MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Eighty-first Session
May 7, 2021

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:02 a.m. on Friday, May 7, 2021, Online and in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Dina Neal, Vice Chair
Senator Melanie Scheible
Senator Roberta Lange
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblyman David Orentlicher, Assembly District No. 20
Assemblywoman Selena Torres, Assembly District No. 3

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Wil Keane, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Barbara Richardson, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
James Wadhams, Preferred Transportation Self Insured Group
Andria Peterson, Dignity-St. Rose Dominican Hospital
Stephanie Woodard, Senior Adviser on Behavioral Health, Division of Public and Behavioral Health, Department of Health and Human Services
James C. Kemp, Nevada Justice Association

Paul Catha, Culinary Union Local 226
Paul Moradkhan, Vegas Chamber
Amber Stidham, Henderson Chamber of Commerce
Conner Cain, Hospital Corporation of America
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Misty Grimmer, Nevada Resort Association
Randi Thompson, State Director, National Federation of Independent Business
Brian Reeder, Nevada Contractors Association
Mike Cathcart, City of Henderson
Mendy Elliott, Reno Sparks Chamber of Commerce
Michael Hillerby, Nevada Optometric Association
Regan Comis, National Association of Vision Care Plans

CHAIR SPEARMAN:
We will open the work session on Assembly Bill (A.B.) 4.

ASSEMBLY BILL 4 (1st Reprint): Revises provisions relating to the Nevada Insurance Guaranty Association. (BDR 57-314)

CESAR MELGAREJO (Policy Analyst):
As indicated in the work session document (Exhibit B), A.B. 4 would change the Nevada Insurance Guaranty Association. It would limit claims asserted against people insured by insolvent insurers, add insurance products to protect creditors for creditor-debtor transactions involving insurance not covered by the Association and describe coverages and warranties not covered by the Association. The bill would amend claims not covered by the Association, extend the claims filing deadline from 18 months to 25 months and lower the net worth threshold for first-party claims to $10 million. The bill would reduce the amount of the Association's obligation to pay a claim to $10,000 per policy if the claim is for the unearned premium.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 4.

SENATOR PICKARD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
We will close the work session on A.B. 4 and open the work session on A.B. 18.

ASSEMBLY BILL 18 (1st Reprint): Revises provisions relating to contracts of insurance and casualty insurance. (BDR 57-315)

MR. MELGAREJO:
As indicated in the work session document (Exhibit C), A.B. 18 would eliminate the limitation on the maximum amount of uninsured vehicle coverage provided by a vehicle liability insurance policy. The bill also provides certain notice requirements do not apply to policies on renewal if changes to provisions favor the policy holder.

SENATOR NEAL MOVED TO DO PASS A.B. 18.

SENATOR LANGE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
We will close the work session on A.B. 18 and open the work session on A.B. 45.

ASSEMBLY BILL 45 (1st Reprint): Revises provisions relating to insurance. (BDR 57-316)

MR. MELGAREJO:
As indicated in the work session document (Exhibit D), A.B. 45 would revise provisions relating to bonds filed by various persons regulated by the Commissioner of Insurance. It would revise provisions governing the service of process on certain insurers and the issuance, renewal and expiration of various licenses, permits, certificates and other authorizations to engage in insurance activities. The bill would provide specific requirements for certain stop-loss insurance policies and insurers and revise requirements governing holding companies and reinsurers. The bill would expand the list of *Nevada Revised Statutes* (NRS) to which certain healthcare-related entities and risk-retention

groups are subject and revise provisions governing annual disclosures by certain persons regulated by the Commissioner.

SENATOR SETTELMEYER:
The proposed amendment (Exhibit E) by Nevada's self-insured groups (SIGs) would help smaller SIGs. Current practice lays an onerous burden upon them; the proposed amendment would go a long way to alleviate that.

BARBARA RICHARDSON (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
With concern over the proposed amendment, Exhibit E, the Insurance Division is asking that all companies, no matter the size or risk, be treated as if entry-level under A.B. 45. The bill provides for different threshold levels for new entrants as well as established businesses. Some workers' compensation claims run for more than 30 years. That means we are seeking just that one change in *Nevada Revised Statutes* (NRS).

Under section 6 of A.B. 45, each company has the opportunity to work with the Division of Insurance on alternate policy protections, based on its individual size and risks, to craft coverage pools. The second change is a request to alter annual audits of associations of self-insured public or private employers. This information is used to determine the amount of member rates and assessments based on actual underlying rate factors. For smaller companies, the audit takes less work and is more confined. Without audits, there is a potential for under- or overpricing for coverage. Underpricing causes insolvency; overpricing causes small employers to pay unnecessarily for their risk pools.

The Division feels uncomfortable with the proposed amendment, Exhibit E. We are committed to working with individual businesses to examine pools to provide the best protection. As Senator Settelmeyer pointed out, there is no one-size-fits-all coverage. Statutory changes being requested would not help make those distinctions.

SENATOR SETTELMEYER:
The changes sought by the SIGs are minimal. Continuous annual audits may be costly and problematic. Is there proof of widespread problems from previous audits necessitating routine audits? I will vote no on A.B. 45 without the proposed amendment, Exhibit E.

MS. RICHARDSON:
The problem with the audits is determining pricing based on standard industrial classifications, which the industry has not been using. That has been the basis of problematic data up until now. The Division tries to be as efficient and accommodating for any kind of market or business we oversee. To best service their members and take care of the market, we do not want them to keep providing duplicative or unnecessary data. In this case, members have not used the proper underlying tools. Our fear is eliminating annual audits is inappropriate.

SENATOR LANGE:
I share Senator Settelmeyer's concerns. I will also vote no on A.B. 45 without the proposed amendment, Exhibit E.

SENATOR PICKARD:
I will also vote no on A.B. 45 without the proposed amendment, Exhibit E.

CHAIR SPEARMAN:
The opposition to the proposed amendment, Exhibit E, stems from the Division's desire to ensure the pricing is right. Is that correct?

MS. RICHARDSON:
Yes.

CHAIR SPEARMAN:
What does that mean for consumers?

MS. RICHARDSON:
The rates members calculate are based on their underlying risk. If that involves workers' compensation claims, that may be a long-term factor. In Nevada, such claims may be reopened any time after the fact. Underlying risk is part of the small-business member pool. For example, you do not want to charge a taxi driver the same rate as an office worker or a construction worker the same as an accountant. Different risks are involved in different work.

The annual audits are designed to ensure the member and employer pool is unchanged. For example, due to Covid-19, there could have been a large swing in the type of actual work, which would affect how the risk is calculated and how much members pay. Without annual audits, there could be a steady

increase without reviews of members' actual risks, or the risk pool could change. If not enough money is paid into the risk pool, there is insolvency. If rates are not calculated on good faith and underlying data, individual insolvency could cause all other businesses in the pool to fail. They have to absorb and pay for any member's insolvency. The Division is figuring out how to work with SIGs separately; meanwhile, we must be sure they are pricing member pools correctly, which is not happening. That causes us a lot of angst.

The proposed amendment, Exhibit E, to A.B. 45 would change "shall" to "may" and "at least annually" to "whenever deemed necessary" in NRS 616B.410: "The Commissioner shall cause to be conducted at least annually an audit of each association of self-insured public or private employers." That would not change the Division's need to start moving in the right direction with correct pricing. If we let members out from under the annual audit requirement, they can never get back on track and provide the information and training needed to understand standard industrial classification rates.

CHAIR SPEARMAN:
If someone has a business with office workers filing a workers' compensation claim, would you walk us through a scenario of how that would differ from a taxi driver's claim?

MS. RICHARDSON:
Let us say a member has only taxi drivers. Taxi drivers have certain risks from often being on the road. If they are injured, it is likely workers' compensation claims are filed. They would cost more because they could last a long time. Office workers do not have those risks; their chances of having workers' compensation claims are much lower. You want to ensure if you have a pool of taxi drivers and a pool of office workers, you do not charge the taxi drivers member the same rate as the office workers member. If you do, there will not be enough to pay the taxi drivers' workers' compensation claims. If a member has a lot of office workers and a few taxi drivers, we want to be sure the member is charged a lower rate because the risk and claims amounts are much lower.

CHAIR SPEARMAN:
Let us say I have a company with office workers. The business next door has taxi drivers. If that person is charged $400 per employee, would that same

$400 apply to me even though my employees' jobs are less risky? Is that what A.B. 45 is trying to accomplish?

MS. RICHARDSON:
The Division is trying to make sure SIGs look at their members' underlying risk thresholds based on what work they are doing. If the State does not perform annual audits and prices are not based on that data, there is an underlying cause to the SIG members who may be over- or underpaying.

CHAIR SPEARMAN:
Apropos of Senator Settelmeyer's question, if a small insurer is charged the same rate as someone with a higher probability of accidents, is it in his or her best interest to be audited? If one person pays $150 per employee and another pays $400, do you not know the difference unless the Division does the audit?

MS. RICHARDSON:
Correct. Nevada has constantly changing populations and businesses. Many SIG companies have people retiring and others being hired constantly. The Division wants to ensure the rates are accurate. We certainly do not want someone who should pay $150 per employee to pay $400.

CHAIR SPEARMAN:
Without the audit, the person who should only be paying $150 per employee may be paying $400. Is that correct?

MS. RICHARDSON:
The member company actually pays into the SIG. So, the entire group may be overpaying.

WIL KEANE (Counsel):
The proposed amendment, Exhibit E, would change subsection 2, paragraph (a) of NRS 616B.353: "At the time of initial qualification and until the association has operated successfully as a qualified association of self-insured private employers for 3 years ..." "Until" would become "as long as" and "for 3 years" would be deleted. I do not know the difference between "until" and "as long as" or with the deletion of "for 3 years" how that clause operates. Do the requirements in subsection 2, paragraph (a) operate in perpetuity as long as the SIG exists?

MS. RICHARDSON:
Yes, that change would make all SIGs act as if they were under the three-year business threshold. There would be no difference between a new entrant and one that had been around for 20 years.

MR. KEANE:
The change in subsection 2, paragraph (b) to NRS 616B.353 provides for what happens after three years of operation. The change is "as determined" to "if permitted" by the Commissioner. What is the distinction, and would that make a substantive difference in court? In both cases, the Commission would judge whether the clause is applicable.

MS. RICHARDSON:
The Division agrees with you, there is no distinction.

MR. KEANE:
The final change in the proposed amendment, Exhibit E, is to subsection 1 of NRS 616B.410. It provides, "The Commissioner shall cause to be conducted at least annually an audit of each association of self-insured public or private employers." The "shall" would be changed to "may" and "at least annually" to "whenever deemed necessary." The change would be to require an annual audit whenever the Commissioner deems it necessary. Is the "deemed necessary" language significant, or could the Commissioner perform audits frequently? Would the Commissioner have a process to determine if the audit was necessary and not be able to audit as often as he or she wished?

MS. RICHARDSON:
The Division also agrees with that interpretation. My concern is we would potentially be asking for an NRS change we do not encourage because the situation could be different in the Eighty-second Session.

MR. KEANE:
With these changes, would you proceed with at least one and possibly multiple annual audits? A SIG could challenge whether the audits were "deemed necessary," and a process would ensue to determine if the Commissioner's determination was correct, therefore delaying the audit. Is that correct?

MS. RICHARDSON:
I do not know the purpose of the proposed amendment, Exhibit E, as the Division does not agree with it. Unless there was something significantly wrong, we would not do more than an annual audit.

Mr. KEANE:
Do you see "whenever deemed necessary" as something the Commissioner could decide on his or her own, or would it necessarily be a process to challenge the determination and delay the audit? The determination could be challenged every year.

MS. RICHARDSON:
In general, NRS allows that type of challenge. It would just delay the audit process and not prevent remediation of problems. Self-insured groups always have the right to challenge anything termed "may."

MR. KEANE:
Without the proposed amendment, would the Division audit SIGs at least annually, which they could not challenge?

MS. RICHARDSON:
I would not interpret it that way. If a SIG feels aggrieved by a Division decision, it has the right to a challenge and hearing. The proposed amendment, Exhibit E, would change whether we institute a new process to deal with challenges.

CHAIR SPEARMAN:
Mr. Keane's question revolves around what if any substantive changes would be implemented by the proposed amendment, Exhibit E, to A.B. 45.

JAMES WADHAMS (Preferred Transportation Self Insured Group):
The section proposed to be amended in NRS 616B.353 involves self-insured members who have operated for as long as 25 to 30 years with a net worth of at least $2.5 million in the aggregate. They can easily pay claims, having passed the asset test. The change to NRS would clarify an interpretation by SIGs that they only qualify if they have enough assets for three years. After that, they would have to pass the revenue test in subsection 2, paragraph (b) of the proposed amendment, Exhibit E.

A member could still fail to pass the test because its activity level could be low: a builder during the beginning of the Covid-19 pandemic, cab companies with slowed transportation. It does not mean they do not have the assets to pay the claims. Members misinterpreted A.B. 45 as they had to meet the revenue test after three years in business. The proposed amendment is designed to address that problem.

In subsection 1 of the proposed changes, Exhibit E, to NRS 616B.410, "shall" is changed to "may." Self-insured insurance groups are audited by outside firms, and the Commissioner can audit them whenever it is deemed appropriate under NRS 616B.395. The change would make the mandatory annual audit a discretionary audit. Members would have the cost of creating an audited financial statement plus an annual audit and potential full examination by the Commissioner. That is nonsensical from an economic standpoint. As defined in NRS, solvency is an ability to pay workers' compensation claims. We need to make sure members do not lose their certificates to stay in business if their cash flows are low even if assets are adequate to pay claims. The changes would not prevent members from staying in business or being audited.

MS. RICHARDSON:
Mr. Wadhams implies some type of crisis or concern with NRS 616B.395. Some of his assertions simply do not play out. The issue is changing the underlying amount to be held by members with less than three years' standing versus members with more than three years. Statute allows SIGs to work with the Division to alter the policy protection amount and provides solvency tools based on individual risk. Smaller SIGs do not have to fall under the $7.5 million threshold if alternatives work for them. The Division has allowed them to be out of compliance for calendar year 2020-2021 to give everyone a year to right set. The SIGs did not understand NRS would allow them to make changes. That gives a false impression something is wrong.

Mr. Wadhams cites three different oversight requirements. The one to provide financial statements is general for any ongoing concern. There is not usually a cost to them to email us their financial statements, which we get from all business entities. The examination statute he mentions focuses on financial statements. The examinations are done every three years, based on supplied financial statements. Mr. Wadhams confuses the audit with other financial reviews; the audit under discussion is not at all a financial review. The audit is to properly classify employees to determine the rates SIG members must pay to

protect them. To claim all three of the oversight requirements will cause a cost crisis is misleading at best.

MR. WADHAMS:
This is not an argument with the Commissioner; we are talking about policy questions that seem large because they are so subtle. Our goal is to ensure financially healthy SIGs can survive until they are determined insolvent. The crisis is not immediate but imposed because of letters each SIG received stating it will no longer qualify for certificates of authority if it does not post bonds. The problem is bonds are not available in the marketplace, which means SIGs would have to defend their solvency before district courts.

Self-insured groups are lumped together; if one member becomes insolvent, the others must pick up the difference. Groups do not support just any risk, rather good, adequate regulations. Self-insured groups have been told they will lose their certificates if they do not meet the second financial test. Subsection 6 of the proposed amendment to NRS 616B.353, Exhibit E, may grant that discretion. That uncertainty may be clarified if we make the alternative between the two tests more distinct, which does not preclude the Commissioner from making another finding. In terms of maintaining the basic certificate to continue in business, that should not be interrupted if groups can still pay out claims.

The Commissioner's examination power under NRS 616B.395 is comprehensive, allowing examinations to occur any time there is a concern. Audited financial statements are common throughout the insurance industry and address issues of adequacy of capital and reserves to pay claims. The proposed amendment does not seek to eliminate the authority for additional, specific audits, rather to make it discretionary instead of mandatory. A small SIG could face three audits in one year, which would be unnecessary if its solvency is not at issue. The Commissioner could perform a full examination, and if a SIG is insolvent, it would be taken out of the market quickly. The annual audit under NRS 616B.410 has not been done because it is unnecessary. The risk that it could become mandatory demands the process be consistent. Regulation is important. We want to ensure SIGs do not have to fight for their lives if they are otherwise solvent and able to pay claims.

SENATOR PICKARD:
Does the Division do the audit or do SIGs provide audited records?

MS. RICHARDSON:
In 2020, the Division discovered several statutes had not been followed for years, including that one. The lack of compliance was based on a misunderstanding of the phrase "standard industrial classification codes." Groups interpreted it to mean a particular classification code from the early 1990s, whereas it really meant to choose a standard industrial classification code. The audit uses that phrase.

SENATOR PICKARD:
Who does the audit?

MS. RICHARDSON:
Under NRS, the audits are done by SIGs for their members.

SENATOR PICKARD:
That is an important distinction. As I read the proposed amendment's revision to subsection 1 of NRS 616B.410, the prior two revisions are meant to conform the rest of NRS to this change. Is that correct?

MR. WADHAMS:
The revision to NRS 616B.410 in the proposed amendment, Exhibit E, states an audit of each SIG may be conducted whenever deemed necessary by the Commissioner. It is a State-ordered audit. The audit developed and hired out to be done by SIGs is in NRS 616B.404. *Nevada Revised Statutes* 616B.410 mandates the Commissioner do an additional outside audit. In NRS 616B.395, because solvency is an issue in all types of insurance operations, the Commissioner has unfettered power to examine finances whenever and however she deems. We are trying to correlate the State-generated examination in NRS 616B.395 with the annual mandated audit in NRS 616B.410 and retain the discretion to have audits done when necessary. Making the audit mandatory adds an additional, redundant expense and does not add to the information base.

CHAIR SPEARMAN:
We will close the work session on A.B. 45 and open the work session on A.B. 437.

ASSEMBLY BILL 437 (1st Reprint): Revises provisions relating to embalming. (BDR 54-513)

MR. MELGAREJO:
As indicated in the work session document (Exhibit F), A.B. 437 revises educational requirements for licensing to practice embalming. The bill would allow licenses to be issued by reciprocity to practice embalming for applicants who have practiced at least five years and actively for at least two of the five previous years. The bill would authorize an embalming college or school of mortuary science student to enter an embalming room without the permission of a family member of the deceased.

SENATOR LANGE MOVED TO DO PASS A.B. 437.

SENATOR NEAL SECONDED THE MOTION.

SENATOR HARDY:
The Committee needs to understand the attending physicians and assistants include medical students, residents and fellows, as discussed during the hearing on A.B. 437.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
We will close the work session on A.B. 437 and open the hearing on A.B. 442.

ASSEMBLY BILL 442 (1st Reprint): Revises requirements concerning training of certain providers of health care. (BDR 54-450)

ASSEMBLYMAN DAVID ORENTLICHER (Assembly District No. 20):
Assembly Bill 442 would revise continuing education unit (CEU) requirements for healthcare providers authorized to prescribe controlled substances. They would have to be trained to better identify patients who have or are at risk of developing substance use disorders. The bill would not increase the number of required CEUs; they would simply be included in the total CEUs prescribers must satisfy. The bill was sponsored by the 2019-2020 Interim Legislative Committee on Health Care.

ANDRIA PETERSON (Dignity-St. Rose Dominican Hospital):
I am a clinical pharmacist and cofounder of the Empowering Mothers for Positive Outcomes with Education, Recovery and Early Development (EMPOWERED) program. The EMPOWERED program originated in 2017 after we discovered an increase in infants with neonatal abstinence syndrome, also known as substance withdrawal. There is a greater need for improved care for pregnant women with substance use disorders in Nevada communities. We guide women into services throughout their pregnancies and support them and their infants for one year postpartum.

In November 2019, we presented the EMPOWERED program to the Interim Committee on Health Care. We were seeking funding—then Covid-19 hit. We developed a no-cost policy option for pregnant women, which the Committee adopted. The policy revolves around CEUs for screening, brief intervention and referral to treatment (SBIRT).

The SBIRT approach is evidence-based and can be rapidly performed in varied settings to identify patients with or at risk of developing substance use disorder. It is a Medicare-reimbursable service. Utilization of SBIRT by healthcare professionals can help them identify and assist people not actively seeking intervention or treatment. It will set providers and patients up for success in addressing the opioid epidemic in our State, as per A.B. No. 474 of the 79th Session.

Assembly Bill 442 would require providers who prescribe controlled substances to complete a two-hour training session on SBIRT. That will qualify as CEU requirements related to substance use and other addictive disorders and the prescribing of opioids, as per A.B. No. 474 of the 79th Session. Healthcare providers newly licensed in the State would have to complete SBIRT training within the first two years of licensing; those already licensed would need to complete it by January 1, 2024.

SENATOR HARDY:
Physicians in Nevada have CEU requirements for pain management and opioid addiction. If a doctor does the SBIRT training, would it count for the addiction and pain management requirement?

STEPHANIE WOODARD (Senior Adviser on Behavioral Health, Division of Public and Behavioral Health, Department of Health and Human Services):
The intent of A.B. 442 is not to add to the required two hours of CEU as per A.B. No. 474 of the 79th Session. The SBIRT training would substitute for the other required hours.

SENATOR NEAL:
In section 8, subsection 2 of A.B. 442, physicians may not use the CEU for SBIRT. I do not understand that provision. Are doctors able to do so now? These people are licensed, so why can they not use CEUs for SBIRT for treatment of substance use disorder?

MS. WOODARD:
The intent is make clear in statute that SBIRT training hours would not be used for existing ethics CEU hours.

MS. PETERSON:
That is correct.

SENATOR NEAL:
Typically, CEUs constitute additional training. Why do you not want doctors to not use CEUs toward SBIRT? Is that not the point of CEUs to shore up areas of knowledge?

MS. WOODARD:
Yes, we want this to count toward CEUs, which each medical board has the authority to determine how many are required during licensure periods. There is typically a subset of requirements determining how many hours of ethics training is expected. Section 8, subsection 2 of A.B. 442 provides CEUs should count, just not toward ethics training. It is guidance for boards on how to classify CEU hours.

SENATOR NEAL:
What type of CEU will satisfy the ethics component?

MS. PETERSON:
Assembly Bill 442 primarily involves CEUs regarding addictive disorders and the prescribing of opioids as set forth in A.B. No. 474 of the 79th Session.

SENATOR SETTELMEYER:
Line 3 of the Legislative Counsel's Digest for A.B. 442 says "opticians" fall under its provisions. On lines 13 and 24, it says "optometrists." Is that a drafting mistake?

ASSEMBLYMAN ORENTLICHER:
I will find out. The bill is meant to encompass all people who prescribe controlled substances.

SENATOR HARDY:
Optometrists, not opticians, can prescribe controlled substances.

ASSEMBLYMAN ORENTLICHER:
We will fix that discrepancy before the work session.

CHAIR SPEARMAN:
We will close the hearing on A.B. 442 and open the hearing on A.B. 222.

ASSEMBLY BILL 222 (1st Reprint): Revises provisions governing employment practices. (BDR 53-739)

ASSEMBLYWOMAN SELENA TORRES (Assembly District No. 3):
Assembly Bill 222 revises provisions governing reporting of workplace safety issues. Throughout the Covid-19 pandemic, workers have expressed fears about telling their employers about workplace safety because they are frightened of retaliation. Covid-19 has exacerbated the issue as essential employees continued to work.

Nevada workers deserve to be safe and feel comfortable about talking to employers about unsafe conditions without fear of retribution. If an employee feels unsafe and reports it to an external authority like the Occupational Safety and Health Administration (OSHA), a regulatory body or the Office of Labor Commissioner, he or she is guaranteed whistleblower protection. However, that protection is not guaranteed to employees who report issues to supervisors or other appropriate authorities within organizations.

It is mutually beneficial if employees report unsafe working conditions to employers. This encourages employers to quickly address safety issues. It empowers employers to talk to their teams about safety and deal with issues

in-house. It helps prevent accidents. When employees know they can talk to their employers, it fosters better work environments and employee-employer relationships.

JAMES C. KEMP (Nevada Justice Association):
Assembly Bill 222 will fill an important void since the Nevada Supreme Court ruled in *Wiltsie v. Baby Grand Corporation*, 105 Nev. 291, 774 P.2d 432 (1989). Whistleblowers are protected under Nevada common law, but that only extends to the point at which an employee reports about workplace conduct to a government agency with regulatory oversight. If an employee merely does internal whistleblowing, he or she has no protection. Workers are forced to call the police about unsafe or illegal conditions. If the employer gets upset over the cost of remediation, he or she could say, "Rather than fix the problem, I'll fire you. That'll fix the problem for me." The Court decision is inconsistent with the majority of other states that protect internal whistleblowers.

Assembly Bill 222 is aimed at bad actors. Good employers do the right thing: fix safety issues and address employees' concerns. Bad actors endanger employees by not correcting workplace problems. Section 1 of A.B. 222 provides if whistleblowers suffer an adverse employment action, they can pursue remedies from the employer: an order of reinstatement, lost wages, compensatory damages for emotional distress and harm, and punitive damages.

Section 4 of the bill provides a fix to discrimination statute NRS 613.430 regarding the time limit to bring a discrimination lawsuit before the Nevada Equal Rights Commission (NERC) or U.S. Equal Employment Opportunity Commission (EEOC) finishes its investigation and issues a notice of suit rights. The NRS speaks to right-to-sue notices issued by NERC. The proposed change clarifies people have 90 days to file suit after EEOC issues its notice of suit right. The agencies do not always issue suit notices at the same time.

SENATOR NEAL:
In section 4 of A.B. 222, the timeline to file suit would change. What if there were a substantial review to ensure procedures were followed by NERC before the suit goes to EEOC?

ASSEMBLYWOMAN TORRES:
A work-sharing agreement between NERC and EEOC that allows for filing discrimination for retaliation suits with both agencies simultaneously. The agreement is not in NRS, and the dual-filing system has been problematic.

MR. KEMP:
Under the work-sharing agreement, whichever agency receives the suit first generally does the investigation. If the suit comes out of NERC and a substantial wait review is requested, A.B. 222 would continue the timeline to file suit until EEOC finishes its review and issues a right-to-sue notice.

SENATOR NEAL:
There is an issue with the substantial wait review. When people's claims are denied by NERC, they do not know how to do a substantial wait review. Should we give complainants a skeleton letter about how to provide substantial wait reviews? If they need to go to NERC, sanctions would not be triggered. Typically, NERC sends a letter saying, "You can no longer contact this office ever again."

MR. KEMP:
Yes, that is an issue. Letters from NERC state workers can file substantial wait reviews, and it usually includes some sort of correspondence from EEOC. It can be confusing for the uninitiated; the process could be improved. The NERC letter has a strict limit of 15 days to file a request for reconsideration with a later substantial wait review. Perhaps NERC could post better instructions on its website.

SENATOR PICKARD:
Section 1, subsection 2, paragraphs (b), (d) and (e) of A.B. 222 deal with denial of employment or promotions. The bill would apply to nonunion and businesses without collective bargaining agreements, I am concerned about its ramifications for our right-to-work state. Looking at section 1, subsection 2, paragraph (e), are not punitive damages disallowed in employment discrimination suits? That would constitute a substantial exposure for employers.

MR. KEMP:
Under common law, punitive damages are allowed for retaliatory discharge for whistleblowing. Under NRS 42.005, the full panoply of damages is allowed, including punitive.

SENATOR PICKARD:
Assembly Bill 222, section 1, subsection 2, paragraph (e) states, "The provisions of NRS 42.007 do not apply to an action brought pursuant to this section." If punitive damages are allowed under NRS 42.005—which governs limitations after court proceedings—but not under NRS 42.007, what is the difference?

MR. KEMP:
Nevada Revised Statutes 42.005 identifies and defines punitive damages. *Nevada Revised Statutes* 42.007 was passed after the 1991 Tailhook sexual assault incident amid concerns employers were being held vicariously liable for punitive damages by actions of their employees.

The relationship in A.B. 222 is between employers and employees. If an employee is fired, the bill's provision clarifies an employer cannot say, "Oh, well, that wasn't really us. It was our low-level manager. You can't collect punitive damages from us." When an employee is fired, the employer does it.

SENATOR PICKARD:
Section 1, subsection 2, paragraph (b) stipulates whistleblowers will be reinstated "without loss of position, seniority or benefits." That is a blatant intrusion into right to work. Sometimes difficult employees make claims to avoid being fired. Would the bill make it difficult for private businesses to discharge difficult employees?

ASSEMBLYWOMAN TORRES:
Assembly Bill 222 is targeted at bad actors, not employers who fire workers who violate workplace rules. Discharged employees would have to file lawsuits, and judges would determine if punitive damages are in order. It is not like employees could file frivolous suits and get damages.

SENATOR SETTELMEYER:
Section 1, subsection 1, paragraph (a) of A.B. 222 states workers may report unsafe conditions to employers or "an appropriate external authority." In my ranching business, if there is a safety issue, I expect my employees to tell me immediately because it affects the well-being of other workers. If they can report it to OSHA instead of me, a known danger could affect me or someone else. I have no problem with issues being reported to OSHA, but they also need to be reported to employers for quick remediation.

ASSEMBLYWOMAN TORRES:
Yes, we want to encourage employees to go directly to good-actor employers like you. However, there is no whistleblower protection for that, only for reporting to external authorities. Abraham Camejo is a southern Nevada small businessman who provides OSHA training for employees. Often, employees go to him with safety issues because they do not know how to navigate reporting, often due to language barriers.

SENATOR SETTELMEYER:
The "or" in section 1, subsection 1, paragraph (a) of A.B. 222 needs to be changed to "and." The bill allows workers to only report to OSHA, not employers. Employers must be notified to fix safety problems before injuries occur. Once an employee identifies an unsafe condition, if the employer disagrees, does that create a cause of action? Sometimes, my daughter says, "Dad, that's dangerous," and I say, "Yeah, that's just kinda the way we do things." When you are dealing with knives and branding irons, some things are inherently dangerous.

MR. KEMP:
If a table saw is missing a safety bar, that is an obvious hazard; other things may fall into a gray area. The only issue in A.B. 222 is when an employer retaliates against and fires a whistleblower.

SENATOR SETTELMEYER:
Does the concept of a disagreement between a worker, employer and OSHA over what constitutes a safety hazard potentially raise a cause of action?

MR. KEMP:
It is only actionable if the employee is fired or retaliated against.

SENATOR SETTELMEYER:
Let us say an employee tells the employer five times about unsafe conditions. Then OSHA deems the conditions are safe, yet the employee keeps complaining. The employer gets tired of that and lets the worker go. Does that constitute a cause of action?

MR. KEMP:
Yes. The question then becomes whether the unsafe condition was the employee's reasonable good-faith belief. If several people disagree there is a

problem, that belief is called into question, and the employee is not protected under the bill.

CHAIR SPEARMAN:
The U.S. Army Criminal Investigation Command will move to a complaint structure based on the death of a female soldier at Fort Hood, Texas. The soldier was sexually harassed and complained to her direct supervisor, who did nothing. When the soldier said she wanted to complain to someone else, she was told she had to have proof of the harassment. Eventually, evidence came to light another soldier had caused the woman's death.

As an Army captain, I experienced sexual harassment from my colonel supervisor in 1986. I never told anyone about it until 1995, when I was promoted to lieutenant colonel because I was deathly afraid of losing my career. Most workers enjoy their jobs, and few would make things up solely to bring down their employer. There are people who enjoy preying on the vulnerable. If an unscrupulous person holds power over someone who needs the job, there are opportunities for harassment.

PAUL CATHA (Culinary Union Local 226):
Culinary Union Local 226 supports A.B. 222.

PAUL MORADKHAN (Vegas Chamber):
The Vegas Chamber does not object to A.B. 222's intent to codify two separate Supreme Court cases but opposes the bill overall. There are laws providing specific whistleblower protections in NRS 618. We are working on an amendment to section 1's legal remedies, scope of damages and correct reporting of safety concerns and which State agencies hear them. The issues are complex, and we want to avoid unintended consequences that may harm employers and employees.

AMBER STIDHAM (Henderson Chamber of Commerce):
The Henderson Chamber of Commerce opposes A.B. 222 unless it is amended. We are concerned about provisions in sections 1 and 3. Federal law provides robust protections for retaliation against whistleblowers. Nevada law protects workers terminated for violations of public policy. Section 2 provides "An employee who is discharged, discriminated against or otherwise suffers an adverse employment action" is entitled to reinstatement, lost wages and past or

future compensatory damages. This is in addition to court costs and attorneys' fees.

We are concerned about overreaching punitive damages and their potential impact on small businesses that could have to financially defend themselves in "he said, she said" complaint scenarios. Laws already provide adequate protections for terminated whistleblowers to regain lost jobs, money and attorneys' fees. Assembly Bill 222 would put small business owners in a difficult situation in regard to hiring, rehiring and retaining employees. It could also discourage critical out-of-State investment and economic diversification.

CONNER CAIN (Hospital Corporation of America):
The Hospital Corporation of America opposes A.B. 222 as going beyond codifying *Wiltsie.* It could have unintended consequences beyond merely reporting illegal or unsafe workplace activities.

BRYAN WACHTER (Senior Vice President, Retail Association of Nevada):
The Retail Association of Nevada opposes A.B. 222 for the aforementioned reasons. We are concerned the bill moves beyond looking for bad actors, given the amount of punitive damages. It would create a system in which businesses doing the right thing are encouraged to settle lawsuits to avoid the expense of defending themselves over a long period. Because OSHA has standards of what is not safe, that is a more traditional and appropriate remedy versus what even Mr. Kemp defined as a gray area: something an employee and employer disagree over. The employee could be dismissed for an entirely different reason, and we are concerned that could lead to frivolous lawsuits.

MISTY GRIMMER (Nevada Resort Association):
The Nevada Resort Association opposes A.B. 222. A mechanism for the formal reporting of a workplace safety violation, filing a claim, investigation by OSHA and punishment for retaliation against whistleblowers is in NRS 618.445. A mechanism to create an avenue for a less formal complaint process could be added to NRS using the structure and punishment framework in NRS 613, which regulates unlawful employment practices. For example, NRS 613 addresses employer access to employees' social media accounts, prohibitions against requiring employees to show up in person to prove they are sick, noncompetition covenants and other issues. We could work within NRS 613 to address the goals of A.B. 222.

Caselaw already protects an employee who refuses to perform a task that violates a law or regulation. We would not object to adding clarity to that protection in NRS as long as protections do not go beyond unlawful activities. Assembly Bill 222 does so, including the ability of an employee to refuse a task because he or she deems it risky. That language is too broad. For example, when the Covid-19 mask mandate is lifted, a person could refuse to work next to an unmasked coworker. The bill's penalty provisions go far beyond what is generally contained in statutes concerning unlawful employment practices. The bill would allow recovery of future wages with no definition of what that means.

RANDI THOMPSON (State Director, National Federation of Independent Business):
The National Federation of Independent Business opposes A.B. 222 for the aforementioned reasons. You have my written statement of opposition (Exhibit G).

BRIAN REEDER (Nevada Contractors Association):
The Nevada Contractors Association opposes A.B. 222 for the aforementioned reasons. We take safety extremely seriously. We honor our members for robust safety and compliance records at our annual Contractor of the Year awards ceremony. Our safety committee meets regularly to discuss best practices in the field and how to keep employees safe. Many members employ full-time safety professionals on staff and in the field at jobsites. We do these things not just out of liability concerns but to ensure our workers go home safely every night.

MIKE CATHCART (City of Henderson):
Assembly Bill 222 would change the whistleblower law from a shield to protect employees from retaliation into a mechanism to supersede employers' disciplinary processes. Punitive damages against government employers are an uncommon remedy in State law. They create a disincentive to discipline and hold accountable employees who file complaints. By accepting the applicability of NRS 42, which limits monetary awards against the government, the change could prove problematic for local government budgets.

MENDY ELLIOTT (Reno Sparks Chamber of Commerce):
The Reno Sparks Chamber of Commerce opposes A.B. 222 for the aforementioned reasons.

ASSEMBLYWOMAN TORRES:
I agree with Senator Settelmeyer that employees should feel comfortable about talking to employers about safety concerns. The unfortunate reality is there is no protection for that without fear of retaliation. Such conversations reduce danger to employees and employers. Section 3 of A.B. 222 was removed. The bill will not lead to frivolous lawsuits if a whistleblower is let go for an unrelated reason. Courts know how to address legitimate terminations if someone is let go for a different reason, which would preclude a wrongful termination claim. Employers use pretexts to hide their real motives, and courts have ways to address that.

CHAIR SPEARMAN:
Mr. Keane, could you address the safety concern inherent in working next to someone not wearing a mask?

MR. KEANE:
There is a patchwork of federal and State whistleblower protections, and Assembly Bill 222 would bring them together. The *Wiltsie* ruling provides protection for whistleblowers who report issues to external authorities but not to their employers. Federal law provides protections in specialized cases that do not always apply to private sector employees. A provision in NRS 618 addresses reporting unsafe conditions and preventing resulting discrimination but does not have the same remedies as in A.B. 222.

Statute allows for employees to refuse unsafe working conditions, but workers must reasonably and in good faith suspect the condition violates local, State or federal laws or regulations. If an appropriate authority deems the condition safe, the employee's argument is undercut. In a limited context, NRS 618 gives employees the right to file actions with the Division of Industrial Relations, Department of Business and Industry, not NERC.

CHAIR SPEARMAN:
We will close the hearing on A.B. 222 and open the hearing on A.B. 436.

ASSEMBLY BILL 436 (1st Reprint): Revises provisions relating to vision insurance. (BDR 57-808)

MICHAEL HILLERBY (Nevada Optometric Association):
Like dental plans, vision plans provide limited, often prepaid benefits. You pay a set price for an annual vision examination and sometimes get a discount on a new pair of glasses. About 200 million Americans have vision plans in their healthcare insurance; two-thirds are covered by just two companies. This has created limited choices and options for consumers and a difficult bargaining environment for independent optometry doctors.

Since 1983, dental plans have been regulated in NRS 695D. Assembly Bill 436 would streamline vision coverage in NRS 686A. Section 1, subsection 1 would prohibit insurers from entering contracts with vision care providers that condition any rate of reimbursement for care on the provider using ophthalmic devices or materials in which the insurer has an ownership or financial interest. The provision would not apply if the insurance company owned the glasses lenses and frames. Nevada Optometric Association members were concerned about patient choices and their ability to provide care in patients' best interest.

Section 1, subsection 2 of the bill provides insurers must include rates of reimbursement for services in contracts to vision care providers. Subsection 3 provides disclosures for policyholders, including whether insurers have any ownership interests in ophthalmic devices or materials or in vision care providers. Section 1, subsection 4 would prohibit advertisements for providing things insurers do not reimburse. There is a proposed amendment (Exhibit H) to this subsection from Regan Comis of the National Association of Vision Care Plans. Subsection 4 provides if an insurer does not provide reimbursement for certain vision care, it shall not advertise the care is available without a copay or additional deductible if an additional fee is already charged. Subsection 5 gives definitions.

Sections 2, 3 and 4 of A.B. 436 repeat the provisions of section 1 in other parts of NRS 686A. Section 5 repeats these provisions in NRS 695B, section 6 repeats the provisions in NRS 695C, and section 7 repeats the provisions in 695F. Sections 8 and 9 cover insurance for public employees.

SENATOR LANGE:
Could we have Regan Comis explain the proposed amendment, Exhibit H?

REGAN COMIS (National Association of Vision Care Plans):
Vision plans can offer certain rebates on things like contact lenses and frames if people use providers in a network. We want to continue to be able to advertise those benefits for enrollees before they choose providers.

SENATOR LANGE:
The proposed amendment, Exhibit H, would allow you to continue the advertising you already do for members?

MS. COMIS:
Yes. If no discount is offered, we should not advertise that as such.

SENATOR LANGE:
In section 1, subsection 4, insurers must disclose if there is an additional copay or out-of-pocket expense. Will that still be required?

MS. COMIS:
Yes.

SENATOR LANGE:
Has the Nevada Optometric Association accepted the proposed amendment?

MR. HILLERBY:
Yes, changing "or that" to "if" in section 1, subsection 4 of Exhibit H clarifies it is a conditional statement, avoiding any confusion.

MS. COMIS:
The National Association of Vision Care Plans is neutral on A.B. 436.

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CHAIR SPEARMAN:
We will close the hearing on A.B. 436. Seeing no more business before the Senate Committee on Commerce and Labor, this meeting is adjourned at 10:42 a.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Begins on Page**	**Witness / Entity**	**Description**
	A	1		Agenda
A.B. 4	B	1	Cesar Melgarejo	Work Session Document
A.B. 18	C	1	Cesar Melgarejo	Work Session Document
A.B. 45	D	1	Cesar Melgarejo	Work Session Document
A.B. 45	E	1	Nevada Self-Insured Groups	Proposed Amendment
A.B. 437	F	1	Cesar Melgarejo	Work Session Document
A.B. 222	G	1	Randi Thompson / National Federation of Independent Business	Opposition Letter
A.B. 436	H	1	Michael Hillerby / Nevada Optometric Association	Proposed Amendment