

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

**Eightieth Session
May 6, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:33 p.m. on Monday, May 6, 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. Settelmeyer
Senator Heidi Seevers Gansert

GUEST LEGISLATORS PRESENT:

Assemblyman Skip Daly, Assembly District No. 31

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Linda Wicksten
Jill Dickman
Kathy Floyd
Mary Isgrigg
Patricia Beatty
David Dazlich, Las Vegas Metro Chamber of Commerce

Senate Committee on Commerce and Labor
May 6, 2019
Page 2

Misty Grimmer, Employers Insurance Company of Nevada
Andy MacKay, Nevada Franchised Auto Dealers Association
Victoria Carreon, Deputy Administrator, Division of Industrial Relations,
Department of Business and Industry
Liz MacMenamin, Retail Association of Nevada
Terry Graves, Nevada Self Insurers Association
Marcus Conklin, Nevada Mortgage Lenders Association
Morgan Gleich, Executive Director, Board of Psychological Examiners

CHAIR SPEARMAN:

I will open the hearing on Assembly Bill (A.B.) 370.

ASSEMBLY BILL 370 (1st Reprint): Revises provisions relating to workers' compensation. (BDR 53-6)

ASSEMBLYMAN SKIP DALY (Assembly District No. 31):

I worked on A.B. 370 during the Interim with all the stakeholders I could get. We worked on it in the Assembly as well, and I think we have all of the parts in place. If there is any opposition, I will be surprised.

Sections 1 and 4 of the bill work in tandem. Section 4 allows the Workers' Compensation Section (WCS), Division of Industrial Relations (DIR), Department of Business and Industry (B&I) to make an assessment to insurers based on the number of policies they write in the State. Section 1 allows them, once they have made that assessment, to then expend the money for the additional benefits covered by the bill.

Section 3.5 does two things. First, it makes an annual cost of living adjustment (COLA) of 2.3 percent of survivors benefits from the date of the bill going forward, so it will be included in future premiums. Anybody who is unfortunate enough to be eligible for this survivor benefit will be covered, so we will never have another stranded group as we now have. Second, everyone who is currently receiving a death benefit will get a 2.3 percent COLA increase starting January 1, 2020, and then every year thereafter going forward. This will be paid for by an assessment from the WCS, which will also cover any administration costs.

The language of section 3.8 of A.B. 370 was suggested by the WCS. It allows insurers that pay the increased death benefit to apply to the WCS for

reimbursement of that increase if they submit the information listed in subsection 1.

Sections 5 and 6 are an attempt to make up for the fact that many survivors went decades without a COLA increase. For those who have been receiving benefits for a death that occurred before January 1, 1989, survivor benefits will be compounded 3 times at 2.3 percent, and the COLA increase beginning on January 1, 2020, will be based on that amount. For those who have been receiving benefits for a death that occurred between January 1, 1989, and January 1, 1994, survivor benefits will be compounded 2 times at 2.3 percent, and the annual COLA increase will be based on that amount.

That is the bill in a nutshell. We have worked on this for a long time; in fact, we have been trying to find a way to get this to work out since 2009. The problem has always been trying to find a way to pay for this increase, since we knew the State did not have the money. We think we have that problem solved, and so far everything is working out.

LINDA WICKSTEN:

I have written testimony ([Exhibit C](#)) describing my experiences fighting for a living pension amount for over 35 years.

I would like to add that I have several letters of testimony from others who were not able to be here today. I was told I could not submit them as exhibits because they did not submit the letters themselves. I sent them to the Committee members individually, and I hope you will read their letters. They wanted their testimony to be heard.

VICE CHAIR DONDERO LOOP:

We will try to work that out.

JILL DICKMAN:

I am here in support of A.B. 370. I am a former assemblywoman, and I want to thank Assemblyman Daly for introducing this bill. I prefiled a version of it in 2016, and many people have worked on this issue over the years, including Senator Debbie Smith, Senator Seevers Gansert and Mike Willden, Governor Brian Sandoval's chief of staff. As you can see, these bipartisan efforts unfortunately fell through the cracks. Assembly Bill No. 438 of the 72nd Session gave a COLA increase for deaths that occurred after 2004, and

that too was a bipartisan effort. I do not think we could find a more bipartisan issue upon which we could all come together, as evidenced by the unanimous vote on A.B. 370 in the Assembly.

We need to remember that these are survivors of those who gave their lives in service to the State, and they deserve better from us. I do not know why or how these particular survivors never received a COLA increase like everyone else, but it must be fixed. Even this bill does not come anywhere near making these survivors whole. If Mrs. Wicksten had received a COLA increase every year since her husband was killed, her monthly check in January 2020 would be approximately \$2,650. With this bill, her January 2020 check will be approximately \$1,150, which is a very small increase. This is the absolute least we must do.

I completely understand the concerns of the business community, since I am part of that community. All Nevadans owe this debt to these survivors, not just employers whose workers' compensation rates will go up. If we wait until money is found in the budget, we will never do the right thing and get this done.

Every time this issue comes up in the Legislature, these people have gotten their hopes up, only to have them dashed. Unfortunately, many of the people who have been affected by this lack have passed away without knowing that we as Nevadans truly cared about them and appreciated their sacrifice. Please do not let it be more of the same for the remaining survivors.

I am asking you to do all you can to get this bill passed. This is finally our opportunity to correct a decades-old injustice.

KATHY FLOYD:

I support this bill. I have written testimony ([Exhibit D](#)) describing my mother's experiences after the death of my father in August 2005.

MARY ISGRIGG:

I support A.B. 370. I have written testimony ([Exhibit E](#)) relating my experiences in 1989 when my husband was killed on the job while he was talking to me on the phone.

PATRICIA BEATTY:

I am here to say I support A.B. 370. I have seen what Mrs. Isgrigg has gone through over the years, and it does seem rather sad that people have to go through this kind of thing. It should also be noted that we do not seem to have a place to go to get the correct information on this topic. Everybody I have heard today has had significant problems being told first one story and then something else. That is just a little sad.

DAVID DAZLICH (Las Vegas Metro Chamber of Commerce):

We are here today in opposition to A.B. 370. Historically, our position on lookbacks like this has been in opposition. We are concerned about the precedent set by continually looking back. We believe this is a taxpayer issue.

MISTY GRIMMER (Employers Insurance Company of Nevada):

We are neutral on this bill. As Assemblyman Daly said, we have been working on this issue for quite a few sessions and trying to find some resolution to this problem. For the most part, we agree with Mr. Dazlich and generally are in opposition to retroactive benefits because you cannot go back and collect premium dollars for a benefit that has already been given. However, this is an issue the State has been trying to address for a long time, which is why we are supportive of what Assemblyman Daly is trying to do.

I have one technical point that may be a question for the Legal Division or perhaps the DIR. There is a similar bill this session, Senate Bill (S.B.) 377, that uses the same mechanism for collecting the assessment and determining claims.

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

I spoke with Assemblyman Daly about this, and he said the DIR is okay with the way A.B. 370 is currently drafted. He is probably right, but there is a section in S.B. 377 that adds an additional paragraph to this mechanism of collection. Our only concern is to ensure that the collection and the assessment are done the same way in both cases. The beneficiaries are different, but the mechanism for collecting dollars and paying claims are done the same way.

VICE CHAIR DONDERO LOOP:

That is not in A.B. 370, am I correct?

MS. GRIMMER:
That is correct.

VICE CHAIR DONDERO LOOP:

Since we are not hearing S.B. 377 right now, I would recommend you take that up with Assemblyman Daly and the sponsor of S.B. 377. That would be the best way to work this out.

MS. GRIMMER:
I did that. Thank you.

ANDY MACKAY (Nevada Franchised Auto Dealers Association):

As many of you know, we have our own self-insured workers' compensation program that covers approximately 82 auto dealerships across Nevada. We were opposed to A.B. 370 in the Assembly initially due to the retroactive payments and how that would apply to us. Subsequently, we were requested to do an analysis of what the direct impact would be on our self-insured group. To cut to the chase, we had no claims that fell into that period of time, so there was no impact for us. However, I have just learned that while we do not have any claims that are directly affected, our members, based on future assessments, will be in fact paying for claims that are not ours.

I am in an awkward spot in that I am both neutral and opposed to this bill. I apologize for bringing this up now, but I would be remiss if I did not indicate our concerns that we will be paying for something that is not ours.

SENATOR SETTELMAYER:

I am trying to get to the gist of this. It sounds like it was a situation where these were all claims under the State Industrial Insurance System, which was taken over by Employers Insurance. Is there a reason we are not having Employers Insurance pay this increase rather than the companies that do not have any claims in this period? I agree that the survivors should be paid, but they should be paid by the State system, the Employers system, rather than by an assessment on all insurers.

MR. MACKAY:
You just hit the nail on the head. That is precisely what our concern is.

SENATOR SEEVERS GANSERT:

It sounds like the money for this increase will ultimately come from the Workers' Compensation Fund, and those funds will have to be replaced. How much do we have in reserves right now? Can it fund this and still continue to have reserves, or will there be a continual drawdown?

VICTORIA CARREON (Deputy Administrator, Division of Industrial Relations, Department of Business and Industry):
We will get that information and get back to you.

We are neutral on A.B. 370. We have a fiscal note. There is no administrative impact to the DIR, but there will be an impact on the Workers' Compensation Fund, as has been discussed. That impact is \$565,738 in the first fiscal year and \$934,434 in the second fiscal year. I want to note that the fiscal note uploaded onto NELIS on this bill was missing the last page, which has details on the calculation of the base year and takes the catch-up provision into consideration.

LIZ MACMENAMIN (Retail Association of Nevada):

We too are concerned about this bill. We spoke to Assemblyman Daly as soon as I found out there were some issues in the clawback piece and the way it would impact assessments for our members. I would like to continue working with the sponsor. Listening to the stories from these widows, I understand the position, and my heart breaks for them. But it puts us in a hard position. I apologize to the sponsor for not getting to him sooner, but we would like to have our concerns on record.

TERRY GRAVES (Nevada Self Insurers Association):

The Nevada Self Insurers Association basically has the same concerns expressed by the two previous speakers. We do not really understand how these retroactive benefit payments will be handled. We would like to see a better explanation of how this works.

ASSEMBLYMAN DALY:

I will try to answer a couple of the questions that came up. I will be happy to work with those who spoke in opposition. I believe this bill is ready to go. We worked on it a long time, and it has been out there for a quite a while. This is the first time I have heard some of the opposition, however.

To answer Senator Settelmeyer's question, yes, we have spread the cost out among all those who write insurance in Nevada. The State already assesses all insurers to the tune of \$38 million a year. When I spoke to some of the stakeholders, I said, "How will we do this? We aren't making the State pay for it." They said, "Use the assessment." All of the insurers pay their little piece, and then they can apply to get reimbursed for that payment.

This COLA increase will be part of the assessment until the people in this pool expire. For deaths that occur after January 1, 2020, increases in premiums will cover the COLA increases, but obviously that is not possible for the stranded group. Instead, we have spread it out amongst all the insurers and payers in the State. Employers Insurance has the lion's share of these claims, but that does not amount to 50 percent. It is not a huge pool of people.

When you look and listen to the stories, I am sure you will decide, as the Assembly decided, that this is just the right thing to do. This is a mechanism to do right by these survivors that does not cost the State money. It spreads the cost out among all those who write insurance in Nevada, and eventually it will flow down to the ratepayers. That is how insurance has always worked.

With regard to the compounded interest in sections 5 and 6, it is a very modest amount. We would love to make these people whole. Remember that this extra payment is only going to the very oldest claims, those that started more than 25 or 30 years ago.

SENATOR SETTELMAYER:

If Employers has less than half of these claims, I would like information as to where the rest of them are. I absolutely want these survivors to get this COLA increase; I want them to get paid. But at the same time, if an insurance entity has had no claims in this category, it does not seem proper that their rates should go up based on that. Why should an insurance company that does not have any of these claims be affected by something they had no control over? In that respect, I am worried about the equity issue. Is there a way to craft the bill so that only the affected insurers' rates go up and not those that had nothing to do with this?

ASSEMBLYMAN DALY:

I do not have all of those numbers. I believe B&I could probably get that information for you.

You are right that there is some inequity here; some insurers without any claims will be paying their small share of the assessment. I guess that is a hill you have to get over. If it is a hill you are willing to die on, then you cannot support this bill. We tried to find an equitable way to do this thing so that nobody was hit too hard. Those who will be paying most of these claims are going to get their compensation back.

SENATOR SETTELMAYER:

I appreciate that. I understand what you are saying about equity. My feeling is if a company makes mistakes, we need to jack up their premiums so they realize they have made a mistake. If we allow the penalty to be broadbased, we are not making sure the entity that made the mistake gets the message.

ASSEMBLYMAN DALY:

As I mentioned, from January 2020 forward, this COLA increase will be required to be covered by premiums. If one insurer is making more mistakes than the others, their premiums will be higher. From the feedback I have gotten from people in the industry, Bob Ostrovsky and Jim Werbeckes, the impact of this assessment will be minimal.

SENATOR SETTELMAYER:

Yes, but the two gentlemen you mentioned work for Employers. They are the ones who have the majority of the claims, and they are having all the other entities pay for their actions. That is where I am a little bit concerned.

SENATOR BROOKS:

This bill was heavily amended in the Assembly, presumably with the input of the folks who just spoke in opposition. Did they indicate to you that these changes would solve their problems? You seemed surprised at their opposition today.

ASSEMBLYMAN DALY:

When the bill came out, I realized I had not been clear enough in my instructions to the Legal Division, so it did not come out exactly right. It actually was dealing with the same issues as S.B. 377, which was permanent total disability. These amendments were an attempt to fix that misunderstanding.

I initially met with B&I, WCS and several others. A few people came to me and told me their concerns about the clawback, and I explained what we were trying

to achieve. When the bill was heard in the Assembly Committee on Commerce and Labor, most who spoke were neutral with a few in opposition, but the bill did not yet include section 3.8. That was added when B&I said they would like to know how reimbursement was going to happen. The law is that insurers make payments and then request reimbursement for it. Where B&I gets the money to reimburse is out of the assessment. The assessments are put into the pool, and insurers apply to be reimbursed from the pool. Everybody we talked to from Employers, the main players and B&I were good with that provision.

I think A.B. 370 is ready to go. You have heard the stories. This is absolutely the right thing to do. It will not cost the State dollars from the General Fund. I think we are ready to go.

SENATOR SEEVERS GANSERT:

I think we are missing some data. We need information about who would have been responsible for these claims and if there is a successor organization. The data about reserves is also important. If we can take care of this small group through reserves, perhaps we will not have to increase assessments. This is not a money committee, but it seems like we should know the finances of this before we move the bill.

VICE CHAIR DONDERO LOOP:

I will close the hearing on A.B. 370 and open the hearing on A.B. 398.

ASSEMBLY BILL 398 (1st Reprint): Revises provisions relating to commercial mortgage lending. (BDR 54-1068)

MARCUS CONKLIN (Nevada Mortgage Lenders Association):

Assembly Bill 398 was intended to do only one thing. In its original drafted form, it was overly complicated and did not actually accomplish the task we set out to do. That is why sections 2, 3 and 4 of the bill were deleted by amendment in the Assembly.

The goal of this bill is to bring more commercial lending money into the State for large projects. These are projects on a grand scale, \$10 million and above. Mortgage lending, as in home mortgage lending, is covered by *Nevada Revised Statutes* (NRS) 645B, and it was not designed for commercial lenders. This bill exempts wholesale lenders who fund or purchase commercial mortgage loans from the provisions of NRS 645B. From a practical standpoint, that means if

you are a broker and you are brokering a commercial loan, you must have a Nevada license, but that loan can be funded by an out-of-state entity. As long as the transaction was done by someone who was licensed in Nevada, where the money comes from or who can purchase the paper after it is funded would no longer be subject to NRS 645B.

VICE CHAIR DONDERO LOOP:

I will close the hearing on A.B. 398 and open the hearing on A.B. 453.

ASSEMBLY BILL 453 (1st Reprint): Revises provisions relating to the Board of Psychological Examiners. (BDR 54-934)

MORGAN GLEICH (Executive Director, Board of Psychological Examiners):

I have written testimony ([Exhibit F](#)) explaining what the bill does and why it is needed.

SENATOR SETTELMAYER:

Section 1.3, subsection 1, paragraph (c) of the bill adds a new member to the Board. Are there a lot of people who meet the criteria you have set? Is there anyone on the Board now who meets those criteria?

MS. GLEICH:

Both the University of Nevada, Las Vegas, and the University of Nevada, Reno, have accredited programs, and the Veterans Administration Hospitals in Reno and Las Vegas have accredited internships. We are developing two more internships as well. This provision was not designed for a particular person, but there is currently one serving member of the Board who would qualify.

SENATOR SETTELMAYER:

Having served in both the Senate and the Assembly, which has twice the number of people the Senate has, I can say that sometimes it is easier to get along with fewer people than it is with more people. Some professional boards have an even number of members but only allow the president to vote to break a tie. Have you thought about keeping your Board at six and saying that the president cannot vote unless it is necessary to break a tie? That would keep the numbers lower and save money on travel. Or are you in a situation where you desperately feel you need more people on the Board?

MS. GLEICH:

I do not know if that option was considered. We had seven members and were reduced to six at the beginning of the year. We took the education language in this provision from a bill from last Session, from one of the consolidation bill options. We thought it was a smart move to have an education person on the Board as much as possible. The profession of psychology is evolving and changing its expectations of training programs a lot lately. We want to make sure we are requiring the same things other states and programs are doing.

SENATOR SETTELMAYER:

You could also change section 1.3, subsection 1, paragraph (a) to say three members instead of four members. That is just a suggestion.

VICE CHAIR DONDERO LOOP:

What was the reason for reducing the number of members last Session?

MS. GLEICH:

The member we lost was a behavioral analyst. When behavioral analysts got their own board, we lost that position.

VICE CHAIR DONDERO LOOP:

You said that you noticed that some licensees were not paying, and they do not lose their license if they do not pay. Could you expand on that?

MS. GLEICH:

We currently have a penalty for when licensees do not pay their renewal fees, but we do not have one for when they do not complete required continuing education units (CEUs). The CEUs are required at the same time as the renewal fee, but many will pay the fee and not do the CEUs. The Board has to chase them down in one form or another. We inferred that the late fee causes them to pay the renewal fee on time, and perhaps another late fee would encourage them to complete their CEUs on time.

VICE CHAIR DONDERO LOOP:

I suggest you consider staggering those late fees and require licensees to complete CEUs before they can renew their licenses, as opposed to doing both at the same time. As an educator, I know that teachers do not pay for the license unless they have documentation that they have completed certain classes.

Senate Committee on Commerce and Labor
May 6, 2019
Page 13

SENATOR SETTELMAYER:

I agree. It seems odd that you would renew their licenses when they have not completed CEUs. In most professions, if you do not do your CEUs, you do not get your license.

Ms. GLEICH:

We do not have the ability to hold a license for CEUs.

SENATOR SETTELMAYER:

Would you like to have that ability?

Ms. GLEICH:

Whatever can get licensees to get their stuff to me correct and on time would certainly make my life easier.

SENATOR SEEVERS GANSERT:

Many boards will suspend a license until the CEUs have been completed, after which the licensee pays a fine and then moves on. That is not what A.B. 453 proposes; it just proposes a penalty. That may motivate them, but it is not unusual for boards to actually suspend a license and also charge a fee.

Ms. GLEICH:

I will take it back to the Board to double-check, but I think we would be in support of that additional provision.

SENATOR SETTELMAYER:

If we proceed with that amendment, perhaps we could give the Board some discretion and say it may suspend a license rather than must. There might be circumstances that make it impossible for a licensee to get CEUs in time. We might give the Board some discretion and say that it may suspend a license until the CEUs are done and charge a fee as well. As Barbara Buckley once told me, "Sometimes we tell people multiple ways so they get the point."

VICE CHAIR DONDERO LOOP:

I agree with you. Educators do not get that courtesy. If you do not have it, you do not teach.

Senate Committee on Commerce and Labor
May 6, 2019
Page 14

SENATOR HARDY:

Could you explain the changes in section 7, subsection 1, paragraph (b) of the bill?

Ms. GLEICH:

Our current language requires a posting in a newspaper if mail is returned. Other regulating boards can just post that the mail was returned and proper service was attempted. We do have in our language that licensees must update their addresses with us within 30 days.

SENATOR HARDY:

When you say "post," what do you mean?

Ms. GLEICH:

The statute requires that we place an ad in a newspaper for a month to notify an individual of a hearing when their mail is returned. The expectation is that licensees will update their addresses with the Board. That is a requirement of their licensure.

SENATOR HARDY:

This would do away with any warning if their mail was returned. Is that right?

Ms. GLEICH:

Correct.

SENATOR HARDY:

Do you use email?

Ms. GLEICH:

It is not a requirement for everyone to give us their email, so we do not have everyone's email address, especially older licensees.

SENATOR HARDY:

We could fix that.

Senate Committee on Commerce and Labor
May 6, 2019
Page 15

VICE CHAIR DONDERO LOOP:

I will close the hearing on A.B. 453. Is there any public comment? Hearing none, I will adjourn the meeting at 2:34 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster
A.B. 370	C	1	Linda Wicksten	Written testimony
A.B. 370	D	3	Kathy Floyd	Written testimony
A.B. 370	E	1	Mary Isgrigg	Written testimony
A.B. 453	F	4	Morgan Gleich / Board of Psychological Examiners	Written testimony