

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

**Eightieth Session
June 2, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:49 p.m. on Sunday, June 2, 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.leg.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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel
Karen Easton, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada
Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO
Thomas D. Dunn, District Vice President, Professional Fire Fighters of Nevada
Scott A. Edwards, President, Las Vegas Peace Officers' Association
Mike Ramirez, Director of Government Affairs, Las Vegas Police Protective Association Metro, Inc.
Jason Mills, representing Nevada Justice Association
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers
Les Lee Shell, Chief Administrative Officer, Office of the County Manager, Clark County
Dagny Stapleton, Executive Director, Nevada Association of Counties
Shani J. Coleman, Deputy Director, Office of Administrative Services, City of Las Vegas
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association
Dalton Hooks, representing Nevada Self Insurers Association
David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce
Misty Grimmer, representing Nevada Resort Association
Michael Brown, Director, Department of Business and Industry

Chair Spiegel:

[Roll was called. Committee rules were explained.] We will open the hearing with Senate Bill 215 (2nd Reprint).

Senate Bill 215 (2nd Reprint): Revises provisions relating to occupational diseases. (BDR 53-317)

Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada:

We are here today to present Senate Bill 215 (2nd Reprint) which cleans up some of our cancer language. I do not know if Senator Cannizzaro or Senator Scheible will be here, so I will go over why we are proposing this bill, then I will go over the bill. If you have any questions, we will go from there. We are not up here today to convince you firefighters have a high risk to get cancer; I think we can all agree that is why we have the current laws in place. As time goes by, sometimes legislation needs to be updated to keep up with the

changing environment and, in this case, the increase in cancers in the firefighting profession. We are presenting this bill because with the changes in the new building materials in the form of energized thermoplastics, all the carcinogens that we have now in the manufacturing of buildings, products, and things like that, we are seeing an increase in cancers in our profession. Today, residential fires have more in common with hazardous materials events than old-fashion house fires due to the material now common in homes—such as plastics and synthetics.

The amount of exposure time has increased due to the limited number of available firefighters, either due to budget cuts or staffing problems. Firefighters are responding to more calls than ever and, because of retirement restrictions, have to work longer careers. It is also believed that cancer rates are potentially underreported among firefighters. Many firefighters do not discover they have cancer until after retiring, because many cancers do not metastasize until 5 to 20 years later, at which time the firefighters are then considered to be part of the general population comparison group.

We have made improvements to protect our members over the past years, but like our brothers and sisters did before us, we still run into burning buildings to protect the lives and property of our citizens and visitors without concern for our own safety. Even with suggestions made by research and study, many of the improvements to prevent our contact with carcinogens are denied for budgetary reasons. You will hear from the opposition that we need to narrow down to a list of cancers and that the cost of this coverage is going to be expensive to cover.

We have conclusive presumptive language for our heart and lung coverage, and we are here today asking for similar coverage for cancer. We do not know the hundreds of recognized carcinogens we are exposed to over a 30-year career—it is impossible to know exactly what is contained in a commercial building fire, house fire, dumpster fire, or wildland fire. We do know that firefighters are 15 percent more likely to be diagnosed with and die of cancer than the normal population present today. We do know that 65 percent of all line-of-duty deaths since 2002 are from cancer. Cancer is now the leading cause of line-of-duty deaths among firefighters.

Since 2014, the Professional Fire Fighters of Nevada has placed 29 members on a national firefighter memorial wall, which will be located right on the grounds outside of this building. This is someone's mother, father, sister, brother, son, or daughter. Sixteen of the 29 members on our Nevada professional firefighter wall have been from cancer. There is a good chance one of us sitting in front of you today will have cancer, if not both of us.

Times have changed and so must our cancer coverage. Our current legislation does not even address any specific cancer coverage for our sisters within the fire service. They deserve and need coverage just like I have, but specific to their gender. We need this change for our sisters and for those who have passed before us. We have had good discussions with some of the opposition and have come close on a lot of agreements, but there are still a few sticking points. I think this bill is needed and what our members deserve.

Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO:

The two main changes in the bill are the changes we are proposing in the statute. We amended the law in 2003 and again in 2009, as new cancers in relationship to firefighters' working conditions came forward with new studies. Section 1 gives a clearer definition of what are considered to be fire investigators. Fire investigators go inside the same buildings we do; they are inside with all of the same chemicals. There are also instructors. The instructors work in training centers where they are performing drill fires on a constant basis with recruits—most of those come from the ranks of firefighters themselves.

The second change is in section 1, subsection 2, paragraphs (a) through (y), which list additional types of cancers. The list came from the International Association of Fire Fighters as a compilation of the different types of cancers they have identified, and the chemical or causal relationship of the certain chemicals that would cause those cancers. Years ago we put in the causal relationship because we were having a difficult time getting workers' compensation claims accepted due to the language which said you had to show a relationship of time between the chemical you were exposed to and the type of cancer you had. They said you could never show the exact exposure you had to cause the type of cancer. We put the carcinogens in the statute to say, If you have been exposed to these, then you get this type of cancer. It creates a rebuttable presumption that you have a type of cancer as a result of your employment as a firefighter.

The last change is in section 1, subsection 7, which changes the length of coverage for the period of time after you leave the job. Through research it was found that many of these cancers metastasize at different rates; many of them metastasize after your employment ends. The statute currently says you have 60 months of coverage after you leave employment—three months per year, up to 60 months maximum. Many of these cancers metastasize well after that time period.

In 2015 we worked with Senator Settlemeyer on the heart and lung language to change the length of time firefighters and police officers were covered for heart and lung conditions after they left employment. The contention from Senator Settlemeyer was that the people who have been there the longest deserve to have the longest coverage, not the guys who just come for a few years then move on. The proposed language in this bill would mirror the language currently in statute for the heart and lungs, so all three of those occupational diseases would have the same level of protection. That was our intent when we made these changes.

Chair Spiegel:

A childhood friend's dad died of lung disease complications. I have seen the devastation this causes on families of firefighters and know just how important this is. I want to also thank you for your service and the service of the firefighters in this state. Most of us run away from fires and you run towards them—we owe you for that.

Assemblywoman Neal:

In section 1, subsection 2, paragraph (s), I read the existing statute and I understand there are risks with this job. What data did you put in the record for the rectal cancer?

Todd Ingalsbee:

We used a National Institute for Occupational Safety and Health report that studied over 1,000 fires and found out that 98 percent of those fires contained these carcinogens. We also looked to our International Association of Fire Fighters, who have been tracking and studying this for the last several years to see where there were spikes in cancer. That is how we got the numbers of carcinogens attached to the cancer. We hope to have this legislation on a federal level. Legislation on a federal level has been passed to track this; the bill was passed in Washington, D.C. Hopefully, we will have more data by the next time this comes around so we will have more specific numbers. This was all based on studies that we have.

Assemblywoman Neal:

Could you send me the research? I did not see any information on how the diesel exhaust, soot, and formaldehyde turns into a cancer-causing agent. For my own information, I would like to know how it reaches into the other parts of the body. Clearly we are all at risk if diesel exhaust is something we are encountering at that level—I just want to see the research. You can email me a link.

Rusty McAllister:

There are numerous studies completed and we will provide you with them. The International Association of Fire Fighters recently completed a lengthy study of tens of thousands of firefighters. This study spanned 40 years in the cities of Philadelphia, Chicago, and San Francisco. Every firefighter within those three cities was tracked for 40 or 50 years—they even went back and found the firefighters who were retired. The study tracked what types of cancers the firefighters were susceptible to. The list of chemicals are on the International Agency for Research on Cancer and the National Toxicology Program—every one of the chemicals is a recognized carcinogen we are exposed to during the course of our career. Any fire you go into, some or all of these chemicals can be present. One thing I forgot to mention, the changes made to this legislation are prospective in nature only. They are not retrospective. As an example, I am already retired from the fire department and knew what my benefit was when I left—I am covered for 60 months. This is only for those firefighters who will be employed in the future. Again, it is prospective in nature, not retrospective.

Assemblywoman Jauregui:

These new cancers are not currently covered at all, so if a firefighter retired and later developed pancreatic cancer, they would not be entitled to any sort of compensation. Currently it is just bladder, brain, colon, kidney, liver, hematopoietic, malignant melanoma, prostate, testicular, and thyroid—the others would all be additional.

Todd Ingalsbee:

That is correct. They were additional cancers based on the most recent studies and the most recent effect that we are seeing the carcinogens directly connected to these cancers. If Rusty came down with pancreatic cancer now and it is past his 60 months, he would not be covered.

Assemblywoman Jauregui:

If this moves forward, it would not be retroactive for anybody who developed any of these cancers prior to this being passed.

Todd Ingalsbee:

The bill passing on July 1, 2019—it would take effect from that point forward.

Assemblyman Kramer:

I recognize the work you do and the risks firemen take, but I think you still have to recognize everybody dies of something, and a lot of people die of cancer who were never firefighters. Some firefighters, or at least one in the whole world, must have come up with cancer that was not caused by fighting fires. As good as your argument is, I think you are ignoring that and saying, No matter what cancer you come down with, no matter when you come down with it, you want to be compensated as though it was a work-related cancer. It seems like that just stretches it a step further than I think the statistics would show; that is my difficulty with this bill.

Assemblywoman Tolles:

I appreciate it is separate but similar of putting yourselves on the line for us. I feel like you are our veterans and we want to take care of you. I appreciate your concern with this and some of the statistics you presented at the beginning. In section 1, lines 13 and 14, in addition to firefighters or fire investigators, you also include instructors or officers for the provision of training. How are they exposed to these chemicals in the instructing environment?

Todd Ingalsbee:

Most of these people come up through the ranks. They start out going through the same fire academy that I go through, and these positions are through promotions. They could have a career of 20 years and then a spot came open to be an instructor of hazardous materials or an instructor to teach at our academies. Therefore, they have been exposed to the same carcinogens we are exposed to for their whole career. They are also teaching fire training to our new recruits and new cadets. The only way they can do it is by going into live training burns where we are in control, but obviously there are lots of carcinogens in those trainings. The fire investigators go in to discover the cause of the fire and everything is still off-gassing during that time—that is why we put those people in the bill as well.

Assemblywoman Neal:

Inmates are used as volunteer firefighters. Is that a volunteer envisioned under this bill? Or are they not considered volunteers?

Rusty McAllister:

In my early life, I was a crew foreman taking crews out on a daily basis to work the wildland fires. You are correct; they work building fires and wildland fires. I do not know the definition contained within this bill; it never has considered them to be volunteers.

Wil Keane, Committee Counsel:

The volunteers to be covered by this provision are in section 1, subsection 1, paragraph (a), subparagraph (1) and subparagraph (2), states, "Acting as a volunteer firefighter in this State and is entitled to the benefits of Chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145." *Nevada Revised Statutes* (NRS) 616A.145 is the definition of volunteer firefighters; it is contained in a different chapter, but it applies. It is defined as, volunteer firefighters who belong to a regular organized and recognized fire department, while engaged in their duties in any voluntary community service which they may undertake, and while acting under the direction of the fire chief or any of the assistants of the fire chief in the protection of life or property, during fire, flood, earthquake, windstorm, ambulance service or other rescue work. If those people are volunteers, they shall be deemed employees of the town for purposes of workers' compensation. The key part is, volunteer firefighters belonging to a regular organized and recognized fire department.

Assemblywoman Carlton:

We have had a lot of conversations in the past, especially with Senator Goicoechea, about the physical exams to be taken; the volunteers taking the exams; the cost to the county. I believe there is an exam upon hiring; and there is an annual exam every year. To Assemblyman Kramer's point, those exams would hopefully give us some indicator if there was a problem. What you are saying here is, because of these chemicals and how carcinogenic they are, even if they had a yearly exam something could still happen in that year. I have heard about some of these guys being exposed, a couple months later they are sick, and a couple months later they are gone—it is that fast and that bad. I think it would be good for the community to understand the exam process and how we make sure they get the physicals.

Rusty McAllister:

You are correct. There is a physical exam process that is required on an annual basis to qualify for heart and lung benefits. It includes blood test, hearing test, eye test, lung test, physical fitness exams through VO₂ max, treadmill, and ultrasound. All that is done during an annual physical. It is done before they start employment; it is not an exam conducted on inmates when they perform on a wildland fire crew. They do what is called a Step Test where they step on a box that is a certain height for five minutes and they test their heart rate before and their heart rate after and their blood pressure. If they fall within a certain range they qualify, if they do not, they are not put on the crew.

The department I worked for has a doctor who is employed by the city who conducts those exams. He received an ultrasound machine. He wanted the ultrasound machine to look at carotid arteries, aorta, liver, and kidneys, to make sure there was no problem, and while he was there he started looking at thyroids. One of the reasons we added thyroid cancer years ago was that just out of my department alone—the rate for thyroid cancer I think is somewhere in the range of 1 in 70,000 people—out of those exams, we had 13 of our guys who had thyroid cancer out of 500. The numbers speak for themselves. Some of them were severe cases of thyroid cancer; most of them had their thyroids removed. Two of them had to go to MD Anderson Medical Center and had massive surgeries—it had grown into their lymph nodes. Along those lines, the workers' compensation system, through some of the

courts who have looked at these things, has chosen to side with the employee in cases where you can find ten doctors who say, It was not as a result of the job, and the other side can find ten that said, It is. The courts have chosen to side with the worker to say, It was a result of the job.

Added into these cancers are three primary to females—ovarian, breast, and uterine cancers. The only breast cancer case I know of that was accepted for a female firefighter was in the state of Nevada. The employer of the female firefighter fought the case all the way to the Nevada Supreme Court. The Nevada Supreme Court looked at all the evidence and ruled in favor of the female firefighter for her breast cancer. The other part we want to make sure we get on the record is, once you leave the job—it is put into the statute just as it was for the heart and lung benefits—the only benefit you are entitled to is medical care. You do not get any type of a permanent or partial disability, there are no disability payments after you leave employment—it is purely for medical care.

Assemblyman Yeager:

I was looking at the iterations of the bill and it looks like the original bill included police officers. I see it was taken out by an amendment in the Senate Committee on Commerce and Labor. Do you know why police officers were removed from the bill? Having not had a chance to look at the Senate Committee on Commerce and Labor minutes, I just wanted to know what the rationale was.

Todd Ingalsbee:

We worked with those in opposition and basically came to an agreement. The current NRS allows police officers to file a claim through a C1 [workers' compensation form] if they have an exposure. If they come down with a cancer specific to those carcinogens at a call, whether they went into a burning building, a meth lab, et cetera, they still have the ability to file a claim. We removed police officers because of the opposition.

Assemblyman Yeager:

As the bill exists today, all of the blue language is the new additional language added for the different types of carcinogens and cancers. If we enacted this particular bill, would police officers still be able to seek coverage, which you suggested they can do now, for the new kinds of things added in this bill?

Todd Ingalsbee:

That is correct. They would have the same coverage extended to them.

Chair Spiegel:

Is there any testimony in support of S.B. 215 (R2)?

Thomas D. Dunn, District Vice President, Professional Fire Fighters of Nevada:

We are here in support of this legislation; we brought it forward and we are sponsoring it. I wanted to answer a couple of questions from the Committee. The reason we have these specific cancers listed, as well as a couple of references to where to find what those

carcinogens are, is there is no safe exposure level recognized by the federal government or the International Rescue Committee for exposure to a carcinogen. What we are seeing specifically to firefighters, after the course of their 20- to 30-year career, it is the total exposure you have received your entire lifetime. Mr. McAllister talked about his department having had issues with thyroid cancer. Several years ago we had an issue where, in a very short amount of time, ten firefighters were diagnosed with prostate cancer—out of the blue. They were definitely younger in age—in their 40s—when they were diagnosed, so there was a spike there. Along with that, specific to some of the cancers, we had a retired firefighter who testified six months after his presumption dates under statute had expired, he was diagnosed with breast cancer. His was directly tied to the job based on his exposure limits. Another fact: it is not only through breathing it, it is also because of the high temperatures we are dealing with when we go into a structure fire or car fire. For every five degrees increase in ambient air temperature, the absorption level to our skin increases 400 percent. It is based on the exposure through our hoods, and as our skin starts to swell and sweat we get a lot of exposures. There are studies being conducted on how to improve our safety gear and protective equipment to ensure we are addressing those occupational safety and health issues, but we are not quite there yet.

Scott A. Edwards, President, Las Vegas Peace Officers' Association:

We represent the corrections officers and sergeants at the City of Las Vegas Detention Center, and I am a proud member of the Nevada Law Enforcement Coalition. We are here in support of this bill. I had a close friend die from cancer which was directly related to his job as a corrections officer, so this is near and dear to me. As the father of a Las Vegas firefighter and three metro police officers, I ask you to support this bill.

Mike Ramirez, Director of Government Affairs, Las Vegas Police Protective Association Metro, Inc.:

We thank the Senator for bringing this forward. As mentioned earlier, we were in the discussions with the amendment and we are here to support the bill.

Jason Mills, representing Nevada Justice Association:

We are in support of S.B. 215 (R2). As I practice in the field, I heard Mr. McAllister's and Mr. Ingalsbee's testimony and agree wholeheartedly with what they said, particularly with how it applies from a legal standpoint.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:

We are here in support of S.B. 215 (R2). We believe this is a highly compelling bill for firefighters and fire investigators; and do not forget it is an extremely compelling bill for female investigators and firefighters. It has never been recognized in the statutes before—it is going to be now.

Chair Spiegel:

Is there anyone to testify in opposition to S.B. 215 (R2)?

**Les Lee Shell, Chief Administrative Officer, Office of the County Manager,
Clark County:**

I would like to take the opportunity to thank the sponsor and the stakeholders of this important bill. I am happy to say that we worked closely together to iron out a number of our concerns and issues and only have one remaining issue which is in section 7—the extension of the post-retirement benefit. Even in this reprint, there was an additional change that had an incorrect date for that additional benefit. We remain concerned about the move from the 60-month anchor to the lifetime coverage. The current structure of our program does not contemplate the long-term liability. We are running a workers' compensation program that covers multiple employees, and our concern is always to balance the coverage. One of our primary concerns is our ability to get and maintain what is called excess workers' compensation coverage, which is required by statute. We have had a struggle getting that coverage over the last couple of years. Underwriters have told us it is primarily due to the exposure for presumption. We appreciate the movement and are in support of adding those additional cancers. To answer Assemblywoman Jauregui's question, this is not an exclusive list, and we do consider claims outside of this list if we believe there is an occupational relationship—if the claim comes to us that way. Even with this list, if there were other cancers we would consider them as well.

Dagny Stapleton, Executive Director, Nevada Association of Counties:

I want to echo the comments of Ms. Shell and also reiterate that our members care about the health safety and needs of county emergency responders, especially when they are at risk for the work they do on behalf of the public. It is the right thing to do to pay those claims connected with the everyday risks those individuals are exposed to—this goes for our urban counties as well. As you heard from Clark County, as well as the 15 rural counties, many of which are insured by the Public Agency Compensation Trust, a nonprofit risk-sharing pool serving public entities. We remain opposed also, but just in regards to section 7, the post-retirement portion which would extend it to a lifetime benefit if the first responder worked more than 20 years and retired after the implementation date in the bill. Especially in the rural areas, there is a disproportionate impact to the extension of the benefit in this way. We are also concerned about the ability to get the excess coverage that Ms. Shell mentioned.

Chair Spiegel:

Does the rebuttable presumption help with that? I would think that it would. Do you have letters from any carriers that documents the challenge you have had?

Les Lee Shell:

Yes, rebuttable presumption would obviously assist us. Again, when you spoke earlier about our active employees, we do the baseline physical as well as the annual physical, so we are working our way through those. We always argue that we never really want to get a claim, we want to try to avoid them—we are working through it. I can get you some information from our carriers for our last renewal that give that indication.

Dagny Stapleton:

I can get that information as well about the excess coverage from POOL/PACT, the rural county insurer.

Shani J. Coleman, Deputy Director, Office of Administrative Services, City of Las Vegas:

We share the same concerns represented by Clark County and the Nevada Association of Counties in regards to the lifetime benefit. I want to address Assemblyman Kramer's comment. Over a lifetime, the American Cancer Society says one in three adults will have a probability of obtaining cancer; one in eight women will develop breast cancer; and one in nine men will develop prostate cancer. We are looking at S.B. 215 (R2) as something related to workers' compensation. How do we delineate the difference between something they will probably get over their lifetime versus something specifically related to their job?

Chair Spiegel:

I have some questions for you from the Committee; and I would also ask you for a letter documenting any challenges you have had getting excess coverage as well.

Assemblywoman Carlton:

Using the American Cancer Society numbers is kind of like comparing apples and oranges. The normal person does not have a level of exposure to these carcinogens that other people have. As a waitress, I had to go through many trainings because of all the chemicals in the hotels. There were signs everywhere and places I could not go because there were certain chemicals. We keep everyday people away from those chemicals, but we send these people in to be exposed to those chemicals. I am not sure if using American Cancer Society numbers is fair as far as what would normally happen to someone. On this dais here, I am sure there is a percentage of cancer survivors. It is not the same as when your job is going in to deal with these things. I would have concerns about using that particular data set.

Assemblywoman Neal:

I am critical, too, but at the end of the day, since the hearing started, I looked up the information. There is a San Francisco study which says there are new building materials and upholstery that cause tons of carcinogens people did not even imagine would be in mattresses and other things. While I was reading all this information, I already knew this was a hazardous position to begin with, but it seems to be super hazardous now that there is new construction and the way things are being created. I hear what you are saying, but I thought about this and I just realized this is a job that will ultimately kill somebody. If you do not like the 60 months and you do not like the lifetime, what is your middle? I have never wanted to be a firefighter, but I understand if you are choosing to be a firefighter you are choosing to place yourself in a super hazardous environment. If all of these studies are coming up that say the new materials that people are constructing things with is making it worse to walk into the building and put out the fire, what do we do? I know you are

representing a city, but I just think we need to be a little more empathetic. I already had empathy, but I wanted to know what was going on with these extended cancers. Seeing that there is research that supports the extended cancers because of the materials, you need to figure out something.

Shani Coleman:

I do not disagree with anything anyone has said. You are absolutely right, Our firefighters do a tremendous job. All of us have increased exposures. Those mattresses throw off dangerous things when they are burned; are we 100 percent sure they are not throwing off dangerous things when we are sleeping on them? We are all exposed to more carcinogens than we have been over the years. I do not want to diminish anything our firefighters do and am proud of the service they provide. I am just questioning how we create a difference between something work-related from something not work-related.

Assemblywoman Tolles:

I am looking at the language and it sparked a thought. Where it mentions breast cancer, I come from a long line of women with breast cancer and I know they have genetic testing to see if you are predisposed to breast cancer. On page 5, lines 14 through 16 [section 1, subsection 5], it says, "disabling cancer is rebuttably presumed to have arisen out of and in the course of the employment of the person if the disease is diagnosed. . . ." Not being a lawyer, I looked up rebuttable presumption which says, a particular rule of law that may be inferred from the existence of a given set of facts that is conclusive, absent contrary evidence. Can I assume if that person develops breast cancer and they also have that genetic line, it would be discussed in the process of whether or not they were eligible? But if they did not, then we would look to the list of factors that show they were being exposed to carcinogens. My point is the backstop—how do we determine whether or not it is? The exposure to the carcinogens versus some other factor is written into the law and would be a part of this process, so it would address the concern.

Les Lee Shell:

Absolutely, those are all considerations when we receive a diagnosis. As an administrator of the program, we are relying on the medical evidence being provided to us in order to make a claim. There are abilities for us to look into it and decide if there is a genetic predisposition. The doctor provides us with the evidence, then we can consider it. It gets really grey, and that is why we have the whole hearing administrative process. We sometimes end up in court disagreeing over what the medical records say and what they indicate. It is not as clear cut as it could be for us at Clark County. I looked back at the records for the last three years; we had two denials for these cancer claims—those were ultimate denials because it initially presented as a cancer and, subsequently it was not a cancer. It is very difficult to say those are not exposures you had during your occupation. I think it becomes tricky post-retirement, while you are an employee. I am not going to argue that these things do not manifest over the course of time. I have my own personal experiences with cancer, occupationally-related

as well. While you are an active employee we are annually testing you. Once you retire there is a period of time—our average age of retirement is 47.5 in Clark County—where you could have a secondary career that could have secondary exposures. There are a lot of complicating factors.

Assemblywoman Tolles:

I guess the point I am trying to make is there is a process put in place. To me this bill just adds a lot of clarification to the process on behalf of our firefighters.

Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association:

While we recognize that our firemen are pillars of our society, we also recognize this bill will be costly for our local governments. Ultimately, taxpayers potentially have to foot the bill, either through a decrease in services or an increase in revenue where available.

Assemblywoman Carlton:

Along those lines, let us look at this holistically—these are citizens of the state. Sometimes they are required to live in the jurisdiction where they work and sometimes they are not. They are taxpayers in those jurisdictions, so they deserve some of the benefits of being a taxpayer in that jurisdiction. The jurisdiction denies the benefit, therefore their private insurance picks it up—anyone in that insurance pool ends up paying for it. If they do not have private insurance, they end up on Medicaid. We have seen many times where health bills will bankrupt families. Therefore, they end up with taxpayer dollars through Medicaid. When you are talking about health care and health care dollars, it is not just a hard line. If you deny them and say taxpayers should not pay for it here, somewhere along the line someone else is going to pay for it; that is how insurance works. Everybody pays into the pool and when someone gets sick they get to use the benefit they paid for.

Just on a side note, the exact same comments were made when these provisions were put in as rebuttable presumption. We discussed these previously in the Senate when they were revised; also in the Assembly, and the same excuses were used. I have not seen Clark County, or any of the other cities, come before us and tell us how horrible this has been. There are some jurisdictions who are still buying \$15,000 palm trees. I really do not get the concern on providing benefits to someone who is very ill and their family has to deal with a sick family member.

Dalton Hooks, representing Nevada Self Insurers Association:

I want to join the comments that were made by Ms. Shell and the other opponents, but I also want to address that I agree with Assemblywoman Carlton. We have to look at the bill holistically. Like Mr. Mills, I am a practitioner in this area and I am a lawyer—this is what I do day in and day out. Holistically, it is important to remember where we are in the act. The workers' compensation act is intended to address work-related injuries. As the Nevada Supreme Court has said in its pronouncements on this, it is not a panacea nor is it intended to address every health concern. With respect to the comments made by Ms. Shell regarding

the lifetime benefit for those who have 20 years of service, the Committee needs to understand, you may be transmuting the workers' compensation act—which is intended to address injuries that arise out of the course and scope of employment—into general insurance—which is not what it is intended to do.

With respect to our firefighters, I join with everyone in respecting the work they do and valuing their heroism. My own daughter is intending to be a firefighter. When she does that, looking holistically at how she will be protected, it is not simply this act—there is also the Occupational Safety and Health Act. There were questions about newer materials in mattresses and other building materials, and what the exposures are from those. Unlike the cocktail waitress, when she goes into a fire she will not be going in unprotected. It begins with engineering controls which will include personal protective equipment, such as self-contained breathing apparatus. There is going to be testing—part of the testing you referred to earlier—in terms of pre-employment and ongoing testing to make sure we identify those exposures. There is a 360-degree net of protection and it does not all come from the workers' compensation act. You also have private insurance, which my daughter will get through her employment when she becomes a firefighter. The question is, where does that belong?

With respect to the balance issue, again we want to be sure there is protection for these heroic workers. There was a question whether the list of cancers is complete and whether someone who was exposed to a chemical on the job and later developed a disabling cancer would be protected for police officers or firefighters; the answer is yes. It does not matter what the cancer is, whether it is enumerated in this list, whether it is enumerated by the National Institute for Occupational Safety and Health as a cancer, or the International Agency for Research on Cancer, which you have in the act as well. Any cancer that arises out of the employment can be compensable under this act—irrespective of whether you are a firefighter, police officer, nurse, or a waitress.

What we are looking at here is shifting the burden every claimant bears to establish that the claimant's cancer, whatever the condition is, arose out of the employment. What we have decided to do here is to switch the burden. If it is an exposure to one of the toxins enumerated, you get a rebuttable presumption that it arose out of your employment. The reason we do it for firefighters is with the example of a burning mattress. You are not going to be able to pinpoint what specific chemical came out of the conflagration that caused the potential cancer. The rebuttable presumption is a good tool to address it. The issue comes, when the rebuttable presumption turns into a lifetime entitlement to general insurance, rather than workers' compensation insurance, which did not arise out of the employment. For those reasons, the Nevada Self Insurers Association joins with the counties and appreciates the work done to improve this bill dramatically, but for those reasons we will oppose.

David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:

I am going to echo the concerns we heard from the Nevada Self Insurers Association, the counties, and the municipalities. The Las Vegas Metro Chamber of Commerce comes at this with the concern that we hold for all additional liabilities counties and municipalities are taking on. We do have the concern of moving from the 60 months to the lifetime coverage, and for the long-term fiscal impact that is going to have.

[([Exhibit C](#)) was submitted but not discussed.]

Chair Spiegel:

Is there anyone to testify in neutral to S.B. 215 (R2)? [There was no one.] We will close the hearing on S.B. 215 (R2), and we will open the hearing on Senate Bill 381 (2nd Reprint).

Senate Bill 381 (2nd Reprint): Revises provisions relating to workers' compensation. (BDR 53-1157)

Jason Mills, representing Nevada Justice Association:

I would like to thank you for your time to hear Senate Bill 381 (2nd Reprint). I would also like to thank Senator Cannizzaro for sponsoring and bringing this bill, and I would like to thank the majority stakeholders in the industry who participated and worked hard with us to make this compromise in legislation. Those stakeholders included the Nevada Resort Association, Nevada Self Insurers Association, and organized labor.

I want to explain the two primary issues this bill addresses; specifically, adequate choice of doctors to treat an injured worker and, by providing that adequate choice, it will result in faster treatment to the injured workers which should translate to being able to return to work faster, thereby meaning saving costs to insurers and employers throughout our state. Existing Nevada law, specifically *Nevada Revised Statutes* (NRS) 616B.5273, already requires every insurers' provider panel list contain an adequate choice of doctors for the treatment of an injured worker's claim—that law has existed for many years. However, the problem is that it is not defined. Adequate choice is not defined in our statutes and adequate choice is not defined in our regulations. Also under existing law, the Nevada Division of Industrial Relations (DIR), within the Department of Business and Industry, has maintained a panel of treating doctors who have demonstrated an interest in treating Nevada's injured workers by agreeing to follow the Nevada workers' compensation statutes and regulations, and they will never charge more for their services based upon the existing Nevada medical fee schedule, which is also adopted by statute and existing regulation already in place.

Insurance providers and employers are currently required to maintain their own subset of treating doctors on their own closed panel lists they use by selecting the doctors from the greater DIR panel list. Because adequate choice is not and has never been defined, there is a vast disparity from some insurers to other insurers when you compare multiple panel lists. The issue we are really focusing on is that we finally define what adequate choice actually is—that is what S.B. 381 (R2) is designed to do. It does so by setting a minimum threshold of doctors—12 in 18 different fields of practice—which each insurer must maintain on their own closed panel list of treating doctors. Additionally, for those areas of specialization not delineated in S.B. 381 (R2) the requisite number of doctors is eight. While specialization itself is currently utilized as a term in existing Nevada workers' compensation statutes, specifically NRS 616C.090 and NRS 616C.490, it, too, is currently not defined in Nevada workers' compensation statutes and regulations. With the additional language in S.B. 381 (R2), by further defining these areas of specialization, particularly those areas that are regularly utilized in workers' compensation claims, we are going to create some uniformity of application to Nevada's workers' compensation laws with regard to the treatment of injured workers. Additionally, the DIR panel has fewer than 12 doctors in any one of those 18 areas of specialization, or 8 doctors for the areas not delineated, thus the insurer need not go out and find more doctors to make up that number. They only need to supply the number of doctors on their closed panel list that is actually referenced on the DIR treating panel list. For example, if there are only 5 orthopedic spine surgeons in Washoe County that are on the DIR list and are so delineated, an insurer only needs to name 5—not 12, and not go out and find additional doctors.

Insurers and employers will still maintain control in their right to select and contract doctors of their choice to be on their respective closed panel lists. With more than 8,800 licensed medical doctors, 1,200 osteopathic doctors, and 1,200 licensed chiropractors in the state of Nevada, we believe that insurers and employers will have an ongoing ability to contract with individual doctors or doctor groups, and that fact will not be materially altered or impacted by S.B. 381 (R2). That is one of the reasons the opposition originally on this bill have now moved to a support position because we addressed that very issue by lowering the number of doctors to the point all parties found acceptable.

The process of a doctor actually being added to the DIR panel list is actually quite simple. They merely fill out a form with the Division of Industrial Relations, indicating various things; for example, they are in good standing, they have a license to practice in the state, et cetera, and supply it to the Division. Thus, any insurer entering into a contract with a doctor for the purposes of joining a particular insurers closed panel list, and he or she happens to not be on the DIR panel list, they will simply supply that form at the same time they are entering into the contract and then they will be impaneled on the DIR panel list. The insurer will then be able to select that particular doctor that was just added, evidencing an ongoing ability for them to "control" their panel list, which is one of the concerns they had.

In closing, these changes in the law are needed. The time to finally define existing law that already requires adequate choice is at hand. This bill will not only define adequate choice, but in so doing will allow the speedy treatment of injured workers, resulting in their returning to work faster and costing insurers less time, money, and energy. Through this bipartisan consensus building, through the major stakeholders, and the Nevada workers' compensation field, we believe we have achieved those goals, as evidenced by the passage from the Senate 21 to 0 yesterday. We urge your adoption and support of this bill. Madam Chair, if you or any members of the Committee have any questions, I am happy to respond.

Chair Spiegel:

Does the Committee have any questions? I do not see any questions. Is there any testimony in support of S.B. 381 (R2)?

Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada:

We support this bill. We think it is about time our injured workers have a choice in who they see to treat them and to get them back to work as quickly as possible.

Misty Grimmer, representing Nevada Resort Association:

As Mr. Mills said, we spent a lot of time working with the proponents of the bill on this and we did come to a good agreement.

Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO:

We are also in support of this legislation. It has been worked on quite a bit by all parties. This will provide a better opportunity for workers to get seen by a doctor.

Mike Ramirez, Director of Government Affairs, Las Vegas Police Protective Association Metro, Inc.:

We are also in support of this bill.

Scott A. Edwards, President, Las Vegas Peace Officers' Association:

We register our support of this and ask you to do the same.

Dalton Hooks, representing Nevada Self Insurers Association:

We would like to thank the sponsors, the proponents, and Mr. Mills for their work on crafting this bill. The Nevada Self Insurers Association rises in support.

Chair Spiegel:

Is there anyone to testify in opposition to S.B. 381 (R2)? [There was no one.] Is there anyone to testify in neutral?

Michael Brown, Director, Department of Business and Industry:

Earlier in the session we had a meeting where we discussed the grand bargain to protect and assist our injured workers. We look forward to working with all the parties to implement it. Assemblywoman Carlton has asked me to make sure we are looking at how we manage injured workers through the workers' compensation process. It will be a major priority of mine during the interim. This is important legislation. While it was not part of DIR's original legislation, we were able to work with all parties concerned and feel we can implement it successfully.

Chair Spiegel:

We will close the hearing on S.B. 381 (R2). Is there any public comment? [The meeting was recessed at 1:58 p.m.] [The meeting was adjourned at 9:07 p.m.]

RESPECTFULLY SUBMITTED:

Karen Easton
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 fiscal note to [Senate Bill 215 \(2nd Reprint\)](#), submitted by Jenni Cartwright, Administrator, Department of Administration.