

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

**Eightieth Session  
April 10, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:38 p.m. on Wednesday, April 10, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Marilyn Dondero Loop, Vice Chair  
Senator Nicole J. Cannizzaro  
Senator Chris Brooks  
Senator Joseph P. Hardy  
Senator James A. Settlemeyer  
Senator Heidi Seevers Gansert

**GUESTS LEGISLATORS PRESENT:**

Senator Julia Ratti, Senatorial District No. 13

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Committee Policy Analyst  
Bryan Fernley, Committee Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Jared Busker, Children's Advocacy Alliance  
Rick McCann, Executive Director, Nevada Association of Public Safety Officers;  
Nevada Law Enforcement Coalition  
Penni Echols  
Beth Jones  
Keith Lee, Nevada Association of Health Plans; Injury Care Solutions

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Laura Rich, Operations Officer, Public Employees' Benefits Program  
Ali Anderson, International Brotherhood of Teamsters  
Fran Almarez, International Brotherhood of Teamsters  
Tom Morley, Laborers' International Union of North America Local 872  
Alfonso Lopez, Sheet Metal and Air Rail Transportation Local 88  
Paul Enos, CEO, Nevada Trucking Association  
Kerrie Kramer, International Market Centers  
Nick Vander Poel, Reno Sparks Chamber of Commerce  
Tyre Gray, Las Vegas Metro Chamber of Commerce  
Andy Peterson, Retail Association of Nevada  
Jenny Reese, Nevada Association of Realtors  
Heather Lunsford, Henderson Chamber of Commerce  
Renee Olson, Administrator, Employment Security Division, Department of  
Employment, Training and Rehabilitation  
Alfredo Alonso, American Legal Finance Association  
Kelly Gilroy, Executive Director, American Legal Finance Association  
David Goldwater, Preferred Capital Funding, NV, LLC  
George E. Burns, Commissioner, Division of Financial Institutions, Department of  
Business and Industry  
Michael Brown, Director, Department of Business and Industry

CHAIR SPEARMAN:  
I will open the hearing on Senate Bill (S.B.) 200.

**SENATE BILL 200**: Requires health insurers to provide coverage for certain services and equipment. (BDR 57-43)

SENATOR PAT SPEARMAN (Senatorial District No. 1):  
With intervention in mind, S.B. 200 takes action to ensure that Nevada's residents are covered to receive screenings and obtain the devices they need to receive treatment early for hearing loss.

According to the American Academy of Pediatrics, approximately 3 infants per 1,000 are born with moderate, profound or severe hearing loss. If hearing loss is not detected and treated early, it can impede speech, language and cognitive development. Over time, such a delay can lead to significant educational costs and learning difficulties.

Regular hearing tests and coverage for hearing aid devices are not only important for our children, they are also important for adults, as there is a strong correlation between aging and hearing loss.

Before I begin discussing the bill, I would like to direct your attention to the conceptual amendment ([Exhibit C](#)), which deletes all of the language in sections 1 through 20 and replaces it with language removed from S.B. 90, which was previously passed by this Committee.

**SENATE BILL 90**: Making various changes relating to the health of children.  
(BDR 57-448)

Senate Bill 200 will require health insurers—including Medicaid, the Children's Health Insurance Program and state and local government employer-based plans—to cover hearing devices, including medically necessary expenses such as ear molds, batteries, retention and FM services for insured individuals who are younger than 18 years of age.

Jared Busker of the Children's Advocacy Alliance will provide the Committee with specific information regarding the new language, the significance of the proposed policy changes and our efforts to support the welfare and health of children in Nevada.

JARED BUSKER (Children's Advocacy Alliance):

As Senator Spearman said, the amendment in [Exhibit C](#) completely strips S.B. 200 and replaces it with provisions from S.B. 90 that require health insurance to cover hearing devices and medically necessary expenses associated with hearing aids, such as ear molds, batteries, retention and FM services prescribed for an insured who is less than 18 years of age.

The amendment adds the same language to various chapters of the *Nevada Revised Statutes* (NRS) to cover different kinds of health insurance. These include NRS 689A, 689B, 689C, 695A, 695B, 695C and 695G. The remainder of the bill is conforming changes. Specific language is detailed in [Exhibit C](#).

SENATOR SETTELMAYER:

When we heard S.B. 90, I believe there was some discussion of changing the effective date since most plans have already been filed for the year. This has an effective date of July 1, 2019. Do we want to make the effective date

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January 1, 2021, so the new plans can be approved by the Division of Insurance?

MR. BUSKER:

Yes, we are amenable to that.

SENATOR SEEVERS GANSERT:

If I understood you, everything in [Exhibit C](#) from section 9 to the end of the bill is conforming language. Is that right? A portion of this language deals with health maintenance organizations, and I cannot tell if there are changes here.

MR. BUSKER:

My understanding is that this is just conforming changes. There are no significant changes to those sections of the NRS.

SENATOR SEEVERS GANSERT:

This legislation is important. I have a child who had a hearing loss. From what I observed with him and other children, children with a hearing loss often have delayed development because the hearing loss goes undiagnosed. In his case, he was maybe two years old before we figured it out. His speech was garbled and delayed, but he was perfectly fine once he could hear. I always wonder how many other children are affected like that because it goes undiagnosed. This bill is important to make sure children can hear. If we can address these concerns early and make sure children get the care and devices they need, they are going to be better off throughout the rest of their lives.

VICE CHAIR DONDERO LOOP:

I agree. Being a teacher, a mother and a grandmother, I see lots of situations like that. I would add that we also need speech therapists, audiologists and so on.

SENATOR SETTELMAYER:

I represent a lot of State workers. Are the Public Employees' Retirement System and the Public Employees' Benefits Program (PEBP) included in this? I have constituents who are State workers. If their children have hearing difficulties, does this bill include them? Does this include those who are in NRS 287?

MR. BUSKER:

As it is currently drafted, no, it does not include NRS 287.

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SENATOR SETTELMAYER:

I wish we would take care of our State workers.

SENATOR SPEARMAN:

There is another bill that has been passed by the Senate Committee on Health and Human Services that allows the Director of the Department of Health and Human Services (DHHS) to purchase hearing devices in bulk to help those who are not covered under S.B. 200. We tried to cast a wide net so we could include as many children as possible.

With regard to Senator Seevers Gansert's comment about catching hearing loss as early as possible, Senator Sheila Leslie sponsored a bill in 2003 that requires all newborns to be tested for hearing. Anyone who was born prior to that time would be susceptible to some of the speech delays and other difficulties she mentioned, but all children born after that time should have been tested at birth.

We have another bill that just passed out of the Senate Committee on Health and Human Services that will provide programs for children who are deaf or hard of hearing and children who are blind or vision challenged. There are different bills going through the Legislature that we hope will address all of the things that would hold our children back from being as successful as they can be academically.

RICK MCCANN (Executive Director, Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition):

We are here in support of S.B. 200. Drastic changes have been made from the original language, and we are happy with those changes. My stakeholders feel comfortable from the self-insured perspective.

SENATOR SETTELMAYER:

Are your people in this bill? Will they be covered by this bill?

MR. MCCANN:

I have one stakeholder in Henderson, Nevada, who runs a self-insured private plan process. Other than that, no. Our only concern throughout was that we would have mandates that our people would have to cover. My understanding is that with the amendment, we are not included.

SENATOR SETTELMAYER:

Your people are not covered, and yet you support the bill.

MR. McCANN:

We do not believe this bill would add anything more than we already provide through our self-insured plan.

PENNI ECHOLS:

I am a parent of a child who is deaf and blind. She has a severe hearing loss and wears bilateral hearing aids. She uses aids for spoken English and American Sign Language.

I am here in support of S.B. 200. This bill helps those of us with private health insurance take care of ourselves. I send extra hearing aid batteries to school with my daughter for the use of children in her classroom whose parents cannot afford them. Teachers are not allowed to provide those for students, so I send in extra batteries for her preschool class. This bill would help standardize the cost of hearing aids purchased by parents. It is a terrifying task to try and find the best deal for hearing aids because there is no regulation on that.

Every child has the right to access language in the way that is easiest for them. I encourage you to support this bill and give that language access to more children in Nevada.

BETH JONES:

I work with Nevada Hands and Voices as a program coordinator for our parent guide program, but today I speak as a mom with three kids.

Two of my kids wear hearing aids. When we first began this journey, I knew nothing about hearing loss. The day my son was born, he was given the newborn hearing screening mentioned by Senator Spearman and did not pass. Thank God for that hearing screening, because we knew when my son was a day old that he needed help. We went through the Early Hearing Detection and Intervention program run by the Department of Public and Behavioral Health, and it was deemed that he needed hearing aids. We got two quotes on hearing aids, and the first quote was three times the cost of the second quote.

My family cannot afford this expense with just the reimbursement currently offered by our insurance. The cost of co-pays for those two quotes, the hearing aids themselves, the ear molds and the surgeries my children have gone through that are associated with their hearing loss all add up. Our insurance reimbursed us \$500 per ear for hearing aids. I paid almost \$20,000 that first year for my son.

As Senator Settelmeyer mentioned, S.B. 200 would not cover my insurance plan. We have teacher's health insurance; my husband has been a teacher with the Clark County School District for 20 years, and I worked in the system for 6 years. It does not apply to us, but it does apply to so many others.

Both my children with hearing aids need access to new technology when it comes out. Our insurance only reimburses us for new hearing aids every five years. When new technology comes out, I do not want to wait for five years for my kids to have access to language.

My daughter has had to have swim molds made because she gets ear infections when she swims. Every time my child went swimming, she would get an ear infection that prevented her from wearing her hearing aids for a week. Costs like this add up.

Passing S.B. 200 would lessen the burden and allow parents to focus on their children. My kids have many accomplishments that are due to hard work, persistence and a lot of money. The extra costs that go along with that are not needed.

KEITH LEE (Nevada Association of Health Plans):

We had no problem with the original language of S.B. 200, but with the amendment in [Exhibit C](#), which we have just seen, we are no longer sure. We need time to evaluate the amended bill, which appears to be an unfunded mandate. As you know, someone has to pay for an unfunded mandate. Subject to our review, we oppose the amended bill.

LAURA RICH (Operations Officer, Public Employees' Benefits Program):

We are neutral on S.B. 200. I should note that PEBP currently provides hearing aids for members with a minimum hearing loss of 50 percent at one hearing aid per ear every three years. We originally presented a fiscal note due to the language in section 15 of the bill regarding the yearly replacement schedule. However, this concern appears to be eliminated in the proposed amendment in [Exhibit C](#).

VICE CHAIR DONDERO LOOP:

I will close the hearing on S.B. 200.

CHAIR SPEARMAN:

I will open the hearing on S.B. 322.

**SENATE BILL 322**: Revises provisions relating to peace officers. (BDR 53-918)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I am pleased to welcome Rick McCann, who worked with me on this bill and is the subject matter expert. We will be talking about a couple of possible amendments as we go along. Those are conceptual amendments only at this point.

MR. MCCANN:

This bill is an attempt to increase wages by specific percentages for all of Nevada's State law enforcement officers (LEOs). We intend to amend the bill to delete section 1, which deals with issues concerning NRS 617, the Nevada Occupational Diseases Act. It is a wonderful concept, but it should not be part of S.B. 322.

Section 2 of the bill is the wage increase provision. This is not intended to be a simple bonus, as is implied by the effective dates of July 1, 2019, to July 30, 2021. It needs to be an ongoing wage increase rather than a one-time payment. I want to make sure that is clear in the record.

After laying the groundwork for the reward to all of the hardworking men and women in State law enforcement, we were forced to deal with the fact that not all law enforcement groups are traditional paramilitary agencies with military rankings and other supervisory regimens that more often define what we see as uniformed officers.

Section 2 basically has three parts. First, State LEOs in departments with paramilitary ranks who are rank-and-file officers up to the rank of sergeant or first-level supervisors would receive a raise of 10 percent across the board. Second, those whose rank is lieutenant or above would receive a raise of 5 percent across the board. Third, if the 10 percent raise results in a situation where supervisors are paid less than the people they supervise, the supervisors will receive a further raise to create a difference of at least 5 percent. State LEOs in departments that do not use paramilitary ranks would receive a 5 percent raise.

Section 2 affects employees of the Department of Public Safety (DPS), the Division of Human Resource Management, the Legislative Police and the Nevada Supreme Court Marshals. Those who would receive the 10 percent increase are DPS officers, Legislative police, Supreme Court marshals, Nevada System of



Higher Education (NSHE) officers and Department of Motor Vehicles (DMV) officers. The 5 percent raise would go to State LEOs in Gaming Control, Secretary of State, Nevada Transportation Authority, Taxicab Authority, State Contractors' Board, Attorney General investigators, Department of Wildlife, Department of Agriculture and State Parks. The pay differential would apply throughout.

We hope to have collective bargaining for State employees soon. As that day approaches, we must give our State law enforcement people a decent wage increase to keep them competitive with other agencies. I was struck by Senator Settelmeyer saying he wants to look out for the State employees in his district. These people in law enforcement also fall into that category.

We were going to have a series of testifiers from some of these agencies fill the room and testify about their individual issues with the current pay structure. However, I do not like to parade people in here to tell you what you already know. You already know these folks are underpaid. You already know that many of these agencies are ripe for raiding by other agencies that pay more in both wages and benefits. In fact, I represent many of the groups that pluck away at your State officers.

With due respect to DPS, let me quote from the May 2018 executive summary of a memo from DPS regarding retention of sworn officers:

The Nevada Department of Public Safety sworn vacancy rates are alarming. ... From a budgeting perspective, avoidable voluntary turnover costs should concern state lawmakers. Maintaining sworn staffing levels is essential for provision of cost effective, reasonable levels of service to Nevada citizens and visitors and, ultimately, public safety. ... "A key way in which law enforcement limits its supply of qualified applicants is by offering prospective candidates uncompetitive wages and benefits packages." Nevada State Law Enforcement Officer (LEO) salaries are not on par with other Nevada municipal or school law enforcement by substantial margins. ... The gap in pay equity between Nevada municipal law enforcement and state law enforcement contributes to high vacancy rates, voluntary turnover, poor retention and productivity loss as indicated by the number of Nevada state LEOs which leave state employment for better pay and/or benefits.

State LEOs are underpaid. You know it; the DHHS knows it; your State LEOs know it, and they are the ones who feel it. For this reason, we urge your support for the amended form of S.B. 322.

SENATOR CANNIZZARO:

I want to clear up some confusion with the conceptual amendment. We are proposing to delete section 1 of the bill and ensure that this is not a one-time payment but an ongoing pay raise. We are not adding language to any other chapter of the NRS. The intent of this bill is to recognize that our hard-working LEOs deserve a pay raise. I know that makes this a money issue.

SENATOR SEEVERS GANSERT:

Just to be absolutely clear, the bill will no longer expand the definition of police officer. Is that right?

SENATOR CANNIZZARO:

Yes, that is correct.

SENATOR SEEVERS GANSERT:

Section 2 lists an effective date of July 1, 2019, to June 30, 2021. Is the raise intended to be 10 percent total or 10 percent each year?

MR. MCCANN:

It is a one-time raise of 10 percent. I do not want it to look like we are giving a bonus of 10 percent, and then at the end of June 2021 they will stop getting that 10 percent. This is a permanent pay raise of 10 percent, but only once, not 10 percent each year.

SENATOR SEEVERS GANSERT:

The base pay would be increased 10 percent. Any other increase, whether cost of living, step increases or anything else, takes place on top of that.

MR. MCCANN:

Yes. Remember, however, that the non-paramilitary environment raises would be 5 percent.

SENATOR BROOKS:

As a sometime State employee, and having family who have been State employees, I appreciate how State LEOs have kept us safe over the years. State law enforcement are definitely underpaid.

How many people would this apply to? Also, if those LEOs were able to collectively bargain for their wages and have a contract that covered that, would this be in addition to that or part of it?

SENATOR CANNIZZARO:

As written, S.B. 322 is a raise for these officers. This is separate and apart from any future collective bargaining for these officers.

MR. MCCANN:

With regard to the number of people who will be affected by the bill, I refer you to the fiscal notes for this bill. Most if not all of them include the number of individuals this raise will apply to. That number will be more accurate than my recollection.

With respect to collective bargaining, if that bill becomes law, it will not be effective July 2. The LEOs need these more competitive wages now. I will add that raises of 5 percent and 10 percent are not enough, but we do not want to break the bank. Collective bargaining will hopefully be able to bring us up to competitive pay rates in the future. In the meantime, we cannot just sit back and say, "Well, it's coming, so you just have to suck it up in the meantime." This is a "Don't suck it up in the meantime" bill.

SENATOR HARDY:

I take it, then, that even though we are getting rid of section 1, the fiscal notes still apply. Is the \$55 million fiscal note from the Department of Corrections still accurate?

MR. MCCANN:

Some of the fiscal notes differentiate the cost of section 1 from the cost of section 2. A few of them, such as the notes from NSHE and the DMV, combine the costs. The fiscal notes should not be taken on their face as reflecting only the costs of section 2.

SENATOR SETTELMAYER:

Considering the deletion of section 1 from the bill, I wonder if it would be more appropriate to re-refer S.B. 322 to the Senate Committee on Finance without recommendation so we can keep the concept moving forward.

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SENATOR CANNIZZARO:

Because this is a policy committee, it was important for Mr. McCann and me to say that we recognize that State LEOs do a difficult job and do not get the recognition and compensation they deserve. We also wanted to present our amendment to remove section 1 from the bill. However, at the end of the day, the rest of the bill depends on what funds are available. If that action is the pleasure of the Committee, I have no objection.

SENATOR SETTELMAYER:

I am informed by Counsel that the action should be to amend and re-refer so we can remove section 1 before we send it on.

CHAIR SPEARMAN:

I was not in Las Vegas on October 1, 2017, when the shooting took place, but I did see pictures. I saw many people running away from the danger, but I saw law enforcement running toward it. That bears repeating: whenever there is any type of emergency, when danger is involved, they are trained to run toward it. They do not ask for much. I want us to understand the gravity of the work they do.

SENATOR DONDERO LOOP MOVED TO AMEND AND RE-REFER S.B. 322  
TO THE SENATE COMMITTEE ON FINANCE.

SENATOR SEEVERS GANSERT SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:

I will open the hearing on S.B. 493.

**SENATE BILL 493**: Creates the Task Force on Employee Misclassification.  
(BDR 53-1087)

SENATOR MARILYN DONDERO LOOP (Senatorial District No. 8):

This bill creates the Taskforce on Employee Misclassification. With your permission, I would like to provide a short review of the history behind employee misclassification.

In 2009, the Nevada Legislature approved Senate Concurrent Resolution No. 26 of the 75th Session, creating the Legislative Commission's Subcommittee to Study Employee Misclassification. The Subcommittee was directed to determine the scope of the problem of employee misclassification in Nevada, including: the implications and scope of economic losses for employees and lost revenues for State and local governments; proposals for State processes to identify employee misclassification; potential penalties for employers engaging in employee misclassification; and legal recourse for affected employees.

As a result of these hearings, the Subcommittee adopted five recommendations. The recommendations would:

1. Create a task force to coordinate State efforts intended to reduce employee misclassification;
2. Expand the use of the three-part "ABC Test" in NRS 612.085, currently used for unemployment insurance and by extension for the Modified Business Tax (MBT), to other areas of employment law;
3. Impose a civil penalty against anyone who advises an employer to misclassify employees as independent contractors;
4. Provide for a private right of action for misclassified workers including reimbursement of legal expenses; and
5. Implement a graduated penalty against employers who misclassify their workers.

During the 2011 Legislative Session, S.B. No. 207 of the 76th Session, which imposed an administrative penalty against an employer who misclassifies an employee as an independent contractor, and S.B. No 208 of the 76th Session, which created the Task Force on Employee Misclassification, were passed by the Legislature but vetoed by Governor Brian Sandoval. With that in mind, the purpose of S.B. 493 is to once again tackle the significant problem of employee misclassification.

I will now walk through the proposals in the bill.

Section 4 of S.B. 493 defines "employee misclassification" as:

... the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment and payroll taxes.

Section 8 of the bill creates the Task Force on Employee Misclassification with participation by State agencies that share various employment responsibilities in Nevada. The Task Force would include representatives of the Office of the Labor Commissioner, the Division of Industrial Relations, the Employment Security Division, the Department of Taxation and the Office of the Attorney General.

Additionally, the Task Force would include several members appointed by the Legislative Commission from names recommended by the Governor, the Majority Leader of the Senate, and the Speaker of the Assembly. These people would represent a large employer with more than 500 employees, a small employer with fewer than 500 employees, an independent contractor, organized labor and the general public.

The Task Force is designed to make sure that these agencies share information concerning suspected employee misclassification; evaluate relevant policies and practices of their offices; evaluate fines, penalties and other disciplinary actions at their disposal; and submit a report to the Legislature with its findings and any recommendations for legislation concerning employee misclassification.

Section 10 of the bill authorizes the Task Force to create a subcommittee and appoint the members of the subcommittee, which must be chaired by a member of the Task Force.

Finally, the Legislative Counsel Bureau is responsible for providing the personnel, facilities, equipment and supplies required by the Task Force to carry out its duties.

I would like to emphasize that this Task Force is advisory only. There are no responsibilities that would be considered enforcement in any way.

Thank you again, Madam Chair and members of the Committee, for your consideration of this measure. I will note that this is definitely a discussion with the stakeholders and a work in progress.

ALI ANDERSON (International Brotherhood of Teamsters):

We have an amendment ([Exhibit D](#)) that incorporates the remaining four recommendations of the Subcommittee. I have written testimony ([Exhibit E](#)) explaining the purpose and function of each part of the amendment.

SENATOR SETTELMAYER:

The way you have this written, if I have five misclassified employees in my business, I automatically have five offenses. Is that your intent?

MS. ANDERSON:

Yes.

SENATOR SETTELMAYER:

I think back to a long time ago when we worked on overtime. We had agreement from everybody, even UPS and FedEx, who are always diametrically opposed to one another in negotiation. It looks like we are undoing all that with the ABC Test.

For full disclosure, my wife is a hairdresser. This bill does not affect me any differently than anyone else. If you have a hair salon and apply the ABC Test, the people who work in that salon are all employees. The same thing applies to many other professions, from taxi drivers to Uber and Lyft to everything else we have done. This is very problematic.

I will talk to you offline to get further clarification.

CHAIR SPEARMAN:

Does misclassification hurt employees? If so, how? Please give me some examples as to why this may be important as a corrective action.

MS. ANDERSON:

Misclassification hurts employees by making them pay for things like unemployment insurance and workers' compensation. When a worker is considered an independent contractor instead of an employee, they are no longer eligible for those and other workplace protections guaranteed to

employees. Independent contractors make less money than employees because they must pay for operating expenses that would normally fall to the employer.

When employees are misclassified as independent contractors, they are not able to set their own schedules or rates. They work at the will of the employer. An independent contractor who is properly classified is able to make those decisions on their own. They have more freedom, and they are not directly penalized by the employer if they do not meet certain standards.

When employees are misclassified, bad-acting employers who misclassify are able to save 30 percent on their operating expenses by misclassifying employees, shifting that burden to good-faith employers who are properly classifying employees.

CHAIR SPEARMAN:  
How does misclassification affect the MBT?

MS. ANDERSON:  
I would have to defer to others on that question. I am not familiar with that part of the NRS.

CHAIR SPEARMAN:  
The MBT taxes payroll. You said misclassifying saves employers 30 percent on operational overhead expenses. If the MBT is included in that, misclassifying an employee as an independent contractor means the money paid to that person would not be subject to the MBT. Is that right?

MS. ANDERSON:  
Yes, that is correct. Misclassification ends up costing a significant amount of revenue.

CHAIR SPEARMAN:  
I do not know if there is anyone here from DHHS, but there is information on their website of the number of full-time employees who are also eligible for social services, such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid. If employees who have been misclassified as independent contractors do not make enough money, would there be a scenario where they could be part of what DHHS does to help other citizens who are less fortunate? In other words, they could be working full-time, but because they are



misclassified, they do not have the money to pay for health insurance, and their low wages qualify them for Medicaid or SNAP.

MS. ANDERSON:

Yes, I believe that could happen. Studies have been done on port trucking drivers showing that the annual net median earnings before taxes of drivers classified as independent contractors was about \$29,000, whereas drivers who were employees received \$35,000. That is a trend we have seen in other areas. Port trucking is an area where misclassification is extremely prevalent. Because of that gap between an employee's wages after taxes and an independent contractor's wages after paying overhead, the independent contractors could find themselves below a threshold that would make them eligible for State services.

CHAIR SPEARMAN:

Let me pose a hypothetical situation. Business A is a mom-and-pop business that hires employees; they are paying their full share of MBT. Business B misclassifies employees as independent contractors; they do not pay their share of MBT. Could one infer that Business A is hurt by misclassification, as are the people working for Business B? And by extension, it would seem to me that those who are doing the right thing are picking up the tab for those who are not. There is a cost shift.

MS. ANDERSON:

Yes, that is correct. Businesses that misclassify employees end up paying about 30 percent less on their operating expenses than businesses that do not. They shift that cost to the companies that properly classify their employees. Employers who misclassify are able to avoid paying about \$831 million in unemployment insurance and \$2.54 billion in workers' compensation insurance. This is a difference law-abiding employers have to make up.

CHAIR SPEARMAN:

How difficult is it to go through the ABC Test and determine whether someone is an employee or an independent contractor? Does it take days, weeks, months? Do you have to hire additional staff to do that, such as lawyers or accountants?

MS. ANDERSON:

The ABC Test is simple and straightforward. It grants an employee the presumption of being an employee from the start and puts the burden of proof

on the employer to prove the person is an independent contractor. It is already used in Nevada to determine misclassification with regard to unemployment insurance. The test is in plain English and says a worker is an employee unless the employer shows that:

(a) The worker is free from the employer's control or direction in performing work, so they can freely determine their own rates and hours, and they are not penalized for accepting or declining work;

(b) The work to be performed takes place outside the services of the company and off the business's site, so the work is not something that is regularly done in-house and which they would need continued workers to complete; and

(c) The worker performs the services of an independently established trade, occupation or business, so the person also has this business and is able to contract with other entities and work independently from the business.

CHAIR SPEARMAN:

Let me see if I can summarize. Someone who misclassifies their employees reduces the MBT, which reduces the amount of money in the General Fund that pays for a number of things we need, including social services such as Medicaid and SNAP. They also shift that cost to employers who are doing the right thing, and those employers pick up the tab. We have a lot of discussions in the money committees regarding how we are going to divide the small and shrinking pot of money we have. All of that is why we have to fix this.

SENATOR BROOKS:

Page 3 of [Exhibit D](#) refers to a person who advises an employer to misclassify employees. Can you give me an example of who that person is? I do not understand who this is meant to apply to.

MS. ANDERSON:

It might be a business consultant who recommends ways for a business to save overhead, and one of those ways might be to hire independent contractors to complete regularly needed work instead of employees to avoid paying unemployment insurance, workers' compensation, Medicare tax, Social Security and the like.

SENATOR BROOKS:

Would this apply to an attorney who was giving advice to a client on whether they were complying with the laws of the State of Nevada on misclassification?

MS. ANDERSON:

I would refer that question to Counsel. It might fall under attorney-client privilege, and I do not know how that would impact the statute.

SENATOR BROOKS:

Does the definition of "employer" extend to the State of Nevada and its agencies?

MS. ANDERSON:

Yes.

SENATOR HARDY:

I have a friend who hired doctors as independent contractors. After a while, these doctors said, "We don't think we should be independent contractors." The friend looked at the federal list of things that qualify independent contractors and said, "In order to be an independent contractor, you have to meet every one of these things." They said, "We don't think so." My friend replied, "Then we can't do business together." If that friend had been employing those doctors for a brief period of time, he would be liable for fines of \$5,000 here and \$25,000 there, and he could lose his business, because the people he hired did not feel they should be independent contractors anymore. And now I do not have a friend anymore.

Another question has to do with ridesharing. Is this bill going to apply to people who carpool?

MS. ANDERSON:

Let me clarify your first question. Were you asking how this new standard would apply in that scenario? I was not entirely clear what your question was.

SENATOR HARDY:

I am saying that the employer could face some liability because of the uncooperative nature of the independent contractor who is acting as an employee, which puts the employer at risk. Why would you engage independent contractors if they could turn around and say, "When I asked if I could come in

later, you said, 'No, you have appointments already.'" My point is that it is a dangerous position for an employer when you can be held critically liable.

I would also like to know how long these five-employee fines can go on. An employer could get fined once this year and once four years from now when somebody under you did something wrong, but the business is held liable, and soon the business is gone.

MS. ANDERSON:

This legislation only aims to address employers who misclassify employees as independent contractors. Many independent contractors are legitimately classified as independent contractors, and that is part of the reason the ABC Test is so important. While the ABC Test does presume an employee status, if a worker meets those three elements of the ABC Test, they are legitimately independent contractors. I believe that addresses your first concern.

With regard to the penalties, they are graduated over time. If an employer is found to be misclassifying employees, the fine for the first offense of unknowingly misclassifying employees is \$200 to \$1,000. For intentionally misclassifying employees, the fine is \$5,000 to \$15,000. Subsequent offenses, especially if an employer has been notified previously that they have been misclassifying employees, would garner increasing fines.

SENATOR HARDY:

Including loss of business.

MS. ANDERSON:

Including loss or suspension of the business license, yes.

SENATOR SETTELMAYER:

The ABC Test to me has some serious problems because it is not a question of one aspect of the test. You have to meet all three criteria. The first prong is to be free from control, and the second is to work outside the course of the hiring entity's business. The third is problematic in my world when it says: "The worker is customarily engaged in an independently established trade, occupation or business."

Here is an example from cold reality. I am an independent contractor, and I pick up hay for people with a harrow bed. I work for a guy who also has a harrow bed, but he prefers not to use it, so he just bales hay. We go around to other

people's ranches to do this. All three of us do this trade normally, so we all fail the third prong of the ABC Test. We could all sue each other ad infinitum.

I am reading from an article on the Akerman LLP website that seems to apply to this bill. It has to do with the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* and is titled, "Say Goodbye to Independent Contractors: The New 'ABC' Test of Employee Status." It can be found at <<https://www.hrdefenseblog.com/2018/05/say-goodbye-to-independent-contractors-the-new-abc-test-of-employee-status/>>

How do we resolve my hay situation? I am in agriculture, and I work for an agriculturist who works for agriculturists. How would that not fail the third prong of the ABC Test? We are independent contractors.

MS. ANDERSON:

My understanding is if this is not an activity that the person contracting you performs regularly or it is a short-term situation—for example, if it is the busy season and they need additional help—it would pass the third prong.

SENATOR SETTELMAYER:

I guess we will have to agree to disagree. To my mind, it fails the third prong because we all normally work in agriculture. It is just that sometimes our toys break, and we have to have other people come in to do the work. And it is common for our toys to break because they cost too much money.

CHAIR SPEARMAN:

When I use my credit card and they give me the bill, it usually includes a contract that says, "I agree to pay this amount." In most business arrangements, it is prudent to presume there is either a memorandum of understanding or some other type of contractual arrangement. If the contract is broken or needs to be renegotiated, both parties will do that. If one of the parties says they do not want to do that anymore, they are released from the contract.

FRAN ALMAREZ (International Brotherhood of Teamsters):

I have written testimony ([Exhibit F](#)) listing the costs of misclassifying employees as independent contractors and describing similar efforts in other states.

TOM MORLEY (Laborers' International Union of North America Local 872):

We support S.B. 493 and echo the foregoing comments.

ALFONSO LOPEZ (Sheet Metal and Air Rail Transportation Local 88):

We support this bill. I am here to address a different aspect of misclassification. Worker misclassification has been abused by out-of-state contractors for years, from Arizona and Utah, especially on Clark County School District projects. I feel the responsibility should be on the general contractors who hire these out-of-state U.S. Mechanical subcontractors, since the blueprints of the schools are all the same. The only way these subcontractors can bid so low is to take the money away from the workforce.

The Labor Commissioner's office recently sent me wage determinations from numerous complaints I have filed against U.S. Mechanical. Just on two schools alone, we found them guilty of owing over \$85,000 in back wages and fines. Contracts awarded to these subcontractors are in the millions. The minimal fines do nothing to deter them from stealing wages over and over again, as I have seen in the past 14 years.

Misclassifying workers in public works projects is a waste of Nevada tax dollars, not to mention the burden it puts on the Labor Commissioner's office to investigate. A fair and level playing field for all bidding contractors is all that is needed.

Nevada's tax dollars need to stay in Nevada to keep our economy growing.

PAUL ENOS (CEO, Nevada Trucking Association):

I am here in opposition to S.B. 493 because of the amendment in [Exhibit D](#). I support the idea of a task force to study misclassification. Yes, there are bad actors; when a trucking company fires its employee drivers, makes them buy their own trucks and come back as independent contractors, that is a problem. Those are the kind of issues where a task force could be helpful.

However, when I look at the amendment, specifically the application of the ABC Test and that third prong, this is going to cause a myriad of issues. This is not just for the trucking industry, which may hire some of these independent contractors during the holiday season, when we have very little capacity and we need to get those packages moved to stores and people. It also affects gyms that have personal trainers who want to be able to float between different clients at different places. It also applies to hairdressers, who occupy one of the biggest realms of independent contractors we have. Accountants at tax season will hire independent contractors. All of those folks would be in violation of that third prong and be employees.

Why do people want to become independent contractors? In Nevada, 60 percent of our drivers are owner-operators. I have trucking companies that would love to hire them as employees, but they do not want to do that because they want to have control of their own work. This bill takes away a lot of that control.

KERRIE KRAMER (International Market Centers):

For the reasons stated before, we are opposed to the amendment and neutral on the bill as written. We have some concerns with regard to some of the provisions. We believe it is intended to hit the bad actors, but it may have unintended consequences and actually hit the good actors as well. We would like to work with the sponsor of the bill on making this more clear.

NICK VANDER POEL (Reno Sparks Chamber of Commerce):

What we thought was good language turned into the amendment, and that is why we are here opposed to S.B. 493. We agree with Mr. Enos about the task force and addressing the bad actors in the business community. However, the language of the amendment raises significant concerns in the business community.

As Senator Settlemeyer pointed out, a wide range of individuals are being captured by this language, including hairdressers, taxi drivers, realtors and more. The list goes on and on. We look at this as a punitive measure. We would like to see the Labor Commissioner working with the business community, not punishing it.

TYRE GRAY (Las Vegas Metro Chamber of Commerce):

We will repeat the common theme that we support the bill as originally written, but the amendment has unfortunately caused us to appear in opposition. The fines are out of line with the majority of fines throughout the NRS. The bill also allows revocation of business licenses, which seems excessive. On page 2 of [Exhibit D](#), the first couple of lines put the burden of proof onto the employer to prove their innocence. On page 3 of the amendment, it refers to "a person who, for money or other valuable consideration, knowingly advises an employer ... to misrepresent." That could be a close call as to whether somebody is an independent contractor or not. That has the potential to subject attorneys, accountants or others to civil liability. In addition to the fine, it would create triple damages for those people as well.

With those issues in the amendment, it is not something we can support.

ANDY PETERSON (Retail Association of Nevada):

We oppose S.B. 493. Most of my points have been eloquently made by others, so I will just say, "Ditto."

JENNY REESE (Nevada Association of Realtors):

We were neutral on this bill, but we are opposed to the amendment. The real estate industry is based upon the broker-agent relationship. It is regulated through NRS 645. The amendment would totally disrupt that business model. For instance, all brokers own the listings, so the agent manages the listings on behalf of the broker. Payment goes to the broker who disperses payment to the agent once the listing closes. We would like to continue to work with the bill's sponsor to avoid disrupting the broker-agent relationship.

HEATHER LUNSFORD (Henderson Chamber of Commerce):

The Henderson Chamber of Commerce was neutral on S.B. 493 and is opposed to the amendment. We echo the concerns that were previously stated. We are happy to work with the sponsor on addressing those concerns.

RENEE OLSON (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

We are testifying neutral on this bill. The Department of Employment, Training and Rehabilitation is happy to serve on the task force, and we believe the task force would benefit our existing efforts in identifying misclassified workers. We have the responsibility to investigate and properly identify misclassified workers under State and federal law. We do this in order to ensure employees have appropriate access to benefits for unemployment insurance.

We have not thoroughly digested the impacts of the amendment. However, it does align the definition of independent contractor with NRS 612.085, which addresses some concerns we had about possible differences.

We have identified some areas that may need additional analysis. This bill would result in two different agencies with processes for identifying misclassified workers. We also have an appeal process for employers who have been told their workers are misclassified. There may also be some case law from prior cases that have gone to the district court and beyond. In fact, there is an existing case going to the Nevada Supreme Court at this time.



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We would like to be involved in any additional conversations with the sponsor to explore how the amendment might impact the Employment Security Division's process.

CHAIR SPEARMAN:  
Did you say there is an appeal process?

MS. OLSON:  
Yes. We use a random audit process to audit employers, at which time we also evaluate whether there are misclassified workers. If we tell an employer some of the workers should be considered employees, that triggers additional taxes they might end up paying to the Unemployment Insurance program. It also triggers penalties and interest on the taxes that should have been paid. If they disagree with that decision, they have the option to appeal the decision. If they go through the first level of appeal and there is still disagreement over the decision, there is another level of appeal called the Board of Review. If they still disagree after that, it would go to the district court level.

SENATOR DONDERO LOOP:  
We will continue to work with the stakeholders on S.B. 493.

CHAIR SPEARMAN:  
We will close the hearing on S.B. 493 and open the work session on S.B. 21.

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

CESAR MELGAREJO (Committee Policy Analyst):  
I have a work session document ([Exhibit G](#)) that summarizes the bill and gives the amendments submitted.

SENATOR DONDERO LOOP MOVED TO AMEND AND DO PASS AS AMENDED S.B. 21.

SENATOR BROOKS SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS SEEVERS GANSERT, HARDY AND SETTELMAYER VOTED NO.)

\* \* \* \* \*

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CHAIR SPEARMAN:

I will open the work session on S.B. 128.

**SENATE BILL 128**: Revises provisions governing the administration of occupational licensing boards. (BDR 54-518)

MR. MELGAREJO:

I have a work session document ([Exhibit H](#)) that summarizes the bill and gives the amendments submitted.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 128.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 171.

**SENATE BILL 171**: Provides for the collection of information from certain providers of health care. (BDR 54-73)

MR. MELGAREJO:

I have a work session document ([Exhibit I](#)) that summarizes the bill and gives the amendments submitted.

SENATOR SEEVERS GANSERT MOVED TO AMEND AND DO PASS AS AMENDED S.B. 171.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 220.

**SENATE BILL 220**: Revises provisions relating to Internet privacy. (BDR 52-920)

MR. MELGAREJO:

I have a work session document ([Exhibit J](#)) that summarizes the bill and gives the amendments submitted. In addition, we received two amendments after the work session document was printed: one from the Nevada Bankers Association ([Exhibit K](#)) and one from the Alliance of Automobile Manufacturers ([Exhibit L](#)).

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 220.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 276.

**SENATE BILL 276**: Revises provisions relating to prescription drugs. (BDR 57-599)

MR. MELGAREJO:

I have a work session document ([Exhibit M](#)) that summarizes the bill and gives the amendments submitted.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 276.

SENATOR SEEVERS GANSERT SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 365.

**SENATE BILL 365**: Revises provisions relating to health insurance. (BDR 57-684)

MR. MELGAREJO:

I have a work session document ([Exhibit N](#)) that summarizes the bill and gives the amendments submitted.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 365.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 366.

**SENATE BILL 366**: Revises provisions relating to dental hygienists and the practice of dental hygiene and dental therapy. (BDR 54-661)

MR. MELGAREJO:

I have a work session document ([Exhibit O](#)) that summarizes the bill and gives the amendments submitted.

SENATOR HARDY:

I will be voting no but reserve my right to change my mind. I would like to see the rural counties more involved and given greater access to health care.

SENATOR SEEVERS GANSERT:

I agree and will be voting no but reserve my right to vote yes on the Senate Floor.

SENATOR SETTELMAYER:

I have not had time to review the amendment completely. I understand what we are trying to and I do want to get the increase in care, but I need to make sure the protections are there for someone working under someone else's license. While I am waiting for more information, I will vote no.

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SENATOR BROOKS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 366.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS SEEVERS GANSERT, HARDY AND  
SETTELMAYER VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:  
I will open the work session on S.B. 377.

**SENATE BILL 377**: Revises provisions relating to workers' compensation.  
(BDR 53-1025)

MR. MELGAREJO:  
I have a work session document ([Exhibit P](#)) that summarizes the bill and gives  
the amendments submitted.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 377.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:  
I will open the work session on S.B. 381.

**SENATE BILL 381**: Revises provisions relating to workers' compensation.  
(BDR 53-1157)

MR. MELGAREJO:  
I have a work session document ([Exhibit Q](#)) that summarizes the bill and gives  
the amendments submitted.

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SENATOR SETTELMAYER:

I appreciate Senator Cannizzaro taking this matter on. I support this bill, but this is the only workers' compensation bill I am willing to support. Any and all other workers' compensation bills I am probably not going to support.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 381.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 397.

**SENATE BILL 397**: Revises provisions governing contractors. (BDR 54-304)

MR. MELGAREJO:

I have a work session document ([Exhibit R](#)) that summarizes the bill and gives the amendment submitted.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 397.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 407.

**SENATE BILL 407**: Revises provisions relating to professional engineers and professional land surveyors. (BDR 54-609)

MR. MELGAREJO:

I have a work session document ([Exhibit S](#)) that summarizes the bill. No amendments were submitted.

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SENATOR DONDERO LOOP MOVED TO DO PASS S.B. 407.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the work session on S.B. 481.

SENATE BILL 481: Revises provisions relating to health insurance. (BDR 57-788)

MR. MELGAREJO:

I have a work session document ([Exhibit T](#)) that summarizes the bill and gives the amendments submitted. In addition, we received another amendment from Michael Hillerby ([Exhibit U](#)) after the work session document was printed. This is a correction to the amendment on page 3 of [Exhibit T](#), which it replaces.

SENATOR SEEVERS GANSERT:

I want to make sure that new associations that have created health plans, like those being started by the chambers of commerce, are still eligible to do so. I believe that is what the amendment from Capitol Partners ([Exhibit V](#)) does.

SENATOR HARDY:

I am confused about the different amendments.

SENATOR SEEVERS GANSERT:

The amendment in [Exhibit V](#) came in late. Those who submitted it were not able to talk to the sponsor of the bill about it, and it may have been covered by another amendment.

SENATOR JULIA RATTI (Senatorial District No. 13):

You may recall that when S.B. 481 was heard, a question arose as to whether the chambers of commerce plans, or any association plan, were self-funded or fully insured. The chamber plans are fully insured, and this bill would only address self-funded plans. We believe the language was clear in the original bill, but we accepted a friendly amendment from the Las Vegas Metro Chamber of Commerce, which is on page 2 of [Exhibit T](#), to make sure the language was

clear. We wanted to be sure we were only sweeping in the self-funded plans we wanted to target and not the fully insured plans.

I believe [Exhibit U](#) addresses the concerns [Exhibit V](#) was trying to address. I believe it was submitted on behalf of the Reno Sparks Chamber of Commerce. I have correspondence from them saying that they understand and agree with the approach of the Las Vegas Metro Chamber of Commerce and [Exhibit V](#) is no longer necessary. For that reason, I am not accepting that amendment. We have agreement that the amendment in [Exhibit U](#) does what [Exhibit V](#) was trying to do.

SENATOR HARDY:

Are you accepting the amendment in [Exhibit U](#)?

SENATOR RATTI:

Yes. Just to make sure we have complete clarity, there was an amendment from Michael Hillerby on page 3 of [Exhibit T](#). That was our mistake; we sent the wrong version. The correct version was handed out today as [Exhibit U](#). It addresses a distinct issue, which is the individual plan issue. It provides that individual plans would no longer be required to be on the Silver State Health Insurance Exchange. It requires that providers of those plans make disclosures to individuals who qualify for the subsidies on the Exchange before they buy a plan off of the Exchange.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 481 WITH ALL AMENDMENTS EXCEPT THE AMENDMENT IN [EXHIBIT V](#).

SENATOR HARDY SECONDED THE MOTION.

SENATOR SEEVERS GANSERT:

I would like to thank the sponsor for making sure the piece on the chambers of commerce is in the bill. That makes a big difference. Their ability to be able to reach out to the members and find insurance that they can purchase for coverage is important.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*



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CHAIR SPEARMAN:

I will open the work session on S.B. 482.

**SENATE BILL 482**: Revises provisions relating to health insurance. (BDR 57-531)

MR. MELGAREJO:

I have a work session document ([Exhibit W](#)) that summarizes the bill and gives the amendments submitted.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 482.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SPEARMAN:

I will open the hearing on S.B. 432.

**SENATE BILL 432**: Revises provisions relating to certain financial transactions. (BDR 52-1146)

SENATOR CANNIZZARO:

This bill was brought to my attention before the Legislative Session. I will defer to Mr. Alonso and Ms. Gilroy to walk you through the bill.

ALFREDO ALONSO (American Legal Finance Association):

This bill is basically an attempt to regulate a financial product that is currently only regulated in about five states. It is known as consumer litigation funding or finance. It is a product which is only offered to people who need money awaiting resolution of a lawsuit or complaint. For example, someone who was the victim of an accident may be in litigation and unable to work while waiting for the case to be settled. In a situation like this, companies that offer litigation funding would basically advance money to the litigant on the expected settlement. It is important to note that these are not loans; they are advances that are only paid back if you win. It is a contract between the company and the individual.

Litigation funding is being offered throughout the U.S. and the world, as well as online. There are some horror stories about individuals getting loans from companies they think are litigation lenders, and then find out that they are expected to pay even if they lose the case. That is one of the problems we felt strongly this bill could solve.

Senate Bill 432 adds in a number of protections for consumers. First, consumers must go through their lawyers. That is important, because the lawyer will know what is going on, where the case is, if there is a chance of settlement and so on. A litigant may not be able to work, but that does not mean the case is good. It is important that the lawyer, under their duties as the person's counsel, be involved in this process.

There are a lot of disclosure requirements in this bill. The American Legal Finance Association (ALFA) came up with language like this in concert with the Consumer Financial Protection Bureau. An act like this one is currently going through New York's legislature as well. The goal was to come up with laws that allowed us to start regulating the industry across the U.S. That protects the consumer, the case and ultimately the companies involved. We want to root out the bad actors. We will never be able to root out the online folks who exist out there; that is something that we are always going to have to live with. This is a good attempt to get at the problem.

We have worked in the last couple of days with the Commissioner of the Division of Financial Institutions (FID) and the Director of the Department of Business and Industry (B&I). We are working on language to give the State the ability to levy administrative fines and other controls. That is important. The Commissioner needs to have whatever power he needs to regulate these folks. We hope to have an amendment shortly, either tonight or tomorrow morning.

KELLY GILROY (Executive Director, American Legal Finance Association):

As you may know, ALFA is a trade association that provides litigation finance, also known as legal funding, around the U.S. I want to talk briefly about who legal funding helps. This product helps people who have been injured through no fault of their own, who have already filed a claim or a case and hired an attorney. These are not people looking for how to file a lawsuit or anything like that. These are existing cases. The money is used to help them cover life needs—to pay the rent or make mortgage payments, make car payments, pay utility bills, keep food on the table and things like that.

One of the things about litigation finance that sets it apart from other products is that it is nonrecourse in nature. That means when people receive this money, they pay back the company through the proceeds of the case or not at all. If there are no proceeds, they pay nothing. If there is less than anticipated, they pay a reduced amount.

Unlike other financial products people can use in stressful situations, we do not impact people's credit. We do not garnish wages. We do not repossess their houses or their cars. Legal funding never puts people in a worse position than they were in before they started. Even if they lose their case, they still have that money to pay their rent and do not have to pay it back. There is no harm to them, and it never sucks them into any sort of cycle of debt.

The availability of this product levels the playing field between consumers and insurance companies. It allows consumers to hang on so they can receive a fair settlement of their case. We are not trying to help people get something they are not owed. We are just trying to help them make it through so the case can be resolved in an appropriate manner.

Senate Bill 432 would establish regulations for this product for the first time in Nevada. It would standardize contracts and allow consumers to compare different companies so they can find the best deal. It would prohibit referral fees between companies and attorneys in either direction. It allows a five-day right of rescission; that is, if people receive funding and then change their minds and want to give the money back, there is no penalty to them. It makes it clear that funding companies can have no involvement in how a case proceeds. People are not coming to ALFA members because they need legal help. They are coming because they need help paying the rent or buying groceries.

When there have been issues with litigation finance in the past, it is typically because people do not understand the terms of their contracts or an attorney was unaware of the transaction. This bill would require attorneys to be made aware of such transactions, and it would make the terms of the contract extremely clear and standardized. It would take out the guesswork so people would not be going through pages and pages of contracts not understanding what they were getting into.

As Mr. Alonso said, only a handful of states regulate litigation finance now. In those states, we are seeing positive trends. Good actors are getting licensed and bad actors are not, and there are fewer complaints. When you give people

clarity, other problems are not popping up. It is making it more streamlined and simple.

Litigation finance is a tool for everyone who has a case or claim filed in Nevada. In the right circumstances, it can be an important tool and a lifesaver. Consumer protections are needed in this field, and S.B. 432 adds them. We have been talking with B&I about more protections that might be needed so everyone is comfortable with the bill. We will continue those talks.

SENATOR SETTELMAYER:

Let us say you get a \$5,000 advance, and it ends up being a \$50,000 case. Is there a traditional percentage you receive, or is it a case-by-case scenario?

MS. GILROY:

When a person calls a legal funding company, they might say, "I need \$1,500 to cover a rent payment." The rule in the industry is that companies try not to fund any more than 10 percent of what they think the settlement will be. They do not want to get involved in the settlement process. The purpose of this product is not to give people their settlement up front. It is to give them enough to bridge a financial gap they cannot cross. If, for example, they think your case will settle for \$50,000 and it settles for \$200,000, the company is not going to get anything more than is in their contract.

The contract requires the payback to be broken into six-month increments so the person can look at the chart and see how much they must pay back. That would not change if they settled for a higher amount. If the settlement is less, if instead of \$50,000 it settled for \$20,000, the company would probably get nothing back or at least far less than agreed upon. People negotiate the number down all the time.

MR. ALONSO:

The Commissioner has regulated this product to keep interest under 40 percent, and we are working on that as well. That will also be part of the amendment. We are trying to make sure these companies cannot just charge anything they want. We know that some have operated under that cap for some time, and we have agreed to that. That will be another part of the amendment.

We also want to make sure the contract is a Nevada contract. Some of these companies will not have brick-and-mortar stores in Nevada. They are large companies located elsewhere. That is how the world is now; half our banks are

not physically located here. The attempt is to make certain that if you get a loan in Nevada, the licensees are regulated by the FID in Nevada, and Nevada laws prevail.

Mr. Lee had a concern that his clients who practice medical factoring would be affected by S.B. 432. We do not believe those companies are included in this bill, but we want to make it clear that there was no intent to take that type of product into this bill. It is clear within the bill that medical factoring would not be subject to these provisions.

SENATOR SEEVERS GANSERT:

It sounds like you are going to give us more information about applicable fees and charges by the company. Is there ever a stacking of these products? If someone got litigation funding from several companies, they could potentially exceed the actual settlement. How do you track that and make sure the person is only getting an appropriate amount?

MR. ALONSO:

That is an important part of the bill. We do not want the customer to have more than one loan, and that is why we are including the lawyer in the process. This is important for the lender as well. That is part of the discussion we are having with B&I to make sure you cannot have more than one loan at a time.

SENATOR BROOKS:

It sounds as if the loan company is required to notify the attorney, but is that when they make the loan or before they make it? If it happens after the loan is made, what is to prevent loan stacking?

MR. ALONSO:

Our intent is that the attorney be notified before the loan is approved. The lawyer should be a big part of this process. As the lender goes through the case, they will want to know every facet of the case. The lawyer will be involved from day one along with the potential consumer.

SENATOR BROOKS:

Is that done before approval of the loan?

MR. ALONSO:

Correct.

KEITH LEE (Injury Care Solutions):

Injury Care Solutions is a medical factoring company. We did not think we were included in S.B. 432, as has been confirmed by Mr. Alonso. However, we are concerned about possible unintended consequences that may be raised by the words "or indirectly" in section 7 of the bill. We are not sure what that phrase was intended to mean, but removing it would avoid the unintended consequence of including medical factoring in this measure.

DAVID GOLDWATER (Preferred Capital Funding, NV, LLC):

Section 23, subsection 3 of the bill includes the phrase, "or any other statutory lien." That is ambiguous. For the purposes of clarity, we propose deleting those words. I am working with Mr. Alonso on his proposed amendment. I hope this correction will be in that amendment, but just in case, I want to be on the record. We will continue to work with the sponsor on that.

GEORGE E. BURNS (Commissioner, Division of Financial Institutions, Department of Business and Industry):

Senate Bill 432 proposes to enact provisions relating to consumer legal funding that the FID currently regulates under NRS 675. We have a number of licensees that function under that statute. The FID continues to work with the proponents of this bill to achieve some kind of balanced consensus. However, we have some serious concerns about S.B. 432 as submitted for several reasons.

Although there is sympathy for those who become involved in litigation and who have no resources, there is also concern that these transactions are being entered into when the litigants are at their most vulnerable, and the cost can be very high to the litigant.

Our primary concern is that the proposed legislation seeks to abrogate current statutory intent and understanding of NRS 675 in declaring that consumer legal funding is not lending. That would be a fundamental change in the established interpretation of lending law in Nevada. If legal funding is not lending, the consumer protection provisions of the federal Truth in Lending Act (TILA) and consumer disclosures required under Regulation Z would also be abrogated.

As mentioned earlier, we are working on the fact that S.B. 432 does not currently provide for adequate administrative examination and enforcement authority, nor does it provide for adequate types of discipline, such as suspensions and fines. The bill also does not provide for adequate disclosure to consumers of its annual percentage rate (APR). For over 30 years, we have

been instructing consumers and informing them that this is the way to measure the true cost of credit. The way this bill is structured, none of those disclosures will be taking place.

If this subject seems to be a déjà vu for Legislators, you are correct. Similar legislation was rejected in previous Sessions dating back to 2011. The industry has long argued that this sort of transaction is not a loan because it does not call for payment if there is no settlement, but it is a loan in the view of the FID and in the view of the interpretation of our counsel through the Attorney General. We consider that this type of lending is a loan in accordance with NRS 675.0601.

The FID currently licenses all of these consumer lending companies that function in Nevada under the general umbrella of NRS 675 without specificity for this type of lending. We understand that the purpose of S.B. 432 is to provide greater specifics regarding consumer legal funding in order to overcome the ambiguities, and we fully support that. However, as proposed, the bill eliminates the consumer protections of the TILA by declaring that consumer legal funding is not a loan. It removes the APR cap of 40 percent currently applicable to NRS 675 lending. It lacks current regulatory enforcement authority present in NRS 675.

The FID would welcome improvements to NRS 675 regarding consumer legal funding and will continue to work with the proponents of S.B. 432. However, unless this Legislature wants to change the fundamental definition of lending in Nevada, issues with S.B. 432 are difficult to resolve.

SENATOR HARDY:

We change the NRS all the time here. Can we change NRS 675 or put this measure somewhere else? Can we add special consumer protections to the bill? It seems to me that this is not an obstacle we cannot overcome, recognizing that the person who is getting an advance on the insurance process never has to pay back anything. Can we overcome this by putting it somewhere else and doing it in some creative way?

MR. BURNS:

I agree that things can be changed, but if they are going to be changed, they should be changed to increase consumer protections and not retract them. We do not consider "You can determine how much it is going to cost you by looking at some chart" as being equivalent to being told the APR, especially as

we have not been provided with that chart or even allowed to view it. This is totally different from how the public evaluates the cost of credit. How do we evaluate the cost of the loan unless we have a certain rate over a certain period of time?

CHAIR SPEARMAN:

How is it a loan if the borrower does not have to pay the money back? As I understand it, the company gets its money from the settlement, and if there is no settlement there is no payback. If the litigant gets \$20,000 and the suit is not settled in their favor, they get to keep the money and do not have to pay it back. How is that a loan?

MR. BURNS:

We interpret it to be a loan, even though it does not need to be paid back if the case does not settle or settles for less than the amount. It is a loan in that money is being given for valuable consideration, and it is secured by an inchoate interest in the legal settlement process. It is still a form of security interest, which would make it a form of lending in all of the conventional understandings of the term.

In your example of someone getting \$20,000 to bridge things during a protracted litigation, we want to know how much the consumer is going to get charged and how the company decides what that cost is going to be. If it is 40 percent, that \$20,000 the consumer got would mean they had to pay back \$28,000. Another thing that is confusing about this particular type of lending is they do not want to call it interest; they want to call it a fee. They do not want to call it a loan, because they do not want it to be subject to other types of consumer protections such as the TILA and so forth.

Those are our concerns. If this Legislature wants to change a fundamental understanding of lending law in Nevada, it has every right to do so, and we will regulate it from that point of view. But I encourage you to consider what this is going to end up being. I am not looking forward to this ending up being another payday lending issue for Nevada.

MICHAEL BROWN (Director, Department of Business and Industry):

This matter has only come to us late in the process. We have committed to working with the sponsor and the industry on this bill. We have had one stakeholder meeting on this, but it was just yesterday afternoon. If you will indulge us, we will continue to work through that process.



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SENATOR CANNIZZARO:

Obviously, there is still some work to do to ensure that this bill does what it is trying to do: to put in protections for these situations, while at the same time balancing some of the concerns we heard today.

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CHAIR SPEARMAN:

I will close the hearing on S.B. 432. Is there any public comment? Hearing none, we are adjourned at 4:27 p.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Pat Spearman, Chair

DATE: <b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	2		Agenda
	B	12		Attendance Roster
S.B. 200	C	6	Senator Pat Spearman	Proposed amendment
S.B. 493	D	4	Ali Anderson / International Brotherhood of Teamsters	Proposed amendment
S.B. 493	E	1	Ali Anderson / International Brotherhood of Teamsters	Written testimony
S.B. 493	F	3	Fran Almarez / International Brotherhood of Teamsters	Written testimony
S.B. 21	G	17	Cesar Melgarejo	Work session document
S.B. 128	H	15	Cesar Melgarejo	Work session document
S.B. 171	I	5	Cesar Melgarejo	Work session document
S.B. 220	J	3	Cesar Melgarejo	Work session document
S.B. 220	K	2	Nevada Bankers Association	Proposed amendment
S.B. 220	L	1	Alliance of Automobile Manufacturers	Proposed amendment
S.B. 276	M	2	Cesar Melgarejo	Work session document
S.B. 365	N	2	Cesar Melgarejo	Work session document
S.B. 366	O	4	Cesar Melgarejo	Work session document
S.B. 377	P	10	Cesar Melgarejo	Work session document
S.B. 381	Q	11	Cesar Melgarejo	Work session document
S.B. 397	R	3	Cesar Melgarejo	Work session document
S.B. 407	S	1	Cesar Melgarejo	Work session document
S.B. 481	T	3	Cesar Melgarejo	Work session document
S.B. 481	U	2	Senator Julia Ratti	Proposed amendment from Michael Hillerby
S.B. 481	V	6	Senator Julia Ratti	Proposed amendment from Capitol Partners
S.B. 482	W	1	Cesar Melgarejo	Work session document