SENATE COMMERCE AND LABOR COMMITTEE

MINUTES OF MEETING

TUESDAY, MARCH 13, 1973

The meeting was called to order at 3:00 p.m.

Senator Drakulich in the Chair.

PRESENT: Senator Herr
Senator Swobe
Senator Pozzi
Senator Hecht
Senator Lamb
Senator Blakemore

ASSEMBLYMAN PRESENT:

Assemblyman Banner, Chairman
Assemblyman Bickerstaff
Assemblyman Capurro
Assemblyman McNeel
Assemblyman Brookman

S.B. 194 - Clarifies Nevada industrial commission's right of subrogation.

Senator Swobe remarked that the majority of mail he has received on this bill is in opposition.

Mr. Robert Archie, Employment Security Department: Mr. Archie stated that he would be talking on S.B. 194, S.B. 307 and A.B. 457 in general. S.B. 307 and A.B. 457 are identical bills, and the Security Department does not care to endorse either bill, but to explain the significant section of all bills. Mr. Archie stated that the benefits are cash payments to replace, for a limited time, a part of wages lost by the insured worker, unemployed because of sickness or injury. Mr. Archie gave details on various programs carried by various states. Mr. Archie further stated that Governor O'Callaghan, in his State of the State message, urged the Legislature to enact the Bill.

Mr. Robert Long, Administrator, Unemployment Insurance Division: The total cost of S.B. 194 would be paid by the employee, The maximum cost to an individual under this bill for FY '75 would be $94.00. There would be a one week waiting period which would not be payable. They estimate 200,000 workers would be covered by this bill in FY '75, with 18,200 of

these workers drawing at least one check - the average being $72.50. The average duration of disability would be 8 weeks in FY '75. The total benefits that would be paid in FY '75 is devised as being $10,300,000. Total administrative cost for administering the bill is estimated at between 6 and 8% of total income, which is estimated at $12,200,000. The employers responsibility under this bill would be to withhold and remit the employee contribution. Contributions would become payable under S.B. 194, effective July 1, 1973. Benefits would become payable April 2, 1974. Start-up costs would be advanced from the Unemployment Insurance Penalty and Interest Fund. This would be reimbursable to this fund by July of 1974. Section 110 of the bill explicitly says that there will be no general fund money to support this bill. State and local employees would have less coverage under S.B. 194. There would be no UINDI or workmans compensation for the same period. The procedures of S.B. 307 are completely different from anything the department is familiar in dealing with. Mr. Long explained various sections of the bill. The coverage under S.B. 307 would be 200,000 workers; duration would be 8 weeks. The total estimated pay-out would be $8,000,000. The total contribution required by the employee would be $6,000,000. The cost to administer S.B. 307 would be considerably less than S.B. 194. Section 20 states that the average weekly wage would be an amount that the claimant would have received. Under S.B. 307 the employee must earn $400 and work at least 20 hours in at least 14 different weeks to be covered.

John B. O'Day, President, Insurance Economic Society:
Mr. O'Day stated that he represents 125 insurance companies, and they are in opposition to S.B. 194, S.B. 307 and A.B. 457. Mr. O'Day spoke of several states which have a similar bill and are going broke. Mr. O'Day requested the rejection of these bills.

Joe Braswell, Director, Social Services Program:
Mr. Braswell stated that he does not see how the people who oppose the bill can turn their backs on the people who have qualified for welfare.

Rowland Oakes, representing general contractors:
Mr. Oakes stated that this type of insurance is unfair to the working man in their business because the men who don't collect this premium work an average of 17 hundred hours a year. The men who do collect the benefit work an average of 856 hours a year. (See Exhibit A for information on teamsters and laborers).

Ben Dasher, President, Universe Life Insurance Company:
Mr. Dasher stated that he felt the bills could be beneficial to the workers.

Frank Young, Associate General Counsel of American Life Insurance Association:
Mr. Young stated that they are opposed to S.B. 194. They believe in freedom of choice. They offer S.B. 307 and A.B. 457 as alternatives to S.B. 194. Mr. Young further commented that they believe the private plan is best.

Clint Knoll, General Manager, Nevada Assn. Employers:
Mr. Knoll expressed their opposition to the bill. Mr. Knoll referred to Page 10, Section 37 - this would result in higher insurance costs.

Robert Guinn, Nevada Transport and Franchise Auto Industry:
Mr. Guinn stated that the employers are on the open end of this - they feel they have been sold down the river. They are in opposition to these bills. Mr. Guinn stated that he would like to suggest that a bill be developed that would say on a given date each year every employer should offer to his employees on the job disability insurance.

Ray Bohart, Managing Director, Federated Employers of Nev.:
Mr. Bohart stated that he is representing various groups in opposition to the bills and asked the committee not to give favorable consideration to the bills.

John Peterson, Sierra Pacific Power:
Mr. Peterson stated that they are opposed to the bills. They have an adequate program for their employees at the present time.

Allen Bruce, Associated General Contractors in So. Nev:
Mr. Bruce stated that they are in opposition to the bills.

Jim Wilkerson, Coordinator for Local 14 Teamsters in L.V.:
Mr. Wilderson stated that they do not wish to have the bills passed.

Fred Bartlett, President, Bartlett Ford, Reno:
Mr. Bartlett submitted a petition, indicating their opposition to the bills (See Exhibit B)

Paul Gemmill, Nevada Mining Association:
Mr. Gemmill stated that they have a large number of mining companies and the small operators are trying to operate around the State to find something that would generage a new production in the mining area. Mr. Gemmill further stated that he wanted to present the problem that many of the small operators will not be there after six months or so.

See Exhibit C for further petitions showing opposition
See Exhibit D for purposed act relating to disability benefits
See Exhibit E for memo concerning Nevada Workmen's Compensation.

Being no further testimony, Senator Drakulich adjourned the meeting.

Respectfully submitted,

Sharon W. Maher

Sharon W. Maher, Secretary

APPROVED:

Senator Drakulich, Chairman

NEVADA CONSTRUCTION &
INDUSTRIAL WORKERS
H & W (TEAMSTERS & LABORERS)

	WEEKLY INDEMNITY STARTED	PRESENT PREMIUM COST PER 45.00 WK.	AVE. MONTH EMPLOYED PER MO. (1972)	AVE. HRS. WORKED PER MO.	ANNUAL HOURS WORKED
LABORERS	2/1/66	2.03	697	138	1,656
TEAMSTERS	3/1/70	2.21	259	128	1,536

1972 WEEKLY INDEMNITY CLAIMS	NO. OF MEN	TOTAL HOURS WORKED BY 55 MEN	AVE. HRS. WORKED BY 55 MEN per Yr.
122	55	50,906	925

TOTAL PREMIUM FOR 956 EMPLOYEES (BASED UPON AVE. OF $2.02 PREMIUM) 24,324.0

TOTAL BENEFITS PAID 1972 FOR 122 CLAIMS (BASED UPON 2.3 WEEK AVE. PER CLAIM) 12,627.0

CARPENTERS HEALTH & INSURANCE
FUND (INCLUDES CEMENT MASONS)

WEEKLY INDEMNITY STARTED	PRESENT COST PER 40.00 WK.	AVE. MONTH EMPLOYED 1972	ANNUALLY EST. HRS. WORKED BY 1090 MEN	EST. MO. AVE. HRS. WORKED BY 1090 MEN
10/1/57	1.30	1,090	1,923,000	1,700

1972 WEEKLY INDEMNITY CLAIMS	NO. OF MEN	TOTAL HOURS WORKED BY 56 MEN	AVE. HRS. WORKED BY 56 MEN PER YR.
142	56	47,930	856

TOTAL PREMIUM PAID FOR 1972 FOR 1,700 EMPLOYEES	17,004.00
TOTAL BENEFITS PAID DURING 1972 FOR 142 CLAIMS (56 MEN)	12,524.00

Bartlett Ford 103

(64)

PETITION OPPOSING DISABILITY INCOME LEGISLATION, SENATE BILL #194

Main points of Senate Bill #194 are as follows:

1) Commencing July 1, 1973, all Nevada employers will be required to withhold 1% of their employees' monthly wages, up to a maximum of $83 a year. This amount would automatically increase each year thereafter, based on the average annual wage in the state.

2) Disability income benefits would range from a minimum of $16 to a maximum of $80 per week, beginning on the eighth day of disability and continuing for a maximum of 26 weeks.

3) No benefits will be paid until nine months after the July commencement of the program, on April 2, 1974, and any disabilities incurred prior to that date are excluded from coverage.

We, as employees and citizens of the State of Nevada, feel that this Temporary Disability Income legislation now pending before the Senate of the Nevada State Legislature, is totally inadequate and is against the interests of employees in this state. Our main objections are as follows:

1) Senate Bill #194 makes it mandatory that the employer deduct a minimum of 1% of employee's monthly wages to cover the cost of this insurance. Thus, once the program is in effect, the employee will not have the option to cancel this insurance.

2) We feel that we would be better able to seek benefits for disability income from private sources on a voluntary basis at competitive prices.

3) It appears certain that the premium withheld from our wages will increase, not only because the average wage in Nevada will go up, but also because the percentage withheld could be increased at any time, without the employee's consent, should there be insufficient funds to provide the necessary benefits.

FOR THE ABOVE REASONS, WE AS EMPLOYEES IN THE STATE OF NEVADA, WISH TO REGISTER OUR OBJECTION TO SENATE BILL #194, AND STRONGLY URGE THAT THIS LEGISLATION NOT BE PASSED.

Signature	Address
Ken Lynn	2050 MARBOT CIRCLE RENO
Hilary Glassel	2160 Carlin St., Reno
Gary Barnett	80 P Street Sparks
Raymond P. Wells	1040 Armstrong La, Carson City
Shirley E. Hood	885 Reeves Ave Reno Nevada
William H. Osborn	3343 4th St. Sparks, Nev.
Betty Sparrow	357 H St, Sparks, Nev.
Susanna O. Robinson	643 Lisa Meadows Dr. Sparks, Nevada
Charlotte K. Kerr	7720 Essex Wy, Reno, Nv. 89503
Bob Mellum	1255 Jones St. Reno, Nevada 89503
Arleen M. Wells	340 E. Greyford Pkwy - Sparks, Nevada 89431
Gordon E. Sanford	770 Calif. Ave. Reno, Nevada
David Bartlett	1315 El Camino Cir., Reno, Nev. 89502
Kay Bartlett	6550 Pyramid, RD. #54 SPARKS, NEV. 89431
Paul Romero	154 Granada Dr Sparks

Signature	Address
Victor Clark	P.O. Box 123 Verdi Nev
J S Smith	#1 Elm Court Reno Nevada
Joseph A. Chiago	1825 BRUNETTI WAY SPARKS NEV.
Lawrence C. Winchester	1435 E. 4th St Reno, Nevada
[illegible]	150-0-St- APT 108 Sparks Nevada
Harold Barnett	914 SBragia way Sparks Nev.
[illegible]	2035 Vale St Reno, Nev. 89501
St. Sage	150 FILLMORE WAY RENO NEV. 89502

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Signature	Address
~~Kim Lyon~~	~~3050 Market Circle Reno~~
~~Hilary Glover~~	~~2160 Carlin St, Reno~~
~~Cindy Bennett~~	~~80 E. Stuart Sparks~~
~~Raymond L Wills~~	~~1040 Cumstone Ln, Carson City~~
David R. Foltz	135 CALIENTE ST. Reno -
Jerry A. Haworth	3225 Heights Drive
Kenneth R. Lively	1000 East Robinson St., Carson City, Nev.
Lew Woodruff	321 Smithridge Park. Reno Nevada.
Albert C. Laney III	690 Colorado Ave Reno Nev
R L Markum	1850 Comstock Dr. Reno Nev.
Martin Ford	3440 4th St. Sparks Nev

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~~Ken Lyon~~	~~3050 Mallory Circle Reno~~
~~Helen Glover~~	~~2160 Carlin St, Reno~~
~~Clara Bennett~~	~~80 L Street Sparks~~
~~Raymond F. Wells~~	~~1040 Armstrong Dr, Carson City~~
Tony Downing	232 Hunter Lake dr. Reno Nev.
Fred Bartlett	Reno Nevada

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~~Hilary Glasel~~	~~2160 Carlin St, Reno~~
~~Clay Dearing~~	~~80 F Street Sparks~~
~~Raymond P. Wells~~	~~1040 Armstrong Dr. Carson City~~
Roger E Saunders	Rt #2 Box 76 Fallon
Bob Keane	515 Hoole Ave.
Robert E Weiss	420 East 6th Sun Valley
Diane J. Hastings	970 Gentry Way Reno Nev.
Bill Clark	2635 Nelson Sparks
Sam Nelson	420 East 6th Street Sun Valley

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~~Clay Dermott~~	~~80 F Street Sparks~~
~~Raymond F. Wells~~	~~1040 Armstrong Dr, Carson City~~
Tom Green	910 AKARD Dr. Reno
Richard Whitaker	10950 Copperfield Dr. Reno
Dale Hunkhuse	2080 McCloud. Reno
Clayton E Speckard	2945 Kuette Ln
C J Stafford	18650 COLD SPR. DR. Reno
J D Sparks	1800 Hawthorne Rd Reno
Walter M Perdo	16900 Toll Rd Reno
Jack W Mowday	11485 Deodar - Lemmon Val

Signature	Address
Orton L. Steele	358-2319 10 Galleron Way Sparks NV 89431
~~Bob Kane~~	~~515 Hoodlane~~
Russell Day Jr	13570 MT RAINIER REND
E. E. Barrenchea	RT. 2 Box 199 FALLON, NEV.
Willie Sollet	1715 Carville Dr Reno

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~~Helen Glasel~~	~~2460 Carlin St, Reno~~
~~Clay Barrett~~	~~80 P Street Sparks~~
~~Raymond F. Wells~~	~~1040 Armstrong Dr, Carson City~~
Orville N. Jennings	1380 Brierton Sparks Nev.
Gary Bruzzanowich	1991 Glendale #8 Sparks Nev.
Shirley Huffnieder	661 Old Lane, Reno, Nev.
Robert C. Grant	1801 Brunetti Way Sparks Nev.
Jackie Faulkner	11485 Deodar Way, Fernmon Valley
Carleen M. Wells	340 E. Jeppford Pkwy. Sparks, Nev NV 8943,
Carol R Dungay	830 Brookfield Dr Reno, Nev 89503
George Cathey	6035 Bidwell Dr. - Sparks, Nev 89431
Norman Whitcomb	720 Robinhood DR. - Reno

Signature	Address
Fred T. Dedolph	1440 EARL DRIVE RENO, NEVADA

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~~Mary L Parrott~~	~~80 P Street Sparks~~
~~Raymond F. Wells~~	~~1010 Armstrong Ln, Carson City~~
Bob Booth	30 E M ST. SPARKS NEV.
Ray D Jacobs	1240 Monroe St Reno Nevada
James L. Howard	528 W 1st St. Reno Nevada
JJ Burton	1200 BIERRUM LANE APT E RENO NEVADA

3/12/73

TO WHOM IT MAY CONCERN:

We, the undersigned, employees of Gaudin Ford, are against passage of bills S.B. 194 and S. B. 307 regarding off the job disability insurance. We feel the benefits received are inadequate for the premium imposed and while we agree that some form of diability insurance would be beneficial, we feel that privately financed plans give us more for our money.

Terril M. Davis
Frances Hadley
Bonnie Basnett
Betty Greene
Reginald A. Kise
Henry Nolte
Bruce Stetson
Robert Longlois
Paul S. Whisler
Terry Robinson
George Okada
Carl L. Harsin
Larry Gallion
Danny Gallion
James Johnson
Don Wiedknecht
Tony Corrao

Umberto Zambarelli
Rick Longlois
Ray Longlois
Delaria Stanley
Don Lowder
Toni May
Cliff Harsin
Curt Wallace
Jack Brien
Ray E. Brien
Harvey Clift
Ed Appleyard
Milton L. Bell
Charles Swonbeck
Robert N. Lee
Smith
Byron Robinson
Ronald C. Booth
Gary Kavilloff
Thomas Carter
John R. Mead
Harry F. Sanders

Robert Lindloff

W. A. Mills

Kathryn Moore

Rita Lydic

[illegible]

[illegible]

A. Clavalier

J. R. Leavitt

Michael N. Burke

Ray Le Chevalier

R. L. Cross

[illegible]

Michael F. Martin

Tom Reese

DICK WIRTH

R. Kirkland

[illegible]

[illegible]

Joe Farley

MAR 9 - 1973

PAT CLARK PONTIAC, INC.

2575 East Sahara Avenue • Telephone 457-2111
LAS VEGAS, NEVADA 89105

Sales and Service

PONTIAC

We, the employees of Pat Clark Pontiac feel that SENATE BILL #194 on "Temporary Disability Income Legislation" is not in the best interest of the working people of the State of Nevada and we strongly urge your support and help in defeating this Bill.

William R. Cox	Margaret B Hawkins	[illegible]
Roy M. Johnson	Henry J. Adams	James [illegible]
Joe Bernard	[illegible] Tatum	Roy Randall
R. M. Shafran	Jeri Ashby	David [illegible]
John Foyt	[illegible]	[illegible]
Phil Stewart	Calvin McDuff	Gary E. Gebs
[illegible] Coffey	Larry Brewer	Harold D. Fealy
Robert E. [illegible]	[illegible]	L. Marie Sardee
[illegible]	[illegible]	Roosevelt Bonney
Dorothy Mikulich	Harold Felger	Thomas Kilby
Marian K. Jones	David [illegible]	Ronald D Campbell
Paul Reed	Boyd E. [illegible]	Robert G. Thompson
W. M. Harkey	[illegible]	[illegible]
Lou [illegible]	Bernadette Firmer	[illegible]
[illegible]	R. H. McConnell	Brian [illegible]
Charles H Crampton	[illegible]	Kevin E. Kensler
[illegible]	[illegible]	Amos B Brown
Ralph J. Ray	Benny Bozzingham	Richard R. [illegible]
Chuck Weaver	William [illegible]	
Tommy [illegible]	Charles Sawrer	
Mildred A. Wisdom	[illegible]	
Sam N. Geannopoulos	Wm. H. [illegible]	

TO ALL EMPLOYEES

SB-194 - OFF - THE - JOB DISABILITY INSURANCE

Senate Bill No. 194 (SB-194) will impose a state-administered compulsory system of off-the-job disability insurance on most of the employers in Nevada.

Beginning July 1, 1973, each Nevada employer will be required to withhold 1% of each employee's wages, including his own, to a maximum withholding of approximately $83.00 per year. The maximum will increase each year. Benefits would not begin until April, 1974. Benefits would not be payable until after the 7th day of disability and would be payable for a maximum of 26 weeks at 50% of the employees weekly wage. The first year benefits would be not less than $16.00 nor more than $80.00 per week. A certificate from the employee's physician would be required. Employees would be paying into the fund for nine months before any benefits could be paid.

I AM AGAINST SB 194	I AM IN FAVOR OF SB 194
William K Foreman	
Ann Webb	

Lewon Richards
B Miller
Johnny Hernandez
Edward Yeltok

Tom Blackwell
Leo Storm
Richard Fernandes
Glen Rasmussen
Manuel Velasco
Lee Curtis
Ivan Walker
Columbus Fenny
Eddie Horn
Herbert Gallup
Mike Wooded
Donald C. Britton
Wayne L Drachenbach
John L
Dan McCall
Donald Humphrey
Donald L Smith
Robert C. Barry
Sandra Babit
Dennis

SB-194 OFF - THE - JOB DISABILITY INSURANCE

SENATE BILL NO. 194 (SB-194) WILL IMPOSE A STATE-ADMINISTERED COMPULSORY SYSTEM OF OFF-THE-JOB DISABILITY INSURANCE ON MOST OF THE EMPLOYERS IN NEVADA.

Beginning July 1, 1973, each Nevada employer will be required to withhold 1 % of each employee's wages, including his own, to a maximum withholding of approximately $83.00 per year. The maximum will increase each year. Benefits would not begin until April, 1974. Benefits would not be payable until after the 7th day of disability and would be payable for a maximum of 26 weeks at 50% of the employees weekly wage. The first year benefits would be not less than $16.00 nor more than $80.00 per week. A certificate from the employee's physician would be required. Employees would be paying into the fund for nine months before any benefits could be paid.

I AM AGAINST SB 194	I AM IN FAVOR OF SB 194
Joe Slater	
David Darling	
Ted Bissell	
Curtis J. Hall	
Mattie Dedmon	
Don Lewey	
Shirley Howard	
Raymond D. Brown	
Charles M. Gregory	
Ben Masters	
William Blackwood	

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Joe Slater	
David Darling	
Ted Bissell	
Curtis J. Hall	
Mattie Diederichs	
Don Lewey	
Shirley Howard	
Raymond D. Brown	
Charles M. Gregory	
Bob Masten	
William Blackwood	

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I AM AGAINST SB 194	I AM IN FAVOR OF SB 194
Wm A Kuhr	
Richard J Blaylock	
Robert C. Keyser	
Fenda Welch	
K. Cage	
Dail J	
Doug Fremmitt	
Knox Burrows	
C Tot	
F J. Russo	
Ray Cobb	
Bob Cole	
R. J. Gel	
Floyd Elkins	
Joe Lawrence	
Carl A Fielding	
Richard C. Ohmert	
Steve Brown	
Ray F Richards	
Pete Krueger	

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I AM AGAINST SB 194	I AM IN FAVOR OF SB 194

James E. Whitney

Bill Doran

M. La Bruce

Chevrolet

Herb Hallman Chevrolet, Inc.

TELEPHONE 786-3111 P. O. BOX 7277 800 KIETZKE LANE RENO, NEVADA 89502

Non Mangment Employees

March 12, 1973

The undersigned are adamantly opposed to senate bills #194 and #307 proposing a state-mandated off the job disability income insurance program. A privately administered program at the option of employees allows benefits superior to any state-mandated program.

V. W. Bell
M. Grew
M. Colombini
V Klemke
Dorothy J. Meadows
L. F. Clear
L Butcher
Marie Backer
Lanford B. Hilliard
Bernard J Green
Michael Jones
Ronald J. Arnold
Lon Rodriguez
Pat Rodriguez
W. B. McCormick
Mary Phungphiphadhana
Robert Schilling

Alex Meinert
Lee Spear
Ray Kelly
Harry Worley
Hans Humpfeld

Rommel Lucero
Eric E. Cooper
Jack E. Kokot
W. J. Graves
E. J. Rusch
L. Ruffin
Glenda Cunningham
Sandra Butcher
Floyd Myers
Jim Valles

Charles Haney
Edward D. Davis
D. Faubert
William H. Berry
William H. Cady
Otis A Myers

Paul Cox
Val Cowden
Ernest De Mars
Gary Zapanik
Don Jepsen
Ed Wilson
Maxine Taylor
Bob Kiser
Bruce Hopkins

MAR 9 1973

STANDARD WHOLESALE SUPPLY CO.

855 WEST BONANZA TELEPHONE 382-6930
LAS VEGAS, NEVADA 89106

COMPLETE LINES OF EQUIPMENT, MATERIAL AND SUPPLIES FOR INDUSTRIAL PLANTS, UTILITIES, WATER DEPARTMENTS & CONTRACTORS

PIPELINE - WATERWORKS— STEEL AND ASBESTOS CEMENT PIPE, VALVES AND FITTINGS, WATER METERS, COPPER TUBING AND FITTINGS

ELECTRICAL— SWITCH GEAR, CONDUIT, FIXTURES, MOTORS, LIGHT FIXTURES, POLE LINE HARDWARE, TRANSFORMERS, COPPER AND ALUMINUM WIRE

PLUMBING - HEATING - AIR CONDITIONING — FIXTURES, PIPE VALVES, FITTINGS, COOLERS, HEATERS, REFRIGERATION UNITS, WATER HEATERS, TOOLS, V-BELTS, PACKING

March 7, 1973

TO: ALL SENATORS AND ASSEMLYMEN

We, the employees of STANDARD WHOLESALE SUPPLY CO. <u>oppose</u> the passage of SB-194 - OFF-THE-JOB DISABILITY INSURANCE.

Irene Richardson
Rebecca Cox
John S. Vander [illegible]
Helen R. Katz
Helen Johnson
[illegible]
Dick Miller
Lee Williamson
[illegible]
Richard L. Kaufman
[illegible]
John R. Horsley
Laverna Ralston
[illegible]
Bert W. Kirkman
[illegible]

Robert D. Gallup
Gerald Raedy
Gary Crowe
Sam [illegible]
Charles F. Young
Roscoe Williams
Thomas Lewis
Gilbert Valdez
Frank [illegible]
Jo Ann Mayhew
Bill [illegible]
[illegible]
J. R. [illegible]
Paul E. Hobdon
Harvey D. Todd
V. C. Canady
Gayla Silva

HOME LUMBER COMPANY OF NEVADA
1220 South Commerce
Las Vegas, Nevada

March 13, 1973

PETITION

WE, the undersigned, are opposed to passage of SB-194(Off-The-Job Disability Insurance), now pending before the Nevada State Legislature. The proposed bill is designed to imposed a state-administered compulsory system of off-the-job disability insurance on most of the employers in Nevada.

SIGNATURE	ADDRESS	PHONE
George W. La Grange	5416 Scarbaugh L.V.	870-2076
Floyd Everett	3005 Webb N.L.V	649 4066
Carol Massoth	6320 Brittany Way Unlisted	[redacted]
Karlene Hatch	1828 E. St Louis	734-0984
Linda Holmes	126 W. Philadelphia	384-4642
Mary Lee Gordon	4600 Mayflower L.V.	870-4670
Alice V. Feasel	6945 Kipp Cove L.V. Nevada	870-7088
Margaret Schwemme	3508 Marlborough ave	452-5789
Rose Anna Schwemme	3508 Marlborough ave	452-5789
Ray W. Harsell	324 Tropicana ave	
[illegible]	5908 MARTITA AVE	878-9172
Ralph Chaffee	829 - N. 29 th St	642 8201
[illegible] Bowden	2204 Dune Dr L.V. 89106	648-6580
John [illegible]	6236 ARLINGTON	870 6296
W. Williams	4813 Expedition	870-4920
Floyd E. Davis	2501 Monterey	457-9494
Joe Worthom	1308 SA TTES	642-6613
[illegible]	3751 NELLIS STS	451 7706
[illegible]	1925 Bluff apt B	645 5594
Walter J. Smith	2500 Karen AVN	4672895
[illegible]	3937 Jackpot	452 0178
Andy Bowman	4108 E Ogden	452-5748
Ray Homan	6229 Alta dr.	878-9206
Bill Dennis	4308 Royal	
[illegible]	171 Ida #5	735-2132
[illegible]	4093 BALBOA	457-9252
Earl [illegible]	2750 Bonanza	384-4583
[illegible]	5239 ERN CIR	451-8464
Craig Labiter	2228 WASHINGTON	648-4043
[illegible] Lee [illegible]	4324 EL CONLON	876-2676
Cliff [illegible]	200 No. Pecos Las Vegas	
Joe Brumley	2236 Melinda Las Vegas	649-7241

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March 13, 1973

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SIGNATURE	ADDRESS	PHONE
A. McRae	1615 So 11th	384-4779
Cal Hewitt	3912 Milford Pl.	876-3296
Vernon Lee	1372 Serape Cl	732-1636
Claude H. Martin	204 Ash St. Henderson	564-5417
Frank Bataille	3508 Marlborough Ave. L.V.	384-9346
Michael T. Collin	1200 1st Street L.V.	870-7180
Richard H. Wegmer	4309 San Angelo	876-7794
Jack Harrell	3912 San Bernardino	876-3071
Maria L. Martinez	3109 E. Tonopah	642-7094
Alice Martinez	3916 Mamua L.V.	none
Duane E. Doop	3128 Brady Ave.	322-5081
Greg Drohan	2472 Capistrano	735-7024
Denis T. Donahue	305 W. Cincinnati	834-8409
[illegible]	3850 Daisy #15	734-7599
Claude Harshbarger	3585 Puccinelli Sparks Nev	359-3742
Edwin J. Brown	2209 Dune Dr.	648-5833
Linda Bass	5819 Anniversary	736-4567
George Wade	1817 Embrey Ave.	384-8176
Edward M. Jackson	3295 Nellis Blvd #2	
James B. Pitts	3304 Turquoise Rd.	648-6892
[illegible] Anderson	4487 E. Lake Mead #31	452-5988
Sheldon R. Sayles	1624 South Palm #269	457-3856
[illegible] Trammell Jr.	1410 2ND St. Apt 3.	DU 29821
Roger Padgett	2116 Dune Dr.	6480692
[illegible] Nelson	6324 Dorrell Lane	648-4610
Annie Slecker	1925 Alwill St.	648-5584
Arthur Hepburn	2001-E Tonopah Ave #54 NLV	
Douglas Boles	3021 Judson Ave NLV	
Rita Woolard	6937 Westbrook Ave	876-2172
M. Baker	5504 Northridge Dr Las Vegas	451-4677
[illegible]	1314 Monterey Dr Boulder City	293-3697
Jean Lunsford	131 W. St Louis #104, Las Vegas	382-8994
Kenneth E White	3508 Ruth Dr Las Vegas	4516252

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SIGNATURE	ADDRESS	PHONE
William Carpenter	1500 Casino Center	
Pete Thompson	4001 Snead Dr	870-3240
Gary Chouan	1828 Sweeney	384-3972
Louis Brown	3?? Mezona Dr	648388
BILL BENNETT	6003 BROMLEY	870 6836
Dorena Huddleston	1621 Carter Apt C	
Keith Reed	26 West Utah	382 7386
Chris Manzi	1920 Silver Ave	384-2774
Tony Roberts	1220 Popular	451-4677
Bill Col[illegible]	1200 15	870 7180
Robert Misbach	2933 J.D. Blvd N. N.L.V.	None
David Manzi	1920 Silver ave	384-2774
Linda HASS	2616 SherWOOD #8	736-4567
Bob Hefner	5900 W Tropicana #106	876-4761
[illegible]	1545 Palm St Henderson	565-0306
Mary Rosmer	324 Tropicana #136	739-7343
Jack Abercrombie	2601 St George Way	642-6233
Moses Harvey	616 McWilliams	
Frank Abercrombie	1441 Christy Ln	

Exhibit D

AN ACT relating to temporary disability benefits; providing penalties; and providi other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Title 53 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth in sections 2 to 61, inclusive of this act.

SEC. 2. This chapter shall be known as the Nevada Temporary Disability Benefit Law.

SEC. 3. The protection of employees from the hardship generally resulting from wage loss due to work-incurred injury or involuntary unemployment of an economic nature has long been established public policy. The purposes of this protection are to maintain consumer purchasing power, to relieve the serious menace to the health, morals and welfare of the people resulting from insecurity and loss of earnings, and to reduce the need for public assistance. Loss of earnings results in hardship whether such loss is due to involuntary unemployment, work-incurred injury, or nonoccupational illness or accident. In harmony with this long-established public policy, it is the policy and purpose of this chapter to provide workers in Nevada protection against hardship resulting from wage loss due to the inability to perform the duties of a job because of nonoccupational illness or accident. This legislation is specifically designed not to impede the growth of voluntary plans which afford additional protection to employees. To effectuate the policy and purpose as herein declared, this chapter shall be liberally construed.

SEC. 4. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 5 to 17, inclusive, of this act, have

EXHIBIT D

Exhibit D

the meanings ascribed to them in such sections.

SEC. 5. 1. With respect to any individual, "benefit year" means the 52-consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for temporary disability benefits. A subsequent benefit year is the one-year period following a preceding benefit year, beginning either (A) with the first day of the first week of disability with respect to which the individual files a subsequent claim for temporary disability benefits, or (B) with the first work-day following the expiration of the preceding benefit year if a disability for which temporary disability benefits are payable during the last week of the preceding benefit year continues and the individual is eligible for further benefit payments.

SEC. 6. "Contributions" means the amounts of money authorized by this chapter to be withheld from employees' wages for the payment of temporary disability benefits.

SEC. 7. "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the equivalent thereof as the executive director may prescribe by regulation, excluding, however, any calendar quarter or portion thereof which occurs prior to October 1, 1972.

SEC. 8. "Department" means the employment security department.

SEC. 9. "Disability" means total inability of an employee to perform the duties of his employment caused by accident or sickness other than an accident or sickness which is compensible under Chapter 616 or 617 of NRS. Disability does not include total inability of an employee to perform the duties of her employment caused by pregnancy. But if pregnancy or the termination of pregnancy produces complications resulting in sickness causing total disability, this is included within the term "disability".

Exhibit D

SEC. 10. "Employee" means an individual engaged in employment for an employer under a contract of hire, either express or implied.

SEC. 11. "Employer" means:

1. Any employing unit which for any calendar quarter has paid or is liable to pay wages of $225 or more, and which in calendar year 1974 employs during such period three or more persons in an employment subject to this chapter, and which in calendar year 1975 and thereafter employs during such period one or more persons in an employment subject to this chapter.

2. Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter.

3. Any individual or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another employing unit if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit, prior to such acquisition, both within the same calendar quarter, would be sufficient to constitute such employing unit as an employer subject to this chapter under subsection 1.

4. Any other employing unit which has elected pursuant to section 36 of this act, to become fully subject to this chapter, and which election has not been terminated.

SEC. 12. "Employing unit" means the same as this term is now or hereafter defined in Chapter 612 of NRS.

SEC. 13. "Employment" means the same as this term is now or hereafter defined in Chapter 612 of NRS.

SEC. 14. "Executive director" means the executive director of the employment security department.

SEC. 15. "Individual in current employment" means an individual who performed regular service in employment immediately or not longer than two weeks prior to the onset of the sickness or to the accident causing disability and who would have continued in or resumed employment except for such disability.

SEC. 16. "Wages" means the same as this term is now or hereafter defined in Chapter 612 of NRS.

SEC. 17. "Weekly benefit amount" means the amount payable under this chapter for a period of continuous disability throughout a calendar week. If the period of disability or the initial or terminal portion thereof is shorter than a calendar week, the benefit amount payable for that portion shall be the weekly benefit amount multiplied by a factor consisting of a quotient having the number of work-days lost during the portion of the week for the numerator and the number of regular work-days of the employee during a calendar week for the denominator.

SEC. 18. 1. Any individual in current employment who suffers disability resulting from accident or sickenss, except accident or disease compensible under the provisions of Chapter 616 or 617 of NRS or any other applicable workmen's compensation law, shall be entitled to receive temporary disability benefits in the amount and manner provided in this chapter.

2. It is the policy of this chapter that the computation and distribution of benefit payments shall correspond to the greatest extent feasible, to the employee's wage loss due to his disability.

SEC. 19. Benefits shall be computed as weekly amounts in the manner

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provided in this section:

1. If the "average weekly wage" of the employee is less than $32, the weekly benefit amount shall be equal to the average weekly wage, but not more than $16. If the "average weekly wage" of the employee is $32 or more, the weekly benefit amount shall be fifty per cent of the "average weekly wage", and if not a multiple of $1, it shall be rounded to the next higher dollar. The "average weekly wage" shall be based on the wages the employee would receive from his employer except for his disability, and for salaried employees, the "average weekly wage" shall be the weekly salary of the employee in the last week prior to the commencement of disability.

2. If the average weekly earnings of the employee exceed an amount equal to one fifty-second of the average annual wage in covered employment in Nevada as determined by the executive director pursuant to Chapter 612 of NRS, such excess shall not be included in the computation of the weekly benefit amount.

3. Notwithstanding any provision in subsections 1 and 2 of this section to the contrary, the weekly benefit amount shall not exceed the maximum weekly benefit specified under Chapter 612 of NRS.

SEC. 20. No temporary disability benefits shall be payable during the first seven consecutive calendar days of any period of disability. Consecutive periods of disability due to the same or related cause and not separated by an interval of more than two weeks shall be considered as a single period of disability.

SEC. 21. Except under a plan qualifying pursuant to subsections 1 (d) or (e) of section 27 of this act, temporary disability benefits shall be payable for any

period of disability following the expiration of the waiting period required in section 20 of this act.

The duration of benefit payments shall not exceed twenty-six weeks for any period of disability or during any benefit year.

SEC. 22. An individual is eligible to receive temporary disability benefits under the provisions of this chapter if he meets the eligibility requirements for unemployment compensation prescribed in subsection 4 of NRS 612.375.

SEC. 23. 1. An individual shall be ineligible to receive temporary disability benefits with respect to any period during which he is not under the care of a licensed physician, surgeon, osteopath or dentist, who shall certify the disability of the claimant, the probable duration thereof, and such other medical facts within his knowledge as required.

2. This section shall not apply to an individual who, pursuant to the teachings, faith or belief of any group, depends for healing upon prayer or other spiritual means. In that case the disability, the probable duration thereof, and any other pertinent facts required shall be certified by a duly authorized or accredited practitioner of such group.

SEC. 24. An individual shall not be eligible to receive temporary disability benefits:

1. For any period of disability during which he would be disqualified from receiving benefits under Chapter 612 of NRS by reason of unemployment due to a stoppage of work existing because of a labor dispute for the duration of such disqualification.

2. If the executive director finds that the individual has knowingly

made a false statement or representation of a fact or knowingly failed to disclose a material fact in order to obtain benefits under this chapter to which he is not otherwise entitled. The ineligibility shall be for a period determined by the executive director, but shall not exceed the period of disability with respect to which the false statement or representation was made or the nondisclosure occurred.

3. For any period of disability due to wilfully and intentionally self-inflicted injury or to injury sustained in the commission of a criminal offense.

4. For any day of disability during which the employee performed work for remuneration or profit.

SEC. 25. No temporary disability benefits shall be payable for any period of disability for which the employee is entitled to receive:

1. Weekly benefits under Chapter 612 of NRS or similar laws of any other state or of the United States, or under any temporary disability benefits law of any other state or of the United States except as provided in section 42 of this act.

2. Weekly disability insurance benefits under 42 U.S.C.A. sec. 423.

3. Weekly benefits for total disability under Chapter 616 or 617 of NRS or similar laws of any other state or of the United States, except benefits for permanent partial or permanent total disability previously incurred. If the claimant does not receive benefits under such other law and his entitlement to such benefits is seriously disputed, the employee, if otherwise eligible, shall receive temporary disability benefits under this chapter, but any insurer or employer or the unemployed disability benefits fund providing such benefits shall

be subrogated, as hereinafter provided, to the employee's right to benefits under such other law for the period of disability for which he received benefits under this chapter to the extent of the benefits so received.

4. Indemnity payments for wage loss under any applicable employers' liability law of this State, or of any other state or of the United States. If an employee has received benefits under this chapter for a period of disability for which he is entitled to such indemnity payments, any insurer or employer or the unemployed disability benefits fund providing such benefits shall be subrogated to the employee's right to such indemnity payments in the amount of the benefits paid under this chapter as hereinafter provided.

SEC. 26. No assignment, pledge, or encumbrance of any right to benefits which are of may become due or payable under this chapter shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, garnishment, or any other remedy whatsoever provided for the collection of debt. No waiver of any exemption provided for in this section shall be valid.

SEC. 27. 1. An employer or an association of employers shall secure temporary disability benefits to their employees in one or more of the following ways:

(a) By insuring and keeping insured the payment of temporary disability benefits with any insurer authorized to transact disability insurance in the State and approved by the insurance commissioner; or

(b) By depositing and maintaining with the state treasurer, securities, or the bond of a surety company authorized to transact business in the State,

Exhibit D

as are satisfactory to the executive director securing the payment by the employer of temporary disability benefits according to the terms of this chapter; or

(c) Upon furnishing satisfactory proof to the executive director of his or its solvency and financial ability to pay the temporary disability benefits herein provided, no insurance or security or surety bond shall be required, and the employer shall make payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this chapter; or

(d) By a plan, entitling employees to cash benefits or wages during a period of disability, in existence on the effective date of this chapter.

(i) If the employees of an employer or any class or classes of such employees are entitled to receive disability benefits under a plan or agreement which remains in effect on January 1, 1974, the employer, subject to the requirements of this section, shall be relieved of responsibility for making provision for benefit payments required under this chapter until the earliest date, determined by the executive director for the purposes of this chapter, upon which the employer has the right to discontinue the plan or agreement or to discontinue his contributions toward the cost of the temporary disability benefits. Any such plan or agreement may be extended, with or without modification, by agreement or collective bargaining between an employer or employers or an association of employers and an association of employees, in which event the period for which the employer is relieved of such responsibility shall include the period of extension.

(ii) Any other plan or agreement in existence on January 1, 1974 which

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the employer may, by his sole act, terminate at any time, or with respect to which he is not obligated to continue for any period to make contributions, may be accepted by the executive director as satisfying the obligation to provide for the payment of benefits under this chapter if the plan or agreement provides benefits at least as favorable as the disability benefits required by this chapter and does not require contributions of any employee or of any class or classes of employees in excess of the amount authorized in section 29 of this act, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the executive director. The executive director may require the employer to enter into an agreement in writing with the executive director that until the employer shall have filed written notice with the executive director of his election to terminate such plan or agreement or to discontinue making necessary contributions toward the cost of providing benefits under the plan or agreement, he will continue to provide for the payment of the disability benefits under the plan or agreement. Any plan or agreement referred to in this paragraph may be extended, with or without modification; provided the benefits under the plan or agreement, as extended or modified, are found by the executive director to be at least as favorable as the disability benefits required by this chapter; or

(e) By a new plan or agreement. On or after January 1, 1974 a new plan or agreement with an insurer may be accepted by the executive director as satisfying the obligation to provide for the payment of benefits under this chapter if the plan or agreement provides benefits at least as favorable as the disability benefits required by this chapter and does not require contributions of any employee or of any class of classes of employees in excess of the

Exhibit D

amount authorized in section 29 of this act, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the executive director. Any such plan or agreement shall continue until written notice is filed with the executive director of intention to terminate the plan or agreement, and any modification of the plan or agreement shall be subject to the written approval of the executive director.

2. During any period in which any plan or agreement or extension or modification thereof authorized under subsection 1 (d) or (e) of this section provides for payments of benefits under this chapter, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in the plan or agreement or its extension or modification rather than as required under this chapter; provided the employer or insurer has agreed in writing with the executive director to pay the assessments imposed by section 44 of this act.

3. If any plan or agreement authorized under subsection 1 (d) or (e) of this section covers less than all of the employees of a covered employer, the requirements of this chapter shall apply with respect to his remaining employees not covered under the plan or agreement.

4. As used in subsection 1 (d) or (e) of this section, "benefits at least favorable as the disability benefits required by this chapter" means the temporary disability benefits under any plan or agreement whose component parts (waiting period for illness, waiting period for accident, duration of benefits, and percentage of wage loss replaced) add in total to cash benefits or wages which are determined by the executive director to be at least as favorable as the disability benefits required by this chapter. The insurance commissioner shall

Exhibit D

establish a set of tables showing the relative value of different types of cash benefits and wages to assist the executive director in determining whether the cash benefits and wages under a plan are at least as favorable as the temporary disability benefits required by this chapter.

5. Any decision of the executive director rendered pursuant to this section with respect to the amount of security required, refusing to permit security to be given or refusing to accept a plan or agreement as satisfying the obligation to provide for the payment of benefits under this chapter shall be subject to review on appeal in conformity with the provisions of this chapter.

6. In order to provide the coverage required by this chapter for employers otherwise unable to obtain or provide such coverage, the insurance commissioner may, after consultation with the insurers licensed to transact disability insurance in this State, approve a reasonable plan or plans for the equitable apportionment among such insurers of employer applicants for such insurance who are in good faith entitled to but are unable to procure such insurance through ordinary methods and, when such a plan has been approved, all such insurers shall subscribe thereto and participate therein; provided, however, that the commissioner shall not, for insurance issued or in connection with any such plan or plans, require or allow the use of premium rates which are either inadequate or excessive in relation to the benefits to be provided. Any employer applying for such insurance or any insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. All orders of the commissioner in connection with any such plan shall be subject to judicial review as provided in Chapter 679B of NRS.

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SEC. 28. If payment of disability benefits is provided for in whole or in part by insurance pursuant to subsection 1 (a), (d) or (e) of section 27 of this act, the employer shall forthwith file with the executive director in form prescribed by the executive director a notice of his insurance together with a statement of benefits provided by the policy.

SEC. 29. 1. Subject to the limitation set forth in subsection 2 of this section an employer may deduct and withhold contributions from each employee of one-half the cost but not more than 0.5 percent of the weekly wages earned by the employee in employment and the employer shall provide for the balance of the cost of providing temporary disability benefits under this chapter over the amount of contributions of his employees. Unless a different rule is prescribed by regulation of the executive director, the withholding period shall be equal to the pay period of the respective employee.

2. Weekly wages for the purposes of this section shall not include remuneration in excess of one fifty-second of the average annual wage in the State as determined for the preceding year pursuant to NRS 612.340. The executive director shall cause this amount to be published annually prior to July 1 of each year.

3. The contributions of the employees deducted and withheld from their wages by their employer shall be held in a separate fund or be paid to insurance carriers as premiums, for the purpose of providing benefits required by this chapter.

4. The executive director shall have authority to prescribe by regulation the reports and information necessary to determine the cost of providing temporary disability benefits under this chapter, especially in the case of employers or employer associations providing such benefits by means of

Exhibit D

self-insurance, and to determine the procedures for the determination of such cost.

5. An employee from whose wages amounts greater than those authorized by this chapter have been withheld by his employer shall be entitled to a refund or credit of the excess as prescribed by regulation of the executive director.

SEC. 30. Benefits provided under this chapter shall be paid periodically and promptly and, except as to a contested period of disability, without any decision by the executive director. The first payment of benefits shall be due on the fourteenth day of disability and benefits for that period shall be paid promptly to the employee after the filing of required proof of claim. Thereafter, benefits shall be due and payable every two weeks. The executive director may determine that benefits may be paid monthly or semi-monthly if wages were so paid, and may authorize deviation from the foregoing requirements to facilitate prompt payment of benefits.

SEC. 31. 1. If an individual has received temporary disability benefits under this chapter during a period of disability for which benefits for total disability under Chapter 616 or 617 of NRS or under the workmen's compensation law of any other state or of the United States are subsequently awarded or accepted in any agreement or compromise, the employer, the association of employers, the insurer, or the unemployed disability benefits fund, as the case may be, providing such temporary disability benefits shall be subrogated to the individual's right to such benefits in the amount of the benefits paid under this chapter.

To protect its subrogation rights to benefits payable under Chapter 616

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or 617 of NRS, the employer, the association of employers, the insurer, or the unemployed disability benefits fund, providing temporary disability benefits shall file a claim with the Nevada industrial commission, and thereupon the employer, the association of employers, the insurer, or the unemployed disability benefits fund, providing temporary disability benefits shall have a lien against the amounts payable as benefits for disability under Chapter 616 or 617 of NRS in the amount of the benefits paid under this chapter during the period for which benefits for disability under Chapter 616 or 617 of NRS have been accepted or awarded as payable. The agreement or award shall include a provision setting forth the existence and amount of such lien.

2. If an individual has received benefits under this chapter during a period of disability for which he is entitled to receive indemnity payments for wage loss under any applicable employers' liability law of this State or of any other state or of the United States, the employer, the association of employers, the insurer, or the unemployed disability benefits fund, providing temporary disability benefits shall be subrogated to the individual's right to such indemnity in the amount of the benefits paid under this chapter and may assert its subrogation rights in any manner appropriate under such acts or any rule of law.

SEC. 32. If any individual who has received benefits under this chapter is entitled to recover damages from a third person who is responsible for the sickness or accident causing the disability, the employer, the association of employers, the insurer, or the unemployed disability benefits fund, providing disability benefits shall be subrogated to, and have a lien upon, the rights of the individual against the third party to the extent that the damages include wage loss during the period of disability for which temporary disability benefits were received in the amount of such benefits.

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If the individual commences an action against such third party, the individual shall notify his employer, or the executive director if the individual is unemployed, of the action and the court in which it is pending. The employer, the association of employers, the insurer, or the unemployed disability benefits fund, providing disability benefits may join as party plaintiff or claim a lien on the amount of any judgment recovered by the individual in such action to the extent of its subrogation rights. If the individual does not commence the action within nine months after the commencement of the sickness o the date of the accident causing the disability, the employer, the association of employers, the insurer, or the unemployed disability benefits fund, providing temporary disability benefits may commence such action, but the individual shall be entitled to join the action and be entitled to any surplus over the amount to which the employers, the association of employers, the insurer, or the unemployed disability benefits fund is subrogated.

SEC. 33. If an employer fails to comply with section 27 of this act he shall be liable to a penalty of not less than $25 or of $1 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the executive director and in the name of the State, and the amount so collected shall be paid into the unemployed disability benefits fund created by section of this act. The executive director may, however, in his discretion, for good cause shown, remit all or any part of the penalty in excess of $25, provided the employer in default forthwith complies with section 27 of this act. With respect to such actions, the attorney general or any district attorney or attorney employed by the department shall prosecute the same if so requested by the executive director.

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Furthermore, if any employer is in default under section 27 of this act, for a period of thirty days, he may be enjoined by the district court of the county in which his principal place of business is from carrying on his business any place in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any district attorney or attorney employed by the department if so requested by the executive director.

SEC. 34. Every policy of insurance issued by an insurer of an employer pursuant to this chapter which covers the liability of the employer for temporary disability benefits shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by filing a separate claim or by making the insurer a party to the original claim, the liability of the insurer in whole or in part for the payment of the disability benefits. Payment in whole or in part of disability benefits by either the employer or the insurer shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

All insurance policies shall be approved by the insurance commissioner.

SEC. 35. No policy or contract of insurance against liability arising under this chapter shall be canceled within the time limited in the contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in the notice, has been filed with and served on the executive director and the employer.

SEC. 36. 1. An employer not otherwise subject to this chapter, including any department of the State of Nevada and any political subdivision of the State, ma file with the executive director a written notice that a majority of the individuals in his employ have elected coverage under this chapter.

2. With the written approval of such election by the executive director, such employer shall become an employer subject to this chapter to the same extent as all other employers, as of the date stated in such approval for a period of not less than 2 calendar years, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only

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if at least 30 days prior to such January 1 it has filed with the executive director a written notice of termination of coverage.

3. Individuals in the employ of any employing unit which files an election of coverage shall be given a reasonable opportunity to file objections thereto or be heard thereon prior to the executive director's approval of such election.

4. Every employing unit which files an election of coverage or a notice of termination of coverage shall post and maintain printed notices of such election or termination on his premises, of such design, in such numbers, and at such places as the executive director may determine to be necessary in order to give timely notice thereof to persons in his service.

5. The executive director may terminate the approval of the election of any such employer at any time upon 30 days' written notice. Political subdivisions that have elected coverage for employees of hospitals and institutions of higher education may not have such election terminated by the executi director. Any such political subdivision may terminate coverage in the manner provided in subsection 2 of this section.

SEC. 37. 1. There is hereby created in the state treasury a special fund to be known as the unemployed disability benefits fund.

2. The fund shall consist of (a) All contributions collected pursuant to this part, together with any interest earned thereon, (b) All fines and penalties imposed pursuant to this act, (c) All monies collected by way of subrogation, (d) Interest earned on any monies in the fund and (e) Any property and securities acquired through the use of monies belonging to the fund.

SEC. 38. 1. The state treasurer shall be the treasurer and custodian of the fund and shall administer such fund in accordance with the directions

of the executive director, and issue his warrant upon it in accordance with such regulations as the executive director shall prescribe.

2. All monies payable to the fund, upon receipt thereof by the executive director, shall be forwarded to the state treasurer, who shall immediately deposit them in any bank or public depository in which general funds of the State may be deposited.

3. Monies in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of the depository.

4. The state treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the executive director and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the fund. All sums recovered on the bond for losses sustained by the fund shall be deposited in the fund.

SEC. 39. All warrants issued by the state treasurer for disbursements from the fund shall bear the signature of the state treasurer and the countersignature of the executive director, or his duly authorized agent for that purpose. Expenditures of monies in the fund shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

SEC. 40. The state treasurer may, from time to time, invest such monies in the fund as are in excess of the amount deemed necessary for the payment of benefits for a reasonable future period. Such monies may be invested, reinvested and disposed of in the same manner and under the same conditions and requirements as are provided by law for other special funds

held in the state treasury and available to the executive director. The investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

SEC. 41. Temporary disability benefits shall be paid from the unemployed disability benefits fund to individuals who become disabled

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when unemployed and who subsequently become ineligible for benefits under Chapter 612 of NRS. Benefits shall also be paid from this fund to an employee who is entitled to receive temporary disability benefits but cannot receive such benefits, because of the bankruptcy of his employer or because his employer is not in compliance with this chapter.

SEC. 42. 1. An individual whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of employment becomes ineligible for benefits claimed under Chapter 612 of NRS solely because of disability commencing on or after January 1, 1974, and who on the day the disability commences is not employed and is not then otherwise eligible for benefits under this chapter, shall be entitled to receive disability benefits as hereinafter provided for each week of such disability for which week he would have received unemployment compensation benefits if he were not so disabled.

2. The weekly benefit payable to the disabled unemployed shall be the same as the benefits to which the individual would be entitled under Chapter 612 of NRS, except for his disability; provided that such benefits payable under this seciton shall not be payable for a period longer than the remainder of the period of unemployment for which benefits would have been payable under Chapter 612 of NRS.

3. The benefits payable under this section shall be paid by the executive director out of any assets in the unemployed disability benefits fund. The payments shall be made through employment offices, as this term is defined and used in Chapter 612 of NRS. The executive director may require an individual claiming benefits under this section to file proofs of disability and other proofs reasonably necessary for the executive director to make a determination

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of eligibility and benefit rights under this section. The executive director may establish reasonable procedures for determining pro-rata benefits payable wi

respect to disability periods of less than one week. Any individual claiming benefits under this section whose claim is rejected in whole or in part by the executive director shall be entitled to request review and shall have all the rights with respect to disputed claims provided in this chapter.

SEC. 43. In any appeal or judicial action in which the unemployed disability benefits fund is a party, the executive director may be represented by:

1. Any qualified attorney employed by the executive director and designated by him for this purpose; or

2. The attorney general, at the executive director's request.

SEC. 44. 1. Each employer shall, from July 1, 1973 to December 31, 1973, contribute to the establishment of the unemployed disability benefits fund at the rate of 0.2 per cent of covered wages. The employer shall pay such contributions to the executive director for a given month on or before the thirtieth day of the next succeeding month.

2. When the balance of the unemployed disability benefits fund falls below $500,000 as of December 31 of any year after 1973, the executive director shall certify such balance to the board of review as established by section 46 of this act, and a levy shall be assessed and collected in the next calendar year from insurers of insured employers and from all other employers not insured.

3. Each year the board of review will determine the amount of the levy to be paid and shall give notice on or before May 1 to each insurer or such employer of the basis for determining such levy. The amount of the levy against such insurer or such employer shall be paid to the executive director on or before August 1 following notification.

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SEC. 45. 1. Appeals involving a dispute over the amount of benefits or the denial of benefits shall be heard by an impartial referee who shall be an employee of the department and who shall be appointed as such referee by the board of review.

2. Appeals from any decision, ruling or regulation of the executive director shall be heard by the board of review.

SEC. 46. The board of review shall consist of the chairman of the Nevada industrial commission who shall be the chairman of the board of review, the executive director and the insurance commissioner, or their respective designees for such purpose. The executive director shall provide the board of review and the referees with proper facilities and assistants for the execution of their functions.

SEC. 47. 1. Any claimant disputing the amount of benefits or the denial of benefits may file an appeal in the form and manner prescribed by the board of review. Such appeal must be filed within 10 days of the date of payment or denial unless such 10-day period is extended for good cause shown.

2. Any person affected by any decision, ruling or regulation of the executive director may file an appeal in the form and manner prescribed by the board of review. Such appeal must be filed within 20 days of the date of the decision, ruling or regulation unless such 20-day period is extended for good cause shown.

3. An appeal pursuant to this section or section 49 of this act shall be deemed to be filed on the date it is delivered to the department, or, if it is mailed, on the post-marked date appearing on the envelope in which it

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was mailed, if postage is prepaid and the envelope is properly addressed to one of the offices of the department.

4. Any employer, insurer, employee or the unemployed disability benefits fund whose rights may be adversely affected may be permitted by the referee or the board of review, as the case may be, to intervene in the appeal.

5. Withdrawal of the appeal may be permitted by the referee or the board of review, as the case may be, at the appellant's request if there is no coercion or fraud involved in the withdrawal.

SEC. 48. 1. A reasonable opportunity for a fair hearing shall be promptly afforded all parties.

2. The hearing tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common law rules. In addition to the specific issues raised, the tribunal may consider all issues affecting a claimant's rights to benefits.

3. All records that are material to the issues shall be included in the record and considered as evidence.

4. A record shall be kept of all testimony and proceedings, but testimony need not be transcribed unless further review is initiated.

5. After a hearing, the tribunal shall make its findings promptly, and on the basis thereof affirm, modify or reverse the determination being appealed. Each party shall be promptly furnished with a copy of the decision.

6. Except for reconsideration pursuant to section 58 of this act, this decision shall be final 10 days after the decision has been mailed to

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each party's last-known address or otherwise delivered to him. Such 10-day period may be extended for good cause shown. Provided, however, the hearing tribunal, within the time for taking an appeal and before further review is sought, and on motion of any party or the executive director or on its own motion, may reopen the matter and thereupon may take further evidence and may affirm, modify or reverse its original decision. If the matter has been so reopened, the hearing tribunal shall render a further decision, and the time to initiate further review shall run from the date of mailing or delivery of such further decision.

SEC. 49. 1. Any party shall be allowed an appeal from a referee's decision to the board of review as a matter of right. Such appeal shall be in the form and manner prescribed by the board of review, and shall be filed before the referee's decision becomes final.

2. The board of review on its own motion may initiate a review of a referee's decision within 10 days after the date of mailing the decision.

3. The board of review may affirm, modify or reverse the findings or conclusions of the referee solely on the basis of the evidence previously submitted or upon the basis of such additional evidence as it may direct to be taken.

4. Each party shall be promptly furnished a copy of the decision and the supporting findings of the board of review. The decision shall become final 10 days after the date of notification or mailing thereof.

SEC. 50. 1. Within 10 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial

review thereof by commencing an action in the district court of the county wherein the appealed claim or claims were filed for the review of such decisions, in which action any other party to the proceedings before the board of review shall be made a defendant.

2. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon all parties and the board of review.

3. The board of review shall within 30 days certify and file with the court originals or true copies of all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The board of review may also, in its discretion, certify questions of law involved in any decision.

4. In any judicial proceedings under this section, the finding of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law.

5. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under Chapter 616 of NRS.

6. An appeal may be taken from the decision of the district court to the supreme court of Nevada, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases.

7. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the board of review, and no

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bond shall be required for entering such appeal.

8. Upon the final determination of such judicial proceeding, the board of review shall enter an order in accordance with such determination.

9. A petition for judicial review shall not act as a supersedeas or stay unless the board of review or the court shall so order.

SEC. 51. 1. The board of review, for cause, may remove or transfer to another referee or to itself any appeal pending before a referee.

2. The parties to any appeal so removed or transferred by the board of review shall be given a full and fair hearing on the original appeal.

SEC. 52. In the board of review's discretion and upon its order, when the same or substantially similar evidence is material to the matter in issue with respect to more than one individual, the same time and place for considering all such appeals may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided no party is prejudiced thereby.

SEC. 53. No person may participate as a referee or on the board of review in any case in which he is an interested party. The chairman of the board of review may designate an alternate to serve in the absence of disqualification of any member thereof. The chairman shall act alone in the absence or disqualification of the other members and their alternates.

SEC. 54. The board of review may be represented in a judicial action in which it is a party by:

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1. Any qualified attorney employed by the board, the Nevada industrial commission, the employment security department or the insurance division of the commerce department and designated by the board for this purpose; or

2. The attorney general, at the board's request.

SEC. 55. In the event that an issue on appeal involves a determination as to whether the disability resulted from occupational or non-occupational causes, thereby being compensible either under Chapter 616 or 617 of NRS or under this chapter, a copy of the final decision on this issue shall be filed with the Nevada industrial commission and made a part of the record of any proceedings involving a claim for the same disability under Chapter 616 or 617 of NRS.

SEC. 56. Benefits shall be paid promptly in accordance with the decision. If an application for reconsideration is duly made or if judicial review is duly filed, benefits with respect to weeks of disability not in dispute and benefits payable in any amount not in dispute shall be paid promptly regardless of any reconsideration or appeal.

SEC. 57. 1. Any person who has received any amount as benefits under this chapter to which he was not entitled shall be liable for such amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience.

2. The person liable shall, in the discretion of the board of review, either repay such amount or have the amount deducted from any future benefits payable under this chapter within two years after the date of mailing of the

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notice of reconsideration or the final decision on an appeal from such reconsideration.

SEC. 58. 1. At any time within 1 year from the date of a final decision with respect to wages upon which benefits are computed, the board of review may reopen the decision if it finds that wages of the claimant pertinent to the decision but not considered in connection therewith have been newly discovered or that benefits have been allowed or denied or the amount of benefits have been fixed on the basis of a nondisclosure or misrepresentation of a material fact, and make a redetermination denying all or part of any benefits previously allowed or allowing all or part of any benefits previously denied.

2. At any time within 1 year from the end of any week with respect to which a final decision allowing or denying benefits has been made, the board of review may reopen any such decision on the grounds of error, mistake or additional information and make a redetermination denying all or part of any benefits previously allowed or allowing all or part of any benefits previously denied.

3. At any time within 2 years from the end of any week with respect to which a final decision allowing or denying benefits has been made, the board of review may reopen any such decision on the grounds of nondisclosure or misrepresentation of a material fact and make a redetermination denying all or part of any benefits previously allowed or allowing all or part of any benefits previously denied.

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4. Notice of any redetermination shall be promptly furnished to the claimant and any other person entitled to receive the original decision. In the event that repayment of any overpayment may be ordered as a result of redetermination pursuant to this section, notice of the redetermination shall state the person who may be liable to make repayment, the amount and basis of any overpayment and the week or weeks for which such benefits were paid.

5. In any redetermination under this section in which the final decision was issued by a court, the board of review shall petition the court to issue a revised decision.

SEC. 59. In case of a dispute between the employee and the employer relating to the withholding of wages, either party may file with the board of review a petition for determination of the amount to be withheld. The decision of the board shall be final.

SEC. 60. The board of review may, after notice and hearing in accordance with Chapter 233B of NRS, adopt, amend, revise and repeal such rules and regulations as it deems necessary or suitable to govern the manner of filing appeals and the conduct of hearings and appeals consistent with the provisions of this chapter.

SEC. 61. Except as to matters under the jurisdiction and supervision of the insurance commissioner, and except as to matters within the purview of the board of review, the executive director shall enforce the provisions of this chapter. The executive director may appoint such assistants and such clerical, stenographic and other help as may be necessary for the proper enforcement of this chapter. The executive director shall, after notice and hearing in accordance with Chapter 233B of NRS, adopt, amend, revise

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and repeal such rules and regulations as he deems necessary or suitable for the proper enforcement of this chapter.

SEC. 62. This act shall become effective on July 1, 1973. For employers of three or more persons, coverage under this act shall be provided for disabilities commencing on and after January 1, 1974. For employers of one or more persons, coverage under this act shall be provided for disabilities commencing on and after January 1, 1975.

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Exh

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
CARSON CITY, NEVADA 89701

LEGISLATIVE COMMISSION
JAMES I. GIBSON, Senator, *Chairman*
INTERIM FINANCE COMMITTEE
ROY YOUNG, Assemblyman, *Chairman*

ROY E. NICKSON, *Director*
ARTHUR J. PALMER, *Deputy Director*

CLINTON E. WOOSTER, *Legislative Counsel*
EARL T. OLIVER, *Fiscal Analyst*

February 11, 1972

TO THE CHAIRMAN AND MEMBERS OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE FOR STUDY OF THE NEVADA INDUSTRIAL COMMISSION

Gentlemen:

Enclosed is a copy of a letter from the Clark County Anesthesia Associates to Senator Dodge requesting information on progress made with the Nevada Industrial Commission on physicians' fees. As indicated, they advocate payment of "usual and customary" charges rather than the fixed fee schedule. They have requested a response in time for presentation at their meeting of March 4, 1972.

Senator Dodge requests that the subcommittee members comment on a proposed reply. Please forward such comments to me as soon as possible so that a response may be prepared for Senator Dodge's signature.

By copy of this letter, Mr. John R. Reiser, the new Chairman of the Nevada Industrial Commission, Mr. F. Britton McConnell and Mr. C. W. Caron of Peat, Marwick, Mitchell and Co. are also requested to respond with comments.

Also enclosed is a Legislative Counsel memorandum prepared as a result of the discussion at the last meeting as to whether or not proceedings in District Court constitute a review of the administrative record or are a trial de novo situation.

Highest personal regards,

Sincerely,

Roy E. Nickson
Director

REN:jll
encls
cc: Chairman and members of the Nevada Industrial Commission (w/encl)
F. Britton Mc Connell, Esq. (w/encl)
Mr. C. W. Caron (w/encl)

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Clark County Anesthesia Associates, Chartered
2031 Paradise Road
Las Vegas, Nevada 89105

Thomas M. Glushien, M.D.
Marshall D. Jackson, M.D.
William E. Kemp, M.D.
Robert V. Plehn, M.D.
Gerald T. Sprague, M.D.
Neil Swissman, M.D.

Phone 735-0141

February 7, 1972

Senator Carl Dodge
Chairman, Sub-committee of
Nevada Industrial Commission
P. O. Box 31
Fallon, Nevada 89406

Dear Senator Dodge:

As president of Clark County Anesthesia Associates, Chartered, I am writing you to see if information is available regarding progress with the Nevada Industrial Commission on physician's fees.

Clark County Anesthesia Associates Board of Directors will hold its annual meeting on the 4th of March. They have requested that information be presented to them which may be obtained from your committee or from the Nevada Industrial Commission itself regarding fee structures.

The doctors have bargained in the past, in good faith, with the Nevada Industrail Commissioners who have repeatedly indicated they intended to begin to abide by state laws and pay usual and customary charges for services rendered to NIC patients. It has been our hope that something would come of these bargain sessions. However, to date nothing has. These sessions stretch back for a period of several years, and during this time we have, in the main, continued to care for NIC patients at a fixed fee schedule. The Nevada Industrail Commission has dictated this fee schedule to us without recourse to further collection from the patient. The doctors have long felt that to do this was morally wrong for the following reasons:

1- It gives one state owned insurance company a fringe benefit which is not enjoyed by other insurance companies.

2- It means that private patients are being penalized by having to pay usual and customary charges where the State of Nevada gets cut rate medicine.

We now find that other problems have arisen. Aetna Insurance Company is now promulgating a scheme in their private sector which will dictate to the doctors what fees they will pay for their subscribers. This is not the worst of the matter Senator Dodge, the worst of the matter is that these insurance people are now sending information to their subscribers which indicates that should the doctor take steps to collect his fee, that the insurance company will defend the subscribed in court against the doctor collecting his usual and customary charges.

We feel the pressure of government all around us. There is little incentive for doctors to continue in the practice of medicine with the skill and the desire that they have had up to date. We feel that we are not only harassed by insurance companies, but by the bad publicity in the papers and by state organizations of various kinds. We are forced to pay higher and higher malpractice insurance premiums because no protection is afforded us by the state against claims by anyone let alone the NIC patients.

We would very much appreciate any information you may be able to give us regarding any progress that has been made. I have a strong suspicion that a decision is apt to be made which is not going to be to the benefit of the NIC patients. I have the feeling among our Board of Directors that they do not intend to continue under the present situation.

If we may have any information you have which might help us reach a just and equitable decision at our meeting in March, I would appreciate it very much. Thank you in advance for your help.

Sincerely yours,

Robert V. Plehn, M.D.
President

CC: Assemblyman Keith Ashworth
William K. Stephan, M.D.
William Harris, M.D.

MEMORANDUM

NEVADA WORKMEN'S COMPENSATION:

WHETHER PROCEEDINGS IN A DISTRICT COURT CONSTITUTE A REVIEW OF THE ADMINISTRATIVE RECORD OR A TRIAL DE NOVO

A. INTRODUCTION

The purpose of this memorandum is to describe current Nevada law and practice as to a district court's scope of proceedings in a workmen's compensation case. Broadly speaking, the question is whether a district court conducts an independent trial or continues with the case begun at the level of the Nevada Industrial Commission (NIC). Must the plaintiff workman have exhausted his administrative remedies as a condition precedent to entering the district court? Does the district court limit itself to a review of the record made by the NIC? Is the court's function simply to ascertain whether or not there was substantial evidence which supported the NIC's determinations? Does the court entertain original evidence and make its own findings?

The sources to be utilized in this memorandum will include (1) Nevada Supreme Court opinions bearing on the subject, (2) applicable provisions of the Nevada statutes, and (3) rulings and written decisions of the district courts.

B. SUMMARY OF TOPIC

Two contrasting views are apparent throughout the source material:

One view regards the district court as possessing full authority to look into every factual and legal aspect of the workman's case. Underlying concern is indicated as to the trend toward administrative encroachment into the traditional sphere of the judicial branch. The view appears to be one of

doubt that the NIC has legal authority to be a specialized judicial tribunal. According to this view, the court may retrace the process of claims determination in disputed matters already considered to a greater or lesser extent by the NIC. The Nevada Supreme Court case of NIC v. Strange (infra) is the modern bulwark of this view. The maintenance of full judicial power in the district court is thought necessary to provide ultimate protection of the workman's rights.

The other view is that commissions like the NIC do have the capacity to conduct their affairs in a quasi-judicial manner. This view is that the NIC should be allowed to exercise quasi-judicial authority in order that the NIC may have firm control over its area of responsibility and thus, incidentally, relieve the courts from becoming unnecessarily burdened with specialized problems. The concept is that NIC's decisions ought to be accorded a degree of finality. A number of practical things are meant by finality. What seems to be contemplated is (1) that the workman should be required to exhaust his administrative remedies before entering the district court, (2) that he should be limited by a particular length of time within which to make known his intention to sue, (3) that the record of the NIC should be "reviewed" in the appellate sense only -- for errors of law rather than fact, (4) that the district court should refuse to receive any evidence not previously considered by NIC, (5) that the findings of the medical board and NIC must be accepted where supported by substantial evidence, and (6) that the Supreme Court's review should not consist of an examination of the district court's findings but, rather, of a re-examination of the NIC record to see whether it was correctly evaluated by the district court. The view is that if, perchance, NIC falls short of having achieved quasi-judicial capacity, any correctives necessary to enable NIC to reach that status can be

instituted through mere formal or minor changes in the Nevada Industrial Insurance Act (NIIA) or in the regulations issued by NIC itself. Credence for this view lies in analogies to the treatment of other commissions, at least one provision of the NIIA, and the inferred applicability of the Administrative Procedure Act (APA).

Although accommodations are taking place between the two views, the basic differences continue unresolved. At present, the schism produces consequences which substantially affect the respective interests of the parties.

C. EARLY OPINIONS OF NEVADA SUPREME COURT

1.

The Nevada Supreme Court touched on the subject for the first time in Brown v. NIC, 40 Nev. 220, 161 P.516 (1916), when the court refused to entertain an original suit in mandamus presented by an injured workman. The Court said, among other things:

> "That there is a remedy at law against respondent [NIC] upon a rejected claim of an employee, we think permits of no question." (40 Nev. at 225)
>
> "Necessarily, the claim of an employee, rejected in whole or in part by the industrial commission upon any question of fact going to the extent of his injuries or as to the existence of the relationship of employer and employee at the time of the accident, must be determined in an action at law against the commission." (40 Nev. at 226)
>
> "A district court is the proper forum to determine the legality of his claim, and, if a legal claim, the amount he is entitled to recover under the statute." (40 Nev. at 227)
>
> "If the legislature had not adopted the statute ... he would ... be compelled to institute his suit in the district court. It cannot, in reason ... be contended that a person entitled to compensation ... has, by virtue of the statute, been granted any different remedy ... than that which before existed." (Ibid.)

The next time the Nevada Supreme Court discussed the subject was in Dahlquist v. NIC, 46 Nev. 107, 206 Pac. 197, 207 Pac. 1104 (1922). The common-law wife of a workman, who had died of injuries, sought an award from the NIC. After the NIC had denied her claim, she sued in the district court and obtained a decision in her own favor. The Supreme Court, affirming the district court's decision, declared the nature of the proceedings in the district court to be as follows:

> "There was, and could have been no appeal from the ruling of the commission. The action of the district court was an original proceeding in a court of record ...." (46 Nev. at 117)

This characterization of the district court's proceedings gave rise to misgivings on the part of counsel for the NIC. They argued, upon rehearing, that if the rule as to original proceeding were carried to its "logical analysis," it would be a "mandate" for claimants to ignore the workmen's compensation act. NIC counsel apparently believed that the injured plaintiffs might omit to present matters fully before the NIC.

The Supreme Court, nevertheless, reiterated their position in the following language:

> "Since the term 'de novo' means anew, it may be that, literally speaking, the trial ... [in the district court] was de novo; but in legal parlance the term ... signifies that there had already been a trial before some tribunal, and that the trial de novo was not before a court upon an original hearing, but upon appeal, whereas this case was originally instituted in the district court." (46 Nev. at 119)

Continuing, the Supreme Court said:

> "We are sure ... counsel are aware of ... section 1, art. 6 of our constitution, and of the holding in Ormsby County v. Kearney, 37 Nev. 314, 142 Pac. 803, and followed in V.L.& S. Co. v. District Court, 42 Nev. 1, 171 Pac. 166, wherein it was held that the legislature had no authority to create a tribunal with judicial powers, other than as provided in the section of the constitution mentioned, from which an appeal might be taken to the district court .... (46 Nev. at 119)
>
> "We have not been cited to any provision of the Workmen's Compensation Act ... authorizing an

appeal from the commission to the court...." (46 Nev. at 119)

The Court added:

> "There is absolutely no connection between the proceeding before the commission and that before this court . . . " (Ibid.)
>
> "In each of these [out-of-state] cases [cited and relied upon by NIC] it appears that the court was authorized to review the proceedings had before the commission. In the case before us the court reviewed nothing: it merely determined a suit commenced before it. There was no connection between the proceedings before the commission and the court proceeding." (46 Nev. at 120)

Because the Dahlquist case raised a constitutional question concerning the legislature's power to make the NIC into a judicial tribunal, it is desirable for us to look into the constitutional provisions as well as the cases cited on that point in Dahlquist.

> "The powers of the Government of the State of Nevada shall be divided into three separate departments,— the Legislative,-the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one ... shall exercise any functions, appertaining to either of the others ...." (Art. 3, section 1)
>
> "The Judicial power of this State shall be vested in a Supreme Court, District Courts, and in Justices of the Peace. The Legislature may also establish Courts for municipal purposes only in incorporated cities and towns." (Art. 6, section 1)
>
> "The District Courts ... shall have original jurisdiction in all cases in equity; also in all cases at law ... [etc.] They shall also have final appellate jurisdiction in cases arising in Justices Courts, and such other inferior tribunals as may be established by law." (Art. 6, section 6)

One of the cases cited in Dahlquist on the constitutional point was Ormsby County v. Kearney, 37 Nev. 314, 142 Pac. 803, 1914. (See Dahlquist, 46 Nev. at 119.) In the Ormsby County case the Supreme Court held that the Nevada water statute had validly authorized the state engineer to "determine the relative

rights of water appropriators or users" and to "determine contests" (37 Nev. at 351, Norcross J.); however, the concurring opinion noted the following qualifications:

> "As the constitution limits the judicial power in this state to the supreme court, district, justice, city, and municipal courts, it follows that it does not provide for an appeal to the district court from the decision of any tribunal not mentioned in that document. The fact that the statute provides for an appeal cannot make the determination of the state engineer binding as a final adjudication of water rights or endow him with judicial power to make a final determination of rights, when the constitution directly limits that power to the courts specified." (37 Nev. at 356, Talbot, C. J.)

> "If there were a provision in the state constitution authorizing the legislature to establish other courts at its discretion, and provision had been made by statute for a special tribunal ... a very different question might be presented." (Ibid., at 357)

The determinations of the state engineer "are not binding as final adjudications, even if no appeal from them be taken." (Ibid.)

The Dahlquist case also cited V.L.& S.Co v. District Court, 42 Nev. 1, 171 Pac. 166, 1918. (See Dahlquist, 46 Nev. at 119.) In the V.L.& S. case the Court held that the water statute did not violate the separation of powers or encroach into the sphere of the judiciary because the function of the state engineer was only preparatory to an adjudication in the district court. The state engineer was to file his order and determination with the court, and hence his action would operate as a complaint, paving the way for subsequent judicial handling. (42 Nev. at pages 25-28)

D. LATER OPINIONS OF NEVADA SUPREME COURT

1.

The case of Provenzano v. Long, 64 Nev. 412, 183 P.2d 639 (1947) is significant because of the Supreme Court's

language, indicating that they were still adhering to the same view as in Dahlquist after twenty five years. In Provenzano, the alignment of parties was unique. Following the injury of a workman, the employer tendered certain late premiums with his payroll information. NIC accepted the premiums. While retaining them, NIC initially granted the employer retroactive coverage but afterward refused it. The employee thereupon sued the employer in the district court. The employer lost in the district court and appealed. He urged that the district court had lacked jurisdiction of the issue of workmen's compensation coverage. He said that NIC's province was exclusive and that NIC had either waived its requirement for timely submission of premiums or, because of keeping the money, should be estopped to refuse coverage. In this context the Supreme Court declared:

> "Where and how has the Nevada industrial commission been clothed with judicial powers? If a construction of the Nevada industrial insurance act furnishes the answer to this question, we should look in vain in our constitution for its authority." (64 Nev. at 426)

Further, the Court said they found nothing in a case cited by the employer to support his theory "that the determination of coverage was under the circumstances within the exclusive jurisdiction of the commission." (64 Nev. at 427)

> "The commission having denied coverage by reason of the defendant's failure to file his pay rolls... plaintiff was entitled to commence his common law action in the district court." (64 Nev. at 428)

2.

Industrial Commission v. Adair, 67 Nev. 259, 217 P.2d 348 (1950) was a case that hinged on the requirements for notice of the accident. The NIC found there was insufficient notice, but the district court came to the opposite conclusion. The district court received original evidence. Upholding the district

court, the Supreme Court made the following comments about the proper scope of proceedings:

> " *** In the jurisdictions in which an appeal or other proceeding attacking the findings and award of the commission is lodged directly in the appellate court, such court gives to the findings of the commission the weight that this court accords to the findings of a trial court. Due consideration is undoubtedly given by the district courts of this state to the findings of the commission on issues of fact submitted to it. Our conclusions in this case should enhance rather than detract from the accomplishment of one of the main purposes of the act - to have cases of this kind fairly and competently handled by a statutory board, and thus greatly relieve the congestion of court calendars." (67 Nev. at 272)

3.

Crosby v. NIC , 73 Nev. 70, 308 P.2d 60 (1957) again revealed the scope of the proceedings in a district court. The NIC and the Medical Referee Board had determined that an injured workman's permanent disability was sixty percent. Dissatisfied, he sued the NIC in a district court, which proceeded "to its own finding approving the 60 percent disability." (73 Nev. at 76) The workman then appealed to the Supreme Court. That Court decided his disability had been too narrowly based on bodily factors without proper account being taken of his incapacity to find employment and do work. The Supreme Court remanded the case to the district court "for further consideration, findings and judgment." (73 Nev. at 72) The Supreme Court stated that determining the extent to which the employee could make intermittent and limited earnings to reduce what appeared to be his total disability was a function which must be performed by the district court. (See 73 Nev. at 78-79.)

We should note that, seemingly contrary to the Court's view, NRS 616.190 requires the NIC to accept the findings of the medical board. This statutory provision was enacted before the Crosby decision:

"The findings of the medical board or a majority of the members thereof shall be final and binding on the commission." (NRS 616.190, subsection 2)

In First National Bank v. District Court, 75 Nev. 77, 335 P.2d 79 (1959) a cocktail waitress had been injured by a gunshot fired in her place of work. She applied to the NIC for compensation and was awarded monthly payments --which she was accepting. Nonetheless, she continued with a suit she had commenced in the district court against her employers for their alleged negligence. The employers opposed her suit on the ground that the NIC award was res judicata. (Cf., McColl v. Scherer, 73 Nev. 226, 315 P.2d 807, 1957) The employers moved for summary judgment, which was denied; and they appealed. The Supreme Court held that the NIC award was not res judicata and that, as a matter of jurisdiction, the district court had power to hear the suit. However, the Supreme Court advised that it would be error for the district court to proceed since the plaintiff's common law right of action had merged into the workmen's compensation award upon her acceptance of it.

The employers contended that plaintiff's suit against them in district court was an impermissible collateral attack upon the NIC award to her. (We note that plaintiff's suit was sustainable only if she showed the NIC award to be invalid; hence, she would have to establish that the injury did not arise out of her employment.) The Supreme Court observed that her suit was easily convertible into a direct attack by bringing in NIC as an added defendant. With this tripartite background in mind, the Supreme Court gave the following discussion bearing on the scope of a district court's proceedings:

> "The authorities upon which petitioners rely in this connection are cases from jurisdictions where, by statute, direct judicial review of commission action is provided. It would appear clear where such procedure ... is provided, that collateral

attack cannot be permitted. Where such provision is made, the commission's determinations should be given that finality and standing which would have resulted had they been affirmed upon judicial review. 171

"Nevada does not provide for judicial review. Any attack upon commission action must be in the form of an original action seeking trial de novo of the issues determined by the commission. Some form of review certainly is appropriate." [The Court seems to mean that the original action in the district court constitutes a "form of review."] (75 Nev. at 80, Merrill, C. J.)

E. O'HARE & INTERNALLY CITED CASES

1.

NIC v. O'Hare, 76 Nev. 107, 349 P.2d 1058 (1960) involved a question as to whether a workman's disease was aggravated or accelerated by his industrial injury or whether his disease was unconnected with it. The medical board found the disease to be unconnected. Accordingly, NIC denied him compensation. He then sued NIC in a district court, which decided for the workman. NIC appealed, chiefly on the ground that the determination of the medical board was binding on the commission. (See NRS 616.190)

The Supreme Court's opinion discloses that physicians did testify in the district court on behalf of the workman, as well as NIC. Therefore, it is clear that the district court did not merely review the NIC record. The Supreme Court concluded that the testimony in the district court supported the district court's decision and did not compel a finding of the opposite - the position earlier reached by the medical board. Further, since the medical board had failed to comply with one of the statutory requirements in its procedure, the Supreme Court held the board's findings did not bind the NIC.

We discern that the case does not deal expressly with the question of whether the district court would have been

obligated to accept the medical board's findings if the board had indeed conducted its proceedings in a manner that statutorily bound the NIC. Yet the proposition that the district court would also have been bound may be implicit in the case. Thus the query remains: Where the medical board fully complies with requirements, is the district court precluded from listening to original medical evidence on a matter the board has decided?

In O'Hare the Supreme Court discussed generally the nature of their review of decisions of administrative boards; and the Court referred to cases involving the tax, gaming and advisory personnel commissions:

> "We have recognized the finality of administrative determinations .... This evolved from the growing appreciation of the undesirability of trying de novo in the courts appeals from the rulings and decisions of the commission. We recognized the desirability of having the commission or administrative tribunal assume a real responsibility for weighing and considering the facts in the fields where it had peculiar competence. *** This we may again confirm with reference to administrative determinations, at the same time recognizing that the final action and judgment of the administrative tribunal made in the exercise of a quasi-judicial function is subject to review. ***" (76 Nev. at 110-111, Badt, J.)

2.

The following is a condensation of the cases referenced in O'Hare on the role of the courts in conducting a review of administrative determinations. Four cases are condensed (chronologically) for completeness; but the opinion by Justice Merrill is the most significant for present application.

State ex rel Grimes v. Board of Commissioners, 53 Nev. 364, 1 P.2d 570 (1931) concerned the power of the Board of City Commissioners of Las Vegas to refuse a gambling permit to a particular applicant while granting licenses to others. In 1931 the Nevada legislature had sanctioned gambling under license and provided the Board authority to licence and tax

gambling, or to prohibit it. The applicant sought a writ of mandamus to force the Board to issue the license. Denying the writ, the Supreme Court said that the evidence showed the Board had not acted arbitrarily and had properly exercised its discretion.

In Dunn v. Nev. Tax Commission, 67 Nev. 173, 216 P.2d 985 (1950) a business organization disseminating information on horse races tested the constitutional validity of a statute under which the activity was being licensed, taxed and regulated. The Supreme Court, in a declaratory judgment, held the statute valid.

Nevada Tax Commission v. Hicks, 73 Nev. 115, 310 P.2d 852 (1957) concerned an NTC order to suspend a gambling license. The gamblers entered the district court and attempted to establish their suitability by evidence not previously shown to the NTC. The gamblers were successful in getting an injunction, from which NTC appealed. The applicable statute merely stated:

> "Any such revocation or suspension so made shall become and remain effective until reversed or modified by a court of competent jurisdiction upon review." (Section 10 (ff), 3302.22a, NCL 1943-1949 Supp.; now NRS 463.310)

The Supreme Court said that NTC had the duty to fix standards of suitability for holding licenses and called this duty "administrative." The Supreme Court said that the NTC's duty to hear cases of revocation or suspension was, on the other hand, "quasi-judicial." Further, the Supreme Court denied that the courts' function was to decide what shall constitute suitability, although courts might look at the definitions to see whether they were discriminatory, arbitrary or in excess of authority. In a particular case the application of rules of suitability was said to be a reviewable question of fact. But the Supreme Court cautioned:

"Since the nature of the court review in such a case as this is limited, the action taken by the commission must make it possible for the courts to respect those limits. *** Standards of suitability clearly appear from ... [the NTC's] decision." 73 Nev. at 122, Merrill J.)

"This action was treated by the [district] court as an independent and original action in equity. The commission contends ... that the only appropriate method of review can be by certiorari. This [contention] ... is going somewhat too far .... The statutory provision for judicial review ... is far from specific. It invites improvisation. *** (Ibid., p. 122)

"The commission assigns as error the action of the trial court in admitting evidence bearing on the issue of suitability which evidence had not been presented to the commission. It contends that this transformed the proceedings below into a trial de novo; that the trial court should, upon review, have confined its consideration to the record made before the commission. Upon this point we concur with the view of the commission. (Ibid., p. 122)

"It should be apparent that if trial de novo is permitted here it would completely destroy the effectiveness of the tax commission as an expert investigative board. The most perfunctory showing could be made before the board by a licensee with knowledge that the matter would ultimately be decided by the courts upon full evidentiary consideration. Trial de novo, in effect, could relegate the commission hearing to a meaningless, formal, preliminary and place upon the courts the full administrative burden of factual determination. (Ibid., p. 123)

"We conclude that ... the reviewing court must confine its consideration to the record of evidence made before the commission. The court below was in error in receiving new evidence relative to the suitability of the licensees." (Ibid., p. 124)

"Having delineated the area within which the courts shall act in judicial review of commission action, we turn to a review.....As we conceive our appellate function ... it is not to review the determinations of the court below, but to undertake afresh a review of the commission's determinations to ascertain whether ... they are supported by substantial evidence." (Ibid., p. 125)

"It is not for us to hold that, upon those commission findings which are supported by substantial evidence, Hicks and Jones are or are not to be held suitable to hold gambling licenses. That determination remains for the tax commission to make." (Ibid., p. 135)

Oliver v. Spitz, 76 Nev. 5, 348 P.2d 158 (1960) involved the dismissal of a classified state employee by his superior. The

Advisory Personnel Commission (NRS 284.390) held a hearing on the superior's charges. Previously the commission had adopted Rule 10.05 indicating that there must be a "just cause" for a dismissal. Finding none, the commission recommended that the superior reinstate the employee. The superior failed to do so.

The Supreme Court declared:

> "The hearing before the commission was in the nature of a judicial proceeding." (76 Nev. at 10)
>
> "It is ... our conclusion that the action of respondent [superior] in disregarding the commission's finding ... is subject to judicial review .... *** We have read the record and see no reason to disagree with the commission's findings." (Ibid.)

The Supreme Court issued a writ of mandate to compel the reinstatement.

F. ADMINISTRATIVE PROCEDURE ACT.

1.

In 1965 the legislature enacted the Administrative Procedure Act (APA), which stated:

> "By this act, the legislature intends to establish minimum procedural requirements for the ... adjudication procedure of all agencies of the executive department ... and for judicial review ... excepting those agencies expressly exempted .... " (Chap. 362, section 3; NRS 233B.020, subsection 1)

The APA defined in part the word "agency" to mean a "commission" of the "executive department," authorized by law "to determine contested cases." (Ibid., section 4; NRS 233B.030) Further, the APA defined "contested case" as a proceeding in which legal rights are required by law to be determined by an agency after hearing. (NRS 233B.030, subsection 2)

The legislative purpose in enacting the APA was clearly to provide certain minimal requirements to govern those agencies which carry on adjudicating procedures and hearings for determination

of contested cases. Since the NIC is an agency conducting such activities, this aspect marks it as a likely subject for the APA.

2.

There may be some question as to whether the NIC is an agency existing within the framework of the executive department. The operation of the NIC is independent of executive control. Incidentally, so are the operations of other statutory commissions. The funds of NIC are held in trust, separate from the state's general fund. (Nev. Const., Article 9, section 2; State v. McMillan, 36 Nev. 383, 1913; also NRS 616.425 and .435) On the other hand, the commissioners are appointed by the governor; the commission's employees and their compensation are subject to the approval of the governor. (NRS 616.125-.140; NRS 616.185) Although it is said that their compensation is paid out of the "state treasury" (NRS 616.185, subsection 3), the state is not liable for "salaries or expenses in the administration" of NIC's activities; and the state derives the funds used for salaries and expenses from moneys contributed by NIC. (See NRS 616.425-.440)

3.

In the beginning provisions of the APA, certain agencies are exempted from control: Penal and educational institutions, administrator of military affairs, state gaming control board, gaming commission, and parole commissioners. At the end of the APA there is a kind of exemption stating that any conflict between the APA and either (a) NRS Chapter 612 - unemployment compensation law - or (b) NRS Chapter 704 - regulation of public utilities - should be resolved in favor of the latter. (Amendment 1967, NRS 233B.160) Thus, while the APA does not expressly

cover the NIC (or any other agency for that matter), neither does the APA list the NIC among the exempted agencies. From this aspect, NIC would appear to be included within the governing principles of the APA.

The APA calls for judicial review as follows:

> "Any person aggrieved by a final decision in a contested case is entitled to judicial review ...." (1965, Ch. 362, section 14) "Proceedings for review shall be instituted by filing a petition in the district court ... within 30 days after the service of the final decision of the agency .... "(NRS 233B.130, subsection 2)

The APA states explicitly:

> "The review shall be conducted by the court ... and shall be confined to the record. *** " (NRS 233B.140, subsection 4)
>
> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *** The court may reverse ... if substantial rights of the appellant have been prejudiced because the administrative findings ... are ... (e) Clearly erroneous .... " (Ibid., subsection 5)

G. OPINION IN NIC v. STRANGE

1.

NIC v. Strange, 84 Nev. 153, 437 P.2d 873 (1968) concerned an injured workman who rejected the NIC's offer of compensation and commenced suit against NIC in a district court. The trial judge conducted a full hearing. He received evidence both documentary and oral. At the conclusion of the trial, he awarded the workman nearly five times the amount previously offered by NIC. Upon appeal by NIC, the Supreme Court's opinion confirmed that the district court itself had made findings of fact:

> "The trial judge filed a written decision .... This was followed by findings of fact, conclusions of law, and an appropriate judgment. *** (4 Nev. at 158)

> "We are unable to say that the trial court's findings were not supported by substantial evidence." (Ibid., p. 159)

2.

The Supreme Court formulated the crucial question in the case:

> "What is the precise duty of the trial court in proceedings of this nature? Is it a court of review? Is it bound by the findings of the Nevada Industrial Commission? Or are its powers the same as in any other original law suit-- to hear and consider the evidence and make its own independent findings and an appropriate award based thereon?" (84 Nev. at 155)

The Supreme Court, in a 5-0 decision written by Justice Mowbray, answered the question as follows:

> "The law of Nevada has always been that proceedings such as the instant case are original in the district court." (Ibid.)

The Supreme Court quoted extensively from Brown (1916), supra, to the effect that the district court has original jurisdiction to hear an original action wherein the workman is entitled to have the question of the extent of his injuries determined as a fact. (Strange, 84 Nev. at 155-156)

From the quoted passages of Brown we note the apparent assumption that the workman has exhausted his remedy with NIC. The examples include an employee "who was dissatisfied with the award" of NIC, an NIC rejection of claim because "the relation of employer and employee did not exist," and a claim "finally rejected in toto" by NIC. (Ibid.)

The Supreme Court also quoted from Dahlquist (1922), supra, to the effect that there is "no connection between the proceedings before the commission and the [trial] court proceeding." (Strange, 84 Nev. at 157) Again quoting from Dahlquist, the Supreme Court brought out that "do novo" signifies an appeal from a previous trial "before some tribunal," whereas the legislature had been held to have "no authority to create a tribunal

with judicial powers, other than as provided in the ... constitution ..., from which an appeal might be taken to the district court." (Ibid., at 156)

Turning from the question of constitutional authority to that of legislative authority, the Supreme Court said:

> "It is to be particularly noted that this court in the Brown case decided that the legislative intent was to vest in the aggrieved employee his cause of action against the Commission, and held in the Dahlquist case that the proceeding before the district court was not a trial de novo but an original proceeding." (Ibid., p.157)

The Supreme Court made these further observations:

> "The Nevada Industrial Insurance Act contains no provisions for a judicial review. The reason is obvious. There simply is nothing to review. The only available procedure ... is an original proceeding in the district court." (Ibid.)

3.

Referring to the O'Hare opinion written by Justice Badt in 1960 which was, in turn, based considerably on Justice Merrill's opinion in NTC v. Hicks in 1957, the Supreme Court declared:

> "Appellant [NIC] urges ... [O'Hare] as authority for the proposition that the medical board's findings are binding on the Commission and therefore shall be binding on the trial court. The question was not directly presented ... the language being dictum. The [O'Hare] court did discuss the proper appellate procedure from a ruling of the Nevada Tax Commission (rather than the Nevada Industrial Commission), but nevertheless said ...:
>
> 'The assignment of error in the court's failure to find the medical board's findings ... were binding upon the commission, and thus binding upon the court, must, under the circumstances, be held to be without merit. '" (Ibid.)

My comment: The O'Hare "circumstances" were that the medical board had failed to conduct a physical examination of the employee, as required by statute. (See O'Hare, 76 Nev. at 111)

In Strange the Supreme Court made their position emphatic. They extended the legal influence of the early cases, while curbing the intervening influence of O'Hare:

> "We reaffirm ... Brown and Dahlquist, and any indication to the contrary which may appear in the case of O'Hare is expressly disavowed." (84 Nev. at 157-158)

The Supreme Court added:

> "The interpretation ... in the Brown case that it was the legislative intent [in enacting the NIIA] to vest in an aggrieved employee the right to bring an original action in the district court has received the tacit acquiescence of the Legislature for a period of 52 years." (Ibid., at 158; see also 157)

My comment: Nothing in the NIIA explicitly shows any legislative intent to vest such a cause of action in the employee. It seems to me that the Court may be deriving such an interpretation from the scheme of workmen's compensation as a whole. The workman's right to compensation through the offices of NIC is a substitute for the workman's loss of his right to sue his employer for negligence. The Court may be saying that since the workman once had the right to seek compensation in a court suit against his employer (and still does if the employer neglects to provide required insurance), the employee now necessarily has the substitutional right to enter the same court to enforce his statutory claim - not against his employer - but against the state agency, the NIC. Perhaps this interpretation follows, perhaps it is a non sequitur. At any event, it is expedient social policy as well as good legal improvisation. (See Brown, 40 Nev. at 22

When the Supreme Court rationalizes the basis of the workman's vested right as a matter of legislative intent, the right becomes vulnerable to eradication by a stroke of the legislative pen. Under this rationale, it would appear that the legislature could take the right away by simply adding to the statute a clarifying statement saying that NIC final

determinations are subject to judicial review and such review is to be confined to the factual record of NIC and legal questions.

On the other hand, the Supreme Court's quotations from Dahlquist indicate that they regard the workman's vested right to an independent trial as a thing of constitutional caliber. The Court, thereby, raises the suggestion that constitutional changes would be required to transform NIC into a new administrative court and to designate appellate functions in the district courts for review of the NIC decisions.

H. THE NIIA AND PROBLEM OF REVIEW

1.

In Strange the Supreme Court states:

> "The Nevada Industrial Insurance Act contains no provisions for a judicial review. *** There simply is nothing to review." (84 Nev. at 157)

The first sentence suggests that the reason there is no judicial review is because the legislature has not so provided in the NIIA, but that the legislature has the power to establish judicial review by statutory enactment in the future.

The last sentence is cryptic. Does it refer to the fact that in Strange the NIC had not made and introduced an administrative record capable of being reviewed? Or does the last sentence imply that due to the lack of authority - constitutional, statutory or both - the NIC is not a body whose determinations can be reviewed in the appellate sense?

2.

At the time of the Strange decision there was nothing in the NIIA about judicial review. In 1969 (the following year) the legislature added a section declaring that the NIC

must provide for adequate notice to each claimant of his right to "judicial review of any final decision by the commission." (NRS 616.220, subsection 8b) We see that the provision is a backhanded sort of way to deal with the right of review. The provision requires NIC to adopt a regulation ensuring that notice of such right be given to the claimant. But where is the right established? Apparently nowhere - unless by indirection or the APA. The so-called "right" actually cuts down on the privileges of the claimant; his superior remedy was his independent suit. Query: If the new provision had been in the NIIA when Strange was litigated, would the Supreme Court have reached a different decision?

3.

Associated with the NIIA is an act on safety and health in employment. The latter act is administered by a department under NIC. The act declares in part:

> "Any person believing himself aggrieved then by the ruling of the Nevada industrial commission shall be entitled to a review of the order or failure to act by a court of competent jurisdiction. (Part 8:436:1955; NRS 618.220, subsection 3)

This provision was effective at the time of Strange. Literally, the provision encompasses all rulings of NIC. However, the context would appear to require that the provision be construed as applicable only to safety matters. If this be so, why should a person be entitled to a judicial review in a safety matter but not be entitled to a review (instead be given an original cause of action) in a compensation matter?

I. THE APA VIS-A-VIS THE STRANGE CASE

1.

The APA was enacted in 1965. The Strange case was

decided in 1968. No mention is made in the Strange opinion as to the applicability of the APA. Why? Could it be that the workman in Strange had begun his contest before July 1, 1965? The APA states that the act does not apply to cases pending on that date. (Stats. 1965, Chap. 362, section 15) Apparently this was not the circumstance. The Strange opinion carries no reference to the date the workman started his contest.

The attorney for NIC, William Crowell, Sr., explains the lack of any issue in Strange about the applicability of APA by noting the fact that at the time of this litigation NIC was not processing its claims formally. He points out that NIC did not adopt its present form of regulations until December 29, 1969 (after Strange). Obviously, since the plaintiff workman had been successful in his full proceeding in the district court, he would not have clouded his victory by raising the issue of the APA before the Supreme Court.

Nevertheless, the tactical circumstances prevailing in Strange really do not explain the language and concept of the opinion. The opinion firmly declares that the district court proceeding is original in nature and unconnected with any prior NIC proceeding. How shall this concept be reconciled with any possible future attempt to link the NIC and district court proceedings and to limit the district court proceeding to a review? How could any perfecting of NIC's internal procedure have the effect of divesting the workman of what the Supreme Court considers his vested right to an independent cause of action?

2.

It is certainly NIC's present desire and intent to implement the APA and be governed by it. NIC has developed

regulations "[p]ursuant to NRS Chapter 233B and NPS 616.220" -according to the title page of NIC's current regulations. NIC's attorney, William Crowell, Sr., would like to see the APA made applicable to the workmen's compensation cases. However, the contrary viewpoint is held by attorneys who represent injured workmen. I interviewed Gary G. Bullis, Esq., to learn of his attitudes developed after trying several of such cases. He feels that, regardless of any theoretical approach, the district courts cannot justifiably limit their consideration to the NIC record under present circumstances. He gave a number of reasons. For example, (1) NIC records sometimes contain selective findings of fact, omitting germane, proven facts favorable to the claimant, (2) the particular employer is consulted as to the amount of the proposed award, and (3) the commission is not sufficiently divorced from its function of investing and administering funds under the present organization to insure its impartial evaluation of the workman's incapacity. The plaintiffs' attorneys desire to retain the latitude of proof allowed by the independent court proceedings.

3.

One section of the APA preserves existing rights to a trial de novo. The section makes the APA review into an alternative mode.

> "Nothing in this section [on judicial review] shall be deemed to limit utilization of trial de novo review where provided by statute, but this section shall provide an alternative means of review in those cases." (NRS 233B.130, subsection 1)

Assume that the NIIA, engrafted with judicial construction, provides for the equivalent of a "trial de novo." Assume, also, that the APA applies to the NIIA. Then the quoted section of the statute indicates that alternative modes of review would exist. But the situation would be incongruous!

NIC would choose the APA mode in order to confine review to the NIC record. The workman would choose the mode of "trial de novo" so he could produce evidence afresh for consideration of the district court. The court would be compelled to choose between these alternatives.

Sooner or later certain issues will have to be resolved: (1) Was the APA intended to apply to the NIIA? (This issue can be resolved by statutory clarification or judicial interpretation) (2) If the APA is intended to apply, would the APA's application be subject to the same constitutional criticism leveled in Strange and Dahlquist against treatment of NIC as an appealable tribunal.

J. DECISIONS RENDERED AT TRIAL LEVEL

1.

Breckenridge v. NIC, Second Judicial District, No. 270 806 (Dept. 2), gave rise to an interesting series of pleadings. Responding to the workman's complaint, NIC set forth the contention that he had not exhausted his administrative remedies. (See third affirmative defense, filed August 5, 1971) NIC explained that after the workman's claim had been denied by the claims department, he was informed of his right "to review and determination" by NIC (all in accordance with the APA plus NIC regulations adopted pursuant thereto) but that he did not avail himself of this administrative procedure.

The workman moved to strike the defense on the ground that the exhaustion of the procedure for "administrative hearing and review" was not a "condition precedent" to his right to maintain the action in the district court. He cited the Strange case (supra) as establishing that there was "no connection" between the administrative and the judicial proceedings. He also said

that the APA "was on the books when our high court spoke." By the latter statement he seemed to be urging that the high court had considered, but rejected, the proposition that the APA applied to NIC cases. (See motion filed by Attorney Gordon W. Rice on August 9, 1971.)

NIC opposed the motion to strike its defense, pointing out, among other things, that the provision of the NIIA "which authorizes" NIC to adopt regulations was amended effective July 1, 1969, following the Strange decision. NIC quoted subsection 8(a) and (b) of NRS 616.220 requiring NIC to provide for adequate notice to each claimant of his right to review by the commission, and to judicial review of any final decision of the commission. (NIC's Points & Authorities, Oct. 12, 1971, p. 2) NIC further brought to the district court's attention the fact that NIC had not been excepted from "the right to adopt an administrative procedure" under the APA, and NIC adopted such procedure effective on February 1, 1970, with subsequent amendments. (Ibid., p.3) NIC conceded that the workman has the right to a "judicial determination" of his "ultimate rights" but insisted that the right to such "determination" [type unspecified] did not arise until final action by NIC. (Ibid.)

The workman replied to NIC with a brief containing, among other things, a quotation from the dissent of Justice Jackson at 343 U.S. 470, 480 to the effect that administrative agencies have been called "quasi-legislative, quasi-executive, or quasi-judicial," the term "quasi" being a "smooth over" to cover the authors' confusion concerning the constitutional scheme for separation of powers. The workman cited out-of-state cases to show that "final power of determination" may not be vested in administrative agencies. (Comment: This misses the precise issue of whether it is permissible to limit the

scope of review.) See brief filed Oct. 13, 1971.

The workman also referred to a California case holding that the legislature cannot properly delegate to an industrial commission the "power to enact laws prescribing the nature and extent of proof necessary to make out a case" and said that this is what NRS 612.220 did in authorizing NIC to "prescribe the method" by which its staff can approve or reject claims. (Comment: If the delegation is unconstitutional, the reason must be that the lawmaking branch is trying to give away its power to an agency of another branch, namely the executive. The argument tacitly recognizes NIC to be an executive agency, and from this it follows that NIC is regarded as being within the framework of agencies the APA was intended to cover.)

The workman's motion to strike NIC's defense was denied. (Order in Dept. 2, dated Nov. 14, 1971) In so denying, the judge decided that NIC's administrative remedies must first be exhausted. This decision was made despite the Supreme Court's language in Strange characterizing a district court's action as "original and unconnected."

In Anderson/Shipley v. NIC, Second Judicial District, No. 265 929 (Dept. 4), a case tried prior to Breckenridge (supra), the NIC had made a similar defense, which was followed by the plaintiff workman's similar motion to strike. There were points and authorities supporting and opposing the motion, but there was no reply brief. The motion to strike was denied. (Order filed April 8, 1971) Thus the judge in Department 4 apparently held that the workman must exhaust all the administrative remedies, the same position later taken in Breckenridge, supra.

Incidentally, the workman's brief said that the NIC was "an administrative body belonging to the Legislative Branch

of the government" and that it was "a tribunal consisting of officers both of limited and special jurisdiction." (See supporting brief, p. 2, filed by Attorneys Wait & Shamberger on March 25, 1971)

While the rulings in Breckenridge and Anderson/Shipley (supra) give some idea of the status that the district courts give to the NIC proceedings, the rulings do not necessarily tell how the courts' proceedings would be conducted with respect to the specific question of trial de novo versus limited review.

Precisely the same issues and pleadings were involved in Wilson v. NIC, Second Judicial District, No. 271 035 (Dept. 5). Here, the ruling was diametrically opposite to the rulings in Breckenridge and Anderson/ Shipley. In Wilson the judge granted the workman's motion to strike NIC's defense. (Order in Dept. 5, dated Oct. 8, 1971) The judge's decision seems to be that it is immaterial whether or not the administrative remedies have been exhausted. His decision probably means that trial would be conducted in the department as if nothing had happened at NIC. Doubtless, unlimited scope would be allowed for presentation of evidence.

2.

A relatively large number of the NIC cases in the Second Judicial District have been tried in Department 3. Strange (supra) was one. Another was Hiibel v. NIC, No. 257 199, where the workman and NIC stipulated that the disability was total and permanent. The Hiibel case was submitted on pleadings. The written decision in the case was filed on May 6, 1970, stating that the only issue concerned the nature and amount of benefits to be awarded. NIC had awarded, besides earlier

payments for temporary disability, a final sum of $3,960. The judge awarded $21,253.25. The case seems to have been tried independently and not as a review of NIC action.

Christensen v. NIC, also in Department 3, was tried after NIC had reached its decision upon an adversary hearing. The workman's attempt to reopen his claim was frustrated, and the NIC was held estopped to deny his attempt. (This indicates that the administrative remedies were exhausted.) At trial, oral and documentary evidence was adduced. Certainly the judge did weigh the adduced evidence, for his decision contains his own findings of fact. He found "sufficient credible evidence" that the workman was unable to perform work that he had been qualified to do before the injury. (Decision filed on May 14, 1971) This case was not one involving a mere review of the NIC record.

Another written decision from Department 3 was rendered in Pierce v. NIC. The decision contains very detailed findings of fact. (Decision filed June 29, 1971) The decision shows that the workman testified during trial as to his personal condition, and that the judge received other testimony and proof. Although the decision is expressed in words consistent with a review, as indicated by the paragraphs quoted in part below, the proceedings actually constituted a fully independent trial:

> "This record supports the Commission's findings .... "Such conflict as may exist in the record ... is within the range of Commission's properly exercised discretion.
>
> "I have reviewed the record . . . and conclude that the Commission gave due consideration . . . to factors specified in NRS 616.605. . . . [etc.]"
>
> (Page 9 of Decision filed June 29, 1971)

William Crowell, Sr., who tried the Pierce case for NIC, states that NIC transcripts were offered at the trial and were admitted into evidence. He says, however, that live witnesses

also appeared before the court. Some of these witnesses had testified previously at the NIC proceedings. Attorney Peter C. Neumann, who represented the workman, confirms that a full trial took place. Therefore, clearly the Pierce case did not consist of an appellate review.

The sum, two district court decisions (Breckenridge and Anderson/Shipley) reveal that the workmen are expected first to exhaust their administrative remedies before seeking relief from the court, but this requirement is not imposed in every judicial department (Wilson). Where trials have been conducted, apparently no restrictions have been placed on the range of opportunity for the parties to present evidence (Strange, Christensen and Pierce). Generally the court proceedings are independent of earlier administrative actions.