

MEMBERS PRESENT:

Chairman Banner
Vice Chairman Thompson
Mr. Bennett
Mrs. Cafferata
Ms. Foley
Mr. Hickey
Mr. Jeffrey
Mr. Rackley

MEMBERS ABSENT:

Mr. Rhoads (excused)

GUESTS PRESENT:

See attached guest list.

WITNESSES TESTIFYING:

Scott Baker, State Industrial Attorney
Joe Nusbaum, Chairman, NIC
Richard Staub, Staff Counsel, NIC
Chuck King, Nevada Self Insurers
Tom Stuart, The Gibbens Co. Inc. and Northern Nevada Personnel Assoc.
Larry McCracken, Director, Employment Security Department
John Flangas, Staff Counsel, Employment Security Department

Chairman Banner called the meeting to order at 5:08 p.m. and Vice Chairman Thompson immediately moved a DO PASS on AB-233, Mr. Jeffrey seconded the motion.

AB-233: Prohibits employer's use of polygraph on applicants for employment or employees.

Chairman Banner told the committee that it had been moved and seconded to DO PASS AB-233 and asked for discussion. Mr. Hickey asked if there were any amendments to the bill and Mr. Thompson indicated the entire meaning of the bill would be changed if amended too much and urged the committee to vote on the bill without amendments.

Chairman Banner asked for a voice vote from the committee on the motion to DO PASS and AB-233 was unanimously passed by the committee members present with Mr. Rhoads, Mrs. Cafferata and Mr. Rackley absent at the time of the vote. (6-0)

Mr. Banner directed the committee's attention to AB-312, AB-313 and AB-314.

AB-312: Amends provisions of laws relating to claims under industrial insurance and occupational safety and health.

Mr. Nusbaum, Chairman, NIC, explained to the committee that this bill related to claims administration and that the Advisory Board of Review for NIC recommended almost all of the provisions.

Mr. Scott Baker, State Industrial Attorney, representing the Advisory Board and the Commission, appeared along with Mr. Nusbaum, being in complete agreement on the provisions of the bill. There were also some proposed amendments to the bill which are outlined in EXHIBIT A attached hereto and distributed to the committee prior to the testimony. The bill itself was presented to the committee section by section by Mr. Nusbaum and Mr. Baker.

Mr. Baker told the committee the first proposed change was Section 1, lines 3 and 4 on page 1 of AB-312. The operative language, "The commission shall provide by regulation for a method of determining average monthly wage," was proposed by the Advisory Board and the NIC concurs. Mr. Baker said this change puts the process in the form of a regulation and they then will have an administrative regulation hearing to adopt the changes.

The second proposed change is Section 2, line 8, page 1. The operative language is "and resulting from external force" was proposed by the Advisory Board in order to remove any doubt that bending, stretching and lifting type injuries are accepted under Workman's Compensation Law. The State Industrial Attorney's Office and the NIC concur.

The third change is Section 3, explained by Mr. Nusbaum as an Advisory Board recommendation dealing with the medical boards concerning difficult medical questions. The operative language of the change is on lines 23 and 24, page 2 "is entitled to receive his usual medical fee for each referred case" and pays participating doctors their usual fee and makes better use of the medical boards.

The fourth change is Section 4, line 40, page 2. Mr. Baker explained the operative language involves changing 45 to 90 days for the choice of an alternate physician, recommended by the Advisory Board because of the difficulty in obtaining doctor appointments. The State Industrial Attorney's Office and the NIC concur.

The fifth change is Section 5, lines 7, 8 and 9, page 3. Mr. Baker directed the committee's attention to the amendment to this proposed change. Refer to EXHIBIT A. He explained that the appeals officer would have control over paying for testimony by relevancy to the case. The Advisory Board recommended the physicians be paid a consulting fee as well as the ordinary witness fee. The State Industrial Attorney's Office and the NIC concur.

Mr. Hickey made the observation that the terminology on page 2, line 24 was different than that on page 3, lines 7, 8 and 9 and thought it should be the same. Mr. Baker and Mr. Nusbaum agreed that "appropriate schedule of fees for physicians" should be used and that Mr. Hickey had a good suggestion.

The sixth change is Section 6 and Mr. Nusbaum explained to the committee that this section of the law says that if an employee of an uninsured employer is injured, he may opt to get benefits under this section or sue his uninsured employer. The cost of this procedure has in the past been borne by the State Insurance Fund; by all employers. Some employers have gone self-insured so the question is who then pays for the uninsured employer. The NIC, State Insurance Fund, feels that in addition to their portion, the self-insured employers should bear some of the cost as well. The operative language is on lines 29, 30 and 31, page 3.

The seventh change is Section 7, lines 34, 35 and 36, page 3, which was explained by Mr. Baker as basically housekeeping changes adding in the self-insured employers. Lines 41 and 42 speaks to the scheduling of medical examinations with due regard given to the employee.

Mr. Baker told the committee that Section 8 proposed by the NIC is being deleted.

Section 9, lines 25, 26 and 27, lines 30, 31, 32 and 33, page 4 has been commonly referred to as the lifetime reopening statute. Mr. Baker said these changes clarify the language in that statute. Medical investigation is addressed in lines 39 through 46 and also needed clarification. The handout to the committee further clarifies the amendment portion suggested.

The next change is in Section 10, lines 2, 3, 4 and 5, page 5 and involves a causation element to the law involving intoxication. Mr. Baker told the committee that there are two steps, first the employer must prove that the employee was intoxicated and then the employee must prove that the intoxication did not cause the injury. The Advisory Board recommended the change and the NIC concurs.

Mr. Nusbaum told the committee that Sections 11 and 12 are very similar and deal with the heart and lung disease statute for firemen and policemen. Under present law, in lung disease, after a person is employed for two years, they are covered and they have to get an examination within the preceding 12 months before they have coverage. In the case of heart disease, it is 5 years. The firefighters in particular came to the Advisory Board and said they should have an examination at the time of employment and that would become the base examination that they could be judged by from thereon. The Advisory Board agreed and is recommending in Sections 11 and 12 that there be an initial examination at the time of employment in lung disease with an examination the next year; in the case of heart disease, there would be an initial examination and another examination at 5 years when the coverage begins. Mr. Nusbaum said what the two sections do in each case is to provide an initial examination at the time of employment and another examination prior to the beginning of coverage; two years in lung; five years in heart.

Mr. Nusbaum pointed out that there is an amendment in Section 12, as pointed out in EXHIBIT A, that correctly states the intent of the bill.

In response to a question by Mr. Thompson, Mr. Nusbaum stated that the NIC would adopt by regulation exactly what the examination should be. In the past, there has been no standardization in the state with regard to the examinations.

Mr. Nusbaum and Mr. Baker told the committee that concluded their testimony on AB-312.

Richard Staub, Staff Counsel for the Insurance Commissioner's Office, stated to the committee that the amendment made to Section 6 requiring self-insured employers to bear a proportion amount of a claim is supported by them.

Chuck King, Nevada Self Insurers, opposes Section 6 of AB-312. They feel this is a double tax for them by paying into a fund assessed by the Commissioner of Insurance for the purpose of the uninsured employee and they also fund the employees injured prior to going self-insured by paying into the fund the NIC administers.

Tom Stuart, The Gibbens Co., Inc. and Northern Nevada Personnel Association, addressing Section 2, opposes the proposed removal of the wording on line 8, "resulting from external force."

Mr. Stuart told the committee that in Section 4, page 2, line 40, the changing of 45 days to 90 days is opposed. He stated that they have not seen the subrogation activity of the NIC as being very effective and would like that activity to be given to the self-insured employers in lieu of leaving it with the NIC. Mr. Stuart added that on page 4, line 45 which states "and is related" they want the wording "with approximate cause" added.

Mr. Thompson assumed the chairmanship of the meeting and asked for further testimony on AB-312. There being none, he directed the committee's attention to AB-313.

AB-313: Restricts payment of certain benefits as unemployment compensation.

Mr. Larry McCracken, Director, Employment Security Department, explained to the committee that this bill is in response to federal law change found in Section 414 of Public Law 96.364. Nevada law must be brought into conformity with that change in law. He explained that basically what this bill does is to preclude a person from leaving a state where extended benefits are payable, moving to a state where they are not being paid and receiving extended benefits in that state. What is required in the future is that benefits must be payable in the state to which an individual moves in order to continue receiving extended benefits. In the event that extended benefits are not payable in the state to which he has moved, then benefits will be discontinued after two weeks. Mr. McCracken said he was hopeful this would be effective no later than June 1, 1981, in order to be in conformity with that statute.

Mr. McCracken presented the committee with written testimony on AB-313, attached hereto as EXHIBIT B.

Mr. Thompson directed the attention of the committee to AB-314.

AB-314: Limits amount of fee for representing claimant of unemployment compensation benefits.

Larry McCracken, Director, Employment Security Department, testified on behalf of the bill. Mr. John Flangas, Employment Security Department, Attorney, accompanied him and will also testify on the bill.

Mr. McCracken referred to Employment Security Laws of the State of Nevada, Chapter 612, Unemployment Compensation, which the committee had previously received copies of, and he directed their attention to Section 705 which addresses the awarding of legal fees to claimants who have incurred such costs to be determined by the Board of Review.

The Board of Review has never authorized any payment of legal fees to date. The problem which has come up is that the courts now are granting legal fees in spite of the statute which precludes the awarding of these fees without the awarding being done by the Board of Review.

Mr. McCracken outlined two problem areas as a result of the awarding of fees by the courts.

1. When the courts are able to award attorney fees, it encourages appeals.
2. There is no way to budget for these claims as a result of not being aware what the court may award as attorney fees.

The Advisory Council has studied and approved this bill in its establishing the awarding of attorney fees not to exceed \$300.

Mr. Flangas explained to the committee there was a conflict between NRS 18.010, the court's authority to award attorney fees, and NRS 612.705, which does not allow for the payment of fees unless awarded by the Board of Review. He said the Legislature might have to appropriate funds for the payment of attorney fees pending the receipt of grant funds.

Mr. McCracken and Mr. Flangas explained to the committee the considerable appeal rights accorded a claimant, stressing the claimant has no filing fees and has preference in getting the matter heard.

There being no further discussion on this bill, Mr. Hickey moved the meeting be adjourned. Mr. Thompson adjourned the meeting at 6:30 p.m.

Respectfully submitted,


Janice Fondi,
Committee Secretary

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61st NEVADA LEGISLATURE

ASSEMBLY COMMITTEE ON LABOR

LEGISLATION ACTION

DATE March 23, 1981

SUBJECT AB-233: Prohibits employer's use of polygraph on applicants
for employment or employees.

MOTION: DO PASS
Do Pass X Amend _____ Indefinitely Postpone _____ Reconsider _____
Moved By: Mr. Thompson Seconded By: Mr. Jeffrey

AMENDMENT:

Moved By: _____ Seconded By: _____

AMENDMENT:

Moved By: _____ Seconded By: _____

	<u>MOTION</u>		<u>AMEND</u>		<u>AMEND</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
FOLEY	<u>X</u>	_____	_____	_____	_____	_____
RHOADS	<u>absent</u>	_____	_____	_____	_____	_____
HICKEY	<u>X</u>	_____	_____	_____	_____	_____
THOMPSON	<u>X</u>	_____	_____	_____	_____	_____
BANNER	<u>X</u>	_____	_____	_____	_____	_____
BENNETT	<u>X</u>	_____	_____	_____	_____	_____
JEFFREY	<u>X</u>	_____	_____	_____	_____	_____
CAFFERATA	<u>absent</u>	_____	_____	_____	_____	_____
RACKLEY	<u>absent</u>	_____	_____	_____	_____	_____

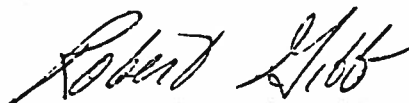
TALLY:
ORIGINAL MOTION: Passed X Defeated _____ Withdrawn _____
AMENDED & PASSED _____ AMENDED & DEFEATED _____
AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes March 23, 1981

MEMORANDUM TO: ASSEMBLYMAN JIM BANNER
FROM: ROBERT GIBB, General Counsel
SUBJECT: BDR 53-406
DATE: March 10, 1981

Scott Baker and I reviewed BDR 53-406 and would like to suggest the following minor changes. Please ask the LCB drafters to:

- (1) Amend section 5, NRS 616.355 to read: "A physician who testifies is entitled to receive the same fees as witnesses in civil cases, and, upon the discretion of the appeals officer, a fee equal to that authorized for a consultation by the appropriate schedule of fees for physicians. (NOTE: the change is the underlined part; the change is also made in section 5).
- (2) Drop section 8 completely.
- (3) In section 9 please add: "The commission (may) ..., upon good cause shown, allow the cost of emergency treatment (the change is the underlined part).
- (4) In section 11, please add a provision stating that: "all physical examinations required pursuant to subsection 2 must be paid for by the employer".
- (5) In section 12 we would like subsection (3) to be changed to read as follows: Each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to (an initial) a physical examination, including an examination of the heart, upon commencement of (coverage or) employment, (whichever is later). (Thereafter,) The employee shall submit to such examination(s) again upon commencement of coverage and thereafter on a regular, annual basis during his employment.



ROBERT GIBB

RG:ss

EMPLOYMENT SECURITY DEPARTMENT

Assemblyman James J. Banner, Chairman and
TO Members, Committee on Labor and Management DATE March 23, 1981

FROM Larry McCracken, Executive Director SUBJECT AB 313

New language found in this Bill on page 1, lines 3 through 10, and on page 1, line 21, constitutes a change required in all state unemployment insurance laws to conform to a federal law change found in section 416 of Public Law 96-364.

This change simply provides that when a person files an interstate claim for unemployment benefits, an extended benefit period must be in effect in both the state where the claim is filed and the paying, or liable, state, otherwise eligibility would end after two weeks. As an example, under current law, a person may establish a new claim for extended benefits in Nevada and then leave this state and continue to file a claim in another state whether or not extended benefits are payable in the second state until all benefit eligibility is exhausted. Under this new federal requirement, any eligibility for extended benefits would end two weeks after the claimant left Nevada unless extended benefits were payable both in Nevada and in the state where the claim was filed.

The new administration in Washington has proposed additional changes to the federal-state extended benefits program which will significantly reduce benefit payout. In view of this and the fact that only half of the cost of extended benefits are reimbursable in federal funds, the impact of this change on Nevada's Trust Fund is estimated to be insignificant, although it will reduce payout somewhat.

Finally, this law change should be effective upon passage and approval, but not later than June 1, 1981 according to federal statute.

bam

ASSEMBLY

AGENDA FOR COMMITTEE ON.....LABOR.....

Date MONDAY, MARCH 23 Time 5:00 P.M. Room 316.....

Bills or Resolutions
to be considered

Subject

Counsel
requested*

AB-312	Amends provisions of laws relating to claims under industrial insurance and occupational safety and health.	
AB-313	Restricts payment of certain benefits as unemployment compensation.	
AB-314	Limits amount of fee for representing claimant of unemployment compensation benefits.	

*Please do not ask for counsel unless necessary.