

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

**Eightieth Session  
April 1, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:50 p.m. on Monday, April 1, 2019, in Room 3137 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](http://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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman Tom Roberts, Assembly District No. 13

**STAFF MEMBERS PRESENT:**

Patrick Ashton, Committee Policy Analyst  
Earlene Miller, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Robert Ostrovsky, representing Employers Holdings Inc; and City of Las Vegas

Jason D. Mills, representing Nevada Justice Association

Dalton L. Hooks Jr., representing Nevada Self Insurers Association

Mike Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association

David Roger, General Counsel, Las Vegas Police Protective Association

James Murray, Detective, Las Vegas Metropolitan Police Department

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

Todd Ingalsbee, representing Professional Fire Fighters of Nevada

Ryan Ashton, President, Reno Police Protective Association

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

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

Myron Hamm, Director of Corrections, Las Vegas Police Protective Association

Gregg Burns, Private Citizen, Las Vegas, Nevada

Bill Gardner, Southern District Vice President, Professional Fire Fighters of Nevada

Terry Taylor, representing Nevada Chapter, International Association of Arson Investigators

Mark Regan, representing Northern Nevada Fire Chiefs Association

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

Dagny Stapleton, Executive Director, Nevada Association of Counties

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

Suhair Susan Sayegh, Workers' Compensation Administrator, Risk and Environmental Services, Clark County School District

Dylan Shaver, Director of Policy and Strategy, Office of the City Manager, City of Reno

David Cherry, Government Affairs Manager, City of Henderson

David Watts-Vial, Chief Deputy District Attorney, Washoe County District Attorney's Office

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

Ray Fierro, Administrator, Division of Industrial Relations, Department of Business and Industry

Linda Wicksten, Private Citizen, Sparks, Nevada

Jill Dickman, Private Citizen, Sparks, Nevada

Jeanette K. Belz, representing American Property Casualty Insurance Association

Kathy Clewett, Legislative Liaison, City of Sparks

Paul J. Enos, CEO, Nevada Trucking Association

Brian Reeder, representing Nevada Contractors Association

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada

Andrew MacKay, representing Nevada Franchised Auto Dealers Association  
Charles J. Verre, Chief Administrative Officer, Workers' Compensation Section,  
Division of Industrial Relations, Department of Business and Industry  
Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers  
Holdings Inc; and President, Kids' Chance of Nevada  
Jaron S. Hildebrand, Manager of Government Affairs, Nevada Trucking Association  
Angela J. Leath, Crisis Intervention Administrator, Las Vegas Fire and Rescue, City  
of Las Vegas  
Marlene Lockard, representing Service Employees International Union, Local 1107;  
and Las Vegas Police Protective Association  
Michael Edmiston, President, Las Vegas Police Protective Association Civilian  
Employees, Inc.  
Cynthia Hare, Private Citizen, Las Vegas, Nevada  
Benjamin Kole, Private Citizen, Las Vegas, Nevada  
Adriana G. Fralick, Deputy City Manager, Carson City

**Chair Spiegel:**

[The roll was taken.] We will open with a presentation about workers' compensation by Robert Ostrovsky, Jason Mills, and Dalton Hooks.

**Robert Ostrovsky, representing Employers Holdings Inc.:**

My section of the presentation is on the history of workers' compensation, which is really a history of the twentieth-century workplace. Nevada's first industrial insurance act was passed in 1913. It was one of the early states that provided for workers' compensation. Wisconsin was the first state to enact a workers' compensation system. Prior to those acts, workers had no coverage. If a person was injured on the job, they went home, the job went away, tough luck! Things have changed substantially in a hundred years. Luckily for Nevada, it started to change in 1913. The state ran the Nevada Industrial Commission (NIC). It was a three-member commission made up of labor, management, and public representatives, and it ran the state's workers' compensation system. It was replaced by the State Industrial Insurance System (SIIS), which was run by a board of directors much larger and broader than the original NIC. That was a structure that lasted for many years. In 1987 the state authorized self-insurance so large employers could self-insure and get out of the SIIS system.

In 1993, the state approved group self-insurance, which allowed smaller employers to create a pool to provide workers' compensation on a self-insured basis. In 1995, the state opened a market to competition which allowed insurance companies to sell an insured product to cover workers' compensation. It was called the three-way system—you could be insured by the state, an insurance company, or you could be self-insured. In 1999, the state approved the privatization of SIIS, because in 1993 an actuarial study showed that the state was \$2.4 billion upside down in its workers' compensation fund. We were paying out more benefits than we were receiving in premiums; this was significant. In those days that was equal to or greater than the entire state budget, and the system had less than 60 days of operating capital on hand. It was a crisis. Through the work of a bipartisan effort, starting

with then-Governor Bob Miller and continuing with former Governor Kenny Guinn, the state allowed the development of Employers Insurance Company in 2000.

Employers Insurance Company eventually took over all of the claims of the old system and then SIIS was dissolved. That is the legacy company that owns all of the old claims. Now we have self-insurance or self-insured. All of the old claims are managed by the state industrial system. This was an important reform as reforms were going on nationwide at that time. In the early 1980s, and as recently as 2003 in California, there were major reforms. The systems grew to pay out more in benefits than they received in premiums. There were preferred industries and nonpreferred industries. All that had to change and this Legislature did yeoman's work to see that that was appropriately approved. To give you some idea about what we are talking about, Employers Insurance Company paid almost \$483 million in claims in 2017. In that same year, they were at 51,382 claims. It is large and the language you will hear in these bills today will have an impact on how that system runs.

**Jason D. Mills, representing Nevada Justice Association:**

I am a workers' compensation attorney and have been licensed in the state of Nevada since 2000. I exclusively represent injured workers. The two big phrases that you will hear in the workers' compensation system are "grand bargain" and "exclusive remedy." As legislators, those two terms will help you to understand the underpinning of the workers' compensation system. The grand bargain was effective in the early 1910s. It established that labor would give up the right to bring suit against their employers for injuries sustained at work. Prior to these workers' compensation acts around the country, an injured employee would have to sue the employer for benefits. In reality they were suing for money and would have to go through a traditional trial setting to get any type of recovery. At the same time, employers were under the threat of very large judgments, in some rare scenarios, so there was a great amount of uncertainty for both employers and employees in the old tort or common-law system. With the grand bargain, labor gave up its right to sue the employer and, in return, he or she would be entitled to medical benefits and wage replacement. In order to avoid the moral hazard of people just wanting to be on workers' compensation pay, they made the temporary total disability (TTD) at a level of 66 2/3 percent of pay. That number was settled upon across the country to avoid the concept that a person would prefer to be on workers' compensation and not work. Effectively in the grand bargain, in giving up the ability to sue the employer, the employer got immunized. In return, the injured worker got medical benefits and wage replacement.

The exclusive remedy means if you are covered by the workers' compensation laws, which employees in this state are, whether they are private or governmental, you cannot sue your employer for a bodily-based industrial injury. The exclusive remedy is to bring the claim through the workers' compensation system. These workers' compensation systems were declared to be constitutional by the U.S. Supreme Court in 1917 under both state and federal constitutions. There have been some challenges of late because of what has happened in some states. They have taken away too many benefits and the employers are still entitled to immunity, so some state supreme courts have said they cannot do that.

**Dalton L. Hooks Jr., representing Nevada Self Insurers Association:**

My practice is almost exclusively workers' compensation. I have been doing some Occupational Safety and Health Administration (OSHA) defense work since 2002. I worked with SIIS and as a compliance officer and an administrator of the Safety Consultation and Training Section of the Division of Industrial Relations, Department of Business and Industry.

Nevada has had the good fortune of having a fairly even-handed system since 1993. The purpose of the grand bargain was not only to give it those benefits, but also to allow for these claims to be adjudicated as quickly as possible. Our administrative procedures allow for that. We begin with a two-step process. There is a hearing before a hearing officer. The hearing officers are generally industry professionals, not lawyers. It is an informal procedure that generally takes 15 to 20 minutes. The hearing is scheduled within 30 days of receiving the notice of appeal from the injured worker. The injured worker is provided the forms he or she will need to complete that appeal by the insurer or third-party administrator (TPA). Those claims begin with a determination from the insurer or the TPA regarding a benefit. The claimant has 70 days to initiate the appeal and then go to a hearing.

After the hearing, the matter proceeds to the appeals office. This is effectively our trial. These are short, quick procedures like a short trial program. The majority of the hearings are resolved within an hour. It is a more formal process; we have relaxed rules of evidence and the witnesses are sworn in. One of the unique features in Nevada is that injured workers are provided access to free attorneys through the office of the Nevada Attorney for Injured Workers. After the hearing, the appeals process can go to the district court and work its way through that system.

The Committee members should know that there are a number of bills that address and affect benefits and penalties predicated upon the appeals process. Understanding how that process works and what tools injured workers have available to them is important in that analysis.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblyman Yeager:**

Is it typical to have expert medical testimony presented live at hearings or is that in the form of expert reports or medical reports that are introduced for consideration?

**Dalton Hooks:**

With regard to the first level of appeal, we typically do not have witnesses other than the injured worker. There are three parties to each one of these hearings—the injured worker, the employer, and the insurer or TPA. Any of those people can file an appeal of a determination by the TPA. At the first-level hearing, we rarely have witnesses. In a 15- to 20-minute hearing, it is going to be based on the record, which includes the medical records from the treating physician and any records the claimant presents to support his or her position. When it gets to the appeal level, there may be live testimony. It is not common,

but in maybe 1 percent of the cases we have live testimony from medical providers. We receive reports such as independent medical evaluations (IME) and other documents. Both sides will present relevant medical evidence to support their position at that point. Last session we had legislation to codify a new section on IMEs as part of the process. That begins with the medical reporting from the treating physician. The hearing officers may order an IME and the claimants now have the ability to request their own IME as a matter of right under certain circumstances.

**Chair Spiegel:**

Thank you for the presentation. I will open the hearing on Assembly Bill 119.

**Assembly Bill 119: Revises provisions governing workers' compensation. (BDR 53-605)**

**Mike Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association:**

I am presenting this bill on behalf of Assemblyman Richard Carrillo. We bring these issues forward because the members that I deal with every day are saying they are being denied benefits. We bring issues forward because there is a reason to do so and it affects our members.

**David Roger, General Counsel, Las Vegas Police Protective Association:**

I am testifying in support of A.B. 119. Detective Jim Murray is part of the reason we asked Assemblyman Carrillo to sponsor this bill. Police and firefighters have heart and lung legislation; these are occupational diseases. Generally speaking, if a police officer or firefighter has been employed for a certain period of time and they have a heart or lung condition, it is conclusively presumed that the condition occurred during the course and scope of their employment. It is important that it is conclusively presumed. Detective Murray has been a police officer for 24 years and one day his heart stopped. He had to have a pacemaker put in place and when he filed a claim with his employer/TPA, they refused to accept the claim. They said it did not occur in the course and scope of his duties. As a result, he hired an attorney to litigate. It is our position that the TPA should have accepted the claim; they can litigate the amount of damage to the heart and the value of the claim through the process. They summarily denied the claim, which caused him to have to appeal himself or hire an attorney.

Section 1 provides that under the present law an employer or TPA has to either accept or deny the claim and notify the claimant. We have added an additional provision [section1, subsection 1, paragraph (c)] that applies to police, firefighters, and arson investigators. This provision provides that an employer must accept a claim unless they can prove by clear and convincing evidence that the ailment, whether it is an injury or an occupational disease, did not occur in the course and scope of a claimant's duties. It is a change with respect to police, firefighters, and arson investigators.

Section 1, subsection 5 includes three parts. First, if an employer denies a claim and they are ultimately found to not be the prevailing party, the administrator shall order them to pay a fine in the amount of \$100 up to \$200 per day. Presently that is discretionary with the administrator. Second, if the employer appeals the matter to a hearing, the employer must pay medical expenses for the employee from the date the hearing was requested until adjudication of the claim. Third, if the hearing master rules in favor of the employer, the employer is entitled to recoup the medical expenses that were paid out.

Section 3 changes immunity. Presently, an injured worker may not sue a TPA, employer, or insurer in civil court. This provision applies to police, firefighters, and arson investigators, and it allows them to file suit against the employer for bad faith. Section 4 [section 2] changes the burden of proof. Presently family members or an employee must prove by a preponderance of evidence that the employee's injury occurred in the course and scope of his or her duties. This change provides that in the case of police, firefighters, or arson investigators, the employer has the burden of proof by clear and convincing evidence that the injury did not occur in the course and scope of duties.

Section 4 [sections 5] deals with occupational diseases including heart, lung, and hepatitis claims. It is the same provisions as in section 1. The potential penalty includes medical expenses of the employee during the pendency of the hearing as well as reimbursement to the employer if the employer prevails. All police officers, firefighters, and arson investigators are required to go through regular physicals. Police officers have to go through annual physicals. There are times when a doctor will have them take steps to lose weight or stop smoking. The statute provides that if an officer or firefighter makes a claim under the heart/lung legislation, evidence of them failing to take corrective measures may be held against them.

Section 5 [subsection 7] says if an employer wants to raise the issue of the employee not taking corrective measures, they have to prove by clear and convincing evidence that the employee's failure to correct a preexisting condition is the proximate cause for either the lung or the heart disease. Section 5 [subsection 12] also includes a definition of disease of the lungs, which is fertile ground for litigation by employers. We have had situations where an employer has said that an irregular heartbeat or arrhythmia is not a disease of the heart. In section 6 [subsection 17], we outline the diseases of the heart.

Section 7 provides that firefighters, police officers, and emergency medical attendants can claim an occupational disease for hepatitis. The same provisions apply with respect to the fines and the employer paying the medical expenses if a hearing is requested, and reimbursement if the employer prevails. Section 8 is a similar section but it encompasses all other police officers, including sheriffs and deputy sheriffs. Section 9 provides that if this bill passes, it will apply to all open cases regardless of when the claims were made.

[Assemblywoman Neal assumed the Chair.]

**James Murray, Detective, Las Vegas Metropolitan Police Department:**

I have been with the Las Vegas Metropolitan Police Department (LVMPD) for approximately 24 years. I was recently diagnosed with bradycardia, or sinus pauses, which means my heart basically stops. I received a pacemaker. I filed a claim through my insurance for workers' compensation. The claim was denied on several occasions due to the fact that they said it was not work-related, although I met all of the requirements under the heart and lung bill. I hired an attorney, which has caused a hardship and will initially take money out of my entitlements under the heart and lung bill. There have been numerous hearings with my attorney, the attorneys for the LVMPD, and other attorneys who have appealed decisions that were made in my favor by the state of Nevada hearing officers. This causes the case to be continually repealed and delayed.

**Acting Chair Neal:**

Are there any questions from the Committee?

**Assemblyman Yeager:**

Section 1 subsection 5 is the provision regarding the penalty of \$100 to \$200 per day. It indicates that the amount would continue to accrue until the claim is adjudicated to a final decision. Where does that final decision happen in the hierarchy of how these cases progress?

**Jason Mills:**

Workers' compensation cases are typically not litigated like a trial where everything is brought forth in a single trial. Workers' compensation claims are brought in pieces where you fight over a particular piece of the claim. I think this particular section is driving at the compensability as to whether or not the claim was denied. Once the denial has been adjudicated, that aspect of the applicability of this section would go away. That does not mean an officer would not be able to fight the scope of his claim or whether or not he is entitled to treatment and which treatment, but the compensability issue would be gone.

**Assemblyman Yeager:**

It sounds as if throughout the process of these claims, either side can make a decision at various points whether to continue appealing or not. As in other cases, if you give up your appeal, it is a final judgment. Based on your experience litigating these cases, what kind of time frame are we talking about? Here it talks about a daily penalty. What is the longest one you have ever seen from the beginning of the case to the final adjudication where the claimant is deemed to be right?

**Jason Mills:**

The length of these claims is different than just the particular issue about which I was talking. For example, the compensability determination, whether or not the claim should be accepted or denied. Litigation can last anywhere from a couple of months to sometimes several years. The reality is that most claims are typically adjudicated in between 6 and 18 months if it is contested. That does not mean cases do not go well beyond that.



**Assemblyman Kramer:**

In section 9, it says that this applies to all open claims. If you say these things can last years, I am alarmed because at \$200 a day, you are talking about \$70,000 a year in fines for something that has been waiting for a decision. It sounds like it changes the whole scope of workers' compensation and would increase the costs.

**Jason Mills:**

Existing law on the heart and lung aspect of the statute already has this provision in it. With regard to the \$100 to \$200 per day fines, that exists in current Nevada law and has since the 2017 Session. I think this section changes it from a permissive fine to a mandatory fine.

**Assemblywoman Tolles:**

On page 11, the list of diseases of the lungs seems to include disorders from birth like cystic fibrosis. If they are from birth, how do we tie that into a workplace injury?

**Jason Mills:**

In existing law and the conclusive presumption for the heart and lung aspect for police, fire, and arson investigators, that is a true statement already. This does not change that. The Nevada Supreme Court ruled in 2008 that the conclusive presumption means exactly that. Whether it is a congenital birth defect or a preexisting condition—if it is a disease of the heart or the lungs, it is supposed to be conclusively covered. My understanding is that it is a policy determination that this Legislature made many years ago, because it is so difficult to prove where a heart or lung disease comes from. If you have a preexisting congenital birth defect in your heart and it manifests after the requisite amount of time, as the Nevada Supreme Court said in *Manwill v. Clark County*, 123 Nev. Adv. Op. No. 28 (July 26, 2007), that is covered. It is difficult to prove where these conditions originate, and they wanted to grant the benefits to police, firefighters, and arson investigators for putting their bodies on the line day in and day out for years until their bodies are effectively destroyed. Hence, the conclusive presumption that already exists. These lists are attempting to stop the litigation over what a disease of the heart or the lungs is. I litigated a case for 3 1/2 years on whether or not occupational asthma was a disease of the lungs. I think these nonexhaustive lists are trying to effectively say that a disease of the heart is what all of us understand it to be.

**Assemblywoman Tolles:**

This bill seems to shift the burden to the employer through clear and convincing evidence.

**Jason Mills:**

Existing law for heart, lung, and hepatitis already has the conclusive presumption. They do not have to prove causation. The clear and convincing evidence is for all other claims. It is for a typical injury claim, or for other occupational diseases that are not heart, lung, or hepatitis that are already the requirement of the employer conclusively to cover. That burden was long ago shifted and it is above and beyond clear and convincing because it is a conclusive presumption. That is way past clear and convincing in the law. There is no way to defend against it other than saying it is not a heart disease or a lung disease—hence, the lists. The burden on clear and convincing evidence, that is on other claims.

**Acting Chair Neal:**

Section 2, subsection 1 is the provision that deals with the entitled compensation for the injured employee or their dependents. It has the preponderance of evidence standard. When you go to section 2, subsection 2, you have the clear and convincing evidence standard. How do the two different evidentiary burdens work?

**Jason Mills:**

The preponderance of the evidence is the burden that all claimants must show in order to bring a claim and show that it has been proved. What that typically involves is more likely than not from a medical standpoint. This bill changes the burden for police, firefighters, and arson investigators. *Nevada Revised Statutes* (NRS) 616C.150 still exists for everyone else exactly the way it is written. It creates a clear and convincing standard, which, in the civil world, is the highest level of proof that one can seek. In the criminal world, the highest level of proof is beyond a reasonable doubt, and in the civil world, clear and convincing evidence is the equivalent. There are aspects of that burden already existing in Nevada law.

**Acting Chair Neal:**

I understand the two types of burdens. It is the duality of the two burdens existing within what seems to be the same claim or an extension of the claim.

**Jason Mills:**

One set of burdens applies to police officers, firefighters, and arson investigators and the other set of burdens applies to everyone else by way of this bill. It makes it a heightened burden to deny the claim for police, firefighters, and arson investigators and not for everyone else.

**Acting Chair Neal:**

In cases where we have had the duality provision in other states, how have those claims worked when they are a single claim or an extension of a claim?

**Jason Mills:**

These different burdens already exist in Nevada law. For example, in the heart and lung act under NRS 617.455 and 617.457, if you are a police officer, firefighter, or arson investigator, you have a conclusive presumption that exists just for you. It is a different set of burdens that apply to them on heart and lung cases. This change, if adopted, would not create two separate burdens for the same claim. It creates a separate burden, distinct and separate, for a particular class. That is what this is doing.

**Acting Chair Neal:**

Are there any additional questions from the Committee? Seeing none, we will hear support for A.B. 119.

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

We represent the corrections officers and sergeants at the Las Vegas Detention Center. We are also a proud member of the Nevada Law Enforcement Coalition. I am here to testify in support of A.B. 119. I have worked at the Las Vegas Detention Center for over 20 years. In those 20 years I have worked with some truly amazing people. I have known many officers with various injuries such as strains, torn knee ligaments, and broken jaws caused by inmates. I have known officers who have had human excrement thrown on them. Some of the cases have resulted in a temporary disability for the officer or sergeant and some of these claims have been denied through the workers' compensation process. Many times, the injured party will hire an attorney and ultimately get his or her claim approved.

In September 2009, Corporal Curt Constantino was diagnosed with cancer and, after appeals by his attorney, his workers' compensation claim was approved. He died on September 10, 2010, leaving behind a teenage son and daughter. On July 19, 2018, corrections officer Kyle Eng was involved in an incident with an inmate at the Las Vegas Detention Center. This was his day off and due to staffing shortages, Kyle volunteered to help cover a vacant shift. There was an incident with an inmate and Kyle was found unresponsive in a staff restroom. Fellow officers found him and started cardiopulmonary resuscitation. The department chief classified Kyle's death as a line-of-duty death. This classification opened a vast array of benefits for his family. Kyle is survived by his wife, 3 daughters, and 11 grandchildren. Unfortunately, like my friend Curt, Kyle's wife has been denied workers' compensation and has had to hire an attorney.

This May, Kyle will be honored at the police memorial outside this building and in Washington, D.C. While ceremonies are happening, the family's attorney will be fighting to get Kyle's wife the benefits she deserves. It seems the system is set up to deny coverage with the hope the individual or family will tire and stop pursuing the claim. This system seems to encourage the hiring of attorneys rather than simply doing what is right. City personnel have stated that the city knows they are going to have to pay, but they are obligated to fight against the workers' compensation claim.

**Todd Ingalsbee, representing Professional Fire Fighters of Nevada:**

The original bill was put in place to protect the rights of our members when they contract an illness directly caused by the hazards we are exposed to every day while trying to protect the citizens and guests of our great state. I want to focus on "conclusively presumed." When these two words were put in the original statute, they were used because conclusively presumed was the strongest language we could find to protect our members. However, we have municipalities and TPAs all over the state denying claims. We are not here today asking for additional coverage, we are here to have the original intent of the bill followed and to eliminate the games being played with our members. This bill is important because any delay of treatment of our members is detrimental to their health. This coverage is the coverage that this Legislature already determined is due to our emergency responders and it is time they receive it.

**Ryan Ashton, President, Reno Police Protective Association:**

We are in support of A.B. 119.

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

I am a member of the Nevada Law Enforcement Coalition. Clear and convincing standard of proof showing that the injury did not arise out of the course of employment is necessary. It resumes the presumptive standards that make workers' compensation what it was supposed to be in the first place. It was supposed to be a presumptive process. It has gotten away from that and this brings it back. Giving the private cause of action to police officers, firefighters, and arson investigators who are aggrieved by the bad faith or unfair trade practices by his or her employer, self-insured employer, self-insured group, insurer, or TPA, simply creates an appropriate first-party relationship for the injured worker. It is about time that these employers and their agents stop acting with impunity by simply saying, Too bad. We have to get beyond that and this will provide some consequences. With this bill, they will finally have consequences like any other first-party contractually insured party. Given that right, consequences have to be imposed and we will start to see people accepting claims instead of denying them with impunity.

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

I will echo the comments that have been made in support. I have been dealing with these issues for 20 years in this building. This would hopefully push claims to be accepted.

**Myron Hamm, Director of Corrections, Las Vegas Police Protective Association:**

We would like to vehemently add our support for this bill. This bill is important for our members and the people we represent. This is an issue that has been ongoing and long going and a lot of people are suffering because of the effects of the negative claims.

**Gregg Burns, Private Citizen, Las Vegas, Nevada:**

I have been with Las Vegas Fire and Rescue for almost 19 years. On October 8, 2013, I had a heart attack. I was able to make a full recovery and return to work. For the last six years, my claim has been denied. I do not understand why, because it is under our heart and lung bill. What bothers me the most is that I wonder, What if something happens to me now? What would happen to me and my family? I want to be able to go to work every day and serve the people of Las Vegas like I took an oath to do almost 19 years ago. I support this bill. This is very important to us. Firefighters have heart attacks and lung issues almost daily, and this is my concern.

**Bill Gardner, Southern District Vice President, Professional Fire Fighters of Nevada:**

I was asked to read a prepared statement from Captain James Perry from Pahrump Valley Fire Rescue about his experience with this legislation as it currently stands:

To Whom It May Concern, My name is Captain James Perry and I have been a firefighter/emergency medical technician with Pahrump Valley Fire Rescue in Nevada. Over the years, I have been in relatively good health with no major problems. In June of 2018, I had chest pain with shortness of breath.

I spent months in and out of hospitals with no real diagnosis. Test after test, doctors and hospitals found nothing, yet the chest pain and difficulty breathing continued. Convinced I was going to die before they would figure it out, I became my own patient advocate. I kept going back and saying, "No, it is not anxiety." I went from ripping patients out of cars to not being able to fight fire or even swim in the pool with my two young daughters. Four months went by before I finally convinced my cardiologist to do a heart catheterization procedure. It took going to a lung doctor who thought I might have pulmonary hypertension before anyone took it seriously. They found a 90 percent blockage in my obtuse marginal, the artery on the backside of my heart. I could have died—four months of many heart attacks. During the catheterization procedure in October, I received a stent. I went on medications and was finally diagnosed with heart disease.

What happened next is a breakdown in our medical system for Nevada firefighters. Workers' compensation denied my claim. They called me to let me know they did not have enough time to process it. In reality, they were trying to let me know time had run out on my knowledge of filing an appeal so they were not obligated to pay it. It was 70 days. I was told they will not cover anything up to the diagnosed date—four months of hospital stays, emergency room visits, doctor visits, and false diagnoses. None of it is covered. I ended up hiring an attorney to represent me. Even though the four months would still not be covered, I needed to ensure my claim was processed within the state guidelines of presumptive care for firefighters—the heart and lung bill. Today, my family is waiting for answers. Workers' compensation has still denied my claim. My insurance denied it, too, because workers' compensation covered things like my medications in the beginning, leading them to believe all of this would be covered by them. At the moment, I am being overwhelmed by medical bills. They are daily occurrences and collections have been filed. My stress level is through the roof. My medical bills are approaching \$300,000. I may need to claim medical bankruptcy because my attorney has informed me these things take years to straighten out.

No firefighter should ever have to go through this. I pay approximately \$800 per month for health insurance. I have never missed a physical in the 20 years of fighting fire. The only recommendation a doctor has given me over the years is to eat a healthy diet and exercise, which I do. If I had not been my own patient advocate and called relentlessly for another doctor to take a look, for my own cardiologist to reconsider, I would not be here today to share my story. They would have figured it out when they autopsied my body. It adds insult to injury to not want to cover me, presumptive only after years of struggling and money being paid to attorneys. This is shameful.

Thank you for your time and I urge you to support this bill.

**Acting Chair Neal:**

Is there anyone else in support?

**Terry Taylor, representing Nevada Chapter, International Association of Arson Investigators:**

We, too, have stories similar to what we have heard from some of our members. We are asking you to look beyond the term "arson investigator." I have 26 years continual experience as a fire officer and investigator, but I have never been called an arson investigator. I have arrested and prosecuted people for arson—wildland, vehicle, and structure. The personnel systems in the agency I worked for never called me an arson investigator. I benefitted from heart/lung because I was a fire captain, not because I was an arson investigator. I think it is imperative to change the terminology to reflect what the profession is doing. The profession now calls us fire investigators or fire inspectors, and we have investigative duties. I am asking you to consider persons who have the investigative duties to investigate fires and explosions, to change it in statute to broaden it from arson investigator. I am not aware of any agency in Nevada that truly calls someone an arson investigator.

Our member in southern Nevada was denied a claim. She had 18 years of service as a fire investigator and bomb technician and she had to go through this same process where both entities controlled by her employer were denied; the insurance that she paid for denied her and workers' compensation denied her. Her association had to take this case to court and spend a significant amount of money for something which should have been covered.

**Mark Regan, representing Northern Nevada Fire Chiefs Association:**

We are here to support A.B. 119. Our members and staff are on the line every day. We have issues trying to process our claims even though we recommend approval—we have claims denied through the third party. We have an individual with over 20 years of service who was discovered to have heart disease during a physical. He is a healthy individual and went through the process and his claim was denied. It took us over two years to support this individual so he was able to retire and enjoy the rest of his life with his family.

**Acting Chair Neal:**

Is there any opposition?

**Robert Ostrovsky, representing City of Las Vegas:**

This bill covers two sections of the law. It covers NRS Chapter 616, which is occupational injury, and NRS Chapter 617, which is occupational disease. The clear and convincing discussion you heard applies to NRS Chapter 616, which is section 1 of A.B. 119. It is a question of proof. In this case you are asking the employers to prove by clear and convincing evidence that something did not happen. We view that as almost an impossible hill to climb on the part of an employer. Failing to do that, and if it goes to a hearing, this bill would apply mandatory penalty provisions. There are a lot of reasons why claims might be denied for logical reasons like not enough medical evidence or waiting for medical reports. That

clock is going to tick and it is going to become very expensive for local governments to be able to comply with that.

The law in Nevada has a declaration in NRS 616A.010 which says, for the accomplishment for these purposes, the provisions of NRS Chapter 616 and Chapter 617 inclusive must not be interpreted or construed broadly or liberally in favor of an employee who is injured or disabled, or the dependents of the employee, or in such a manner as to favor the rights and interests of an employer over the rights and interests of an employee who is injured or disabled or his dependents. It is supposed to be an even-handed, balanced system. Earlier I indicated that there were 51,000 claims filed in 2017. Statistics from 2017 will show that about 10 percent of those claims were denied, about 30 percent of those were reversed on appeal, and about 7 percent of those claims were denied statewide. To indicate to the Committee that this is broad-based would be inaccurate. It does happen and things are litigated.

I have heard that the attempt here is to avoid litigation. We have added language into this bill allowing for bad faith and other kinds of lawsuits which will encourage more litigation, not less. I understand the concerns about having to go through a long process. We heard earlier that a process of 16 to 18 months could occur. I am in favor of anything to shorten the process. I do not think this bill does that and we oppose this bill as written.

**Acting Chair Neal:**

Are there any questions from the Committee?

**Assemblywoman Tolles:**

Have there been other attempts to shorten that time frame?

**Robert Ostrovsky:**

Over the years, we have tried various methods. The hearing process has gotten more and more litigious. When I first got involved in dealing with workers' compensation, 34 years ago, it was a much different kind of situation where you would go to a hearing officer and the two parties would explain their problem. The hearing officer might separate the parties and talk to one and then the other to try to reach some compromise and move forward. Now, it seems like there are an awful lot who get out of the hearings process and the hearing officer makes a determination that is not favorable to the employee and it gets up to the judge. The Judicial Branch of the Department of Administration does a good job, but they are overwhelmed with their calendar. Frequently there are delays in getting medical records. If you send someone for an independent medical evaluation, it may take months to get to see a doctor, have the doctor draft a report, and then get it back to the judge. It is a long process. If we had more judges and better rules of evidence, perhaps it could speed up that process; better discovery rules, for example. We have been successful in speeding it up, but not nearly enough.

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

We have been in discussion with the sponsors of this bill. Clark County continues to be committed to our employees and ensuring that they have the benefits and services they need if they experience an occupational injury or disease. Assembly Bill 119 has some policies and standard changes in it that make it difficult for us to abide by. That expansion of the creation of a new class outside of our current heart and lung cancer presumption is concerning to us as well as the addition of the bad faith and unfair trade practices. As Mr. Mills said, that exclusive remedy is inherent in workers' compensation. The mandatory penalties currently exist in statute specific to heart and lung, which was added in 2017. Those are permissive now and it is up to \$200 per day. This process is quite lengthy and those penalties are concerning to us because it may force us to accept claims that we may otherwise not think are compensable.

Regarding the ability that makes the changes for the employer failing to mitigate predisposing conditions, we would like to partner with our employees when we are working with them and we would prefer avoiding a work-related injury or illness. If we can work on those mitigating situations with them, we would like to do that. I believe we could talk about what the list for mandatory coverage looks like. There are some things on the list that are concerning to us. Some of those conditions are genetic in nature and we need to know how they are occupational. Collocating some of the conditions in statute makes that difficult for the conflicting coverage question.

This bill would be retroactive and would apply to all open claims. We are not sure what that means. If we currently have a claim that has been denied and is in the administrative process, does this roll back and make us subject to those penalties for that claim even though those penalties were not in statute at the time of the action we took? It is for those reasons that we oppose A.B. 119 as written. We are willing to continue to work with the sponsors.

**Acting Chair Neal:**

Does Clark County keep any data on claims that are related to heart and lung where there is the presumption in law where there has been a denial?

**Les Lee Shell:**

I believe we have that data and I will get that for you.

**Acting Chair Neal:**

That would be helpful for us to understand if there is a presumption in law or conclusive presumption, and what the basis was of the denials.

**Dagny Stapleton, Executive Director, Nevada Association of Counties:**

We are in opposition to this bill but we want to reiterate that our members care about the health, safety, and needs of county emergency responders, especially when they are at risk for the work that they do on behalf of the public. It is the right thing to do to pay claims that are connected with the everyday risks these individuals are exposed to. This goes for



Nevada's urban counties as well as the 15 rural counties, the majority of which are insured by the Public Agency Compensation Trust (PACT), which is an association of self-insured public agencies—a nonprofit risk-sharing pool serving public entities.

There are significant expansions proposed in this bill which we are concerned with and many have already been discussed on the record including shifting the burden of proof from claimant to employer regarding whether a claim was work related. Other concerns are the significant daily penalty for appeals even if the appeal has legitimate legal justification, and any addition of legal actions based on bad faith which upends one of the basic tenets of workers' compensation. When considering such sweeping changes, we believe there should be a thorough analysis of the issue and proposed solutions including a full analysis of the economic impact to employers and taxpayers and the consideration of other administrative remedies. These expansions are proposed without study or conversations and without an associated plan for counties to plan for these significant changes. The increased unknown liability will make it difficult for local governments to obtain necessary statutorily required excess insurance to cover catastrophic exposure events. These impacts to counties may be disproportionate in the rural jurisdictions. We would be happy to work on improvements to this process and work with stakeholders.

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

We are in opposition to this bill. We believe the \$100 to \$200 per day fine is a deterrent for employers to contest workers' compensation claims and not to stop complaints in bad faith. There could be any number of reasons that an employer would contest a workers' compensation claim and not in bad faith. There could be potential privacy issues, being that the burden of proof shifts to the employer. We are concerned about the bill being applied to all open claims.

**Suhair Susan Sayegh, Workers' Compensation Administrator, Risk and Environmental Services, Clark County School District:**

We are in opposition to this bill, specifically section 4, subsection 7. There are already provisions in place under NRS Chapter 616D for benefit penalties and fines that can address intentional delays. This bill is adding another layer of benefit penalties, essentially giving two bites of the same apple through the Division of Industrial Relations. As it relates to benefit penalties, there is no need to add another layer.

**Dalton L. Hooks Jr., representing Nevada Self Insurers Association:**

I want to address this from a different perspective, which goes back to the comments from Mr. Mills regarding the grand bargain. As we look at this legislation, it is important to remember the grand bargain and why we are here. The Nevada Supreme Court has indicated that the Nevada Industrial Insurance Act is not intended to be a panacea. It is very specific to benefits that arise out of and in the course and scope of employment. As has been described, heart and lung is already covered under a presumption that is unique to firefighters to cover those cases. The public policy behind that is very clear. These are very difficult cases for a firefighter to determine what chemical he was exposed to that may have given him cancer, or

what particular day it was when he was running around in a self-contained breathing apparatus that put strain on his heart which might have resulted in a heart condition. It is not so with a standard paper cut or an injury resulting from lifting.

As we look at this process, we need to be fair and recognize there are a triumvirate of parties in these cases. You have the injured worker, the employer, and the insurer. Fairness and due process is important. When we look at this act, what you are asking with shifting to the clear and convincing burden is to have an adjuster who has 30 days to make a determination regarding a claim to conduct an investigation and make a decision that is going to result in lifetime benefits for the party. You cannot make a quick decision to accept the claim and later reverse it with case law that does not allow that. As we look at this in the context of a back injury, how do claims get denied? I have been certified by the State Bar of Nevada as an expert in workers' compensation. How does a claim get denied? It is denied primarily because we got an employee's claim for compensation/report of initial treatment form (C-4) where a medical doctor indicated that he was unable to link the condition to the employee's employment. The claims adjuster facing that C-4 is typically not going to put himself in the shoes of a medical doctor and say it probably should be compensable based on what that doctor saw. He or she is going to deny that claim.

This bill would force the insurer to make a determination—with a threat of hundreds of dollars of penalties per day—which would be in contradistinction to the medical evidence we have. We are putting this bill over the recommendation of the medical provider. The consequence of that is we will have a mandatory penalty of \$100 to \$200 per day. In my experience, Mr. Mills' statement of 6 to 18 months for the length of hearings is about right. However, once a determination has been made on a claim, any of the three parties can appeal the determination. If the employer appeals the determination, the TPA or insurer in that case is facing a penalty. The initial hearing has to be scheduled within 30 days. The hearing officer has 15 days in which to render his determination. A party deciding to appeal that has another 30 days to make that determination. By the time it gets to the appeals officer, we are looking at a couple of months out from being scheduled for the initial hearing. Effectively, you have a due process issue with the statute as written. I am sure it will face a due process challenge; I do not think it will survive it. This is intended to force a determination to accept a claim. It is going to be based on a doctor saying that this is not compensable. So we have to conduct an investigation in that context.

There are some questions about how long this process takes and what we can do to streamline it. We have a very small bar and Mr. Mills and I are in court every day litigating these cases. There are a number of things that cause these cases to take longer than we would like, including the availability of medical providers to conduct an IME. All of those delays are now going to be mandatorily put on the shoulders of the insurer, the TPA, and the employer if ultimately the claimant prevails. On average 10 percent of these claims being denied is consistent with my own experience and so is the 70 percent of them ultimately being affirmed on claim denial. In the introduction of the bill it was stated that one of the issues is to get rid of the litigation because of the costs people are having to incur in order to litigate these cases. I want to remind you that no injured employee in the state of Nevada has

to hire an attorney. Though Mr. Mills is fantastic at his job, we have the Nevada Attorney for Injured Workers who provides that service for free.

**Dylan Shaver, Director of Policy and Strategy, Office of the City Manager, City of Reno:**

It is frustrating to sit in a hearing and hear someone say a phrase like "denying claims with impunity." Things like that compel me to speak on behalf of the hard-working public servants who are put into this unfortunate role from time to time. The reality is that nobody wants to deny these sorts of claims. In fact, at the city of Reno, we appreciate the valor and the work that our police and firefighters and other first responders put into their jobs. It is so tremendous not just for us as an organization and as a city, but for us as a community. Those are very valuable resources. At the same time, we have to play the same balancing act that you do in this building.

The act of governance is bridging limited resources with unlimited wants and unlimited needs. These are denials that are coming at the recommendation of trained medical professionals. This is not something people are trying to do. No one is trying to get out of a responsibility here. The real challenge we have here began nearly 40 years ago when we decided to change the state's tax structure and make local governments rely on property taxes and then capping that income. The Legislature has the ability to find revenue for a worthwhile program; we cannot. When one of our experts is working with the medical advisors and insurance professionals and you impose on top of that a \$200 per day fine, every one of those days comes with a \$200 opportunity cost. That is an opportunity cost that is going to come from somewhere in our municipal government. It could come from parks, salaries for police or firefighters, or sewer. The reality is that we have to pay attention when we impose these additional burdens to the costs that they will create.

The city of Reno appreciates the service of the people who are here today, but we do not believe that this bill solves the problem. It makes one class of plaintiffs' lives a lot easier, but we are just moving the burden from one place to another and it is not a better place than it was in the first place. We are willing to work with the bill sponsors.

**Acting Chair Neal:**

Typically, we only see bills in the Legislature that push the pendulum in the opposite direction when they are trying to force the middle. Usually, when somebody goes to the extreme, it is because something is going wrong in the process and there are too many denials of good claims, so you need to find the balance in the system. Maybe this is the opportunity for everybody to see the light on both sides.

**David Cherry, Government Affairs Manager, City of Henderson:**

We recognize occupational injuries take place and we want a system that works for everyone and that ensures that those who need medical care can receive treatment and the benefits they deserve. As others have expressed, we have concerns about the bill including the change from optional to the mandatory penalties, the change in the presumption burden, and the upending of the grand bargain by the inclusion of the bad-faith provisions. We are also

concerned that there will be an impact on our ability to purchase stop-loss insurance that could raise the cost of this coverage overall. We would also like to participate if there is a working group to try to get to some middle ground and make sure the system is strengthened for everyone who is participating.

**David Watts-Vial, Chief Deputy District Attorney, Washoe County District Attorney's Office:**

Washoe County is in opposition to this bill because it shifts the burden of proof from the employee to the employer. It makes the burden of proof essentially that of proving a negative which is an impossible burden to meet. The penalties for denying or appealing claims create yet another disincentive to challenging claims, not that that many will be challenged due to the burden of proof. It also shifts medical determinations away from physicians who are offering medical opinions as to causation and prognosis. Because there is only a slight ability to challenge any claims of cost and insurance, the cost and insurance for those claims is going to rise as well.

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

I agree with the previous testimony in opposition to A.B. 119. I would like to emphasize our great concern with the shifting of the burden of proof to clear and convincing to the employer and the provider. We urge a no vote.

**Acting Chair Neal:**

Are there any questions from the Committee? Seeing none, we will move to neutral.

**Ray Fierro, Administrator, Division of Industrial Relations, Department of Business and Industry:**

We are neutral on A.B. 119 and we submitted no fiscal impact.

**Assemblyman Yeager:**

I have a question for the Legislative Counsel Bureau. Would the Committee be able to get some of the statistics relating to hearings that have been filed, denied, and reversed? I do not know if those are available, but it may be helpful if we could get the last five years to see the trend on the state side.

**Acting Chair Neal:**

Are there any final comments on A.B. 119?

**Mike Ramirez:**

We have heard a lot of rebuttal. We have had talks and we continue to have talks; it is a constant uphill battle. We look forward to working with all of the stakeholders and I believe we can come to some agreement.

**Acting Chair Neal:**

I will close the hearing on A.B. 119 and open the hearing on Assembly Bill 370.

**Assembly Bill 370: Revises provisions relating to workers' compensation. (BDR 53-6)**

**Assemblyman Skip Daly, representing Assembly District No. 31:**

Assembly Bill 370 only deals with the death benefit sections of workers' compensation. It does not affect permanent or partial total disability. We are working off the mock-up of the proposed amendment which is on the Nevada Electronic Legislative Information System (NELIS) (Exhibit C). There has never been any type of increase for the death benefit in the state law. There has been some activity on total disability, but none on the death benefit side. In 2009, Assembly Bill 178 of the 75th Session was introduced. It went to the Assembly Committee on Ways and Means and never came out. We are hoping to avoid that. In the bill there is a provision that will provide for a cost-of-living benefit for people who are not in pay status. It will be for somebody in the future who has a tragedy in their life and is eligible for the death benefit. It will be included in the benefit which will be paid for with the premiums.

We have a stranded pool of people who are currently in pay status for whom we do not have a way to pay for the cost-of-living adjustment. We are trying to find a way to give them a cost-of-living adjustment at least going forward in 2020 and not have that be something the state needs to fund. Under the existing plan, the workers' compensation division does an assessment of all of the insurers in the state. This bill will allow them to include the cost of these increases for the pay status people in that assessment. It would allow them to collect it and allow them to pay out of it for that benefit. That is what this is intended to do.

Section 1 of the proposed amendment allows the Division of Industrial Relations (DIR), Department of Business and Industry, to make assessments, and the language added in subsection 3, paragraph (g) allows DIR to include in the assessment the amount to pay for the workers who are in pay status now. That was not included in the premium when the benefit was provided. We are trying to find a way to pay for that.

Section 2 is proposed to be deleted. Section 3.5 of the proposed amendment is the portion that will add a new section to the *Nevada Revised Statutes* (NRS) which will require future payees to receive a cost-of-living increase to the death benefit. That will be paid for and included in the premiums the insurers charge.

Section 4 allows workers' compensation to pay for the cost of the benefit and the cost of administering the program. We are trying not to have any fiscal notes or impact to the state. It is my understanding that DIR will get the money and it will go to the State Treasurer and they will be authorized to pay the money. They can collect the money and make it as an offset. The insurers will pay the money. In 2018 the amount that was paid out by all of the insurers in the state for death benefits was around \$13.9 million. The cost-of-living increase of 2.3 percent would be \$319,000 which would be added to the assessment and any amount that it would cost to administer the program.

In section 5 and section 6, some of these people have been in pay status for 30 or more years and have not received any cost-of-living increase. We are trying to take a small step without getting too big and having the impact that we are trying to avoid. A person who has been in pay status from 1989 and before would get a three-year retroactive payment which would be compounded going forward. That calculation of \$319,000 is the 2.3 percent on \$13.9 million—the administration costs plus the retroactive pay. Then it will go up slightly over the years because it compounds. As the people in the pool die, the number will get smaller and eventually it will stop. One of the things we might add is to say when the last survivor is paid, the assessment would end. We want to make sure that is the intent. There are two pools of people and there are two things we are trying to do. There are people who are in pay status who never got a benefit and we are trying to have that paid through the assessment without having an impact on the state. There is a second pool of people who have not incurred a claim yet. Those people would be covered and have the added benefit which would be paid for with future premiums.

[Chair Spiegel reassumed the Chair.]

**Chair Spiegel:**

Could you explain how the assessment would work?

**Assemblyman Daly:**

The state does an assessment of a variety of costs that are incurred to administer the program. I am told that number is in the neighborhood of \$38 million per year, so they are already making that assessment. The cost for this increase for the pool of people we are trying to target would be added to that assessment. It will be relatively small in the scope of things. Once they collect the money and have it in the pool, it is set aside to pay for those benefits, and then they are authorized in the bill to spend that money to pay for those benefits.

**Chair Spiegel:**

Who is being assessed and what are they being assessed on?

**Assemblyman Daly:**

The providers of workers' compensation are the ones that receive the assessment. Each individual employer pays a premium to someone or they are self-insured. Those people providing the workers' compensation receive the assessment and everybody pays their share.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

So from now going forward, you want to build a cost-of-living adjustment into the death benefit?

**Assemblyman Daly:**

Yes.

**Assemblywoman Carlton:**

You are saying from 1989 and before. So with the three-year retroactive pay, you are trying to address those people?

**Assemblyman Daly:**

On a small scale, that is correct. If you were in pay status and your claim has been in existence for 30 years, you will get a three-year retroactive increase with compounded interest. After 2020, you will get a 2.3 percent annual increase. If your award started between 1989 and 1994, you will get a two-year retroactive increase. If the award was after 1994, the cost-of-living increase will begin in 2020 and go forward.

**Assemblywoman Carlton:**

So the lookback goes to 1994?

**Assemblyman Daly:**

There are two tiers. Prior to 1989, it is three years, and between 1989 and 1994 it goes back two years. From 1994 forward, the cost-of-living adjustment starts in 2020. If you went into pay status in 1995, the cost-of-living increase of 2.3 percent will start in 2020.

**Assemblywoman Carlton:**

Would the lookbacks be State General Fund dollars?

**Assemblyman Daly:**

They will come from the assessment.

**Assemblywoman Carlton:**

Would that benefit be \$70 per month?

**Assemblyman Daly:**

If you have a \$1,000 per month benefit and you qualify for the three-year provision, it would compound annually which would be approximately \$1,070. Then you would add 2.3 percent annually. In the other group, you would only get the increase twice and then it would increase in 2020 and forward. If the claim was paid after 1994, you will get the 2.3 percent increase annually starting in 2020.

**Assemblywoman Carlton:**

How many people will this impact?

**Assemblyman Daly:**

I know the 13.9 million is the dollar amount. Two groups were working on the actuarial information on how much they anticipate the first assessment is going to be. The first assessment is going to be higher because you have to pay for the three-year and two-year

lookbacks. The future assessments will be based on how many people are left in the pool and it may have to increase for a few years because of the compounding. I am thinking on the high end the first assessment might be \$1.2 million to \$1.3 million, and after the initial year, around \$400,000 annually until the pool diminishes.

**Assemblywoman Carlton:**

I have a concern about the implementation date and being able to actuarially account for the dollars because rate setting goes into effect at certain times. With the implementation date on this, is there an issue with being able to make that adjustment so the assessments actually do come in to pay the benefit?

**Assemblyman Daly:**

I have not heard anybody say that the dates will not work, but we want to make sure they do. We will make adjustments if we have to do so.

**Chair Spiegel:**

Do you have any sense of the impact that these additional assessments would have on any of the insurers and the possibility that they could become insolvent, and what that impact would be in the guaranty fund?

**Assemblyman Daly:**

I could not say what financial conditions any of the insurers are in. I know they are paying in the neighborhood of \$38 million in assessments now. This is a small increase to pay for this pool of people. We have been trying to help these people since 2009, and I hope we have found a way where it is not going to have a great fiscal impact on the state so this benefit can be covered.

**Chair Spiegel:**

Have you reached out to the guaranty association?

**Assemblyman Daly:**

No, and they did not come to me either.

**Chair Spiegel:**

Are there any other questions from the Committee?

**Assemblywoman Neal:**

How did you arrive at a two-year lookback versus a three-year lookback, and who is in the class of 1989 that we are talking about?

**Assemblyman Daly:**

That is the number that has been in the statute and has been used in other bills. I became aware of this last session and started asking people how we could fix this if there is no money in the state fund. The consensus was that the assessment was the mechanism to do it. We wanted to keep that as low an impact as we could on the ratepayers and everybody else.



We wanted to try to do a little bit more for some people who have been eaten up by inflation for 30 years so the three-year lookback is a small amount, but I did not figure I could go back 30 years. I wanted to get as much done as I could without weighing this down and not making any progress. I was trying to balance it.

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

In 2001, I was able to get a bill sponsored by a legislator that tried to address some of this issue. The insurance industry was not receptive to trying to make a change. I found the uninsured employers account and there was a large amount of money in there. It was generating a significant amount of interest and dividends per year. In 2001, we passed a bill that said each year the DIR would withdraw the amount that had been gained per year in dividends and they would divide that amount up and give it to all those people who were disabled and on permanent total disability. They would divide it based on a formula of those who had been disabled the longest and the least amount of time. It was not a lot of money, but it was something. We got a commitment from the insurance industry that they would work with me the next session to accomplish something.

In 2003, we got another bill sponsored. In 2003, I went back 40 years with social security and I took the annual increase to social security for every year and I averaged it. That number came out to be 4.6 percent per year. The industry said they could not go 4.6 percent and we agreed on half of that. The insurance industry said the problem they encountered was they did not fund that before. They did not fund those premiums before to pay for that cost-of-living adjustment. They said they could fund it in the rates going forward. The people who were left out of that were those who had been disabled prior to January 1, 2004. All they continued to receive was the interest that was drawn off the uninsured employers account. They did not get the 2.3 percent annual increases and they continued to have their benefits erode away with the cost of living. There are a couple of bills in the Senate that address this same issue to try to find some means by which to fix this without going through the insurance industry necessarily to raise premiums, but by using an assessment through the workers' compensation system.

**Chair Spiegel:**

I will open testimony in support of [A.B. 370](#).

**Linda Wicksten, Private Citizen, Sparks, Nevada:**

My husband was killed 39 years ago along with former Lieutenant Governor Sue Wagner's husband, another scientist, and the pilot of the plane. My husband was the copilot on the Desert Research Institute weather plane. [Linda Wicksten read from prepared testimony ([Exhibit D](#)) and submitted a letter of support ([Exhibit E](#)).]

We are a small group of widows who have been fighting for a living pension amount for over 35 years. All we ever hear is, No, there is no money for you, Life is not always fair, and You will get more money over my dead body. Yes, two men actually said those things: Run along, it is not my job, et cetera. Why is it that a group of widows is treated this way by the Legislature for decades? We are all here because our husbands were killed on the job in and

for Nevada; it was not something any of us chose, and our husbands certainly did not. We are not asking for anything other than to be brought to current dollars and receive a cost-of-living adjustment (COLA) from now on. We are not asking for back pay. Can any of you live on approximately \$1000.00 a month? We do.

The price of everything continues to go up and up; our pensions do not. Trying to pay bills, insurance, medical, gas, repairs, and food just to live is not easy. The majority of us are 60 to 90 years old, many with major medical problems. We have to decide on spending money for necessary medical or food. Would you feel this way if it was your grandmother, wife, mother, or daughter? Caralee needs a knee replacement and cannot afford it. The doctor said without it she will be in a wheelchair. Nettie has a 57-year-old daughter who is going on 3 years of age mentally. Both have major medical expenses and they have already lost their home.

Caralee's husband died in a Southwest Gas explosion. My husband was a copilot on a plane that crashed. We identified parts of their bodies. Nettie's husband fell from the second story of a building in Las Vegas that was being built in City Center. Jeannie Minny and June Down's husbands were Reno Police officers who were killed in the line of duty. All we are asking for is a living wage and we do not think that is too much to ask for.

**Chair Spiegel:**

Are there any questions from the Committee?

**Jill Dickman, Private Citizen, Sparks, Nevada:**

I am a former assemblywoman. I pre-filed a version of this bill in 2016 and many people have worked on this issue over the years including former Senator Debbie Smith, Senator Heidi Gansert, and former Governor Sandoval's Chief of Staff, Mike Willden. There have been bipartisan efforts that, unfortunately, have fallen through the cracks. I do not understand how this can all be about costs. There is fairness, humanity, and caring about people. Is this how we demonstrate our gratitude to people who have given their lives in service to our state? If we went back to 1980 and gave Mrs. Wicksten a COLA, she would be receiving \$2,650 per month in 2020. If she had received a COLA beginning in 2004 under Assembly Bill 438 of the 72nd Session, her check would be about \$1,575 per month in 2020. This bill gets her maybe \$1,150 which is a less than \$70 per month increase. Every time the bill has come up, these people have gotten their hopes up only to have them dashed. Unfortunately, many of the people this has affected have already died without knowing that we Nevadans truly cared about them and their sacrifices. Please do not let it be more of the same for the remaining survivors. I am asking you to do all you can to get this bill passed. This is an opportunity to correct a decades-old injustice.

**Chair Spiegel:**

Is there anyone else wishing to testify in support? Seeing no one, is there anyone to testify in opposition?

**Jeanette K. Belz, representing American Property Casualty Insurance Association:**

We submitted a letter in opposition to A.B. 370 ([Exhibit F](#)). The amendment submitted by Assemblyman Daly would bring us to neutral.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

Would it be possible for you to get the numbers so we could have a better feel for the bill? Even though this will not be General Fund dollars, it will be insurance premium dollars and we need all that information to consider.

**Jeanette Belz:**

We have been talking about that internally and I will try to get those numbers to you.

**Dalton L. Hooks Jr., representing Nevada Self Insurers Association:**

We are in opposition to the bill specifically with regard to section 3.5 and the confusion about which there has been discussion today. We are concerned with sections 5 and 6 and their retroactive effect. We agree with the overall goals of the bill in order to increase the benefits to death benefit recipients to a more modern wage. Our opposition is simply the issue of the retroactivity and the costs that will be associated with that.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

I would like to have you figure out what the actual cost will be and what the assessment would look like.

**Dalton Hooks:**

I think you will hear some actual numbers from other testifiers, and we would like to participate in that. We would like to work together to get this to a point where we can agree.

**Kathy Clewett, Legislative Liaison, City of Sparks:**

With the proposed amendment, we are probably in neutral now.

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

I agree with Mr. Hooks' comments which reflect the bulk of our concerns.

**Paul J. Enos, CEO, Nevada Trucking Association:**

We have the same concerns on the retroactivity. We will get the numbers requested by Assemblywoman Carlton.

**Brian Reeder, representing Nevada Contractors Association:**

We agree with previous testifiers in opposition. We will also look at getting the numbers requested by Assemblywoman Carlton.

**Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:**

Our concern is about the retroactive costs.

**Andrew MacKay, representing Nevada Franchised Auto Dealers Association:**

We agree with the others who testified in opposition and we will have figures for the Committee.

**Chair Spiegel:**

Is there anyone else to testify in opposition? Seeing none, is there any testimony in neutral?

**Assemblywoman Carlton:**

Where do we stand as far as the cost of workers' compensation premiums in the country?

**Charles J. Verre, Chief Administrative Officer, Workers' Compensation Section,  
Division of Industrial Relations, Department of Business and Industry:**

I am not sure exactly where we stand. I will find out and provide that information to the Committee.

**Ray Fierro, Administrator, Division of Industrial Relations, Department of Business  
and Industry:**

Our preliminary results for the cost of what this would be for year one is \$565,738, and year two, \$934,434. For the biennium, it would be \$1,500,172. Currently there are 578 claimants under the survivor benefits. Of those survivors, 168 of them are in the prior-to-1989 category; 68 in the 1989-1994 category; and 342 in the on-or-after 1994 category. When this bill was first introduced, we did not have a fiscal impact. With the amendments, we will have to look at the possible fiscal impact to the Division of Industrial Relations (DIR).

**Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers  
Holdings Inc.:**

We strongly support the 2.3 percent COLA going forward. We think that is absolutely the right thing to do. We oppose doing retroactive benefits. You are asking policyholders today and in the future to pay for benefits of which there was no contemplation of that benefit or any premium collected for those benefits. That said, this is a policy-setting body and this bill as it is drafted, besides taking it out of the General Fund, does a good job of spreading the wealth to everybody in the workers' compensation community that is doing this. Because of that, I am taking a neutral position. I do not know what the financial impact is on every carrier or us, but because we are the former State Fund, 330 of those 578 claims are ours. I need to be clear about the deletion of *Nevada Revised Statutes* 616C.453, which includes the section where the DIR currently pays these benefits. Is the DIR going to be making these payments to the survivors or will the insurer pay them? This bill does not address any of that. Should this bill pass, we would like to see a sunset on this bill.

**Assemblywoman Carlton:**

When we switched over from the state system, there was a lot of discussion about the tail and the state picking up the cost of the tail and building that into rates.

**Jim Werbeckes:**

When we privatized, we took all the assets and all the liabilities including the \$2.2 billion worth of liabilities of the old claims. We sold that off to three reinsurers for roughly \$775 million. We still manage the claims. Those claims are going to cost \$2.2 billion over the lifetime of the claims. The reinsurance contract that we have with the reinsurers, if this bill passes, will pay these additional benefits.

**Assemblywoman Carlton:**

Have you been able to determine the actual increase to premiums and who would pay the premium?

**Jim Werbeckes:**

Today, Employers Holdings Inc. only has about 8 to 10 percent of the overall market in Nevada. This will be built into the assessment we receive from DIR, which is based on premiums written in the state for insurers, and for the self-insurers it is based on some formula with claims. That is how that assessment will be broken down. Assemblyman Daly indicated that our claims in the first year would be \$400,000 and the DIR's claims would be around \$565,000. That is for the first year. Divided by all of the carriers doing business in this state, it is probably not a huge amount of money per assessed individual employer. This is not the only bill in the Legislature that is going after retroactive benefits and will affect this account.

**Assemblywoman Carlton:**

What percentage of your business does this represent?

**Jim Werbeckes:**

In the state of Nevada, we do approximately \$12 or \$13 million in premiums written.

**Assemblywoman Carlton:**

People will want to know what the impact will be to the employers that will end up paying this.

**Jim Werbeckes:**

The people who received the money 30 years ago, that was the promise that was provided at that time. This body made that policy and it needs to ask if that is fair. If not, you need to change the policy and the carriers will have to do what you decide. It is the insurance policies of today and in the future that are going to pay for these benefits.

**Robert Ostrovsky, representing Employers Holdings, Inc.:**

I have been working with Assemblyman Daly for about four years and I want the Committee to understand that this is a tough issue that you have inherited from policy decisions that were made many years ago. Assemblyman Daly has worked very hard to find what he thought was a reasonable solution by socializing the cost against all insurers. The fairness in that, in the policy decision going forward is yours. I would like to thank him for his effort.

**Assemblyman Daly:**

There is no denying that, in the end, the people paying the premiums are going to pay for it, but that is the way it is. We have a pool of people who are stranded where the cost for this benefit was not included in the premium when the employers made their promise. I think it is time, and we should remember there are people behind all of these numbers. It is not just about the numbers. I tried to find that balance. I think this is a path forward that will work.

[Communications in support of A.B. 370 were submitted but not discussed and will become part of the record: ([Exhibit G](#)), ([Exhibit H](#)), ([Exhibit I](#)), ([Exhibit J](#)), and ([Exhibit K](#)).]

**Chair Spiegel:**

I will close the hearing on A.B. 370 and open the hearing on Assembly Bill 455.

**Assembly Bill 455: Makes various changes relating to families of injured workers.  
(BDR 53-1102)**

**Jim Werbeckes, President, Kids' Chance of Nevada:**

This is a bill I have requested to help Kids' Chance of Nevada. Kids' Chance of Nevada is a nonprofit organization which is part of Kids' Chance of America. Kids' Chance provides college and technical school scholarships to children whose parents have either been killed or severely injured in a workplace accident. I have been president of Kids' Chance for a year and a half. When I got into this organization, the people from the national organization said one of the hardest things you are going to have to do is find kids. He was right. Raising money is the easy part. Trying to find kids is the hard part ([Exhibit L](#)) and ([Exhibit M](#)).

I currently have three recipients on scholarship. One is attending the University of Nevada, Reno (UNR), one is at the University of Nevada, Las Vegas (UNLV), and one is at the College of Southern Nevada (CSN). We have put out to the Plaintiffs Attorney Bar Association, the Nevada Justice Association, the Defense Bar, claims adjusters, and companies trying to find kids to help support. We have had a difficult time finding them. I reached out to DIR because they know all of the beneficiaries. I asked them to send a letter to these kids to let them know that this scholarship is available. They were very receptive, however, they said the statute did not give them the authority to do so. This bill gives them the authority if they wish. It does not demand or require, it allows them to reach out to the kids who may be eligible for a scholarship from us.

The three kids I have include Hannah Roach, a student at UNR. Her father was a police officer in Las Vegas. He was hit on his motorcycle and is a paraplegic. Unessa Hicks is a student at UNLV. Her father was killed when she was nine months old. He was a bartender in Las Vegas and was shot while working. Samantha Hernandez is at CSN. Her father died about a year ago when the vehicle he was in rolled over. These are three amazing women who are getting an education with very little money coming out of their pockets. We would like to help more kids. I hope you can support this bill.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

In section 1, subsection 9, paragraph (a) it says, "Disclosing any nonproprietary information relating to an uninsured employer or proof of industrial insurance." I am trying to understand that. I know what you are trying to get at, but I do not think I see anything in this bill that says they are doing this just for nonprofits, and I do not want to open the door to businesses being able to access some of this information. We should protect injured workers from people preying on them, knowing that they have a death benefit.

**Jim Werbeckes:**

This is not the original language I provided to the Legislative Counsel Bureau. I have no idea what that means. All I am trying to achieve is to allow DIR to be able to contact these people and tell them the scholarship is available. I would be happy with any language that gets this done.

**Assemblywoman Carlton:**

I am wondering if we would want some type of nonprofit criteria involved. I do not want a product line of some kind going to DIR and saying, We want you to send something out for us, too, which would give it the appearance that it is supported by the state, and DIR would not have the authority to say no.

**Chair Spiegel:**

Is there testimony in support of the bill?

**Suhair Susan Sayegh, Workers' Compensation Administrator, Risk and Environmental Services, Clark County Unified School District:**

We are in support of Mr. Werbeckes' cause. Based on the provisional language that Assemblywoman Carlton mentioned, we would like to support this bill.

**Jeanette K. Belz, representing American Property Casualty Insurance Association:**

We submitted a letter in support of A.B. 455 and encourage you to work out any language to ensure these kids are getting the benefit of this program ([Exhibit N](#)).

**Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:**

I am a board member of Kids' Chance of Nevada. This is a wonderful project and we need the ability to reach out to these children. We work hard to raise money for these kids to get an opportunity to get a higher education. We support this bill and, hopefully, we can work the language out to make it doable for this nonprofit.

**Dalton L. Hooks Jr., representing Nevada Self Insurers Association:**

We strongly support this bill. Getting the information in the hands of the people who need it is important. The Nevada Self Insurers Association has its own scholarship fund and we have a similar problem getting in contact with people who are eligible for those funds. We appreciate Kids' Chance of Nevada's predicament and we want to support getting that information out.

**Jaron S. Hildebrand, Manager of Government Affairs, Nevada Trucking Association:**

We would like to echo the comments of Dalton Hooks and Liz MacMenamin. We are in support of the bill.

**Chair Spiegel:**

Is there anyone to testify in opposition? Seeing no one, is there anyone to testify in neutral?

**Ray Fierro, Administrator, Division of Industrial Relations, Department of Business and Industry:**

We take a neutral stance on this bill and we have no fiscal impact.

**Assemblywoman Carlton:**

We want to protect employees, spouses, and dependents from someone requesting you to send something out. I am not sure what your criteria are or if you have criteria. I do not want to open the door to other private businesses being able to do this. I think this is a very small exception we want to make and I am not sure the language is tight enough. Have you had your people take a look at it to see what the impact might be?

**Ray Fierro:**

We are willing to work with the bill sponsors to make sure the language is crafted in a way that prevents everybody being able to access that information.

**Assemblywoman Carlton:**

Maybe it could be something along the lines of "from a nonprofit entity for the benefit of the dependent."

**Ray Fierro:**

That is correct.

**Chair Spiegel:**

I will close the hearing on A.B. 455 and open the hearing on Assembly Bill 492.



**Assembly Bill 492: Revises provisions governing industrial insurance benefits.  
(BDR 53-709)**

**Assemblyman Tom Roberts, Assembly District No. 13:**

Assembly Bill 492 revises provisions governing industrial insurance benefits. It adds posttraumatic stress disorder (PTSD) to workers' compensation. I worked in law enforcement for several years and I dealt with employees with PTSD at the Las Vegas Metropolitan Police Department and in the military. It is a significant issue for law enforcement. Over the years I have seen several people commit suicide and have other mental health issues associated with it. Some of those could not return to work or work functionally as they had done previously due to exposure to serious incidents. I have seen the effects of PTSD and this is the vehicle to do it. I will go through the bill.

Section 1 defines PTSD as described in the *Diagnostic and Statistical Manual of Mental Disorders*, 5th Edition, published by the American Psychiatric Association. It sets the standard for proof for this type of disorder as clear and convincing evidence. It puts the burden on the employee. It also highlights that PTSD could result from a first responder acting in the course of duty. It would not apply to off-duty situations. It also states that it is required that first responders are examined and subsequently diagnosed with such a disorder by a licensed psychiatrist. Section 1 also requires that one or more of the traumatic events must occur for exposure. It sets out 11 traumatic events in the bill. It distinguishes between being on or off duty and gives specific guidelines for that. It also requires the Division of Industrial Relations (DIR), Department of Business and Industry to adopt regulations which specify the injuries that qualify for grievous bodily harm of a nature that shocks the conscience for the purpose of this section. As written, it would mean that you would directly witness, meaning seeing or hearing one of those 11 events. It also lists and defines first responders as the seven that are identified including a volunteer firefighter, police officer, emergency medical attendant, emergency dispatcher or call taker who is employed by a law enforcement agency or public safety agency in this state, a crime scene investigator who is employed by a law enforcement or public safety agency in this state, a forensic investigator, and a county coroner or medical examiner.

Sections 2 through 7 add PTSD as exempt for claims in workers' compensation. It is more technical language to include this in other workers' compensation fields.

**Angela J. Leath, Crisis Intervention Administrator, Las Vegas Fire and Rescue, City of Las Vegas:**

I am a veteran and very passionate about PTSD and really see the need for us to start taking care of our first responders. I am going to show video clips of a few 911 calls ([Exhibit O](#)). One is from 1 October and one is around a child incident. [The calls were played.]

I played those calls to try to give you an idea of what our center goes through on a regular basis. The mass casualty call was something that none of us could have imagined having to work. At the end, when our crews went in, there were 31 bodies on the scene and 58 dead total. They had to transfer 851 people. Our 911 call center was flooded with calls from

people trying to figure out where to go and we had nothing to tell them. People with their loved ones shot next to them who we would normally tell to start cardiopulmonary resuscitation (CPR), we had to tell them to flee. Once the scene was secure and our medics and emergency medical technicians could get into the scene, they drove around bodies trying to find people who were still viable enough to save. They were in a position where they had to do a triage. We typically do not do that; if someone calls and needs help, we take them to an emergency center. We do not usually have to triage everybody to decide who we can take and who we cannot.

All of the people I just mentioned would have been excluded from filing a mental stress injury claim the way the *Nevada Revised Statute* is written now. We are here to try to make sure the people who are doing this work for us are getting the health care and treatment they deserve and need after these incidents happen. I played the drowning call so you could see that it is not just the mass trauma calls that can have an effect on people. These men and women do this on a daily basis. They do not get these calls every day but when they do, it can be traumatic. Like anything else, when you look at the revisions to the statute, what is listed are potentially traumatic events. That is important to understand. It does not mean that everyone that experiences it is going to have trauma, but the potential is there. We are asking to have something put in place to support these people when it does happen. Not only are all of those people left out, our dispatchers are always left out. Based on the current statute, it says you have to feel as though your life was threatened. The dispatchers are never in that situation where their life is threatened, so they have been excluded automatically. We had two dispatchers in the past year have someone complete a suicide while they were on the phone with them. They had no means or recourse to take some time off to get the help they needed.

I was a combat veteran in two deployments and I could not imagine what it would be like to have gone into that scene. We were trained to go downrange. We knew what we might see and what might happen, and we still came back with a lot of acute stress and a lot of posttraumatic stress symptoms. Imagine going into a scene that your mind and body has not been prepared to see. We had nothing to offer these men and women when this event was over.

**Todd Ingalsbee, representing Professional Fire Fighters of Nevada:**

As you have heard from the bill presenters, PTSD is a growing concern for firefighters, police, and dispatchers. According to a recent publication, 90 percent of adults have at least one exposure to trauma and the most common number of potentially traumatic exposures in a lifetime was three. In contrast, our members routinely encounter as many as four unique potential traumatic events in a response to a single alarm. Our members frequently experience life-threatening accidents, natural disasters, and suicide of coworkers; for civilians, multi-casualty accidents, significant life-threatening events involving children, and they witness injury and death on a daily basis. Increasingly, our members' duties require that they also respond to large scale catastrophic events, and natural and technological disasters. October 1 is obviously a catastrophic event that happened here. Firefighters and dispatchers can be exposed to the common life number of events in a single shift.

The overwhelming majority of career firefighters, police, and dispatchers are required to work a minimum of 28 years in Nevada. Their cumulative occupational exposure to potentially traumatic events far exceeds the exposure for civilians. Studies have found that up to 30 percent of firefighters meet criteria for a current diagnosis of PTSD. This number might also be lower than reality because the longtime stigma in the fire and police services for decades was to "suck it up." You did not dare ask for help because that was a sign of weakness. For years, firefighters have masked symptoms with substance abuse. Many symptoms like anxiety, lack of sleep, depression, and divorce were considered to be part of the job. We did not believe we had a problem until the suicide rates started to increase. One year we had more suicides than any other line of duty death. We feel this legislation is important to get our members help to provide them with treatment early, just as we do in some of our other presumptive benefits. Plus it provides a plan for both the members and the municipalities to follow.

Approximately 60 percent of people who receive evidence-based treatments reported symptoms improvement. About 40 percent no longer meet criteria for PTSD at the conclusion of treatment. Most treated individuals report a return to functional status. Thus, the evidence indicates that PTSD is treatable as opposed to a chronic condition. We truly believe this, and it is important that, with this legislation, our members will have this option and feel they can be provided this treatment. The additional burdens should not be placed on firefighters, dispatchers, or police when they develop PTSD that studies have shown are clearly a result of their occupation.

On a positive note, they are treatable. The cost of educating new firefighters, police, or dispatchers far exceeds the cost of treating or returning to duty a professional with a work-related mental health diagnosis. Multiple studies clearly document that firefighters, dispatchers, and police are exposed to trauma at high levels in their work. Data also clearly shows that we are at an increased risk of developing PTSD. The current workers' compensation system places an enormous burden on the individual firefighter, police officer, or dispatcher who currently develops or has PTSD. Presumptions of PTSD has become accepted throughout the community, the country, and the mental health profession. It is time that Nevada acts on the science and enacts legislation to help our members who develop work-related mental health disorders including PTSD.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Neal:**

In section 1, subsection 6, paragraph (a) it says, "Apportionment due to a preexisting posttraumatic stress disorder." How does the apportionment work? If you are an individual who is taking calls and this has not been covered prior, clearly there is a lineage to what has been going on with that individual. This seems to be an exclusion. It looks like they could have already had stress they were enduring, but they did not have a claim for it and now it cannot be apportioned.

**Angela Leath:**

I think this is referring to a preexisting condition. You already had the diagnosis prior to this occurring.

**Assemblywoman Neal:**

It does not speak to proximity of occurrences. There could be a retroactive link if there were a series of events that happened back-to-back in terms of the calls they took. Technically, you would still be treating symptoms from all those calls. At some point they do converge and that is why I was trying to get an understanding about that particular section. My second question is on subsection 8. I am trying to get an understanding of when the Division adopts the regulations which specify the injuries that qualify as grievous bodily harm. How would that be determined? You have a list of things that an individual will witness, but shocking the conscience—it has to be pulled from somewhere? What do you envision being the process for how someone adopts regulations around these items?

**Todd Ingalsbee:**

I got examples from other municipalities throughout the country. This is just a start so we have a process. There is still some work to be done.

**Assemblywoman Neal:**

What shocks the conscience? That is what I am trying to figure out—the degree of how you determine the relevancy or the nature of it—because it is very subjective.

**Angela Leath:**

It is subjective when we talk about mental health in a lot of different capacities. What we are looking for is that they will still need to be diagnosed by a professional. It is subjective based on that person's experience. That is why it is so hard to put into words. We would be willing to work on the wording so we can get something in place that everybody thinks is appropriate. Two people can experience the same event and one can bounce back while the other may have a mental injury from it. For example, if two law enforcement officers go into a residence and one falls down the stairs and he is fine; the second falls down behind him and breaks his legs. They both experience the same event and one has a physical injury and one does not. Mental injuries are the same way. You can experience the same event and one may come out with a mental injury and the other one does not.

**Todd Ingalsbee:**

It will be based on the professionals' diagnosis of each individual. That was our objective. They will have to determine if it is job related or if it is not.

**Assemblywoman Neal:**

I did not see anything about the confidentiality of when you report the incident because there is still a machismo factor in regard to not wanting other people to become aware of what you are experiencing.

**Assemblyman Roberts:**

Those kinds of communications are supposed to be confidential. The more that people believe there is a sense of confidentiality and people will not know they are seeking help, the more apt they are to go get help. We do not want to deter people from seeking help.

**Assemblywoman Carlton:**

We know that with police and firefighters the stress factor falls in almost within the presumptive eligibility side. When I read section 2, subsection 1, "Except as otherwise provided in this section, an injury or disease sustained by an employee that is caused by stress is compensable pursuant to the provisions of NRS Chapters 616A to 616D." If stress is already covered, but now we are making a list of what will actually be considered stress within this particular dynamic, how is all this going to fit together? If stress is already presumptive, once you get the diagnosis, it would be presumed that it happened in the line of work, so why would we have to list all of these things so people would get the treatment they would need.

**Todd Ingalsbee:**

We listed those items as examples and to try to be more specific about things we can prove are related to PTSD and what is causing the increase in PTSD within the fire service. We include that to narrow it down and make it more palatable.

**Assemblywoman Carlton:**

When you make a list, you leave somebody off of the list. It has always bothered me that we have not covered dispatchers because they are exposed to stressful incidents the whole time. I want to make sure that when we make this list, we do not take an incident that is not involved and when the diagnosis is made, they are not allowed the care they need because it is not part of the list.

**Todd Ingalsbee:**

We agree. We tried to get all of the parties together to brainstorm and come up with every situation we could including some left out by other states.

**Angela Leath:**

That is part of the reason they define witnessing as seeing or hearing to make sure it includes the dispatchers. As far as the old NRS went, there was a clause in NRS 616C.180 that said injury or disease caused by stress, but it had to be caused by extreme stress in the time of danger. That was exclusive language toward the dispatchers as well as the investigative crews and the coroners' investigators who are actually cleaning up the bodies.

**Assemblyman Kramer:**

Nurses who have worked in a trauma center for many years have to rotate out. After some time they can go back to it. Their reason for going out is essentially the same thing—the PTSD of dealing with people in very trying circumstances. Is it the plan to take a step further to include anyone in a position of experiencing what you are talking about?

**Assemblyman Roberts:**

From my experience, I think this is an area that has been neglected in workers' compensation. I am in management, and throughout my career I saw a lot of people who did not get the help they needed and it ended up changing their lives in significant ways. A lot of people absorb it very well. This is a field that we need to explore so we do not break the bank with workers' compensation and building a system which people can abuse. We take care of the people who need it. That is why I am here today.

**Chair Spiegel:**

In section 1, subsection 9, paragraph (c), subparagraph 3, when you say "an emergency medical attendant," does that mean an emergency medical technician (EMT) or does that also include staff in the emergency room? I am sure some staff at the emergency rooms had some traumatic events after the sheer volume of people who came into the hospital after the mass shooting in Las Vegas. I want to be sure the bill is covering everyone that it should.

**Todd Ingalsbee:**

Emergency medical technician is a broad term for EMT, intermediate EMT, paramedic, so it is all-encompassing. We do have certain paramedics in classifications who work at Sunrise Hospital in Las Vegas, but I do not know how their nurses are classified.

**Chair Spiegel:**

Is it your legislative intent that it would cover hospital staff as well?

**Todd Ingalsbee:**

We have not been approached by anybody else regarding that. I am not sure if they already have programs in their hospitals. That is not our intent.

**Chair Spiegel:**

We will now hear testimony in support.

**Mike Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association:**

This is something that is needed. Every person absorbs things differently. Some people may need counseling and others may not. It would be a challenge to encompass language to cover all people. We appreciate and support the bill.

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

We are in support of this legislation. As Mr. Ramirez said, the stories are certainly imbedded in the backs of the brains of those who have been doing this for a long period of time and in some cases, just a short period of time. The current statute ties the benefits to one specific incident and research shows that this is not a one-incident thing. It can be, but it may be something that builds up gradually. Current statute says that it does not qualify for benefits if it is a gradual build up. It has to be a specific incident and it has to be by clear and convincing evidence. We would have to prove by clear and convincing evidence that one incident caused the incapacity.

This is long overdue and is taking a national stage. In the military, we see people who go overseas and we push hard for protections and coverage for PTSD, but we do not want to care for people who see this on a day-to-day basis in their careers. We think this is the right thing to do and it is long overdue.

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

I am a member of the Nevada Law Enforcement Coalition. We are here to support A.B. 492. First responders in this bill must demonstrate PTSD by clear and convincing evidence—you have an evidentiary standard. First responders must be acting in the course and scope of their employment—you have a scope of the bill's application. First responders must be examined and diagnosed by relevant medical professionals—you have reference to a medical review. It outlines traumatic events—you have definitions. The bill is not perfect and may need some language changes, which we are all prepared to do. I represent law enforcement because they are my heroes and it is time to start caring for those who care for us. This is an opportunity to do that. We urge your support of A.B. 492.

**Mark Regan, representing Northern Nevada Fire Chiefs Association:**

We are in support of A.B. 492. We have seen the impact of this in our departments across the state of Nevada and the difficulty of getting the help that our coworkers and staff need for the short term and long term. We have had cases where we have tried to file a workers' compensation claim on short-term issues to try to relieve the firefighters for a day or two to get the help they need. We have had problems doing that. This is something that we have been trying to work with and there are some language changes to be done.

**Ryan Ashton, President, Reno Police Protective Association:**

We are in support of this bill and feel it is long overdue. I have been president of our association for a little more than a year. I have encountered a handful of officers who are very proficient at their job who encounter one or a series of traumatic events, which years later results in alcohol abuse and personal issues. The mechanism that is in place for them to get treatment is inadequate. Often the officers are left trying to figure out what to do, and they do not know where to turn for help.

**Marlene Lockard, representing Service Employees International Union, Local 1107; and Las Vegas Police Protective Association:**

On behalf of Service Employees International Union, Local 1107, we represent employees in Clark County including employees at the University Medical Center. This is a very real issue and a concern for us. We urge your consideration.

**Michael Edmiston, President, Las Vegas Police Protective Association Civilian Employees, Inc.:**

We represent approximately 1,500 civilian employees. Of those 1,500 employees, 262 are call takers, dispatchers, and dispatch supervisors with an additional 63 being crime scene investigators and supervisors. Our 911 dispatch team answers approximately one million 911 emergency calls and an additional two million 311 nonemergency calls annually in Clark County. The crime scene investigators responded to 9,923 calls in 2018. Of all of the

classifications we represent, the call takers, dispatchers, and crime scene investigators are directly impacted almost daily by the horrible and traumatizing calls they handle. These employees are all required to work a full 33 1/3 years to be able to retire. We do not believe this will open the floodgates to nonmeritorious claims as the claimants' condition must be approved by a psychiatrist or psychologist. We feel it will cover those who are slipping through the cracks and could be liabilities to their employers. Researcher Lawrence Shatkin, Ph.D., compared the stress levels of 747 occupations as categorized by the U.S. Department of Labor. Dr. Shatkin measured the stress tolerance for each job including the frequency of how often workers face high-stress situations. His research also looked at the consequences of on-the-job errors and the pressure of time constraints. Dr. Shatkin gave 911 dispatchers a stress tolerance of 98.5; a consequence of error score of 86; a time pressure score of 68.3, all of which are very high scores.

**Cynthia Hare, Private Citizen, Las Vegas, Nevada:**

I am a retired 911 specialist from the Las Vegas Metropolitan Police Department. I came here today to explain how this has affected me personally. I hired on to the Department in October 1996. I am a former collegiate athlete; I have a bachelor of arts degree in criminal justice. When I hired on I was a happy, healthy, strong, independent, mentally tough, hardworking individual. I was so excited and eager to start my career with the Las Vegas Metropolitan Police Department. I love Metro. I loved my job; I loved the people I worked with and the outside agencies I worked with. It was my pleasure to serve my community. I cared about you, the citizens, and keeping our first responders safe.

Throughout my career, I suffered from stress, anxiety, and now, I realize, PTSD. I received numerous awards and accolades. I was voted 911 operator of the year by my peers and management. I was nominated for national 911 call taker of the year by my supervisor. I received many thank you notes. I want you to realize how many highly educated, very capable, strong men and women we have in the Las Vegas Metropolitan Communications Center who are affected by PTSD on a daily basis. Some of them have not been diagnosed and some of them refuse to seek help. I did everything I could to help myself. You start with eating right and exercising, as people have stated before me. I go to church and I went to my doctor. I was on antidepressants. I took sleeping pills to sleep at night, but I loved my job and I kept going.

Unless you have done the job, you have no idea what is going on in the mind of a 911 dispatcher. Throughout my career, policies changed, leadership changed, computer systems changed, phones changed, coworkers came and left, but one thing that never changed was how much I cared and the thoughts that I had every time a life was placed in my hands.

I am going to share some of the calls that I received on a daily basis. Late in the year 2016, I did a medical retirement. I felt I was a liability to my coworkers and my department. I had a very difficult time leaving a career that I loved and excelled at. Somehow, I always got the suicide calls. I usually did not mind because I was good at it, I truly cared, and I made a difference. Toward the end of my career, I begged to not get another one. The call I am going to share went like this: 911 Emergency P#5346. The gentleman on the line said,



Do you have my address? Yes, sir, I do. He said, Do you have my phone number? I replied, Yes, sir, I do. Sir, this is 911, do you have an emergency? He said, Yes, I do. I have a gun and I am going to kill myself. I could hear his voice quivering and I said, Sir, is there anything I could say or do to make you change your mind? He said, No. Then I hear boom and groaning. There were 3 shots. I sat there paralyzed. I did not know what to do. I muted the mic and said, Shots fired, send medical. I turned around and vomited in a wastepaper basket behind me, grabbed a drink of water and a bite to eat on my lunch break, and returned back to dispatch, not because I wanted to but because I had no choice.

We are not afforded sick time for taking calls like that. We are not afforded the opportunity to take a week off after being affected by a traumatic call. However, I was so glad I returned that day because I had the officers who responded call me and say, There was nothing you could have said or done. They went to the house and found the caller had his entire house packed up, he had a letter written about who got what, and there was nothing you could have said that would have made a difference. I appreciated that so much because I would have blamed myself.

On a daily basis, we received hundreds of calls each day. I took numerous violent calls and I have taken calls with robberies in progress in banks. There was one where a security guard was shot. I have taken calls about babies drowning in pools, robberies in progress, and I have taken the most dreaded calls that none of us want to take. We refer to them as a 444, officer down. I have had my friends and coworkers get involved in accidents while on duty and citizens calling in saying they have an officer down.

I had a call where one of our off-duty officers called in and said, There has been an explosion and I am hurt. He went silent and I had no idea what was going on. I only knew his location because it popped up on my screen. We are not secretaries sitting there talking, we are typing everything that is being said. We are running names to see if they are dangerous. We are checking previous events to see if our officers need to be aware of anything that occurred there in the past. We are yelling for our coworker to get medical started. We are asking ourselves, Did I get the right address and did I make sure I got the phone number? Did I press the right button? Type faster, I need to ask more questions. I need to get this call sent faster. It is stress. I chose it, I loved it, and I have no regrets.

I chose to retire in 2016. I am a single mother and have two children in high school. I am on a fixed income and have a degree I cannot use because I do not want to go back into law enforcement. I am a very capable, smart, educated person and am very capable of working in another field. I have allowed myself to take time to be a mom to my children and slowly heal. I took a part-time job at the Hallmark store. It is awesome. I speak to wonderful people every day and I am surrounded by beautiful things. I often have daydreams about traumatic incidents. I think it is awful that I continually have to deal with that. A lot of first responders experience those emotions; we are hyper aware of our surroundings but it affects me. I implore you not to forget your dispatchers—there is nothing easy about this job. They all react differently, but they all react. Some cry, some shut down, some relate to it, some

talk about it, some seek help, and some do not. Sometimes that one decision they make will last a lifetime for not just the dispatcher, but the caller as well.

**Chair Spiegel:**

Thank you for sharing your story and for your many years of service.

**Benjamin Kole, Private Citizen, Las Vegas, Nevada:**

I am a paramedic/firefighter for Las Vegas Fire and Rescue. I took the oath to serve this community nearly 17 years ago. In that time, I have seen my share of pediatric codes, gunshot wounds to children, and self-inflicted fatal gunshot wounds to teenagers along with all of the other brothers and sisters across the state responding to our calls. I was also at Route 91 and I was able to set up the first triage and manage to get patients to the staging area that I set up through our dispatch on my personal cell phone. The shooter was still shooting at that time and the fire department was not allowed on the scene quite yet. Without getting into too much detail, I will explain what the effects were afterwards. You heard the tapes—can you imagine yourself going into that scene and trying to establish order?

After two days of no sleep, I sought therapy; I had a feeling of being lost with no sense of direction. I was not wanting any kind of responsibility and I did not want anyone to turn to me for anything. I wanted it to be about me for a change. I considered dropping my medic patch. I was uninterested in what others had to say and I just did not care. I wanted to be left alone. I was diagnosed by a professional who works with military, police, and fire personnel, and I was rated an 8 on a PTSD scale of 10. I continued getting therapy even though I returned back to work after I was released by my doctor and now I am a 2 on the scale of 10, which is bearable.

There are certain incidents that shoot me back to that night at Route 91 especially. All those things accumulate over time. Some things I have to live with now because I cannot have any overbearing sounds. I have to be able to hear background noise so I know what else is going on. If you are at the Fremont Street Experience and you hear a helicopter overhead, the repetitive sounds almost sound like gunfire. I constantly see the faces of the people that I could not help that night. It is not in our job to walk away from somebody who needs help. In that scenario, the people who were unsalvageable, you had to move on. You had to pick those that were salvageable. I would be remiss not to mention that it crossed my mind to end it all. I started to enjoy drinking because it allowed me to not think about the things that I have experienced.

I have continued to get therapy and my condition has improved immensely. Assemblywoman Neal asked about shocking the conscience. I have done CPR on a stillborn baby. My son died as a stillborn. Can you really put a label on what you can determine is PTSD? Can you tell me that I cannot be affected by this? You cannot. Only a professional who has experience with people who have had this before can. I tell this for your support and understanding that when we are called upon to fulfil our responsibility, there is fallout. There are repercussions to what we do. It stretches our sanity to the threshold. It is my hope that you will support this bill so we first responders can continue to support our community.

**Chair Spiegel:**

Thank you for sharing your personal story and for your service to our community. Are there any questions from the Committee? Seeing none, do we have anyone else who wishes to testify in support? [There was no one.] Is there anyone who wishes to testify in opposition?

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

We agree this is an important piece of legislation. If 1 October taught us anything, it was that there are things our employees were going to be exposed to that we could not have possibly imagined. We are happy to work with Assemblyman Roberts; and we tried to get to a place where we think this bill can be doable and get services to those people who actually need them. One of the important pieces of the legislation that we can support fully and wholeheartedly is the training piece. We think it is a value to try to get people the skills and information prior to these events so they are able to better handle some of this very difficult exposure they have during the course of their employment.

I want to point out a couple of technical issues we have with the bill: we believe as it is currently drafted it is slightly over broad. We have concerns about the lists and questions about how the pieces would coordinate together. The definition of "course and scope" currently only provides two exceptions, and those are if the individual is off duty or out of jurisdiction. In workers' compensation there are some other indications of when someone might be out of course and scope. We would appreciate speaking with the sponsor about that.

Regarding the benefit timeline, we understand the anchor to the actual events and the requirement that you file your notice of exposure as you would with any other injury or exposure event. The question is that it is up to 52 weeks for the manifestation of the disorder. We are unsure if the 52 weeks is the upper limit or if there is an actual outer limit for an actual manifestation. We have some questions about how the apportionment might work. It provides an open-ended period of time for the temporary total disability benefits, which is understandable with the type of condition this covers. It removes the requirement for the period of disability in order to receive the benefit. Currently, there is a certain period of time that you must be absent from work in order to receive benefits under workers' compensation. I understand there are some unique circumstances surrounding this type of a benefit.

We believe each of our employees deserves a safe and healthy workplace. They also deserve access to the benefits and support when they need it. The stories we heard today—these people are public servants in their hearts and the work they do is incredibly difficult. The Clark County employees are like my family members. We want to make sure they are getting the services and benefits they deserve. We look forward to working with the sponsor and hope we can get to a place where we can make this bill workable.

**David Watts-Vial, Chief Deputy District Attorney, Washoe County District Attorney's Office:**

Washoe County is opposed to the current version of the bill, but is willing to work with the drafters and everybody else to try to find a solution that works for everyone. We are particularly in support of the educational part of the bill.

**Dagny Stapleton, Executive Director, Nevada Association of Counties:**

We believe in the importance of ensuring that county employees are given the support and benefits necessary to assist them, especially if they experience a tragic event and for the many who put their lives on the line. We want to echo the comments of Les Lee Shell and her outline of some of the concerns on the bill. We would like to be a part of a larger conversation to look at this bill in relation to others that have been proposed. There are a lot of significant changes proposed to workers' compensation and we hope there can be an analysis and a larger conversation of which we can be a part in relation to this bill and others. We are interested in working on this issue and how we can provide better service to individuals exposed to very traumatic situations.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

You mentioned course and scope. Could you give me an example?

**Les Lee Shell:**

Specifically, if you have a policy or procedure which prohibits a certain behavior or action and an employee is engaged in that behavior, it might put them outside the course and scope.

**Assemblywoman Carlton:**

If you had a smoker, would you hold that against them? What kind of behavior are you talking about? Is it alcoholism, drug abuse, gambling; what are you talking about when you say that? It is very ambiguous.

**Les Lee Shell:**

Those would not be the types of things I would be referencing. If an employer had a specific policy and an officer violates the policy, that may be outside the course and scope. It would be if there were certain types of practices which we follow and the employee did not follow those correctly or in a different order. Those would be very limited.

**Assemblywoman Carlton:**

I am afraid that certain entities might come up with some type of policies or procedures in the future that would end up negating anything that might be in these lists. We need to be very careful about how we deal with this course and scope issue. I have a problem with the off duty, because I know there are some guys who are never off duty. They are always a cop and they carry their weapon all of the time. If something happened in the grocery store, they would be there responding. If it turned into something traumatic, this bill would

automatically say they are not covered. I already have a problem going there, let alone allowing counties to develop policies that would exclude treatment for someone who was exposed. I want to be very careful that we do not exclude people from treatment. That is what this is really about—just getting the help.

**Chair Spiegel:**

Is there anyone else to testify in opposition?

**Adriana G. Fralick, Deputy City Manager, Carson City:**

We want to echo the comments of the previous three speakers. We will work with the stakeholders to come to language that everyone can agree on.

**Dalton L. Hooks Jr., representing Nevada Self Insurers Association:**

We oppose the bill as written. I want to speak to some of the impetus for this. Probably one of the driving factors here is the 1 October occurrence. It hit us all hard. One of my friends was next to a person who was shot in the head. It affected us all. I am aware of a number of the workers' compensation community including claims adjusters who themselves were shot. This is not something that affects a small number of us. It affects us all. We are all Vegas Strong.

The apportionment as envisioned in this bill deals with prior, nonindustrial conditions and perhaps prior industrial conditions that might have been from another employment. This is not a limiting factor in terms of current conditions or claims that were not filed, but it addresses those issues and apportioning that, potentially, between preexisting conditions and the existing condition. If there is a prior claim in workers' compensation, there would likely be no apportionment if it was a nonindustrial condition that somehow you could split out PTSD from one source to another, but that would be a medical determination made by a doctor.

The "shock the conscience" language appears later in the section, but section 1, subsection 1, paragraph (c), subparagraph (1) covers seeing a deceased minor. That is a catchall provision that is intended to capture other occurrences. I was a compliance officer with Nevada Occupational Safety and Health Administration (OSHA) for many years and conducted thousands of investigations. Often, OSHA inspectors are not the first responders, but they are on the scene with a body when there is no hope for the person. We were called out because of a fatality and we often had to inform the family of the occurrence. That is one of the issues that I think there is with this language as written. It ultimately is narrower than the existing statute. *Nevada Revised Statutes* (NRS) 616C.180 does not exclude dispatchers.

In the testimony we had today, we heard no anecdotes of denied stress claims. I can tell you specifically in regard to 1 October, there were none. I am aware of one situation that was tangential so NRS 616C.180 is not a statute that is broken. When the language says "in a time of danger," it is incredibly broad. A dispatcher taking a phone call from someone who commits suicide would be in a time of danger. There is no question about that. You are still looking at the exact same standard. Clear and convincing medical evidence from a medical

provider is a standard. One of the things that the bill does is add psychiatrist to the language. The language already includes psychiatrist. One of the problems we have is that there are only two psychiatrist providers in northern Nevada and one in southern Nevada who are on the DIR's panel to do this work. We have more psychologists. Psychiatrists are currently covered. The gold standard is you want to have a psychiatrist along with a psychologist because for PTSD you want to have someone who can administer medication.

As we look through this bill, there are a number of areas that are more narrowing. The list of occurrences narrows the list of NRS 616C.180 as it exists. There is no limitation in terms of what the source of the PTSD is currently. It simply needs to occur in a time of danger that does not arise out of an employment action. This would be an incident such as an employee claiming PTSD because the employee is in the process of being terminated and the boss, by giving you that information, has created a hostile work environment. That is the only restriction on NRS 616C.180 as it is currently written.

**Assemblywoman Carlton:**

What is the section of NRS you are referring to?

**Dalton Hooks:**

It is the current stress statute which is NRS 616C.180.

**Assemblywoman Carlton:**

That is the statute that does not include dispatchers.

**Dalton Hooks:**

It does not exclude them either.

**Assemblywoman Carlton:**

It does not include them because there is no imminent bodily harm. You might not have gotten any claims for it because they do not think they can file.

**Dalton Hooks:**

The language does not require the person to be at risk of bodily harm. The language is "time of danger." The example of the dispatcher taking a call of a suicide is by definition a time of danger. It would be covered under NRS 616C.180. I will agree with you that it is possible that we did not get those claims because of a lack of education, so I completely support the education portion of this provision. The statute is not broken to the extent that if we had claims filed under NRS 616C.180 for 1 October or other occurrences, they would not have necessarily been denied because the standard for the causation is the same: medical provider finding clear and convincing evidence of distress. For there to be a diagnosis of PTSD, there has to be some stress manifesting, such as loss of sleep or hypervigilance. Those are things the medical professional would look at in determining that there is a clear and convincing evidence of PTSD. The time of danger requirement only is that there was something going on, not simply a person who was stressed out at work.

Assemblywoman Carlton mentioned the off-duty provision. Some of that language being outside of the jurisdiction of the employer narrows what the statute already provides as a benefit. We would be very happy to work with the stakeholders to address this language. From a practical standpoint, I am the only workers' compensation attorney who does this on a daily basis. This statute is not broken and the vast majority of claims of the sort that we have talked about today would be eligible and compensable under that provision as it is. As a compliance officer, I would not be covered under the current language, but going out and seeing a body which caused me PTSD would already be something I could claim under NRS 616C.180 as it is.

**Assemblywoman Carlton:**

Mr. Hooks, you are a compliance officer and who do you work for?

**Dalton Hooks:**

I was formerly a compliance officer with Nevada OSHA. I am currently a lawyer. I started as an employee at the State Industrial Insurance System in 1989 and went to the DIR as a compliance officer with OSHA, was a trainer with Nevada Safety Consultation and Training Section (SCATS), and was the chief administrative officer of SCATS through the 1990s. I went to law school in the 1990s and when I finished, I opened a practice doing workers' compensation. I am currently a workers' compensation lawyer and I also do OSHA defense work and I am here on behalf of the Nevada Self Insurers Association.

**Chair Spiegel:**

If this bill, in your opinion, is narrowing the scope of covered employees, is that your opposition?

**Dalton Hooks:**

I believe the legislation is a solution in search of a problem because NRS 616C.180 is not broken. However, when you have the provision that extends the ability to file a claim for 52 weeks after the occurrence—how that would work today is that this is treated like an occupational disease. A mental injury is not a physical injury to the body so the clock would not start on a claimant filing that claim until he or she had notice of the condition and its relationship to their employment. They would not know that until they had a diagnosis of PTSD from a competent medical provider. The statute would not begin to run until that happened whether that is years from the occurrence or otherwise. It would make it more difficult to evaluate the claim the further out it is. To the extent that we have a statute that works well, I do not think it adds very much and it does narrow the scope of what we are looking at.

**Chair Spiegel:**

If an employee experiences a traumatic incident at work and calls the Employee Assistance Program (EAP), can that provider diagnose them with PTSD?

**Dalton Hooks:**

I do not think that is generally how the EAP would work. I believe that they also provide for treatment, and if the employee went to an EAP program and a medical provider diagnosed them with PTSD, what could and probably should happen is that a compensation/report of initial treatment form (C-4) would be completed at that time. That is how a claim is initiated under the statute. That doctor would then provide the information that we have a PTSD claim. Together with the C-4 and the medical reporting, that probably will be the clear and convincing evidence of a PTSD claim, which is not the same where the employers are being asked to show clear and convincing evidence that there was no injury. Most of the claims that are denied are denied because the medical provider reviewing the claim finds that he is unable to link it as being job incurred. We have case law that shows that that opinion is given to a reasonable degree of medical probability, but it is not a clear and convincing standard. If we have a doctor saying it is not compensable, I do not know how in that circumstance an employer would get to clear and convincing. Here you are going to have that.

**David Cherry, Government Affairs Manager, City of Henderson:**

We recognize that our public safety personnel face unique risks in their occupations and on-the-job injuries are not just physical, but mental and emotional. We can all agree that we want a system that covers all of the above circumstances, but we also share the goal that we want it done right. We would like to be a part of the conversation that will take place to make sure this legislation is what it needs to be for everyone involved. We also support the training for the first responders and think it is important that that would include those who are also volunteers. We would like to have conversations about the 52-week period and the "upon manifestation" language. The bill seems to be very broad when it comes to the categories of those who would be covered. We have some concern about the apportionment language as well.

**Kathy Clewett, Legislative Liaison, City of Sparks:**

We have a lot of concerns as everyone else has and that have already been stated.

**Robert Ostrovsky, representing City of Las Vegas:**

We have known for a long time the situations we ask these employees to step into—the situations that we will not. We have a counseling program already established in the city to assist employees that are in these situations. We recognize that this kind of situation can create stress that has temporary and long-lasting effects. The apportionment language could be interpreted that someone could actually get more than 100 percent disabled if we were not able to apportion this. I think that language needs some work. Any limitation on the duration of temporary benefits means that a person could stay on temporary total disability forever. Under current law, once a person is stable and ratable, they are entitled to a permanent partial disability award and may be eligible for vocational rehabilitation.



The language in this bill closes out that possibility and needs a lot of work. I think the purpose of receiving medical care under workers' compensation is to get you back to the best position we can. We need to compensate people for the difference between where they were before the event and where they are after the event. I can foresee that there are a lot of employees that are going to take advantage of this, and we will have to develop a system that works because we know people are in these situations all of the time. We have listed county coroner and medical examiner—that is their job, they are there every day, and they are going to see some really bad situations. How do we handle that? We want to get them through so they stay on the job until they complete their career. That is what we all want. The language needs some work and I would be happy to work on that.

We started today by looking at the good picture and looked at workers' compensation from the 10,000-foot level, and now we are down to the one-inch level. Every word in this bill has an impact on the benefits that would be delivered and the rights of the employer. I urge the Committee to take due care and work with the parties to make sure, if you decide to process this bill, that every word is carefully monitored, looked at, and we talk about the impacts so we do not have any unintended consequence of this legislation.

**Chair Spiegel:**

Are there any questions from the Committee? Seeing none, I will move on to neutral testimony.

**Ray Fierro, Administrator, Division of Industrial Relations, Department of Business and Industry:**

We take a neutral stance on this bill. We did not receive a fiscal note request until this afternoon, so we will have to determine if there is a fiscal impact on DIR.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

I think there is a disconnect in this language. In your opinion if a dispatcher showed up with a claim, do you think it would be honored or not? Do you know of any instances where dispatchers have filed claims and were told workers' compensation does not have jurisdiction over their job classification?

**Ray Fierro:**

We do not make determinations on claims.

**Assemblywoman Carlton:**

Have you had any complaints?

**Charles J. Verre, Chief Administrative Officer, Workers' Compensation Section,  
Division of Industrial Relations, Department of Business and Industry:**

I cannot tell you if we have any complaints specifically regarding this issue or not. As Administrator Fierro stated, we do not make claims determinations. Each circumstance is decided by a claims examiner and each case is considered on a case-by-case, individual basis. Depending on the facts, the example you posed might be a compensable occurrence or not. We cannot say across the board or automatically that it would or would not be.

**Assemblywoman Carlton:**

I think we need to make it clear that these claims are decided upon by a private entity or municipality. Does DIR have the authority to look at these claims to see what has gone on in history with these entities and how they manage these claims?

**Charles Verre:**

We do have the authority to look to see if there is a violation of the statute or the rules which apply to the processing and handling of an injured worker's claim. With regard to the method of the claims management, we are also able to look at the way claims are processed and handled by individual insurers and third-party claims administrators.

**Chair Spiegel:**

Do you have the ability to determine how many claims were submitted by dispatchers for PTSD and what percentage of those claims were accepted?

**Charles Verre:**

We could request that information from the regulated community. I do not believe we have that information, although we do collect some information regarding payments made, but I do not believe it is that specific. We are neutral on this bill.

**Chair Spiegel:**

Would the bill sponsor like to add closing comments?

**Assemblyman Roberts:**

I spoke with Mr. Edmiston from the Las Vegas Police Protective Association Civilian Employees, Inc. and he said they have had some claimants who were told they did not qualify, so they did not file. I will ask him to get those numbers for the Las Vegas Metropolitan Police Department and their 260 dispatchers. We will work diligently to get something that is acceptable to all sides.

**Chair Spiegel:**

I will close the hearing on A.B. 492. Is there any public comment? Seeing none, I would like to recognize Assemblywoman Duran for her work on this bill.

The meeting is adjourned [at 5:10 p.m.].

RESPECTFULLY SUBMITTED:

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Earlene Miller  
Committee Secretary

APPROVED BY:

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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 [Assembly Bill 370](#), presented by Assemblyman Skip Daly, Assembly District No. 31.

[Exhibit D](#) is written testimony regarding [Assembly Bill 370](#), authored and presented by Linda Wicksten, Private Citizen, Sparks, Nevada.

[Exhibit E](#) is a letter dated March 30, 2019 in support of [Assembly Bill 370](#), to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Linda Wicksten, Private Citizen, Sparks, Nevada.

[Exhibit F](#) is a letter in opposition to [Assembly Bill 370](#), dated April 1, 2019, to Honorable Chair Spiegel, and members of the Assembly Committee on Commerce and Labor authored by Mark Sektnan, Vice President, American Property Casualty Insurance Association, and presented by Jeanette K. Belz, representing American Property Casualty Insurance Association

[Exhibit G](#) is a statement in support of [Assembly Bill 370](#), dated March 31, 2019, authored by Caralee Stokes, Private Citizen, Elko, Nevada.

[Exhibit H](#) is an email dated March 30, 2019, to Chair Spiegel and Assemblywoman Tolles in support of [Assembly Bill 370](#), authored by Sue Wagner, Private Citizen, Reno, Nevada.

[Exhibit I](#) is an email dated March 29, 2019, to Chairwoman Ellen Spiegel in support of [Assembly Bill 370](#), authored by June Downs, Private Citizen, Hawthorne, Nevada.

[Exhibit J](#) is a letter to Members of the Assembly Committee on Commerce and Labor dated April 1, 2019, in support of [Assembly Bill 370](#), written by Dave Barber, Private Citizen, Carson City, Nevada.

[Exhibit K](#) is a letter dated March 31, 2019, in support of [Assembly Bill 370](#), to Chairwoman Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Ronald P. Dreher, Executive Director, Advocacy Investigation Services, Reno, Nevada.

[Exhibit L](#) is a letter dated March 29, 2019, in support of [Assembly Bill 455](#), to Chair Spiegel and members of the Assembly Committee on Commerce and Labor from Jim Werbeckes, President, Kids' Chance of Nevada.

[Exhibit M](#) is a flyer regarding Kids' Chance of Nevada, submitted by Jim Werbeckes, President, Kids' Chance of Nevada.

[Exhibit N](#) is a letter dated April 1, 2019, in support of Assembly Bill 455, to Chair Spiegel, and members of the Assembly Committee on Commerce and Labor, submitted by Mark Sektnan, Vice President, American Property Casualty Insurance Association; and presented by Jeanette K. Belz, representing American Property Casualty Insurance Association.

[Exhibit O](#) is an audio presentation for Assembly Bill 492, submitted by Marlene Lockard, representing Service Employees International Union, Local 1107; and Las Vegas Police Protective Association, and presented by Angela J. Leath, Crisis Intervention Administrator, Las Vegas Fire and Rescue, City of Las Vegas.