

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

**Eightieth Session
February 11, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:35 p.m. on Monday, February 11, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Kelvin Atkinson, Vice Chair
Senator Nicole J. Cannizzaro
Senator James Ohrenschall
Senator Chris Brooks
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi Seevers Gansert

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Marjorie Paslov Thomas, Policy Analyst
Bryan Fernley, Committee Counsel
Jennifer Richardson, Committee Secretary

OTHERS PRESENT:

Barbara Richardson, Commissioner, Division of Insurance
Tray Abney, America's Health Insurance Plans
Sylvia Smith, Nevada Land Title Association
Jesse Wadhams, Nevada Independent Insurance Agents; Nevada Association of Insurance and Financial Advisors; Nevada Association of Health Underwriters
Keith Lee, Nevada Association of Health Plans

CHAIR SPEARMAN:

We will begin the hearing with Senate Bill (S.B.) 21.

SENATE BILL 21: Enacts the Insurance Data Security Law. (BDR 57-221)

BARBARA RICHARDSON (Commissioner, Department of Insurance):

I am here to present S.B. 21. The bill seeks to establish data security standards. I will be reading from a prepared statement ([Exhibit C](#)).

The bulk of the amendments proposed by opponents to the bill were debated at the national level and were found to not be in the consumers' best interest. As a result, they were not approved into the Insurance Data Security Model Law.

Regarding sections 1-4, the opponents of the proposed bill would like the Department of Insurance (DOI) to have exclusive jurisdiction over cybersecurity breaches in the insurance markets while attempting to exclude the Office of the Attorney General (OAG) from this authority. We are against that as it is a part of their proposed amendments. We work very closely with the OAG and do not want to exclude them from anything that would be in their regulatory authority.

Regarding section 21, the opponents who are bringing forth an amendment are also asking for a three business day notification period versus a three day period. We argue that the insurance industry and the insurance business is a 24/7 industry and should not depend on a business day, especially during the holiday season. We want to note that they are to notify us if there is a reasonable likelihood of consumer harm. The problem is, if you wait until you find out there is consumer harm, it may be too late to do anything about it. Our request is to get notification right away and then we can discuss the consumer harm that may occur further down the line when companies have had time to investigate.

Regarding section 23, this section grants the Commissioner of the DOI the authority to share information with other regulatory authorities so we can do examinations across state borders with our fellow regulators.

Regarding section 24, because these licensees are required to have data security protocols in place under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), they are already compliant with the protection requirements of this bill except for the notification requirement to the

DOI. We understand there will be requests to have those carriers fully exempted from this bill, but doing so will take them out of the consumer protection notifications requirement. We are against this because of the number of breaches in the health market over the last few years.

From the many discussions at the national level while drafting the National Association of Insurance Commissioners (NAIC) model, we understand that the national health lobbyists are claiming this bill requires duplicative protections. However, the exemptions in section 24 requiring insurance carriers under the HIPAA requirement to report breaches to the DOI are not duplicative. Given the bulk of the data security breaches in the health segment of the insurance market that affected Nevada consumers in the last three years, we are against any health carrier avoiding the consumer protection requirements set out in this bill.

Regarding section 26, this section is important because this is information about consumers' private information.

We provided the Committee some additional information about our proposed amendments and an explanation ([Exhibit D](#)) to the bill. We have not put our proposed amendments in, because we understand that the opponents have their proposed amendments and we would like to work with them to make compromises that work for both the consumers and the Committee before we bring our proposed amendments back to the Committee for review. We do not agree with several proposed amendments by the opposition.

One area we will not compromise is consumer protections. We do not want to weaken consumer protections. We are willing to work with all the opponents to discuss the amendments.

SENATOR SEEVERS GANSERT:

In looking at this bill, it appears that you require the licensee to come up with a different means of protection and then provide that. Are national standards through the National Institute of Standards and Technology and the Center for Internet Security not used? Are you intending to use any sort of national standards as guidelines?

As a follow-up, does the bill require that they re-evaluate its program? Do they resubmit it? And will there be a cycle of checking on how data is being managed to ensure it is secure?

Because technology changes, using a national standard that changes with technology may be helpful.

MS. RICHARDSON:

I understand there are national standards. The NAIC decided not to point to any specific security standards because technology moves all the time. We would accept those standards, but they are not prudent to every type of insurance carrier. However, we will be looking at that in the regulations on data management. We want to make sure that companies understand that compliance is important. We want to make sure that consumer data is protected.

SENATOR SEEVERS GANSERT:

We all agree that we want to make sure that consumer information is protected.

TRAY ABNEY (America's Health Insurance Plans):

We are in opposition of the bill, but we fully support the intentions behind the bill. We are suggesting some clarifying language and some edits that we believe will make this bill stronger and provide better protections for policyholders in Nevada. As the Commissioner mentioned, S.B. 21 is based on model language composed by the NAIC. While America's Health Insurance Plans did provide input on that model, we believe there are problematic issues with the language you have before you today.

Our amendment ([Exhibit E](#)) language is a result of 11 separate trade associations coming together at a national level to present all over the U.S. For perspective, the language and concepts have been introduced in eight other states. In five of those states, the insurance commissioners have included our language in their proposals. Of those five states, it has been enacted in Michigan and Ohio. It is safe to say while the original bill is model language, with our model we are seeing states adopting the stricter language that we are advocating. We are not undermining the core purpose of the bill with the specifics of our amendment, which is to ensure that insurance department licensees protect their data with information security programs. We want to ensure licensees promptly conduct an investigation if they suspect they may

have had a breach and to make sure that in cases where there is a breach, it is promptly reported to the Commissioner. Our amendments make this bill workable; they make it so companies can comply with the bill and they make it so companies and regulators can efficiently and effectively protect confidential data. Would you like me to outline the main points found in our amendment?

CHAIR SPEARMAN:

You have provided the Committee members with a copy. It will not be necessary. You may do a brief summary.

MR. ABNEY:

The main point here has to do with HIPAA. Privacy, security and breach requirements for the health care industry nationwide is required by HIPAA. They are required for health insurers, but also health care providers, doctors, hospitals, pharmacies and entities they contract with. They have over 100 pages of detailed and specific regulations that set out terms, definitions, usages and other requirements for handling confidential patient information, security and breach reporting.

In recognition of how pervasive and robust these requirements are, most states that have data privacy legislation also have what we call HIPAA safe harbor language, which states an entity in compliance with HIPAA is in compliance with state law. Our amendment has updated HIPAA safe harbor language in section 24. It acknowledges that HIPAA does everything that S.B. 21 does, but more completely and more effectively. For example, HIPAA specifies that the contents and details of a breach to consumers be reported to the Secretary of the U.S. Department of Health and Human Services and, in some cases, to the media. What HIPAA does not do is require notification to the Commissioner. Our language provides broad exceptions for HIPAA entities, but carves out and specifically preserves the requirement for notice to the Commissioner.

SYLVIA SMITH (Nevada Land Title Association):

The Nevada Land Title Association is opposed to S.B. 21. We are not opposed to the intent of the bill or to consumer protection. We support a couple of amendments ([Exhibit F](#)) to the bill which we have submitted. We are meeting with the DOI later this week to find common ground on our main concerns.

JESSE WADHAMS (Nevada Independent Insurance Agents; Nevada Association of Insurance and Financial Advisors; Nevada Association of Health Underwriters):

We oppose the bill in its current form for the same reasons mentioned previously. Since the NAIC adopted the model act in October 2017, only three states have moved forward in any form. Of those, two states adopted most of the amendments offered earlier that have been taken into consideration. Trying to have small businesses, such as small insurance agents, police much larger entities that usually have a take it or leave it contract could be very difficult. We are working with the DOI to address some of these concerns.

CHAIR SPEARMAN:

I had an opportunity to meet with most of you. The conversation is ongoing. At some point in time we should have a finite ending.

SENATOR ATKINSON:

I would like an idea of how we got here. Have you been in touch with the Commissioner? How long has the conversation been going on? Have you all been involved in those conversations? If so, do you see how close you are to coming to an agreement?

MR. ABNEY:

My client has been in conversations with the DOI over the last several months. I personally have not been. I do not know how close we are. Thus far, they have not accepted any of our amendments. The Commissioner is willing to work with us.

SENATOR ATKINSON:

That would indicate to me that you are far apart if the DOI has not accepted any amendments.

MR. WADHAMS:

Part of the confusion is this has developed with the NAIC at the national level. Our groups are national organizations and have been working with commissioners of insurance. Ms. Smith's amendment is pretty much the same as what the trade associations have put together. There is a global amendment to the national proposal that is being vetted by our group.

SENATOR ATKINSON:

Can you say how far off you are?

MR. WADHAMS:

Do I think there is an opportunity to make this work? If the Committee is willing and gives us an opportunity to work with the Commissioner and her staff. I think the underlying goal of the bill is very laudable. We all agree on data protection and cybersecurity.

SENATOR ATKINSON:

How long have you been trading proposals?

MR. WADHAMS:

I do not know if the Commissioner has seen something specific from the Nevada producer groups. That said, all commissioners have seen the global proposal from the national trade associations.

MS. SMITH:

The Nevada Land Title Association has been a part of the trade groups where model law has been submitted. We submitted our suggestions to the Commissioner's Office last fall. From our standpoint we are close.

KEITH LEE (Nevada Association of Health Plans):

We read Mr. Abney's amendment and heard his statements. To add some context to Senator Atkinson's question, we have been in discussions with the Commissioner's Office for about a year. We had a number of workshops. I think we will have something that most of us can agree on.

CHAIR SPEARMAN:

We will close the hearing on S.B. 21. We will open the hearing on S.B. 86.

SENATE BILL 86: Makes various changes relating to the regulation of insurers by the Division of Insurance of the Department of Business and Industry. (BDR 57-238)

MS. RICHARDSON:

I am here to present S.B. 86. The bill addresses a variety of topics related to insurance regulations. I will be reading from a prepared statement ([Exhibit G](#)).

We have a chart ([Exhibit H](#)) to show how the discussion of the bill is related to the chapters in the *Nevada Revised Statutes* (NRS).

Regarding sections 9 and 34, we are changing this mid-year so there will be no financial hit to the General Fund because these fees go to the General Fund. If you stop or alter the timing mid-year, then we move to a two-year program for everybody as they come up for renewal. The service contract providers will find this easier than to try to comply with the numerous requirements that are done on an annual basis.

Regarding section 12, there are statutes that require all third-party administrators' applications to pass through the Division of Industrial Relations, even though they have nothing to do with workers' compensation claims. This eliminates the two weeks it takes for them to receive the information, stamp it and send it back for review.

Regarding section 15, we want everyone to understand that NRS 616B does not change the brick and mortar requirement for workers' compensation adjusters. This is for the property, casualty and large claim adjusters using drones and planes to bring its claims adjudication into play.

Regarding section 16, given these claims are long-tail claims, we want everyone to understand how long to hold those claims.

Regarding section 29, we will be using those actuary services to do peer reviews, but not to perform the initial duties so that we can control the costs.

Regarding sections 35-38, we have seen other states, including the state of Vermont, which is the largest captive residency state in the U.S., bring forth this bill. A certificate of dormancy makes it easier for captive companies, who need another year, to get started on their business plans. This is an important issue for new innovations or businesses with risks, for example the cannabis industry.

Regarding section 47, we looked into these banking arrangements as a specific request by the cannabis associations. We are working with the Banking Commissioner, because everything must be cleared by him first. This is the way to open the door once that conversation has occurred.

Regarding section 48, we have captives who are looking for a dividend of less than \$1,000. It is painful to go through the process of the formal review we are required to do. We are looking to put a cap on that. We have two proposed amendments ([Exhibit I](#)) to this bill.

CHAIR SPEARMAN:

We will close the hearing on S.B. 86. We will open the hearing on S.B. 87.

SENATE BILL 87: Revises provisions governing the Nevada Life and Health Insurance Guaranty Association. (BDR 57-219)

MS. RICHARDSON:

I am here to present S.B. 87. I will be reading from a prepared statement ([Exhibit J](#)).

Regarding section 32, in the explanation table ([Exhibit K](#)), we have included the formula that subsection 2 provides in sentence form.

Based on suggestions from members of the insurance industry, we have six amendments ([Exhibit L](#)) we are recommending.

CHAIR SPEARMAN:

We will close the hearing on S.B. 87. We will open the hearing on S.B. 88.

SENATE BILL 88: Revises provisions governing producers of insurance and other persons regulated by the Commissioner of Insurance. (BDR 57-220)

MS. RICHARDSON:

I am here to present S.B. 88. This bill has been edited. I will be reading from a prepared statement ([Exhibit M](#)).

Regarding sections 15 and 16, we changed from mailing licenses and communicating with licensees to using email unless we cannot communicate otherwise. For the exemption in section 16, we have included producer licensing and it will also be extended to the adjusters.

We proposed two amendments ([Exhibit N](#)) and an explanation table ([Exhibit O](#)).

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SENATOR OHRENSCHALL:

Regarding the language in section 21 of the proposed amendment:

In order to assist in the performance of the duties of the Commissioner, the Commissioner may contract with nongovernmental entities, including, without limitation, the National Association of Insurance Commissioners or its affiliates or subsidiaries, to perform any ministerial function, including, without limitation, the collection of fees and data.

Do you envision being limited to that national association? Could this include other contracting or subcontracting of work that is currently done by the DOI?

MS. RICHARDSON:

There is no reason to depart from the NAIC or the National Insurance Producer Registry because it allows us to do licensing in Nevada and other states. To give that up to go to a service that does not have the protections and does not promote the ability to use all the shared data of the NAIC would be a detriment to this State, unless the federal government passed the National Association of Registered Agents and Brokers that would give us the ability to contract with other associations.

MR. WADHAMS:

We are testifying neutral on S.B. 88. We had some concerns with the education changes with regard to producer licensing. In looking through the amendments, it looks like some of our concerns are being addressed. We will work with the Commissioner on making sure those amendments address those concerns.

CHAIR SPEARMAN:

We will close the hearing on S.B. 88.

I am requesting a Committee introduction of Bill Draft Request (BDR) 10-503.

BILL DRAFT REQUEST 10-503: Revises provisions governing manufactured home parks. (Later introduced as [Senate Bill 148](#).)

SENATOR ATKINSON MOVED TO INTRODUCE BDR 10-503.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

With no further public comment, I adjourn this Committee meeting at 2:51 p.m.

RESPECTFULLY SUBMITTED:

Jennifer Richardson,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 21	C	4	Barbara Richardson / Division of Insurance	Written Testimony
S.B. 21	D	2	Barbara Richardson / Division of Insurance	Explanation Table for Insurance Data Security Law
S.B. 21	E	9	Tray Abney / America's Health Insurance Plans	Proposed Amendment
S.B. 21	F	11	Sylvia Smith / Nevada Land Title Association	Proposed Amendment
S.B. 86	G	7	Barbara Richardson / Division of Insurance	Written Testimony
S.B. 86	H	7	Barbara Richardson / Division of Insurance	Explanation Table for Regulation of Insurers
S.B. 86	I	3	Barbara Richardson / Division of Insurance	Proposed Amendments 1 and 2
S.B. 87	J	5	Barbara Richardson / Division of Insurance	Written Testimony
S.B. 87	K	4	Barbara Richardson / Division of Insurance	Explanation Table Guaranty Association
S.B. 87	L	8	Barbara Richardson / Division of Insurance	Proposed Amendments 1 through 6
S.B. 88	M	3	Barbara Richardson / Division of Insurance	Written Testimony
S.B. 88	N	19	Barbara Richardson / Division of Insurance	Proposed Amendments 1 and 2
S.B. 88	O	3	Barbara Richardson / Division of Insurance	Explanation Table for Licensing