MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Eighth Session
April 22, 2015

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:33 p.m. on Wednesday, April 22, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775 684 6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Patricia Farley, Senate District No. 8

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Janel Davis, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Warren B. Hardy II, representing Nevada Restaurant Association
Andy Donahue, Political Intern, Senate Majority Leadership
Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada
Tim Wulf, Owner, JJ of Reno, Inc.
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce
Randi Thompson, State Director, National Federation of Independent Business
Terry Graves, representing Western Metals Recycling
Brian Reeder, Government Affairs Coordinator, Nevada Chapter, Associated General Contractors of America
Ray Bacon, representing Nevada Manufacturers Association
Frank Lepori, representing Nevada Chapter, Associated General Contractors of America
Richard "Skip" Daly, Business Manager, Local 169, Laborers' International Union of North America
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
Victor Joecks, Executive Vice President, Nevada Policy Research Institute
Modesto Gaxiola, Business Manager, Local 162, United Union of Roofers, Waterproofers, and Allied Workers
Gerald Litt, Private Citizen, Las Vegas, Nevada
Yvanna Cancela, Political Director, Culinary Union Local 226
Greg Esposito, representing Plumbers and Pipefitters Local 350

Jared Hague, Attorney, Sutton Hague Law Corporation, Las Vegas, Nevada
Michael Dyer, Director, Nevada Catholic Conference
Allan M. Smith, representing Religious Alliance in Nevada
Reverend Michael Patterson, representing Lutheran Episcopal Advocacy in Nevada
Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance
Mark Sektnan, Vice President, State Government Relations, Property Casualty Insurers Association of America
Lisa Foster, representing Allstate Corporation and American Family Insurance Company
Dan Musgrove, representing AAA Insurance
Kerrie Kramer, representing Las Vegas Defense Lawyers
Joseph Guild, representing State Farm Insurance Company
Mark Wenzel, representing Nevada Justice Association
Stan Olsen, representing Henderson Chamber of Commerce
Michael D. Hillerby, representing Lyft
Nick Vassiliadis, representing USAA
Michael Dorsey, representing Uber
Robert List, representing Livery Operators Association of Las Vegas
Mark E. Trafton, Vice President and General Counsel, Whittlesea Bell, Las Vegas, Nevada
E. Sanders Partee, President, Curb
Lou Castro, President, Earth Limos and Buses, Las Vegas, Nevada, representing Nevada Bus and Limousine Association
Jerry Keys, Private Citizen, Reno, Nevada
Jennifer Gaynor, representing Nevada Credit Union League
Aaron West, Chief Executive Officer, Builders Alliance of Western Nevada
Robert Vogel, Vice President, Pro Group Management, Carson City, Nevada
Bill Miles, President and Chief Executive Officer, Miles Construction, Carson City , Nevada
Adalberto Rosas, Private Citizen, Reno, Nevada
Gregory F. Peek, representing Nevada Home Builders Association
Steven George, Administrator, Division of Industrial Relations, Department of Business and Industry

Chairman Kirner:
[Roll was called. Rules and protocol were stated.] Today we begin to take a serious look at the Senate bills. I want to thank my colleagues. I think we have worked really well together in our Committee.

There are four bills on our agenda today. We are going to hear them a bit out of order. We will begin with Senate Bill 193 (1st Reprint).

Senate Bill 193 (1st Reprint): Revises provisions governing the payment of minimum wage and compensation for overtime. (BDR 53-989)

Senator James A. Settelmeyer, Senate District No. 17:
This bill started out when a number of individuals came to me, as employees, saying the overtime rule as it now exists, was problematic for them. They stated they were trying to talk to their boss so they could come in an hour or two earlier in order to go to their child's game, a doctor's appointment, or something of that nature. Unfortunately, with our laws, they could not do that because the employer would have to pay overtime, and the employer could not afford to do so. There was discussion of moving us to the 40-hour workweek just as 46 other states already have. They do not have sweatshops there, they are not working their employees hard, and they are not getting into trouble.

This made us look at the laws. There are only four states that have a daily overtime: Nevada, California, Texas, and Alaska. Interestingly enough, one state actually has a ten–hour day with what they call the "ten–hour reset." The other states all have eight–hour days. We are the only state with an eight-hour day and a 24–hour clock. That means if you come in one minute early, by law, you are supposed to be paid overtime. There have been lawsuits on this point. Unfortunately, some companies have developed policies that if you check in late or early twice in a pay period, you are fired because they cannot afford the overtime. At the same time, in the Senate Committee on Legislative Operations and Elections, we are hearing issues of raising the minimum wage. As these employers and employees came to me and said they wanted flexibility, the employees also indicated they did not want to see a cut in their pay.

I found it really troubling that many of the employers were just disobeying the law. I asked them what they were doing, and they answered, "Disobeying the law. If you have a disgruntled employee, they will take your business from you. The laws are just too unworkable. I want to be able to be a nice employer and let somebody go to their child's game or doctor's appointment. I am not going to penalize them. They have agreed to not go after me." I told them that I do not believe it works this way. I think they are putting themselves at risk. Those employers said they would love to go to the 40-hour week. I asked, "What is it worth to you? Are you willing to pay for it?" They said, "Yes!" and asked, "What does that mean?" I responded with, "You will find out."

I am Chair of the Senate Committee on Commerce, Labor and Energy. My Vice Chair, Senator Farley, and I had a conversation about raising minimum wage after discussions on overtime. The Legal Division responded that it is within our purview to do just that. The *Nevada Constitution* only sets forth a floor that we cannot go below. As legislators, it is our ability to go above and beyond. We started looking at the different rates in other states and also tried to determine what we should do, if we did not offer overtime, that would not be taking money out of the pocket of the workers. When we looked at the data from the Department of Employment, Training and Rehabilitation (DETR), it became apparent that most employees are currently only working about 26.9 hours in most of these trades. We all know why. Due to the current law, if you go over 30 hours, the employer has to provide insurance. These employees would love to have the ability to go 10 hours here, 10 hours there, and then find another place to work for another 10 hours to make up those 40 hours, or even 50 hours. Currently, they cannot because of the overtime.

After looking at the numbers, we came to the determination of raising the minimum wage to $9. This would make us tied for the fifth-highest hourly paid wage in the United States. There are some who would like it to be more, but I worry that it would be too big of a shock to the industry. Also, $9 would represent the largest increase in the state's history. I am more than willing to stand for questions. Senator Farley also has some statements.

Senator Patricia Farley, Senate District No. 8:
I am certified as a women owned business, and I employ 40 people. It is an honor to be here today to talk about S.B. 193 (R1), which addresses Nevada's minimum wage and overtime rules. I have been amazed by the response to the proposal to raise Nevada's minimum wage, but it is clear that confusion continues to reign for both supporters and detractors of this proposal. Here are a few interesting facts to consider as part of our conversation.

One percent of Americans make minimum wage, yet politicians talk about it as if we are destabilizing the nation's economy; 3.3 percent of Nevada's workforce make minimum wage or less.

Will raising the minimum wage cause mass unemployment and destabilize our state economy? First, that has never happened in history, yet it is talked about as if we all personally know a survivor of the "great minimum wage increase." Not one person can point to a company that closed its doors or laid off employees because of incremental increases to the minimum wage.

Let us address the 7.1 percent unemployed in Nevada who are looking for jobs. Those people are seeking skilled labor positions or jobs that allow for an individual or head of household to not need the assistance of welfare services. The 97 percent of the 7.1 percent who need a job are looking for good paying jobs, not minimum wage jobs. As a business owner, I do not want the 7.1 percent taking minimum wage jobs. As a Republican, I want to work on a better economy with higher paying jobs, not increasing a pool of low-wage earners who are currently dependent on a very expensive welfare system. Please do not confuse or pair the $9 minimum wage increase with the unemployment rate. The unemployment rate is due to an economy that is slow to recover from a recession, not the 3.3 percent of our workforce making minimum wage. Trust me, as an employer, if we are not paying working employees enough to cover basic living costs, then we are paying for welfare services and the systems to deliver those services to our working poor.

As you may be aware, inflation-adjusted wages for all but the highest-income Americans have remained stagnant or decreased steadily over time. The current federal minimum wage has been $7.25 per hour since 2009; however, the Congressional Research Service found the value of the federal minimum wage peaked in 1968, when it equated to $10.69 per hour, and hit its lowest point in 2007 at $6.58 when adjusted for inflation.

According to the United States Department of Labor, 3.3 percent of Nevada's workers are paid at or below minimum wage. This equates to about 22,000 Nevadans. Under current law, employees making $7.25 per hour must be offered health insurance in order to legally pay those employees that rate. An employee making $7.25 per hour working a full-time job makes only $15,080 each year, which equates to roughly 130 percent of the federal poverty level, making those employees eligible for Medicaid. Medicaid is comprehensive medical insurance, not a high deductible or catastrophic plan. Employers who do not offer medical insurance of any kind must pay their employees $8.25 per hour.

Raising the minimum wage to $9 per hour would be the largest one-time increase in the history of Nevada. Employees earning $9 per hour would reach 150 percent of the federal poverty limit and would earn an additional $120 per month in wages.

The average age of an individual making minimum wage is 29. I believe the reason for this is the reduction of middle management positions during our most recent economic downturn. Minimum wage is a rate to be paid to first-time unskilled workers, but with the recession, there were no jobs for these now-experienced employees to grow into.

Moreover, the Pew Research Center estimates that 64 percent of all minimum wage earners work part-time. Most low-wage workers are scheduled for 4- to 6-hour shifts per day, are not likely to work 8 or more hours in a scheduled work period, and are therefore not likely to earn overtime. The opportunity for low-wage, part-time workers to work enough hours to earn the equivalent of the minimum wage is minimal to nonexistent.

Minimum wage and health care are critically linked. This year is the look-back or stability period for employers. Under the Affordable Care Act (ACA), employers are required to track each employee's hours to determine whether that employee is considered full-time or part-time. A full-time employee is one who works more than 30 hours in a week. Because of the ACA and the incredible escalating costs of health care, many employers have reduced low-wage workers to less than 30 hours per week, making them ineligible for company health insurance.

The proposal before you will only increase the wage rate for those employees who are not offered health insurance by their employers. As we discussed earlier, employees earning $7.25 per hour are eligible for Medicaid. These workers would not likely participate in an employer's health care plan, given they are already eligible for Medicaid coverage. Employees earning $9 per hour, however, exceed 150 percent of the federal poverty level and—under the ACA—would pay approximately $66 per month for Silver level coverage, according to the Henry J. Kaiser Family Foundation. Under the ACA, all health plans must be comprehensive, include essential health benefits, and not exceed 9.5 percent of an individual's income. Most must include ambulatory patient services, prescription drugs, emergency care, mental health services, hospitalization, rehabilitative and habilitative services, preventative and wellness services, laboratory services, pediatric care, and maternity and newborn care.

Chairman Kirner:
Thank you, Senators. Are there any questions?

Assemblywoman Carlton:
I would like you to help me understand the numbers exactly. I have had two or three people read this bill with me and I am confused on exactly what we are trying to do. We have the bifurcated minimum wage in this state with the option of offering health insurance. Currently, the minimum wage is $7.25, correct?

Senator Settelmeyer:
Assemblywoman Carlton, let me see if I can predict your questions. Currently, yes. Federal law dictates that the minimum wage is $7.25 if you

offer insurance. Under Article 15, Section 16, of the *Nevada Constitution*, it states that health insurance has to cost not more than 10 percent of the person's gross taxable income. If the employer does not offer insurance, then our system is bifurcated and it goes to $8.25, which was put in by the voters.

Senator Farley:
I would like to add one point. At $7.25, employees are at 130 percent of the federal poverty level, which means they are eligible for Medicaid at no cost.

Assemblywoman Carlton:
I understand that. I would like to get to the health insurance provision. If they do not pay for health insurance—if it is offered, but they cannot afford it—how does this affect them? If they end up making enough to put them at 150 percent, which means they cannot apply for Medicaid—and there is a whole policy discussion about the state Medicaid role supporting businesses, which we will not get into—it bumps them just above that. That means they are only making another $15 or $20 per week, but the cost of insurance can be much higher than that. I am trying to figure out how the pieces of this puzzle fit together, because we want to be very careful we do not pay people enough that they lose the benefits that they need.

Senator Settelmeyer:
The concept of the insurance, and limitation of 10 percent within it, is in our *Nevada Constitution,* and we do not have much ability around that unless we change the *Nevada Constitution*. As far as the concept of allowing individuals to make more money, I have to pay 30 percent of my salary for insurance, so I am very aware how expensive insurance is. It would be my hope that by raising the minimum wage, more employers will help provide insurance.

Assemblywoman Carlton:
I must be missing something somewhere. If you offer health insurance, you can pay them $7.25?

Senator Settelmeyer:
That is current law, yes.

Assemblywoman Carlton:
You are proposing to raise that to $8.25?

Senator Settelmeyer:
Current law is $8.25 if you do not provide insurance and $7.25 if you provide insurance. What we are seeking to do is raise the upper end verification if an employer does not provide insurance.

Assemblywoman Carlton:
Are you saying does not provide or an employee cannot afford?

Senator Settelmeyer:
Under our *Nevada Constitution* and according to the Legal Division, we had to keep it within what the *Nevada Constitution* stated.

Assemblywoman Carlton:
That is not an answer to my question. I will work on this some more. I have a fear that people are either going to be offered something they cannot afford, or they are going to be given something that is going to eliminate them from benefits that they currently have. I am not even talking about the overtime part yet.

Senator Farley:
Whether the employer offers insurance or they go on the Silver State Health Insurance Exchange (SSHIX), it cannot be more than 9.5 percent of their income. At $7.25, the way the law is currently set, the individual or the employer would not contribute to the health insurance cost. At $8.25, the employee does contribute because of the relative relationship to the federal poverty level. By moving the $8.25 number up to $9, the insurance would cost about $66 per month, which is around $15 more a month than what the $8.25 person would pay. In effect, the net would be $105 greater to the $9 an hour person with the minimum wage increase if they had to pay—whether it was the SSHIX and/or contributed to an employer plan. An employer cannot collect more than 9.5 percent of the health insurance premium from the employees. It is the same either way. I hope that made sense.

Assemblywoman Carlton:
My concern is the employer could be offering a health insurance plan and, if they offer health insurance, the employee cannot go to the SSHIX; instead they are supposed to get it from their employer. I am not sure how all of this is going to fit together.

Senator Farley:
If the employer offers health insurance, it is 9.5 percent of whatever that comprehensive plan is. Whether it is SSHIX or a private group plan, we all have to offer the same essential health benefits. They mirror each other even though the networks might be different. If I offer an $8.25 per hour employee a health insurance plan under my company, which includes essential health benefits,

I can only charge 9.5 percent of his income. That calculation is the same if that person did not take the employer health plan and elected to buy insurance through the SSHIX. The cost is irrelevant to the conversation. It is going to cost somebody within the margin of the federal poverty limit the same amount of money whether it is an employee/employer or a state plan.

Assemblyman Ellison:
Is it true that the overtime does not occur per day, that it occurs per week on the 40 hours?

Senator Settelmeyer:
Current Nevada law dictates that if an employer has someone who works more than eight hours per day they have to be paid time and a half unless they are in one of the exemptions. The exemptions are listed on pages 1 and 2 of the bill, and in *Nevada Revised Statutes* (NRS) 608.018.

Currently, there are a fair number of individuals who are exempt from paying the minimum wage due to these factors. Rather than creating all of this confusion and having these exemptions, we are saying everyone has to pay overtime after 40 hours rather than the current law of 8 hours unless you are in one of the (a) through (n) exemptions, plus the other exemptions listed in NRS 608.250.

Assemblyman Ellison:
I understand and like that part. A lot of people like to work four days versus five days per week, for example. Is the federal government trying to raise the minimum wage right now also? Would that interfere with this?

Senator Settelmeyer:
No. If the federal government raises their minimum wage, it does not affect our ability. They would trump us through preemption. As far as your concept of working four 10-hour days, you are absolutely correct. In the state of Nevada, it is totally legal to work four 10-hour days and not receive overtime. However, if you work three 10-hour days, you must receive overtime.

Assemblywoman Kirkpatrick:
How would this affect state employees who might have temporary positions or variable shifts? They work those shifts for a reason, and it works well with shift differential. For example, firefighters may only go out for a day and a half, so why would we not want to pay them for the work they did, especially for protecting us?

I heard all of the states you listed, but we live in a different kind of state. Other states do not have casinos and the same 24-hour excitement and entertainment as we do. I think that was one of the reasons why the law actually started. For example, sometimes a banquet will go longer. How would this work in regard to those situations?

I think about the Department of Motor Vehicles (DMV) and the temporary people who come in. What happens if the doors close at 5 p.m., but there are still 100 people inside who will still need to be assisted? Do we not pay them the rest and just pay them straight time? I am concerned how this works out for many of these people.

Senator Settelmeyer:
If you look at the current law, if a person has made more than one and a half times minimum wage, they are already exempt from being paid overtime. In my discussions with different departments and state employees, I have not been able to find individuals who are paid less than one and a half times the minimum wage starting salary, because they all usually have benefits. Therefore, they are already being paid $7.25 and outside of this because of the insurance.

There were some concerns raised by law enforcement about that. The current law, NRS 608.018, subsection 3, paragraph (e), states "Employees covered by collective bargaining agreements which provide otherwise for overtime." Therefore, they were already exempted out of it. I did ask them for a list of the counties or the numbers of everyone who is an officer and not earning one and a half times the minimum wage. I am still waiting for that list.

Assemblywoman Kirkpatrick:
There are many people who have volunteer positions and we pay them certain benefits, or we at least pay them overtime, especially in some of the smaller counties. How would they be impacted?

When this was solely an overtime bill, it was easier to deal with but in my opinion now it is a bit more complicated with the minimum wage portion. Somebody may make $9 or $10 an hour, but if you do the math, with no overtime during the week, that is still not enough money for many to feed their families and they are having to do that a couple of times. Then you throw in the overtime piece and in trying to subsidize it through overtime, I do not know if it is quite the wash that people want to believe that it is. I am confused how to get through that.

Senator Settelmeyer:
As far as the people working for the county, under NRS 608.018, subsection 3, paragraph (e), they are already exempted because they are provided otherwise by their overtime contracts to collective bargaining. That is existing law. This bill would change that by simply stating that they would be covered by that instead, and they have to be paid at least $9 an hour. In my discussions with the counties, they do not have any employees in that realm.

We got those numbers by looking at the average worker in the state of Nevada who is working 26.1 hours. They are not getting 40 hours anymore. There is also a national statistic; unfortunately DETR does not keep this information; which is that 3.4 of those hours are overtime. I did the math because I wanted to make sure these people were walking home with more money than less. That is where I came to $9 per hour, which would put us fifth in the nation. I will allow Senator Farley to share some comments.

Senator Farley:
We had an issue trying to get a statistic from DETR, but the Pew Research Center estimates that 64 percent of all minimum wage workers are part-time and do not receive overtime. When we talked to the Labor Commissioner, he projected, off of unscientific data, that it was probably north of 70 percent in Nevada.

We are linking an issue that there is some sort of deleted benefit by changing the overtime law, but when there is not a benefit to the mass majority of people, there is not a benefit. These people are working two jobs and not making enough money. Raising the hourly rate will put more money in people's pockets.

Senator Settelmeyer:
When we talked to the larger employers, we saw the simple reality that they do not have a problem with the overtime because they have enough employees. This overtime issue and these concepts really affect small businesses and their ability to manage their employees and to try to do what they want to do—to be kind to those employees, to let them off early when they need it.

This is not a new subject for any of us. We have had this discussion of overtime almost every session that I have been in the Legislature, and it is continuing. This time, I decided we needed a different concept. After hearing

the many hours of testimony on minimum wage, some people want to go to $15 an hour. I thought that was going a little too far because literally 36.8 percent of all the employers in the state of Nevada would be affected by that number. In my opinion, I thought we should start with a little more reasonable number.

Chairman Kirner:
How many employees, in your numbers, would be affected by a minimum wage increase to $9?

Senator Settelmeyer:
Using the DETR numbers, I calculated that about 5.3 percent of the employers in the state would be affected by this change. However, I feel that the options and the protections are not there currently for employers, leaving them open to disgruntled employees coming after them for doing a kind act. Sadly, that is what happened to one employer I talked to. After he gave a disgruntled employee time off, they went to the Labor Commissioner, and the employer was levied a fine of $27,000. I find that problematic.

Chairman Kirner:
You talked about the number of part-time employees and went through calculations of average hours worked. Looking at it in a different way, do you have a sense of what percentage are part-time people and what percentage are people working 40 hours or full-time?

Senator Settelmeyer:
Unfortunately, DETR does not keep that data for the state of Nevada, so the information Senator Farley will give is only a generalization based on national information. Just as the information I gave pertaining to 3.4 hour of average overtime is, unfortunately, a national number, because we do not keep that number through DETR or anyone else.

Senator Farley:
Again, the Pew Research Center estimates that 64 percent of all minimum wage workers are part-time. If you talk to the people at the Office of the Labor Commissioner, they will tell you that they believe the average is north of 70 percent. The reason they do not have statistics is because this is the look-back year under the ACA so employers previously were not hiring employees to make them part-time. This is essentially a year where employers

made a decision to change employees' schedules to 30 hours or less to avoid the 2016 mandate that you either provide health insurance and/or pay fines or penalties associated with not offering or covering employees with insurance. That is why DETR does not have a statistic yet for this year in regard to how many people this is actually impacting.

As Senator Settelmeyer said, we both sit on the Senate Committee on Legislative Operations and Elections and have heard the minimum wage bill. It was very interesting to have numerous people testifying that they were not getting more than 20 or 29 hours per week. They also were not getting overtime and were working two jobs. Not one person who testified stated being a full-time minimum wage employee. They were lamenting about being forced to work two part-time jobs or being forced to work part-time from full-time.

Chairman Kirner:
Thank you. Are there any questions?

Assemblywoman Neal:
I have two questions. In section 1 on the minimum wage question, you chose the modest approach which is that 5.3 percent of the employers would be affected by the $9 minimum wage, correct? Do you believe that the $9 will prevent people from having to work two jobs?

If I do the calculation, at 40 hours per week, the amount would be $18,720 a year. With this amount, you are able to pay for your car and rent. If you want to eat, at roughly $150 per month, which will be about $1,800 more, that is not actually in your $9 wage. If you want to forgo eating, then you can have car, insurance, and rent paid. Why did you choose 5.3 percent and not go somewhere more in the middle, especially when you said the high could have been 36.4 percent? I am not necessarily advocating $15, because I believe in people getting an education and capturing whatever they can get, but why did you not go more toward the middle and try to affect, say, 12.7 percent of employers versus 5.3 percent?

Senator Settelmeyer:
To answer your first question, if I believe this will prevent people from having two jobs, the answer is no. If you paid somebody $100 an hour it will not prevent them from having two jobs. People are going to do what they have to do to support their family at whatever level they wish. I believe all of us have

a desire to always make sure our families are better off than we were. We are always looking to work harder to provide those assets and resources to our children so they can have a better life. I know I am, and from your nodding, I think you are too.

We started playing with the calculations. The problem is the calculations are based on falsehood, because they are all based on a 40-hour week. We do not have people working 40 hours and that is the problem with all of the calculation data. If you went to the concept of getting people to the poverty level while working a 26.1-hour workweek, which is the average for the state of Nevada, their salary would have to be at about $22 to $25 an hour. The highest minimum wage is that of the District of Columbia at $9.50. I felt the concept of going to the fifth highest was a great start. Being a conservative Republican, it was problematic for me to even go that far. Senator Farley had to get me to that point.

Senator Farley:
I would like to follow up on Senator Settelmeyer's comments. So, 5.9 percent of employers employ the 3.3 percent of employees who are earning minimum wage. The increase of the minimum wage would impact that percentage of employees. We are actually talking about a population of 3.3 percent of Nevada's workforce. In regard to the calculation, we looked at this from the federal poverty level. If you look at the Washoe County and Clark County websites, they give numbers regarding where people are and what they need to be earning to live in those areas.

I wanted to let you know that those sorts of things were taken into consideration and that we have to be in compliance with those numbers. I also did not want the 5.9 percent number to be confused with the 3.3 percent number which represents actual minimum wage earners.

Assemblywoman Neal:
I have a question about the overtime in section 3, subsection 3 of the bill. I heard the reasoning, but I want to understand the part in paragraph (a) that is eight hours in one calendar day, which is deleted. I have a real life example. I have a friend who works construction in Florida; he does concrete. One day, it rained and he could not leave. He began his day at 6 a.m. He sat in his car and stayed to make sure the job site was protected. So what would have been a typical 10-hour day turned into a 12-hour day. The way this bill is written, a person working under 40 hours, who worked 12 hours, not 10 hours, would not get overtime, correct?

Senator Settelmeyer:
Under current Florida law, in the situation your friend was in, he would not get overtime until he reached a 40-hour workweek. I cannot answer your question because I do not have enough information. For example, I would ask such questions as, was he in a field under current law that was collectively bargained? Was he getting more than one and a half times minimum wage? Was he in a professional capacity? I would need the answers to those questions before I could tell you if, in Nevada, he would have received overtime under existing law. If we change the law, you can only get overtime after 40 hours. Whether he would have been covered in Nevada, I do not have enough information. You would also have to find out how much he was earning per hour. Again, the list of exemptions we have in NRS 608.018, subsection 3(a) through (n), plus NRS 608.250 has six other exemptions, which makes it very complicated, especially for small businesses.

Chairman Kirner:
Looking at paragraphs (a) through (n) of NRS 608.018, subsection 3, under your proposal on this bill with the $9 minimum wage, that would be without insurance, correct?

Senator Settelmeyer:
That is correct.

Chairman Kirner:
Regarding those positions listed in paragraphs (a) through (n), would they still be receiving time and a half after eight hours or based on their collective bargaining agreement?

Senator Settelmeyer:
If you were to pass S.B. 193 (R1) as it exists now, all of those exemptions they added would go away, and it would give the ability for employers to have some predictability by having the existing law. I know people are looking through their paperwork, but what we are referring to is current law that is not within this version of the bill.

Chairman Kirner:
Are you saying that the exemptions in paragraphs (a) through (n) would go away in terms of overtime except for 40 hours per week?

Senator Settelmeyer:
Correct.

Chairman Kirner:
So that would usurp any collective bargaining agreements, motor carrier agreements, et cetera?

Senator Settelmeyer:
Collective bargaining agreements would still be over this. Everyone has the right to contract as they see fit. For example, if they earned $10 an hour and were under the collective bargaining agreement, that would go over this—as would any contract between two individuals.

Chairman Kirner:
That is what I wanted to be sure of. Are there any questions?

Assemblywoman Carlton:
I was getting confused in regard to the provision in the *Nevada Constitution*. If I remember correctly, it says you have to provide health insurance, not just offer it. I think we are having an issue there because we are supposed to provide it. Also, when I read section 1, how many employers do not offer health insurance right now? A lot of them offer it, but the employees cannot afford to buy it. This is the problem. This would allow them to pay the lower rate even if they offer it and the employee cannot afford it. It seems like a four- or five-step process here that we have to break down. It is my understanding that the definition you were giving me earlier was how you define providing health insurance to your employees, not just an offer of health insurance. I think we need to clarify that.

Senator Settelmeyer:
We did that with the Legal Division. Legal chose the words; they said it had to be "offer" in order to be consistent with the rulings by the Labor Commissioner and with the *Nevada Constitution*. They were the ones indicating that was the word choice. That is something that you may have to ask your own legal counsel since they chose the words.

Assemblywoman Carlton:
What about the percentage of people in this state who do not have health insurance?

Senator Settelmeyer:
Unfortunately, I do not know the percentage of individuals. I would assume that everyone who is currently being paid $7.25 to $8.25 per hour clearly has to be given health insurance, which is 3.8 percent of the employees in the state of Nevada. As far as the rest, I do not know. I know that my employees are all

offered insurance, and they make far more than the minimum wage. I have insurance as well, but I do not know the number of uninsured Nevadans who are employed at this time.

Assemblywoman Carlton:
I will respectfully disagree with Senator Settelmeyer. I think we are having a wordsmithing issue. I was around when that *Nevada Constitution* amendment went in, as you were, and I have been through all of the debates. I also helped write on the back of a napkin across the street the provision to deal with if they did provide health insurance, not just offer it.

Chairman Kirner:
The issue is the employer has to provide it, not simply offer it.

Assemblywoman Carlton:
That is the point I am trying to make. The bill says offer, and we are talking about providing. I think people need to really understand what that means.

Senator Settelmeyer:
Maybe we can have Brenda Erdoes, the Legislative Counsel, contact you since she was the one who indicated the words had to be as they were.

Chairman Kirner:
I am going to ask Mr. Mundy so that we are all clear on this point.

Matt Mundy, Committee Counsel:
I think the provisions of section 1 have to be in contemplation of the constitutional provision, that distinction between being provided health benefits and not being provided health benefits. Article 15, Section 16, says that an employer shall pay a wage to each employee of not less than the hourly rates. The amount stated in the *Nevada Constitution* is $5.15, and that is adjusted if the employer provides health benefits. So, under section 1, an employer who actually provides health benefits can pay $7.25, and $9 would apply to everyone else.

Assemblywoman Carlton:
You did say "provides" health insurance, not "offers" it. This bill says "offer." There is a big difference between providing and offering. It is the expense of health insurance. I just want to make sure we are all on the same page and not misinterpreting one word for the other. I would love to meet with Brenda Erdoes and talk about this because this has been an issue for a long time. I look forward to the discussion.

[Assemblywoman Seaman assumed the Chair.]

Vice Chair Seaman:
Are there any questions from the Committee?

Assemblyman Ellison:
I know what you are trying to do with this bill and how you are getting there. I know you are trying to get people's wages a little higher, but what happens if an employer is paying his employee $7.25 an hour and providing insurance and he looks at this bill and says, "Oh, I can pay my employees $9 an hour and that is $1.75 more an hour times eight hours equals $14 per day, so it works out to $70 a week. That comes to $280 a month, so if I have to pay $500 or whatever my match is for insurance, I would be better off to pay the $9 an hour and not pay the insurance." Is there anything in here to protect those employees and keep them insured?

Senator Settelmeyer:
The reality is if it was that type of an employee, they would have already done that calculation at $8.25 and done so.

Assemblyman Ohrenschall:
A scenario was brought to my attention. Let us say you have an employee who works 30 hours a week and makes $8.25 an hour, and he works three 10 hour shifts under the current law. Doing the math, I came up with $8.25 times eight hours equals $66 plus $24.75 for two hours of time and a half resulting in $90.75 for that 10-hour day. Under this bill, if passed, when I multiply the $9 wage without overtime by ten hours, I get $90. So the worker would now be losing 75 cents a day. Am I misunderstanding how the bill will work? Can you explain that to me?

Senator Settelmeyer:
There may be certain situations where someone does not make as much money, but the overwhelming majority of individuals will be making far more from the math that I have done.

Assemblyman Ohrenschall:
I wonder if the bill sponsors might be amenable to tweaking the amount. I did some more math and if you look at $9 an hour with 30 hours per week, then the loss for that employee who is only getting 30 hours per week and is at minimum wage would be remedied, at least the way I see it.

Senator Farley:
It is a net zero impact at 75 cents per day. Let us assume they are working 30 hours per week times four weeks, which would be 120 hours at an $8.25 hourly wage. With overtime they gain 75 cents per day. Rounding $.75 out to $1, that comes to $120 per month. At a wage of $9 per hour, there also is a $120 increase per month, so it is a net zero impact with the overtime. For an employer, the reality is that normally if the person is working four 10-hour shifts, he is set at straight time, not eight hours plus two hours of overtime, unless he has an abnormal work schedule. So the person would not be working two hours of overtime every day.

Senator Settelmeyer:
Assemblyman Ohrenschall, I appreciate your question. I have talked to many businesses, and I am sure there will be some against this idea of going up in salary in any way, shape, or form. I have been contacted by a couple of individuals involved with fast food restaurants, who are definitely not happy with this. In that respect, I was trying to do something that put us near the great list rather that always being at the bottom of the bad list. In my Senate Committee on Commerce, Labor and Energy I was not willing to go any higher than $9.

This Committee is more than welcome to bring that up with your Chairman and see what you all wish to do with it. I felt that $9 was the largest increase in minimum wage in the state's history, which is a remarkable improvement. It ties us for fifth in the United States, and I was willing to go to that level. Again, this is your Committee and your decision.

Assemblyman Ohrenschall:
I appreciate that. I am concerned with the scenario with losing the 4/10s and the overtime, that the person might actually lose money. I wonder if there is a way to work on that and interplay the two, even if it is a small amount of money, because for part of that group of people making that wage and trying to support themselves or a family, $20 a month is a lot.

Senator Farley:
Normally, if you are working 4/10s, you are on straight time, and that is both collectively bargained and under the current law. The reality is, if somebody at $8.25 an hour got two hours of overtime every day in the course of a month, they could possibly be losing $120, but if you take the wage up to $9 an hour, it is a net zero impact and it washes out.

Senator Settelmeyer:
Also, under NRS 608.018, individuals who work 4/10s do not get paid overtime in the state of Nevada.

Assemblyman Ohrenschall:
My concern is somebody who is working under those 4/10s and that scenario. I do not know how common that is, but a lot of people are working just 30 hours per week.

Senator Settelmeyer:
I find it absolutely fascinating that our state does not require overtime for 4/10s but does require overtime for 3/10s.

Chairman Kirner:
I am anxious to hear support and opposition on the bill, but let us hear the rest of the questions.

Assemblywoman Kirkpatrick:
I have a rather simple question that is not really in the bill, but I am hoping you might have come across this during your discussions with the Labor Commissioner. What happens to an employee who works the eight hours and then their boss asks them to stay an extra hour. What are the repercussions? Have we thought this all the way through? I am really concerned with the word "regulation" in section 1 of the bill. What is envisioned here?

There have been some controversial pieces on this topic. My history on the 4/10s has always been that construction workers did it so that they could travel to different places. It would be great if everyone could work 40 hours, but people just cannot do that. The last time I followed up with DETR, we had more underemployed people who were working, so I do not want to disincentivize them to do better.

Senator Settelmeyer:
As far as the regulations go, I hope that both of us get to be on the Legislative Commission, and I look forward to the possibility of this bill passing and talking with the Labor Commissioner to try to figure that out. As far as unintended consequences of a bad employer, or bad employee, I cannot predict the completely unintended ones. I understand your fear of an employer saying you have to stay 20 minutes extra otherwise you are fired. The problem I have with that is I think it is completely outweighed by the number of employees right now who are being fired if they clock in late twice within a week. I am more

worried about that, as well as the individuals who are not getting 40 hours of work due to the ACA. Instead, they are getting about 30 hours. Again, the average hours per week for Nevada is 26.1, and that is why I am trying to focus on giving them the option to have two jobs. Maybe that is a good thing, maybe it is a bad thing, but the fact is, the employees are coming to me saying they would like to do 3/10s here and go somewhere also and do another 10, or maybe 2/10s, in order to support their family.

I could not, in good conscience, get rid of that overtime without entertaining the concept of raising the minimum wage to make sure I did not hold them back from a better situation. There may be those rare exceptions that are within the system, or the ones with the unscrupulous employer, and I can understand that. However, I tend to look at the 46 other states and understand that we are different, but I do not hear complete horror stories where every employer is evil and, therefore, we cannot have a 40-hour week.

Our economy is changing. We are steering away from gaming a little bit and that is a good thing. However, I want to allow people to have quality of life and to have the ability to come in early and stay late. My employees are all salaried, but anytime they want to go home, they are more than welcome to. What is interesting is that my employees are ones that I have brought along. I have one man who has been working with me for 17 years. Some prefer to be at work. They say it costs them less money to be at work and their wives do not tell them what to do, so they stay at work.

Chairman Kirner:
I would like to ask those who are in support of S.B. 193 (R1) to please come forward.

Warren B. Hardy II, representing Nevada Restaurant Association:
We are in strong support of certain provisions of this bill. I am probably on tenuous ground in terms of the rules of where I should have signed in, but there is no way I could have signed in anything but in support of the first provision of this bill, which provides for return of the 40-hour workweek. On behalf of the Nevada Restaurant Association, one of the primary complaints that we get from our employees is they would like the chance to arrange with their employers to be able to work different hours, or more hours, at one time. Many of the restaurants do evening banquets. The employees would like to be able to work their day, afternoon, or evening shift and then work on a banquet later that night to pick up extra hours and money. This is an example unique to the

restaurant industry. Currently, they are not able to do this. Another example would be a desirable Friday night shift or Saturday morning shift. Under the current law, they cannot work a Friday night and then come in and work a Saturday morning.

In terms of the priorities for helping our members' employees go to the 40-hour overtime, the federal 40-hour overtime rule is extremely important. Again, it is of some benefit to the employers as well to give them some flexibility, but in response to the Minority Leader's question, overwhelmingly we are finding it is our employees who want to be able to take on those additional shifts, particularly when it comes to banquets because there is good money involved.

With regard to the minimum wage provision of the bill, we are certainly in support. We want our industry to be a very sought-after, high-paying industry. We also have a unique situation in the restaurant industry. Portions of our industry are extremely well paid. Our servers are very well paid. My daughter was a server at a restaurant, and she used to put her check in her savings account and lived off her tip income. The challenge we have is that we are not able to spread the wealth around, for lack of a better phrase. The restaurant industry works on margins that are 2 to 3 percent in some cases. It makes it very difficult if we have to pay the minimum wage to our servers and also be able to pay minimum wage to our cooks, greeters, and to our bus people. We would like to be able to pay the entire industry better than we are paying them now, but with these margins, it is difficult to do.

There is some concern in our industry about one facet of this. Brett Sutton, an employment lawyer who sits on our board, provided a letter to the Committee (Exhibit C) indicating questions about whether the Legislature can constitutionally raise the minimum wage. When it comes to the minimum wage question, our recommendation would be that we take it to a vote of the people and we go to a Nevada constitutional change to try to increase that. Short of that, we would respectfully request that this Committee consider a tip credit on the additional 75 cents. If, in fact, the Legislature can raise the minimum wage by the *Nevada Constitution*, we believe that the Legislature can also provide a tip credit for those tipped employees, so that we can take that incremental difference from the servers and give it to the bus people, cooks, and others involved in the industry. Again, we have unqualified support for going to the 40-hour week on behalf of our employees. We would like an opportunity to continue to have discussions with the bill sponsors about the minimum wage.

Chairman Kirner:
I would like to go through the panel present at the table and then open up the hearing to questions.

Andy Donahue, Political Intern, Senate Majority Leadership:
I have been studying possible legislation concerning the minimum wage this entire legislative session and have emerged today with three additional reasons to support S.B. 193 (R1). [Referred to handout (Exhibit D) submitted for reference by Senator Settelmeyer.] First, according to DETR, 9 percent of the state's lowest earners will see an increase in retained wages upon passage of S.B. 193 (R1). Constituents of this body are priced out and reaching the poverty line. This bill is a swift response to a dire need right now.

Second, employees pay 100 percent of their health insurance premiums either through out-of-pocket expenses or by forgoing wages. Senate Bill 193 (R1) stands to lower the cost of ACA-eligible employees by up to 86 percent if they are paying the highest premium allowable under law, and will completely insulate business owners from paying fines to the federal government because coverage will be easily made available. This will keep resources in the state for further investment with local discretion.

Third, Nevada's business leaders have alleviated concerns of such an increase in the minimum wage suppressing growth, or serving as a shock to the industry, for at least ten national companies with a combined 195 retail locations in the state, all of which pay $9 an hour starting salary. This bill reinforces the economic foundations of this state. I hope these reasons prove compelling in your consideration of S.B. 193 (R1).

Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada:
We strongly support the daily overtime piece of the bill. We are simply trying to match federal law. This is certainly not an extreme piece of legislation, as 46 other states already have the 40-hour week. There are many exemptions in our current NRS, and I wonder how effective this law is to begin with. Unfortunately, you will hear many businesspeople speak in support of this side of the bill and a lot of labor people testify against it. For example, we had a Chamber of Commerce event a couple of years ago at a northern Nevada casino property, and it was pointed out to the banquet workers at the event who I was and what I did. They came up to me and said they needed us to change the state overtime laws. "I want more hours and I want to make more money," they said, but because of the current law, they said they cannot have more hours to make more money and provide more resources to their families. We are saying this is greater flexibility, not just for employers but also for employees. What if they want to work a double shift and return to work the next morning? It could be argued that the status quo actually hurts these workers and costs them the money that they could be making.

As for the minimum wage portion of the bill, I will echo Mr. Hardy's comments. I have a lot of restaurant employees who are not thrilled with that piece, and it is certainly not something that the Chamber of Commerce ever asked to be in this bill. We support Mr. Hardy's efforts and those in the industry. You will hear from a restaurant owner about the difficulties with that. The daily overtime piece is an extremely important part of this bill.

Tim Wulf, Owner, JJ of Reno, Inc.:
I am a retired associate professor of economics and the owner of a food service restaurant, Jimmy John's, that employs 55 of the 22,000 minimum wage employees that we recently alluded to. Currently none of my employees are making minimum wage. They all start at minimum wage and get a training wage. After training and progression in their skills, the average wage is $10 per hour. Our tipped employees are between $18 and $20 per hour. There are 38 states that have tip credits, and the tip credit would be a huge asset to us because we could share that wealth with our in-shop employees who are not tipped.

Regarding the concerns of employees, all of whom are entry-level employees at my restaurant, one of the ways we could help them is by introducing a tip credit as opposed to introducing a minimum wage increase, which I will soon speak to in the negative. As to the 40-hour workweek, I polled my employees and all of them would like to have a 40-hour workweek. The most important thing to the millennials is flexibility of schedule. A few more dollars would be great, but to get the exact schedules they like is gold. They are going to school, they have lives away from work, and they are traveling. Most of them are under 26 years old, so they are covered by the ACA anyway. When we talk about helping people in this wage classification, you are not going to help them by raising minimum wage, but you are going to help them by giving them more flexibility of hours. We strongly support that portion of the bill.

As an economist, I would point out that we have decades of studies that indicate what the effect of minimum wage really is. We do not have to use forecasting documents or algorithms to do this because we have historical data. What we know is that for every dollar increase in minimum wage, we will see a 1.5 percent increase in unemployment. In fact, 4.7 percent of that unemployment will be teenagers. The very people you are trying to help are the ones who will be hurt by a minimum wage increase because the opportunity to get that wage will diminish.

My business generates 41,000 labor hours per year. All of my employees would expect a 75 cent increase if the minimum wage went up because they all started there. They would not want to be paid the same as the person who is

just starting. I would have all sorts of morale problems unless the whole payroll went up by 75 cents. That would be 41,000 x 75 cents, and after adding the payroll taxes and other costs associated with labor, you are talking about $41,000 in additional labor cost to run a restaurant. If you have a 5 percent return, which is relatively above the average in the restaurant industry, it means that you are going to have to generate 20 times that $41,000 just to pay for the increase in the payroll. Obviously, that is not going to happen because 20 times that would be more than the average sales of a Port of Subs or a Subway.

So what is the reality for the business owner? He has to cut labor and raise prices. What will happen is that you are going to use kiosks instead of cashiers. It is not what you want to do. If you want to help the entry-level worker, give them the opportunity to learn job skills, because that is who the entry-level worker is. There is a difference between a living wage and a wage that is an entry-level training wage. Most of the people who are entering the workforce need the opportunity to learn how to work. Let us not diminish that opportunity for them.

Chairman Kirner:
At this point, I recognize that you are in support of part of the bill and opposed to part of the bill. I know there are a number of our members who have questions, so I will open the hearing up for questions.

Assemblywoman Carlton:
I am disturbed by the conversation of tip credit. Having been a waitress for over 35 years, it is something very sensitive to me and would be sensitive to most service workers in this state. Those service workers are the ones who helped build this state and are the reason Nevada is the way it is today in regard to the gaming industry.

To me, tip credit basically says that the employer is going to take money out of my tips to help subsidize the cost of the other employees in the restaurant. When I walk in the door and clock in for my shift, I am being paid to take care of tables and wait on people and do a good job. I was a good waitress and made a very good living at it. Those tips went into my pocket because I was that good. I worked with people who were not that good, so they left. When the company starts talking about reaching into their employees' pockets to help subsidize other employees, I think we need to be very careful. It is not something that has been vetted in this Legislature, and I think it needs a lot more discussion than just throwing it into a bill that has a lot of different political ramifications.

Chairman Kirner:
I think there are some rules around tip credits that are important for this Committee to appreciate. I will ask our Committee Counsel, Matt Mundy, to help us understand.

Matt Mundy:
This is a rather novel question. In general, the *Nevada Constitution* prohibits tip credits. Tips or gratuities received by employees shall not be credited as being part of, or offset against, the wages that are paid pursuant to the constitutional provisions. We have a concern that a tip credit in statute would be constitutional, but that issue just arose last night and is something Brenda Erdoes and I have been talking about. We are going to get more information. That provision does exist in the *Nevada Constitution*, and we believe it is problematic.

Assemblywoman Carlton:
That is the reason I moved here.

Assemblyman Nelson:
This question may be for either Mr. Mundy or Mr. Hardy. You mentioned the question about the constitutionality of raising the minimum wage. What is your issue with that?

Warren Hardy:
It is my understanding that the Legislative Counsel Bureau (LCB), which I have come to trust explicitly on these sorts of things, has ruled that it is constitutional to raise the minimum wage. It is, in fact, a floor not a ceiling. I am reporting that I have spoken with several other employment law attorneys who have a different opinion on that, which is the reason for my suggestion. If we are going to do something with the minimum wage, which is probably desirable, we should do it through a constitutional amendment as opposed to doing it through legislation. That way, any question about it is removed. I certainly have no reason to doubt LCB, from my experience with them through the years, but I know that it is a point of contention with some other employment law attorneys. We have submitted a letter from Brett Sutton (Exhibit C) that I would refer you to with regard to that subject.

Chairman Kirner:
In preparation for our meeting today, you had an opportunity to visit with LCB directly, right?

Warren Hardy:
I did.

Chairman Kirner:
Their perspective was that it was not unconstitutional for Nevada, correct?

Warren Hardy:
That is correct. They maintained that, and we certainly respect their opinion.

Chairman Kirner:
So that may be a point of difference. I am operating under LCB rules here.

Warren Hardy:
At some point, I think the Legislature is correct in doing that.

Chairman Kirner:
Are there any questions?

Assemblywoman Neal:
Mr. Wulf, I was listening to your economic argument that an increase of minimum wage could have a negative effect on business costs and employment. The more you increase the wage, the more you may lose the ability to have more positions open. It is the rights of the business versus the person who works. I am trying to figure out what would be the middle ground? Ultimately, there has to be a movement in the profit margin to keep an employee, correct? There has to be some sort of wiggle room to say, "What should I do in order to get good employees who want to come to work every day, and what would I like to carve out in terms of my profit so that I can pay a decent wage?"

I have a couple of friends who own businesses. One of those business owners sees what is fair and pays three employees $11 an hour. The other business owner is cheap and does not want to pay as much. At the end of the day, they still need someone to work for them. I want to hear what the middle ground would be.

Tim Wulf:
I am going to answer your question in two parts. First, I can imagine that one of your friends does not have very happy employees. The market should determine what the wage rate should be. It is always interesting to an economist when people say they believe in free markets and free market capitalism, but they want to somehow restrict what the wage level is when it is

a level of payment between employer and the employee. When I came to Nevada 11 years ago, after retiring to start the business, the economy was a lot different, and minimum wage did not exist. We pay $2 above minimum wage because if we did not, we would not have any employees. The market should determine that. It is not a right; it is just the market.

In terms of finding middle ground, what happens in business reality is that when one input factor in a competitive market, like labor, increases in cost, you start looking for alternatives. You can turn to technology or robotics or try to increase your prices. If you are in a competitive market and cannot increase your prices, you are going to look at other alternatives. What eventually happens is if you continue to increase the cost of labor, the opportunity to have jobs diminishes. It is simple supply and demand; it is not complicated. The middle ground is you pay what the market dictates.

Chairman Kirner:
As I listen to this argument, I am told that we are going to have 6,000 new jobs in the northern Nevada area from a car company. If that begins to cascade down, it seems to me that you are going to be forced to raise your wages regardless of whether or not there is a minimum wage. I would guess you are probably going to have to go above that just to get employees. Is that a safe assumption?

Tim Wulf:
That is a very safe assumption. As excited as we all are in northern Nevada regarding all of these great paying jobs, the reality for small businesses is that we have to compete with that. We know that is in our future. Since I have the microphone, I want to say that tip credit does not take tips away from employees, but it lowers the wage level.

Assemblyman Hansen:
I want to address the topic of supply and demand. You agree market forces should dictate, which I have no problem with, but the problem in Nevada is that the statistics I have seen suggest that 30 percent of our workforce is made up of people who are illegally in this country. Have you done any calculations as to what the wage scale may be if you are able to reduce 30 percent of the labor pool at the moment?

Tim Wulf:
I do not have that answer.

Assemblyman Hansen:
Since you are an economist, take a guess. If you were to take one-third of the workforce out, I would suspect that you would see wage scales go through the roof in Nevada. We talk supply and demand, but we have a porous border around this state. We have all of these people who do not belong in this country taking jobs away from Nevadans. I do not even hear this being addressed, yet if we are going to talk about a free market, that pretty much blows the free market out of the water when there is a constant, unlimited supply of cheap labor pouring into the country.

Tim Wulf:
I would like to say that I am one of those economists who does not guess. I like to use historical data and I do not have that to avail. I am not discrediting your point; I think you are making it clearly, but I have nothing to support it.

Assemblyman Hansen:
I can make it clear that if you take one-third of the workforce that is not supposed to be here, you would see wage scales go through the roof.

Chairman Kirner:
I suspect your sandwich prices would go up too. Are there others who wish to testify in support of the bill?

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:
The Las Vegas Metro Chamber of Commerce would like to offer its support of S.B. 193 (R1) because of the provisions relating to the daily overtime component of the bill. As you are probably aware, the Chamber of Commerce was in support of this bill in its original format on the Senate side because of the provisions relating to greater flexibility for the employer and the employee. As mentioned, the market trends are changing here in the workforce, not just in Nevada, but nationally, and as we see it, more employees want greater flexibility with their schedule. We believe that this is an important component to the policy conversation today. We also believe it will bring greater efficiencies and scheduling for the staffing needs on behalf of the employers and employees.

Historically the Chamber of Commerce has had concerns with minimum wage increases. As many of you know, we are the largest business organization in the state. We have employees and members in every single category. Our members employ almost 250,000 Nevadans, so it is hard for us to say what the absolute impact would be. We know that most of our members are paying above the minimum wage.

On the historical level on the health care side, because we are transitioning to the ACA, our members bought and provided health care insurance for their employees. We do not have data this year because it is a transition year, but we know that they have been able to provide that in the past.

Randi Thompson, State Director, National Federation of Independent Business:
I represent over 2,000 businesses across the state of Nevada. Last year we did a poll on getting rid of the 24-hour clock and overtime, and 84 percent of our members supported that. We are in full support of the overtime change. The overtime change will most likely help the people you are trying to help, most of whom are the minimum wage workers. It will benefit them because they will be able to pick up more hours, as Mr. Wulf was talking about, where his student workers have that flexibility to work around their school schedule. Removing that 24-hour clock will allow flexibility for both the employers and the employees.

I have to agree with Assemblywoman Kirkpatrick that this bill would be a lot cleaner if it did not have the minimum wage portion attached to it. I would ask that you strip that totally out of the bill, and then we can have the discussion about tip credits that Assemblywoman Carlton mentioned. I will echo Mr. Hardy that if we cannot take out the minimum wage portion, we should at least consider some sort of tip credit, which Mr. Mundy said would be challenging anyway. We are fully in support with the overtime, but are very concerned about the minimum wage increase.

Matt Mundy:
Without section 1, I do not think there is any question that a tip credit would be unconstitutional for Nevada.

Terry Graves, representing Western Metals Recycling:
I represent a group of scrap metal processors who use a lot of low-skilled workers. We, too, are interested in the overtime change. Minimum wage is not really an issue with us. Even our lowest-skilled workers are above the minimum wage.

Brian Reeder, Government Affairs Coordinator, Nevada Chapter, Associated General Contractors of America:
The Associated General Contractors of America (AGC) is in support of this bill. My comments are toward section 4. Construction is unique, and the 4/10s schedule allows flexibility, especially when you have a contractor doing a job in Battle Mountain, for example. Contractors like to offer their employees the 4/10s schedule so they can go home on the fifth day and spend the weekend with their families. Currently what happens with the 4/10s schedule

is on that fourth day, if they are rained out, they are required to pay overtime hours nine and ten of the previous three days. This bill would allow more flexibility so that does not happen and there is no risk in offering that 4/10s schedule.

Chairman Kirner:
Thank you for your testimony. Do we have questions for this panel? [There were none.] Are there others in support of the bill?

Ray Bacon, representing Nevada Manufacturers Association:
Ditto.

Frank Lepori, representing Nevada Chapter, Associated General Contractors of America:
I am in support of the 40-hour workweek.

Chairman Kirner:
I will now ask those who are opposed to this bill to please come to the table.

Richard "Skip" Daly, Business Manager, Local 169, Laborers' International Union of North America:
My comments are about section 4 of the bill. I listened to this bill on the Senate side as well. Some of the issues are affecting people in the restaurant business and businesses other than construction. Regarding the flexibility that was talked about by Mr. Reeder with the AGC and others, in my opinion, section 4 is not a problem, but I do not think it really belongs in this bill. I would hope that this Committee will delete section 4 on the construction language.

I worked with Assemblyman Pete Livermore last session, in this very Committee, to address the 4/10s issues, which would have addressed it in the nonconstruction businesses and in the construction industry. Unfortunately, we were not able to get that done. I noticed that other people are coming forward to talk about the 4/10s and the hours in between. I think those things need to be addressed. There is an interpretation made by the Labor Commissioner exactly as someone said. If I worked day one, two, and three, and then it rains or I get sick, I get transferred from a 4/10 job to a 5/8 job and do not work that full 40 hours in the time period. The interpretation has been that they have to be paid the overtime.

The issues of the overtime being paid after eight hours of construction work are there for a couple of reasons. Those changes were made in 2003 in a bill that went through the Assembly Committee on Government Affairs. The reason that bill even came up was because of a question on whether the

Labor Commissioner had the authority in statute to enforce some of the Fair Labor Standards Act (FLSA) provisions and other things. There was language put into law, and in the regulation later, that referenced the federal guidelines. That we had the authority to enforce overtime in the eight-hour day on construction projects was put into place at that time. For a variety of reasons, the Labor Commissioner under Governor Kenny Guinn, Terry Johnson, agreed with it. It was their bill suggestion and amendment; we supported it.

I have not heard any testimony in the Senate or here today directly about the construction issue of paying overtime except for flexibility on the 4/10s and an interpretation that hopefully can be fixed. I know there are a couple of people on this Committee who are involved or have been involved in construction. I see the eight-hour workday in construction especially. Some of you who have not worked in construction should get out there and see if you can hack it past eight hours. We wanted an eight-hour workday. There are safety issues involved and solid reasons why we have that in place. It creates a level playing field in the industry. If we can fix the 4/10s language so those rain-out days and various things that happen—not to the fault of the employer—could be addressed, I think this would be a better bill. To eliminate the construction portion of this, I will disagree.

I will try to answer Assemblywoman Neal's question regarding the wait time and rain. Again, that goes to some of the issues that the Labor Commissioner was able to fix by reference to the federal law. There is a whole series of questions, like Senator Settelmeyer said, on exempted employees. Under the FLSA, their question was, "Have you been encouraged to wait?" If you are told to wait until the rain stops and then go back to work, you are encouraged to wait and you would be paid. If you went over 8 or 10 hours, or whatever the rule is of the state, and were over 40 hours that week, then the overtime would kick in. If you have not been encouraged to wait, then it would be a different story. Those circumstances are in the FLSA and apply to all workers regardless.

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
As the group and the person who ran that campaign to put the minimum wage in the *Nevada Constitution*, I will point out that the reason we had the provision about the health care was because it was before the ACA, and it was offered as an incentive to employers to provide health care to employees. At the time, 24 percent of the people in the state had no health care, and they were driving the cost up for everyone who did have health care because when they accessed health care, they did it at the most expensive point, which is the emergency room. Without some patients' ability to pay then, the providers were eating those costs and passing the costs on to those of us who were paying.

As far as raising the minimum wage to $9, we support that. We do not believe $9 is enough, but if $9 is what it is going to be, we would support that. As far as the eight-hour day, I represent workers, and I have never had anyone tell me to do away with their overtime.

As a person who sat in your seat before and did things that I thought were right only to go home and find out from my constituents that it was not, I will tell all of you that should you vote to eliminate worker's overtime, you will hear from your constituents. The ten-hour day and all of it, exemptions were put in there for reasons, and they were done over the years. People came to the Legislature and wanted the ten-hour day changed because they wanted a ten-hour day, and the only way to do it, outside of the overtime laws, was to put a provision in for that. We oppose part of this bill, and support the other part.

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

We are opposed to this bill for reasons that have been stated by Mr. Daly and will probably be stated by others. The current federal minimum wage for tipped workers has not been changed in a long time. It is currently $2.13 an hour. I know there is a constitutional question about that, so when you talk about tip offset, please keep that in mind. There is an issue of polling your employees. For example, if my boss wanted to ask me a question on how I felt about daily overtime, and he put his arm around me and said, "Hey, let us walk around the corner and tell me how you feel about this," the likelihood is that I am going to give him the answer he wants to hear rather than an honest answer. That will happen unless the poll is completely anonymous and without potential repercussions. Those have been my experiences with employee polling. Anonymous polls typically give the least biased results.

During the hearing in the Senate on this bill, the focus was more clearly on the issue of daily overtime and the 24-hour clock, and overtime in general, whether it is in regard to the construction industry, state workers, or low-income workers. I would like to head back in that direction and talk about the issues that have been identified, not only in that hearing but here today as well. The 24-hour day, the rolling clock, is something that I think is universally agreed to be problematic for everybody. We understand that the 24-hour rolling clock can trigger overtime provisions unintentionally. While we believe in the promise of daily overtime after a minimum number of hours worked, we also believe that it should not be so restrictive that it creates problems not only for the employee but also for the employer.

We also believe in having a minimum length of time off between shifts. In the construction industry, you start to lose productivity before an eight-hour shift ends. When you talk about working 10- to 14-hour shifts in order to complete a project or make sure you can go home early on a Wednesday or a Thursday if you are working out of town, you actually end up losing productivity and increase potential for safety problems. It could be more trouble than what it is worth.

While we are not opposed to doing away with the premise of the 24-hour clock, we would be more supportive of some flexibility on the 8-hour day and the minimum period of time between work periods, which I believe is going to be addressed by another person.

Victor Joecks, Executive Vice President, Nevada Policy Research Institute:
We are opposed to this version of S.B. 193 (R1), but not for any of the reasons just articulated. We strongly support the removal of the daily overtime requirement for reasons previously detailed by supporters, but not in combination with this minimum wage increase. The increase in the minimum wage would be harmful for entry-level and low-skilled workers. The primary value of entry-level jobs is they allow workers to gain basic employment skills, which allows them to earn higher wages in the future. Raising the minimum wage, however, makes it harder for these low-skilled workers to get those first jobs. Having that first job is crucial because two-thirds of minimum wage workers earn a raise within their first year. Basic supply and demand shows that raising the minimum wage makes it harder for those struggling the most to get that first job.

In Nevada, as around the country, that involves predominately young workers. Nevada's youth unemployment rate for 16- to 19-year-olds is 25 percent; for 20- to 24-year-olds it is 15 percent. Everything else is held equal. Raising the minimum wage would increase those unemployment rates. With the debate over increasing the national minimum wage, the Congressional Budget Office has projected that an increase in the federal minimum wage to $9 would reduce employment by 100,000 jobs. I urge you not to increase unemployment in Nevada by increasing the minimum wage. We would love to see the first version of this bill, where it solely deals with the daily overtime requirement.

Assemblyman Nelson:
Has anybody talked about the inflationary effect of raising the minimum wage?

Victor Joecks:
I have not looked at anything specifically, but certainly a consequence is that prices go up, the cost of your inputs go up, and you are unable to reduce those through automation or some other mechanism. Certainly, you see the price increase.

Assemblyman Hansen:
I am a blue-collar worker, a high school graduate, a fairly typical Nevadan who entered the workforce. I have seen a dramatic decline in the wages of workers like myself who are nonunion. The only reason I supported the prevailing wage portion this time was because you are the last blue-collar, middle-class, construction workers in the state because of this massive change in the quantity of labor available in the state of Nevada.

I am a big free-market guy to a point, but the fact is when you look at the history of wage scales in this country—and how people like me got to be middle class—they had dramatic cutbacks in immigration. At the same time there was a very big expansion in manufacturing and a huge rise in labor for ordinary Americans. That is when the middle class came about in the mid- and early twentieth century. Having said that, I cannot figure out why the unions used to aggressively insist on enforcement of borders to protect the workers here from competition from illegal workers.

I am a contractor and we have a very aggressive program in Nevada going after illegal contractors, but the fact is that if the State Contractor's Board quit doing that, the wage scales for contractors doing it legally like myself would drop dramatically because we could not compete with illegal contractors. It is the same thing with this whole wage issue. If we really wanted to raise the minimum wage in Nevada, you have to limit the supply of labor that is pouring into the state. Nobody seems to want to touch that. Traditionally, the unions fought that aggressively, yet today the national AFL-CIO has pretty much walked away from that issue. If we really want to see wages go up, how are we going to deal with that?

Danny Thompson:
We support comprehensive immigration reform for a lot of reasons. One relates to the workers you are talking about who are exploited in the system. We agree that there needs to be a solution to that problem. Until there is a comprehensive solution that may include tightening the borders, you have to do something with the 12.5 million people who are already here. Right now, those workers are being exploited and sometimes literally work for nothing. That is why there needs to be a solution and that is what we support: a comprehensive fix to immigration reform.

Chairman Kirner:
Are there any others who wish to testify in opposition?

Modesto Gaxiola, Business Manager, Local 162, United Union of Roofers, Waterproofers, and Allied Workers:
I have spoken before previous committees on this same bill. We are here today to reiterate our position. We are opposed to S.B. 193 (R1). We feel that it hurts workers. I would not say that we are opposed to a raise in minimum wage, but the conversation changed at one of the previous meetings. We were talking about eliminating overtime, and all of a sudden a wage rate was introduced.

At previous committee meetings, we have heard testimony from the Nevada Restaurant Association expressing their desire for flexibility. I have heard testimony from employer groups, the chambers of commerce, and the Nevada Restaurant Association all stating that they have spoken to their employees. As a union representative, I am quite offended. I have representation cards that give me authority to speak on behalf of my members. When they speak on the opinion of their employees, they are really speaking on behalf of themselves as employers. Without express written consent, I believe that testimony should be taken away. Again, we are opposed to this bill, and we urge you to vote against it.

Gerald Litt, Private Citizen, Las Vegas, Nevada:
I live in Las Vegas, and I have been in and out of the state because I worked in the construction industry for the last 50 years. The root word of "austerity" is "austere, "meaning strict or severe in discipline. Let us be clear that this bill is no more than an austerity measure, meaning a strict measure that is trying to be voluntarily implemented by government to assist in bringing state expenditures more in line with revenues; that is, in order to bring the deficits down. This is being performed on the backs of Nevada workers. Therefore, the Legislature should call S.B. 193 (R1) the austerity measures bill.

Senate Bill 193 (R1) is not a benefit for the Nevada worker. This is a continuance or furtherance of the "right to work" laws adding to the inequality in the work laws. This is actually grand theft on the part of the state to make overtime start only after 40 hours of work. By doing this, the state can benefit and employers can benefit, but where is the benefit for the Nevada worker?

I would like to cover three things quickly. First, the employers benefit because they are in control of how many hours you work and when you work. That can be up to 40 hours or more if they choose. Therefore, protecting and controlling overtime from being over 40 hours of work and working an employee over 8 hours without paying overtime is absurd.

Second, the state benefits because it can now substantiate the raising of business taxes—which our Governor wanted to do—which will not impact the bottom because those monies are actually coming from the Nevada workers by eliminating overtime after eight hours.

Third, the games continue to be played to that 30-year trend of wage disparity. How is that remotely fair? Nevada just continued to kick Nevada workers deeper and deeper into the ground until they were buried alive and then dead. Is this what we are really trying to accomplish?

It is time to stand for something and be an advocate. To paraphrase that old saying, all it takes for evil or wrong to be done is for good, brave, and intelligent men and women of the Legislature to fail to stand up against this bill and do absolutely nothing to defend Nevada workers.

We have a recent worker's hero in the news. You may have heard of Dan Price, the chief executive officer of Gravity Payments in Seattle, who reduced his $1 million salary to $70,000 per year after reading a study from Princeton University. He will pay all the workers in his company a livable wage of $70,000 per year. Elsewhere, the average chief executive officer today is earning 300 percent more than the average worker—the true asset of every organization.

Assemblyman Hansen, I think you are on the right track when you talk about salaries and wages. I think they ought to be tied to the profit margin of every company, then we know that the workers will be paid the salary they are supposed to be getting.

I work in the construction industry. I want you to imagine a construction employee working in Nevada where we have 300 or more days of sunshine with temperatures of 100 degrees. If you do not agree, I challenge you to go out to the Valley of Fire during the summer months and tell me it is not so.

Since work is sporadic due to weather conditions in Nevada, it has essentially kept us from working a full 40-hour workweek. Again, if an employer in my situation decides we need to work 8, 10, or 12 hours in a day, is that okay? They know the company will save thousands of dollars from not having to pay

overtime after eight hours. I think Assemblyman Hansen is on the right track about your questioning the Legislature in reference to overtime after eight hours.

In my situation, many occasions prevent you from being able to do that. There is a double impact of loss of wages not just from overtime after 8 hours but not even completing a 40-hour week.

Yvanna Cancela, Political Director, Culinary Union Local 226:
I want to point out that it takes a special measure to have business groups in favor of a minimum wage increase and labor groups against it. I think the reason for that is because this is not a minimum wage increase bill. This is a pay cut bill for people who work less than 40 hours a week and more than 8 hours a day. I am going to walk you through why that is the case and then talk about what I think is a good amendment (Exhibit E).

First, we should talk about who would currently qualify for overtime. We are talking about people who make minimum wage and a half or less. That is $12.38 without health care and $10.88 with health care. The Bureau of Labor Statistics of the U.S. Department of Labor comes out every year with data showing how many people work certain classifications of jobs and the average wages for those jobs. Based on that data, there are about 461,900 Nevadans in jobs that pay $12.35 or less an hour. All these people would currently qualify for overtime pay if they worked more than eight hours per day. Here is a list of examples: cleaners of vehicles and equipment, pharmacy aids; crossing guards; cashiers; hairdressers; hair stylists; cosmetologists; servers; parking lot attendants; meat; poultry; and fish cutters and trimmers; funeral attendants; dishwashers; telemarketers; personal care and service employees; demonstrators; and product promoters. The list is fairly lengthy, and even if you were to take out 100,000 of those people who were under a collective bargaining agreement and thus would be exempt from these measures, we are still looking at about 350,000 Nevadans.

Currently, there are about 22,000 Nevadans making minimum wage or less. When you look at the fact that in these jobs, discussed widely both by supporters and those against, people never get to 40 hours a week. There are arguments why the ACA makes that true and why our economy makes that true. The presenters of the bill noted that the national average is 26.1 hours worked per week. In Nevada, DETR says the average work hours, as of 2012, were 31 hours per week. This means that if you eliminate the ability for people to make overtime pay after 8 hours, and say it is only after 40 hours a week, you prevent them from ever getting to that money. The idea that they get to the 40-hour workweek is not true.

The other argument that has been thrown around as to why we should conform to federal standards and become a 40-hour workweek state is this idea that it happens across the country and there are not any problems there. There is no other state in the country that has a tiered minimum wage system tied to health care. Our overtime is directly tied to that, which makes our overtime unique. That, coupled with the fact that we are a service sector economy, whether we are trending away from that or not, means that we have protections in place that reflect not only our *Nevada Constitution* language, but the unique economy we have.

Assemblyman Ohrenschall alluded to the fact that even with the increase to $9, if you eliminate the overtime provisions, it is a pay cut. I did some math also. Under the amended bill, at $7.25 an hour working three 12-hour shifts, a person would receive a pay cut of $43.50 a week, which comes to $174 a month. If that person is making $8.25 an hour and working three 12-hour shifts, they end up losing $22.50 a week or $90 a month. The idea that this is not a significant amount of money is preposterous. For people working these kinds of jobs, that is a tremendous amount of money, and it adds up very quickly. When you eliminate the premium on excess work, an employer has no disincentive to not only overwork employees but to make it so that they feel compelled to put their own life on hold in order to retain their job.

Taking into account all of the arguments that the bill presenters made, all of which talk about how raising the minimum wage does not affect businesses and that there are protections in place for why this is possible, none of those arguments assume a slash in overtime hours. They are independent of that and should be treated as such.

Looking at what the business groups mentioned, which is the flexibility needed by businesses, I put together an amendment (Exhibit E) I think addresses all of these concerns.

There are three main things. First, it raises the cap on daily overtime from eight hours to ten hours. The issue, which I do not think has been fleshed out, is not the paying of overtime but the 24-hour clock. Supply and demand dictates that in the majority of these jobs people do not ever work 12, 15, or 16 hours at a restaurant, for example. Currently, if you work from noon to 8 p.m. and you would like to come back at 8 a.m. for another shift, that 8 a.m. to noon time is overtime because it is part of a 24-hour clock. The amendment says you only need eight hours between shifts, so that same person could work noon to 8 p.m. and return at 8 a.m. and not be on overtime. It solves the issue

that Mr. Abney brought up with banquet workers. It gives businesses the flexibility that they are looking for in order to be able to schedule people without necessarily paying them overtime.

Second, the amendment keeps the $8.25 increase to $9 an hour. Let us be clear, there are a lot of different numbers, facts, and figures that get tossed around. As long as you do not move the $7.25 figure, all an employer has to do is offer a health care plan—the employee does not have to take the health care plan—and can then justify paying the $7.25 an hour. Theoretically, you could move the $8.25 tier to $100 an hour if there is a health care plan offered.

Third, the way the bill is written now, it goes into effect immediately. This amendment would have a phase-in of January 2016 in order to give small businesses and employees time to adjust to the changes.

Greg Esposito, representing Plumbers and Pipefitters Local 350:
As was just stated, this bill will reduce the earnings of low-wage workers primarily for the benefit of employers. It would affect not just the restaurant industry, but all industries across the state. The current law protects workers against employer abuse. Assemblywoman Kirkpatrick was accurate in her assessment that if this bill passes, there will be nothing that prevents an employer from ordering—not requesting—an employee to work extended hours without offering proper compensation.

During testimony, it was said that Nevada is one of the only states that has this eight-hour provision. Shame on the other states for not caring for their low-wage workers the same way that we do. Everyone is always focused on making Nevada a better place for businesses, but we should give equal care to make Nevada a great place for wage earners as well. A lot of people who have given testimony in this hearing and in the Senate hearing talked about how employees told them they want change. I think the gentleman from Reno mentioned how it was not people in suits and cufflinks, but it was the average wage earners. There has been no one but people in suits and cufflinks sitting here giving testimony as to why this would be a great idea. We have not seen the workers come up and testify, "Yes, we want this." I think that speaks volumes as to what this bill is going to accomplish.

The overtime component of this bill will use the legislative process to reduce the earnings of low-wage earners for the financial benefit of employers, and that is why we oppose this at this time.

Jared Hague, Attorney, Sutton Hague Law Corporation, Las Vegas, Nevada:
I share the opinions of those who have spoken both for and against this bill. My opposition is limited strictly to section 1 concerning the minimum wage increase. The reason I oppose section 1 is that I view attempts to raise the minimum wage by legislation to be unconstitutional. I feel this way because the *Nevada Constitution* specifically sets forth two mechanisms by which the minimum wage may be increased. First, it would be in lockstep with any increase occurring at the federal level, and we all understand the reasons for that. Second, the minimum wage may be increased in accordance with the Consumer Price Index (CPI), and it is capped at a 3 percent increase if the increase occurs via that mechanism. It is my feeling that the *Nevada Constitution* has unambiguously stated the mechanisms by which the minimum wage may be increased. Simply put, S.B. 193 (R1) falls outside the scope of either of those mechanisms. For that reason, I believe that portion of the bill would not be constitutional and would be preempted.

Chairman Kirner:
I will close the testimony for those in opposition and invite those who are in neutral to the table. Assemblyman Hansen, did you have a question first?

Assemblyman Hansen:
No. I have a correction from a previous statement. I double-checked some numbers. It is estimated that up to 30 percent of the service industry workers in Nevada and 10 percent of the entire workforce may be illegal aliens.

Michael Dyer, Director, Nevada Catholic Conference:
The Nevada Catholic Conference is the way the bishops of the Nevada dioceses speak on legislative matters. We are testifying as neutral because we only have one focus on this particular bill. Whatever you do with this bill, it should not result in people who are earning the minimum wage actually ending up with less money in their pocket at the end of the day. With the way the bill is set up right now, that is going to happen. This concept has been brought up by a couple of the legislators and by some of the testifiers. It is because of the taking away of the daily excess of eight hours and not including that. At $9 an hour, people who are only making minimum wage and work 30 hours a week are going to end up with less money in their pocket after the increase in the minimum wage to $9 an hour. The right number to avoid that is somewhere between $9.20 or $10. We are not advocating one way or another. We are simply saying do not do something that takes money away from the minimum wage people that this law is intended to protect.

Allan M. Smith, representing Religious Alliance in Nevada:
We are here in the neutral position. As Mr. Dyer already mentioned, we are concerned about the minimum wage worker. We are even more concerned with both categories because of the effect on those who are offered health care but may not necessarily take it because of the 10 percent hit they could face. We think the $9 amount for the minimum wage should be reviewed and also the lower tier should be taken into account.

Chairman Kirner:
Would you favor not changing the minimum wage at all?

Allan Smith:
We would favor changing the minimum wage to a higher amount.

Reverend Michael Patterson, representing Lutheran Episcopal Advocacy in Nevada:
I noticed that when Assemblywoman Carlton asked about a 30-hour week, the response was based on a 40-hour week, As I did the calculations, on a 40-hour week the employee ends up doing better. To answer her questions, during a 30-hour week, if the minimum wage was $9.08, it would equal out to what a 10 hour a day worker gets now. There is not a huge difference. I am proposing something like a 10/10 wage, which the two national churches I represent are in favor of.

In a joint letter from 15 faith leaders, including the Presiding Bishop of the Evangelical Lutheran Church in America, Elizabeth Eaton, and the Presiding Bishop of the Episcopal Church of the United States, Katharine Jefferts Schori, they said, "An adequate minimum wage is a bedrock moral value for our nation." I think that is one of the things we ask you, as our leaders, to do for us—to present the moral side of this. I do not believe anybody intentionally wanted to cut the wage of a 30-hour worker by 75 cents. We ask that portion be fixed.

I would like to end with a prayer from the Episcopal *Book of Common Prayer*:

> Guide the people of this land so to use our public and private wealth that all may find suitable and fulfilling employment, and receive just payment for their labor; through Jesus Christ our Lord. *Amen*.

Chairman Kirner:
Seeing no more questions from the Committee, I will invite the bill sponsor back to the table for closing remarks.

Senator Farley:
I appreciate everybody's effort and passion around this bill. We cannot make legislation based on catastrophic analogies. We cannot make legislation around scenarios that are not true. People are not getting overtime, and they are not working 10-hour days. Our own Labor Commissioner will tell you that it is north of 70 percent of people who are working 20 hours or fewer per week, 4 to 6 hours per day, and are not given the opportunity to receive overtime. We cannot legislate on these scenarios that are just not happening in the real world.

We did not touch the $7.25 rate. People can hire at that rate. My belief, under interpretation, is that if I have an employer health plan and I offer it to you and you do not take it, I can keep paying you the $7.25. With that said, I do not necessarily think that $7.25 is the correct rate to pay somebody, but it is a good entry-level wage. If you need Medicaid and do not take the employer's plan, it is free at that point.

On the economist versus reality discussion—and I am a business owner—I have to tell you that every time we talk about raising minimum wage, we talk about these situations where the world is going to end and business is going to go under. Yet states incrementally raise the minimum wage all the time, and nobody can point to a scenario such as where Albertson's closed down and people got laid off. It is not a reality that occurs, particularly if it is an incremental change in the minimum wage.

We need to legislate on reality and look at the needs of our state. We also have to look at what the true costs are. The economist talked about numbers, and I need to tell you about another number. When you pay people $7.25 or $8.25 an hour, they are relying on the welfare system for assistance of basic necessities. That cost ends up equaling more to deliver that amount of service than it does to pay these people to not have to access it. When we are talking about business cost, I can either pay a hard-working person a livable wage; which at this point in regard to the poverty level is about $9, or I can pay more taxes and pay to support these people on a different spectrum. We have to talk reality and stop talking about situations that are not affecting the masses. I would like to thank everyone for their questions and everyone who truly cared about this issue on both sides to make sure we are doing the right things for the people of Nevada.

Chairman Kirner:
I will close the hearing on S.B. 193 (1st Reprint) and open the hearing on Senate Bill 162 (1st Reprint).

Senate Bill 162 (1st Reprint): Revises provisions relating to insurance. (BDR 57-950)

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance:
Thank you for allowing me to present Senate Bill 162 (1st Reprint). During the 1995 Session, the Nevada State Senate discussed reciprocal pre-litigation disclosures and discovery that would eventually become *Nevada Revised Statutes* (NRS) 690B.042. You are probably wondering why I am here today talking about pre-litigation discovery in a chapter of law that should probably be heard in the Assembly Committee on Judiciary. I will give you a little history about this bill and what has gone on in this session so far. [Robert Compan submitted a letter comprising testimony (Exhibit F)].

Under NRS 690B.042, since the inception of this language, we have had many issues with the plaintiff attorneys. Not to blanket all personal injury attorneys, but there are many in the state who have found their way to circumvent this law. By statute, it is required that we comply with this law. It says:

> 1. Except as otherwise provided in subsection 2, any party against whom a claim is asserted for compensation or damages for personal injury under a policy of motor vehicle insurance covering a passenger car may require any attorney representing the claimant to provide to the party and the insurer or attorney of the party, not more than once every 90 days, all medical reports, records and bills concerning the claim.

The statute also states that once they have representation, we, the insurance company, are to tell them what our policy limits are. In turn, the plaintiff's attorneys are to provide us with medical "specials," such as authorization of medical bills, every 90 days as requested until the conclusion of the claim.

Unfortunately, that is not the case. In many cases, we are allowing them to say our limits, and if they are above what the statutory responsibility limits are for a financial responsibility of 15/30/10 [$15,000/$30,000/$10,000], even if they have a $100,000 policy, we are telling them. It becomes somewhat of a shopping list to certain personal injury attorneys where they can send their clients to get erroneous treatments. They know what they can spend.

What is happening in reality is that every 90 days we are asking for the medical specials, and we are only getting one piece of a copy of a medical bill. We still proceed with requesting these medical specials, and we do not get them. Under NRS, after two years the statute of limitations tolls, and we wind up

getting a demand package for our policy limits without having any way to investigate that claim at all during that period. We have been asking for these bills, and there is no way to get them because there are no "teeth" in the statutory requirements that would mandate that they give us these limits. We end up having to open up our policy limits because we could be found in bad faith if we do not settle within the time frame in the statutory requirements.

So, we presented some remedies in 2007 in Senate Bill No. 359 of the 74th Session, which did not quite work out. Senator Roberson sponsored this bill for us. I would like to take a look at the original bill. If a claimant's attorney says you are in violation of NRS Chapter 690B, they can go to the Division of Insurance and to the Commissioner of Insurance, who can provide sanctions to insurance companies to mandate that we provide our policy limits. However, there is no governing authority under attorneys to tell them that they have to comply with NRS Chapter 690B. We recommend, and I will quote from the original version of the bill:

> If the party or the insurer or attorney of the party does not receive all medical reports, records and bills concerning the claim as provided in this section, the party or the insurer or attorney of the party may, upon petition, obtain an order from a court of competent jurisdiction requiring the claimant or any attorney representing the claimant to meet requirements of this section. In lieu of or in addition to any other sanction, a judge may require the claimant or any attorney representing the claimant to pay any reasonable expenses or attorney's fees incurred by the party or the insurer or attorney of the party....

If we were not getting the information required and were allowed to by statute, we can take them to a court of jurisdiction and have a judge decide that they are in violation of the statute, and a judge can order them to do so. The judge can supply us with attorney's fees and costs.

After looking at this and having conversations with members of the Nevada Justice Association, other attorneys, Senator Roberson, and Senator Brower, who is Chair of the Senate Committee on Judiciary, we decided that it was better just to remove the statute. It is unnecessary and is not needed in Nevada law.

The result is what is in front of you today, S.B. 162 (R1), which is to remove NRS 690B.042 from the statute. To insurance companies and people representing claimants in an accident, this means that they will now be mandated; if they want to find out what the limits are, they will not have

shopping lists. They will present their medical bills, the attorneys will present to the insurance companies, and the insurance companies will tell them whether they have enough to cover this. If somebody has minimum liability in this state, which is $15,000, depending on the accident, it could exceed that right away. We can tender our policy limits right away, pending medical information. It will stop erroneous claims, stop frivolous lawsuits, and stop pending litigation should the statute of limitations toll after two years. This was an agreement that was reached and passed unanimously by the Senate Committee on Judiciary and on the Senate floor. It is a little bit complicated, but I think it will benefit Nevada consumers and the court system.

Chairman Kirner:
Are there any questions from the Committee?

Assemblyman Nelson:
I understand what you are talking about with plaintiff attorneys who play tricks and wait until the last minute. Then they drop a telephone book of medical terms on you and demand a settlement or else they will threaten you with bad faith. I have seen that. If the bill is passed, would through discovery be the only way you would be required to give policy limits?

Robert Compan:
No. This is pure litigation. Under discovery, obviously, you get the policy limits. If you were to litigate in discovery, you would get the limits.

Assemblyman Nelson:
So the answer is yes?

Robert Compan:
Yes.

Assemblywoman Carlton:
I remember this discussion in 2007, or perhaps the original legislation was amended in 2007. Was all of this done at that time?

Robert Compan:
This is all new. The language from 2007 has a different look than it does now. The language I referenced earlier was from the original language in the bill in the Senate before it was amended out and the statute was removed.

Assemblywoman Carlton:
Do I understand correctly that the text of the repealed section was put in in 2007?

Robert Compan:
That was done in 1996.

Assemblywoman Carlton:
So it was amended and "passenger car" was added afterwards? My concern is with the constituents who call me and have a problem after they were in car accident. For example, they have been paying their insurance premiums diligently, and they have policy limits. Those policy limits are encapsulated within the policy itself that you provide to the policyholder, correct? So they have that information already?

Robert Compan:
Yes.

Assemblywoman Carlton:
All I would have to do is find my policy and I know what my policy limits are, correct?

Robert Compan:
Yes.

Assemblywoman Carlton:
So what is the issue? Because I can get up to my policy limits, you cannot deny me unless you find cause for it. I should not have to get permission from you to use the money that is within my policy limits.

Robert Compan:
This is representing you as insurer with your policy limits. Let us say you have a $100,000/$300,000/$500,000 policy and you get into an accident. The attorney, under the current statute, goes to your insurance company and says we want to know what are her limits of liability. The insurance company says she has $500,000—a million dollar umbrella. Under current law, that attorney is now supposed to provide the insurance company, every 90 days, with the medical notifications.

Assemblywoman Carlton:
I understand all of that. Basically, what you are saying is that we are going to play hide the ball from the third party because we do not want them to know what the limits are. Even though I have paid for those limits to cover that person because it is part of my insurance policy, we are not going to let that person know what those limits are?

Robert Compan:
As your insurance company, I am protecting your rights. It is not playing hide the ball or opening up a shopping list for somebody to go out and have erroneous treatments that are not needed. It is in our interest as an insurance company. We have a responsibility to protect you. We also have a responsibility per NRS under the Nevada Insurance Code to provide reserve to show the solvency of our company. If we do not have any idea what the medical specials are, or what they are going to be, because they are not being provided to us under the statute, we cannot properly reserve a claim, investigate a claim, or do an independent medical review. Let us say it is a light car accident. In normal cases, if we were presented with large bills, as they are in many cases when the statute of limitations is about to toll, we would have done independent engineering reports on that vehicle. It may have only been an impact of an elevator stop, and if we had had the opportunity to get an independent medical exam on it, that would have been known. This is going to have the attorneys provide you with the medical specials to see if you have enough coverage to protect you as an insurance policyholder in the state of Nevada.

Assemblywoman Carlton:
I am not just a policyholder. I could be the victim, and this could work against me if I was the person who was the third party applying for insurance on someone else's insurance.

Robert Compan:
I understand what you are saying, but it protects both parties. There is no hiding of the ball. You present us with the medical specials with the treatments, and we will tell you if there is enough coverage. If there is not enough coverage, and you have an uninsured motorist claim policy, you can open that up and start pursuing it under your claim. We may have exhausted all of our policy limits for all we know. This is truly protecting the consumers of Nevada.

Chairman Kirner:
Thank you. We are going to move through the panel.

Mark Sektnan, Vice President, State Government Relations, Property Casualty Insurers Association of America:
We are in support of the bill. [Mark Sektnan submitted a letter (Exhibit G).]

Lisa Foster, representing Allstate Corporation and American Family Insurance Company:
We are in support of the bill and the amendment.

Assemblywoman Kirkpatrick:
By making these changes, what does it do to insurance rates for everybody? Many times I have heard people say that all these extra lawsuits make the rates go up. I am fortunate to not have had an accident in five years, but I still pay $6,000 per year for my insurance, so I would like to understand how that works.

Robert Compan:
You are right. It is going to affect your insurance. Insurance is very competitive. We want to pay what we owe, nothing more and nothing less. Unfortunately, there is a loophole in the law, and we are forced to pay a lot more that we have to sometimes. If we can reduce cost, we can be competitive within our peers, and our insurance costs could come down.

Assemblywoman Kirkpatrick:
You said "could," which means they will not. Is that the intent of the legislation, to ensure rates can go down? We say things like that all the time, and we do not take things back.

Robert Compan:
I have been asked that question since I began working at the Legislature, and almost every time we are up in a bill, they are going to ask whether or not insurance is going to be reduced. Certainly, if you can reduce claims costs, then insurance costs will come down.

Assemblyman Ohrenschall:
Hypothetically, if I get into my car, it is a rainy day, and I get hit by somebody who was texting on their phone or playing with their radio, and I have a lot of injuries, and I know the driver's policy limits—and I want to go get three MRIs, four CAT scans, and go to a faith healer—does the insurer still have the same right to deny that in any case? Does the full information on both sides help these situations settle? I am not sure about keeping cards hidden and what the benefit of that is.

Robert Compan:
This is a good question, but only depending on what the limits are. Obviously, if you get into that accident, you are going to present whatever bills you have right away; you are not going to wait 90 days or two years down the line. If you are getting treatment, or faith healing or "praying to the dust gods," you are probably going to exhaust those policy limits pretty quick and you are going

to know that. You had better have an idea rather than face a lien. After an accident, you have to go to the hospital and get better. Knowing the policy limits is not going to stop you from getting better; you are going to have to treat, whether it is through your insurance or universal health care. Once those policy limits are exhausted, they will be exhausted.

Assemblyman Ohrenschall:
If this information is not being disclosed as it should be now under NRS 690B.042, or if it will not be under the new law, and it is going to have to be through litigation in the discovery process, does that result in less money that can go to the victim?

Robert Compan:
I believe that is going to be the opposite case. It is an incentive to settle the claim as soon as possible to better have an idea on what the medical specials are. Contrary to the advertisements you see on television all day, insurance companies are not bad people. We are there to protect you and the consumers. As you are treating, if those policy limits are exhausted, the insurance company is going to let you know there is not going to be any post-litigation. It is not going to cause any erroneous lawsuits or force you into litigation to find out what those policy limits are.

Assemblyman Ohrenschall:
The injured party will not know until they have been exhausted. It is kind of like feeling around in the dark.

Assemblywoman Diaz:
This bill is seeking to repeal this statute now, 20 years later, and I did not hear the last two sessions that this was a big problem with car insurance and accidents. What went wrong from 2013 to 2015 that now we need to repeal this?

My other question is along the lines of Assemblyman Ohrenschall's about not being able to disclose this information freely. Now we have to tie up and bog down our court system. The reason I, as a consumer, hire an attorney is so that I can worry about getting my health and life back together after an accident that was not my fault. I have been paying for my car insurance, I am responsible, and I did not want this accident to happen, but I am stuck in the middle of it.

I have been through two accidents, one my spouse and one myself. It is not an easy venture, Mr. Compan, and with you painting this new scenario that it is going to be all pro-consumer and so helpful—I am not seeing it. If my attorney

does not have the information to educate me about my choices, my options, my health care, and how much treatment I could seek, you could be putting me on the hook for medical services that I will not have the money from my claim to pay back.

Robert Compan:
To answer your first question, this has been a problem since 1996. I was a claims manager in 1996, and I saw these problems. I saw trial lawyers using a loophole in this law to not provide us with the medical specials. Since I began here in 2005, I have been shopping bills. We had Senate Bill No. 359 of the 74th Session that was brought forth by Senator Schneider back in 2007, and it did not pass. We have been looking at the issue and thought this session was a good time to address it.

As to your second question, I know how horrific accidents are. Representation is fine, but it is not going to prevent you from seeking treatment. You are talking about opening yourself up to lawsuits. Let us say your insurance is only minimum liability and you hit someone. He treats up to $100,000 and does not let you know that he is treating, and two years from now, before the statute of limitation tolls, he files a lawsuit and says, "You owe me $200,000." And you respond, "My limit is only 15/30/10." He is going to file a judgement against your assets and even go against you personally.

Assemblywoman Diaz:
What happens when there are multiple people involved in an accident and one policyholder is responsible for all of those individuals? How will my attorney know how to share that policy if we are not freely exchanging the information? There are three people who have three potential claims tapping out at one policy, and now we want to keep everyone in the dark. I do not think this is wise.

Robert Compan:
I certainly hear what you are saying. I would beg to differ; I think it is wise and it is prudent policy. Personally, I do not think the people on trial will want that either. This was a compromise to be able to pre-litigate to try to get claims settled and protect the families in Nevada.

Assemblywoman Neal:
You tried to bring this bill in 2007. Why were you unable to pass this bill in the past? Also, why did you think this particular session was right for this bill?

Robert Compan:
Good question. In 2007, Senator Schneider sponsored the bill. I was new to the Legislative Counsel Bureau and drafting of legislation. The language in that bill would have actually tolled the statute of limitations, which would have been problematic for everybody. Therefore, the bill just kind of died. The reason I brought it forth this session was to find a bill sponsor. It does not mean this session is better than any other session. It came from a conversation with Senator Roberson early in the election cycle, and he was happy to sponsor this legislation.

Chairman Kirner:
I really do not want to get into the politics of why now versus why later. We have heard from the three of you. Mr. Musgrove, are you a part of this bill presentation?

Dan Musgrove, representing AAA Insurance:
I am just a willing "me too."

Chairman Kirner:
I will invite others in support of the bill to the table.

Kerrie Kramer, representing Las Vegas Defense Lawyers:
We are in support of the bill.

Joseph Guild, representing State Farm Insurance Company:
We are also in support of the bill.

Chairman Kirner:
Is there anyone else in support? [There was no one.] I will invite those who are opposed. [There was no one.] Is there anyone in the neutral position?

Mark Wenzel, representing Nevada Justice Association:
The reason I am testifying in a neutral capacity is because we have a deal brokered with the Senate Committee on Judiciary, in particular with Senator Brower. We were faced with what the Nevada Justice Association believed was a horrible change to the law. Current law is that if I am representing an injured party, I give that injured party the medical documentation I have. In exchange for that medical documentation, the insurance carrier is required by statute to give me the policy limit information.

For the 20 years I have been practicing, since 1995, which coincidentally was when this statute was enacted, it has worked well. The first half of my career was spent as a defense attorney working for many of the people who have just testified, for example, Allstate Insurance and State Farm. For the second half of my career, I have worked for, and on behalf, of injured parties.

Quite frankly, I have not seen a problem with this statute, both as a defense attorney and as a person representing injured parties. It fosters mutual cooperation between the insurance carriers and people who represent injured parties and lawsuits. With very few exceptions, this works quite well. I have not seen the alleged abuses by plaintiffs' attorneys. In fact, I think it is somewhat absurd that a plaintiff attorney who wants to get paid and wants their client to get paid, would not provide every single piece of documentation to the insurance company so that their clients and they can both get paid in a timely manner.

All of the insurance companies except the sponsor of this bill have complied with that statute. To answer Assemblywoman Neal, Farmers Insurance got a bit cross with the Insurance Commissioner last year, and perhaps that is what prompted the statute at this time.

We have a deal with the insurance industry. When faced with the original version of the bill, it was horribly one-sided in favor of that industry. Senator Brower thought about going to the old ways, prior to 1995, and to have both parties stare at each other when faced with medical documentation and the request for policy limit information was made. Looking at that as the lesser of the two evils, that is the one we chose. Again, we are not going back on the deal that was brokered; I just wanted to testify in a neutral capacity to tell you that there are problems I foresee with this passing. We are amenable to going through with the deal that was brokered on the Senate side.

To address a concern of Assemblywoman Diaz, I would like to end with an illustration from my own practice about how the availability of insurance policy limit information early on sometimes deters the hiring of an attorney. Right around the time that this bill was set for hearing, a gentleman came into my office who had been injured in the Fernley area. A drunk driver crossed the road and hit him head on, broke his leg, and sent him to the emergency room. He came into my office shortly thereafter because he was not getting any cooperation from either the adverse driver's insurance company or his own insurance company. He asked me to take a look at the situation for him, and I quickly gathered what limited medical documentation he had, which I believe comprised the medical records from the emergency room as well as the emergency room bill, which was around $56,000. I sent that documentation to

the adverse driver's insurance company and to his own insurance company, and I quickly found out that there was only $40,000 total between the two companies. I gave the file back to the gentlemen because there was nothing I could have done. He did not need to hire an attorney. Knowing that information early helped him make a prudent business decision, as opposed to retaining an attorney for an unnecessary reason. He was able to quickly resolve that claim on his own without any further intervention and without having to file a lawsuit—which is the only way we can find out what the policy limit information is if this goes through. I think it will bring things to a grinding halt prior to litigation.

The part that I still cannot fathom, even though we are in agreement that there is deal brokered here, is we get that information once we file a lawsuit. To think that is going to have a chilling effect on filing lawsuits from the attorneys I have talked to after S.B. 162 (R1) has been proposed, quite the contrary is true. There seems to be a feeling that you can just file a lawsuit because you can get the information that way.

Assemblywoman Neal:
The minutes from 2007 have a direct quote from Robert L. Compan of Farmers Insurance in support of S.B. No. 359 of the 74th Session. It reads, "This bill will give our claims professionals the ability to properly serve the interest of our Nevada customers in the evaluation of bodily injury claims by outlining requirements of the claimants or their attorney's representation."

In 2007, why was it highly critical and relevant to have the reports, documentation, and other items that represent what is being repealed, but now there is a reason to roll it back and say it is no longer needed?

Mark Wenzel:
I am confused too.

Chairman Kirner:
The bill sponsor might be in a better position to address that question.

Assemblywoman Neal:
The minutes from 2007 have a direct quote from Robert L. Compan of Farmers Insurance which reads, "I am in support of S.B. 359. This bill will give our claims professionals the ability to properly serve the interest of our Nevada customers in the evaluation of bodily injury claims by outlining requirements of the claimants or their attorney’s representation."

Chairman Kirner:
I would suggest that Mr. Compan answer that.

Mark Wenzel:
I am in favor of providing everything I have to the insurance company for them to evaluate my clients' claims. My goal when I represent someone is to try to resolve it without the necessity of filing a lawsuit. To address your concern, Assemblywoman Neal, I am in favor. When I represented insurance companies, the more information I had to evaluate things, the better off things were. Again, I do not understand what the purported problems are because I am not faced with them and it is not the way I operate my business. I get them everything they want. If they want anything from the beginning to the end of a claim, I get it to them. The more information they have, the more objective they are going to be in evaluating a claim in a timely manner.

Chairman Kirner:
You do not represent the universe of attorneys, right?

Mark Wenzel:
No.

Chairman Kirner:
You represent one attorney, correct?

Mark Wenzel:
I represent the Nevada Justice Association.

Chairman Kirner:
You are testifying in the neutral position, correct?

Mark Wenzel:
Correct.

Chairman Kirner:
I am having a hard time distinguishing. I am going to have questions at this time, and then I will have Mr. Compan answer Ms. Neal's question directly.

Assemblywoman Bustamante Adams:
What is the process now? How would the process change if S.B. 162 (R1) was enacted?

Mark Wenzel:
The process right now is that an injured party comes into my office for representation, or they can represent themselves. They get documentation such as medical records or medical bills to the adverse driver's insurance carrier. In exchange for that documentation, the insurance carrier has a statutory obligation to give the policy limit information to the injured party or his attorney. Oftentimes, at the completion of the injured party's treatment, they make a demand based upon the extent of their treatment, wage loss, and pain and suffering. If the parties cannot resolve it, a lawsuit is filed. So we would represent the insured person coming into our office.

Mr. Chairman, I want to stress that we are in agreement with the proposed changes to this bill; we had a deal brokered.

I began practicing in 1995 right when this law was passed, so the only way I know how to do it is under the current statute, but my understanding is that I would give the insurance company information to evaluate the claim. At some juncture, depending on what their policy limit information would be, they would or would not provide me with that information. Based upon some strong relationships I have with different insurance carriers, I am anticipating that they will look out for their insureds. If their policy limits are very low and the bills are very high, like the example of the gentleman who was hit by a drunk driver, I do not know if there would be a change procedurally.

Again, however, if they do not want to disclose what those policy limits are, there would be no statutory obligation to do so. Instead of a full disclosure, you will be holding the cards close to the vest, I think, in certain situations. In the situation where the drunk driver hits the kid because he goes over the center line, I would be very hopeful that they would say, we only have $15,000 in coverage, and your client is presenting with over $50,000 in medical bills; here are the policy limits, and have a good day. That is how I would anticipate it would work.

Assemblyman Nelson:
I have been on both sides, like you have. I have defense attorney work and claims work. Can you tell us about the deal you have brokered? It cannot just be on this bill, right? Are you talking about brokering a deal on other issues?

Mark Wenzel:
No, it is just on this bill.

Assemblyman Nelson:
I cannot see one possible reason why you would agree to this.

Mark Wenzel:
The alternative to Senate Bill 162 (R1) was the original draft of Senate Bill 162, which was horribly written and completely one-sided on behalf of the insurance company. They were in charge of the claims process. If they determine that either I or a claimant did not comply with their request, regardless of how egregious they may or may not be, they could file a lawsuit against us or against the claimant because they did not give them a record that may or may not exist. In my perspective, we had to choose the lesser of two evils. Senate Bill 162 was so overboard as far as being in favor of the insurance carrier that we thought we had no choice but to broker this deal and to repeal NRS 690B.042.

Chairman Kirner:
It sounds to me that you are testifying in support based upon your deal. Or are you testifying in opposition because you do not want to support?

Mark Wenzel:
I am trying to testify in the neutral position because we have a deal that we are willing to abide by.

Chairman Kirner:
I would like to invite the bill sponsor back to the table.

Robert Compan:
Assemblywoman Neal could you please repeat your question?

Assemblywoman Neal:
What is the difference between 2007 and now? When I was reading your testimony and the proposed amendment that was presented during the 2007 hearing of Senate Bill No. 359 of the 74th Session, what you proposed as an amendment then, is the exact language in S.B. 162. I am trying to figure out why you are walking backwards and repealing a provision that you brought and asked for. I am having my attaché bring the exact testimony that was presented by you during that hearing. It has highlighted language that is struck out. We can deal with it later since you do not have the information in front of you.

Robert Compan:
I would have to look at that. I do not think that we would present something like that. Certainly to have the Nevada Justice Association bash Farmers Insurance like that is wrong. The reason we are challenging that statute, and we got sanctioned by the Division of Insurance, is actually what

now brings it to the forefront because there is no responsibility for trial lawyers. Mr. Wenzel's firm is a very reputable firm, and they do things right. His testimony was neutral; it was a brokered deal.

Chairman Kirner:
I think that work on the bill is going to have to be done outside of this meeting. Assemblywoman Neal has the quotes from the minutes on April 4, 2007, page 11, from the Senate Committee on Commerce and Labor, and I am sure she will share them with you. I will close the hearing on S.B. 162 (R1) and open the hearing on Senate Bill 440 (1st Reprint). Before we hear this bill, I would like to say this. I have been lobbied, and I suspect many others on this Committee have been lobbied. I would like this discussion to be on insurance and insurance only. No FBI, no fingerprints, no anything outside of what this bill is. With that, Mr. Settelmeyer, I will pass it to you.

Senate Bill 440 (1st Reprint): Revises provisions relating to insurance. (BDR 57-983)

Senator James A. Settelmeyer, Senatorial District No. 17:
You have before you Senate Bill 440 (1st Reprint). During the last interim, we watched transportation network companies (TNC) operate in Nevada. There were a fair number of stories from individuals stating that their insurance was not adequate. I felt it was our responsibility to make sure they have adequate insurance, regardless of whether or not they are allowed to operate or be in the state of Nevada. Currently, there is an injunction saying they cannot operate in the state of Nevada. However, that injunction only applies to one TNC; other ones can start up tomorrow. To my mind, they should have an adequate level of insurance.

Mr. Compan of Farmers Insurance and I had discussions regarding what was the necessary level of insurance to have on TNCs. I had told other individuals I did not care what their prerogative was; I was going to determine the adequate level. Then a national agreement was met that indicated their level of insurance would be $1 million plus 50/100/20 [$50,000/$100,000/$20,000]. In current Nevada law, it is 15/30/10. That would include $15,000 for bodily injury to one person, $30,000 if there are multiple people injured in an accident, and $10,000 for destruction of another person's vehicle. The average insurance claim in the state of Nevada is $8,000 to $10,000 per person. The vehicle averages $5,000. The concept of 50/100/20, known as the midrange where TNCs operate, seemed more than adequate. However, I did not agree with that national deal of $1 million. I felt that it should be higher; therefore, we indicate that it needs to be $1.5 million.

There are some corrections in the bill, which I will address with the Legal Division if the bill is processed. Areas such as when the ride ends need to be addressed. In the Senate Committee on Commerce, Labor and Energy, we made clear in another bill—which unfortunately did not pass—that the ride will end when the passenger fully disembarks, not just when the ride is over. If somebody left their umbrella and has to go back into the vehicle to get their umbrella, they should still be covered.

There are some questions with the phases. Currently with the TNC, if the driver decides he wants to look for a ride, he turns on that application also known as an app. This is an in-between phase. In other words, if you are driving your child to a soccer game and the app is not on, you are completely on your own insurance. As soon as you turn the app on, but you have not accepted a ride, you are in that in-between phase and have the 50/100/20 if you decide to process this bill. The minute you accept that ride on the app, you automatically go to $1.5 million of insurance. To me, that seemed fair. Some people will complain that other industries require $250,000 of a surety bond all the time. I felt this was a reasonable compromise.

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance:

I want to provide a quick history on how the insurance industry and transportation network companies reached our recently announced compromise on a legislative framework, and then share why we believe it provides both important consumer protections and opportunities for new products in the market.

The legislative battles that took place in California and Colorado last year were very time-consuming, frustrating, and often contentious. As legislative sessions began this year in various states, it was clear that the patterns from 2014 were reemerging in 2015.

After a few unfavorable experiences in the different states, our team at Farmers Insurance thought it would be more productive to reach out to Uber to try to identify areas of common ground. After several conversations, we found that Uber's essential elements were not too far from those articulated in the industry "toolkit model" produced in late 2014. After some back and forth, and a significant amount of internal review and feedback, Farmers Insurance and Uber developed something we believed could work as a compromise model bill.

We knew that, as only two companies, our chances of success were greatly diminished unless we could significantly broaden our coalition. We also knew that creating a broad coalition around a single model could help insurers, TNCs,

and regulators avoid a patchwork of inconsistent laws. Today, I am pleased to report that virtually all of the personal lines insurers, and the trade associations who represent them, are aligned to support this model law. The auto insurance and transportation network industries share a strong mutual commitment to ensuring safe transportation options, as well as ensuring that TNCs and their drivers maintain appropriate automobile insurance. We know that the regulatory community shares this commitment.

A lot of questions came out during the Senate hearing. Senator Spearman asked why we are putting the cart before the horse, because TNCs have not been approved to operate in the state yet. Under the current law, municipalities could probably order and operate TNCs. The City of Reno and the City of Henderson have expressed interest in having TNCs operate there. Most recently, the City of North Las Vegas has expressed interest. Rather than regulate on the local level, as an insurance industry we are asking you, as legislators, to legislate and make sure that when a Nevada consumer gets in the car, that he or she are properly covered.

As Senator Settelmeyer mentioned, there are two phases to an app. If you are sitting at home, for example, monitoring your app, you have 50/100/25, which amounts to $50,000 per person covered, $100,000 maximum for the accident, and $25,000 for property damage. That is three times more than Nevada's minimum limits. The minute you press that button, no matter where you are, that coverage goes up to $1.5 million, three times more than what is statutorily required for common carriers in the state of Nevada.

We think we have hit a compromise. We think it is a good piece of legislation. We are not in the battle with the liveries. You have made that clear; it is just an insurance piece of legislation. Forty-two states are now operating with TNCs. We want to make sure that this model language, which has been adopted in three states in the past week, sets forth a standard for the industry and a standard for our communities in Nevada and to protect our consumers.

Mark Sektnan, Vice President, State Government Relations, Property Casualty Insurers Association of America:

The Property Casualty Insurers Association of America (PCI) has been working on this issue for the past couple of years. This is a broad discussion on the shared economy where people use their personal automobiles, homes, and other items for commercial use. Automobile insurance presents a problem because those policies typically have what we call a livery exclusion, which is a personal automobile policy. Therefore, the policy is not designed or intended to cover commercial activity. Obviously, in a world where TNCs are becoming more and more popular, this becomes a problem.

We have been working with the TNC industry and have become involved in a model. This bill deals with several key elements. First, it sets up a bright line so that it is clear that the personal automobile insurance policy is not engaged in covering commercial activity. The bill says that the TNC activity is defined from app-on to app-off. There has to be special insurance designed specifically for TNC activities to cover this activity. States do it differently in terms of limits, issues, and periods, but the key element is from app-on to app-off. The individual has announced to the world that they are ready to work once they turn the app on. The insurance requirement kicks in at that time.

This bill also helps provide protection for the personal auto policy by making it clear that the personal auto insurance policy does not have to handle or deny the claim from commercial activity before the TNC will accept it. We were concerned that this would lead to a great deal of friction between the personal auto policy and the TNC's policies, so this bill makes that very clear. The TNC policy is primary. It will handle the claim, and does not require that the claim be denied by the personal auto insurance policy first. It also has clear disclosure up front. The TNC driver understands that his personal auto insurance policy is not going to provide coverage for this commercial activity and he needs to get specialized insurance. It also allows for product flexibility and innovation. The TNCs are innovative, and so are the insurance companies. This bill would allow for that insurance to be provided in a variety of ways. It could be provided by the TNC, the driver through a special policy, or a combination of those things.

In closing, I want to be clear that we do not intend to obstruct the business model or be an impediment to innovation. However, TNCs present some serious insurance issues that we believe can be addressed, and we support innovation in both the transportation industry and the insurance industry without shifting the TNC's cost of doing business to all Nevada drivers. We urge you to vote in favor of this bill. [Mark Sektnan provided testimony in support of the bill (Exhibit H).]

Chairman Kirner:
Are there questions from the Committee?

Assemblyman Ohrenschall:
About a decade ago, there was a tragic accident in Las Vegas when a delivery truck driving through a gated community hit an elderly lady crossing the street. There were no criminal charges filed; it was just one of those terrible accidents. In that case, we knew who the employer and employee were. He was on his route and in his scope of work, and this tragedy happened. I do not think there was any question as to the liability of the company.

I am a little confused about how this will work with the TNC. As I understand it, the driver is an independent contractor. At what point is there liability for the TNC if an accident happens in the scope of the employment? Is it only when the app is engaged or only when the passenger is picked up? When will the insurance from the TNC kick in?

Senator Settelmeyer:
As I explained earlier, the concept is that there are several different phases. If you do not have the app on, you are under your own insurance, period. In the next phase, you are looking for activity to give someone a ride. If you are looking to give a ride when that accident occurs, you are in the 50/100/25 insurance policy under this bill. As soon as you accept and give that ride, you just went to $1.5 million; that is the liability level. Other states have had this type of TNC insurance, and if you look within this bill, the TNC insurance is the default if someone does not pay anything.

Assemblyman Ohrenschall:
Just to be clear, the minute the app is turned on, the TNC insurance kicks in, just like the driver who works for a delivery company, correct?

Senator Settelmeyer:
Correct. Then you go to the 50/100/25, but as soon as you accept picking someone up for the ride, you go to the $1.5 million.

Assemblyman Ohrenschall:
Page 3 of the bill discusses the difference of a $1.5 million limit versus the $50,000 limit. Let us say I am using the app, and I drop my children off at school, go get a cup of coffee, then turn the application on, and get into an accident. Why have the lower limit there when it would not be comparable to other carriers like that who would be driving around, not necessarily with a passenger, but ready to take one. Is this creating two types of victims if an accident happens? The taxi driver would have a higher limit of insurance versus the regular guy like me who is using the app and would not have as much coverage. I am concerned about not using the same levels any time the application is engaged.

Senator Settelmeyer:
You would have three times more insurance than a regular policy. Remember that a regular policy is 15/30/10 versus if the application is on it is 50/100/25 until you accept a ride and the passenger fully disembarks. The reasoning to me as to why you would not be at the higher level all the time, simply put, is that TNCs are people who generally operate four to six hours in a day. They are not doing this full-time. They are not using that vehicle 24 hours per day.

Traditionally, in other delivery-type situations, people are renting the car. Usually the use is split between two people, so the car is going all the time, 24 hours a day, in two 12-hour shifts. I felt it was appropriate to allow somebody who was doing this—not as a full-time job—to have a different level of insurance in compliance with the national model agreement that has been reached. I felt it was worthwhile to go to those limits. I disagreed with the $1 million, and that is why I went to $1.5 million.

Assemblyman Ohrenschall:
My concern is that accidents can happen, even if you do not have a passenger in the car, and even if you are hoping to get a fare.

Senator Settelmeyer:
I understand that it was a policy decision by the Senate Committee on Commerce, Labor and Energy. Accidents happen and, yes, sometimes crazy things can happen. We have all seen the large black marble pillars placed in front of this building. They were placed there because a disgruntled taxicab driver decided to drive into the building. Things happen in all industries. From a policy standpoint, I thought that this made sense.

Assemblyman Nelson:
In section 8 of the bill, it reads, "Every transportation network company or driver shall continuously provide...." Are you contemplating this insurance being written on the driver? So if I wanted to be a driver for Uber or Lyft, I could get this type of insurance coverage myself?

Robert Compan:
During period two, when they have accepted the ride, the insurance is $1.5 million. During period one when it is 50/100/25, they can purchase the TNC insurance coverage under section 8. Farmers Insurance now offers a product for TNC drivers under that period too. We are trying to provide a product that is an endorsement on their personal auto policy to raise it from the minimum level of liability up to that 50/100/25. Personally, if I had that endorsement on my policy, I would turn the app on because now I have triple the insurance coverage than I have on my normal car. It is a part of being able to sell the product in the market.

Assemblywoman Carlton:
I am concerned about the rates on this because we know how insurance works. If there is a loss, you can go to the Commissioner of Insurance, get the losses recouped, and that is shared among all the people who are insured. I have a lot more to learn about the app-on and app-off situation. If the honor system is

applied here, and people want to pick up fares but not turn the app on, without a regulatory process in there to monitor all of this, I am not sure how this is going to work. They could be picking up people someplace with an Uber sign in the window but never turn the application on.

I am really concerned about the rates because of the cost that could end up filtering to myself and my constituents. This is a new form of insurance. How is it going to be segregated? When a taxi driver gets into his car, he is covered by insurance for his whole shift. There is no on or off button, phase 1 or phase 2, or any of that kind of stuff. This is done a little bit differently. Are we going to be blending this commercial-style rate with personal coverages?

Mark Sektnan:
This is a specially designed TNC product that is only for TNC services for exactly that reason. When PCI first became interested in this issue, that was the concern, particularly in Colorado. We were concerned that the coverage would end up being subsidized by the other drivers in Colorado. This bill is designed to get around that exact issue by making sure that the insurance is specially rated and specially designed and is separated from the personal insurance policy.

Assemblywoman Carlton:
So is it going to be segregated, and will it be totally separate from my personal insurance?

Mark Sektnan:
Yes.

Assemblywoman Carlton:
How does the endorsement part of it work if you are going to sell an endorsement on my personal insurance? How can you segregate it?

Mark Sektnan:
The endorsement would be separately priced and would reflect the risk inherent in that commercial activity, which your personal insurance policy was never designed to cover. In the states where this law has taken effect, in particular Colorado, there are four companies that provide this product in a variety of methods, at least the 50/100/25 products that are for period one, which we will consider from app-on to "match." Typically the TNC policy provided by the TNC company provides from match-on to exit; they are not terribly expensive.

Assemblywoman Carlton:
I want to be sure if this goes through, and a TNC company is approved and we start this insurance scheme, that I am not going to hear from the Insurance Commissioner that the reason my auto insurance policy went up is because they sold to someone who used this, and because of their losses they are sharing those losses across all insured. Will those losses be segregated away from my constituents who are not involved in this?

Robert Compan:
You are correct. We have reviewed this. The National Association of Insurance Commissioners reviewed the compromise bill, I and they have signed off on it. It is not going to affect your personal auto policy. This has to do specifically with TNCs.

Assemblywoman Carlton:
If we figure out our constituents are having to pay more so that people can play on an app on a phone, it will not work.

Assemblywoman Bustamante Adams:
My question has to do with the primary in each one of these phases that you described. Can you tell me who the primary sponsor is on the insurance? Is it the TNC or the individual? For the businesses in my district that have the commercial insurance, will they involved in this? They would continue to have to have the full insurance whether they are a delivery service or not, correct?

Robert Compan:
The primary insurance, which in period one is 50/100/25 and in period two is $1.5 million, is always the responsibility of the TNC unless, under period one, a competitive product with about a 50/100/25 is purchased from a third-party insurance company. Should that policy lapse, the primary would then become the TNC at that time. There is always continuous coverage during both periods.

To answer your second question, this is tailored around new technology with TNCs. There may be an Uber delivery service; you may see a lot of things happening where people are not only ridesharing but sharing their homes. There are different products coming into the market now that are very inventive. It is something that could be offered in a technological part where a company like that could be involved in a commercial venture.

Assemblywoman Kirkpatrick:
Section 9, subsection 3 of the bill talks about the driver being logged into the network. What happens if the driver does not log in? Sometimes we forget to do those types of things. What are the protections for those situations? Also,

what happens to businesses that want to have their own delivery service? Could they go under this network as well, as opposed to what they are currently doing? For example, what if a contracted concierge drives around and picks up things for the hotel? Could they then be under this?

Senator Settelmeyer:
Some of these TNCs are doing innovative things through their platform. In San Francisco, California, people, parents, think it is a wonderfully demonic idea called "Uber Kitten." This entails bringing a kitten to your house, letting you play with it, and then taking the kitten away unless you agree to adopt it. That being said, I believe that the platforms are a whole other discussion with a whole different bill. I am saying that if TNCs operate in the state of Nevada, this bill is about ensuring that they are insured.

Assemblywoman Kirkpatrick:
California is making significant changes to them, and they were one of the first states to do this. Have we contemplated their mistakes so that they do not happen in our state?

Mark Sektnan:
I was very involved in the California bill. I am not aware of any changes that are being proposed either by the insurance industry or by the TNCs. I know they do not like exporting the California model to other states because, in many cases, they feel the limits are too high. There are certainly not any bills in their legislature this year regarding this. The only problem is that they have an issue whether or not the Department of Motor Vehicles treats them as commercial vehicles or not for license plate issues.

Assemblywoman Kirkpatrick:
I thought I read that California was looking at it because some things did not turn out exactly how they wanted. If you could answer my question on what happens if the person does not log in, and who is then responsible, that would be great.

Robert Compan:
If they are not logged into the network, they are operating as a rogue driver. The TNCs, per this legislation, are to share whenever they are logged in to it. First of all, they would not be able to accept a fare unless they are driving down the street waving a TNC sign. I am not sure if that answers your question.

Assemblywoman Kirkpatrick:
It does not. My concern is this. Hypothetically, what happens if I decide to get in a car to go across the street, and the driver does not log in? I would not know that, but who would cover my insurance?

Senator Settelmeyer:
If they are not logged into the application in any way, shape, or form, they are on their own insurance. The way a TNC works is basically as a membership organization. You decide to download an app. From that app, you have to give them your credit card information; the TNC is operated only on credit cards. There is no cash; that is one of the benefits as a security measure. You decide to download this app and be a member of this entity and accept transportation through this service. You turn on the app and have somebody accept you because when you push the button, it contacts that driver, and a picture is sent to you of the driver's vehicle, the driver, the phone number that is scrambled, and then you are put into contact with them. The concept of a street hail cannot occur because you never had the app on. In that respect, it is much different than the current process for some other industries.

Assemblywoman Kirkpatrick:
I do not think you can even street hail a taxi today. Who would regulate this and how do we ensure that it is working?

Senator Settelmeyer:
If they disobeyed the insurance requirements, like anybody disobeying insurance requirements, there would be legal repercussions. As far as the other bill which died on the Senate floor, that is where the regulation was.

Chairman Kirner:
I am not sure if it is legal anymore, but when people in San Francisco needed to cross the bridge to go to work, people would line up on the side, and drivers would pick people up to use the diamond lane, or fast lane, to get across the bridge. This is a ride-sharing concept where you do not have any idea who your driver or passenger is. How is that insured?

Senator Settelmeyer:
I will let someone else answer that question.

Mark Sektnan:
That is actually called a carpool, and it is covered under your personal auto insurance policy.

Chairman Kirner:
I will invite those in support of this bill to table.

Stan Olsen, representing Henderson Chamber of Commerce:
Besides representing the Henderson Chamber of Commerce, I am also a member of its board of directors. We are in support of this bill. The City of Henderson is severely underserved. We are the second largest city in the state of Nevada, but we are underserved by the taxi programs that currently exist. We think this is a great step in the right direction to eventually get us in the served capacity. We support this bill as it is written.

Chairman Kirner:
Let it be a reminder that we are talking about insurance in this bill today, not service.

Dan Musgrove, representing AAA Insurance:
To answer Assemblywoman Carlton's question regarding AAA, we have yet to decide whether or not we are going to enter the TNC business. If one of our drivers chose to be an Uber or Lyft driver, they would have to purchase a separate policy from another company. If, on their personal time, they are covered under their AAA policy, but if they chose to be in the business and go into phase 1, they would have to impact that other company and policy, so Assemblywoman Carlton's rates would not be affected. That is a clear distinction for our company, but that is the way it is designed with a company that decides to do both. There is a clear demarcation between personal insurance and becoming a commercial activity. We are in support of this bill.

Michael D. Hillerby, representing Lyft:
We are in support of the bill. Lyft pays for and provides the TNC insurance in both periods for its drivers. The drivers do not buy that insurance on their own, but they are welcome to, especially if they want additional coverage.

Assemblywoman Neal:
I have a question about section 9, on page 5, line 32 of the bill. How does the right of contribution against other insurers work? It says that if an insurer meets the provisions of subsection 3, paragraphs (a) and (b), the insurer "has the right of contribution against other insurers who provide coverage to the driver to satisfy the coverage required by section 8 of this act at the time of the loss." Typically, is right of contribution legislated or is it in the policy?

Michael Hillerby:
I think there are other people in the audience who have already spoken, in particular the representative of PCI, who could give you a more detailed answer. The right of contribution is a general concept, not specific in statute, but in law. For example, if there are two insurers potentially covering a loss, one has paid the full claim. Another example would be a driver hit by two other cars. The insurance of car one ends up paying the full claim but found out that car two was also involved and liable. The first insurer could then ask the other insurer to contribute. It is going after other insurance that may have some responsibility or liability to pay that claim. It is something that happens between insurers. That is the end of my knowledge in regard to that concept.

Chairman Kirner:
We can come back to that question.

Nick Vassiliadis, representing USAA Insurance:
For the sake of brevity, I will offer a "me too" for many of the reasons already stated in support of this bill.

Michael Dorsey, representing Uber:
I, too, would like to offer my support for this bill.

Assemblywoman Carlton:
If I decide I am going to do this, am I legally bound to inform AAA that I am now using a car for business that I insure with you personally? I know there is a business aspect of insurance. You base your rates on how much the car is used, who is driving it, and where it is going. There are a multitude of factors. Am I now going have to share that information with you?

Moreover, if the car is in an accident, has AAA contemplated how they are going to deal with who is paying what, to make sure that the person paying the insurance does not get caught in the middle? Because we know what happens when you have two health insurance coverages; they want to point at the other one and say it is their fault. I am concerned that I would have to report it, and it could impact my personal insurance on the other side.

Dan Musgrove:
To answer your first question, as of this moment, AAA does not allow you to perform commercial work with your vehicle that is insured under AAA. We cover you under the personal use of your automobile. If you absolutely choose to do commercial work, you are in violation of the agreement we have

with you as a policyholder with our company. It would be a problem for us, and we would want you to inform us of this so we could tell you what would need to be done to make sure that you are not in violation of the insurance agreement.

I think your second question goes to the issue of what you are doing with your car and the fact that the technology will tell us when you are working and not working. The gentlemen from Uber or Lyft could tell you how that works, but again, we are just talking insurance. My belief is that there would be a clear distinction between your personal use and commercial use. The best thing may be to have only one company, but if you are using Lyft, they are paying for it.

Chairman Kirner:
Let me review so I can understand what you are saying. You represent AAA Insurance, which is a personal automobile insurance company. I decide to be involved in some commercial enterprise, and they are willing to insure me. So I have the same car that I am driving for personal use, but then I turn the app on, and all of sudden I am driving the car for commercial use. Now you no longer provide insurance, but this other outfit is providing me coverage, is that correct?

Dan Musgrove:
Correct.

Chairman Kirner:
Thank you. Are there any other questions?

Assemblyman Nelson:
I understand the insurance coverage, but from a legal relationship standpoint, is the TNC a primary defendant, or are they saying that they are limiting their liability to the insurance coverage? Let us say that I had 14 people in a van and they were all killed, and my damages were more than $1.5 million. Are you saying that the TNCs would not be liable for something above the insurance coverage?

Robert Compan:
The TNC is the primary once the app is off. The TNC will be primary unless there are other coverages afforded to them for discovery purposes, if an insurance policy should lapse. This is a national agreement between all of the trades and insurance companies. For example, if you own your personal car and you are a pizza delivery driver, the pizza company will pick up those coverages. Even though it is excluded in your personal auto policy, you are still covered. It is also not a duty to inform your insurance company that you are now into

this venture. I understand Assemblywoman Carlton's thought process because now they are in a commercial venture, so what do they do? There are no requirements under the law or national agreements to tell your insurance company.

Assemblyman Ohrenschall:
Section 7, subsection 1 of the bill states, "Disclose the insurance coverage and limits of liability that the transportation network company provides for a driver while the driver is providing transportation services." This is the same scenario if, hypothetically, a UPS driver is texting and hits someone. There is an action against the driver and against UPS. I am seeing that there is no liability for the TNC the way the statute is written. Am I reading that correctly?

Michael Hillerby:
I think the liability would be determined after a claim was made and by trier of fact, either through the settlement process or in front of a court. There is a difference between coverage and liability. In your example with the delivery driver, any common commercial carrier has to have evidence of coverage that is satisfactory to their regulator in those various amounts. The liability is a separate question. In this case, the TNC is the primary coverage, and if the driver is found at fault, that TNC coverage would be liable for paying the claim.

Assemblyman Ohrenschall:
The way the bill is written, would the TNC ever be a party to any action? My misunderstanding is that the insurance is just for the driver as an independent contractor.

Michael Dorsey:
The TNC is the primary.

Robert Compan:
Under the determination of liability, pre- or post-litigation does not matter. The investigation would be done by the insurance companies provided by the TNC, which would be primary. They will do the investigation in terms of liability and either accept or deny coverage based on what Nevada statutes are regarding liability coverages. I hope that answers your question.

Assemblyman Ohrenschall:
Thank you. I will have to get together with you after the hearing.

Chairman Kirner:
Are there any other supporters of this bill who wish to speak? [There were none.] Assemblywoman Carlton, do you have a question?

Assemblywoman Carlton:
I have a question on the liability portion of this bill. Currently, under commercial, is there an example where the TNC could possibly tell the driver that their policy is not in effect because of some extenuating circumstance, such as drugs, alcohol, texting, or not wearing a seatbelt? Are you familiar with that at all? In that case, the driver would be left without coverage if there was a way that the TNC could deny the coverage. I want to make sure there is not an option for that to happen, because ultimately it is the victim in the back seat who ends up bearing the burden.

Chairman Kirner:
I will now move to those in opposition of this bill.

Robert List, representing Livery Operators Association of Las Vegas:
The Livery Operators Association of Las Vegas is an organization primarily consisting of taxicab operators, limousine operators, and related personal transportation. We have an unusual situation with this bill. In a sense, it is the cart in front of the horse. This bill relates to a business entity concept that does not even exist in Nevada. We have no such authorized TNC entity operating in Nevada. The one that was operating has been enjoined from proceeding further. It is difficult to speculate whether or not such an entity might be authorized in the future.

In a sense, Senate Bill 440 (R1) was tethered to Senate Bill 439 (1st Reprint), that is essentially in abeyance, which leaves this bill untethered. It purports to establish insurance standards for a former business that is a "what if" at this stage. I think the sequence of these bills, while we respect the Committee's determination to take them in this order, is somewhat reversed. We are being asked to assume that if someday a TNC is authorized in Nevada, we should have insurance that should look like this. Frankly, if there were to be such an entity, I think you would be looking at a regulatory structure design to protect the public from unscrupulous and unsafe practices. There would be no piecemeal bill dealing with one item such as insurance. If there would be such a form of business created in Nevada, certainly that legislation would include insurance, but it would also authorize a form of transportation itself and include such items as driver training qualifications, drug testing, alcohol monitoring, background checks, vehicular inspections, and licensing and regulations covering consumer protection.

Chairman Kirner:
Mr. List, please stay along the lines of insurance. Senate Bill 439 (1st Reprint) may or may not get to us, but if it does not, this whole thing dies. You have to understand my situation. In this Committee, under this bill, I cannot talk about what some other bill looked like or did not look like. I do not even know the other bill.

Robert List:
I certainly respect that. We are dealing with a hypothetical situation with a bill that would have application if and when it were ever authorized. You have heard from the insurance people, and they are always looking for new lines of insurance, so they would welcome this. We would oppose the creation of a TNC that would trigger this particular form of insurance. We would suggest that this bill be tabled until such an enabling bill itself comes forward and is approved.

Chairman Kirner:
That is noted, and I appreciate that.

Mark E. Trafton, Vice President and General Counsel, Whittlesea Bell, Las Vegas, Nevada
We are in the business of providing transportation of a driver of one or more passengers between points chosen by the passenger or passengers and prearranged through the use of a digital network or software application service. In addition, we dispatch these same services through the telephone and through lines at the airport and casinos. As such, we are governed by *Nevada Revised Statutes* (NRS) Chapter 706, which governs transportation companies. There are insurance requirements. Respectfully, the insurance requirements that apply to the transportation companies that I work with should also apply to these so-called TNCs.

In my opinion, this bill is not necessary. I agree with Mr. List that this is hypothetical and premature. I heard some of the proponents of this insurance bill talk about other TNCs that may come, so we need to address this now. In October 2014, the Executive Branch through the Office of the Attorney General filed a lawsuit seeking to enjoin a TNC for operating in Nevada without a certificate. After much discovery, litigation, and a preliminary injunction hearing, Washoe County District Court Judge Scott Freeman ruled in favor of injunction. In his finding, he ruled that the TNC company, Uber, was operating without a license that they should have applied for because they were operating as a transportation company.

Chairman Kirner:
Relative to insurance, how do you insure your vehicles? I understand the injunction and whether or not somebody is operating, but I really care about the insurance piece of the bill.

Mark Trafton:
My point is that the insurance requirements of NRS Chapter 706 should govern.

Chairman Kirner:
What are the requirements?

Mark Trafton:
For taxicabs, the minimum limits are $250,000 per claim and up to $500,000 for multiple claims. For all other commercial vehicles, which include vans, limousines, and shuttle buses, the requirements are $1.5 million per claim. That is whenever the wheels are rolling. There are no periods, tiers, or phases; it is whenever that car starts to roll, no matter what type of commercial vehicle is offering transportation for a fee. The insurance is in place the whole time, and that is whether the car has a passenger or not. On that point, 60 percent of the car accidents in Las Vegas involving a taxicab or limousine happen when there are no passengers in the car and the driver is going to look for a fare—the very situation for which this bill creates only $50,000 in minimum requirements for TNCs. In the taxicab or limousine industry, when there is no passenger in the car and no passenger has accepted a ride, there is still full coverage.

The bill's proponents describe two different periods. I respectfully disagree. I think that there are three different periods. For example, if I am a driver for TNC, and after I drop my children off at school, I log into my app and see what I can get. To me, that should be period number one. My intention is that I have begun the process of turning on the app; it does not just click on when I start to think that. I have to reach over, scroll through my phone, maybe enter a password, and then log into the app. What if I get into a car accident while I am in the process of doing that? You know how much coverage there is on this bill? Zero, if I get into a significant accident when I am about to log into the app.

What should be period number two is when I have successfully navigated through my phone and logged into the app, but I have not accepted a ride yet. This bill contemplates $50,000 in minimum coverage for that period. My understanding is that if you are a driver for a TNC, the typical process is that you have 15 seconds to accept a ride if a passenger says they want you. From an insurance standpoint, imagine that I am driving down the freeway and I am logged into the app. I know that I only have 15 seconds if a request

comes through to accept it, and I am going 65 miles per hour on the freeway. I hear my phone go off and try to click on the incoming request, but miss it and crash into the car in front of me; two people are killed and I, the driver, am injured. Under that scenario, what is the insurance that this bill contemplates? It is $50,000 in coverage because I did not successfully accept the ride. I crashed before I could do that. What does this bill contemplate for insurance for the Uber driver? There is no workers' compensation insurance. The driver who is injured trying to get into his app is not covered. The driver is going to go to the hospital and rack up emergency room bills, and there is no workers' compensation insurance coverage for him. I think we all know what happens under those circumstances.

What should be period number three is the situation where I have successfully turned on my phone, logged into the network, and accepted a rider. I understand the insurance then switches to $1.5 million. An interesting issue was brought up by Assemblyman Nelson. Under the $1.5 million coverage scenario, what if the driver smashes into somebody and, unfortunately, eight people are killed. What is going to be the position of the TNC? I have thought about that. Insurance coverage and scope of liability are two different issues. If you review the terms and conditions on the Uber app that was updated recently, they are disclaiming all liability for anything happening with the driver of the Uber vehicle. They will tell you that the insurance covers it, but what happens if the claim is above $1.5 million in the case of eight people being killed? I guarantee you that the claim is going to be above $1.5 million. Currently, we at Whittlesea Bell carry $3 million of coverage for our taxicabs and $5 million for our limousines and town cars. I have been there since 1999, and we, unfortunately, have had accidents where the claims are more than our insurance coverage. We dig into our pockets and pay whatever we need to pay beyond that. Are the TNCs going to do that? I do not think so. I ask you to consider that.

The final issue I want to bring up is happening throughout the country. These TNC drivers figure out where the people are, and they go to the same place over and over again. Instead of paying whatever percentage they have to pay to the TNC, whether it is 20 percent or not, they turn off their app and keep their placard in the front of their car and offer rides for $20 cash. I guarantee that this is happening all over, and there is no insurance under this or their personal liability coverage either. The victims, particularly the way this bill is drafted, are going to be the people or tourists in the state of Nevada.

Chairman Kirner:
In the example you just gave where drivers pick somebody up with just a placard in their car, they are acting on a commercial basis on a private insurance policy, so that if something happened, they would argue that they were doing commercial business. Since they really were not engaged with the company, the company would say the driver was not engaged with them, so you would be on your own, correct?

Mark Trafton:
Exactly.

E. Sanders Partee, President, Curb:
We make an app that connects people to ground transportation provided by regulated, licensed people. Our technology powers over a million rides a month. We are in 60 cities and recently contracted to be in the fine state of Nevada. I live outside of Washington, D.C., and have a lot of experience with what we are talking about today. Part of my testimony is to talk about section 11, subsection 1. The insurance gentleman talked about a bright line, which I think is a perfect introduction for my testimony. In the real world in which this transportation is provided, there is not a bright line.

In the transportation business, it is very difficult to get repeat customers. Drivers make friends with their passengers and give the passengers their phone number. These are called personals in the taxicab industry. I can tell you that it is happening in the TNC industry because I have taken plenty of rides to learn about the industry in my hometown. I took a $60 ride, and the driver gave me his card. He said he would be happy if I called, and he could take me anywhere I wanted to go.

Washington, D.C., has a massive presence of Uber. They have the little signs in the window that identify you as an Uber driver, presumably so you can identify the driver picking you up, since you just did the app process. In reality, the driver rolls down the window and says: "Would you like an Uber ride?" That is a street hail under the guise of someone is coming with an Uber car. People get in the car, the driver says, if you pay cash I will give you a discount. The car takes off before they realize this is not how it is supposed to be. Besides adding to the confusion of the consumer, they have no insurance. That is my point. The app-on, app-off component of this bill is not correct. Examples are personals and street hails. Also, somebody mentioned turning the app on to gain extra coverage. That is a fallacy because of the way rides are assigned by TNCs. They rate you as a driver based on whether or not you have accepted them.

It is an important part of this insurance bill that you are not covering commercial activity that is happening because of the way the systems are designed. If I have taken a fare outside of town and it was a good ride, when I return and I turn the app off because I do not want any more fares, all that dead ride back to my home area is essentially a commercial activity. I would not have been out there had I not been performing something. This is an example of the taxicab company having 24/7 coverage. That personal insurance coverage is going to pay because I am app-off, but I was essentially performing a commercial activity.

Lou Castro, President, Earth Limos and Buses, Las Vegas, Nevada, representing Nevada Bus and Limousine Association:
Our association is composed of 20 small bus and limousine companies. Most of our members are what you would consider "mom and pop" operations that run on slim to no margins but, nonetheless, pay taxes and have employees to take care of. Current operators are required to carry insurance policies that offer continuous coverage. These policies are expensive and a large part of our operating cost. These policies are vetted and are in place for a reason. The existing policies protect our industry and the traveling public continuously without any downtime or any additional steps in having to push a button on an app. These systems are not broken and do not need adjustments. This bill offers no equality and no fairness to traditional car services, which are heavily regulated and, at times, fight to make ends meet. The TNCs could legally operate in the state right now as a common broker of transportation services, which is what they really are. Instead, TNCs choose to add or amend existing law just for them. If you choose to give the TNCs this advantage, then please feel free to do the same to the existing carriers that have been working and complying with the guidelines of this state under NRS Chapter 706.

In closing, S.B. 440 (R1) not only is an unfair advantage over the entire transportation industry, but also leaves the traveling public with less insurance coverage than a person traveling on a city bus. This proposed, four-tiered TNC insurance is nothing less than part-time coverage. We owe our traveling public more protection than a product that is risky and confusing at best. Simply said, if you offer any transportation provider new guidelines under NRS, please offer the same to the small transportation businesses who work diligently every day to follow the current guidelines of our state. Please support the current working infrastructure that we have in our state.

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
Speaking to insurance, when that driver turns the app on, he is at work. He is looking for a fare and is working. He also should have a workers' compensation

policy just like the existing companies are required to do. I served on the Advisory Council to the Division of Industrial Relations (DIR) advisory board for 14 years. One of the functions of that board is to write off bad, uncollectable debt to the state as a result of people who do not have insurance, have been fined, and gone out of business. Every meeting we wrote off bad debt from people who were at work and did not have the proper insurance.

My concern with this bill is that there is no mention of workers' compensation. I have been involved with this for a long time. The first thing you are asked when you get to the emergency room is, "What happened to you?" You respond, "I was at work." Then a whole different thing happens. Your other insurance does not cover it. I will tell you, these same companies that are saying they are going to cover this will dispute these cases and will argue that they are not liable because your workers' compensation should be the primary payer of the bill. When that person is unable to pay, one of two things happens. The provider gets stiffed and the cost of the health coverage goes up for everybody, or the state uninsured fund kicks in and pays that claim for them. In that case, every other employer in the state gets stiffed because they are paying into that.

If you process this bill, I think it would be a simple amendment to say that if the app is on, you also have to have a workers' compensation policy, because one of the issues with the DIR is they are constantly chasing employers and contractors about what the policy is. They want to know who the policyholder is because, ultimately, those kinds of things happen where you cancel today and sign up tomorrow. I think this would be the vehicle to ensure that person who is engaged in a commercial activity when he turns on the app has the same level of insurance that all other employers are required to have in the state of Nevada. That would protect those employers from having to pick up the tab for someone who does not have the policy coverage.

Also, this industry is heavily regulated under the NRS. I would suggest to you that this activity is a commercial activity, and commercial insurance should apply. If you are going to process this bill, it would be a simple amendment to let the other companies who are doing the exact same thing participate in this. By that I mean, if I am a taxi company, I can have an on and off switch because I spend a lot of time sitting at the airport, racking up big dollars of insurance while the guy is sitting in the car doing nothing. They should be afforded the same opportunity to turn their app off and not have to have the same type of insurance. I do not think that would be an attractive move given all the taxi history in Las Vegas. We are opposed to this bill as it is written.

Chairman Kirner:
Are there any questions?

Assemblywoman Bustamante Adams:
I have a question for Mark Trafton. For the taxicabs, is there ever a time when there is a private and a commercial use for the vehicle?

Mark Trafton:
For insurance purposes, the answer is no. There is never a time. However, I was asked this question earlier today: "Does the cab driver ever run into a convenience store to grab a soda or something like that?" Obviously, this would be a personal use of the car, but the insurance coverage is in full force during the entire shift. Whenever those wheels are rolling, the insurance coverage is in place.

Assemblywoman Diaz:
I was given a visual of when the car was covered and the amounts it is covered for at certain times. One thing that caught my eye is that the only time there is collision and comprehensive coverage for a vehicle involved in an accident is when the app is on. My concern is if someone is driving around in their car that is still on loan from the bank and the app is not on when the accident occurs, how does it affect that individual? Taxicab owners own the fleet that the drivers use, but this is my vehicle. Let us say that I am going to drive for Lyft and my car is still on a loan with the credit union. What is the effect if now my car does not have coverage? For example, I am on the app trying to get rides, but my personal insurance coverage will not kick in because I am fishing for rides. I do not get the collision comprehensive because I am not giving someone a lift, and then I am in an accident. So what happens to me then as a car owner?

Mark Trafton:
You raise one of a myriad of good questions about when the coverage applies, how it applies, under what tier it applies, whether the individual is personally liable, and whether Uber or Lyft is going to step in. Honestly, I do not know the answer to those questions, and I think that is a problem. I have been in this business for almost 20 years, and I understand insurance coverage, but I do not know. Maybe the proponents of this bill can answer you.

Assemblywoman Diaz:
I think it is different when it is my vehicle. My vehicle is how I get my children to school, buy my groceries, and make my way around town. Now, potentially, I might even lose my vehicle or have to pay the bank for a loss. I want to make sure there is no gap for anybody who is going to engage in this.

Assemblywoman Carlton:
We have talked about so many different types of vehicles, I think I need a visual. I would appreciate it if someone would please compare what the bill actually covers and break it down for me. I would like to understand what this bill does for cabs, and then I would like to understand what it does for the delivery side. I do not see any differentiation in the insurance depending upon whether it is a Scion compact or a Suburban that would hold ten people. That would make a big difference to me, but apparently you people break it down differently.

I would like to see, in basic columns, what is covered and how it goes so that I can really understand what the amounts of coverages are going to look like. Also, is there a time when you are not liable for your driver? If your driver does something—the car is insured, and you are also insuring the driver—is there a time when the victim gets left out? I want to make sure that does not happen.

Mark Trafton:
In my experience, the insurance coverage for taxicabs and limousines applies in the course and scope of the employment when a negligent act occurs. I have dealt with situations as counsel for taxicab companies. An example that comes to mind is, while waiting in line, sometimes the drivers will get into a disagreement, it escalates, a fight takes place, and a lawsuit ensues. This is not necessarily covered by liability insurance because it is not an act within driving, but it is an act that happens in the course and scope of employment.

This is the distinction I was referring to earlier between insurance coverage and course and scope of employment. We have Nevada case law that talks about this. An example was a 21 card dealer who ended up punching out a patron at a casino. It was found that maybe the insurance coverage did not apply, but the casino—because the worker was in the course and scope of his employment when this happened—had to provide a defense at indemnity. It is kind of a technical question and answer. We, at Whittlesea Bell, have always defended the driver's actions whether or not the liability insurance coverage came into play. Only one or two times in my 16 years of working there did the insurance company say it was a matter for the company. If so, then the company steps up and accepts the responsibility.

Chairman Kirner:
Are there any others who wish to testify in opposition?

Jerry Keys, Private Citizen, Reno, Nevada:
I have some issues as a driver. I have been a driver for 15 years. I have not heard any discussion about regulation.

Chairman Kirner:
This bill does not cover regulation; that is why I have been very focused on insurance. There is another bill that focuses on that.

Jerry Keys:
It does tie into the expenses that Whittlesea Bell has to provide the service that they do in Reno. The cost of insurance for them is significantly different than what it would be for any of these TNCs. They pay for the exposure that goes from the time you put your ignition key in the taxi to when it comes back out. In my mind, that is an insurance issue.

Chairman Kirner:
I am realizing that it is quite different.

Jerry Keys:
I am not insurance savvy, but I would expect the premiums that they have to pay as a company would be significantly higher. In regard to regulation, who would be in charge of regulating part-time drivers?

Chairman Kirner:
Again, that is on the regulation side, which is in S.B. 439 (R1). Today I am focused on S.B. 440 (R1) and nothing about regulation.

Jerry Keys:
As a driver, I am competing with these other drivers out there. For the insurance "pie," let us say in Reno, there are going to be X number of trips in one day, and these other companies do not bring any other business into this pie. The cost of providing a service, because of the insurance, is going to be significant along with all these other issues that will apparently be addressed later.

The point I would like to make, as a driver, is that I am going to be competing with some part-time drivers. I drive 12 hours a day; it is a full-time job for me. Everybody I know does this. I am involved in a cab line at the Reno-Tahoe International Airport picking up passengers, and I am on the Internet doing transportation between the airport and all of Lake Tahoe. My insurance covers all of this activity for 12 hours a day. I am going to be competing with people who do not have all of the checks and balances that I do. I am ultimately paying for this with my customers' income. Who is going to enforce this if I am

competing with drivers who are not insured much of the time that they are in the vehicle? There was a shootout with the company I work for in the last few months, and the driver was killed. The company took care of the driver. That is important to me, knowing I have people behind me who would be able to step up to bat when adversity hits.

Chairman Kirner:
I appreciate your story, but we need to focus on the insurance portion of the bill. If we ever get to Senate Bill 439 (R1), we will have an opportunity to deal with the regulation portions. This bill has to be processed before we get anywhere near that. Is there anyone in the neutral position?

Jennifer Gaynor, representing Nevada Credit Union League:
We are representing 18 credit unions and more than 300,000 members here in Nevada. We are here to support an amendment that we proposed (Exhibit I) that we believe fills an important gap in the national model insurance that you have seen presented in S.B. 440 (R1). This is a gap that was referenced in Assemblywoman Diaz's questions about comprehensive and collision coverage.

Our requested amendment would do three things. First, it would require that specific notice be given to drivers regarding potential gaps in their comprehensive and collision insurance coverage that occur when they use their vehicles as a TNC driver. Second, it would require TNC drivers to notify their insurer about how to direct payment for claims paid under comprehensive and collision coverage policies. Third, it would require the TNC or the driver to provide comprehensive and collision coverage while they are using their vehicles for TNC services.

We introduced this amendment in the Senate Committee on Commerce, Labor and Energy. We also reached out to the insurance companies and Uber and spoke with them about what we are proposing. The insurance companies communicated to us that they have no issue with our proposed amendments. Uber has no problem with the two notice issues, which would be our amendments 2 and 3 in the amendments we have submitted in writing (Exhibit I). We ask that you consider adding at least the language in amendments 2 and 3 to S.B. 440 (R1).

We also ask that you consider our other amendment, which would be the requirement to include comprehensive and collision coverage while acting as a TNC driver. We believe this is an important consumer protection issue. This is not just a question of protecting our credit unions' collateral. We want to protect our credit union members who decide to become TNC drivers and use their automobiles to do so without realizing the risk they face, that they could

lose their vehicles because their insurance or the TNC insurance coverage will not cover the loss of the vehicle if they are in an accident while working as a TNC driver. If they get in an accident without comprehensive and collision coverage, they cannot fix their car, cannot drive, and are no longer able to work. This is not part of the national agreement on insurance, but we believe it is important. Similar requirements, I believe, have been adopted in other states, including most recently, Utah. [Jennifer Gaynor also submitted a flyer (Exhibit J) from the Nevada Credit Union League for reference.]

Chairman Kirner:
Thank you. I believe we have those amendments on the Nevada Electronic Legislative Information System (NELIS), and we will look them over with the bill sponsors. I will invite the bill sponsors back to the table for any closing remarks.

Senator Settelmeyer:
This bill is indicating that if a TNC comes to the state of Nevada, even though we have not passed a bill and said we wanted to regulate them, I think that they should have a minimum level of insurance. I think the national model of insurance is a good start. To me, the upper limit of $1 million was not enough. I indicated that I wanted it to be $1.5 million. Even if we decide that we do not want to do this, I think we have a couple of entertaining bills around this building talking about home rule and giving counties, municipalities, and potentially even cities the ability to regulate on nonfiscal matters. I think this qualifies. I think we should do something now to make sure the insurance exists. If we do not, because the Legislature only meets every two years, we could be in a situation where we do not have the ability to dictate a minimum level of insurance. That bothers me.

Assemblyman Ohrenschall:
I have been reading up about the different ridesharing services. Drivers want to be where the fares are and where the people are. One article said that, like cab drivers in Reno and Las Vegas, ridesharing drivers will sometimes log in as a passenger so they can see where the passengers are.

Looking at section 8, subsection 1 of the bill, if this were to happen, would they be covered under the $1.5 million in paragraph (a), the $50,000 in paragraph (b), or would they not be covered because they are not using the app the way they are supposed to? I have noticed some states like Illinois do not have different levels of coverage in terms of whether or not you have a passenger or if you just have the app on.

Senator Settelmeyer:
Again, I was going after the national model, trying to find something that everyone from the various industries agreed on. However, I went up in limitation because I did not feel that $1 million was enough.

As to your second question, I will have to look into it, but I do not believe they would be covered because they are not logged in as a driver. There are situations where individuals may be a driver but they are on vacation, and they use that very same service, but not as a driver.

Assemblyman Ohrenschall:
I would not care if they were on vacation logged in as a passenger, but if they were logged in as a passenger in order to get business, then I would be concerned if they were not covered.

Senator Settelmeyer:
As previous testimony indicated, they have a short time frame to accept the ride. From switching as a driver to a passenger and logging in and out, they would probably lose the fare.

Assemblyman Ellison:
If the driver's car breaks down, and he has to borrow one or use a different vehicle, does that insurance go with him, as a driver? Or does it go with that vehicle?

Senator Settelmeyer:
I will look into that answer for you. To my knowledge, the way the platform works on a TNC is they have a picture and license plate number of that vehicle, so that agreement is between that driver and the vehicle associated with him. In order to change that, I believe they would have to go through a process to do that. I am pretty positive that it is only relevant to the actual vehicle that a person signed up with.

Assemblyman Ellison:
You said that they scramble the numbers so you cannot call back and forth. Let us say the driver breaks down halfway there, has to get another vehicle, and shows up. Would that driver then be in liability? He has no way to call you, and you have no way to call him.

Senator Settelmeyer:
The entire time frame from when the person accepts the concept of driving for you, that conduit is still open. They have the ability to communicate with

one another in order to convey any problems that may occur. Maybe they call the person to decline due to an accident or something else. Those options exist within that framework to still communicate with one another.

Assemblywoman Neal:
In section 7 of the bill, it says, "Before allowing a natural person to be connected..." and as you move through the bill it changes from "natural person" to "driver." When are they an agent of the TNC and when do they become an independent contractor of the TNC in terms of liability? Who they are and their relationship shifts as the activity occurs, as described in the bill.

Senator Settelmeyer:
To my knowledge, the drivers are always independent contractors through the period. They are not employees; they are independent contractors. There is an explanation to that question related to S.B. 439 (R1), but we can talk off the record later. I go back to the simple fact that one entity was operating in the state for about a month—the injunction currently only applies to that one entity—and if other entities are allowed to exist, I think they should have a heightened level of insurance rather than the existing standard by Nevada law, which is 15/30/10. Therefore, I agree with the concept of insurance. They go up to 50/100/25, with a $1.5 million overall coverage once they accept the ride. It is not the concept of them having somebody in the vehicle. It is as soon as they accept they are going to go pick somebody up until the completion of the ride that the insurance is still in effect.

Chairman Kirner:
I want to thank everyone who has participated. I think we received a lot of information. I am going to close the hearing on S.B. 440 (R1) and open the hearing on Senate Bill 233 (1st Reprint).

Senate Bill 233 (1st Reprint): Revises provisions relating to occupational safety. (BDR 53-990)

Senator James A. Settelmeyer, Senate District No. 17:
During the interim I was talking to numerous contractors, and they were discussing a five-year provision relating to the Occupational Safety and Health Administration (OSHA) 10-hour and 30-hour classes that we implemented in this very room when I was on the Assembly Committee on Commerce and Labor. After five years, they had to have their licenses renewed. These individuals were taking these classes and finding out it was the exact same course. That course covers things such as not duct-taping two five-gallon barrels together to use as stilts and things of that nature.

Taking the class a second time, people found it to be problematic, especially when they had to take certain courses to be specifically trained for workplace situations.

Furthermore, their workers' compensation claims also had training specific to their industry that they felt would be more beneficial. The concept of doing the renewal class was not beneficial. Instead it was expensive and took too much time. Therefore, they asked me to bring forth the bill through the Senate Committee on Commerce, Labor and Energy, where I am the Chair, to remedy that situation. We are the only state with a renewal process. We brought the bill forward to remove the renewal; however, my Committee felt that idea did not make sense. After the testimony, it made more sense to not have the renewal process. Instead, it would just have the initial class and then allow private training by the individual employers and their insurance companies. Again, they know better how to individually train their own employees to help ensure they have fewer workplace injuries. I believe there will be an amendment coming forward.

Assemblyman Ellison:
I brought up this bill last session. It is a great bill. It is ridiculous when OSHA and the Mine Safety and Health Administration (MSHA) are almost identical in training. It is only when they go to underground that the training is a little different. As many times as my employees have taken this class, there is no change and no difference. It includes the same films. To me, it is a waste of time. I understand it for new employees, but not for employees that have worked for a while. They could write the test before they walked in the door. I think if you are going to do this bill, it needs to be for the OSHA 10-hour and 30-hour classes.

Assemblywoman Bustamante Adams:
I know we could probably do this better as a state, so there is likely room for improvement. My questions have to do with allowing private training after the initial training. First, how do we ensure that the private training takes place? Second, how do we know that the private training is adequate? Third, how do we prevent the deaths of workers, like those that occurred at Las Vegas CityCenter?

Senator Settelmeyer:
Businesses have a personal interest in making sure that their employees are not injured. They do not want to have to pay more in premiums; they do not want to have sick employees; they do not want employees to not be there. There is a very high level of interest from the employer; their insurance companies

dictate to them that they have certain courses that they actually come out and teach. What is interesting about the OSHA 10-hour and 30-hour courses is they do not function much on large-scale, 20-story buildings such as the Las Vegas CityCenter. Therefore, it was not necessarily pertinent to that situation. That is why it is better to allow an initial generalized safety course and let the industry, its employers, and its insurance agents indicate what needs to be done for their specific job sectors. Today there will be far more testimony from individuals who can get into detail on this subject.

Assemblywoman Bustamante Adams:
How would we hold those private training classes accountable? Do they have to report to someone that this private training has taken place? I am not sure how that process works. I do not have an issue with allowing them to do their training for their specific industry. I just want to make sure that it is done right and that there is always an updated review process for anything new coming into the industry.

Senator Settelmeyer:
There is nothing in the bill that would create government oversight to regulate the nuts and bolts or figure out how each class would be taught at an individual level. This falls on the employers to work with their insurance companies to develop their own programs in order to improve workplace safety. When I have a new piece of equipment, we teach the nuances of that piece of equipment to my new employees. Many times, my employees who have more familiarity than I do with something, such as moving irrigation pipe, will say, "Let me train you." They have showed me many tricks that facilitated that process and helped result in fewer injuries for myself. I train my employees how to use certain pieces of equipment, whether it is a 1095 harrow bed or a 580K backhoe. Again, OSHA 10-hour and 30-hour courses would never cover that. I have that interest because I like my employees and I do not ever want to see them hurt. They have had to rescue me a couple of times when I got hurt, and they did not like that either, because I am then off work and they have to do more.

This is about allowing people to develop what is right for their particular industry. No other state has a renewal process. I believe other states have discovered the reality that it is best left to the employer and their insurance companies that have a vested interest in these types of claims. I know that Pro Group Management will probably come up and testify, and they do the same thing. They make sure to visit the jobsites and tell the employer how it is going to work for their particular industry. This happened with me with Pro Group for agriculture. There was some very agriculture-specific training they came to for insurance for my employees. They do that for all the

industries they represent. They develop their own specialized training. You are correct; there is no governmental oversight. It goes to the concept that neither the employer, the employee, nor the business want injuries.

Aaron West, Chief Executive Officer, Builders Alliance of Western Nevada:
Keep in mind that the OSHA 10-hour and 30-hour outreach training program that is currently mandated under Nevada law administered by the U.S. Department of Labor is actually a voluntary program. Nevada is one of only seven states to have adopted legislation to make OSHA 10-hour and 30-hour training mandatory. We are the only state that mandates this training for use on public and private projects. The other six states only required it on public works projects, and there is no renewal requirement. Once on the job site, the employee is covered by Nevada OSHA and federal OSHA regulations, which have mandatory training requirements that must be provided by the employer prior to beginning specific work duties.

To answer Assemblywoman Bustamante Adams, as you get onto the job site and your work mandates that you get into various sectors, you are required to do mandatory training for those specific sectors. A few examples of specific task training provided by state and federal regulation includes fall protection prevention systems, which you would see roofers using. Also, there are lockout/tagout systems which you would see heating, ventilation, and air-conditioning people using. There are programs on forklift safety, material suppliers, and things of that nature. As you can see, these requirements are trade-and equipment-specific, so to repeat the basic education provided under OSHA 10-hour and 30-hour courses does nothing to further the goal of safety.

Employers support the base training and requirement that everyone have a card affirming their training; however, we believe the time spent on the mandatory renewals can be better spent with already required on-the-job training.

Assemblywoman Neal:
I am looking at section 1, subsection 3, paragraph (a) of the bill, where you change the course model and the number of years before they come in to renew from five to ten. I understand why you want to extend it out, but on the other side, for the company that is offering the safety training, how do they put that into their business model in terms of expected revenue? Those persons will not cycle through on the expected dates. What is the effect?

Senator Settelmeyer:
In discussion with some of the training people, such as the Associated General Contractors (AGC) north and south, we learned they were happy to get out of this field. They like the idea of teaching new employees and they want more construction workers out in the field. They do not really like this idea; they did it as a reach-out for the people they represent. I cannot speak for all of them. I am sure there are some out there who want to continue to get money from this service. The ones I talked to are willing to get out of it.

Assemblyman Nelson:
Nevada is also the only state requiring this sort of training for home builders, is that correct?

Senator Settelmeyer:
I believe that is correct.

Assemblyman Nelson:
Do you think that is necessary when most homes are just one or two stories?

Senator Settelmeyer:
I think the initial training makes sense. A generalized safety course is important in order to make sure people are aware of what is going on. In hearing the testimony from many years ago, from the original bill by then Assemblyman John Oceguera, it was compelling to learn about the different injuries that took place. Unfortunately, common sense is not as common as it used to be.

Chairman Kirner:
Thank you. Let us entertain those supportive of this bill.

Robert Vogel, Vice President, Pro Group Management:
Pro Group Management (PGM) is the administrator for five self-insured groups in the state of Nevada covering many employees, particularly those interested in this bill through our builder's group, transportation group, and other employers who are involved in the building trades. We have an affiliated company called PGM Safety Services that concentrates on providing safety training for employers and their employees across the state and all of the trades and services that are provided in the state. We provide the OSHA 10-hour and 30-hour courses and the renewal for employers in the state.

We are in support of the bill as presented. The renewals are redundant and do not focus on the real safety concerns that employees and employers will have. There is more about this in my submitted testimony (Exhibit K).

As it relates to a business model for our PGM Safety Services company, the time spent in providing this renewal card is not a main source of revenue. We are more interested in being at the work site with the specific site inspections and training, with our employees and the employers to make sure they are safe in their job-specific duties. As it relates to who regulates that ongoing training, very specifically, Nevada OSHA and our federal OSHA have adopted requirements that all employers are required to adhere to. The training is provided by our staff, who are certified in those specific areas, whether it is MSHA or Nevada OSHA, lockout/tagout, or fall prevention. They have to provide certification to Nevada OSHA and to their particular training organization to maintain their certification. It is very highly regulated.

Additionally, we have a great crew under Safety Consultation and Training Section (SCATS) and federal OSHA, who are out there observing and helping our employers meet those regulations. We have a lot of oversight on the on-site training of our employees for safe work environments. The OSHA 10-hour and 30-hour initial training is a good start, and it has been very official by the state adopting that, but the renewal process is redundant and unnecessary at this point.

Brian Reeder, Government Affairs Coordinator, Nevada Chapter, Associated General Contractors of America:

We support this bill for many reasons previously stated. I want to emphasize that the training that is more task- and job site-specific has a lot of value and AGC performs these trainings in-house. As far as losing revenue when offering the refresher courses, we would rather spend that time offering more fall protection or forklift courses.

Bill Miles, President and Chief Executive Officer, Miles Construction, Carson City, Nevada:

We have been in business and hiring employees for 35 years in Nevada. We seriously stress safety in our company and have for years. We are a client of Pro Group Management, and they do a great job on the requirements for anybody to come into their group as far as specific safety programs, written programs, communication programs, and so on. I am a general contractor, so I am required to have all of my subcontractors have a safety communication program. The OSHA 10-hour and the 30-hour are great courses for the initial people going on to a construction job including the residential industry. Unfortunately, I have to agree with Senator Settelmeyer's statement that there is just not a lot of common sense anymore. The basic common sense that the OSHA 10-hour and 30-hour courses give a person is huge for that person's safety on a job.

I probably spent close to $12,000 to $13,000 to renew all of my employees this year. I am very fortunate that I have a lot of long-term staff, but the OSHA 30-hour renewal for a high-end superintendent or project manager who makes in excess of $100,000 per year winds up costing me close to $75 an hour. It was unnecessary money spent. I would much sooner see job site-specific training. A good example of that is a small project we did out at the Tesla Motors site. Anybody from my company was required to do another three hours of training to even go on to that site no matter how much training they already had. The redundancy of the OSHA classes when it comes to renewal, I feel, is a waste of productive time.

Adalberto Rosas, Private Citizen, Reno, Nevada:
I am an authorized OSHA trainer from Reno. I would like to think I am representing employers, employees, insurance companies, small businesses, large businesses, trainers, spouses, children, and families. I am in an enviable position that as it is currently written, I am for, against, and neutral on some portion of these amendments. I would like the Committee to know that, above all, this is about people. It is not statistics. It is not a line item on a contract. This is about keeping people safe. We are in agreement with a lot of this bill. Not only do I have my own safety training company, but I teach for several others, including Truckee Meadows Community College.

The initial training is a good law, just like children's car seats, seatbelt laws, and driving under the influence laws. In reference to the renewals, some of the things that I am proposing to amend would actually hurt my business and take money out of my pocket, which is fine because I believe in the overall safety issues. The Safety Consultation and Training Section was mentioned, but it has limited resources. Some companies have safety trainers, but they are also limited. Not a lot of companies can afford a full-time safety person.

I submitted a document (Exhibit L) which states 20 facts that I can go over for you if there is time.

Chairman Kirner:
We have that on the Nevada Electronic Legislative Information System (NELIS) so we can go over it ourselves.

Adalberto Rosas:
The opinion was that the gutting of *Nevada Revised Statutes* (NRS) 618.983 and its requirements will lead to more fatalities, accidents, fines, and increased insurance and business costs for small construction business owners.

I would like to address some concerns from Assemblyman Ellison. The classes are not repetitive. I do this every day. There have been a lot of changes since April 15, 2011. You are more than welcome to sit in on one of my classes. I will not charge you; it is just $5 for the card. I do feel that it is important training.

I wanted to know if I can be involved with proposing some amendments (Exhibit M), including agreeing with some of the amendments already in place.

Chairman Kirner:
I think if you have proposals, it is best to talk with the bill sponsor.

Adalberto Rosas:
Thank you.

Chairman Kirner:
Are there any questions?

Assemblywoman Diaz:
As an educator, I continually have to take courses that are redundant. Every year, I have to refresh my memory about bullying, staph infections, and things of this nature. I think these refresher courses are sometimes important because in the course of a year they get faded in our memory because we have so much on our minds.

I wanted to get some reassurance from all of you at the table who are in support of pushing the renewal back to ten years. Ten years seems like a really long time for something to be revisited, especially when it comes to worker safety. I think worker safety is of the utmost importance. You all talked about how you have things in place at your work sites and it is job-specific, but can you give me some comfort as to how often it is happening and who gets it? I also wanted to know about the transiency of your workforce.

Bill Miles:
I have a couple of businesses, but typically we have somebody in our company designated as a safety manager. My company has a full-time safety manager. Part of his job description is to meet not only with our employees but also with the subcontractors on job sites, particularly if it is a large job, prior to the start to discuss the safety protocols. Part of our superintendent's requirement is to make sure that anybody who comes on that job site has his OSHA 10-hour card or 30-hour card, or that person is not allowed on the site. We are very strict about making sure we have trained personnel on-site.

In addition, if you went to an OSHA 10-hour or 30-hour class, they would give you a broad brush of something like forklift training. We require if somebody is on a job site and is going to run a forklift—there are multiple types of forklifts—that they have a specific training card for the piece of equipment they are going to operate. That continues on down the line. If somebody on the job site is going to run a powder-actuated tool, such as a Hilti gun, where you put a powder cartridge in it and shoot a fastener, that person is specifically required to have a training card for that tool.

The education in the construction industry continues all the time. The insurance company is looking over my back; they come in and audit our programs. They audit our written safety program. They audit the fact that we are training employees to have a forklift card, not only for a straight mast forklift but for a reach forklift. The training continues daily, weekly, monthly, and yearly in the industry once you get started. In general, I am very much a fan of the OSHA 10-hour and 30-hour courses and continuing training throughout the employees' term at my company. Hopefully, some day they might retire with me.

Assemblywoman Diaz:
When you mentioned that you get audited by the insurance companies, is it a commission?

Bill Miles:
No, we are with Pro Group Management. Another big insurer in Nevada is Employers Insurance Company of Nevada, previously the State Industrial Insurance System. I believe they also require written safety programs. We require a lot of subcontractors who come onto our jobs, even though they might not be a Pro Group Management client, to have written safety programs and to bring those with them. We require our subcontractors to have trained personnel on our jobs, specifically if they are using any dangerous types of tools.

Assemblywoman Diaz:
So there is a hammer or sanctions, too, if it is found that you are not adequately educating the workforce in terms of security measures, or what they should be doing? Is there something that happens to penalize a "bad actor"? I am not saying that you are; I am just asking if there is a hammer in place to come down for those who do not comply?

Bill Miles:
I am not familiar as to whether there is or not.

Adalberto Rosas:
Yes, there is. Federal and Nevada OSHA can come down with a hammer and make sure they comply. One of the issues is that depending on what trade you are talking about, Spanish speakers or nonnative English speakers make up anywhere from 40 percent to 100 percent of the people I see. Federal OSHA requires that the training be done in the language that the employee understands. I am getting anywhere from 85 to 90 percent of my business from Spanish speakers, and I teach the classes in Spanish and in English. English is my second language.

I am a little reluctant to do away completely with the renewals. I have been doing this for roughly a dozen years, and it did not change for a while, but there has been a sea change since April 14, 2011. This is when OSHA came up with some new guidelines and new programs. This information is all in the fact handout I provided the Committee (Exhibit L). I would like to see the renewals go to ten years, and I am willing to work with the bill sponsor. I think at that point common sense will prevail. The training provided by employers and by the insurance companies will suffice. For example, all employees should have been trained on the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) by December 2013. When I am teaching my OSHA 10-hour class and I ask if everyone had been trained on GHS, I receive blank stares. So I make GHS part of my OSHA 10-hour class so that they understand. This is one of those situations where everybody wins. If employers are safe and employees do not break the rules, the employer wins, the employee wins, and the insurance company wins.

Robert Vogel:
We are the insurer representing the insurance entity. Every insurance company has a vested interest in a safe work environment, so they work with employers to provide safety training they are interested in and those safe work environments. We work with our trade associations, like AGC does for its members. We work through the Builders Alliance of Western Nevada and our transportation group, our retail group, and our auto dealer group, and those employers promote a safe work environment.

We audit and examine. From the perspective of an insurance entity, there are results. They could have their policy canceled because they are not following safe work environments. This presents a financial burden to that company, and most often it brings them around. We have the ability to surcharge them for not following safe work environments. That again is more financial incentive for the policyholder to be more proactive in safety and other areas. State OSHA is the enforcement agency; they are the police. They have the regulatory authority to fine and carry out those fines, which are substantial for employers

who are not following safe work environments. There is very consistent regulation after your initial OSHA 10-hour and 30-hour classes, which are base awareness construction programs.

Assemblywoman Diaz, as an educator, you have a certification you are maintaining, so those regularly occurring classes are at a much higher level. This is an introductory program. I am glad Mr. Rosas has introduced new pieces that are not part of the normal curriculum. They have come up with additional changes since the initiation of the renewal, but it is more about class size and who the authorized trainers are. It is more at that level than the content level and the specificity at the job site that Mr. Miles was talking about. That is a continuing effort after the initial introductory course that gets those new employees into the industry. Once I am a new employee and swinging a hammer and driving a forklift, I am receiving continuous training. I do not need to go back and learn about things that really have no bearing on what I do on a day-to-day basis. Coming into the industry and getting a broad scope of what OSHA is, what our standards are, what GHS is, what kind of training should I expect, and how can I report if I am not getting the right training are all important things to know for the OSHA 10-hour and 30-hour classes.

Assemblywoman Bustamante Adams:
I would like this question on the record, but I can get my answer at another time. Section 2 of the bill says it becomes effective upon passage and approval. To me, that means October of this year. If I were a cardholder of an OSHA 10-hour course and it expires in September 2015, do I still have to get a renewal?

Chairman Kirner:
Thank you panel members. Is there anyone else in support?

Gregory F. Peek, representing Nevada Home Builders Association:
In the interest of the hour, I would like to put us on record as supporting this bill. Nevada is the only state that includes home building in the recertification process. I have a couple of answers to questions already asked, but we can talk about those later.

Chairman Kirner:
Is there anybody in opposition?

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:
I was here in 2009 and worked extensively on this issue. This law was born following a large number of deaths that occurred, primarily in southern Nevada on CityCenter and other projects. The result was a bill that was intended to create a culture of job site awareness of safety. The belief at the time was that, with some exceptions, training was low priority, and the only way to guarantee some form of compliance with this concept of creating a culture of job site awareness was to have a short enough shelf life on this training that the training would actually occur.

When working on the bill, we became aware that a number of contractors were not in compliance with some of the regulations that existed in law then and exist today, including having a mandatory safety program, designated personnel responsible for safety, orientations, occupation-specific training, and even things as simple as weekly job site talks. If those things had been occurring then, I think our position on the deadline issue would have been somewhat different.

In the previous hearing on the Senate side, S.B. 439 (R1) was extending the time frame on both OSHA 10-hour and 30-hour classes to ten years. We are neutral on that and did not testify on the bill. We believe a renewal of ten years is sufficient for both. There are enough technological changes that occur in a ten-year span that it should be required that the basic job site awareness training occur on a renewal basis. That is why we are in opposition to the bill today. The OSHA ten-hour renewal has been extended to a lifetime.

Adalberto Rosas:
I agree with Mr. Mallory. They are trying to get away from the renewal for the workers. It has been my experience that when most construction accidents happen, there is no supervisor employee present, there is no SCATS person present, there is no insurance company present, and there is no federal person present. Oftentimes it happens because the employees are not following the rules or are being pressured by their supervisors to hurry up and get a job done. Those are things I address in class. I would like to keep the renewals for both the employees and the supervisory employees.

I also had an issue where the original bill, in section 2, said, "this act becomes effective on July 1, 2015," and then was changed to "upon passage and approval." I would say to make this approval effective April 2016 because that would allow people who went through the initial training to get their renewal training before this new law goes through. They would be caught up with everybody else who has gone through it, and they would get the new piece of learning that is very crucial.

Chairman Kirner:
Are there any questions? [There were none.] Is there anyone in the neutral position?

Steven George, Administrator, Division of Industrial Relations, Department of Business and Industry:
The Division of Industrial Relations (DIR) includes OSHA and SCATS. We are neutral on this bill. It is a policy issue for you. I met with the bill sponsor when it was in the Senate Committee on Commerce, Labor and Energy, and we had come up with an understanding that OSHA was okay with you dropping both the 10-hour and 30-hour requirement. If you decide you want to do that, it is fine with us. As the other speakers have said, the initial training is what we do. It is very helpful for all of the employees just coming into the industry. The renewal process is most cumbersome for us and the businesses. In regards to people in the private sector, the insurance companies do this, and they have a very good reason for keeping their employees safe because their insurance rates will go up otherwise.

To some of the questions that were asked, Nevada OSHA is that enforcement arm. We have a whistle-blower program. If somebody was on a site and he felt they were being unsafe, he can call us anonymously, and we would send out an investigator to look. The citations can be very costly. For a lot of good reasons, it behooves the company to do a good job of protecting their employees.

Assemblyman Ohrenschall:
I, too, was here in 2009, and I remember the testimony. I remember the deaths at CityCenter. I wonder, have things improved in the years since? Do you attribute it to the training or maybe to the lack of construction in Nevada? Do you feel the training is working?

Steven George:
I have no institutional knowledge because I have only been the Administrator for DIR since November 2014, but I have talked to the OSHA people. They said it was because, at that time, CityCenter was getting built so fast and maybe some things were not done as properly as they should have been done. It was a reaction, and probably a good reaction, by the Legislature at that time to enact those. Since then, we have had SCATS, which is one of the most unknown and underutilized sections we have in our state. It is a free service.

They will come out and do safety inspections for you. They will tell you exactly what you need to clean up. All the company has to do is request SCATS to come. I think it is a great service. As a new administrator, I am trying to get more people to understand what a terrific service that is to the business community.

Assemblyman Ohrenschall:
If possible, could you contact any of your people from OSHA and get any data from 2009 until now so we could see if there is a trend and compare that to the rate of construction in Nevada? If it is distinguishable, I think the Committee would benefit from that information.

Steven George:
I would be happy to do that.

Jack Mallory:
Having some institutional knowledge of this issue, being in the construction industry for the last 20 or so years in southern Nevada, it has been my observation that it is has worked. There has been a downtick not only in the per capita number of fatal injuries on the job, but also the number of serious injuries and the number of near misses. It is because there has been an increase in awareness more than anything else.

Assemblyman Ohrenschall:
Do the building trades keep any data about that?

Jack Mallory:
I would be happy to provide you with some data.

Senator Settelmeyer:
In summary, we are the only state that does a renewal process in regard to home builders and the only state that has a renewal process. It is still my opinion that personalized training by the employer and their insurance companies will actually make longer strides toward job safety.

Chairman Kirner:
One of the comments was made with regard to the OSHA 30-hour course, and that is not in your bill. What is your take on that?

Senator Settelmeyer:
I would consider that to be a friendly amendment to also not have the 30 hours, but I can go either way. It is up to your Committee and whatever you want to do with that particular aspect. I know the insurance individuals and employers

I have talked to feel the same way, that there is enough training on a personal level that getting rid of the renewal in the 30-hour course would be okay. Again, we are the only state that does that. There was a discussion I remember from a long time ago dealing with CityCenter, and sadly it was a situation where, in my opinion, they were rushing to get a job done, and they had far too many people working around mechanized machinery in an unsafe condition.

Chairman Kirner:
Thank you. I will close the hearing on S.B. 233 (R1). Is there any public comment? [There was none.] This meeting is adjourned [at 6:59 p.m.].

RESPECTFULLY SUBMITTED:

_____
Janel Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor

Date: April 22, 2015 **Time of Meeting: 1:33 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 193 (R1)	C	Warren B. Hardy II, Nevada Restaurant Association	Letter from Brett Sutton, Attorney, Las Vegas
S.B. 193 (R1)	D	Senator James Settelmeyer	Handout from Andy Donahue, Intern, Senate Majority Leadership
S.B. 193 (R1)	E	Yvanna Cancela, Culinary Union Local 226	Amendment
S.B. 162 (R1)	F	Robert L. Compan, Farmers Insurance	Letter
S.B. 162 (R1)	G	Mark Sektnan, Property Casualty Insurers Association of America	Letter
S.B. 440 (R1)	H	Mark Sektnan, Property Casualty Insurers Association of America	Letter
S.B. 440 (R1)	I	Jennifer Gaynor, Nevada Credit Union League	Amendment
S.B. 440 (R1)	J	Jennifer Gaynor, Nevada Credit Union League	Flyer
S.B. 233 (R1)	K	Robert Vogel, Pro Group Management	Written Testimony
S.B. 233 (R1)	L	Adalberto Rosas, Private Citizen, Reno, Nevada	Fact Sheet
S.B. 233 (R1)	M	Adalberto Rosas, Private Citizen, Reno, Nevada	Amendments