

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

**Eightieth Session
June 1, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 3:48 p.m. on Saturday, June 1, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

GUEST LEGISLATORS PRESENT:

Senator Dallas Harris, Senate District No. 11

STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel
Katelyn Malone, Committee Secretary
Olivia Lloyd, Committee Assistant



OTHERS PRESENT:

Jason D. Mills, representing Nevada Justice Association
Paul J. Enos, representing Nevada Self Insurers Association
Misty Grimmer, representing Employers Holdings, Inc.
Patti Jesinoski, Private Citizen, Henderson, Nevada

Chair Spiegel:

[Roll was taken. Committee rules and protocol were explained.] We will open the hearing on Senate Bill 377 (1st Reprint).

Senate Bill 377 (1st Reprint): Revises provisions relating to workers' compensation. (BDR 53-1025)

Jason D. Mills, representing Nevada Justice Association:

Over the past several years, the Nevada Legislature has discussed ways to address the declining economic value of permanent total disability benefits, largely attributed to inflation. In 2003, the Legislature enacted *Nevada Revised Statutes* (NRS) 616C.473 to provide a cost of living increase for workers who had suffered an industrial injury or occupational disease on or after January 1, 2004. However, efforts to provide a cost of living increase to permanent total disability beneficiaries who were injured before January 1, 2004 were frustrated, as no funding source could be identified to pay for the cost of living increase.

In 2005, the Legislature enacted NRS 616C.453, which provides a single annual payment for claimants who were not eligible for an annual increase pursuant to NRS 616C.473. For claimants with permanent total disability benefits incurred before January 1, 2004, NRS 616C.453 authorizes annual payments from an investment income derived from the Uninsured Employers' Claim Account. As set forth in this statute, annual payments may not exceed \$1,200 per claimant and total payments may not exceed \$500,000 per year. Unfortunately, the revenue for the account is based on interest, and the total amount available to disburse has declined significantly with the struggling economy from 2007 to 2014.

Beginning on January 1, 2020, Senate Bill 377 (1st Reprint) provides a 2.3 percent annual increase in compensation for permanent total disability to claimants and dependents of claimants who suffered an industrial injury or disablement before January 1, 2004. I will note that the bill does not provide retroactive benefits or payments to these individuals. The bill provides that assessments against employers and insurers who provide accident benefits for injured employees may be used to pay the cost of the annual increase in compensation paid to the claimants. Additionally, the bill requires money from securities in the Fund for Workers' Compensation and Safety to be used to reimburse the annual increase from the Uninsured Employers' Claim Account if it is sufficient to fund such increased compensation. The bill authorizes an employer or insurer who pays an annual increase in compensation to

obtain reimbursement from the Administrator of the Division of Industrial Relations of the Department of Business and Industry, paid from income realized from interest in the account or from assessments levied on insurers or employers, if the income realized from the account is insufficient.

Lastly, the bill repeals provisions that authorize single annual payments from the account to claimants and dependents of claimants who suffered an industrial injury or disablement that occurred before January 1, 2004.

Senator Dallas Harris, Senate District No. 11:

Simply, [Senate Bill 377 \(1st Reprint\)](#) provides a 2.3 percent cost of living increase. The proposed amendment ([Exhibit C](#)) fixes a minor problem in the calculation of compensation and would allow for the concurrent calculation to be fixed.

Assemblyman Kramer:

I am always troubled when we target workers' compensation groups. I recall when Carson City became self-insured. We put together an insurance plan based on the concept of having no accidents or claims. We invested heavily in training and the number of accidents was dramatically reduced. If one group has fewer accidents than another because they spent their money on training and education, they are typically paying less money for benefits. Why would their payment for the cost of living increase be the same as a group who did not invest in training and, therefore, has more accidents? The funding for the increase comes from different silos, and it troubles me that each group will be equally responsible for paying the cost when some groups have demonstrably fewer accidents per hour than others.

Senator Harris:

Senator Settlemeyer expressed this concern as well. His concerns were alleviated, as the bill passed unanimously in the Senate. The groups will remain intact. One group will not be responsible for paying the 2.3 percent increase for another group, but only responsible for paying the 2.3 percent increase for their group. The silos themselves will remain the same. There will be no change in the responsibilities for covering the costs.

Assemblywoman Carlton:

Is it correct that this used to be called an experience modification? Jobs were assigned an experience modifier depending on their level of danger. For example, a steel worker would not be categorized the same as a childcare worker. The experience modification created the silos that Senator Harris is referring to.

Jason Mills:

That is correct.

Assemblywoman Carlton:

That ensures that everyone pays their fair share, because some jobs have a much higher risk. How did you arrive at the decision to increase the payments by 2.3 percent? Currently, workers' compensation payments are 66 2/3 percent of the person's deemed wage. How will the increase affect that calculation?

Senator Harris:

Those who were injured after January 1, 2004 received a 2.3 percent cost of living increase. The bill seeks parity for those injured prior to January 1, 2004. Unfortunately, we are unable to increase their payments to match the current cost of living, but we can at least provide them a 2.3 percent increase. Payments will still be calculated at 66 2/3 percent of a person's income; however, the 2.3 percent increase will only apply to what they are receiving now, and they will receive a 2.3 percent increase moving forward. The cost of living increase will not affect the calculations of a person's wages or the payment they are entitled to, but it will escalate their wages each year moving forward. You have highlighted one of the reasons this bill is important. These workers have not received a cost of living increase since they were injured, and they are still receiving workers' compensation payments based on their wages prior to 2004, which were significantly lower than wages today. This bill is my attempt to provide them some relief.

Assemblyman Kramer:

Somewhere in the bill, I want to see that an employee who was injured while working for a self-insured company will not be paid for by a private-insured employee, or vice versa; that their 2.3 percent cost of living increase will be covered by self-insured companies. Where in the bill does it indicate this?

Senator Harris:

In this case, it is about what is not included in the bill. The bill does not change how the assessments are levied; assessments for self-insured companies and private-insured companies remain the same. Each silo has their own responsibility and there is no change in how each group's responsibility is decided in contributing to the assessments. The calculation to determine each silo's portion of the assessment does not change. The ability to ensure that self-insured and private-insured companies are only paying for their risk is inherent in the calculation of the assessment rate.

Assemblyman Kramer:

The grandfather of the workers' compensation plans that exist now is the State Industrial Insurance System (SIIS). It is likely that those injured before January 1, 2004 are customers of SIIS, as opposed to customers of self-insured companies or of insurance companies that have entered the market since then. State Industrial Insurance System is the only successor organization that should be involved with giving raises to people who were injured during that time. Correct me if I am wrong, but they are the group that needs to provide the raises. I am trying to protect the other groups that provide workers' compensation insurance.

Paul J. Enos, representing Nevada Self Insurers Association:

There are three silos where the funds for these raises will be drawn from—the commercial market, singularly self-insured employers, and self-insured groups. Each silo will be responsible for the claims that exist within their silo. Not every group will be responsible for their own claims, but if a claim comes from the commercial market, the money for the claim will be funded by all of the entities in the commercial market. The money for a claim in the singularly self-insured market will be funded by the entities in that market, and the money for a claim in the self-insured group will be funded by the entities in that market. The claims will not be paid for individually, but will be paid for within each of the three silos.

Chair Spiegel:

We will hear testimony from those in support.

Paul Enos:

We support Senate Bill 377 (1st Reprint) and the proposed amendment that revises the calculation of average wages from a 12-month period to a 12-week period.

Misty Grimmer, representing Employers Holdings, Inc.:

We also support the bill and the amendment that has been proposed. To provide some clarification, we are discussing retroactive benefits. Generally, employers and most insurers are not in favor of retroactive benefits because they have not had the opportunity to collect a premium that would generally be required to cover the benefit. Insurance is determined actuarially. These are retroactive benefits, which is one of the reasons the cost is shared, because we are looking back historically and providing a benefit for injured workers who otherwise would not have received it. The insurance company at the time would not have been responsible for paying the benefit.

Assemblywoman Neal:

Can you help me understand why these people are entitled to an increase?

Misty Grimmer:

As Senator Harris and Mr. Mills spoke to, when we began providing cost of living increases to injured workers collecting for a permanent total disability or a death benefit going forward, these workers were not included. Senate Bill 377 (1st Reprint), as well as Assembly Bill 370 (1st Reprint), seek to bring this population of people to parity. For example, someone may have been injured in 1984 and has been receiving \$500 per month. Their monthly payment did not include a calculation to increase over time. Just as everyone else's wages have increased over time as the cost of living has increased, these people's wages need to increase as well.

Assemblywoman Neal:

This population is different than the population represented in A.B. 370 (R1). Will there be yet another population that needs increased payments in the future? How are the populations designated—year of benefits, or circumstances of benefits? If another bill is proposed in the future, what will the characteristics of the represented population need to be for retroactive benefits to be awarded?

Misty Grimmer:

Both bills address people who can no longer work, presumably limited to populations of people who are beneficiaries of a death benefit or people who are permanently total disabled. Workers' compensation is intended to be income replacement for those who were injured on the job and, to some degree, can no longer work. I suppose there is a possibility that other populations could be given an increase, but it is less likely because these populations are considered temporary total disabled workers. Temporary total disabled workers can continue to work and their livelihood would not be dependent on these benefits.

Chair Spiegel:

We will hear testimony from those in opposition. [There was none.] We will hear neutral testimony.

Patti Jesinoski, Private Citizen, Henderson, Nevada:

I need some clarification on the bill. Would a person receive a cost of living increase if they became unable to do their primary job, even if they were able to enter into another field of work?

Wil Keane, Committee Counsel:

The bill addresses permanent total disabilities, and provides the 2.3 percent cost of living increase for the people injured before January 1, 2004 to match the 2.3 percent annual increase that is provided to those with permanent total disabilities who were injured after January 1, 2004.

Patti Jesinoski:

I am neutral on the bill. Perhaps there is a definition of permanent total disability in the bill.

Assemblyman Kramer:

Typically when a company changes insurance programs, for example, from an insurance provider to self-insured, someone covers the injured employees that were previously covered before the new insurance plan begins. Is there a resemblance of this in the bill? If someone is disabled and currently covered by the tail end of an insurance plan, does the responsibility to cover the cost of living increase fall on the organization currently paying the disability premium, or on multiple insurers? Will the party paying for the inflationary increase be the same party currently paying the disability payments?

Senator Harris:

One of the reasons for the construction of the bill is so we could spread the responsibility across a pool, and that it would not be a burden on any one person, group, or company. The responsibility will fall upon an entire group of insurers, not on one particular company that owns the policy.

I want to acknowledge that there is a fundamental amount of unfairness in the bill, and I have no issues with that. I simply believe this is the right thing to do. The 2.3 percent cost of living increase is not something that the market created, but something that the Legislature created, for those injured after January 1, 2004. At the time, we were unable to provide a cost of living increase for those injured prior to January 1, 2004. I hope we could all agree that there is no good reason why someone injured prior to January 1, 2004 should not receive a 2.3 percent cost of living increase. The bill seeks to help people who have not received an increase in their benefits in at least 15 years.

Assemblyman Kramer:

If someone was injured in 1985, their disability payments would have been covered by SIIS, which is a state-owned program. The employees were public employees, the money was invested by the state, and the insurance company was owned and ran by the state of Nevada. In the case of the people injured at that time, we will not be requiring the state of Nevada to increase their disability payments, but require other insurers to, because the state of Nevada is no longer an insurer. We have removed the obligation for the state to pay those disability payments, even though they were our obligation at the time of their injury. We are imposing the state's obligation on the private sector. That does not seem fair to the insurance companies who have built their rates based on their current situation.

Chair Spiegel:

It is my understanding that the bill has been negotiated and agreed upon by the insurance companies that will be responsible for paying these benefits, and do not currently collect the premiums. Is that correct?

Senator Harris:

That is correct. It took some time to get the insurance companies on board, but they will be responsible for paying the cost of living increase and taking on the obligation to do so.

Assemblywoman Carlton:

In 1999, the Legislature was in the process of privatizing SIIS. There was a huge liability on the state that the state no longer wanted to carry, and thus, self-insured and private insurance groups were created. At the time, businesses were not apprehensive about the change. They wanted the additional business from the state, and they wanted the state out of their business so they could make a profit on workers' compensation insurance.

I heard a lot of testimony from people who had been harmed by workers' compensation insurance. For years after we privatized SIIS, we had injured workers telling us their horror stories—they were being denied coverage and were not receiving benefits. When someone

tells you that their mother committed suicide because her workers' compensation insurance denied her a wheelchair, but she did not want to be a burden on her family, it makes you realize that the Legislature's decisions about workers' compensation are serious. The decision to provide the 2.3 percent cost of living increase for some and not others was simply a decision of numbers, and it was a heart-wrenching decision to make.

I want to thank Senator Harris for bringing this bill forward. There are a lot of inequities in the workers' compensation system, not only for businesses, but for injured workers. By no means is this bill perfect, but we do our best to ensure that if someone gets hurt at work, they are taken care of. Ultimately, the main goal is to not have anyone get hurt at work.

Senator Harris:

Thank you for hearing Senate Bill 377 (1st Reprint). In closing, I want to note that we could affect 832 lives today. There is no opportunity for this measure to be abused, and the pool of people eligible to receive a cost of living increase will not get any larger. This is an opportunity for us to do something that to us may seem very small, but to them, will be very large.

Chair Spiegel:

We will close the hearing on Senate Bill 377 (1st Reprint) and open the work session on Senate Bill 377 (1st Reprint).

I will entertain a motion to amend and do pass Senate Bill 377 (1st Reprint).

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
SENATE BILL 377 (1ST REPRINT).

ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED.

I will assign the floor statement to Assemblywoman Neal. We will move to the next item on work session.

**Senate Bill 366 (2nd Reprint): Establishes provisions relating to dental therapy.
(BDR 54-661)**

Patrick Ashton, Committee Policy Analyst:

[Read from (Exhibit D).] Senate Bill 366 (2nd Reprint) establishes the profession and practice of dental therapy and provides for the Board of Dental Examiners of Nevada to license and regulate persons engaged in dental therapy. The bill specifies the scope of practice and the settings in which a dental therapist may practice dental therapy, as well as the responsibilities of the authorizing dentist. Additionally, a dental therapist shall provide

services only under the direct supervision of the authorizing dentist until the dental therapist has obtained a certain minimum amount of clinical practice hours. Finally, the bill requires the state dental director to report to the Legislature within five years regarding the impact of authorizing the practice of dental therapy on the quality and availability of dental services in this state.

The Assembly Committee on Commerce and Labor proposes to amend S.B. 366 (R2) as attached [page 2, ([Exhibit D](#))] and as follows:

1. Amend section 60.2 to accomplish the following:
 - a. Delete the citizenship or immigration status requirement in subsection 1(c) to resolve a conflict with section 3(1) of Assembly Bill 275, which has already been enrolled. Additionally, this deletion will make the provisions governing application requirements for dental therapists match the provisions governing application requirements for dentists and dental hygienists, as amended by sections 24.5 and 26, respectively, of A.B. 275;
 - b. Connect the application requirements in subsection 1 with an "and" to clarify that an applicant must comply with paragraphs (a), (b), (c), and (d); and
2. Amend section 64(2) by deleting the first sentence. This deletion will address a conflict in the bill between section 61(2) and section 64(2), so that a dental therapist may treat a patient regardless of whether the patient has seen a dentist in the past 18 months. This deletion does not affect the requirement in section 61(1) that the dental therapist must practice "in accordance with a written practice agreement signed by the dental therapist and the authorizing dentist."

Chair Spiegel:

Is there any discussion on the bill?

Assemblywoman Neal:

In amendment 2, what does it mean that a dental therapist may treat a patient regardless of whether they have seen a dentist in the past 18 months? Is this an issue of not having access to dental records? It seems to be a broad statement.

Chair Spiegel:

The original bill specified that a patient could not see a dental therapist unless they had seen a dentist in the preceding 18 months. The way the bill was originally written, a dental therapist would not have been able to open a mobile unit in a rural area.

Assemblyman McCurdy:

I will vote yes today, but I reserve the right to change my vote on the floor. I have some concerns about the supervision between the dentist and the dental therapist. I believe it is a bit ambiguous.

Chair Spiegel:

Section 61 states that the supervision must be direct, and was expressed as being "line of sight." The dentist must supervise for up to 1,500 hours, depending on the qualifications of the dental therapist. After that, the supervision would be subject to the provisions of the agreement that was executed.

I will entertain a motion to amend and do pass Senate Bill 366 (2nd Reprint).

ASSEMBLYMAN DALY MOVED TO AMEND AND DO PASS
SENATE BILL 366 (2ND REPRINT).

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED.

I will assign the floor statement to Assemblyman Daly.

[The meeting is recessed at 4:32 p.m.] [The meeting is adjourned at 6:36 p.m.]

RESPECTFULLY SUBMITTED:

Katelyn Malone
Committee Secretary

APPROVED BY:

Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Senate Bill 377 (1st Reprint), presented by Senator Dallas Harris, Senate District No. 11.

[Exhibit D](#) is the Work Session Document for Senate Bill 366 (2nd Reprint), presented by Patrick Ashton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.