

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

**Seventy-Eighth Session  
March 13, 2015**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 8:36 a.m. on Friday, March 13, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator James A. Settelmeyer, Chair  
Senator Patricia Farley, Vice Chair  
Senator Joe P. Hardy  
Senator Becky Harris  
Senator Mark A. Manendo

**COMMITTEE MEMBERS ABSENT:**

Senator Kelvin Atkinson (Excused)  
Senator Pat Spearman (Excused)

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Christine Miner, Committee Secretary

**OTHERS PRESENT:**

Bob Ostrovsky, Employers Insurance Group  
Don Jayne, Nevada Self-Insurers Association  
Jaron Hildebrand, Nevada Trucking Association  
Ray Bacon, Nevada Manufacturers Association  
Jeanette K. Belz, Property Casualty Insurers Association of America  
Jesse Wadhams, American Insurance Association  
Adam Plain, Associated General Contractors of America  
Jim Endres, Automated HealthCare Solutions, LLC

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Greg McDermott, Automated HealthCare Solutions, LLC  
Jason Mills, Nevada Justice Association  
Rusty McAllister, Professional Firefighters of Nevada  
Danny L. Thompson, Nevada State AFL-CIO  
Jack Mallory, Southern Nevada Building & Construction Trades Council  
Ron Dreher, Peace Officers Research Association of Nevada  
Stacy Woodbury, M.P.A., Executive Director, Nevada State Medical Association  
Pat Sanderson, Laborers International Union Local No. 872, AFL-CIO  
Ryan Beaman, President, Clark County Firefighters Union Local 1908

**Chair Settlemeyer:**

I will begin the hearing on Senate Bill (S.B.) 231.

**SENATE BILL 231**: Revises provisions relating to workers' compensation.  
(BDR 53-986)

**Bob Ostrovsky (Employers Insurance Group):**

I am here on behalf of Employers Insurance. The proposed change in S.B. 231, section 3, subsection 5, paragraph (b) on nonindustrial conditions is being stricken from the bill. This bill is a product of work done in the interim by a number of people representing the insurance industry, including manufacturing, retail and chambers of commerce. Positive reform in workers' compensation regulation is the intent. There are three issues involved: (1) dispensing of drugs to claimants, (2) procedural matters and handling and payment of invoices, and (3) rules involving intoxication on the job.

Senate Bill 231, section 1, addresses the dispensing of drugs by a physician or the office of a provider of health care. The pharmacy is excluded. The bill seeks to control the costs and record keeping of the distribution of drugs from a health care office. There are continuing issues with distribution of opioids and resulting patient dependency from these drugs. There are workers' compensation claims using long-term treatment with opioids that often create dependency. The result is expensive rehabilitation costs at the end of the claim. There is a human toll for a person on a workers' compensation claim who ends up with an addiction.

Senate Bill 231 puts limitations on the distribution of drugs from an office of a health care provider. Only a 15-day supply of drugs can be issued from a provider office. When the 15-day period expires, the injured worker returns to work or fills the prescription at a reputable Nevada pharmacy. Pharmacies report

to the State Board of Pharmacy. It has a system for tracking the distribution of Schedule II and Schedule III drugs. Schedule II drugs have a high potential for abuse. Schedule III drugs have less potential for abuse. The bill requires doctors to report to the Pharmacy Board for drug abuse tracking. The bill proposes a cost standard for doctors when prescribing drugs. The insurance company will pay a fee equal to 110 percent of the average wholesale price. The health care providers must be paid for the drugs they are dispensing in a timely manner. The Pharmacy Board can achieve this faster, at less expense and provide better tracking on an authorized Nevada pharmacy. The bill proposes there be some limitations on the off-label use of drugs. The bill states that off-label drugs can be used and dispensed as long as the drugs meet the FDA standard and approval; be recognized in the standard reference records compendia for treatment of conditions; or accepted for treatment for the indication in peer-reviewed medical literature.

The prescribing of OxyContin and Actiq is a problem. OxyContin is used to relieve moderate to severe pain and belongs to the narcotics group of pain medicines. These drugs should not be used for mild pain or situations where a non-narcotic drug is effective. This is a nationwide problem. These narcotics should only be prescribed consistent with good medical practice. Actiq is used to treat severe pain in cancer patients and considered an end-of-life drug that comes in the form of a lollipop. These drugs are being prescribed to workers' compensation claimants and this is often inappropriate use. It is only appropriate for conditions recognized by one of the three standards stated in S.B. 231. There are problems in other states with repackaging of drugs, changes in coding and charging of excessive fees.

Section 2 of S.B. 231 addresses the issue of claims processing. In statute, there is a 60-day window for approval and payment of a medical invoice. This bill does not concern the acceptance or denial of a claim in a timely fashion. The Division of Industrial Relations is proposing in a regulation, LCB File No. R130-14, that the invoice be red-stamped for approval or denial. Most of the invoices are electronically received. Senate Bill 231 proposes a 45-day window for an insurer to pay or deny the invoice upon receipt.

Existing law states that compensation be denied to an employee whose injury is caused by intoxication or use of a controlled substance while on the job. Intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary. Two court cases challenged this standard: *Desert*

*Valley Const. v. Hurley*, 120 Nev. 499, 96 P.3d 739 (2004) and *Construction Industry Workers' Compensation Group ex rel. Mojave Elec. v. Chalue*, 119 Nev. 348, 74 P.3d 595 (2003). The courts stated the statute provides any amount of a substance creates a rebuttable presumption that the controlled substance was not a proximate cause of the claimant's injury. The statute is unequivocal. If an injured employee tests positive for marijuana, then marijuana caused the accident unless otherwise evidenced to the contrary. The legislative intent is to create a drug-free workplace. *Nevada Revised Statute* (NRS) 616C.230, subsection 1, paragraph (d) contains the words "any amount" in establishing a rebuttable assumption. The claimants won their cases. In both cases, eyewitnesses testified they observed no evidence of intoxication in the claimants on the job site. The standard of a drug-free workplace slipped away with these two court cases. Employers found it difficult to deny a claim based on drugs or alcohol. Medical marijuana presents additional factors in deciding a claim. Marijuana is evidenced in a blood test for 2 weeks. A claim cannot be denied for lack of evidence that the drug affected the performance of the injured.

Senate Bill 231, section 3, proposes to remove the current language of "any amount" and replace the language to align with the State standards for a DUI. Evidence of a blood alcohol level of 0.08 or above will deny a claim. We accept the State standards that regulate marijuana and other drugs for those people driving a vehicle. This bill enables the employer a drug-free workplace. The trucking industry has a zero-tolerance policy for drug and alcohol use. The Nevada Justice Association has reasonable concerns about the provision in S.B. 231 and has provided an amendment. There has not been time to review it. The concern is for a case of an injured worker who fails the sobriety test, though not at fault for the injury. Upon review of the amendment, we will attempt to find a reasonable solution to the concerns.

**Chair Settlemeyer:**

Would this prevent a doctor from distributing a free sample to the patient at the doctor's office?

**Mr. Ostrovsky:**

The provisions of the bill allow distribution of samples not exceeding 15 days.

**Chair Settlemeyer:**

How was the fee equal to 110 percent of the average wholesale price determined?

**Mr. Ostrovsky:**

This may be the standard used in other states. I will supply the Committee with a confirmed answer.

**Senator Hardy:**

How does one report to the Prescription Monitoring Program (PMP)?

**Mr. Ostrovsky:**

Reporting is done by phone or electronically.

**Senator Hardy:**

Can a doctor's office do this?

**Mr. Ostrovsky:**

I will supply the Committee with clarification on the method of reporting to the PMP.

**Don Jayne (Nevada Self-Insurers Association):**

The Nevada Self-Insurers Association supports S.B. 231 and participated in the planning meetings. It recognizes the prescription drug concerns as stated in section 1 and the elements of the audit of drugs in section 2. Section 3, page 6, line 13 of S.B. 231 concerns the requests for test results. There has been difficulty securing blood test results from facilities. The employer wants access to the tests for the purpose of the defense for the workers' compensation claim. The language can be edited if problematic.

**Jaron Hildebrand (Nevada Trucking Association):**

The Nevada Trucking Association (NTA) supports S.B. 231. The Federal Motor Carrier Safety Administration has a zero-tolerance policy. An individual with a blood alcohol level of 0.04 is considered intoxicated. The NTA sponsors Nevada Transportation Self-insured Group and insures 10,000 people.

**Ray Bacon (Nevada Manufacturers Association):**

Some of the members of Nevada Manufacturers Association are defense contractors and are required by federal law to have a drug-free workplace. The

medical marijuana issue prompted discussion in the development of S.B. 231. The bill makes it clear that a drug-free workplace is still the employer's option as long as a regular testing program is in place. This is necessary for the defense contract business.

**Senator Farley:**

Will S.B. 231 allow the employer to obtain the records of blood tests from the hospital performing them after a workplace accident?

**Mr. Jayne:**

The intention of the bill is to allow an employer with a drug-testing program to have access to tests performed on an employee at an emergency facility when an accident happens at the workplace. That is what we are seeking on a workers' compensation claim.

**Senator Hardy:**

Who gets and who does not get the results when an employee is injured and sent for treatment?

**Mr. Jayne:**

The employer or its representative gets the results for a workers' compensation claim and evaluates the claim.

**Senator Hardy:**

Where do the test results go now for a workers' compensation claim?

**Mr. Jayne:**

The drug-testing results obtained for the employer are returned to the employer via the insurance company. There are two types of self-insured programs: the stand-alone which consists of the employer and the insurer, and the self-insured group with a third-party administrator handling the claims. Ultimately, the employer needs the information in order to evaluate the compensability.

**Jeanette K. Belz (Property Casualty Insurers Association of America):**

The Property Casualty Insurers Association of America (PCI) represents companies that write 42.3 percent of personal auto insurance, 26 percent of homeowners and 36 percent of the workers' compensation insurance in Nevada. Mark Sektnan, vice president of PCI, has offered a letter with extensive

research on the dispensing of repackaged drugs ([Exhibit C](#)). Property Casualty Insurers supports S.B. 231.

**Jesse Wadhams (American Insurance Association):**

The American Insurance Association supports S.B. 231.

**Adam Plain (Associated General Contractors of America):**

The Las Vegas Chapter of the Associated General Contractors of America represents over 600 member firms including general contractors, subcontractors and suppliers in Nevada. It supports S.B. 231.

**Jim Endres (Automated HealthCare Solutions, LLC):**

Automated HealthCare Solutions (AHCS) has reviewed S.B. 231 and is opposed to the bill as proposed. The concern of the AHCS lies in section 1 of the bill. A representative of AHCS is here to relate the best practices that AHCS shares with physicians and health care groups in the Country. The AHCS serves physicians who dispense drugs to workers' compensation patients. We intend to speak on the best practices of many physicians in dispensing, recording and controlling the drugs and records relating to dispensing. We understand the concern that initiated this bill and the purpose to control those medical professionals who abuse the system. As public policy, this bill should consider ways to incentivize and motivate physicians to develop and use best practices in dispensing drugs. Our purpose is to bring that discussion to the constructors of the bill.

**Greg McDermott (Automated HealthCare Solutions, LLC):**

Automated HealthCare Solutions is in support of efforts to control prescription drug abuse. We are proud of our doctors who dispense drugs responsibly and in the best interest of their patients. Physicians do not repackage medications. Repackaging businesses repackage medications, and elevated costs are associated with this. Figures of 500 percent cost increases are over-exaggerated. State data shows the percentage of costs is much lower. We support measures to control prices. Medications dispensed from a physician's office need not cost more than from a pharmacy. Dispensing and prescribing of opiates is an issue that extends beyond workers' compensation claims. There are irresponsible parties who prescribe medications. There are many workers' compensation claims that require pain medications. Management of patients by a doctor is important. The doctors in our program report daily to the PMP and there are concerns that this may not be the case with all doctors. We support

stricter requirements for PMP reporting. Our company requirement for reporting on a daily basis is a self-imposed limitation that is more strict than the weekly reporting required by law. Our physicians are subject to the inspections required to secure a pharmacy dispensing license. We assist our physicians in doing this lawfully and thoroughly. Our concern is penalizing doctors who are reporting in a responsible manner and helping the patients who need and benefit from their services. Our desire is to work with those who are authoring this legislation to weed out those medical professionals who are not dispensing responsibly. Those physicians who comply with best practices should be allowed to continue to treat their patients. We want a reasonable solution on this issue.

**Jason Mills (Nevada Justice Association):**

The Nevada Justice Association opposes S.B. 231. Our primary objection lies in section 3, subsection 1, paragraphs (c) and (d) that attempt to put in a bright-line rule that mimics the DUI standard. Our issue is with the elimination of the rebuttal element. An intoxicated individual who experienced major medical issues as a result of being a passenger in a company vehicle that was involved in an accident would be denied workers' compensation because of blood alcohol level results, even though the accident was not directly related to this person's intoxication. The exclusive remedy in the workers' compensation statute would disallow this person remedy against the coworker who caused the incident. This person, though not at fault, has no remedy. It would be a violation of state and federal constitutions with regard to the due process clause that would result in a criminal fine levied in a civil proceeding without recourse. We have suggested an amendment and have yet to submit it to the Committee. Our amendment includes a rebuttal allowance for the rare time a no-fault situation occurs. We are opposed to the provision in S.B. 231, section 3, subsection 5, paragraph (b), that is now being struck and are in agreement with this action.

**Senator Hardy:**

Is a person who gets intoxicated at lunch hour being paid during that time?

**Mr. Mills:**

That depends on whether the company allows payment during lunch, but it is not an issue being addressed in this bill.

**Senator Hardy:**

Whose fault is it when an intoxicated person is struck by another vehicle while driving on the road?



**Mr. Mills:**

The intoxicated driver is the person at fault.

**Rusty McAllister (Professional Firefighters of Nevada):**

The Professional Firefighters of Nevada opposes S.B. 231. It concerns section 3. A person with a workers' compensation claim, assigned light duty and under a doctor's care, has no ability to rebut if further injury occurs. If a person is on pain medication and the doctor increases dosage, does that push the level of nanograms in this person's system over the legal limit? The fire department requires employees to notify them if the employee is on medication. Would the employee lose his or her benefit if this scenario occurred? The Nevada Justice Association's amendment may address this issue with a high rebuttable standard.

**Danny L. Thompson (Nevada State AFL-CIO):**

The Nevada State AFL-CIO worked on language in S.B. 231. Our concern is removing the rebuttable factor for a no-fault situation in which a person needs this ability.

**Jack Mallory (Southern Nevada Building and Construction Trades Council):**

The Southern Nevada Building and Construction Trades Council agrees with sections 1 and 2 of S.B. 231 and with the previous testimony of the Nevada Justice Association. The concern of the Council lies in section 3, subsection 2, paragraph (c). If a Health Insurance Portability and Accountability Act (HIPAA) release is not signed, how secure is the medical information referred to in this section? The other concern is about a possible conflict with a federal program. If I am in a program for alcoholics and have been sober for 9 months, I am covered by the Americans with Disabilities Act (ADA) because I have this disease and participate in a program. Drug addicts can be covered by the ADA. If an employee is injured on the job and the employer has made reasonable accommodations for the individual covered by the ADA, is this legislation a possible conflict with the ADA? Removing the proximate standard and going to a hard-and-fast standard in this bill could present a problem. I urge the supporters of the bill to consider these issues.

**Senator Farley:**

The doctor sends back an extensive restrictions list for an employee on light duty. The information includes medication this employee is on and what equipment that can be used and alerts are put in place. The employer is

responsible for complying with these provisions. Does workers' compensation cover the employee if the employer does not comply with the restrictions? By federal law under worker's compensation, the injured worker must sign and agree to a blood test within 24 hours of being injured. An employee covered by the ADA has to adhere to certain standards and the employer is aware of this. I do not think S.B. 231 affects this. Can you educate me on this?

**Mr. Mallory:**

Not every doctor's release on light duty is fully specific. An 800 mg ibuprofen tablet has a warning label indicating it may cause drowsiness and warns against operation of machinery. The restrictions and release of liability on products are results from litigation. The ADA prohibits discrimination against an employee because of the disability. The way the bill is drafted, if an individual is covered by the ADA because of a drug or alcohol problem and is currently in a program, the ADA covers them. The drug abuse standard as written in S.B. 231, allowing no bright-line for the level of drugs in a person's bloodstream, is discrimination against that person.

**Senator Farley:**

A person covered by ADA who violates the restriction loses the ADA right. I do not understand how this bill is an infraction of the ADA protections. The doctors are specific with the employer on the restrictions of the employee. The doctors who specialize in workers' compensation claims know how to write light-duty restrictions. There is a lot of oversight on these cases.

**Chair Settlemeyer:**

The amendment that is being discussed could alleviate these concerns. I hope the opposing parties will meet to remedy the language to create the solution to the concerns.

**Mr. McAllister:**

When a person returns to light duty from a workers' compensation injury, the workers' compensation doctor is going to submit the work limitations for the patient. Senate Bill 231 does not specify that the employer is responsible for an injury that could happen to an employee who is on restricted work duty. There is no rebuttable language in the bill. The fire department blood tests, for example, will be submitted to the human resources department of workers' compensation and could result in the termination of the employee. There are issues with the line of communication.

**Senator Farley:**

Employers are concerned with having issues with workers' compensation and this results in much oversight and care. From an employer's prospective, the issues are handled carefully to avoid litigation and minimize the risks to avoid loss of insurance coverage.

**Chair Settlemeyer:**

The amendments can be crafted to address the legitimate concerns. It is difficult to deal with the issues of substances by prescription and the drugs being prescribed.

**Senator Hardy:**

In S.B. 231, section 3, subsection 1, paragraph (d), it says that the employee has no right to be on a prohibited substance unless it was prescribed. The paragraph notes that compensation is not payable for an injury:

That occurred while the employee was under the influence of a controlled or prohibited substance ... that was equal to or greater than the limits set forth in subsection 3 of NRS 484C.110 and for which the employee did not have a current and lawful prescription issued in the employee's name.

**Mr. McAllister:**

Thank you, that clarifies my issue.

**Mr. Mallory:**

For a drug addict who has recently joined a rehabilitation program for marijuana, that substance stays in a person's system for some time. The way S.B. 231 is drafted, there is a presumption of abuse. We request the amendments be considerate of these issues.

**Chair Settlemeyer:**

The amendments being drafted can solve many of the issues discussed today.

**Ron Dreher (Peace Officers Research Association of Nevada):**

For the reasons stated by Mr. McAllister, Mr. Thompson and Mr. Mallory, the Peace Officers Research Association of Nevada is in opposition of S.B. 231.

**Stacy Woodbury, M.P.A. (Executive Director, Nevada State Medical Association):**

The Nevada State Medical Association was not involved in the discussions for S.B. 231. I have submitted two documents with information on our position on the provisions proposed in S.B. 231 ([Exhibit D](#) and [Exhibit E](#)). We support the provision relating to the one-time 15-day prescription period and mandating the original national drug code remain with the dispensed medication to keep down the costs. We prefer the regulatory fee schedule remain in regulation and not in statute. The bill proposes to legislate the proximate cause of presumed intoxication in cases where the DUI laws are not within the standard of care. If someone is prescribed morphine for ambulatory surgery, a 65 ng/ml standard would be in their blood and the DUI standard is 50 ng/ml. Upon hearing the language Senator Hardy mentioned, this is less of a concern. The provisions in section 2, subsections 2 and 3 of S.B. 231 are of concern. This allows an insurer to substitute its judgment ahead of a physician or other prescriber. This is not in the best interest of the patient.

**Pat Sanderson (Laborers International Union Local 872, AFL-CIO):**

My daughter is in the pharmaceutical industry and provides free samples to physicians. Is the provision prohibiting giving free samples of medicine to the patient for just pain medication or things that would be illegal?

**Chair Settlemeyer:**

This bill does not do away with free samples. The intention is to prevent a bottle of medication from being broken up and distributed in 15-day supplies. The prepackaged samples will not be affected by this bill.

**Senator Hardy:**

The injured worker is prescribed medication by the doctor and it can be filled anywhere. In this scenario, the doctor asks if the patient wants to pay for the drugs there or go to a pharmacy. The patient does not know the cost ramification, but it is convenient and the patient could feel intimidated by the doctor. I do not know if the physician is aware of the costs. Do you have any comments on this observation?

**Ms. Woodbury:**

Not all physicians dispense medication from their office. A special license, in addition to a controlled substance license from the Pharmacy Board, is required

for a practicing physician to dispense from the office. I am not aware if a physician has the capability to enter directly into a PMP program.

**Senator Harris:**

What percentage of Nevada physicians are dispensing physicians?

**Ms. Woodbury:**

Only 200 of the 8,000 licensed physicians are dispensing physicians.

**Senator Harris:**

Are the dispensing physicians specialty providers?

**Ms. Woodbury:**

I will provide that information to the Committee.

**Mr. Ostrovsky:**

The amendment being worked on with the Nevada Justice Association addresses all of the intoxication issues. There is work to be done and all of the issues will be considered. The intention is not to discount a legitimate claim. Two drug categories are of concern. Schedule I drugs are illegal. Schedule II and Schedule III drugs are the most powerful available by prescription. The insurer is paying the bills on the claim, not the employee.

**Chair Settlemeyer:**

I will close the hearing on S.B. 231. There are two bills on workers' compensation purposely to separate some of the issues. I will open the hearing on S.B. 232.

**SENATE BILL 232:** Makes various changes relating to workers' compensation.  
(BDR 53-987)

**Mr. Jayne:**

The Nevada Self-Insurers Association was created in 1980 to provide members with the opportunity to confer and discuss many of the questions that arise pertaining to workers' compensation in Nevada. The Association represents two types of insurers, stand-alone self-insurers and insurers that participate in a self-insured group. These insurers provide workers' compensation coverage to over 200,000 employees in Nevada. The health insurance industry put language in statute allowing reclamation of payments to the insurer if an injury is

determined to be a workers' compensation claim. Senate Bill 232, section 1, seeks to revise NRS 616C.138 to provide a reciprocal right to reimbursement in situations where a workers' compensation claim is successfully defended and the workers' compensation insurer can recoup payments from the injured employee's health or casualty insurer. Section 2, subsection 5, paragraph (a) of S.B. 232 seeks to clarify language in NRS 616C.390. Interpretation of the language to be deleted "was not off work," has an unclarified meaning. Replacing the language with proposed language, "did not receive benefits for a temporary total disability," seeks to make the intent clear. The authors of the bill are considering proposed amendments from the Nevada Justice Association with further clarification on the language. If an injured employee were away from the job for just 2 hours, this person would be considered "off work" and by statute could reopen a claim. The intent should focus on a more serious lost-time claim.

Section 3 of S.B. 232 seeks to replace the 25 percent impairment rating threshold to a 30 percent rating for the disability lump-sum permanent partial disability (PPD) distribution. A lump sum can be issued to a claimant for a 25 percent impairment rating. The excess is paid out to the claimant in installments up to age 72. With more recent American Medical Association guidelines and the inclusion of activities of daily living, we are finding more claims being settled in the 26 percent to 28 percent impairment range. These claimants are choosing the optional lump sum award and the remainder of 1 percent to 3 percent of the award is distributed in installments. Section 3 of S.B. 232 seeks to define a total disability and simplify the rating calculation guidelines. An injured employee may not receive compensation based on a combined PPD rating that exceeds 100 percent for all of this employee's injuries.

**Mr. Ostrovsky:**

In current statute, if a workers' compensation claimant loses the claim and has received compensation payments, recovery of the payments by the insurer can only be made to the claimant. The insurer can deduct the loss from the claimant in future claims. Recovery of payouts has been a difficult task. The 25 percent impairment rating standard is to pay out smaller claims in a lump sum. The statute states the claimant "may elect" the option to take the lump sum. These issues will be rectified by the passage of S.B. 232.

**Mr. Bacon:**

The Nevada Manufacturers Association supports S.B. 232.

**Ms. Belz:**

The Property Casualty Insurers Association of America supports S.B. 232.

**Senator Farley:**

Regarding the subrogation issue, will the employer ultimately pay the claim as part of the history until the money is recovered?

**Mr. Ostrovsky:**

It will remain on the employer's account and affect the premium or experience modification rate (EMR) until the claim is settled.

**Senator Hardy:**

When there is a conflict between the employee's insurance carrier and the workers' compensation carrier, who is responsible for the charges? Which of these insurance carriers charges the patient?

**Mr. Ostrovsky:**

If a workers' compensation claim is denied and the employee is not covered by private insurance, the provider will bill the employee. If the employee is covered by health insurance, the health insurance company will be responsible for the charges, depending on how the coverage is written. The intention of the language of the bill is to find a payer for denied claims.

**Senator Hardy:**

Does this bill benefit the injured worker?

**Mr. Ostrovsky:**

No, it does not benefit the injured worker.

**Mr. Hildebrand:**

The Nevada Trucking Association supports S.B. 232.

**Mr. Wadhams:**

The American Insurance Association supports S.B. 232.

**Mr. Mills:**

The Nevada Justice Association opposes S.B. 232, section 2, subsection 5, paragraph (a) in striking the language, "not off work," and replacing it with "did not receive benefits for a temporary total disability." The language does not clarify for the claimant the entitlement option for the benefit. It encourages a third-party administrator or insurer to avoid paying benefits to an injured employee and attempts to confuse or allow the benefit to go to a pro per, one who is representing oneself. The pro per may not understand the entitlement allowance. When the employee seeks to reopen the claim, it could be denied. We have suggested two amendments to the authors of the bill to clarify the language as an entitlement for the time duration as set in NRS 616C.400.

**Mr. Mallory:**

The Southern Nevada Building and Construction Trades Council opposes S.B. 232. The issue the Council has with the workers' compensation scheme is the lack of disincentive for the third-party administrator to initially deny claims. Seventy-five percent of claims submitted are denied; workers rely on private health insurance if it is available. It is not an issue of receiving a windfall from a claim. When the initial claim is filed, the injured worker goes to a facility for care where costs are incurred. If the costs are paid by the workers' compensation insurer, does this mean these costs are subrogated prior to the acceptance or denial of the claim? The concern is the costs being passed to the private insurer, which drives up the costs of health insurance. Subrogation of claims is an extensive process.

**Senator Hardy:**

In the event an injured employee did not follow the proper procedure in filing a claim and the workers' compensation insurance or the private insurance company denies the claim, is the injured worker at risk of losing both coverages?

**Mr. Mallory:**

There is a risk to the workers' compensation claimant. Some insurances will pay if a workers' compensation claim is denied. That may not be the case for all companies.

**Senator Harris:**

How long does the process take from an on-the-job injury? The process begins when the doctor's office asks where the injury occurred. When an insurance



company determines if the claim will be covered, there seems to be a time gap between the determination and the payment of the claim.

**Mr. Mills:**

I have practiced in the workers' compensation field for 15 years in southern Nevada. If a typical claim is denied, it is not uncommon for litigation to continue for 9 to 18 months.

**Senator Harris:**

Who is paying the costs of a workers' compensation claimant until the claim is accepted or denied and when would health insurance begin?

**Mr. Mills:**

No one is paying these costs, and often this causes a claimant to become destitute.

**Senator Farley:**

I question the percentage of claim denial. In my experience as a business owner, I see the opposite is true. Workers' compensation is federal law and protects the employer. If an employee is legitimately hurt on the job, an employer is going to work vigorously to ensure workers' compensation knows that if the claim were rejected, the employer would be held liable for the claim.

**Mr. Mallory:**

Not every employer fits into the same category. Workers have been advised not to fill out Form C-4, the employee's claim for compensation, report of initial treatment, and to avoid the workers' compensation process and abuse the system to benefit the employer.

**Senator Farley:**

That employer loses all federal protection when advising the employee to be dishonest. This behavior will catch up to them. The employer has 7 days to report an injury and the claim is decided in 30 days. If it is not a legitimate work claim, it falls back on the health insurance of the claimant. The issue is not being able to subrogate from workers' compensation insurance back to private health insurance. The employer may end up paying either. The employer wants workers' compensation to recover the costs so the EMR stays low and rates stay level.

**Mr. Mallory:**

I agree with the ability to subrogate in legitimate cases. The following is an example of a case that should have been quickly resolved as a workers' compensation case. A member of the Council was working on a Henderson Water Treatment facility and stepped into a hole covered with opaque plastic with no guardrails. The individual fell 6 feet into the hole, landing on his feet and injuring his back. He is no longer able to work in the trade. He sustained severe nerve damage and drop foot. This worker followed procedure as instructed by the workers' compensation carrier and the claim was denied. The worker had sustained a back injury from an auto accident years prior to the accident, and the claim was denied on the grounds of a preexisting condition. This is just one example of how the process can be extended and the costs mount. A 22-month delay to have a third-party insurer pay the claim, in this case, put the individual in severe financial loss. Compensation was allowed for medical injury and loss of time, but not personal loss.

**Mr. Dreher:**

The Peace Officers Research Association of Nevada opposes S.B. 232. I assisted a law enforcement officer on a claim that was denied by workers' compensation and the self-insurers. It was determined the fault was with the officer, who was terminated and could not proceed with the claim. The loss was only the officer's.

**Ryan Beaman (President, Clark County Firefighters Union Local 1908):**

The Clark County Firefighters Union Local 1908 has concern about the payment on a claim to an out-of-network provider. We intend to work with the sponsors of S.B. 232 to address this concern.

**Mr. McAllister:**

Striking of the language on page 6, line 9, "was not off work," affects the 5-day rule, off for 5 cumulative days in a 20-day period, in NRS 616C.400. Retired firefighters' claims are denied because of this ruling. Another working firefighter with skin cancer has a 1-day treatment and is denied the claim because of this ruling. Can this issue be resolved in S.B. 232?

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**Chair Settlemeyer:**

The sponsors of the bill can work on this issue and try to resolve it. I have had a similar injury and had an issue with the 5-day rule. My office is available to the sponsors of the bill and those with amendments and concerns for a quick resolution. I will close the hearing on S.B. 232. With no further business before the Committee, I adjourn the meeting at 10:17 a.m.

RESPECTFULLY SUBMITTED:

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Christine Miner,  
Committee Secretary

APPROVED BY:

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Senator James A. Settlemeyer, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness or Agency</b>	<b>Description</b>
	A	1		Agenda
	B	7		Attendance Roster
S.B. 231	C	3	Jeanette K. Belz/ Property Casualty Insurers Association of America	PCI letter
S.B. 231	D	1	Stacy Woodbury/ Nevada State Medical Association	Letter of position
S.B. 231	E	2	Stacy Woodbury/ Nevada State Medical Association	Information on position