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

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
MARCH 23, 1981

The Senate Committee on Commerce and Labor was called to order by Chairman Thomas R. C. Wilson, at 1:50 p.m., on Monday, March 23, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R. C. Wilson, Chairman
Senator Richard Blakemore, Vice Chairman
Senator Clifford McCorkle
Senator Don Ashworth
Senator Melvin Close
Senator William Hernstadt
Senator William Raggio

STAFF MEMBER PRESENT:

Betty Steele, Committee Secretary

SENATE BILL NO. 203--Provides for industrial insurance coverage by private insurance.

Chairman Wilson opened the hearing on Senate Bill No. 203. He stated the bill had originally been scheduled for another hearing. He said the Nevada industrial commission advisory board had been invited to testify and give their recommendations; but they had not been able to meet. Therefore, another hearing will be set for the purpose of taking their recommendations before making a decision on the bill. The Chairman asked who was present to appear for the bill.

Mr. Randall Capurro, representing the Professional Insurance Agents of America, stated there would be several persons speaking on this subject; but their testimonies would not be the same. (See Exhibit C.) He stated they would demonstrate that higher costs with private insurance companies are not inevitable.

Vice Chairman Blakemore, now in charge of the meeting, asked Mr. Capurro about the fiscal note appended to Senate Bill No. 203. He wondered, since it appeared somewhat ambiguous to him, if it would be addressed somewhere in the testimony.

Mr. Capurro stated he was not prepared to address that point but some one of the insurance representatives would do so if it was felt necessary. He stated that by adding private insurance carriers, an additional 2 percent premium tax would be realized, based on the present premium of approximately $3 million.

Mr. Remo Fratini, president of Lucini and Associates, an independent insurance company, stated the last time the three-way plan was considered in the legislature it did not have the full support of the insurance companies. Now, however, he felt that today's hearing would prove the full support of the insurance companies was behind the bill. He suggested some proposals to ease some of the problems in the bill as presently written. He said that perhaps a group of representatives from the insurance division, the self-insurers, and the insurance industry, could work out the problems in the present bill in a reasonable time.

Mr. Donald Miller, assistant vice president and regional counselor, for Insurance Company of America, presented his testimony in favor of Senate Bill No. 203, verbally and in written form (See Exhibit D.)

Senator Raggio asked Mr. Miller about the Stanford Research Institute's report, which indicated three-way coverage would raise the employers' cost immediately to 21 percent over the state-funded plan. Mr. Miller did not answer that statement. Instead he stated if a competitive company cannot provide a competitive product, it is not effective on the market. He stated other insurance industry representatives would answer the statement of the Stanford Research Institute report.

Senator McCorkle inquired whether there was any basis for the fear within the construction industry they might be forced to pay higher premiums under NIC because under a three-way system NIC would have to retain the "higher risk" industries.

Mr. Miller did not discount that possibility and observed that, under the present configuration, he understood there was a tendency for the so-called "non-preferred" risks to be relegated to an almost residual market. In response to Senator McCorkle's statement on premium dollars being divided into three parts instead of the present two, causing a raise in premiums, Mr. Miller agreed that might happen.

Senator Hernstadt inquired whether Mr. Hilen could comment on the Stanford Research Institute report and Mr. Hilen declined, saying he was not familiar with the report and referred Senator Hernstadt to others who could answer his query. (See Exhibit F.)

Mr. Bel Teecher, president, Mission Insurance Company of Los Angeles, commented about insurance rates. He stated that where there was more competition, historically, rates were reduced. In response to Senator Raggio's question whether employers' rates went down as a result of the three-way system or other factors, Mr. Teecher replied too many unknown factors were involved to look at the overall rate; but there is better service, quicker claims handling, efficient treatment and medical care, which tends to get the employee back to work sooner, saving the employer money and reducing rates.

In answer to Senator McCorkle's request for a breakdown by job classifications, of rates before and after the three-way systems were installed, Mr. Teecher advised there is a committee, meeting in Washington, D.C., working on such a classification system which may eventually recommend 300 classifications. He said, however, the benefits are different in every state, making it difficult or even impossible to compare them.

Senator Close inquired what ratio of the premium dollar went to the injured worker, compared to other states. Mr. Teecher said he felt the figure of 89 percent of the insurance dollar (supposedly going to the injured Nevada worker) was obviously not correct since it did not include legal and other costs. He said even if NIC's operating expenses were only 11 percent, with 89 percent going to pay claims, it still would not take care of the other costs.

Senator Hernstadt asked Mr. Teecher to indicate what percentage of the premium dollar went to injured workers under Mr. Teecher's insurance company and he replied in California the permissible loss ratio was 65 percent and the expense ratio 35 percent, with a dividend system which pays back to policy holders with better records, their dividends. The dividends are based on size of premium and profit and loss experience on the individual risk.

Mr. Bud Meneley, of Nevada Independent Insurance Agents, said he had an exhibit which might answer some of the questions on premium volume. (See Exhibit E2.) He said Idaho, Montana, and Utah, have lower premium volumes than Nevada. In reply to Senator Blakemore's comments on the interest in lower volume, Mr. Meneley said this may be indicative the price is too high in Nevada.

Mr. Rowland Oakes, representing the Association of General Contractors, spoke in defense of employers in this situation. He stated there used to be a bill for three-way insurance in every session and the purpose was to kill it; which put them in a better bargaining position with the labor unions. Mr. Oakes said that everyone avoids speaking about what happened in Oregon where the rates for the contruction industry went from $7 to $20 or more. He stated there has not been an increase in Nevada rates for four years; and that has not been the case in the surrounding states of California, Arizona, etc. He commented the benefit rate paid the Nevada worker of 89 cents out of the dollar was reported in the Stanford Research Institute Report (See Exhibit F.) Mr. Oakes felt the insurance companies ought to be able to answer the senators' questions with regard to how much of the premium dollar is returned to the injured workman by the private insurer. He said they know the answer; it is published in their reports. They do not wish to give it out. Previously Nevada was reported as not large enough for three-way insurance; now they say size is not important. Mr. Oakes asked to go on record as opposed to three-way insurance proposal. He stated he would furnish a copy of rates and comparative benefits of the surroundings states as it is no mystery. Senator Wilson asked for the statistics to be furnished for the record and distributed and they were brought in by Mr. Oakes. (See Exhibit G.)

Mr. Rodney B. Leavitt, representing Professional Insurance Agents, Southern Nevada Chapter, Las Vegas, stated the testimony had dealt in technicalities but he wanted to broaden the issue a little more. He said that Senator Raggio brought up the point, in hearings some weeks ago, of how would this bill benefit the employers. He said the subject of contractors had been brought up and the largest single type of insurance his organization writes is for contractors. Many contractors expressed a problem because the private insurer is not able to meet their full needs because state statute precludes that. He said their clients face a situation of not having their needs met due to the state funded industrial insurance program.

Senator Wilson stated the argument about convenience is understood. But he had requested that testimony be focused on the issue of the committee being asked to make a decision which will change the basic fundamental nature of industrial insurance and coverage in this state. This is the issue the committee wants addressed; the dynamics of the economics.

Mr. Leavitt continued to address the issue about splitting the pie three ways; that in essence the ratings' specific information is not going to vary. He said price is not the only consideration.

Senator Hernstadt asked whether the rates were variable or on bid; and whether they were all "safe".

Mr. Miller replied there is a local variable system of delivery; but rates are promulgated as annual rates and are variable in a number of states. He said there is competition within the given parameters.

Mr. Sterling L. Hilen, senior vice-president and general counsel for Industrial Indemnity of San Francisco, commented his company had provided industrial insurance for a number of years and felt they were in a position to speak for the benefits which would accrue from the private enterprise system in workers' compensation funds. He noted the State of California has been competing, since the inception of its workmens' compensation insurance system, with the private companies which has caused improvement in the state system. This competition is beneficial to employers and injured employees according to Mr. Hilen. He said private companies compete on price of course; but maintain a pricing edge through two principal mechanisms--professional and effective safety techniques to prevent injuries in the first place and, when injury does occur, they provide a coordinated battery of services to achieve the return of the injured employee to gainful and productive employment at the earliest possible moment. He indicated private companies stress fast, efficient, effective claims handling, expert medical services and effective rehabilitation. Mr. Hilen remarked if Nevada's state industrial insurance can provide superior services of this type, they have nothing to fear from this legislation or outside competition.

Senator Wilson questioned whether the Nevada market is large enough to support the three-way system (state insurance, self-insurance, and private insurance) for industrial insurance coverage. Mr. Hilen replied that the state was unequivocally able to support such a system and cited various statistics giving the comparative sizes of various other states' funds. (See Exhibit E.)

Senator Blakemore stated there are only so many premium dollars, presently divided by two (NIC and self-insured) and proposed in Senate Bill No. 203 to be divided by three. He wanted to know just how the costs could be held at the same premium rate, in the instance of such a three-way split.

Mr. Hilen did not answer directly other than to say the "proof of the pudding" was in the number of state funds, at much smaller size than Nevada's, who are operating that way and successfully.

Mr. Bill Molmen, counsel for the American Insurance Association, San Francisco, commented that most of the points which refute the Stanford Research Institute report have assumed that everyone (state fund, self-insured, and private insurers) would use the same expenses. However, Senate Bill No. 203 does not provide for that. It permits the NIC or the state fund to deviate downwards or upwards which throws the whole premise of the SRI study "out the window". Mr. Molmen stated if everyone was charged the same rate then he would have to take the SRI study on from a different viewpoint.

In response to Senator Wilson's question, Mr. Molmen gave some examples of how the deviation allowance operates in states like Nevada. He said the state laws differ, different companies compete in different ways. The number one premise is that some new ground rules have to be created. Mr. Molmen said the SRI study assumes the loss dollars are going to be the same and they are just adding expenses on top of those same loss dollars. He said the witnesses today have made a case that services such as prompt claims handling, prompt vocational rehabilitation, good safety services (unrelated to those of NIC, whether consultative services or enforcement services) are new partnership services which are going to decrease the loss dollar. Thus they would start with a lower base at the start; to pay more for the services there will hopefully be a balance and not a 21 percent increase as was stated in earlier testimony. But if there is not, if in fact the state fund can deviate, that is a very important factor. There is nothing in Senate Bill No. 203 which requires a private company, employer, or the state of Nevada to go to a private insurer; they can go to the state fund.

Mr. Molmen mentioned the conclusions of the Stanford Research Institute as opposed to those of Tillinghouse, Nelson and Warren, a firm with a great deal of experience in workers' compensation, who were commissioned to do a study in Oregon last year. They concluded the relative size of the private insurance segment in Oregon is evidence of the usefulness of that private segment to Oregon employers. Secondly, they found each individual provider of workmens' compensation is a better provider in the face of competition. They covered the point of the flexible rating formula which was not covered by the SRI study. Private insurance brings with it a broad range of flexibility rating plans, dividends and discounts, and special ratings for larger employers. With a broader base for rating plans and dividend programs, and more effective safety programs, there are bound to be savings. Mr. Molmen stated this aspect of the problem was ignored by the Stanford Research Institute study. (See Exhibit F.)

Mr. Molmen commented on the adverse selection process mentioned in earlier testimony. With regard to that, the question was asked whether NIC would be stuck with all the less-desirable categories to insure. Mr. Molmen said that was not necessarily so, as generally speaking, the state funds retain a greater part of the insurance business. He stated this was true in Utah, Idaho and Montana and thought that would answer to some extent the adverse selection problem.

In reply to Senator Blakemore's query as to which state Nevada was closest to in claims, wondering if it might be Arizona. Mr. Molmen answered it probably would not be Arizona but more likely would be Utah. He stated much more important then premium dollars or size of the state, is the kind of system the state is under.

Mr. Del Frost, state rehabilitation division administrator, asked to speak in opposition to four subsections of Senate Bill No. 203 and provided the committee with copies of that opposition. (See Exhibit H.) Senator Wilson asked him to defer his testimony for the policy discussion. He stated the bill has to be substantially rewritten, as indicated by its proponents. Senator Wilson felt Mr. Frost's testimony should be taken after the bill is rewritten. Senator Ashworth commented the subject of the bill is inadequate.

Senator Hernstadt asked Mr. Frost whether everyone is able to be rehabilitated, and Mr. Frost affirmed they were. Senator Hernstadt then asked about the rehabilitation benefits. He stated one of the big points made by the private insurers is they can make benefits available that are not available under the state system and if Mr. Frost had some points to make on that, he would like to hear them.

Mr. Frost referred to page 6, section 24.2 of the bill, "Vocational rehabilitation must be provided for a period of no more than 26 weeks, except by agreement of the parties or when in unusual cases the commission orders an extension which must not exceed 26 weeks." He commented that section alleviates the appropriate burden, on the employer or insurance carrier, to provide all the care that may be necessary to rehabilitate an injured worker. By allowing them to step away from their responsibility in a specified amount of time, the mechanics are set in motion for bureaucratic stalling and processes put into play in that period of time, enabling them to step out of it. Mr. Frost indicated in addition, in severely injured people, a great deal of time is spent just preparing them for a rehabilitation plan. A set period of time like twenty-six weeks is just not appropriate.

Mr. Frost continued that in his business, the vocational rehabilitation agency, the average rehabilitation period is 63.42 weeks.

Senator Don Ashworth commented he felt the problem was the senators had not read nor understood the bill. He stated they were not getting the assistance they need from the insurance industry today, in his estimation; and said the bill was 58 pages long.

Mr. Joe Nusbaum, chairman of the Nevada industrial commission, wished to postpone his testimony until the NIC advisory board is being heard.

Mr. Ron Krump, of Krump Construction Company, wished to postpone his testimony for private enterprise. He felt the problem was the laws under which they must operate.

With no further testimony, Chairman Wilson closed the hearing on Senate Bill No. 203.

SENATE BILL NO. 366--Provides for separate licensing of cosmeticians.

Ms. Jacqueline Hawkins, representing "Faces" in Reno, distributed a letter describing what she would like Senate Bill No. 366 to do. She stated California and many other states have a separate licensing function for cosmeticians for facials as opposed to those who are hair dressers. Ms. Hawkins stated it seems impossibe to find a cosmetician trained to specialize in facials. Her purpose is to see that cosmeticians have at least 300 hours of specialization in skin training in beauty school. She explained a copy of an amendment summarizing California's requirements was submitted but the bill drafter used different wording and sent a copy to the board of cosmetology several weeks ago with no reply. Ms. Hawkins stated she also sent a letter to the board of cosmetology with no reply so she assumed they did not oppose the bill. She felt it was important to make skin training a requirement in the beauty schools because of the difficulty in finding anyone trained in that field. (See Exhibit I.)

With no further testimony, Chairman Wilson closed the hearing on Senate Bill No. 366.

SENATE BILL NO. 391--Amends law relating to pharmacists and pharmacies.

Mr. Frank Titus, chairman of the state board of pharmacy introduced

the board legal counsel Mr. Fran Breen, and Mr. Gene Coombs of the state division of investigation of narcotics. Mr. Titus stated Senate Bill No. 391 is a "housekeeping bill" in many respects. He stated on page 1 is a definition of "hospital" and "hospital pharmacy" and in Section 15, "hospital pharmacy" is defined further.

In response to Senator Wilson's question, Mr. Titus explained this is the same definition of hospital existing in NRS Chapters 453 and 454; but it might be defined somewhat differently in some other section of the law. They are striving for a uniform definition of what a hospital is. Mr. Titus explained in Section 4 they are revising the requirements of the pharmacies on the literature they are required to keep in their pharmacies. Section 5, page 2, was requested primarily to accommodate those pharmacists, sixty-five years or older, who wish to maintain their license without practicing or continuing education requirements.

In response to Senator Wilson's query on the reason for wanting to maintain a license and no longer practice, Mr. Titus replied it could be merely for sentimental reasons but stated he has been asked to introduce this bill by a number of pharmacists throughout the state. On line 41, NRS 639.133 is deleted which is an old hold-over allowing registration of a pharmacist who does not possess a formal education, and no longer applicable. On page 3, they want to dispense with reporting a full and complete record of board proceedings to the governor and state "a summary of the proceedings," and "statement of all fees received" instead of a "complete statement." On line 6 they felt there was no need to send a list of all state pharmacists to the governor either. Mr. Titus moved on to lines 15 through 20, taking the word "percent" out of the grades since the test is given nationally in every state in the union (the National Board of Pharmacy examinations). In reply to Senator Raggio's question, Mr. Titus stated this has always been in the language but they would like to take it out as under the basic national agreement, to go along with the National Pharmacy Board with regard to passing grades. In section 11, they put in veterinary prescription and non-prescription drug permit fees. fees. Mr. Titus said line 39, NRS 639.133, mentioned earlier, should be deleted. On line 6 of page 5, they delete 639.170 which refers to the fee schedule. Section 16 covers grounds for revoking licenses. Section 14 changed punctuation only. Page 6, lines 16 through 19, is to define what a hospital pharmacy is, because there have been serious diversions of drugs and other problems.

Mr. Fran Breen, counsel for the state pharmacy board, addressed the issue of the drug diversion problem which he stated has reached epidemic proportions.

Mr. Breen stated illicit drugs may be correctly and legally manufactured but become illicit when they are diverted into illegal channels. The two major problems contributing to this are inappropriate prescribing practices by some physicians and the failure of some pharmacists to check properly on all prescriptions for controlled substances. Mr. Breen described the types of drugs dealt with, the controlled substances and delineated the parameters of the problem, in the U.S. and in the state.

Senator Hernstadt questioned the validity of so-called "sweeping problems" in the state which would necessitate such legislation. Senator Wilson asked for recommendations to solve the problem.

Mr. Breen suggested one way would be that the only practitioner who could write a prescription for a controlled substance to be filled by a pharmacy in this state would, if he were not a resident doctor, have to be registered with the Nevada board of pharmacy. Senator Hernstadt suggested this would be most inconvenient for Nevada residents or tourists from other states who might receive prescriptions in other states which were necessary to be filled in Nevada.

Mr. Breen stated the inconvenience is far outweighed by the dangerous drug traffic that is arriving in the state as the result of non-resident physicians writing prescriptions for controlled substances. He cited various cases and statistics to make his case more convincing and mentioned a South Tahoe physician, known as "Dr. Feelgood" because of his indiscriminate prescribing of controlled substances for which prescriptions have been filled in Nevada pharmacies.

Senator Wilson suggested it might be wise to honor only the prescriptions which are sent in person and not those by mail. It was noted there is a new facility in Las Vegas, the Retired Person's Pharmacy, which services the 11 western states. The American Association of Retired Persons (AARP) and the National Retired Teachers Association (NRTA) utilize the pharmacy for their members.

Mr. Breen stated that Nevada is the only state which allows prescriptions to be filled for out-of- state practitioners, among the surrounding states.

Mr. Coombs, with the division of Investigation and Narcotics (DIN), stated their endorsement is because Section 16 gives the

Mr. Whittemore commented on some of the legal issues raised by Senate Bill No. 391. He believes the bill impacts interstate commerce and would therefore violate the constitutionality of interstate commerce by requiring every practitioner who writes a prescription to be filled in Nevada, to be registered with the Nevada state board of pharmacy. Mr. Whittemore believes there has to be a middle ground; if control of prescriptions, based on concern over mail order pharmacies, is to be handled impartially and with restraint, he feels such limitations could control the problem. He stated Mr. Baron would address the mail order prescription problem as well as some of Mr. Breen's remarks.

Senator Wilson asked Mr. Baron to explain the existing system of mail order prescriptions and how they are handled.

Mr. Melvin Baron, manager of the Nevada Retired Persons Pharmacy in Las Vegas, stated there are nine regional pharmaceutical centers serving the 12.5 million members of the National Retired Teachers Association (NRTA) and the American Association of Retired Persons (AARP). The national organization is now the largest private mail order service in the world and the foremost provider of reasonably priced pharmaceuticals, prescription and non-prescription, to the elderly, retired, members of both NRTA and AARP. Mr. Baron emphasized, as manager of the pharmacy and a representative of both NRTA and AARP, he was specifically opposed to Section 16 of Senate Bill No. 391. He pointed out the proposed language of Section 16 is in clear violation of the interstate commerce clause of the U.S. Constitution and he cited the legal precedent for their position (Roland Rassmussen vs. State of Iowa and the Federal Prescription Service, Inc.). Mr. Whittemore commented a similar case has been filed in the State of Oregon since the Iowa case was favorably decided; furthermore suit was filed by the Oregon Retired Persons Pharmacy. (See Exhibits J&K.)

Senator Hernstadt asked what safeguards exist and what reasonable powers could a state use to make a reasonable impression upon interstate commerce because of a legitimate exercise of police power.

Mr. Baron replied those safeguards which are consistent with the present practices of the mail order pharmacies presently in the state would probably apply. He felt the present laws allow Nevada pharmacists to exercise their professional judgment as needed in filling out-of-state prescriptions for controlled drugs. He said out-of-state retired persons (members) send in 5 to 10 percent of their business in controlled substances.

division a tool for enforcement as all that can be done under present law is to send extradition papers. Mr. Coombs said there is a need to stop this substantial abuse in legal pharmaceutical drugs.

Senator Wilson asked that the testimony proceed to Section 17. Mr. Titus said lines 43 through 50 are to change the way prescriptions are presently written so as to the save the patient time and money. He stated this section would not apply to Chapter 453 because of the Federal regulations applying to the dangerous drugs.

Mr. Breen made the comment that Section 17 is in conflict with Federal law. Senator Wilson requested the pharmacy board to prepare an amendment which he suggested the division of narcotics might endorse for the amendment to read the same as the Federal regulations. He also inquired of Mr. Breen why, if there were clearcut examples of such abuse, there had been no notice in the papers. Mr. Breen explained it was due to the difficulty they had, trying to get evidence for a conviction. He agreed to get the information for the committee.

On Section 18, Mr. Breen suggested requiring the pharmacies to retain prescriptions on file for two years but this was changed to five years. Section 19 does address the number of years which must elapse before a person can ask for a revoked license of certificate. They are asking for a period of three years elapsed time before he can apply. Provisions of subsection 4 of NRS 639.120 do not apply to such an applicant. Part 2 is just bookkeeping, clarifying the requirement of the petition of someone asking to be reinstated. Page, line 21, has to do with a missing bracket and the caution label is being removed. On dangerous drugs, like Valium, they are not putting on the required sticker.

Chairman Wilson asked if there were any questions or further testimony on Senate Bill No. 391.

Mr. Harvey Whittemore, of the Lionel, Sawyer and Collins law firm in Reno, introduced Mr. Mel Baron, manager of the Nevada Retired Persons' Pharmacy in Las Vegas, and Mr. William McCullough, chairman of the Nevada Retired Teachers' Association. He stated their comments with respect to the bill would be directed to Section 16 which states a prescription for a controlled substance may only be written by a practitioner registered in the state of Nevada.

Mr. Baron said those members are unable to afford the higher costs involved in verifying their prescriptions in their home states before purchase.

Senator Wilson asked for recommendations.

Mr. Baron stated it was unrealistic and impractical for tourists, visitors and elderly retired persons to have to go to a Nevada physician for each prescription. He also felt it was unrealistic, as well as a burden to interstate commerce, to require every physician in the U.S. to register with the Nevada pharmacy board. Mr. Baron said he felt the procedures performed by his organization exceed both federal and state requirements. Every physician's Drug Enforcement Number is checked by computer. They are part of a national drug alert system in which all nine of their facilities can be alerted within minutesif an illicit controlled drug prescription is discovered. Mr. Baron stated all controlled drug prescriptions coming to their facility are filled in a separate, isolated room by one pharmacist who is responsible for verification, inventory control, and the records of each transaction, which are all microfilmed and easily retrieved. As for Schedule 2 prescriptions, before filling one, the doctor is always called for verification. Mr. Baron added there is always a problem in each state with pharmacy boards who feel their business is threatened. Mr. Baron reiterated they are in business for the membership of NRTA-AARP only.

Senator Hernstadt asked how a member living in Nevada would get a mail order prescription, and under what circumstances. Mr. Baron replied that most of the members living in Southern Nevada come by the pharmacy and pick up their prescription. However, they go to their doctor, who mails their prescription in to the pharmacy where it is filled and either picked up or mailed to the member. Mr. Baron said rural members are serviced through the mails, postage-free. He said they have a staff of 10 persons, under the supervision of 2 pharmacists and this staff either calls or writes for verifications of prescriptions as required.

There was further discussion by the committee members and Mr. Baron, Mr. Whittemore and Mr. Breen regarding business with out-of state-doctors, tourists, telephone verification systems, and whether Nevada is the only state with this sort of problem. Mr. Titus, of the pharmacy board also offered some observations on the problem and stated Nevada is not unique.

Mr. Bill McCullough, chairman, Nevada National Retired Teachers Association, American Association of Retired Persons, Nevada

Joint Legislative Commitee, expressed the opposition of the organizations he represents to Senate Bill No. 391, Section 16 in particular. He presented verbal and written testimony to that effect. (See Exhibit L.)

Mr. Virgil Wedge, attorney, of the law firm of Woodburn, Wedge, Blakey and Jepson, indicated he represented Raley's of Nevada. Raley's is a retail chain with 12 stores in Nevada and pharmacies in all 12 of those stores. He said there is a peculiar situation in southern Nevada, where a great many people go to southern Utah for medical services, or to the Sansome Clinic at Santa Barbara, California, coming back into Nevada with their prescriptions. In northern Nevada they go to the Woodland Clinic or down to Stanford or San Francisco, and come back here with their prescriptions. It would be a terrible inconvenience and/or imposition for those people either to have to go to a Nevada doctor also, or else go back and get the prescriptions filled where they were written. It would be a real problem for Raley's management to have to handle such a situation, and would mean a substantial loss of business to Raley's. Therefore, they are definitely opposed to Section 16 of Senate Bill No. 391.

In reply to Senator Hernstadt's question. Mr. Wedge answered that all Raley's pharmacies use telephone communication for verification of prescriptions, with the physicians writing them. For the record, he presented the committee with a copy of the complaint filed in the State of Oregon. (See Exhibit K.)

Mr. Wedge and Mr. Whittemore answered a variety of questions from the committee regarding the outcome if a bill was approved for telephone verification of each prescription, or what restrictions neighboring states have. Mr. Whittemore offered to research all 50 states and get the information back to the committee. Mr. Baron answered questions about the facilities of his organization; there are nine including Nevada's, and verified they all filled mail order prescriptions without problems except for Oregon, where a suit had been filed.

Senator Wilson stated if anyone in the hearing room had any requests for information from those present they should ask their qustions now but not to put the burden of proof on the committee. Mr. Whittemore commented the people requesting the provision (Section 16) should have to come up with the hard evidence but Senator McCorkle disagreed on the grounds that, if Nevada was the only state with the aforementioned problems happening, maybe the state is the reason for them happening. Senator Wilson commented that would not be argued here and the hearing needed to move along to other matters.

Senator Wilson asked for a list of other states either having on their books a provision similar to Section 16, or laws more stringent; he also specified an analysis of how other states deal with the mail order problem.

Mr. Breen said he had such a list and would give the committee the California code sections and would get others for them.

Chairman Wilson concluded the testimony and closed the hearing on Senate Bill No. 391.

SENATE JOINT RESOLUTION NO. 28--Memorializes Congress to repeal legislation setting wages for workers on federal public works.

Chairman Wilson stated they were booked for a hearing on this resolution but are asking for a hearing on it at a later date.

SENATE CONCURRENT RESOLUTION NO. 36--Calls upon labor commissioner and state gaming control board to investigate possible discriminatory practices of gaming establishments in employment.

Chairman Wilson called for a hearing on the resolution and stated Senator Neal, the sponsor of the bill, was not in the building to testify. He asked for other testimony on the bill.

Mr. Robbins Cahill, representing the Nevada Resort Association, stated they are opposed to this resolution as they believe this particular area of labor relations is the most monitored of all. He said the Nevada Resort Association has for years been working very hard on improving minority hiring practices. Several years ago they signed the consent decree agreeing to conditions set out by the U.S. Justice Department on the hiring of blacks and this was to be monitored by the Federal Equal Employment Opportunity Commission. That decree is still in effect and still being monitored by the EEOC, as well as the State Equal Rights Commission on occasion. Three years ago other minorities were included in the program. The Resort Association believes there are enough organizations monitoring hiring activities without adding any more and are completely opposed to SCR No. 36 on the ground that it is completely unnecessary.

Mr. Jerry Higgins, of the Gaming Industry Association, stated his organization is in agreement with the arguments set forth by Mr. Cahill and concurs in his conclusion.

Chairman Wilson then re-opened the meeting as a work session. He stated the Assembly Transportation Committee has three insurance bills and the Senate Committee on Commerce and Labor will participate with them in a joint hearing tomorrow at 1:30 p.m. in Room 131.

Chairman Wilson said the committee had been asked by the Musician's Union to ask for a bill draft request dealing with the Workmens' Compensation Insurance and Unemployment laws which would adjust to the musicians' work week which might start on a Wednesday or Thursday, due to the nature of their employment. There is a problem because of this and a request for a BDR has been submitted. If the committee has no objections, the Chairman said he would prepare it. There were no objections.

Chairman Wilson said there had been a request from the savings and loans associations for an amendment to NRS Chapter 673 which would provide for missing powers or exceptions beyond those granted to federally-chartered savings and loans associations so the same will be given by the state, under this chapter. He asked if the committee had any objections to a bill being drawn and there were no objections.

Chairman Wilson brought up the physical therapist's bill (Senate Bill No. 231) stating there was a suggestion by the therapists to change the definition dealing with the spine. It was agreed that those provisions should be brought back to the committee for discussion. Senator Wilson thought the suggested amendment changing "joint mobilization" to "manual therapy" might solve the problems. The committee agreed to review the amendment.

Chairman Wilson stated he was to get a bill relating to the thrift companies, raising the amount of capital, with a couple of other provisions relating to regulation of thrift companies. He said he forgot to bring it in but would give it to the committee for introduction.

Chairman Wilson then presented a bill relating to insurance and extending the exemption from premium taxes to annuities; and tentative plans of deferred compensation of public employees for the committee's review.

SENATE BILL NO. 366--Provides for separate licensing of cosmeticians.

Senator Raggio asked the committee to consider approval for the bill adding "facials" to the definition of cosmetician.

MEETING OF THE SENATE COMMITTEE ON COMMERCE AND LABOR
MARCH 23, 1981

Senator Raggio moved for approval of Senate Bill No. 366.

Senator Hernstadt seconded the motion.

The motion was not completed as, after some discussion, it was decided to hold the bill for further discussion on Wednesday, March 25.

There being no further business, the meeting adjourned at 5:30 p.m.

Respectfully submitted,

Betty Steele, Committee Secretary

APPROVED:

Senator Thomas R. C. Wilson, Chairman

DATE: _____

EXHIBITS - MEETING - MARCH 23, 1981

Exhibit A - is the revised Meeting Agenda.

Exhibit B - is the Attendance Roster.

Exhibit C1 - is copy of Arguments in Favor of Private Insurance submitted by Mr. Capurro.
C2 - is copy of Workmen's Compensation Statistics from the Insurance Institute of America.

Exhibit D - is testimony of Mr. Miller, of I.N.A.

Exhibit E1 - 1979 Volume & Market Shares, 12 states

Exhibit E2 - Testimony, Mr. Meneley, Nevada Independent Insurance Agents

Exhibit F - Stanford Research Institute Report on Nevada Industrial Compensation Insurance

Exhibit G - Comparison of Workmen's Insurance Compensation and Benefits, submitted by Mr. Oakes.

Exhibit H - Rehabilitation Division Opposition to Senate Bill No. 203 submitted by Mr. Frost.

Exhibit I - Letter and proposed amendment, Senate Bill No. 366, submitted by Ms. Hawkins.

Exhibit J - Copy of Iowa court decision re pharmacy matters, with reference to Senate Bill No. 391.

Exhibit K - Copy of Oregon Retired Persons Pharmacy Suit, with reference to Senate Bill No. 391

Exhibit L - Verbatim testimony of Mr. William McCullough.

EXHIBIT A

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Commerce and Labor, Room 213.

Day Monday, Date March 23, Time 1:30 p.m.

REVISED AGENDA

S.B. No. 203--Provides for industrial insurance coverage by private insurance.

S.B. No. 366--Provides for separate licensing of cosmeticians.

S.B. No. 391--Amends law relating to pharmacists and pharmacies.

S.J.R. No. 28--Memorialized Congress to repeal legislation setting wages for workers on federal public works.

S.C.R. No. 36--Calls upon labor commissioner and state gaming control board to investigate possible discriminatory practices of gaming establishments in employment.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON Commerce & Labor

EXHIBIT B

DATE: Monday, March 23

PLEASE PRINT NAME (Exhibit Testimony)	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT	PLEASE PRINT TELEPHONE
W.D McCullough	NSTA/AARP - Nev. Joint State Leg. Comm.		293-1774
Melvin A. Bum	NEV. RETIRED PERSONS PARTY 5947 BOULDER HWY. L.V.		456-7665
Stan Jones	N. Nev. Central Labor Council		323-0390
Ben Dasher	NIC Adv. Board		329-6171
RANDAL CAPURRO	Professional Ins. Agents		826 8450
Bud Mendenhall	Prof. Ind. Ins. Agents		786-4433
MARY FRANCIS	RISK MGMT DIV, STATE of NV		885-4085
Rod Leavitt	Professional Insurance Agents		322-4010
Bob Teacher	MISSION INSURANCE CO		213 381-6811
Donald R. Miller	IIAR, 3807 Wilshire, Los Angeles, CA 90010		213/480-4448
RENO FRATINI	LUCINI & ASSOC 230 E. Liberty Reno		702-786-1555
John Baker	NECA — Reno		359-6373
John Raymond	NECA - Reno		359-6373
Bill Molmen	Amer. Ins. Assn San Francisco, Ca		415 362-2170
Jacqueline Hawkins	Sacs		(702) 827-3223
Bob Czerkowsky	MGM-RENO		789-2203
Jim Washburn	Commerce Dept		885-4250
Ron Krump	Krump Const. P.O. Box 7357 Reno		356-5679
Jim Chevallier	Laborers Local 169		323-0169
WALT HENDERSON	LOCAL 169		323 6169
Gordon Lawrence	H 567		322-7214
PATSY REDMOND	INS. DIVISION		885-4270
Jean Breen	Pharmacy Board		786-7600

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON Commerce & Labor

DATE: Monday, March 23

PLEASE PRINT	PLEASE PRINT	PLEASE PRINT	PLEASE PRINT
NAME	ORGANIZATION & ADDRESS		TELEPHONE
BENSON LEE	LCB NEVADA 1325 AIRMOTIVE WAY		329-0151
Roy C. Adams	" 567		825-2360
Glenn Taylor	Nev. Labor Commission		885-4850
Del Frost	State Rehab. Div		5-4440
Robbins Cahill	NEVADA RESORT ASSOC		883.8806

Testimony of Randall Capurro

EXHIBIT C1

B. ARGUMENTS IN FAVOR OF PRIVATE INSURANCE

PRESENTED BY

RANDALL CAPURRO

I. HOW WILL NEVADA BENEFIT FROM A THREE-WAY SYSTEM?

A. Lack of competition

Until just a year ago, the only delivery system available in Nevada was the Nevada Industrial Commission, a monopolistic state fund. In preserving its status, NIC has acclaim good administration, sound financing, low premium rates, dedicated employees, good benefit delivery, etc. as reasons for retaining its monopolistic status.

While those reasons are goals which any quality insurance carrier strives to achieve, the true test of the performance of any insurance carrier is the result in the face of competition. Checks and balances are automatically built into a competitive state compensation system which are not available to a monopolistic system.

The clearest evidence of how Nevada has already benefited from switching over from a monopolistic system to an alternative delivery system is reflected in the success of the self-insurance alternative. Just to name a few, large Nevada employers such as Caesars Tahoe & Palace, Del Webb Corporation, Duval Corporation, MGM, Ralston Purina, Albertson's, and many others have elected self-insurance for many good reasons. Besides the inherent cash-flow benefits which allows an employer to retain the use of its money for capital investment and expansion - important in an atmosphere of high interest rates, severe unemployment, and increasing business recession- there is the direct personal contact with a firm's employees which leads to better morale

and increased productivity. Already, the Nevada Industrial Commission has lost a significant portion of its policyholders (estimated at $15 million of annual premium) within less than a year since self-insurance has been in operation. WHY?

It must be that however NIC has acclaim good administration, sound financing, low premiums, good benefit delivery etc., it has fallen in the face of competition.

However, the lack of competition still exists in Nevada. Self-insurance is an alternative available only for very large employers who can retain their own risks. While the premium volume of the self-insureds is very large, the percentage of employers who still remain locked within NIC is enormous.

There are approximately 27,000 employers within this state. Only a small number of employers, less than one-hundredths of one percent, have elected self-insurance. For the overwhelming number of employers in this state, there is no choice. How would NIC fare in the face of competition here? Would there be any deficiencies in policy, financing or administration? Nevada employers should be given the true option of electing self-insurance, private insurance or a state insurance fund.

Private insurance is not new in Nevada. It has been in existence from the beginning. However, only"grandfather"employers such as Penny's and six others were exempt from securing NIC coverage.

That is because they had private disability plans in existence before July of 1947. Nevada employers should be given a true choice. We have been informed that several large employers would elect private insurance if available. Otherwise, they would be forced to elect self-insurance because of the lack of the third alternative.

B. Service

For the past years, service has been severely lacking the NIC. Of the 27,000 or so employers in this state, the only contacts after the initial application stages are typically the following: (1) more advanced deposits are required; (2) an audit is forthcoming; (3)a classification or reclassification event, etc. There is no significant, personal contact.

An organizational Study by Kafoury, Armstrong & Co. was completed in September of last year. Among the reasons cited for the study was "Pulic concern and criticism regarding the internal operations, claims settlement and adjudication processes has increased greatly."

Service is not an idle concept in the private insurance industry. The value of private insurance is reflected clearly by the percentage of the total market which private carriers hold. According to the Best's Executive Service Report A-2, the state funds only retain 22% of the 1979 premium volume where the state fund is competive.

In the areas of loss control and safety, private insurance provides meaningful and trustworthy consultation for employers. The incentives are self-evident. The elimination of safety and health hazards will reduce the incidence of losses to the insurance carrier. At the same time, employees will benefit from a safer work enviroment and employers will benefit from a lower net premium.

Although the NIC has recently separated its OSHA enforcement function from its loss control functions, there is still hesitancy on the part of employers to contact NIC. The ability of NIC employees to transfer from the OSHA department to the Loss Control department or visa versa hinders employer confidence and confidentiality in the two areas. Additionally, employers are often puzzled at the efforts of the Loss Control Department of NIC when the loss ratio of NIC itself indicates loss control measures should be ~~directly~~ directed internally.

There is no potential conflicts or mistrusts for private insurers because of the direct incentive to reduce accidents.

C. Cost

The evaluation of alternatives in the workers' compensation system was completed by the Stanford Research Institute in March, 1979. One recommendation of that study was that they"did not consider a three-way system to be appropriate at the present time." One of the reasons for this recommendation was they felt "there was little reason to expect private carriers to be able to add additional value to the system to offset the additional cost

they would require." However, a close scutiny of their basis disclosures the following simplicities:

1. The analysis assumes a constant level of benefits, i.e. $100 of benefits. As indicated previously, the insurance carrier and its policyholder has a direct interest in reducing the incidence of loss. At the same time, an insurance carrier is interested in the prompt delivery of benefits to the claimants to assure satisfaction and avoid unnecessary and expensive litigation. Private carriers would have a greater incentive to reduce the incidence of loss below NIC because of greater acquisition costs.

2. NIC has now inherited acquisition costs as the result of self-insurance in Nevada. We understand there is a committment by NIC to develop and staff a full marketing department. In addition, increased regulatory expenses (e.g. division of insurance) is in existence.
3. Service has an important significance to policyholders. as mentioned previously as evidence by the total market share held by private insurance.

4. The value of free choice is not indicated or considered. Economical efficiency is not the sole consideration. In reference to the organizational study alluded to earlier, one alternative considered in the study is a return to the unitary system where the NIC performs all functions.

The study indicated as follows:

"This alternative, although the most economically efficient, creates excessive centralization and affords opportunity for unfair treatment of both worker and employer. This alternative was the previous method of NIC operations and has been recently dismantled by the legislature. In the face of such clear legislative intent, this alternative appears to be inappropriate."

The Legislature, as a futher illustration that cost is not the sole criterion, recently transferred the claims appeals process to the Department of Administration.

5. Although a portion of investment earnings is retained as profit by private carriers, a private carrier must maximize investment to survive. Failure to do so may result in competitive disadvantage from the NIC or other private carriers. Is NIC simularly motivated? Has the NIC performed as well as the State Treasurer or the State Retirement Board? Private Carriers do not have a guaranteed market.

6. Even assuming a constant level of benefits (mentioned earlier), the study focused merely on administrative expenses, including loading for acquisition and profit. The SRI report did not consider the possibility of the savings resulting from innovations in rating plans which would result in a lower "net cost" to employers. E.g.:

   a. NIC has a retrospective rating plan. However, the minimum qualification is $25,000 in annual premiums. The National

Council requires a much smaller qualification ($1500) for retrospective rating. Currently, thousands of Nevada policyholders with good loss experience are not eligible to participate for the NIC plans. How would NIC fare in the face of competition? These employers are denied an opportunity to achieve a lower net cost. Additionally, the exclusion of private carriers prevents larger employers to elect a retrospective plan "D."

7. S.B. 203 would not automatically raise all rates. Each carrier, including NIC, would file rates with the Division of insurance. This is not a minimum rate law. An insurance carrier would be able to compete with the rates filed by NIC and afford the policyholder a choice.

D. Timing

There are currently only five states with exclusive state funds. The role of private insurance is clearly indicated throughout the country. For the reasons given below, the timing for the incorporation of private insurance is now.

1. NIC is currently engaged in internal reorganization as the result of the NIC Organizational Study. If all the recommendations are adopted, there would also be an external reorganization to restore regulation to one state agency. If the recommendations of the Study are adopted by the Legislature, the final phase would be completed in approximately 3 ½ years.

2. Competitive State Funds with private insurance is clearly the trend in this country. Because the reorganization would develop differently if three-way was implemented, it would save administrative expense to incorporate it now. For example, the proposed state insurance fund would no longer assume responsibility for the rehabilitation center. Additionally, the center would be operated and financed as an independent entity.

3. Unlike self-insurance entities, private insurance carriers are experts in all lines of insurance, including workers' compensation. Carriers have national resources and are familar with various workers' compensation systems around the country and can offer their expertise in the reorganization process.

4. When NIC was a monopolistic fund, all risks within the state were pooled together to "spread the risk" uniformally and equitably. However, with the advent of self-insurance, a significant portion of the loss experience of the self-insureds will be lost in the future. The state now requires a broader base to establish rates and classifications more equitably to the remaining policyholders.

5. The Division of Insurance and NIC are currently in the process of establishing a centralized reporting system. Private insurance could be accommodated easily into this process. Unlike Oregon, which transformed from an exclusive

system into three-way, Nevada has been given a head start in the transformation to a fully-competitive system by adopting two-way first.

EXHIBIT C2

WORKMEN'S COMPENSATION EXPERIENCE FOR 1975-1979

COUNTRYWIDE

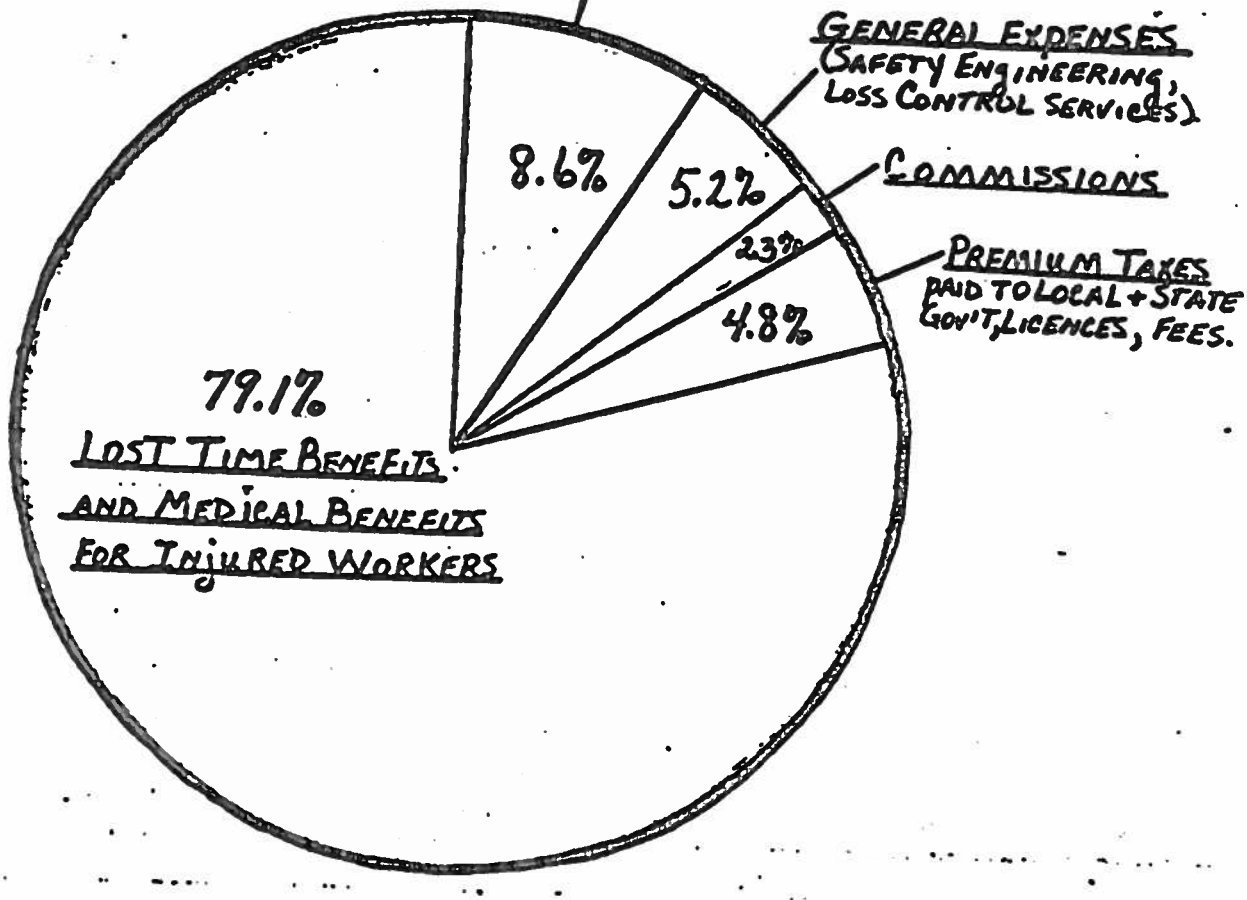
		Dollar Amount	% Of Net Cost
1.	Net Earned Premium prior to Dividends Paid	52,335,202,987	
2.	Dividends to Policyholders	3,013,899,036	
3.	Net Earned Premiums after Dividends Paid (1)-(2)	49,321,303,951	
4.	Taxes, Licenses and Fees excluding Federal Income Tax		4.8
5.	Balance for Paying Benefit and Expenses (3)-(4)		95.2
6.	Claims and Related Services		
	(a) Indemnity and Medical Benefits for Injured Workmen	38,989,113,431	79.1
	(b) Claim Adjustment Expense	4,263,492,972	8.6
	Total [6(a) + 6(b)]		87.7
7.	Balance for Other Expenses (5)-(6)		7.5
8.	Commissions	2,520,460,293	5.1
9.	Balance for Company Expenses (7)-(8)		2.4
10.	Company Expenses		
	(a) Acquisition and Field Supervision other than Commission	1,212,018,400	2.5
	(b) General Expenses including Payroll Audit, Bureau Inspection and Safety Engineering	2,563,149,744	5.2
	Total [10(a) + 10(b)]	3,775,168,144	7.7
11.			(5.3)

Costs Not Supplied By Policyholder (9)-(10)

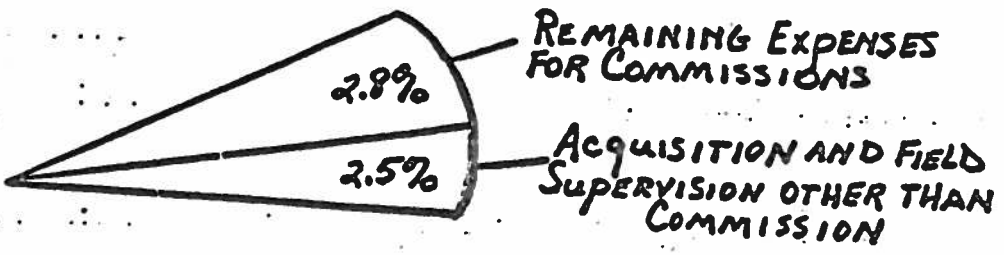
991

Data Source: Insurance Expense Exhibit - Official Supplement to Annual Report

COST TO THE POLICYHOLDER - 1975 in 1979



COST TO THE INSURANCE COMPANY



Mon Mar 23

Donald P. Miller

STATEMENT OF INA
COMMERCE AND LABOR COMMITTEE
MARCH 23, 1981

EXHIBIT D

CHAIRMAN WILSON; MEMBERS OF THE COMMERCE AND LABOR COMMITTEE, MY NAME IS DONALD MILLER AND I AM AN ASSISTANT VICE PRESIDENT AND COUNSEL FOR THE WESTERN REGION OF THE INSURANCE COMPANY OF NORTH AMERICA. OUR WESTERN REGIONAL OFFICE IS LOCATED IN NEWPORT BEACH, CALIFORNIA.

FIRST OF ALL I WOULD LIKE TO THANK CHAIRMAN WILSON AND THE COMMITTEE FOR PROVIDING INA WITH THE OPPORTUNITY TO TESTIFY TODAY CONCERNING INA'S ABILITY AND WILLINGNESS TO ENTER THE NEVADA WORKERS COMPENSATION MARKET. I WANT TO STATE FROM THE OUTSET THAT INA IS COMMITTED TO THE WORKERS COMPENSATION MARKET IN ALL PERMISSABLE JURISDICTIONS AND INA WILL PROVIDE A MARKET IN NEVADA IF THREE WAY LEGISLATION IS PASSED.

AS EVIDENCE OF INA'S COMMITMENT, I WOULD ASK THE COMMITTEE TO TAKE NOTE OF THE FACT THAT IN 1979 INA WAS THE LEADING WORKERS COMPENSATION WRITER IN THE WESTERN REGION* WITH TOTAL PREMIUM WRITTEN OF 177 MILLION.

(* Arizona, California, Hawaii and Nevada)

IN THE NORTHWEST REGION WHICH INCLUDES ALASKA, COLORADO, IDAHO, MINNESOTA, MONTANA, THE DAKOTAS, WYOMING, WASHINGTON AND OREGON, INA WAS THE LEADING PROVIDER OF WORKERS COMPENSATION INSURANCE, SUPPLYING 7.6% OF THE MARKET.

NATIONALLY INA IS THE (4) FOURTH LARGEST WORKERS COMPENSATION WRITER. IT IS OUR SINGLE LARGEST PRODUCT LINE.

993

WITHIN THE LAST TWO YEARS, INA HAS OPENED A SERVICE OFFICE IN LAS VEGAS AND IS READY TO MARKET ALL OF OUR PRODUCTS, INCLUDING WORKERS COMPENSATION.

INA IS INTENT ON PROVIDING THE WIDEST RANGE OF PRODUCTS AND SERVICES TO ITS BUSINESS CUSTOMERS. IN WORKERS COMPENSATION, INA OFFERS SEVERAL RISK-FINANCING OPTIONS IN ADDITION TO THE PURCHASE OF THE TRADITIONAL INSURANCE PRODUCT. THESE INCLUDE PAID LOSS RETROS, LARGE DEDUCTIBLES AND CAPTIVE PROGRAMS.

INA IS CAPABLE OF SUPPORTING ITS CUSTOMERS' NEEDS WITH A MULTITUDE OF SERVICES INCLUDING RISK MANAGEMENT, LOSS CONTROL, CLAIMS HANDLING, REHABILITATION, PREMIUM FINANCING, TECHNICAL ENGINEERING, FINANCIAL INVESTMENT AND LOSS RESERVE ADVICE.

INA SUPPORTS THE PRINCIPLES OF COMPETITION AND FREE ENTERPRISE, AND IS READY TO PROVIDE ITS SERVICES TO THE PEOPLE AND COMMERCE OF NEVADA UNDER A THREE-WAY SYSTEM.

Mon. Mar 23

Mr. Thursday

EXHIBIT E1

* Exhibit

1979 PREMIUM VOLUME AND MARKET SHARES OF TWELVE COMPETITIVE STATE FUNDS

NEVADA — Premium Volume (millions) 111.3

State	Total Market	State Fund	Market Share
ARIZONA	$ 282.5	$112.2	39.7%
CALIFORNIA	2,582.7	449.9	17.4
COLORADO	171.9	93.7	54.5
IDAHO	58.1	12.7	21.8
MARYLAND	261.7	32.7	12.5
MICHIGAN	918.9	81.9	8.9
MONTANA	48.5	22.8	47.1
NEW YORK	1,289.8	421.1	32.7
OKLAHOMA	214.4	44.3	20.7
OREGON	446.4	246.6	55.2
PENNSYLVANIA*	1,171.4	127.4	10.9
UTAH	52.8	34.6	65.5
	7,499.1	1,679.9	22.4%

*Note: *Pennsylvania has the only State Fund without the leading individual market share in its state: It should be noted that the Pennsylvania Fund is not "fully" competitive in that it historically has not actively solicited business.*

7 OUT OF THE 12 STATE FUNDS IN COMPETITIVE STATES ARE SMALLER THAN THE N.I.C.

Sources: Best's Executive Service Report A-2.
AASCIF Statistics Committee Report, 1980.

THERE ARE NOW 18 STATE FUNDS (12 COMPETITIVE AND 6 MONOPOLISTIC). NO ONE HAS FELT THE NEED TO FORM A NEW STATE FUND SINCE 1922.

PRIVATE INSURANCE COMPANIES WRITE 70% TO 80% OF ALL WORKERS COMPENSATION INSURANCE.

INCREASES IN NIC INVESTMENTS

Year	Premium	Increase in Investments	Investment increase as Percent of Premium
1973	$32,759,000	$15,176,000	46%
1974	43,630,000	20,765,000	48%
1975	43,115,000	15,740,000	37%
1976	53,860,000	19,910,000	37%
1977	72,751,000	28,172,000	39%
1978	92,492,000	38,548,000	42%
1979	111,259,000	60,228,000	54%
1980	128,278,000	48,000,000	38%

3/23

NEVADA INDEPENDENT INSURANCE AGENTS

A STATEWIDE ASSOCIATION OF INDEPENDENT INSURANCE AGENTS

EXHIBIT E2

March 26, 1981

Senator Blakemore
Legislative Building
Carson City, Nevada 89701

RE: SB 203 Competitive Worker's Compensation

Dear Senator Blakemore:

I appreciate the opportunity of appearing before the Senate Commerce and Labor Committee. I would like to explain why direct answers to some of your questions are virtually impossible with any degree of accuracy.

Any actuary (including those at NIC) will tell you that rates are a function of the frequency and severity of loss. The system used to deliver benefits (whether it be NIC, private insurance companies or self insureds) has little effect on rates. Therefore, in any comparison of rates, it is necessary to look at the reasons for the differences in frequency and severity of loss. First and most obvious is a difference in benefits. Probably more significant are a host of other factors. Nevada uses the AMA guide to determine degree of disability. Most of the states with whom rates have been compared for you, use other systems which result in both increases in frequency and severity of compensation losses. We certainly don't advocate a change from the use of the AMA guide. In some states court interpretations of disability have had a significant effect on severity of disability losses. The particular appeal process can have a substantial effect on severity. A completely unmeasurable factor is the attitude of people. I think Nevada is fortunate in having people who stand on their own feet. They don't file claims as frequently as people in some other states. This attitude is even more apparent in the field of general liability insurance.

The matter of classification complicates the comparison of rates even further. I have attached examples of rate classifications used in Nevada and those used in most other states. Each "group" in Nevada carries the same rate. Therefore in rate making the loss experience of all classes in a group is lumped together.

997

310 NORTH STEWART STREET / P. O. BOX 645 / CARSON CITY, NEVADA 89701 / PHONE: 882-1366

You can see how diverse the groups are. Many have no relationship with other classes in the group. The common factor is supposed to be the rate. Since there is little or no movement of classifications from one group to another, I can only conclude that no classification stands on its own experience but depends on the experience of the group. Even further complicating the comparison is the practice in Nevada of using a governing classification (Regulation 17.010 attached) for each employer. For example, in Nevada, a highway contractor might be assigned code 8001 General Contractor for all his payroll. In another state the same contractor might break his payroll into 5507 Grading, 5506 Paving, 4000 Sand and Gravel Digging, 5200 Concrete Work, etc. To compare the single Nevada rate with one of several rates in another state is not conclusive. I suspect continuation of the classification confusion has been conscious and intentional.

Until recently, NIC even lumped clerical employees into the higher rated classification. Definition of a clerical employee is still much more severe than other states (see attached rule). This has the effect of reducing the rate of the governing classification.

Further, the rate comparisons that have been made for you are gross rates and make no allowance for rate modifications, deviations, retrospective returns, dividends, etc., which would bring the comparisons to a net rate. This is the rate the employer actually ends up paying, which is very different from the gross rate. Failure to consider these items is a gross misrepresentation in the SRI Report.

I have only touched on a few of the reasons we all had blank looks when asked about rate comparisons. It's not only like comparing apples and oranges but more like comparing apples and tennis balls. There have been many studies on comparison of worker's compensation rates. Invariably Nevada is excluded from these studies because the proper data just isn't available. We are trying to get an actuary to analyze the many variables and come up with a more direct answer to your questions, but I would caution that the result will necessarily be based on many assumptions and possibly some pure guesses.

What then is the rationale of going to competitive worker's compensation. The answer is a reduction of <u>frequency</u> and <u>severity</u> of loss. Competitive states have systems that do reduce frequency and severity. Frequency is reduced by <u>effective</u> safety engineering that prevents accidents that never should happen. From a practical standpoint, NIC has no safety program. A handful of safety people cover 27,000 employers. The number of safety professionals available to Nevada employers would be increased many times with the introduction of private insurance companies. Severity is reduced by effective rehabilitation programs that get the disabled back to work. The NIC has built a multi-million dollar rehabilitation facility in Southern Nevada that is a disaster. Competitive states have effective rehabilitation programs and they don't need monumen-

tal buildings to accomplish it.

The 11% expense factor claimed by the NIC and resultant 89% claimed returned to the employee (not true) is a disgrace to Nevada. They have been content to pay for accidents rather than spend any money to prevent them and to pay the disabled rather than getting them back to work.

The fact that 80% of the worker's compensation in the United States is handled be private insurance companies isn't happenstance. It's because competition has created an effective system. No state funds have been formed since 1922 and none of the studies to go from a competitive system to a monopolistic system have recommended a change. No state has ever gone from a competitive system (44 States) to a monopolistic system.

I'm sorry to be so lengthy but the question is complex.

NEVADA INDEPENDENT INSURANCE AGENTS

Bud Meneley

W.S. Meneley
Chairman, Worker's Compensation Committee

WSM/kl

cc: Senator Wilson
Senator Don Ashworth
Senator Close
Senator Hernstadt
Senator McCorkle
Senator Raggio

STATISTICAL NUMBERS Sched. & Group	C. & E. L. Code	M. & C. Code	CLASSIFICATION
277	5466D	—	Waterproofing – incl. D. C. & H. (D: 6-4 (Retained in N. J.)
273	*5468D	—	Cement Work (Calif.) (D: 12-15) (5200)
360	5469	17965	Cleaning or Renovating Outside Surfaces Buildings – incl. drivers (Not available Calif., N. J. and N. Y.)
276	5470D	—	Tuck Pointing (D: 3-17) (5022)
276	5471D	—	Staff Work (D: 3-17) (5022)
276	5472D	—	Stucco Work – outside (D: 3-17) (5022)
276	5473D	—	Plastering – outside – N. O. C. (D: 1920 R (5022)
275	5474	17235	Painting or Paper Hanging N. O. C. – incl. d operations, drivers (Not available in M and Mich.)
275	*5474	—	Painting or Decorating N. O. C. – i incidental shop operations, drivers (N. (E: 8-59) (N. J.) (E: 7-61)
270	*5475	—	Painting – oil or gasoline storage tanks – i shop operations, drivers (N. J.) (E: 1-42)
275	*5476	—	Painting or Paper Hanging N. O. C. – incl. d operations, drivers (Mich.) (E: 7-61)
270	*5477	—	Painting – oil field tanks, not elevated (Te (E: 5-38)
274	5479	15161	Insulation Work – incl. drivers (E: 6-47)
276	5480	17445	Plastering N. O. C. – incl. drivers
276	*5481D	—	Plastering N.O.C. (E: 1-54) (Ariz.) (D: 1-69)
273	5482D	—	Cement Work (Calif.) (D: 12-15) (5200)
252	5483D	—	Sign Painting or Lettering – inside of build – incl. drivers (D: 12-35) (9501)
275	5490D	—	Painting and Decorating – interior (D: 10 (5474) (Retained in Mass.)
275	5491	17235	Paper Hanging – incl. drivers (Not availabl Calif.)
261	5500D	—	Paving or Road Surfacing or Scraping N. O (D: 4-31) (5506)
261	*5500	—	Street or Road Paving, Surfacing or Resurfa – incl. yard employees, drivers (N. J.)
273	5501D	—	Light Prisms – installation and repair (5200
273	5502D	—	Concrete Constr. – Floors or Sidewalks 12-32) (5200)

NATIONAL

STATISTICAL NUMBERS & Group	C. & E. L. Code	M. & C. Code	CLASSIFICATION
3	5503D	—	Asphalt Laying – street or sidewalk (5506)
3	5504D	—	Sidewalk Caulking (5200)
	*5505	—	Paving or Road Surfacing or Scraping N. O. C. – incl. drivers (Mo.) (E: 4-31)
1	5506	16125	Street or Road Construction, Paving or Repaving – all kinds – incl. drivers (E: 4-31) (Not available in N. J. and Utah)
1	5507	16115	Street or Road Construction – clearing of right of way – incl. drivers (E: 4-31) (Not available in Mo., N.J., and Utah)
1	5508	16115	Street or Road Construction – rock excavation – incl. drivers (E: 4-31) (Not available in Calif., Mo., N. J. and Utah)
1	*5509	—	Street or Road Maintenance by County or Municipal Employees only – incl. drivers (Mich.) (E: 10-34) (Utah) (E: 1-44) (Mass.) (E: 2-59)
1	*5509	—	Street or Road Maintenance – Municipal, County or State Departments – incl. drivers (Conn.) (E: 4-59)
1	*5509	—	Street or Road Maintenance or Beautification – incl. drivers (Fla.) (E: 7-37)
1	*5509	—	Street or Road Maintenance – Municipal, County or State (N. J.) (E: 7-52)
1	*5515	—	Street or Road Construction – clearing of right of way – earth or rock excavation – incl. drivers (Mo.) (E: 12-33)
1	*5516	—	Street or Road Construction – clearing of right of way (Utah) (E: 7-42)
	5520D	—	Tile Work – decorative floors (D: 12-15) (5348)
	5521D	—	Mosaic Work – inside (D: 12-15) (5348)
	*5536	—	Air Conditioning Duct Fabrication and Installation – incl. drivers (Texas) (E: 12-55)
	5538	17615	Sheet Metal Work Erection N. O. C. – incl. drivers (E: 11-22)
	5539D	—	Sheet Metal Work – N. O. C. (D: 11-22) (5538)
	5540D	—	Cornices and Skylights (D: 1920 Rev.) (5538)
	5541D	—	Galvanized Iron and Sheet Iron Work (D: 1920 Rev.) (5538)
	5542D	—	Coppersmithing (D: 12-15) (5538)
	5543D	—	Tinsmithing (D: 1920 Rev.) (5538)

NEVADA

04 Architects - Architectural Consulting Engineers, building and landscape design
09 Boards of trade and/or Better Business Bureaus
11 Chambers of Commerce
12 Clerical office employees and executives (NOC) excluding all such employees who are employed in an industry or business listed in this manual
21 Insurance brokers and agencies
23 Law offices
24 Lodges
26 Professional associations
27 Public stenographers
30 Stock and bond brokers
31 Trade Associations
34 Welfare or charitable associations
37 Telephone answering service & travel information, radio paging systems
39 Musicians
50 State Board of Fish and Game Commission and County Game Management Boards servicing pursuant to NRS 501.135 & 501.285 while engaged in their designated duties as such members shall be reported at a deemed wage of $250
51 Non-paid members of the State Department, Boards, Commission, Agencies or Bureaus (including University of Nevada Board of Regents) who serve without pay or who receive less than $250 a month (reportable at a deemed wage of $250)
52 Non-paid County Boards who serve without pay or who receive less than $250 a month (reportable at a deemed wage of $250)
53 Non-paid City Boards who serve without pay or who receive less than $250 a month (reportable at a deemed wage of $250)
54 Accountants
99 Volunteers working in industries described above at $100 deemed wage

Group 7900

02 Banks
03 Barber shops
05 Beauty shops
06 Churches
09 Dentists' office (no hospital or clinic facilities)
13 Employment agencies
19 Finance companies, auto leasing, collection agencies, appraisers
20 Labor unions and brotherhoods
21 Real estate brokers
22 Insurance adjustors
23 Powder room attendant
30 Blood Banks
21 Dental or clinical laboratories, without hospital facilities
22 Radio and television broadcasting companies
23 Optometrists
99 Volunteers working in industries described above at $100 deeme wage

Group 8000

01 General contractors - including street, road highway contracto including bridge construction, or other equipment contract
02 Street lighting, traffic signal installation, underground cabl installation, etc.
03 Septic tank and cesspool installation and service
08 Earth sculpture
99 Volunteers working in industries described above at $100 deeme wage

Group 8100

01 Building construction, residential or commercial
02 Carpenters, including hardwood floors and garage door instal- lation
07 Roofing contractors, effective 1-1-80
08 Plaster/lath or drywall contractors - (drywall tapers - 8206)
09 Fence contractors (guardrails - 8001)
11 Mill and plant construction
12 Masonry and stone work (includes exterior tile contractors)
13 Concrete contractors (patios, driveways, foundations) (8001 for curbs and gutters)
14 Fixture installation
15 Sign erection (outdoor) (8401 - electrical)
16 Building construction NOC
17 Siding and sheet metal contractors, effective 1-1-80
99 Volunteers working in industries described above at $100 deemed wage

Group 8200

03 Painting contractors
06 Drywall tapers
99 Volunteers working in industries described above at $100 deemed wage

Regulation 17

CLASSIFICATION PROCEDURES

17.010 Industry or governing classification.

1. Accounts shall be classified for assignment of manual rates on an "industry" or "governing" classification basis.

2. The term "industry" or "governing classification" is defined as that manual class described in the NIC Manual of Classifications and Basic Rates which most accurately describes the operations of a business.

3. Businesses conducted at one or more locations which consist of a single operation or a combination of separate operations which normally prevail in the business described by a single manual classification, will be classified by that single classification which most accurately describes the entire operation. The occupations of individual workmen within the business are not material to the classification assigned.

4. Separate manual classifications will not be assigned for supporting operations which are normally a function performed within the industry or governing classification, even though such supporting operations may be specifically described by a classification described in the NIC manual of Classifications and Basic Rates.

17.020 Multiple enterprises.

1. Business enterprises which include separate operations which do not normally prevail in the business described by the industry or governing classification may be assigned multiple classifications provided that the following conditions exist:

(a) Each separate operation is conducted without interchange of labor.

(b) Payroll records identify the employees engaged in each of the operations for which a separate classification is assigned.

(c) If the conditions described in paragraphs (a) and (b) do not exist, the classification assigned the highest premium rate will apply to the payroll for all employees.

(d) The entire payroll of employees who work in more than one of the classified operations during the month will be reported at the classification which carries the highest premium rate.

2. Miscellaneous employees are employees who work in a business which is assigned multiple manual classifications, but who cannot be specifically related to any of the assigned classifications. The payroll of miscellaneous employees will be assigned to the governing classification.

17.030 Reclassification.

1. A business operation may be reclassified by the commission when loss experience, inspection and/or other information indicates that the operation involves hazards that were not contemplated by the original classification(s) assigned.

2. An employer may apply for reclassification of his operation by filing a written request with the commission. The request should include a brief explanation of the basis upon which the request for change is being made.

(Adopted 1973)

OBERT LIST
GOVERNOR

STATE OF NEVADA

NEVADA INDUSTRIAL COMMISSION

JOE E. NUSBAUM
CHAIRMAN

HAL G. CURTIS
COMMISSIONER REPRESENTING LABOR
JAMES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

REPLY TO

The following employees are excluded from the clerical classification:

1. Corporate Officers
2. Airline, busline ticket counter personnel
3. Ticket sales
4. Cashiers
5. Operators of one-person sales outlets
6. Hotel/motel registration clerks

The July 1, 1976 Commission Ruling that allowed the standard exception of clerical for Nevada employers and the National Council on Workmen's Compensation Insurance, define clerical office employees as follows:

> "Clerical Office Employees are defined as those employees whose duties are confined to keeping the books or records of the assured, or conducting correspondence, or who are engaged wholly in office work where such books or records are kept or where such correspondence is conducted, having no other duty of any nature in or about the employer's premises. If any clerical office employee is exposed to any operative hazard of the business, his entire payroll shall be assigned to the highest rated classification of work to which he is exposed."
>
> "The classification shall be applied only to persons as herein described who are employed exclusively in separate buildings or on separate floors of buildings or in departments on such floors which are separated from all other work places of the employer by structural partitions and within which no work is performed other than clerical office duties as defined in this paragraph."

It should be kept in mind that if the employee has any other duties of any nature in or about the employer's business, such as, errand running, banking, going to the post office or any exposure to the operative hazard of the business, the employee connot be reported as clerical. A strict interpretation of the clerical definition is followed.

EXHIBIT F

THE WORKERS' COMPENSATION SYSTEM IN THE STATE OF NEVADA: AN EVALUATION OF ALTERNATIVES

Final Report

March 1979

Prepared for:

The Governor's NIC Labor Management
Advisory Board
Carson City, Nevada

SRI International
333 Ravenswood Avenue
Menlo Park, California 94025
(415) 326-6200
Cable: SRI INTL MNP
TWX: 910-373-1246

SRI International

THE WORKERS' COMPENSATION SYSTEM IN THE STATE OF NEVADA: AN EVALUATION OF ALTERNATIVES

Final Report

March 1979

By: Harry J. Solberg
James J. Carey

Prepared for:

The Governor's NIC Labor Management
Advisory Board
Carson City, Nevada

SRI Project 8075

CONTENTS

LIST OF TABLES iv

FOREWORD v

ACKNOWLEDGMENTS vi

I INTRODUCTION 1

Objective 1
Analytical Process 1
Organization of Report 2

II SUMMARY 3

Introduction 3
Conclusions and Recommendations 3

III NEVADA'S WORKERS' COMPENSATION SYSTEM 6

IV THE PRESENT NEVADA SYSTEM: IDENTIFICATION AND ANALYSIS OF PERCEIVED WEAKNESSES 9

Introduction 9
Reserve Level 10
Premium Level 13
Equity of Premium Structure 15
Adjudication Process 18
Delivery System 19
Investment Management 19
Lack of Checks and Balances 20
Conflicting Responsibilities 21
Rehabilitation 22
Unresponsiveness 22
Management Structure 22

V FUNCTIONS ASSOCIATED WITH A WORKERS' COMPENSATION SYSTEM . 24

Introduction 24
Identification of Functions 24
Identification of Parties Responsible for Functions . . . 25
OSHA Compliance Function 27

VI IDENTIFICATION OF THE OPTIMAL STRUCTURES FOR EACH SYSTEM . 29

Introduction 29
Exclusive State Fund Alternatives 29
Two-Way System Alternatives 33
Three-Way System Alternatives 35

VII SELECTION OF THE BEST SYSTEM 37

Introduction 37
Self Insurance Analysis 37
Private Carrier Analysis 39

VIII CONCLUSIONS AND RECOMMENDATIONS 45

Introduction 45
Conclusions and Recommendations 45

TABLES

1	NIC Underwriting Results	7
2	Interviews with Parties Affected by the Nevada System	9
3	Summary of NIC Rate Changes	15
4	Expense Loadings as a Percentage of Premium	16
5	Rate Comparison Nevada Versus California	17
6	Frequency of Loss-of-Time Accidents	17
7	Functions Under an Exclusive State Fund System	26
8	Costs per $100 of Benefits	39
9	Comparison of Premiums NIC Versus Private Carriers	43

FOREWORD

SRI was retained by the NIC to undertake this study in response to a recommendation from the Governor's NIC Labor-Management Advisory Board. The NIC recognized the importance of independence on the part of the consulting organization. Accordingly, the NIC committed itself to publication of the results without control over the research and consulting effort.

SRI had complete independence in carrying out this study and is solely responsible for the conclusions and recommendations contained in this report.

ACKNOWLEDGMENTS

The authors gratefully acknowledge the help received from a number of experts during the course of the study. Allan Kaufman from Peat, Marwick, Mitchell & Co. and Ed Woodward, a workers' compensation advisor with the U.S. Department of Labor, were particularly helpful. In addition, Linda Bogue and Dr. James Marver, our colleagues at SRI, contributed during various stages of the study.

We are grateful for the cooperation received from representatives of the insurance carriers. They were generous with their time and provided valuable information for this report. We also acknowledge the generosity shown by Nevada legislators who were able to take the time from their hectic schedules to share with us valuable insights into the Nevada workers' compensation system.

We would like to express our appreciation to the employers and employee representatives whom we had the opportunity to interview. They were candid in expressing what they perceived as being the weaknesses of the current system. Without the insight gained from these interviews, it would have been very difficult to develop recommendations specifically formulated for the Nevada system.

Finally, we would like to thank the members of the Governor's NIC Labor-Management Advisory Board, the NIC commissioners, and the NIC employees. Without their responsiveness to our needs and their recognition of the necessity of performing an objective evaluation, our task would have been exceedingly difficult to accomplish.

I INTRODUCTION

Objective

The objective of this study is to develop recommendations that would lead to an appreciable improvement in the Nevada workers' compensation system. These recommendations are based on an objective analysis of viable alternatives including a modification of the existing exclusive state fund system, an expansion of the current system to permit self insurance (a "two-way system"), and an expansion of the current system to permit self insurance together with private carriers (a "three-way system").

In developing these recommendations, it was considered essential that they be based on a practical rather than a theoretical analysis of alternatives. For example, in theory we believe that true price competition would promote the most efficient and effective workers' compensation system. However, the marketplace in which workers' compensation insurance is actually bought and sold typically is subject to significant price regulation and is not truly price competitive. Further, the transition from a regulatory environment in which a state monopoly exists to one in which competition is the predominant factor is not frictionless and indeed involves substantial cost. In this sector, the disruptive impact of any change is increased because there is substantial public interest in workers' compensation and a large interface between the private sector and the government. In view of these factors, our analysis recognizes the existing system and considers both the benefits and the costs of a number of incremental modifications to the system.

In striving to achieve this objective, it was also recognized that these recommendations are being made in a dynamic environment. It is implicit in these recommendations that as the Nevada environment continues to change, the workers' compensation system should be periodically evaluated. The recommendations anticipate future evaluations and provide for objective standards that can be used when alternatives are being considered in the future. For example, if in the future an evaluation using objective standards indicates that private concerns are able to match the performance of the exclusive state fund, then entry of private carriers should again be seriously considered.

Analytical Process

To ensure that the recommendations made were both directly applicable to Nevada's workers' compensation system and considered all viable alternatives, the analysis consisted of three phases described below.

The first phase involved a series of interviews with a number of people who are affected by the Nevada system and an analysis of the interview results. The people interviewed included employers and employee representatives, legislators, and NIC employees. The purpose of the interview process was to identify the perceived weaknesses of the current system. These perceptions were then analyzed to identify the actual shortcomings of the system.

The second phase involved the selection of an optimal structure for an exclusive state fund system, a two-way system and a three-way system. This selection was made from a number of alternatives that were generated by identifying the functions associated with a workers' compensation system and the possible parties who might perform these functions. Insights gained from the first phase were used to assist in selecting the optimal structure for each of the three systems.

The third phase involved the selection of the best system from the three identified during the second phase. Again, insights from the first phase were used to assist in selecting the best system. The conclusions and the recommendations made are a culmination of this three-phase analytical process.

Organization of Report

This report consists of eight chapters. Chapter II is a brief summary, Chapter III presents a brief description of the present Nevada system. Chapter IV contains an enumeration and an analysis of perceptions about weaknesses of the current system. Chapter V contains an identification of the functions associated with a workers' compensation system and specifies the various parties who could be responsible for their performance. Chapter VI presents a number of alternative structures under each system and selects the optimal structure for each of the three systems. Chapter VII analyzes the optimal structures identified in the previous chapter and selects the best system.

Chapter VIII contains the conclusions reached and the recommendations made as a result of the analysis summarized in the preceding chapters.

II SUMMARY

Introduction

The Governor's NIC Labor-Management Advisory Board recommended that an objective analysis be made of the workers' compensation system in Nevada. SRI was selected to perform this task. The analysis focused on the actual and perceived weaknesses of the current system, considered alternative systems to eliminate or minimize these weaknesses, and resulted in a series of conclusions and recommendations concerning the most appropriate system for Nevada at the present time.

The recommendations are based on the realities of the existing circumstances in Nevada, the existing NIC structure, and the alternatives available. As the Nevada environment continues to change, the workers' compensation system should be periodically evaluated. For example, if in the future an evaluation using objective standards indicates that private carriers are able to match the performance of the exclusive state fund, then entry of private carriers should again be seriously considered. The recommendations made in this study provide for objective standards that can be used in future evaluations. Such standards do not currently exist.

Conclusions and Recommendations

The interposition of private insurers is neither necessary nor desirable at the present time, although it may be at some time in the future.

> Recommendation No. 1: Improvements in the current system should continue to be made. At the present time, Nevada should not permit the entrance of private insurers for purposes of writing workers' compensation insurance.

It is now appropriate to expand the existing system to accommodate self-insurers. In view of the amount of preliminary work required, a period of 12-18 months is necessary if the expansion is to be implemented with a minimum amount of disruption.

> Recommendation No. 2: Enabling legislation should be passed to allow the Industrial Commission to develop regulations permitting qualified employers to self-insure. Regulation of self-insurers by the Insurance Department is unnecessary, impractical, and would be redundant. A target date should be established after which self-insurance would be permitted. This date should be between April 1, 1980 and October 1, 1980.

NIC's responsibility for enforcing compliance with OSHA's regulations has had a detrimental effect on the impact of NIC's safety consulting function.

Recommendation No. 3: The OSHA compliance function should be completely separated from the workers' compensation system.

Employers, employees, and the legislature expect the NIC to perform as an efficient and effective business. To do this, the NIC must communicate with Nevada employers and employees by maintaining an appropriate flow of relevant information.

Recommendation No. 4: A communications unit should be established. Initial funding should be in the range of 0.5% to 0.75% of premiums. This unit should take the initiative in providing accurate and timely information to employers, employees, the media, and government agencies. Duties also should include responding to comments made in the media and monitoring complaints received by the NIC.

A number of issues that have been raised in connection with the NIC have been based on a misunderstanding of technical processes.

Recommendation No. 5: A series of information circulars should be prepared to clearly explain the rate making, reserving, premium, and classification determination processes. Workshops should then be set up to further elucidate the processes.

The NIC will continue to be subject to criticism until performance standards for each of the major NIC functions are set, performance is measured against these standards, and the results communicated to the public.

Recommendation No. 6: Standards should be established by which the performance of the various NIC service operations should be measured. These standards should be reviewed periodically.

Recommendation No. 7: An annual report should be prepared to communicate both financial and operational performance.

Recommendation No. 8: An annual meeting should be held to review performance, highlight anticipated problems, and to solicit comments from employers and employees.

The NIC has properly refused to respond to political pressure in carrying out its fiduciary responsibilities. The NIC's fiscal notes are developed on the basis of an objective evaluation of available relevant data.

Recommendation No. 9: The requirement that fiscal notes be developed before proposed workers' compensation legislation is given serious consideration must be adhered to if costs and benefits are to remain at reasonable levels.

The legislature and the NIC have worked in concert to improve the workers' compensation system in Nevada. The inevitable misunderstandings that arise in connection with various NIC functions are not necessarily indicative of mismanagement. In fact, there is no reason to believe that the important NIC functions are not effectively carried out. When the Nevada system is considered objectively, it must be considered sound and generally responsive. To maintain and improve the quality of NIC staff, an objective analysis must be made of the required tasks and skills, as well as of the appropriate incentive structure.

Recommendation No. 10: To ensure quality and continuity of the management structure, a study to determine appropriate manpower and compensation levels should be undertaken by an outside independent consultant. To avoid any possibility of self interest in making this recommendation, SRI should not be included among the consultants who might be considered to perform this study.

III NEVADA'S WORKERS' COMPENSATION SYSTEM

Except for a few Nevada employers that had private workers' compensation insurance before 1947, the Nevada Industrial Commission (NIC) is the exclusive workers' compensation insurance carrier in Nevada. The NIC is directed by three commissioners, each appointed for a term of 4 years. One of the commissioners represents labor and is selected by the governor from a list of names submitted by the Nevada branch of the AFL-CIO. The second commissioner represents employers and is selected by the governor from a list of names submitted by employer associations. The third commissioner is selected by the governor and is designated Chairman of the NIC. He must have at least 5 years of actuarial experience and a master's degree in business administration or experience deemed to be equivalent to that degree.

The commissioners are responsible for the administration of the Nevada Industrial Insurance Act, the Nevada Occupational Diseases Act, the Nevada Occupational Safety and Health Act, and the State Mine Inspectors Act. In carrying out these responsibilities, the NIC determines classifications and rates, invests assets supporting claim liabilities, adjudicates claims, directs the occupational rehabilitation program, and administers the Department of Occupational Safety and Health and the State Inspector of Mines Office.

In addition to the NIC, the appeals officer and the state industrial attorney are each appointed for a 4-year term by the governor and are important participants in the claims adjudication process. The appeals officer is responsible for conducting hearings in contested claims for compensation and rendering a decision that is the final administrative determination of a claim. The state industrial attorney represents claimants who are financially unable to employ private counsel. He represents these claimants before the appeals officer and in the district court when appealing the decision made by the appeals officer.

As indicated in Table 1, the Nevada workers' compensation system has experienced rapid growth over the last 4 years. The growth in premiums and benefits reflects the expanding Nevada economy and increasing benefit levels. Increases in administrative expenses have been controlled over the last 4 years, being limited to 12.9% per year compared with the 20.7% annual increase in premiums.

Over the last 7 years, the NIC and the legislature have been responsive to the needs of both employers and employees. Tangible evidence of this can be seen by briefly reviewing the major changes made to the system over this time period. These include changes in the benefit level,

Table 1

NIC UNDERWRITING RESULTS

	Thousands of Dollars 1974	1978	Annual Growth Rate (percent)
Premiums	43,630	92,492	20.7
Less: Benefits*	37,410	84,084	22.4
Admin expenses	2,705	4,393	12.9
Underwriting result	3,515	4,015	--

*Includes loss adjustment expense.

expanded safety and rehabilitation, development of alternative premium arrangements, and reductions in the required claim reserves by anticipating future investment income. Following is a chronology of these changes:

- Benefit level changes
  - 7/73 Legislation enacted to revise benefit structure.
- Expanded safety programs
  - 1/74 Pilot safety rating program initiated.
  - 1/79 All employers assigned a safety rating based on 1978 performance.
- Expanded rehabilitation programs
  - 7/73 Rehabilitation program authorized by legislation.
  - 7/74 Pilot disability prevention team program initiated.
  - 10/74 Rehabilitation department staffed and program initiated.
  - 9/76 Disability prevention team concept implemented. Team consists of a rehabilitation counselor, registered nurse, and claims examiner.
  - 1978 Rehabilitation center completed and operation commenced.
- Alternative premium arrangements
  - 7/74 Self rater program initiated.
  - 7/78 Experience rating system revised to provide more responsive ratings.
  - 7/78 Retrospective rating intiated.

- Reserve reduction actions
  - 7/72 Reserves revalued at 3.75%.
  - 7/78 Reserves revalued at 4.5%.

On the basis of the above, it appears that the Nevada workers' compensation system has been responsive to the needs of Nevada employers and employees. However, on the basis of our analysis, it is also apparent that certain changes should be made so that the needs of employers and employees will continue to be served. The subsequent chapters of this report will address these changes.

IV THE PRESENT NEVADA SYSTEM: IDENTIFICATION AND ANALYSIS OF PERCEIVED WEAKNESSES

Introduction

A critical phase in this evaluation entailed a series of interviews with a number of people who are affected by the Nevada system. Table 2 classifies the interviews conducted by the type of party interviewed.

Table 2

INTERVIEWS WITH PARTIES AFFECTED BY THE NEVADA SYSTEM

Parties Interviewed	Number of Interviews
NIC employees	4
NIC Labor Management Advisory Board	9
Labor representatives	6
Hotel/resort industry	18
Banking	2
Insurance industry	6
Manufacturing and other industries	6
Legislators	4
Others	4
	59

In general, those interviewed were selected from a list of names that was developed in discussions with the NIC Labor/Management Advisory Board. In compiling this list, the Advisory Board members were asked to identify parties who either represented significant interests within the state or who were critical of certain aspects of the NIC's operations. During preliminary talks, additional names were suggested in order to achieve a deeper understanding of workers' compensation in Nevada. A selection was made from these names and further interviews were conducted.

The primary objective of the interview process was to identify the perceived weaknesses of the present system and perceptions concerning alternative systems. In reading the remainder of this report, it is important to remember that the interviews focused on perceived weaknesses and were not designed to elicit comments about the system's strengths. The major assertions that were made about the shortcomings of the present Nevada system during the interviews are the following:

- Reserves are too high
- Premiums are too high
- The premium structure is not equitable
- The adjudication process is not fair
- The benefit delivery system is not effective
- The investment portfolio is not managed effectively
- The NIC is not subject to adequate checks and balances
- Certain responsibilities of the NIC conflict with one another
- Rehabilitation efforts are ineffective
- The NIC is not responsive to employers
- The management structure is not adequate.

Many of those interviewed felt that allowing for self-insurance or alternatively allowing for self-insurance and the entry of private insurance carriers into Nevada would resolve these perceived weaknesses. Following is a brief discussion of each of these assertions.

Reserve Level

Employer representatives made numerous comments about the reserves being held to cover future payments on claims. In fact, the reserve level and the reserving practices of the NIC were the target of a large proportion of all criticism offered by employers. Their critical comments can be summarized by the following statements:

- The reserve being held to cover a specific claim was excessive.
- The method being used to establish case reserves was arbitrary.
- The overall loss reserve level was excessive.
- The reserve level should increase at the same rate as claim payments.
- Interest was not being credited on the reserves.
- There is no need to establish reserves because premium rates can be increased when necessary to pay benefits.

In view of the amount of interest expressed concerning reserves, it was deemed appropriate that the methods being used to establish reserves be reviewed. Such a review was conducted.

It is important to realize that the establishment of a reserve for a specific claim is not and cannot be an exact science, but is simply an objective judgment based on all available information. As more information about the claim develops, it is to be expected that the estimated severity of a claim will either increase or decrease. The method

used by the NIC to establish case reserves results in a fluctuation in the estimated severity of a claim as information about the claimant and the nature and extent of the injury is developed. This is entirely appropriate and is to be expected. A number of employers pointed to specific cases where in retrospect the reserves established were too high. No employer mentioned any claim where in retrospect the reserves established were too low. However, those claims do exist and because of the judgmental nature of the case-reserving process, it is to be expected that at any point in time, the reserves for some claims will be too high and the reserves for other claims will be too low. This process is an essential part of the insuring mechanism; it is not unique to the NIC. The best that can be expected is that the total case reserves for all claims at any given point in time is an accurate measure of the liability representing future payments to be made on open claims. If proper case reserves are to be established, it is necessary to have experienced personnel reviewing the claims files, and they must be insulated from employer pressure. In addition, an objective third party should evaluate the judgment of the reviewers on a periodic basis. The NIC personnel responsible for setting the case reserves are experienced and their judgment is regularly reviewed by an independent actuary who has indicated that NIC personnel competently perform this function. Also, efforts are made to prevent their judgment from being influenced by undue pressure from employers.

There is no evidence that the method used to establish case reserves is arbitrary. However, it is apparent that employers are not familiar with the techniques used, and this unfamiliarity breeds suspicion. A program aimed at improving employers' understanding in this area should result in a reduction in complaints about specific case reserves established and in assertions that the techniques used are arbitrary.

Because of the nature of workers' compensation claims, the overall reserves held by an insurer are substantial. Payments made on a claim may continue for as many as 40 years after the accident occurs. Medical expenses may be large and may be paid out over a number of years. The reserve established when the claim is incurred should be sufficient to cover all future compensation payments in addition to future medical expenses. Complaints that reserves are too high are not unique to the Nevada system, but are prevalent in most states irrespective of the entity providing the insurance. The overall reserve level in Nevada is determined by qualified independent actuaries using generally accepted actuarial standards. It is normal and to be expected that an actuarial estimate of the proper reserve level at the end of some accounting periods will be higher than ultimately necessary and at the end of other periods be lower than ultimately necessary. The fact that this occurs does not suggest any improprieties on the part of the insurer, but is a result of the fundamental nature of the reserving process.

It is noteworthy that although the actuarial reports that explain the methods and assumptions used in establishing the reserves are available to interested employers in Nevada, we have not found any employer who has reviewed them in an effort to understand the reserving process

and reserve fluctuations. On the basis of our review of the last five annual actuarial reports, we consider the reserving methods being used to be appropriate. In fact, it is highly probable that the reserves being maintained by the NIC are lower than the reserves that would be maintained by a private carrier because the NIC reserves established for compensation claims are discounted at 4-1/2%, whereas private carriers do not discount claim reserves. Discounting gives Nevada employers current credit for future interest to be earned on reserves. Despite this, a number of employers anticipated that private carrier reserves would be lower than those established by the NIC.

Employers are concerned that reserves have been increasing more rapidly than claim payments. The change in reserves is analyzed and explained each year in the actuarial report. In reviewing the reports, we found that the explanations given for increases in reserves are reasonable and such increases are necessary if the system is to remain fiscally sound. Despite this, a number of employers are convinced that the NIC was purposely over-reserving and suggested that the $20 million reserve reduction at the end of the 1978 plan year for claims incurred prior to 1978 was a result of pressure being placed on the NIC. There is no basis in fact for this opinion. The 1978 actuarial report discusses the reasons for the downward revision in the reserves for claims incurred prior to 1978 and the bases for the revision are understandable and appropriate.

The treatment of investment earnings is not clearly understood by employers. This is unfortunate because the NIC has been imaginative in discounting reserves in anticipation of future investment earnings in order to minimize the cash drain on employers. Most private workers' compensation insurers do not discount reserves (do not give credit for future investment earnings) and as a result, the cash required from employers by other insurers is increased. We have estimated that the impact on premiums of discounting reserves is approximately 7%. The NIC can either discount reserves as they do currently or set up the full reserve and credit interest on it. They have chosen the discount approach because of the resulting decrease in cash required from the employers.

Several employers did not understand the need for maintaining claim reserves because in their opinion the NIC could raise premium rates immediately if there was not enough cash flow to pay benefits. The Nevada legislators have determined that the workers' compensation system should be administered on a fiscally sound basis. In view of this determination, it is imperative that reserves be established to cover claim liabilities.

On the basis of our review of the reserving methods used and the independent actuarial reports prepared annually, we conclude that there is no reason to believe that the NIC is systematically establishing excess reserves. Because the reserving process is not an exact science and must operate in an environment where benefits are frequently changing, it is to be expected that the reserves established at the end of any accounting

period will be either increased or decreased in subsequent periods. In fact, if such adjustments are not made, there is some basis for becoming concerned with the reserving methods being employed. Employers are concerned about reserves because they represent a large portion of their workers' compensation costs, and NIC efforts aimed at explaining the reserving process have not been effective. Employers must understand the process if they are to be convinced that the reserve level is appropriate.

Premium Level

Comments made about the premium level generally indicated that:

- Premiums are too high.
- Premiums rates have undergone rapid increases over the last 5 years and are "out of control."

High Premiums

The assertion that premiums are too high is usually based on an analysis that compares the premium paid by the employer with claim payments made. The major reasons for the difference between premium payments and claim payments are the claim reserves, the credibility of the employer's experience, the rating plan used to determine an employer's premium, and the nature of the insurance mechanism. As indicated previously, claim reserves are necessary if the system is to remain fiscally sound. If a valid comparison is to be made between premiums paid and claims, reserves must first be added to the claim payments. Even after this adjustment is made, the employer may still consider the premiums paid to be too high.

A key factor in the determination of an employer's insurance premium is the degree to which his own claims experience is taken into account in the determination of his particular premium. In general, the claims experience for an employer with few employees does not have a direct impact on his specific premium whereas a large employer's claims experience will have a significant impact on his specific premium. That is to say, the claims experience of the small employer is less "credible" than the claims experience of the large employer. However, even if an employer's claims experience is considered to be fully credible, its impact on his premium will differ depending on whether the Experience Rating Plan, the Retrospective Rating Plan, or the Self-Insurance Rating Plan is being used. Finally, insurance, by its very nature, involves a spreading of risk among all those insured. Because of this, during any given time period, some employers will pay more into the system than their employees receive in incurred benefit payments and other employers will pay less into the system than their employees receive in incurred benefit payments. To minimize the spread between the amount paid in and the amount paid out and to improve the overall equity of the system, at the end of each accounting period, premiums are adjusted so that employers

with good credible experience (i.e., incurred benefits low in relation to premium) will benefit from this favorable experience and employers with poor credible experience (i.e., incurred benefits high in relation to premium) will be adversely affected by this unfavorable experience.

In summary, we have determined that criticisms from employers about the premium level are the result of several factors: a lack of appreciation for the necessity of establishing reserves to cover incurred liabilities, the rather complicated methods used to determine premiums, and the time lag between either favorable or unfavorable loss experience and the resulting impact on premiums. These factors are common to the great majority of workers' compensation systems irrespective of the entity providing the insurance and are commonly the source of criticism from employers. An effective response by the NIC to such criticism would be to help the employer achieve a better understanding of the methods used to determine premium levels.

Increases in Premium Rates

Not only do employers consider the present premium level to be too high as discussed above, but they have also expressed concern that the increases in premium rates during the 1970s have been unreasonable. Employers have pointed to the rapid increase in workers' compensation premiums as evidence that they are "out of control." There is little question that rate increases have been substantial during the 1970s. However, when the reasons for the increases are identified, it is apparent that the present NIC management should not be criticized. Table 3 summarizes the change in rates from 1960 through 1978. For purposes of the analysis, 1960 is selected as the base year and the effective rate for that year has been set equal to $1.00.

Table 3 highlights the fact that the rate charged to employers actually decreased by $0.12 during the 1960s despite legislative increases in benefits, medical cost inflation, and increasingly liberal judicial decisions. Early in the current decade, it was decided that the system should be placed on a fiscally sound basis by funding the benefit increases that occurred during the 1960s. As a result, the effective rate was increased by $0.44 during 1971 and 1972. During the same 2-year period, legislative benefit increases raised the rate by an additional $0.23. Thus, the combined impact of these two factors increased the rate to $1.55 by 1973.

Over the last 5 years, in order to keep benefits at an appropriate level, benefit provisions have been upgraded, resulting in an additional increase in the effective rate of $0.52. The upgrading of benefit levels (as a result of legislative changes, judicial interpretation, and inflation) complicates the reserving process and makes it increasingly difficult to determine adequate reserves. In addition, economic cycles cause further complications. Over the last 5-year period, to maintain adequate reserves, rates have been increased by $0.22. The upgrading of benefits

Table 3

SUMMARY OF NIC RATE CHANGES
(Base Year = 1960)

	Dollars
1960 effective rate	1.00
1961 through 1969 cumulative rate change	-0.12
1970 effective rate	0.88
1971 through 1972 cumulative rate change	
Result of experience	0.44
Result of benefit level changes	0.23
1973 effective rate	1.55
1974 through 1977 cumulative rate change	
Result of experience	0.22
Result of benefit level changes	0.52
1978 effective rate	2.29

and the maintenance of adequate reserves have resulted in a current rate of $2.29. Thus, it can be seen that the increases in costs during the 1970s are the result of keeping the benefit level up to date and placing the system on a fiscally sound basis. In addition, costs for workers' compensation have been increasing rapidly country wide; in fact, the rate of increase has been faster for the country as a whole than it has been for Nevada. If Nevada's rate followed the increases experienced country wide over the last 5 years, the current effective rate in Nevada would be $3.30 rather than $2.29.

In summary, although the cost for workers' compensation has been increasing, there is no evidence to suggest that the present level is excessive. In fact, based on countrywide experience, it appears that Nevada has been more successful than the average state in controlling costs while at the same time maintaining adequate benefits. Benefit levels have been kept up to date and reserve levels have been increased to reflect benefit changes that occurred during the 1960s, but were not funded during that period. It is apparent that Nevada employers need to receive adequate explanations when premium rates are increased so that they understand the basis for the increase.

Equity of Premium Structure

A number of employers suggested that the present Nevada pricing structure is not equitable. They feel that inherent subsidies are built into the structure. These perceptions include:

- Large employers subsidize small employers.
- The hotel and resort industry subsidizes other industries within the state.

The pricing structure does not favor either small employers or large employers, but rather develops premiums that reflect the different expense levels associated with small versus large employers. An equitable structure would build higher expense loadings into the premium rates for smaller employers to reflect the higher expenses (as a percentage of premium) associated with administering small accounts. Table 4 illustrates the expense loadings built into the current premium structure.

Table 4

EXPENSE LOADINGS AS A PERCENTAGE OF PREMIUM

Employer Size as Measured by Annual Premium	Expense Loading (percent)
Less than $20,000	23.3
$20,000 to $99,999	10.5
$100,000 and higher	8.5

As can be seen from Table 4, the premium structure does reflect the higher expenses associated with handling smaller employers.

Because these loadings appear to reasonably reflect the actual expenses incurred, we consider the premium structure to be equitable for both small and large employers. Private carriers also vary the expense loadings by size of employer, and although the pattern used to vary the loadings is different from the NIC pattern, their loadings are higher than the NIC's for every employer size analyzed.

There is no convincing evidence that the hotel and resort industry subsidizes other industries within the state. Representatives of the hotels and resorts have compared rates charged for various occupations in Nevada with rates charged in other states and have used this comparison as a basis for suggesting that a subsidy exists. Table 5 illustrates the comparison that they have made.

The position taken by the hotel and resort representatives is that it is illogical for the hotel and resort industry rate to be higher than that for firemen and police, especially in view of the rates for these occupations in California. However, this analysis ignores the fact that police and firemen are quite logically grouped with other local government workers in Nevada, whereas they are separately classified in California. Because the Nevada rate reflects the experience of lower risk

Table 5

RATE COMPARISON NEVADA VERSUS CALIFORNIA
(Dollars)

Industry Classification	Premium Rate per $100 of Payroll	
	Nevada	California
Hotels, resorts	5.20	5.20
Firemen	2.44	12.62
Police	2.44	12.25

occupations together with police and firemen, a comparison with the California rates for firemen and police alone is not valid.

Aside from this, there is a prevalent attitude among the hotel and resort representatives that their industry is a relatively safe one with a relatively low incidence of claims when compared with other industry classifications in Nevada. Our review of the overall claim frequency rates revealed no basis for this conception. Table 6 compares the frequency of loss-of-time accidents in the Nevada hotel and resort industry with the frequency for all industries combined.

Table 6

FREQUENCY OF LOSS-OF-TIME ACCIDENTS*

Year	Hotels and Resorts	All Industries
1969	3.25	2.43
1970	3.45	2.68
1971	3.55	2.73
1972	3.35	2.91
1973	4.37	3.24
1974	4.79	3.22
1975	4.84	3.32
1976	5.76	3.60

*Frequency is measured by the number of accidents per 200,000 man-hours of work.

A review of the above frequency statistics suggests that the NIC and the hotel and resort industry might work together in identifying the factors responsible for the relatively high frequency rates.

In summary, we do not see any firm basis for the belief that either large employers are subsidizing small employers or that the hotel and resort industry is subsidizing other industries. Our review of the methods currently being used to determine the rates indicate that the premium structure is equitable.

Adjudication Process

Both employers and employee representatives expressed some dissatisfaction about the manner in which issues were adjudicated. Among the issues mentioned were:

- Settlement of claims
- Resolution of disputes involving reserving and premium rates.

The different perspectives of employers and employees produced an interesting dichotomy when the claims adjudication process was discussed: a number of employers claimed that the NIC "bent over backwards" to pay all claims; several employee representatives stated that the NIC was unduly influenced by employers and strongly resisted paying claims. Another comment made was that a decision reached at one level in the hearings procedure was frequently changed at the next level, indicating a general lack of expertise at all levels. In opposition to this, several employers felt that the appeals officer was somewhat reluctant to reverse a decision of the Commission because his budget is controlled by the NIC. It is not possible to evaluate objectively the adjudication process until standards acceptable to all parties are developed and performance tracked against these standards. It is not realistic to expect that a claims adjudication process can be developed that will eliminate all criticisms. In addition, it is not reasonable to restructure an existing process until an objective determination is made about its effectiveness. To date, the existing process has not been subjected to an objective evaluation nor can it be, until standards are developed against which it can be measured.

Disputes involving reserving and premium rates arise from a lack of understanding of the part of employers coupled with inadequate communication of information by the NIC. As indicated previously, we have concluded that the NIC ably performs the actuarial functions associated with the determination of reserves and premium rates. They rely on assistance from competent outside actuarial consultants to carry out these functions. If the NIC allocated sufficient resources to communicate with employers on these issues, it would be reasonable to expect that most employers would conclude that the NIC is performing these functions competently.

The weaknesses perceived by employers and employee representatives as being a problem with the adjudication process, is actually a performance

measurement and a communication issue. Changing the adjudication process without developing performance measurements and without improving communications would be treating the symptom of the problem rather than the problem itself. A better approach would be to first develop standards and then measure performance against these standards. In addition, an attempt should be made to communicate more effectively. Only after these changes are made and subsequent evaluation determines that they have failed, should a restructuring of the process be contemplated. This is dealt with in more detail in Chapter VI.

Delivery System

Several negative comments were made about the manner in which benefits were paid (i.e., the benefit delivery system). The initiation of benefit payments and the termination of such payments was the focal point for these comments. Here again, as in the case of claims adjudication, both employers and employee representatives were critical, but from very different perspectives. In reference to the initiation of benefit payments, several employee representatives felt that in numerous instances the time required to commence benefit payments was inordinately long. On the other hand, spokesmen for employers expressed the opinion that the NIC was all too willing to commence benefit payments even before a claim could be validated. After benefit payments commence, employee representatives suggested that the NIC arbitrarily attempts to terminate benefit payments in many cases. In contrast, employers cited examples where the employee continued to receive benefit payments even after he was fully recovered, back at work on a full-time basis, and the NIC had been so notified.

An objective evaluation of the benefit delivery system requires that standards first be developed so that performance can be measured. If action is taken to alter the existing system based on a sample of criticisms made about it, there is a very real possibility that the benefits of the present system would be lost and the systems change would merely result in substituting a number of real problems for several perceived problems. Establishing a procedure that would facilitate an objective measurement of the systems' performance would minimize the possibility that this might occur. However, if it is determined, after performance is measured against standards, that the current system is functioning adequately, it is still necessary to establish a process whereby any claim that is mishandled in the opinion of either the employer or employee is evaluated to determine the reasons for this opinion and appropriate action taken. The success of this process would depend on clear communications being established between the NIC, employers, and employees.

Investment Management

Not only were a number of employees critical about the level of claim reserves, but they also felt that the investment portfolio supporting the

reserves was not well-managed. In an effort to determine the manner in which the investment portfolio is managed, we reviewed the investment policy, the guidelines established for investment management, and the performance goals used to evaluate the investment manager. In addition, we participated in the quarterly investment management meeting at which the 1978 performance was evaluated. On the basis of these activities, we have concluded that the NIC has established a sound investment management function and is sensitive to the need for maximizing investment return while maintaining the quality of the portfolio at a relatively high level. The NIC depends on a qualified outside investment manager to manage the investment portfolio and a separate qualified consultant to review investment performance. If employers deem the overall investment performance to be unacceptable, they should determine whether they consider the guidelines to be unsuitable, the goals to be too easily achievable, or the performance to be lacking when measured against these goals. We are confident that the NIC will seriously consider any reasonable suggestions that might enhance performance without sacrificing the overall quality of the portfolio. Criticisms about the methods used by state agencies to manage investments abound. However, according to our evaluation, these general criticisms do not apply to the NIC.

Lack of Checks and Balances

A substantial number of employers and employee representatives expressed the opinion that the NIC, in effect, was not answerable to any authority. It was felt that although in theory the commission is controlled by the legislature, in practice very little control is exercised especially as the legislature meets only every second year and those sessions are relatively short. Several areas were mentioned where the parties interviewed thought that a system of checks and balances was necessary to prevent the NIC from operating in an arbitrary and capricious manner. These included determination of premiums, establishment of reserves, and delivery of benefits. Several employers expressed strong feelings that the need for checks and balances was a critical one because the controls inherent in a competitive market are absent in the workers' compensation system in Nevada.

As previously indicated, we have concluded that the NIC competently performs those functions that involve the determination of premium rates and the establishment of reserves. The employers' perception that there is a need for a system of checks and balances in these areas reflects the limited communications between the NIC and the employers. Establishing a system of checks and balances to resolve a basic communications problem is inefficient at best and may even exacerbate the problem. In the benefit delivery area, maximizing performance can best be achieved by setting objective standards, measuring performance against those standards, and communicating performance to employers and employees. A system of checks and balances, because of its very nature, does not encourage an entity to constantly strive for better performance, but merely to settle for adequate

performance, which is normally substantially less than the maximum level achievable.

Conflicting Responsibilities

Both employers and employees perceived an implicit conflict in a number of functions performed by the NIC. Specifically:

- The NIC is responsible for both claims determination and claims adjudication.
- The NIC is responsible for both providing safety consulting services to employers and assuring compliance with OSHA regulations.

The dual responsibility for claims determination and adjudication does not necessarily create a conflict although it has the potential for doing so. Having the two functions combined under one agency as is currently done, has the potential for maximizing efficiency both in terms of cost and time service. To determine whether it would be advantageous to eliminate the potential for conflict between the two responsibilities, it is necessary to determine the extent to which real conflict exists, the possbility of minimizing it within the current structure if conflict does exist, and the impact on efficiency if the system were restructured to separate the two functions. An effective method of determining whether a conflict exists and, at the same time of minimizing it, is to track the performance of the NIC in carrying out these functions and to communicate its performance to employers and employees. If it is apparent after this has been done that a real conflict does exist and cannot be eliminated under the current structure, it would then be timely to quantify the impact on efficiency of separating the functions and to decide whether the separations should be made. To make this decision without first determining if there is a conflict and attempting to minimize it would be premature.

In the areas of safety consulting and OSHA compliance, we have concluded that the mere perception on the part of many employers of a conflict between these two responsibilities is sufficient cause for their separation. This perception, irrespsective of whether a real conflict exists, results in the safety consulting function being less effective. The NIC has attempted to assure employers that these functions are performed independently of each other, but these attempts have been generally unsuccussful. Many employers, frustrated by the massive amount of OSHA regulation, will not accept the safety consulting services of the NIC as long as the agency is also responsible for OSHA compliance, regardless of assurances from the NIC.

It should be pointed out that the impact on the workers' compensation system of employers' perceptions concerning conflicting responsibilities is the critical factor in determining whether those specific responsibilities should be separated. In the case of safety consulting and OSHA compliance, the mere perception that there is a conflict results in a less effective safety program and presumably a higher accident rate thus leading

to the conclusion that responsibility for the functions must be separated. In the case of claims determination and adjudication, the perception that a conflict exists is not a significant impediment to achieving the overall objectives of the system.

Rehabilitation

Without exception, all parties interviewed supported the concept of medical and vocational rehabilitation. However, a number of employers and employees questioned the effectiveness of the current rehabilitation program. They mentioned several examples where, in their individual opinions, a rehabilitation plan identified for an injured worker was not appropriate. The present rehabilitation program is built around the new rehabilitation center. It is still too early to evaluate the impact this center when fully staffed will have on the workers' compensation system. Comments that are critical of a specific rehabilitation plan developed for an injured worker suggest that the concepts around which the rehabilitation program has been developed have not been presented effectively to employers and employees.

Unresponsiveness

Many comments made by employers suggested that the NIC does not respond in a timely and effective manner to their concerns. The two most frequently identified areas in which employers indicated that the NIC does not respond involve reserves and premium rates.

As indicated in other sections of this chapter, it is evident that the NIC has not communicated effectively with employers and employees. It has been the NIC's position that minimal resources should be allocated for communications in an effort to minimize the cost of the system. The communications issue will be discussed further in Chapter VI.

Management Structure

A number of employers suggested that the Nevada workers' compensation system has outgrown the management structure. They expressed the opinion that it is now necessary to reorganize the NIC. Several employers suggested that if the NIC is to attract and retain a management team with the skills necessary to operate the NIC effectively, it should not be governed by Nevada's personnel system and policies. In addition, it was felt that the NIC should strengthen a number of its functions internally so that it would not have to rely on external expertise.

On the basis of our analysis, we consider the current overall management structure to be suitable for administering the workers' compensation system as it currently exists. The system is sound and there is little basis on which to contemplate a change. Certain minor adjustments should be made to fine-tune the existing system; these adjustments are discussed

in Chapter VI. We anticipate that the NIC may have difficulty in attracting and retaining quality employees; this issue is addressed in Chapter VIII. Finally, the use of outside expertise to assist in carrying out certain functions such as premium determination, reserve determination, and investment performance analysis should continue rather than the development of additional expertise in-house. These advisors have been valuable in providing the NIC with insights gained from a breadth of experience in providing services to other workers' compensation systems.

V FUNCTIONS ASSOCIATED WITH A WORKERS' COMPENSATION SYSTEM

Introduction

To achieve the objectives of a workers' compensation system, it is necessary that the functions associated with it be performed effectively and efficiently. The specific functions to be performed and the parties responsible for their performance are in part dependent upon the type of system selected (i.e., exclusive state fund system, two-way system, or three-way system). In order to construct a number of alternative structures for each of the three possible systems, it is necessary to identify the functions that must be performed under each system and then specify the various parties who could be responsible for their performance. In identifying the functions, first, the exclusive state fund system will be considered; second, the incremental functions associated with a two-way system will be identified; finally, the additional functions necessary under a three-way system will be addressed. Following this process, the parties who could be responsible for them will be considered.

After identifying the functions, together with the parties who might be responsible for them, the OSHA compliance function will be discussed. This function requires special attention because, although it is not an inherent part of the workers' compensation system, the NIC is responsible for its performance and this responsibility inhibits the effectiveness of NIC's safety consulting role, a crucial part of the workers' compensation system.

Identification of Functions

Functions to be performed under the exclusive state fund system can be grouped into the following categories:

- Employee oriented functions (i.e., performance has a direct impact on the employee).
- Employer oriented functions (i.e., performance has a direct impact on the employer).
- Functions that promote effective performance of employee or employer oriented functions.
- Functions that monitor performance of employee or employer oriented functions.

Employee or employer oriented functions can be further subdivided into those that are performed by the entity providing the insurance (i.e.,

the state fund, self insurers, or private carriers) and those performed by some other entity. Table 7 identifies the functions performed under an exclusive state fund system grouped as indicated above. Table 7 also indicates those employee or employer oriented functions that have an associated function to monitor or promote the maximum effectiveness of the employee or employer oriented function.

The functions categorized as employee oriented and employer oriented are invariably included in all workers' compensation systems. However, some of the associated functions that promote effective performance and monitor performance may be excluded entirely or exist only on an implicit basis. Frequently, they are internal functions and are not visible to the public.

A two-way system requires that the following two functions be established in addition to the functions enumerated in Table 7:

- Qualify self insurers
- Monitor financial condition of self insurers.

If self insurers are to be included in a workers' compensation system, the functions in Table 7 that are designed to monitor performance would have to be expanded.

Under a three-way system, a number of additional functions are necessary. These include:

- Qualify private carriers
- Monitor the financial condition of private carriers
- Monitor competitive practices
- Assure availability of coverage
- Approve premium rates.

The monitoring functions included in Table 7 would have to be expanded further to oversee not only the self insurers, but also the private carriers.

Identification of Parties Responsible for Functions

The number of parties involved in performing functions associated with a workers' compensation system can vary over a large range depending on the type of system involved and the degree of centralization within the system. As indicated previously, the functions can be divided into six groups: employee oriented functions, employer oriented functions, functions intended to promote effective performance, monitoring functions, functions required under a two-way system, and functions required under a three-way system.

Table 7

FUNCTIONS UNDER AN EXCLUSIVE STATE FUND SYSTEM

Function	Associated Function to Promote Maximum Effectiveness	Associated Function to Monitor Performance
Employee oriented		
Performed by insurance entity		
Establish safety programs	X	X
Deliver benefits	X	X
Establish rehabilitation programs	X	X
Communicate with employees	X	
Performed by other entities		
Represent employee during claims appeal		
Provide forum for claims appeals		
Assure compliance with workers' compensation regulations		
Employer oriented		
Performed by insurance entity		
Invest assets	X	X
Determine premiums and reserves		X
Resolve premium and reserve disputes	X	
Communicate with employers	X	
Represent employer during claims appeal		
Performed by other entities		
Provide forum for claims appeals		

The parties that could conceivably be involved in performing one or more of those employee and employer oriented functions include the entities who might provide insurance (i.e., private carriers, self insurers, state industrial commission or the state compensation fund), state industrial attorneys, private attorneys, appeals officers, and rating bureaus. The state compensation fund and rating bureaus are two entities that might not be familiar to Nevada employers and employees. In states where there are separate state agencies for administering the workers' compensation law and for providing workers' compensation insurance, the agency responsible for providing the insurance is commonly known as the state compensation fund. In a number of states, independent rating bureaus are responsible for developing rates.

The entities responsible for promoting effective performance of the employee and employer oriented functions are not discrete, easily identifiable parties. They include the competitive environment, the environment created when standards are developed and used for measuring performance, and the environment created when an effective communications function is in existence. It should be recognized that even though these "entities" are somewhat amorphous, the functions assigned to them are no less important to the workers' compensation system.

Possible candidates for monitoring the performance of employee and employer oriented functions include the state industrial commission and the state insurance commission. The "environmental" entities mentioned above can also serve as effective monitoring devices--particularly the environment created by an effective communications function.

Entities that might be responsible for carrying out the additional functions associated with a two-way or a three-way system include the state industrial commission, the state insurance department, the state compensation fund and private carriers.

OSHA Compliance Function

The functions discussed above are important to an efficient and effective workers' compensation system. The OSHA compliance function, however, is not an integral part of the system, but has been assigned to the NIC in an effort to achieve greater operating efficiencies. Assigning this function to the NIC has impeded the progress of the safety consulting function because many employers will not use the NIC's safety consultants as long as the NIC has the OSHA compliance responsibility. Although a major objective of both OSHA and the workers' compensation system is identical, i.e., minimize the frequency and severity of industrial accidents and disease, the methods used in an attempt to attain these objectives are different. OSHA uses a regulatory approach that has resulted in over-regulation and has generated a substantial amount of ill-will on the part of employers. Naturally, the brunt of employer resentment and criticism has been felt by the local agency responsible for administering the program, the NIC, and has reduced its effectiveness as a safety consultant. In fact, one employer noted "the NIC did a pretty good job until it became involved with OSHA."

To maximize the effectiveness of efforts aimed at enhancing safety in the work place, the NIC should be perceived as working in tandem with the employer and should be looked upon primarily as a consultant rather than an enforcer if safety improvement is to be maximized. It is unrealistic to expect employers to consider the NIC in this fashion as long as it is burdened with the responsibility for OSHA compliance.

Although we strongly recommend that OSHA enforcement be separated competely from the workers compensation system in Nevada, we have not identified the specific agency that should be charged with this responsibility. Logical alternatives include some other state agency (e.g., the State Labor Commission) or returning the compliance function to the Federal Government. The development of a specific recommendation in this area is outside the scope of the present study.

VI IDENTIFICATION OF THE OPTIMAL STRUCTURES FOR EACH SYSTEM

Introduction

The performance level achieved by the NIC in carrying out various functions has been criticized by a number of employers and employees. These parties, generally dissatisfied with NIC's current performance, anticipate substantial benefits to be gained by dismantling the current system and constructing a new one. The new system would permit either a state fund and self insurance or a state fund, self insurance, and private insurers. A change to another system would be accompanied by disruptions in several areas, the degree of which would depend on how well the translation is planned and implemented.

Unfortunately, there is little convincing evidence that a new system would be a panacea. In states with two-way or three-way systems, criticisms about premium levels, reserve levels, and service levels are prevalent. These are the same areas mentioned by critics of the NIC. It would be counter-productive if a new system were established and the currently perceived problems remained.

To identify the best system for Nevada, it is necessary to develop all viable alternatives, analyze each, and select the one that best satisfies the needs of Nevada employers and employees. The remainder of this chapter contains the development of alternative structures for each of the three systems, an analysis of these alternatives, and selection of the optimal structure for each system. In view of the number of functions and possible entities involved, a very large number of alternatives could be developed. The alternatives identified in this report have been selected as those that might reasonably be considered appropriate for Nevada. In Chapter VII, the optimal structures are analyzed and the best one is selected.

In the analysis that follows, it is assumed that the OSHA compliance function is removed from the workers compensation system. This assumption is common to all the alternatives considered.

Exclusive State Fund Alternatives

The exclusive state fund alternatives selected for analysis can be characterized as follows:

- Alternative 1: The existing NIC structure.
- Alternative 2: The existing NIC structure with objective performance standards developed to promote effective performance. A

communications unit would be established to promote a better understanding of the NIC and to serve as an effective monitoring device.

- Alternative 3: The structure as described in Alternative 2 modified so that the insurance department would have responsibility for approving premium rates.
- Alternative 4: A complete restructuring of the current system, with a state compensation fund being set up to perform the insurance functions and the state industrial commission to be responsible for the regulatory functions.

Alternative 1, which maintains the current structure without any modification (except for elimination of the responsibility for OSHA compliance) must be considered as a possible alternative. On the basis of our review of the current system, we have concluded that it is sound under the current structure. However, if Alternative 1 were chosen, a number of employers and employees would continue to be dissatisfied with the system because of the absence of an effective communications link with the NIC. As indicated previously, this deficiency leads to misunderstandings and assertions that performance is poor and NIC activities are not monitored closely.

Alternative 2 maintains the current NIC structure, but makes it more visible to the public. On the basis of our review of the NIC, we consider the existing level of service provided to employers and employees to be commensurate with the resources allocated to provide such service. The NIC is a cost-efficient operation that has minimized expenditures necessary for effective communications. Employers, employees, and the legislature expect the NIC to perform as an efficient and effective business. If these expectations are to be realized, sufficient resources must be allocated to carry out all the essential business functions including communications with the system's stakeholders. Just as a corporation must communicate with those who are affected by its success or failure, the NIC must communicate with Nevada employers and employees.

The need to communicate is not satisfied by merely issuing reports and holding meetings on a sporadic basis. To be effective, the communications effort must aim at maintaining an appropriate flow of relevant information to employers, employees, legislators, and others. On the basis of the information communicated, interested parties should be able to develop an understanding of the NIC and evaluate NIC performance in carrying out its service functions. To understand the NIC, technical subjects such as rate making, reserving, premium and classification determination must be explained. Such communication should lead to a reduction in disputes about premiums and reserve levels. If the NIC's performance is to be evaluated, objective standards must be developed and performance measured against these standards. The results must then be communicated. Measurement of performance against objective standards can promote effective performance. Communications of the results of this process can serve as a monitoring mechanism. An annual report focusing on underwriting performance, investment performance, changes in reserve

levels, and measurement of service functions against objective standards should be prepared and reviewed at an annual meeting.

We consider the absence of an effective communications unit to be a major weakness of the current structure. It is important for a communications unit to be developed irrespective of whether Nevada maintains an exclusive state fund, permits self insurers, or permits self insurers and private carriers. In view of this, all alternatives considered in the remainder of this chapter will assume that a communications unit is in place. Alternative 2 is considered superior to Alternative 1 because of the weak communications function under the current system.

The communications unit should use professionals so that maximum effectiveness is achieved. Initial funding of this function should be in the range of 0.5% to 0.75% of premiums. The individual responsible for this unit would coordinate the communications activities discussed above and take the initiative in providing accurate and timely information to employers, employees, the media, and government agencies. He would also have the responsibility for responding to comments made in the media and monitoring complaints received by the NIC.

Alternative 3 is identical to Alternative 2 except that the state insurance department is given responsibility for approving premium rates. This alternative must be considered in view of current perceptions about premium levels. As indicated in Chapter IV, we do not consider the current premium level to be unreasonable. However, before determining whether the insurance department should be given responsibility for approval of rates, it should be decided whether this function is even necessary where the sole insurer is the monopolistic state fund. In general, if the rate determination process is fair and equitable, is communicated to and understood by employers, there is little need to establish a rate approval function within any state agency. Even if only one of the above elements is missing, suspicion is engendered and discontent results. The process used to determine rates for workers compensation is rather unique and expertise in this area is not readily available. In view of this, establishing a rate approval function to oversee the rate determination process would appear to be an option considered only as a last resort, after other solutions have been unsuccessfully attempted. The better solution would be to improve the methods used to communicate the rate determination process to employers as suggested under Alternative 2. In our view, the current process is fair and equitable. If it is finally determined that the rates are unreasonable and that the process cannot be effectively communicated and understood, then the establishment of an approval function might be considered a viable solution. To implement such a solution without a real attempt to communicate the process would be premature. Accordingly, Alternative 2 is considered to be better for Nevada than Alternative 3.

Alternative 4 is based on a complete restructuring of the current system with the insurance functions separated from the regulatory functions. The benefits said to be associated with this configuration are:

- Increased opportunity to select a professional insurance manager to be responsible for the insurance function because it is separate from the political orientation of the typical regulatory agency.
- Elimination of a conflict of interest in adjudicating issues that arise when the insurance functions and regulatory functions are combined.
- Potential improvements in efficiency achieved through monitoring by an outside agency.

However, it is unlikely that these suggested benefits would be realized if the Nevada system were restructured.

On the basis of our analysis, the current insurance and regulatory functions are competently performed. We consider this to be a direct result of a legislative enactment that specified the qualifications that the commission chairman must have. Specifically, "the chairman ... shall have not less than 5 years actuarial experience and shall have a degree of master of business administration or experience deemed equivalent to that degree." Thus, the Nevada Industrial Commission is significantly different from the typical regulatory agency; consequently, the benefit to the system mentioned above that might apply to the typical regulatory agency is not applicable in the case of Nevada.

Although the potential for a conflict of interest exists when the insurance functions and regulatory functions are combined, we have not found any evidence suggesting that there is an actual conflict of interest within the NIC. Initial determinations made by staff members or by the employer accounts department have on occasion been changed by the hearing examiner. Similarly, a number of decisions made by the hearings examiner have been changed by the Commissioners. At each level within the Commission, the personnel involved are instructed to be objective in making their own determinations and to avoid being influenced by decisions made by other NIC employees. If decisions made at one level within the NIC were always confirmed upon appeal to another level within the NIC, then there would be justification to suggest that conflicts of interest were influencing decisions. However, decisions made at one level are on occasion reversed upon appeal to another level within the NIC. Also, the legislature, anticipating charges of conflict of interests in the adjudication process has provided that the appeals officer be appointed by the governor. The appeals officer is not an employee of the NIC and, in fact, the Nevada statutes stipulate that "If an appeals officer determines that he has a personal interest or a conflict of interest, directly or indirectly, in any case that is before him, he shall disqualify himself from hearing such case ..." In summary, we have not seen any evidence of conflict of interest, the current NIC system is structured to avoid such conflicts, and the prevailing attitude within the NIC is such that decisions made at one level can be reversed on appeal if an objective evaluation indicates that this should be done.

There is no reason to expect that the potential increased efficiency that might be achieved by having an outside agency monitor the insurance functions will be greater than that achieved by setting standards, measuring performance against these standards, and communicating the results to employers, employees, and legislators.

On the basis of above analysis, Alternative 2 is selected as the optimal exclusive state fund structure over Alternative 4. The credentials that the Chairman must possess help to assure that the appointee is a professional insurance manager. The prevailing attitude within the NIC, the independent appeals officer function and the reversal of decisions within the NIC suggest that the issue of possible conflicts of interest within the current Nevada workers' compensation system should be of minimal concern. The use of standards to measure performance and the communication of the results should be sufficient to generate improved efficiencies.

Two-Way System Alternatives

The two-way system alternatives selected for analysis can be characterized as follows:

- Alternative 5: A structure similar to the optimal exclusive state fund structure (Alternative 2), including the development of objective performance standards and the establishment of a communications unit. The NIC to be responsible for qualifying and monitoring the financial condition of self insurers.
- Alternative 6: A structure similar to Alternative 5, except that the state insurance department would be responsible for qualifying self insurers and monitoring their financial condition.
- Alternative 7: A complete restructuring of the NIC, with a state compensation fund being set up to perform the insurance functions and the state industrial commission responsible for the regulatory functions.

Alternative 5 would involve an expansion of the functions defined under the optimal exclusive state fund structure. The NIC would be responsible for monitoring the service performance of the self insurers. The NIC would also be responsible for qualifying self insurers and monitoring their financial condition. To minimize concerns about a potential conflict of interest in carrying out the monitoring functions, the standards used by the NIC to monitor self insurers' performance should be the same standards used by the NIC to measure the performance of the NIC insurance functions. It would not be equitable to the self insurers for the NIC to use more stringent performance standards than those used to monitor its own performance. Also, it would not be fair to employees of self insurers to use less stringent performance standards.

The standards used by the NIC to determine whether an employer is eligible to self insure should be developed based on an actuarial analysis of the risk involved. The standards in other states should be considered as a part of the overall analysis. These standards should be public knowledge so that charges of conflict of interest are minimized. In a similar fashion, standards to be used in monitoring the ongoing financial condition of self insurers should be developed and communicated. Finally, the treatment of self insurers by the NIC should be compared with the treatment of employers who insure with the NIC and this comparison made public to ensure that both groups are treated equitably.

Alternative 6 is based on the same structure as that described for Alternative 5, except the state insurance department would be responsible for qualifying self insurers and monitoring their financial condition. It has been suggested that the NIC would not be objective when determining whether an employer should be allowed to self insure or when reviewing the financial condition of existing self insurers. For this reason, the state insurance department might be considered an appropriate agency to perform these functions. However, it would first be necessary for the insurance department to develop expertise in workers' compensation. Also, the claim liabilities under workers' compensation can change rapidly as a result of legislative changes, judicial interpretation of the law, and economic cycles. In view of this, the entity responsible for qualifying self insurers and monitoring their financial condition should be sufficiently familiar with trends and developments within workers' compensation that such entity can anticipate these trends when performing the qualifying and monitoring functions. Consequently, we would consider it to be inappropriate to have the insurance company responsible for regulating self insurers. The NIC is deeply involved in workers' compensation on a fulltime basis and as a result is better equipped to perform the necessary analysis for qualifying and monitoring the financial condition of self insurers. If objective standards are used to perform this function, there should be a minimal amount of concern about conflicts of interest. Thus, Alternative 5 is selected as being more suitable for Nevada than Alternative 6.

Alternative 7 would involve a complete restructuring of the NIC. A state compensation fund would be established with the insurance functions being separated from the regulatory functions. This would be desirable if:

- A conflict of interest existed between the insurance functions of the NIC and the regulatory functions.
- Self insured employers and their employees were treated differently from the employers who insured with the NIC and their employees.
- The standards used for monitoring self insurers were different from those used to monitor the insurance functions of the NIC.
- A conflict of interest existed between the insurance function of the NIC and the function responsible for qualifying and monitoring the financial condition of self insurers.

Following is a brief discussion of each item listed above to determine whether a complete restructuring of the NIC would be necessary under a two-way system. Analysis under Alternative 4 suggests that there is no indication that a conflict of interest exists between the insurance functions and regulatory functions of the NIC. As suggested under Alternative 5, a comparison of NIC's treatment of self insurers with its treatment of employers insured with the NIC could be made to ensure that the two groups of employers receive equal treatment. As indicated under Alternative 5, the use of identical standards for monitoring performance of self insurers and the NIC insurance functions eliminates the concern that different standards are used. Also, under Alternative 5, the standards to be used to quality self insurers and monitor their performance would be public knowledge to minimize concerns about conflicts of interest.

From the above analysis, Alternative 5 is selected over Alternative 7. Alternative 5 involves a minimal amount of restructuring and is more efficient. Concerns about conflicts of interest and inequitable treatment can be minimized under Alternative 5 by measuring performance, comparing performance, communicating the results of these measurements and comparisons, and by publicizing the standards to be used when qualifying self insurers and monitoring their financial condition.

Three-Way System Alternatives

The three-way system alternatives selected for analysis can be characterized as follows:

- Alternative 8: NIC continues to be responsible for the insurance functions of the state fund, the regulatory functions, and for qualifying self insurers and monitoring their financial condition (similar to Alternative 5). The insurance department would be responsible for qualifying private carriers, monitoring their financial condition, and approving private carrier premium rates, in addition to its normal regulatory functions.
- Alternative 9: A complete restructuring of the NIC, with a state compensation fund being set up to perform the insurance functions and the state industrial commission responsible for the regulatory functions. The state insurance department and the state industrial commission to regulate the state compensation fund as if it were a private carrier. A rating bureau to be established.

Alternative 8 would minimize the additional expense associated with a three-way system. The competitive environment would be responsible for promoting efficient performance of the employer and employee oriented service functions. The state industrial commission and the state insurance department would be responsible for the monitoring functions. However, the insurance functions of the state industrial commission would not be subject to review by the state insurance department. Self insurers would continue to be regulated by the state industrial commission.

Alternative 9 would involve a complete restructuring of the NIC. A state compensation fund would be established. This fund and private carriers would be regulated in the same manner by the state industrial commission and by the state insurance department. A rating bureau would be used to establish premium rates. Self insurers would be regulated by the state industrial commission (as in Alternative 8).

In choosing between Alternative 8 and Alternative 9, the key factor is the degree to which competition (responsible for promoting effective performance) would operate under each alternative. If Alternative 8 were selected, competition might be impaired because the insurance fund under the state industrial commission would be perceived as having a competitive advantage over private carriers. The source of this perceived competitive advantage would be the absence of state insurance department regulation over the state insurance fund and the potential conflict of interest that is inherent, in the private carriers' view, when responsibility for regulatory functions and insurance functions is assigned to the same agency. This perceived advantage could reasonably be expected to cause a number of private carriers to minimize efforts directed at entering the Nevada market, thus leading to a less competitive environment. Alternative 9 eliminates the perceived competitive advantage of the state compensation fund and enhances the competitive environment. Private carriers would perceive the state compensation fund as competing on an equal basis under this alternative and would be expected to aggressively enter the market. Alternative 9 is selected over Alternative 8 because the more competitive environment associated with Alternative 9 should encourage a higher level of performance by private carriers and the state compensation fund.

VII SELECTION OF THE BEST SYSTEM

Introduction

Optimal structures for an exclusive state fund system, a two-way system, and a three-way system have been defined in Chapter VI. Selection of the best system from among these three structures will be made by first evaluating whether the optimal exclusive state fund structure should be expanded to accommodate self insurers. Then, the potential impact of allowing private carriers to enter the market will be analyzed to determine if the system should be completely restructured in order to allow their entry.

Self Insurance Analysis

The basic issues that must be addressed when considering whether employees should be permitted to self insure workers' compensation in Nevada are:

- The fundamental question of equity
- The impact on safety programs
- The impact on the benefit delivery system
- The impact on rehabilitation
- The qualification and monitoring of self insurers' performance.

The expansion of the system to include self insurers would not require a substantial restructuring of the NIC, but rather a broadening of the existing structure to accommodate the additional administrative tasks associated with self insurers.

The objective of pricing methods being used by the NIC is to charge each employer with his "fair" share of the costs for workers' compensation. In addition, the Experience Rating, Retrospective Rating, and Self Rating plans all have been developed by the NIC to allow employers to choose the pricing method that best accommodates their risk aversion preference. Thus, the current pricing structure is equitable not only in terms of attempting to have each employer's costs reflect his expected loss, but also by allowing each qualified employer to select a rating plan that reflects to some extent the degree of risk he is willing to take.

It is apparent from this that the NIC and the legislature have developed a flexible pricing structure that is based on the concepts of equity and employer attitudes toward risk as opposed to social adequacy (a pricing structure based on social adequacy concepts purposely involves

some employers subsidizing other employers). Expansion of the system to permit self insurance for qualified employers is a natural extension of those concepts. However, before such an expansion can be contemplated, the impact on employees must be considered. The expansion would be unacceptable if it resulted in a reduction in safety activities, in a less effective rehabilitation program, or in a deterioration in the benefit delivery system.

If an employer is to be allowed to self insure, he must be required to have a sound safety program and a rehabilitation program that is at least equal to the program provided by the NIC. An inherent characteristic of self insuring workers' compensation is that it provides a substantial incentive for developing effective safety and rehabilitation programs because accident costs are felt directly and immediately. An information system must be established so that the effectiveness of these programs can be evaluated. The NIC should be responsible for monitoring the self insurer's performance in these areas and be empowered to take appropriate action if an employer's safety and rehabilitation programs are not adequate. If these steps are taken, concerns about inadequate programs in these critical areas would be minimized.

The self insurer should be able to deliver benefits to the insured worker faster than any other insuring entity because the need to communicate with outside parties (e.g., a private carrier or the state fund) is minimized. However, to ensure that employees are being fairly treated, it is necessary to monitor the benefit delivery system. Accordingly, self insurers should be required to provide the NIC with data that can be used to monitor performance. If the NIC is given the authority to take action against self insurers who do not have effective benefit delivery systems, the employees' interests should be adequately protected.

From the above, it is obvious that a critical role would be played by the NIC if self insurance were permitted. To ensure that the rights of employees are protected, the NIC must have the responsibility for monitoring the self insurers' administration of the workers' compensation program together with their financial stability. These functions must be supported by granting the NIC the power to take appropriate action if the administration functions are not performed adequately or if a self insurer's financial condition deteriorates. In addition, the NIC must be responsible for evaluating the financial stability and other characteristics of prospective self insurers to determine whether they have the capability of self insuring a workers' compensation program.

On the basis of our analysis, we believe that the Nevada workers' compensation system should be expanded to include a self insurance option for qualified employers. This expansion will lead to greater equity for Nevada employers. Through the self insurance mechanism, employers should be motivated to place increased emphasis on safety and rehabilitation programs because of their direct and immediate impact on employer costs. Increased sensitivity to the value of safety and rehabilitation will also have a beneficial impact on employees. To ensure that employees are not adversely impacted by a self insurance option, the NIC should be given

responsibility for qualifying self insurers and monitoring their continued financial stability, together with their administration of the workers' compensation program. At the outset, sufficient time (e.g., 12-18 months) should be allowed before qualified employers are permitted to commence self insurance programs so that regulations and systems can be developed in an orderly fashion.

Private Carrier Analysis

To determine whether private insurance carriers should be permitted to write workers' compensation in Nevada, it is necessary to consider the impact on costs and benefit levels. Assuming private carriers' expenses are equal to the typical expense loadings built into their rates, they would incur, on average, $31.38 in expenses for each $100 in benefits they would pay, whereas the NIC would incur $12.79 for each $100 of benefits. Table 8 compares the average cost to employers for $100 in benefits with the NIC providing coverage and alternatively with private carriers providing the coverage.

Table 8

COSTS PER $100 OF BENEFITS
(Dollars)

	NIC	NCCI
Benefits	100.00	100.00
Expenses	12.79	31.38
Carrier profit	--	3.90
Employer cost before dividends	112.79	135.28
Less		
Dividends	--	8.85
Investment income	8.26	--
Total	104.53	126.43

Table 8 shows that for every $100 in benefits, the net cost to the employer under NIC would be $104.53 compared with the $126.43 estimated for an employer with a private carrier. That the average cost to employers who insure with private carriers is expected to be 21% higher than the average cost to employers who insure with the NIC reflects a number of factors including:

- A portion of investment earnings is retained as profit by the private carriers.
- The cost of the sales and servicing system is higher.
- The private carriers have an underwriting profit objective of 2.5% of premium, whereas the NIC has no profit requirements.
- The surplus requirements for private carriers is substantially higher.

Even representatives of the private carriers agree that the employer's cost per $100 of benefits would be higher if private carriers were used instead of the NIC. However, it is the private carriers' position that utilization of their resources and expertise will result in a reduction in benefit costs to a level that will justify the additional expenses associated with their approach. Based on the above analysis, private carriers must achieve a $17 reduction in benefit costs for every $100 in benefits currently paid under the NIC if entry of private carriers is to be cost effective. The prospects for achieving such an impact on benefit costs should be assessed carefully.

The major insurer functions aimed at a reduction in benefit costs described above are:

- Development and promotion of safety programs.
- Operation of a benefit delivery system with the objective of limiting payments to the amount to which a claimant is entitled.
- Development and promotion of rehabilitation programs.
- Representation of the employer during the appeals process.

In Nevada, the NIC is currently responsible for carrying out these functions. If private carriers entered Nevada, they would assume these responsibilities for their customers. The private carriers' ability in performing these functions would have to be far superior to that of the NIC to result in a reduction in benefit cost equivalent to the projected increase in expense of $21.90. However, there is no compelling basis to expect that private carriers would be able to exceed the present performance level of the NIC to the extent that a reduction in benefit costs of this magnitude would be realized. Assuming the NIC's performance will be improved as a result of recommendations made in this study, the size of the required reduction will become even larger. The benefits of having a major rehabilitation facility convenient to the injured worker would be difficult for private carriers to match. Eliminating the responsibility for OSHA compliance as recommended will improve the performance of the NIC safety consulting function and will result in a direct and positive impact on benefit costs under the present system. The measurement of performance against objective standards and the communication of the results, as recommended, should raise the performance of those functions aimed at a reduction in necessary benefit costs through improved safety, more effective treatment of the injured worker, and a fair representation of the employers' interests during the appeals process.

On the basis of the above, we consider it unreasonable to expect private carriers to develop and implement programs that would result in a $17 reduction in benefit costs for every $100 in benefits currently paid. In addition, other considerations must be taken into account when contemplating the possible entry of private carriers.

It is suggested that private carriers will be more effective in the resolution of classification, rate, and reserve disputes, as well as in maintaining adequate communications with employers and employees. Recommendations for improving communications concerning the many facets of NIC are included in this report. In a large number of cases, disputes are the result of a lack of complete knowledge engendered by an inadequate communications effort by the NIC. Improved communications should lead to the effective resolution of many disputes without having to delegate responsibility for communications to the private carriers.

An important function that has received only a minimal amount of attention in discussions to date is the investment function. Successful investment performance by the NIC can have a major impact on minimizing the Nevada employers' workers' compensation costs. The performance level of the NIC investment portfolio can be evaluated and direct action can be taken if performance is not adequate. Not only is it difficult to evaluate or influence the investment performance of private carriers, but that performance has no effect upon their rates and only a modest effect on employers' workers' compensation costs.

A number of monitoring functions can effectively be coordinated with the insurance functions under one agency as long as the system operates in a noncompetitive environment. These functions include:

- Monitoring the benefit determination process
- Monitoring the benefit delivery system
- Monitoring rehabilitation effectiveness
- Monitoring compliance with workers' compensation regulations
- Qualifying and monitoring the financial condition of self insurers.

If private carriers are permitted to enter Nevada, these monitoring functions would have to be separated from the insurance functions of the state fund, resulting in a loss in efficiency and an increase in administrative expenses. A loss in the effectiveness of the monitoring process could also result because the entities being monitored would be widely dispersed. As suggested previously, establishing objective standards, measuring performance against these standards and communicating the results of this process should be an effective self monitoring device that can work well in the Nevada environment.

If private carriers were permitted to write workers' compensation in Nevada, provision would have to be made to establish the following functions:

- Regulation of competitive practices
- Assurance of availability of coverage
- Approval of rates.

Additional expenses are associated with each of these functions. No positive benefit is derived from the first two functions because they are necessary only to prevent possible market disruptions. The rate approval function is considered by some parties to be required even if private carriers do not enter the market. As indicated previously, there will be little need to establish such a function if an effective communications function is developed.

Thus, when the system is considered in its totality, there is no reason to expect that, at the present time, private carriers could add value to the workers' compensation system to a level commensurate with the additional costs involved. Nevertheless, if permitting private carriers to enter Nevada would reduce the costs for certain groups of employers, there could be some basis for considering their entry. This does not appear to be the case for groupings of employers by size of premium. Table 9 compares the premium under the current NIC with an estimate of the premium if private carriers were providing the insurance for 18 such groups. The table also sets forth the percentage increase in premiums, for a size distribution of employers by premium range, if private carriers' cost structures were applied to workers' compensation in Nevada. Sixty percent of Nevada's employers are included in the size groupings that would experience a 23% or greater increase in premiums. Note that all of Nevada's employers would experience at least a 10% increase if the cost structure of private carriers were applied.

Although the competitive outcome between the NIC and private carriers (if the latter were permitted to enter) cannot be foreseen, it is highly probable that such entry would increase costs for the NIC and might push the private carriers to lower their costs somewhat. The tradeoff that Nevada employers would have to make, however, is in deciding whether the value added by private carriers in the services they would offer and in the possible favorable future impact of programs they would develop is worth the additional premiums employers would be required to pay. The difference in the cost structure is impressive. Even at a much lower differential, it would be very difficult to justify upsetting the organized approach to workers' compensation that the State of Nevada has achieved.

Table 9

COMPARISON OF PREMIUMS

NIC VERSUS PRIVATE CARRIERS

Annual Premium Range (dollars)	Number of Employers	Average Annual Premium (dollars)			Percentage Increase If Private Carriers Are Used	
			Private Carriers			
		NIC	Before Dividend	After Dividend*	Before Dividend	After Dividend*
Less than $500	14,235	117	158	148	35.0	26.5
500 to 1,000	2,743	744	918	858	23.4	15.3
1,000 to 2,000	2,505	1,445	1,721	1,608	19.1	11.3
2,000 to 3,000	1,242	2,466	2,911	2,721	18.0	10.3
3,000 to 4,000	705	3,555	4,209	3,934	18.4	10.7
4,000 to 5,000	473	4,514	5,330	4,981	18.1	10.3
5,000 to 10,000	1,132	7,051	8,361	7,814	18.6	10.8
10,000 to 15,000	426	12,420	15,333	14,330	23.5	15.4
15,000 to 20,000	232	17,203	22,196	20,744	29.0	20.6
20,000 to 30,000	240	24,750	32,743	30,601	32.3	23.6
30,000 to 40,000	128	35,531	47,107	44,025	32.6	23.9
40,000 to 50,000	73	44,507	59,236	55,361	33.1	24.4
50,000 to 60,000	35	55,686	74,268	69,409	33.4	24.6
60,000 to 70,000	34	65,529	87,673	81,937	33.8	25.0
70,000 to 80,000	22	75,955	101,849	95,186	34.1	25.3
80,000 to 90,000	20	88,200	118,579	110,821	34.4	25.6
90,000 to 100,000	19	97,684	131,675	123,061	34.8	26.0
Greater than 100,000	144	260,410	348,130	325,355	33.7	24.9
Total	24,408					

*Assumes a 7% dividend uniformly spread over all premium size groups.

In summary, we recommend that Nevada permit self insurance and structure the system to conform with the optimal two-way system defined earlier in this report. We do not consider a three-way system to be appropriate for Nevada at the present time because:

- There is little reason to expect private carriers to be able to add additional value to the system to offset the additional cost they would require.
- Development of an effective communications function should result in improved performance by eliminating sources of misunderstanding and by resolving disputes, thus obviating the need for an insurance agent to perform this function.
- Maintaining local control over the investment portfolio within the NIC enables employers to have a greater impact on investment policy and performance.
- The full amount of investment income on required reserves can be captured for use within the Nevada workers' compensation system by continuing to use the NIC as the insurer.
- The monitoring functions can be effectively and efficiently performed by the NIC by establishing standards, measuring performance against these standards, and communicating the results of this process. The monitoring functions would have to be separated from the insurance functions if private carriers entered the market, resulting in an increase in administrative expense.
- The entry of private carriers would require additional supervisory functions to be established to perform preventive as opposed to positive oversight functions.

VIII CONCLUSIONS AND RECOMMENDATIONS

Introduction

The conclusions and recommendations that follow summarize the foregoing analysis. It is critical in reading these recommendations to understand that they are being made after an analysis of the present Nevada environment and the NIC structure and operations. They are based on the realities of the existing circumstances, the existing NIC structure, and the alternatives available. That is, they are "Nevada specific" and evolutionary. They have been made to present an effective forward step in Nevada's pursuit of fairness and efficiency for its workers' compensation system.

Conclusions and Recommendations

Our analysis determined that the State of Nevada has developed a sound and well run workers' compensation system including the insuring function that is fundamental to its success. Invariably, opportunities exist to improve the operations of any system and any insurer. The insurance operations of the NIC are no exception; value can be obtained from certain structural and operational improvements. To ensure that such improvements are made, it has been suggested that private insurance carriers be permitted to write workers' compensation insurance in Nevada in competition with the NIC. Our analysis indicates that, although the desirability of doing this at some time in the future is not impossible, the interposition of private insurance carriers is currently neither necessary nor desirable, and the appropriate improvements can be accomplished without their presence.

> Recommendation No. 1: The State of Nevada should continue to support improvements in its current workers' compensation system. Current NIC efforts aimed at upgrading the system's performance should be encouraged so that maximum efficiency and effectiveness can be achieved. The State should not permit the entrance of private insurers for purposes of writing workers' compensation insurance at this time.

Because of the increasing numbers of large employers in Nevada, it is now appropriate to expand the existing system to accommodate self insurers. Employers who prefer self insurance and have the financial resources commensurate with the risk involved should be given the opportunity to self insure. Self insurance for workers' compensation and for other risk exposures is now broadly used and well understood across the United States. However, in order to assure that benefits will be delivered in accordance

with workers' compensation statutes, provision must be made for qualifying self insurers, as well as for supervising and monitoring their performance. To the extent that expansion of the Nevada system to include self insurance is carefully planned and phased in over a reasonable time period, the expansion will be successful. Permitting employers to commence self insurance within the next 12 months, however, would not allow sufficient time to establish the necessary structure for qualifying, regulating, and monitoring these insurance activities. In view of the amount of preliminary work required, a period of 12-18 months is necessary if expansion of the system is to be implemented with a minimum amount of disruption.

> Recommendation No. 2: Enabling legislation should be passed to allow the Industrial Commission to develop regulations permitting qualified employers to self insure. These should be developed after a review of self insurance regulations in other states. The Industrial Commission should continue to be responsible for regulating and monitoring the activity of self insurers. Regulation by the Insurance Department is unnecessary, impractical, and would be redundant. A target date after which self insurance will be permitted to qualified employers should be established. This date should be between April 1, 1980, and October 1, 1980, in order to allow sufficient time to develop the necessary regulations and functions.

NIC's responsibility for OSHA compliance enforcement has generated a substantial amount of ill will toward the NIC. Criticisms that should more properly be focused on those responsible for the excessive amount of OSHA regulation have had a detrimental effect on NIC's safety consulting function.

> Recommendation No. 3: The OSHA compliance function should be completely separated from the workers' compensation system. Consideration should be given to placing this function under the State Labor Commission, locating it elsewhere within the state government, or returning it to the Federal Government.

Employers, employees, and the legislature expect, and have the right to expect, the NIC to perform as an efficient and effective business. If these expectations are to be realized, the NIC must allocate sufficient resources to carry out those functions that are essential for the conduct of a well run business. Included among the many necessary functions is communications with its stakeholders. Just as a corporation must communicate with those who are affected by its success or failure (e.g., its shareholders and its customers), the NIC must communicate with Nevada employers and employees. This effort cannot be sporadic if it is to be effective. Rather, a communications program aimed at maintaining an appropriate flow of relevant information to employers, employees, and others is required if the NIC is to function efficiently.

Recommendation No. 4: A unit should be established to have sole responsibility for public communications. In order to be effective, sufficient resources must be allocated to support this unit and communications professionals utilized. Initial funding should be in the range of 0.5% to 0.75% of premiums. The individual selected to direct this unit should take the initiative in providing accurate and timely information to employers, employees, the media, and government agencies. Duties should also include responding to comments made in the media and monitoring complaints received by the NIC.

A number of issues that have been raised in connection with the NIC have been based on misunderstanding. This is not at all surprising because frequently complex and highly technical concepts are involved. For example, to understand how rating classifications are determined, some knowledge of credibility theory is necessary. Another complicating factor is the widely diversified knowledge base of the audience to which explanations are directed. For example, if a program were developed to explain the method being used to establish reserves, to be effective it must be aimed at an audience that might contain a general manager, a comptroller, a personnel manager, and a risk manager, all from separate companies.

Recommendation No. 5: A series of information circulars should be prepared that provide nontechnical explanations of the rate making, reserving, premium, and classification determination processes. These should be distributed at periodic intervals and a workshop held in Carson City and Las Vegas after each distribution. Each employer desiring to attend a workshop must notify the NIC and submit specific questions in advance. The workshops should then be designed around the specific interests of the attendees.

A relatively large amount of criticism has been directed at the NIC despite responsible and capable management. This criticism is the result of a combination of factors that include: inability to communicate effectively, responsibility for OSHA compliance, and the lack of objective standards against which performance can be measured. Establishing a communications function and transferring the responsibility for OSHA compliance as recommended earlier should eliminate the first two causal factors. However, the NIC will continue to be subject to criticism until performance standards for each of the major NIC functions are set, performance is measured against these standards, and the results communicated to the public. An alternative approach for ensuring adequate system performance has been suggested by various parties. It involves the separation of the NIC's insurance functions from the monitoring and supervisory functions related to administering the workers' compensation law. Although, on the surface, this would appear to be a viable method, currently it would lead to a less efficient system.

Recommendation No. 6: A committee composed of members representing employers, employees, the NIC, the insurance industry, and the Department of Labor should be established on an ad hoc basis to develop standards against which the performance of the various service operations should be measured. A procedure should be established to review and update these standards periodically.

Recommendation No. 7: An annual report should be prepared to communicate both financial and operational performance. The financial aspects of the report should focus on underwriting performance, investment performance, and changes in required reserve levels. The operational performance section of the report should measure actual experience against the standards established in the previous recommendation.

Recommendation No. 8: An annual meeting should be held in Carson City and Las Vegas to review the year's operations by focusing on the above items, to highlight anticipated problems, and to solicit comments from employers and employees.

The NIC has properly refused to respond to pressure in carrying out its fiduciary responsibilities. For example, the 1971 decision to act decisively to strengthen reserves was unpopular with a number of influential employers, yet proper if NIC management is to operate a fund that is fiscally sound. The NIC's fiscal notes, required to be attached to proposed legislation, are developed on an objective evaluation of available relevant data, often with the help of outside, independent consultants. Such efforts may result in a conclusion by the legislature that certain benefit increases are too expensive and may generate substantial criticism of NIC from various interest groups.

Recommendation No. 9: The requirement that fiscal notes be developed before proposed workers' compensation legislation is given serious consideration must be adhered to if costs and benefits are to remain at reasonable levels.

Since the 1972 Legislative Commmission Study of the NIC, the legislature and the NIC have worked in concert to improve the wokers' compensation system in Nevada. This combined effort has resulted in an active organization that has responded responsibly and effectively to emerging problems and trends. For example, the need to improve the financial structure was recognized and rates were increased accordingly despite pressure being exerted to ignore the problem. Also, the variety of rating plans available to employers has been constantly expanding with the introduction of the Self Rating Plan in 1974, the Retrospective Rating Plan in 1978, and periodic modification to the Experience Rating Plan. It is inevitable that misunderstandings will arise in connection with the various functions performed by the NIC, but this is not necessarily indicative of mismanagement. In fact, there is no reason to believe that the following functions are not effectively carried out presently: rate making, reserving, determining premiums and classifications, investigating and adjudicating claims,

determining and delivering benefits, and performing medical and vocational rehabilitation. When the Nevada system is considered objectively, it must be considered to be sound and generally responsive to employers and employees. This is a direct result of a qualified and motivated NIC staff and an effective legislature. Maintaining and improving the quality of NIC staff requires an objective analysis of the tasks that must be performed by the NIC, the necessary skills required to perform them, and the appropriate incentive structures required to attract and retain personnel with those skills.

Recommendation No. 10: To ensure quality and continuity of the management structure, a study to determine appropriate manpower and compensation levels should be undertaken. This should be conducted for the Commission by an outside independent consulting firm with expertise in this area. To avoid any possibility of self interest in making this recommendation, we further recommend that SRI not be included among the consultants who might be considered to perform this study.

Contract form
- 21.20 -
Associated General Contractors
see p-6 of draft

EXHIBIT G

COMPARISON OF
WORKMAN'S COMPENSATION COSTS
AND BENEFITS

APRIL 1981

PREPARED BY:

THE NEVADA CHAPTER,

ASSOCIATED GENERAL CONTRACTORS

At the request of the Senate taxation committee the following information is furnished:

Exhibit "A" shows rates in California, Arizona, and Oregon in comparison with Nevada rates. A few major classifications are excerpted below as examples:

CLASSIFICATION	NEVADA	CALIFORNIA	ARIZONA	OREGON
Auto Dealers	3.15	4.15	7.47	8.22
Cattle Feed	7.58	15.59	16.39	16.94
Hotels	4.33	6.08	3.99	7.01
Structural Steel	12.09	16.55	32.23	30.35
Trucking	6.76	11.43	18.65	14.52
Warehouse	3.78	8.60	7.90	9.57

Several sources have stated that Nevada rates fourth or fifth nationally in benefits.

Some of the testimony from the insurance industry has indicated that the premiums in Oregon are high because the benefits in Oregon are among the highest in the nation.

*A comparison of selected benefits for Nevada and Oregon appears below:

LOSS OF	NEVADA	NEVADA TO AGE 65	OREGON
Arm at Shoulder	$47,755	$148,998	$19,000
Hand	$42,980	$134,098	$15,000
Thumb	$19,510	$54,632	$4,800
Leg at Hip	$36,612	$114,231	$15,000

LOSS OF	NEVADA	NEVADA TO AGE 65	OREGON
Foot	$22,286	$69,532	$13,500
Hearing, Both Ears	$27,857	$86,915	$19,200
Temporary Total Disability (T.T.D.)	$1,061 (mo.)		$1,137 (mo.)
Burial Benefits	$2,500		$1,000
Fatal Widow with Children	$1,061		$1,137
Fatal Widow without Children	$1,061		$568

*Source: U.S. Chamber Analysis of Workmen's Compensation Laws, 1980 Edition.

Also attached is a report prepared by 1975-1977 Oregon Legislature Interim Committee with selections highlighted for easier reading.

EXHIBIT A

RATE COMPARISON CHART

	Nevada 7/1/80	California 1/1/80	Ratio of Calif. to Nevada Rate	Arizona 9/1/79	Ratio of Ariz. to Nevada Rate	Oregon 7/1/80	Ratio of Oregon to Nevada Rate
Attorney's Offices	$ .42	$ .43	102%	$ .48	114%	$ .49	117%
Auditors, Accountants	.42	.42	100%	.48	114%	.68	162%
Automobiles or Auto Truck Dealers, except salesmen	3.15	4.45	141%	7.47	237%	8.22	261%
Automobiles and Auto Truck Salesmen	3.15	1.25	40%	1.94	62%	1.26	40%
Auto or Auto Truck Dismantling	12.09	11.43	95%	22.82	189%	A	--
Auto Repair Shops	4.16	6.05	145%	6.08	146%	8.22	198%
Auto Service Stations	4.16	6.05	145%	6.08	146%	6.89	166%
Bakeries	3.35	5.41	161%	6.46	193%	7.34	219%
Banks, except clerical employees	.70	.70	100%	.61 to 7.24	87-1034%	1.05 to 6.93	150 to 990%
Banks, clerical employees	.42	.70	166%	.48	114%	.49	117%
Barber Shops	.70	1.01	144%	.97	139%	1.70	243%
Beer or Ale Dealers Wholesale	3.62	10.38	287%	5.77	159%	6.90	191%
Blacksmithing	4.37	13.30	304%	11.51	263%	11.03	252%
Bottling Beverages	3.35	5.92	177%	6.61-12.00	197-358%	7.84-8.06	234 to 241%
Bridge Building, Metal	12.09	13.76	114%	32.23	267%	30.35	251%
Building Material, Lumberyards	5.02	6.66	133%	10.10	201%	9.12	182%
Building Material Dealers, New	5.02	6.66	133%	4.52	90%	4.56	91%
Building Material Dealers, Second Hand	5.02	10.17	203%	18.93	377%	16.09	321%
Building Raising or Moving	12.09	19.05	158%	31.11	257%	34.27	283%
Building Operation by Contractors or Owners	4.43	7.68	173%	7.24	163%	6.93	156%
Bus Operations	4.60	7.08	154%	8.53	185%	11.25	245%
Limousine Operations	4.60	7.08	154%	8.53	185%	11.25	245%
Bus or Limousine, Garage Employees	4.60	7.08	154%	7.74	168%	6.68	145%
Butchering, including Handling of Livestock	7.58	11.44	151%	15.11	199%	14.77	195%
Cabinet Works, Furniture Manufacturing	7.40	9.06	122%	11.43	155%	12.56	170%
Carpentry, shop only	7.40	9.06	122%	8.04	109%	9.60	129%
Carpentry, Construction or Remodeling of Dwellings	8.57	8.62	101%	9.43-10.62	110-124%	8.20-13.00	96 to 152%
Carpentry, N.O.C.	8.57	10.30	120%	18.94	221%	16.99	187%

A = Variable rate assigned by Rating Bureau.

1029

	Nevada 7/1/80	California 1/1/80	Ratio of Calif. to Nevada Rate	Arizona 9/1/79	Ratio of Ariz. to Nevada Rate	Oregon 7/1/80	Ratio of Oregon to Nevada Rate
Chemical Mfg.	$ 3.59	$ 4.97-9.40	138-262%	$ 4.46 to 21.08	124-587%	$ A	--
Clubs - Country, Golf, Tennis	2.85	4.97	174%	3.46	121%	3.34	117%
Concrete Products Mfg.	4.52	11.46	254%	16.18	358%	15.30	338%
Concrete Construction	range - 4.52 to 12.09	3.88 to 19.24	86% to 159%	7.03 to 16.52	156% to 137%	9.24 to 17.09	204% 141%
Convalescent Homes or Hospitals X	6.93	9.15	132%	5.97	86%	10.38	150%
Dental Laboratories X	.70	1.13	161%	1.19	170%	1.06	151%
Electric Light or Power Companies X	3.15	3.71	118%	6.82	217%	3.89	123%
Power Line Construction	12.09	14.43	119%	21.23	176%	18.65	154%
Electrical Wiring in Buildings	3.26	4.09	125%	7.96	244%	4.22	129%
Engineers & Consulting	1.18	1.12	95%	1.79	152%	3.31	281%
Dairy Farms X	7.58	8.44	111%	11.15	147%	14.50	191%
Cattle Feed Yards X	7.58	15.59	206%	16.39	216%	16.94	223%
Field Crops X	8.24	9.90	120%	6.27	76%	14.50	176%
Sheep and Hog Farms	4.86	7.05	145%	15.92	328%	14.50	298%
Truck Farms	4.86	4.76	98%	3.87	80%	5.77	119%
Feed Mfg.	6.35	7.08	111%	13.46	212%	11.02	174%
Fence Construction/Metal or Wood	8.57	11.09	129%	18.90 to 11.61	221% to 135%	10.49-15.99	122-187%
Fuel and Material Dealers X	5.02	6.66	133%	10.10	201%	9.12	182%
Garbage or Refuse Collection X	8.24	15.57	185%	16.76	203%	13.31	162%
Gasoline or Oil Dealers, Wholesale X	5.02	5.66	113%	11.06	220%	9.39	187%
Glaziers - Shop	3.79	7.30	193%	8.44	223%	7.91	209%
- Outside	3.79	7.97	210%	13.03	344%	8.41	222%
Grading Land	6.71	5.51	82%	7.53	112%	10.31	154%
Hospitals, All Employees	2.63	2.79	106%	2.85-784	108 to 298%	2.42-8.89	92 to 338%
Including Clerical	.42	2.79	664%	.48	114%	.49	117%
Hotels, All Employees	4.33	6.08	140%	3.99	92%	7.01	162%
Including Clerical	.42	.43	102%	.48	114%	.49	117%
Iron or Steel Erection, N.O.C.	12.09	16.02	133%	20.23	167%	21.17	175%
Iron or Steel Erection, Structural Construction of Buildings Over 2 Stories	12.09	16.55	137%	32.23	267%	30.35	251%
Iron Works, Shop, Fabricating	4.37	11.16	255%	14.99	343%	11.41 to 17.11	261 to 392%
Laundries X	3.88	5.75	148%	5.98	154%	6.47	167%

2401

	Nevada 7/1/80	California 1/1/80	Ratio of Calif. to Nevada Rate	Arizona 9/1/79	Ratio of Ariz. to Nevada Rate	Oregon 7/1/80	Ratio of Oregon to Nevada Rate
Machinery Dealers	$ 4.16	$ 7.58 to 6.02	182-145%	$ 7.82	188%	$ 7.72	186%
Machine Shops, N.O.C.	4.94	5.43	110%	8.23	167%	5.42	110%
Mining, Surface	5.25	9.52	181%	6.06	115%	8.59	164%
Mining, Underground	11.05	14.29	129%	23.06	209%	23.95	217%
Surface Employees	11.05	12.20	110%	--	--	--	--
Ore Milling	5.54	9.01	163%	4.87	88%	8.04	145%
Motels	4.33	6.08	140%	3.99	92%	7.01	162%
Motorcycle Dealers	4.16	3.99	96%	7.47	180%	8.22	198%
Clerical Office Employees	.42	.43	102%	.48	114%	.49	117%
Firemen	3.53	11.48	325%	8.32	236%	5.46	155%
Municipal or County Employees, White Collar	2.22 to 2.31	3.06	138% to 132%	1.77	80% to 77%	.49 to 3.06	22% to 132%
Municipal or County Employees, Blue Collar	2.22 to 2.31	9.82	442% 425%				
Policemen, Sheriffs, Constables	3.53	15.01	425%	6.83	193%	5.62	159%
Public Schools or Colleges	.83	1.76	212%	.53 to 5.57	64% to 671%	.56 to 6.96	67% to 1043%
Nursing Homes, All Employees	6.93	9.15	132%	5.97	86%	10.38	150%
Including Clerical	.42	.43	102%	.48	114%	.49	117%
Optical Goods Mfg., N.O.C.	1.11	1.99	179%	1.41	127%	1.76	159%
Painting	7.20	7.56	105%	7.33	102%	12.61	175%
Planing and Molding Mills	7.40	6.30	85%	7.63	103%	10.32	139%
Plaster Mills	4.26	8.00	188%	4.73	111%	5.92	139%
Plastering or Stucco Work	8.57	9.50	111%	11.03-17.12	129 to 200%	13.18	154%
Plumbing, N.O.C. - Shop and Outside	3.96	5.34	135%	7.52	190%	6.49	164%
Quarries	5.21	9.52	183%	14.88	286%	17.45	335%
Radio, Television and Commercial	.70	1.03	147%	.98	140%	1.18	169%
Broadcasting, All Employees	.42	1.03	245%	.48	114%	1.18	281%
Including Clerical	.70	.61	87%	.61	87%	1.05	150%
Real Estate Agencies	3.95	4.02	102%	3.94 & 3.99	99% to 101%	4.42	112%
Restaurants	2.97	4.02	135%	3.94	133%	4.42	149%
Taverns	8.57	17.59	205%	30.21	353%	32.71	382%
Roofing	4.16	6.05	145%	6.08	146%	6.89	166%
Tire Dealers	4.16	9.20	221%	6.08	146%	6.89	166%
Tire Recapping							

	Nevada 7/1/80	California 1/1/80	Ratio of Calif. to Nevada Rate	Arizona 9/1/79	Ratio of Ariz. to Nevada Rate	Oregon 7/1/80	Ratio of Oregon to Nevada Rate
...p and Scrap Dealers	$12.09	$21.65	179%	$21.08	174%	$20.73	171%
Sand or Gravel Digging	5.21	6.37	122%	13.43	258%	11.83	227%
Sewer Construction	6.71	10.48	156%	14.48	216%	16.73	249%
Stores - Auto Accessories	1.78	2.63	148%	3.34	188%	3.06	172%
Stores, Department	1.78	2.81	158%	1.87	105%	A	--
Stores, Furniture	2.60	3.71	143%	4.19	161%	3.62	139%
Stores, Grocery	3.62	2.66	73%	5.73 to 8.45	158% to 233%	5.51	152%
Stores, Meat, Fish, Poultry	5.65	4.31-8.76	76-155%	9.70	172%	5.71-15.15	101-268%
Street and Road Construction, Grading	6.71	8.83	132%	7.53	112%	13.10	195%
Paving	6.71	8.57	128%	11.18	167%	10.27	153%
Taxicab Operation, All Employees	6.57	15.73	239%	7.74 to 8.53	118% to 134%	11.25	171%
Clerical	.42	.43	102%	.48	114%	.49	117%
Trucking	6.76	11.43	169%	18.65-34.03	276% to 503%	14.52	215%
Wall Board Application	8.57	5.37	63%	11.98	140%	11.35	132%
Warehouses, General Merchandise	3.78	8.60	228%	7.90	209%	9.57	253%
Welding or Cutting, N.O.C. - Shop or Outside	4.94	9.13	185%	15.48	313%	13.01	263%
Wrecking or Demolition of Building	12.09	--	--	31.11-56.22	257% to 465%	34.27-49.44	283%-409%

62/1275

STATE OF OREGON

REPORT OF LEGISLATIVE COMMITTEE ON TRADE AND ECONOMIC DEVELOPMENT

DECEMBER 1976

RECOMMENDATIONS BY CATEGORY

BEFORE THE

SUBCOMMITTEE ON WORKMAN'S COMPENSATION

INSURING THE SYSTEM

Recommendations:

(1) **Establish an exclusive state fund, eliminating direct responsibility employers--both self-insured employers & carrier-insured employers.**

(2) **Make the State Accident Insurance Fund a division of the new Department of Worker's Compensation.**

(3) **Establish an Industrial Accident Advisory Commission whose members the Governor shall appoint. The Commission members shall fairly represent the interests of all concerned in the administration of the workers' compensation law.**

Delivery of services is the test every workers' compensation system faces. Whether the services are in safety, claims, or rehabilitation, the services must be delivered effectively if the system is going to achieve its major objectives.

What are the methods available to deliver these services? Oregon currently uses three: the State Accident Insurance Fund (SAIF), private carriers, and self-insured; but it wasn't too long ago (1965), when Oregon had an exclusive state fund for providing workers' compensation coverage.

From 1913 until December 31, 1965, the State Industrial Accident Commission handled all compensation matters; and no private carrier sold workers' compensation insurance in Oregon. (The private carriers did, however, sell employers' liability insurance to those employers who rejected the act.)

The 1965 Legislative Assembly, however, made far-reaching changes in workers' compensation. To review, until the 1965 "three-way" bill became law, workers' compensation in Oregon was elective. Employers in hazardous occupations could either

obtain coverage through the state fund or reject the act. If they rejected the act, they were subject to the employers' liability law without the common law defenses of contributory negligence, assumption of risk and fellow-servant doctrines. Employers in non-hazardous occupations could elect to be covered under the act.

Labor, management, and the insurance industry had struggled previously over the issue of workers' compensation. Labor wanted compulsory insurance under an exclusive state fund along with increased benefit levels, management wanted the options of self-insurance and of going to private carriers, and the insurance industry wanted to sell workers' compensation insurance in the state.

In 1964, the voters defeated (549,414 - 205,182) a labor-sponsored intitiative providing for compulsory coverage under an exclusive state fund. The stage was set for the 1965 Legislative Assembly; and the session produced compulsory insurance (with certain exceptions), increased benefits, and the three-way system of insuring. Compromise had ruled the day.

It is now almost exactly eleven years since the three-way law went into effect; and Oregon's workers' compensation rates are amongst the highest, if not the highest, in the country. In May, 1976, the National Council on Compensation Insurance filed a request with the Insurance Commissioner for "an average increase of 41.5% in the overall level of rates presently in force." After conducting a public hearing, the Insurance Commissioner granted a two-step increase of 15% effective July 1, 1976 and 12.5% effective October 1, 1976, for a compounded increase of 29.4%. Workers' compensation in Oregon is rapidly approaching a crisis situation; and some would argue we are there already. It is certainly a

situation that needs close examination.

In a 1974 study of Oregon's agricultural rates, Dr. Dennis Fisher, then of Oregon State University, concluded: "Oregon's workmen's compensation insurance rates were high because of the statutes pertaining to determination of PPD (Permanent Partial Disability) and PTD (Permanent Total Disability) claims, and interpretations of those statutes." While conceding that Oregon does have a large number of PTD's, and that PPD and PTD costs are high, and that Oregon's courts have liberally construed the statutes, staff contends the answer to the problem is more complex than Dr. Fisher's conclusion. Staff suggests that a layering of inefficiencies within the system unnecessarily adds to the system's burdensome costs and hinders the effective delivery of services. One of the inefficiencies is the appeals procedure discussed previously. Staff contends another is the presence of the private insurance carriers in Oregon's workers' compensation system.

During the subcommittee's study of the system, questions were asked about cost reductions made possible through an exclusive state fund. As a follow-up to those questions, staff requested SAIF to prepare a paper on possible reductions resulting from Oregon's return to an exclusive state fund. While reluctant to cast itself in a advocacy position, SAIF complied with the staff request. Cf. "Options for Lowering Workmen's Compensation Costs in Oregon." Appendix I. (For an introduction to state funds, cf. Appendix J.)

Table I of the SAIF report "summarizes the results of ten

years of competition between private carriers and SAIF for the privilege of insuring Oregon employers."

Without considering investment earnings, during 1966-1975 the private carriers have operated at a 22.20% overhead; while SAIF's overhead was less than a quarter of that at 5.27%. The private carriers have returned 8.52% of earned premium in dividends, while SAIF's percentage was nearly double at 16.91%.

Table 2 of the paper restates the combined figures for all carriers' administering the delivery system and it then assumes administration of the system by private carriers only and by SAIF only. It bases the assumptions on the actual percentage of all carriers' incurred losses and on the actual overhead experiences of SAIF and the private carriers.

The SAIF paper calculates that if the private carriers only had administered the system dividends would have shrunk and overhead increased by $113,775,091; and "The costs to employers after dividends over the ten years would have been higher by 11.9%..." On the other hand, if SAIF only had administered the system, dividends could have been increased and overhead reduced by $73,680,045," which "represents a minimum reduction of 7.7% in net cost after the actual dividends paid..."

SAIF continues:

> Under an exclusive state fund operation the $224,410,236 dividends postulated could have been omitted from the rate level entirely, amounting to a front end reduction in earned premiums (premiums paid) of 20.27%. Earned premiums after experience rating and premium discount approximate 79.8% of the manual rate level. Thus a 20.27% reduction in earned premiums would work out to about a 16% reduction at the manual rate level.

SAIF indicates that further reductions are possible due to efficiencies achieved in administering the system. Asked to comment on an exclusive state fund without self-insureds, SAIF replies: "Were self insurance phased out, additional cuts in the Board's operations would be possible and additional reductions in the administrative costs of the program could be made. Finally, SAIF lists three additional options for reducing premium levels.

In view of Oregon's high workers' compensation costs, SAIF has presented information and outlined options worthy of serious attention. Staff and SAIF, however, are aware that cost is not the only consideration. SAIF mentions other questions, "And it is in the resolution of those questions that the real controversy lies." The questions are: "'free enterprise' v. 'state monopoly,' with the concept of adding profits to the cost of a compulsory social insurance program," "the wisdom of allowing large employers to self-insure," and "the improvements in service which competition may have brought, or to the possible loss of service which might result from a return to an exclusive fund."

The "free enterprise" v. "state monopoly" question finds its answer in the philosophy one adopts toward the notion of profit coming from compulsory social insurance program. Staff contends that such a program, which has as its goal the restoration of the injured worker and his family to a state of well-being, and whose costs the employer and ultimately every consumer bear, should be run as efficiently as possible, that is, as close to the actual cost of aiding the worker plus a small administration cost. Staff

therefore concludes; there is no room for profit in the program. Staff is not anti-profit per se; but in a compulsory social insurance program, staff takes exception to a profit being made, to the presence of "free enterprise." Social Security and unemployment are other examples of compulsory social insurance programs in which profit does not play a part.

Putting aside the question of self-insureds for the moment, the next question deals with improvements in service caused by competition or loss of service resulting from an exclusive state fund. Staff admits that competition may improve service. But staff finds that competition can be a hindrance to getting a job done efficiently. Too many competitors can bog the system down and render it inefficient and, therfore, ineffective. According to the Board's Annual Report for Fiscal Year 1976, there were 147 active private carriers in Oregon at the end of calendar year 1975, all competing with SAIF. While regulating 147 private insurance carriers with SAIF, the Board has the responsibility of delivering services effectively.

As an example of the system's ineffectiveness due to its inefficiency, let's look at the time lapse between dates of injury and date of admission into physical rehabilitation: 15 months. (And the administrator in charge of physical rehabilitation has told staff that he must still go out and sell rehabilitation to the private carriers. With the new facility at Wilsonville, the private carriers should be trying to admit as many injured workers as the facility will hold.) A look at the time lapse between date of injury and referral to vocational rehabilitation, 19 months, draws another picture of a system

breaking down along the delivery line. And staff contends that the breakdown is in part due to the number of hands reaching into the system that have to be coordinated and regulated in order to produce an effective system: 147 private carriers. Staff suggests that under such circumstances, the Board cannot deliver services effectively, the test every workers' compensation system faces. Staff suggests, therefore, that while competition may have its benefits, it also has its problems. Staff concludes, therefore, that since the private insurance carriers are a part of the layering of inefficiencies unnecessarily adding to the system's burdensome costs and hindering the effective delivery of services, the private carriers should be eliminated from Oregon's workers' compensation system.

Staff, therefore, recommends that the legislature establish an exclusive state fund eliminating carrier-insured employers.

Returning to the question of self-insured, as of September 27, 1976, ninety-five self insureds were active in Oregon. They include in their number many of Oregon's largest and wealthiest employers, with the best safety programs and claims management.

A principle behind insurance is that of spreading the risk of mishap as widely as possible by involving as many people as possible. The rationale is that if enough people bear a share of the burden, no one person will be hurt too badly. Staff contends that the self-insureds should be asked to bear a fair share by contributing to an exclusive state fund.

For fiscal year 1976, the Board averaged roughly 60,000

registered employers each month. For each employee, an employer pays a manual rate premium based on $100 of payroll. (The rate differs from one job classification to another.) The manual rate is that rate paid before any adjustments, such as experience modification or premium discount. To qualify for experience modification, an employer must have averaged $750 in manual rate premiums for two or more years; and to qualify for premium discount, an employer must pay a premium in excess of $1,000. Approximately 40,000 Oregon employers pay the manual rate, the highest possible rate under the current rating structure. They receive no discounts; consequently they feel the full brunt of the recent rate increases. With Oregon's seasonally adjusted unemployment rate for September 1976 at 9.6%, some assistance msut be given to these smaller employers in the form of the lowest possible rates (resulting from lower system costs) to keep them in business. They are a valuable source of jobs in a state whose unemployment is above the national average.

Based on SAIF's assessment that "additional reductions in the administrative costs of the program could be made" if self-insurance were phased out and based upon the principle of spreading the risk so that everyone may bear a fair share, staff concludes that the legislature should eliminate self-insured employers.

Staff, therefore, recommends that the legislature establish an exclusive state fund eliminating self-insured employers.

Upon the establishment of an exclusive State Fund, another efficiency is possible by eliminating the dual evaluating that

now occurs. By making SAIF a division of the new Department of Workers' Compensation, the State could merge the claims representative and evaluation functions. Then the claims representative, who actually sees the injured worker and his environs, could make the evaluation when the worker is medically stationary.

APPENDIX I

OPTIONS FOR LOWERING
WORKMEN'S COMPENSATION COSTS IN OREGON

APPENDIX I

INTRODUCTION

SAIF has been requested by the Interim Committee on Trade and Economic Development to prepare a paper detailing how, and to what degree, workmen's compensation insurance costs could be reduced by returning to an exclusive state fund. This we are happy to do. It is the kind of technical information we have available, and which should be studied by those who have the responsibility for Oregon's Workmen's Compensation Laws.

However, we feel it important to note that SAIF approaches this request with some misgivings. We are well aware of the explosive nature of the traditional "private carrier vs. state fund" arguments. During previous legislative sessions we have responded to similar information requests, only to find those in favor of the present system accusing SAIF of "lobbying" for a return to the status of an exclusive fund.

That was not the case then, nor is it now.

The State Accident Insurance Fund has functioned well during the ten years Oregon has operated under the "three-way" system. We have maintained our position as the state's leading carrier by combining the savings derived through our nonprofit operations with innovative programs in such areas as safety, claims handling and marketing services. We have every confidence SAIF can continue to compete effectively and maintain it's number one position in the years ahead.

As the following pages will show an exclusive fund system is less expensive to operate than either a two-way or three-way

system. If cost were the only consideration, an exclusive fund system could easily be judged to be superior to the other options.

The question, of course, is not that simple. There are other considerations which must be made in determining what system is best for Oregon. And it is in the resolution of those questions that the real controversy lies.

This paper does not address itself to those areas. It does not attempt to deal with the question of "free enterprise" vs. "state monopoly", with the concept of adding profits to the cost of a compulsory social insurance program or with the wisdom of allowing large employers to self insure. It does not speculate as to the improvements in service which competition may have brought, or to the possible loss of service which might result from a return to an exclusive fund.

We hope this paper will be used in the same manner in which it was produced. Not as an endorsement for one insurance system or another, but simply as a response to a legislative request to identify the costs involved in those various systems.

BACKGROUND

On January 1, 1966, Oregon's workmen's compensation delivery system changed from an exclusive state fund to a three-way option. This option enables an employer to comply with the requirement that he carry workmen's compensation insurance in one of three ways:

1. Insuring with the state fund;
2. Insuring with a private carrier;
3. Self insuring.

Ten years experience has now accumulated and it is possible to analyze what this change has brought about, what it has cost, and the options available for the future.

CHANGES IN BRIEF

The 1965 law was a compromise ending in a deadlock between labor and management which had blocked substantive changes in benefits for several sessions. In return for the right to self insure or insure through private carriers and for elimination of the jury trial, coverage was extended to almost all employers and, after some delay, to farmers, benefits were increased, and an administrative agency was created in the form of Workmen's Compensation Board. The Board continued to perform many of the functions for which the old State Industrial Accident Commission had been responsible but in addition it was charged with:

1. Hearings and appeals in claim controversies
2. Disability evaluation
3. Supervision of claims handling by the state fund, private carriers and self insurers
4. Registration of the insurer of each employer.

Amendments since 1965 have continued to upgrade the law's benefit provisions. Liberal court interpretations have broadened the basis for computing permanent partial disability awards from physical disability only to include loss of earning power in certain instances. Court interpretations have likewise made it easier to substantiate a claim of permanent total disability. Appeals from the Board's disability evaluations prove successful in a high percentage of cases.

With the establishment of the three way law rate making responsibility passed to the National Council on Compensation Insurance, (NCCI) a body created by the insurance industry to gather statistics, compute rates by state, and standardize rules for policy issuance and the plans for pricing workmen's compensation insurance, including experience rating plans, premium discount plans and retrospective rating plans.

The change from an exclusive state fund to a three way delivery system also:

1. Resulted in the exclusion of investment earnings from the rate making process.
2. Increased the expense loading to cover private carrier overhead.
3. Introduced premium discounts for large firms as a method of offsetting the high expense loading.
4. Resulted in the use of dividends as a means of returning excess premiums to employers.
5. Introduced a more rational experience rating plan than the one formerly written into the Oregon law with the result that a smaller increase in the manual rate level to offset the net loss from experience rating became possible.
6. Brought more complexity to claims administration from Board supervisory requirements and the division of responsibility for retroactive relief, second injury relief, physical and vocational rehabilitation and aid in finding employment.
7. Offered more pricing options to large employers in the form of dividend plans, retrospective rating plans, budget and cash flow plans.
8. Increased the incentives to self insure by increasing administrative costs and the investment of cash flow opportunities behind the higher reserves required for increased benefits.

TEN YEARS' EXPERIENCE SHOW COMPARATIVE PRIVATE CARRIER & SAIF COSTS

Table 1 summarizes the results of ten years of competition between private carriers and SAIF for the privilege of insuring Oregon employers. Private carriers paid or set aside 69.28% of their earned premium for losses, returned 8.52% to their insureds in dividends and retained 22.20% to cover the Board's assessment, and carrier operating costs, profits and additions to surplus. SAIF paid or set aside 77.82% of its earned premium for losses, returned 16.91% to its insureds in dividends and retained 5.27% to cover the Board's assessment, and SAIF's operating costs and additions to surplus. This is not to say that private carrier expenses were 22.20% of earned premiums as against only 5.27% for SAIF but rather that the financial policies followed by each type of carrier laid this net burden on employers for program administration. The extraction of part of their investment earnings from the program by private carriers, on the one hand, and the application of all of its investment earnings to losses and expenses by SAIF were responsible for much of the cost difference.

SAIF's loss ratio was higher because it insured the bulk of the small employers, stood ready to insure any employer turned down by another carrier, had most of the coverage subject to the low legislated farm rate and gave a flat 10% reduction off the rate level to political subdivisions and members of the Farm Bureau group thus reducing its earned premium. But even while paying out and setting aside a higher percentage for losses, SAIF paid dividends at almost twice the private carrier level and retained less than a fourth of the premiums required by the

private carriers for the Board's assessment, and carrier expenses, profits and additions to surplus.

TABLE 1

Application of Earned Premiums for Workmen's Compensation Insurance in Oregon by the State Fund and Private Carriers for the Ten Year Period 1966 - 1975

Carrier	Earned Premiums	Incurred Losses	Dividends Paid to Insureds	Required for Overhead (1)-(2)-(3) 1/
Private Carriers in Oregon	$434,850,170	$301,237,889	$37,059,199	$96,553,082
Percent	100.00%	69.28%	8.52%	22.20%
SAIF	$672,386,314	$523,236,996	$113,670,992	$35,478,326
Percent	100.00%	77.82%	16.91%	5.27%
All Carriers	$1,107,236,484	$824,474,885	$150,730,191	$132,031,408
Percent	100.00%	74.46%	13.61%	11.93%

1/ This retention represents administrative expense only from the employer's viewpoint as being the amount of his premium payments not required for claim costs or returned to him in dividends. Column 4 also includes additions to carrier's surplus and underwriting profit. Not syphoning off investment earnings as stockholder profits increases the percentage of premium returned to employers in Column 3 and reduces Column 4 percentages.

Source: Private carriers - reports to Insurance Commissioner (1973 data from Bes-ts) SAIF - unpublished data and from 1972-75, from Insurance Commissioner reports.

HOW CHANGES IN THE DELIVERY SYSTEM WOULD AFFECT NET PROGRAM COSTS

Table 2 shows the experience laid down by the private carriers and SAIF over the ten year period 1966-1975. By considering the incurred losses as fixed and computing the balance of the program costs at the administrative cost levels developed by the private carriers and SAIF, a rough handle on relative costs can be obtained. This assumes that out of earned premium must come losses and expenses before dividends can be paid. Only the combined costs of both private carriers and SAIF have been recapitulated from Table 1 into Table 2 below. Reference must be made to Table 1 to verify the percentages of earned premium required for overhead by private carriers and SAIF.

TABLE 2

Recapitulation of 1966 - 1975 Experience and Two Assumptions:

Administration by Private Carriers Only or SAIF Only

Administration of Delivery System	Earned Premium	Incurred Losses	Available for Dividends	Required for Overhead
Private Carriers and SAIF (Actual)				
Percent	100	74.46	13.61	11.93
Amount	$1,107,236,484	$821,474,885	$150,730,191 (Paid)	$132,031,408
Private Carriers only				
Percent	100	74.46 (actual)	3.34 (remainder)	22.20 (actual
Amount	$1,107,236,484	$824,474,885	$36,955,100 (est)	$245,806,699 (est)
SAIF only				
Percent	100	74.46 (actual)	20.27 (remainder)	5.27 (actual)
Amount	$1,107,236,484	$824,474,835	$224,410,236 (est)	$58,351,366 (est)

By this analysis if SAIF had not been part of the delivery system dividends would have shrunk from $150,730,191 to $36,955,100 and the amount held out for the Board and carrier overhead, profit and additions to surplus would have increased by $113,775,091 ($245,806,499 - $132,031,408 - $113,775,091).

The net costs to employers after dividends over the ten years would have been higher by 11.9%; i.e.,

$$\frac{\$113,775,091 \text{ (added cost)}}{\$1,107,236,484 \text{ (earned premium)} - \$150,730,191 \text{ (actual dividends)}} = 11.9\%$$

If in the past ten years SAIF had administered the program dividends could have been increased by $73,680,045 to $224,410,236. Because of SAIF's non profit status and its policy on investment earnings, the actual net saving to employers would have been at least the difference between the $132,031,408 it cost to administer the program with the private carriers and SAIF competing and the net extimated administrative cost of $58,351,363 if SAIF had been the sole carrier. The difference, or $73,680,045 over 10 years, represents a minimum reduction of 7.7% in net cost after the actual dividends paid, i.e.,

$$\frac{\$73,680,045 \text{ (savings)}}{\$1,107,236,484 \text{ (earned premiums)} - \$150,730,191 \text{ (actual dividends)}} = 7.7\%$$

The savings of $73,680,045 expressed as a percent of the $1,107,236,484 earned premium amounts to 6.7% when spread over the entire delivery system. What there is to work with is the spread between the private carriers' overhead charges on the employer of 22.20% and SAIF's charge of 5.27%.

Under an exclusive fund operation the $224,410,236 dividends postulated could have been omitted from the rate level entirely, amounting to a front end reduction in earned premiums (premiums paid)

of 20.27%. Earned premiums after experience rating and premium discount approximate 79.8% of the manual rate level. Thus a 20.27% reduction in earned premiums would work out to about a 16% reduction at the manual rate level.

FURTHER REDUCTIONS POSSIBLE

The minimum reduction in net costs is set at 7.7% assuming only SAIF and self insurers had been involved in the program, because it is improbable that the legislature would leave in place all those Board functions which, with relation to SAIF, would divide program responsibility between two state agencies, would duplicate activities or would represent a one on one review by the Board of SAIF's claims handling. In addition, SAIF would make its own rates, would streamline some procedures currently required by Board or National Council rules and could dispense with functions related to business acquisition. To place the extent of SAIF's turnover to the Board in perspective, of the 5.27% of earned premium retained by SAIF to cover the Board's assessment and SAIF's operating costs and additions to surplus, the major part has gone to cover the Board's assessment. This has varied from a low of 3% of earned premium from 10/1/73 - 6/30/74 to a high of 5.4% in the early years of the three way law. From 7/1/74 to 6/30/75, SAIF turned over 5% of its earned premium to the Board.

AN EXCLUSIVE FUND ONLY COULD FURTHER REDUCE COSTS

As long as self insurance is permitted some agency has to authorize, supervise and monitor the self insurers and provide for the joint funding required for those services that apply to

to all employers and workers such as the appeals system, developing safety standards, safety inspections, operation of the physical rehabilitation center, vocational rehabilitation, the retroactive relief program, the second injury program and the collection of statistics on accidents and program operations. Elimination of private carriers from the delivery system would leave only the self insurers to justify the Board's continuing activity in many of these areas. Were self insurance phased out, additional cuts in the Board's operations would be possible and additional reductions in the administrative costs of the program could be made. The Canadian provinces exemplify the type of operation that would be possible.

OTHER OPTIONS FOR REDUCING PREMIUM LEVELS

Rate making starts with estimated accident costs and adds a percentage for carrier operating expenses, taxes and profits. It has been demonstrated that SAIF's non profit status and the plowing back of all its investment earnings into the program has resulted in a ten year average charge on employers for administration close to, or but little above, that portion built into the rate level to cover the Board's requirements. Thus a two way (SAIF and self insurance) or exclusive fund (SAIF only) has these additional options:

1. Require that the rates set by SAIF be determined from estimated losses as developed by acceptable rate making techniques, plus SAIF's budget and SAIF's share of the Board's budget, plus appropriate changes in surplus, minus expected investment earnings. This would result in very low expense loadings.

2. Eliminate the premium discount feature. The low expense loading under 1 above would remove the logic for a premium discount plan.

3. Having reduced the expense loading and included investment earnings in the rate making process, only premiums in excess of anticipated losses would be available for dividends. The legislature could specify that any excess premium in one year could be used to reduce future manual rates.

APPENDIX J

STATE COMPENSATION INSURANCE FUNDS

Their Purpose & Impact

TABLE OF CONTENTS

Development of Workers' Compensation and the Creation of State Funds 1

Workers' Compensation Systems 4

Advantages of State Funds 7

The Impact of State Funds on Workers' Compensation Systems. 13

American Association of State Compensation Insurance Funds. 16

The Future. 19

Bibliography. 22

APPENDIX J

DEVELOPMENT OF WORKERS' COMPENSATION AND THE CREATION OF STATE FUNDS

Workers' compensation is essentially a product of the industrial revolution. That revolution changed common law and employer liability remedies into unfair burdens on the injured worker.

By the early 1900's, the inadequacy of these legal remedies was becoming common knowledge. The practice of basing liability on negligence was no longer justifiable in a time when many jobs were recognized to involve certain inherent but often unpredictable hazards. Compensation for injuries was usually insufficient, never consistent, and always uncertain. Painfully slow court procedures in most states delayed settlements. The system was wasteful because of high and excessive insurance carrier overhead. Labor relations during this period deteriorated because the system promoted antagonism between employers and wage earners. There was also little financial stimulus for employers to seek methods of accident prevention. And, finally, society was becoming increasingly disturbed by the burden of charity for uncompensated injured workers. It became evident that a new approach was needed. This approach took the form of workers' compensation laws.

It was intended that workers' compensation laws would provide prompt, equitable, guaranteed relief to the injured worker, irrespective of fault. In return, the employer would be protected

against catastrophic loss by a stated liability for specified benefits. However, even the costs associated with one severe injury could be beyond the financial capability of many employers, particularly the small employers. It was also apparent that benefits under this new system would be paid to the injured worker or his dependents over a long period of time, and the problem of guaranteeing continuation of the benefits existed when an employer went out of business or ownership of the firm changed hands. It was evident that only a few very large employers had the financial capacity and long-range stability to assume this liability themselves. For the vast majority of employers, it would be necessary, as well as desirable, to purchase insurance protection against this statutorily imposed liability. Through insurance, the risk could be spread and benefits guaranteed to the injured worker irrespective of the life of his employer.

Many legislators, employers, and others were concerned over the implications of subjecting employers to a statutory liability that required insurance protection as the only feasible method of meeting this liability. Would individual employers or categories of employers be forced to quit business if insurance carriers refused them coverage? What if the premium rates were so excessive as to impose a serious financial burden on many employers and adversely affect the state economy? Was it equitable to allow an insurance company to reap an uncontrolled profit from a premium payment that could be equated with a tax on the employer? These concerns were based upon extensive experience and data developed under employer liability statues. For example,

in New York, in 1908, it was found that only 37 cents of every premium dollar went for the payment of benefits to the injured worker; in Iowa, only 28 cents went for the payment of benefits.[1]

The early laws creating workers' compensation responded to the unique problems associated with providing compulsory insurance coverage by establishing State workers' compensation insurance funds. It was intended that State Funds would provide a guaranteed source of insurance coverage and operate on a non-profit basis. These State Funds would protect employers from the uncertainties of underwriting decisions based solely on the profit motive and would guarantee that workers' compensation insurance be provided to employers at the lowest possible cost.

Recognition of the need to establish a workers' compensation system brought with it a responsibility to provide an effective, efficient, and equitable delivery system. In recognizing this responsibility, 18 States established State Funds in their workers' compensation laws between 1911 and 1925.[2]

1. Herman and Anne Somers, Workmen's Compensation (New York: Wylic and Sons, 1954), 24.

2. David McCahan, State Insurance in the United States (Philadelphia: U. of Pennsylvania Press, 1929), 6-7.

WORKERS' COMPENSATION SYSTEMS

The establishment of State Funds meant that many employers finally had an alternative for insuring their workers' compensation liability. Today, where an employer is required or elects to insure his liability, he may do so through a private carrier or through a State Fund if one is available in his State. In those States that permit self-insurance the employer may assume the liability himself.

Not all of these options are available in all States or Territories. Guam and Texas require that an employer insure his liability with a private carrier. Eight jurisdictions, including Puerto Rico and the Virgin Islands, have an exclusive State Fund and require all employers to insure with it, except that three also permit self-insurance. Thirty-two jurisdictions allow self-insurance coverage or coverage through private carriers. Twelve States offer all three options, self-insurance, insurance through a competitive State Fund, or insurance through private carriers.[3] In Canada, all Provinces have boards or commissions with complete jurisdictional and administrative powers in matter relating to workers' compensation. These boards are similar in concept and organization to exclusive Funds.

3. See Exhibits 1 and 2.

EXHIBIT 1

TYPES OF WORKERS' COMPENSATION SYSTEMS IN THE UNITED STATES AND ITS TERRITORIES

A. Exclusively by private insurance:

GUAM
TEXAS

B. By private insurance or by authorized self-insurance:

ALABAMA
ALASKA
ARKANSAS
CONNECTICUT
DELAWARE
DISTRICT OF COLUMBIA
FLORIDA
GEORGIA
HAWAII
ILLINOIS
INDIANA
IOWA
KANSAS
KENTUCKY
LOUISIANA
MAINE
MASSACHUSETTS
MINNESOTA
MISSISSIPPI
MISSOURI
NEBRASKA
NEW HAMPSHIRE
NEW JERSEY
NEW MEXICO
NORTH CAROLINA
RHODE ISLAND
SOUTH CAROLINA
SOUTH DAKOTA
TENNESSEE
VERMONT
VIRGINIA
WISCONSIN

C. Exclusively by State Fund:

NEVADA
NORTH DAKOTA
PUERTO RICO
VIRGIN ISLANDS
WYOMING

D. By either State Fund or authorized self-insurance:

OHIO
WASHINGTON
WEST VIRGINIA

E. By any one of three means: Private insurance, State Fund of authorized self-insurance:

ARIZONA
CALIFORNIA
COLORADO
IDAHO
MARYLAND
MICHIGAN
MONTANA
NEW YORK
OKLAHOMA
OREGON
PENNSYLVANIA
UTAH

Source: AASCIF Minutes, Exhibits, and Attached Documents, 1969.

ADVANTAGES OF STATE FUNDS

While both exclusive and competitive State Funds share major advantages over private carriers, there are some differences between the two types of Funds.

Because all employers in an exclusive state must insure with the State Fund, no sales force is required and therefore no acquisition cost is incurred. Administration can be simpler because these State Funds need issue no policies and need not develop and administer marketing programs. Exclusive Funds make their own rates rather than relying on an independent bureau or the National Council on Compensation Insurance. Policyholder surplus is generally used by exclusive Funds to reduce rates for the succeeding rating period, while the practice of most competitive Funds is to return the surplus to policyholders in the form of dividends.

The significant differences in insuring workers' compensation liability, though, lie not between exclusive and competitive State Funds but between State Funds and private insurers.

A major advantage of all State Funds is that they assure employers in their States a ready resource through which to insure their workers' compensation liability. In these States, every employer is assured of a ready and available market for workers' compensation insurance coverage, irrespective of premium size, nature of business, or loss history. In non-State Fund states, certain employers can be subjected to the vagaries

of underwriting decisions of private insurers and obtain coverage only at additional cost or with the stigma of being placed in an assigned risk plan.

The object of State Funds is not profit, but rather to provide insurance at the lowest possible cost to employers and to provide prompt, equitable treatment and benefits to injured workers. Their motivation arises from social responsibility consistent with the concept of workers' compensation rather than the production of profits. It should be remembered that workers' compensation has historically been the single most profitable line of insurance for stock insurance carriers and the second most profitable line of insurance for mutual insurance carriers.[4] These profits of private insurers in workers' compensation must be developed from the excess of premium to losses and from investment earnings. The State Funds either return these "profits" back to employers in the form of dividends or offer lower rates.

In addition to providing workers' compensation insurance on a non-profit basis, State Funds can also assist employers to realize additional savings because of their outstanding record of operational efficiency. An important characteristic of State Funds is that their overhead expense ratios are consistently and significantly lower than that of private insurers.[5] This low

4. Marcus Rosenblum, ed., Compendium on Workmen's Compensation (Washington, D.C.: National Commission on State Workmen's Compensation Laws, 1973) 270-271, Table 16.3

5. See Exhibit 3.

EXHIBIT 3

AVERAGE EXPENSE RATIOS BY TYPE OF INSURERS 1960 - 1974*

STOCK CARRIERS	22.0%
MUTUALS	16.8%
STATE FUNDS	9.4%

*NOTE: Excludes Loss Adjustment Expense

SOURCE: Compendium of Workmen's Compensation Table 16.2, page 270 and 272.

Best's Aggregates and Averages Property-Liability, 1971-74 editions.

AASCIF Statistics Committee Reports, 1974-75.

Argus F.C. & S. Charts, 1973 and 1975 editions.

administrative cost reflects a concern for efficiency and economy of operations not evident in most social programs or even business enterprises.

Another advantage of State Funds is that they specialize in workers' compensation insurance. Workers' compensation is their only endeavor and receives the devotion of their entire energies and resources.* This specialization produces an in-depth knowledge and expertise that has formed the cornerstone for many significant advances and innovations in workers' compensation. State Funds have pioneered in such areas as rehabilitation and the application of new technologies in the creation of more effective delivery systems. The Ontario workers' compensation system, for example, has often been cited for excellence in rehabilitation. The President's White Paper on Workers' Compensation noted "...the Ontario inquiry system appears to provide higher quality services at considerably lower costs. For example, both rehabilitation and the treatment of permanent partial disabilities seem to be handled well in Ontario".[6] The State Fund of Washington has long demonstrated leadership in the practice of the total rehabilitation concept.

*NOTE: The only exception is the New York State Insurance Fund which furnishes statutory disability benefits to employers.

6. U.S. Department of Labor, U.S. Department of Commerce, U.S. Department of Housing and Urban Development: White Paper on Workers' Compensation (Washington, D.C., 1973).

The Fund owns and operates an in-resident rehabilitation center with physical restoration, vocational evaluation, counseling, and job placement services. New technology also occupies a prominent place in State Funds' adjustment of workers' compensation claims. The State Funds of California and Oregon have developed and implemented a team approach with computer-based systems for the management of their workers' compensation claims. These are but a few examples demonstrating the positive effects of specializing in workers' compensation.

Another beneficial effect of specializing has been the State Funds' record of providing efficient, comprehensive service to the employer and injured worker. Many private insurers writing workers' compensation insurance do not have a large enough premium volume in any concentrated geographical area to warrant the level of expenditures necessary to provide full and complete services. In contrast, State Funds have a significant market share in virtually every State where they are in existence; therefore, it is economically feasible and practical for them to provide a full range of workers' compensation services to their insured employers.[7]

7. See Exhibit 4.

EXHIBIT 4

1974 PREMIUM VOLUME AND MARKET SHARES OF TWELVE COMPETITIVE STATE FUNDS

Premium Volume (millions)

STATE	TOTAL	STATE FUND	MARKET SHARE
ARIZONA	105.0	37.8	36.0%
CALIFORNIA	1014.5	232.0	22.8%
COLORADO	57.0	26.7	46.8%
IDAHO	29.6	5.6	18.9%
MARYLAND*	110.4	5.5	5.0%
MICHIGAN*	362.7	17.4	4.8%
MONTANA	31.6	14.7	46.5%
NEW YORK	543.0	133.7	24.6%
OKLAHOMA*	65.5	6.8	10.4%
OREGON	182.0	111.8	61.4%
PENNSYLVANIA*	238.2	15.1	6.6%
UTAH	16.7	9.4	56.3%

*NOTE: Only Maryland, Michigan, Oklahoma, and Pennsylvania do not have the leading market share in their respective states. It should be noted that Maryland and Oklahoma are not "fully" competitive funds. Maryland historically has not actively solicited business, while Oklahoma is prohibited from doing so.

SOURCE: AASCIF Statistics Committee Reports, 1974-1975. National Council on Workers' Compensation Insurance.

There is also a fiscal benefit derived by states having a State Fund. Revenue generated by a State Fund through benefits paid, premium collected, and salaries and expenses for operations remains essentially in that particular state. Investments frequently provide a boon to the economy of the State Fund state.

In some states, for example, State Fund reserves are invested in home mortages, loaned to local businesses, and have been borrowed by the state to construct buildings. This kind of economic benefit is not typical of private insurers whose profits often will be spent and reserves invested outside of the state in which they were earned.

THE IMPACT OF STATE FUNDS ON WORKERS' COMPENSATION SYSTEMS

From their inception, State Funds have had significant impact on workers' compensation systems. State Funds were created as a guaranteed source of insurance for employers and as a means to assure the full measure of benefits for injureds. Their excellence in fulfulling this role has been amply demonstrated over the years.

Perhaps the most salutary effect State Funds have had has been to furnish a yardstick for the cost of workers' compensation insurance against which the performance of private carriers can be measured. Nowhere is this effect more apparent than in the maintenance of a low expense ratio and the reduction of net premium cost for employers.

The average expense ratio for State Funds has varied little from the 11% level they achieved in 1925.[8] In fact, the average expense ratio for Funds from 1960 through 1974 was 9.4%.[9] This consistently low expense figure has forced the private insurance industry to lower their expense ratios over the years to a more acceptable level. It should be noted, however, that the average expense ratio for mutual carriers is still more than 50% higher than the average expense ratio for State Funds.[10] The average expense ratio for stock carriers is over 200% higher.[11]

8. McCahan, 128-131. (Note: Average extrapolated between 5.9% for exclusive Funds and 15.6% for competitive Funds.)

9. See Exhibit 3.

10. Ibid.

11. Ibid.

State Funds have also set standards of performance for reducing the net premium cost for employers through rate discounts and the payment of dividends. Prior to the creation of State Funds, the concept of non-profit insurers returning their surplus to policyholders in the form of dividends was unheard of in the United States. The State Funds' pioneering efforts in cost reduction encouraged the private insurance industry to seek an alternative method to provide lower premium costs to employers. The industry accomplished this through the formation of mutual carriers. Interestingly, these carriers emulated the competitive State Funds in two very significant ways -- they were established to be non-profit and to be direct writers of workers' compensation insurance.

State Funds have also had significant impact on the workers' compensation insurance market itself. There are twelve states in which employers have the option of securing coverage with the State Fund or with private carriers. In eight of those twelve states, the State Fund is the leading carrier in premium volume.[12]

This impact on the workers' compensation insurance market is as visable today as it was when State Funds first came into being. Between 1970 and 1974, State Funds' overall share of the market actually increased from 35.8% to 38.7%.[13]

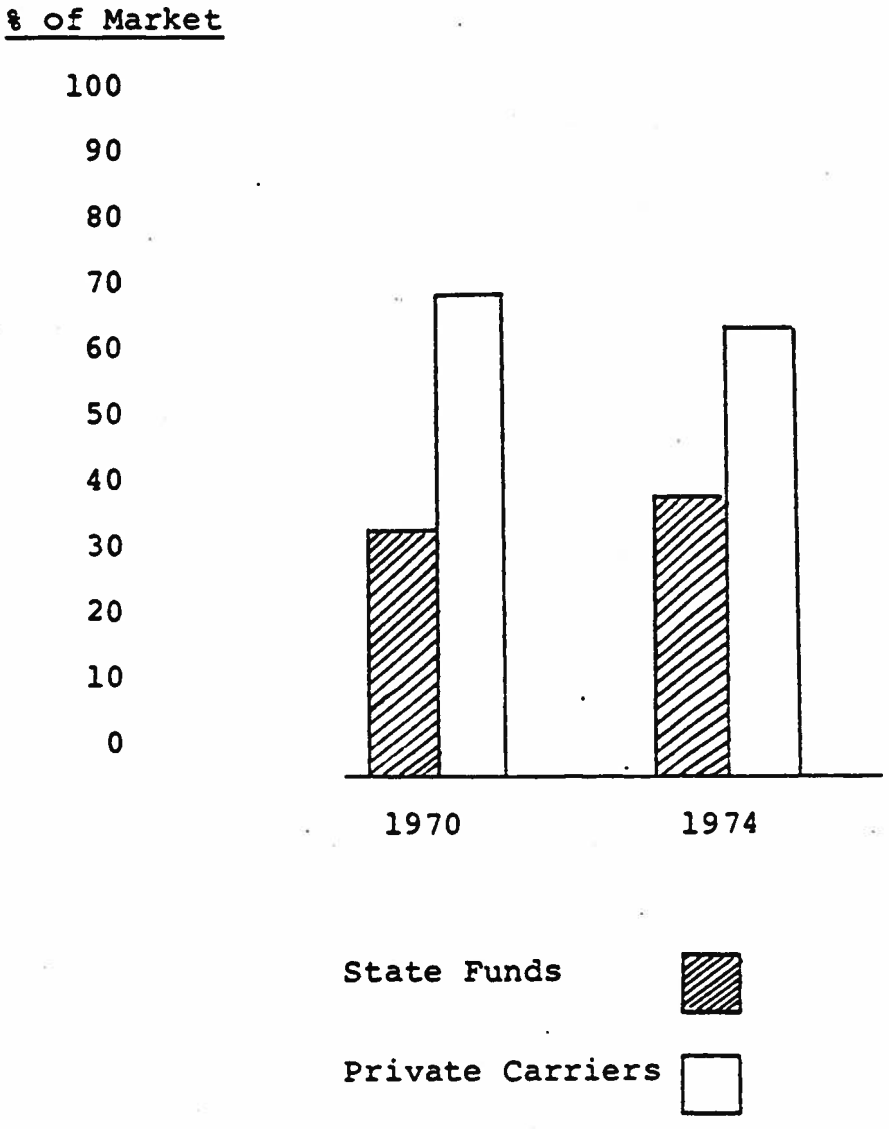
12. See Exhibit 4.

13. See Exhibit 5.

EXHIBIT 5

EARNED PREMIUM AS SHARE OF MARKET
STATE FUNDS VS: PRIVATE CARRIERS

Comparison of Years 1970 & 1974



SOURCE: AASCIP 1976 Statistics Committee Report.

3/2 H

STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
RALPH R. DISIBIO, ED.D., DIRECTOR
ROBERT LIST, GOVERNOR
DEL FROST, ADMINISTRATOR

REHABILITATION DIVISION
ADMINISTRATIVE OFFICE
KINKEAD BUILDING, FIFTH FLOOR
505 EAST KING STREET
STATE CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

EXHIBIT H

February 27, 1981

Senator Thomas Wilson, Chairman
Committee on Commerce and Labor
Nevada State Legislature
Carson City, Nevada 89710

SENATE BILL NUMBER 203: REHABILITATION DIVISION OPPOSITION

Spike, I am opposed to various aspects of S.B. 203.

The Bill provides:

1. Section 24, 2 (page 6)

> *"2. Vocational rehabilitation must be provided for a period of no more than 26 weeks, except by agreement of the parties or when, in unusual cases, the commission orders an extension which must not exceed 26 weeks."*

This immediately alleviates the appropriate burden on the employer or carrier to provide what may be necessary to rehabilitate the injured employee.

The responsibility will again be switched to the tax payers through Public Welfare and certainly through the Rehabilitation Division of the Department of Human Resources.

The average period for us to rehabilitate an individual properly is 63.43 weeks, with the severely disabled frequently taking longer.

I think the limitation on rehabilitation of the industrially injured is irresponsible.

2. Section 19, 5 (page 5)

The responsibilities of the employer or carrier are:

> *"5. Upon completion of a rehabilitation program, to assist the employee to find work, but in no event does this responsibility extend more than 6 weeks from completion of the rehabilitation program."*

For us, "rehabilitation" means that the individual is job-ready and has in fact performed successfully on the job for no less than 60 days.

Again, the Bill alleviates a responsibility properly belonging to the employer or carrier. Too frequently, we have seen industrially injured workers placed back in the same job category, complicating the injury, and losing the employment within a few weeks.

3. Section 33 (page 9)

It appears that the Bill draft confuses the intent of this section. The section was originated to provide NIC coverage for Human Resources Department Rehabilitation Division clients in our facilities; in essence, we become the "employer."

Subsection 3, which related to our method of payment <u>for NIC coverage</u>, has been changed to a "charge."

> "3. Payments [shall be made from the special maintenance fund for the vocational rehabilitation of disabled persons.] *must be charged to the carrier."*
>
> The "charge" relates to payments to the injured client, which is inappropriate for referencing the Division payment relationship.

4. Section 14, 4 (page 4) removes the requirement for a cooperative agreement with us, effective January 1, 1983. This, as you know, is contrary to our interests.

Should you have any questions regarding my concerns, please let me know. In my absence, Jane Douglas of the Division will be able to respond to your questions.

Del Frost

DEL FROST, ADMINISTRATOR

DF:jsM27

EXHIBIT I

FACES
3454 Lakeside Drive,
Reno, Nevada 89509

March 20, 1981.

Senators Wilson, Blakemore, Ashworth,
Close, Hernstadt, McCorkle, Raggio,
Committee on Commerce and Labor.

SB 366 -- Separate Licensing of Cosmeticians

Gentlemen:

California and other states have separate statutes governing qualification for a license for "The Practice of Facials". A copy of the California law is attached.

It is impossible to find cosmetologists who, as a practical matter, are competent to give facials. They are not available. The beauty colleges stress hairdressing and do not provide adequate training in skincare.

I ask, therefore, that the Nevada Act be amended to be the equivalent of the California Act. Although I contemplated a separate Act, like California, I understand that the effect of this bill is the same. It makes no change in the licensing of persons who also engage in hairdressing, etc. It only provides that a person may be licensed to be solely a cosmetician on the basis of 300 hours specialized training. This should result in the training and licensing of cosmeticians, who would not be interested in becoming hairdressers, and who would therefore be able to concentrate on obtaining the skills needed to be good cosmeticians. To be helpful, the bill should be amended to be effective on passage and approval.

Sincerely,

Jacqueline Hawkins

Jacqueline C. Hawkins,
FACES, Skin Care Center.

ARTICLE 4.5

Practice of Facials

[Added by Stats 1976 ch 1394 § 3.]

§ 7354. "Cosmetician"
§ 7354.1. Prohibited practices
§ 7355. Qualifications for examination
§ 7356. Registration without examination

§ 7354. "Cosmetician"

A cosmetician is any person who engages in any one or more of the following practices:

(a) Giving facials, applying makeup, giving skin care, removing hair by tweezing, depilatory or waxing or applying eyelashes to any person.

(b) Beautifying the face, neck, arms, bust or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions or creams.

(c) Massaging, cleaning or stimulating the face, neck, arms, bust or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions or creams.

(d) Removing superfluous hair from the body of any person by the use of depilatories, or waxing, or by the use of tweezers.

Added Stats 1976 ch 1394 § 3.

§ 7354.1. Prohibited practices

A cosmetician, unless otherwise licensed by the board, is specifically prohibited from engaging in any and all of the following practices:

(a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, singeing, bleaching, tinting, coloring, straightening, dyeing, brushing, beautifying or otherwise treating by any means the hair on the head of any person.

(b) Massaging, cleaning or stimulating the scalp, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions or creams.

(c) Removing superfluous hair from the body of any person by the use of electrolysis or thermolysis.

(d) Cutting, trimming, polishing, tinting, coloring, cleansing or manicuring the nails of any person.

Added Stats 1976 ch 1394 § 3.

§ 7355. Qualifications for examination

The board shall admit to examination for a license as a cosmetician, any person who has made application to the board in proper form, paid the fee required by this chapter, and who is qualified as follows:

(a) Who is not less than 17 years of age.

(b) Who has completed the 10th grade in the public schools of this state or its equivalent.

(c) Who has received a minimum of 600 hours of training at an approved public or private school which teaches cosmetology, or who has practiced the occupation of a cosmetician, as defined in Section 7354, full time for at least one year or the equivalent of one year full time prior to the effective date of this section. The 600 hours of training shall include theory, modeling, and practice.

Added Stats 1976 ch 1394 § 3.

§ 7356. Registration without examination

Notwithstanding any other provision of this chapter, the board shall grant without examination a certificate of registration as a cosmetician to any person who meets all of the following conditions:

(a) The person has practiced the occupation of a cosmetician, as defined in Section 7354, full time for at least one year, or the equivalent of one year full time, prior to the effective date of this section.

(b) The person has applied within six months after the effective date of this section to the board in proper form and paid the fee required.

A certificate of registration issued pursuant to this section shall authorize the holder thereof to practice the occupation of a cosmetician in a licensed cosmetological establishment until the certificate expires. Every certificate of registration as a cosmetician shall expire September 30, 1978, and shall not be renewable.

Any person issued a certificate of registration issued pursuant to this section as a cosmetician who, before or after the expiration of such registration, makes application to the board in proper form and pays the fee required by this chapter shall be admitted to an examination for a license as a cosmetician, as prescribed by the board.

Added Stats 1976 ch 1394 § 3.

§ 7371. Cosmetology: Subjects and conduct of examinations: Availability of examination in Spanish

The examination of applicants for a license in any of the branches or practices of cosmetology shall include both a practical demonstration and a

Trans. Mar 23 – Nelson Case

EXHIBIT J

THE IOWA STATE BAR ASSOCIATION

1101 Fleming Building, Des Moines, Iowa 50309

We note that you appeared as counsel in the case decided by the opinion which we are enclosing. This opinion is sent to you, free of charge, as a service of The Iowa State Bar Association, and you will continue to receive free copies of opinions in all cases in which you are of counsel.

Edward H. Jones,

Secretary.

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Appellant,

v.

ROLAND RASMUSSEN and
FEDERAL PRESCRIPTION SERVICE, INC.,

Appellees.

Filed December 19, 1973

285
2-56203

Appeal from Boone District Court, Newt Draheim, Judge

State of Iowa appeals from trial court's ruling on application for separate adjudication of law points.

--AFFIRMED.

Richard C. Turner, Attorney General, and Fred M. Haskins, Assistant Attorney General, of Des Moines, for appellant.

H. M. Coggeshall of Des Moines, and Geo. S. Leonard of Washington, D.C., for appellees.

Heard by MOORE, C.J., and MASON, RAWLINGS, REES and McCORMICK, JJ.

REES, J.

This matter had its genesis in the district court of Boone County, and arose by the filing by the Attorney General of the State of Iowa at the behest of the Iowa Board of Pharmacy Examiners of a petition seeking a permanent injunction against the defendants to enjoin them from filling prescriptions written by nonresident physicians not licensed by the Iowa authorities to prescribe controlled substances. Plaintiff moved for an adjudication of points of law raised by defendants, and after hearing trial court held the Iowa Uniform Controlled Substances Act was intended to regulate only intrastate transactions of controlled substances, and that registration under the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, constituted compliance with the Iowa Act. From such ruling, plaintiff has appealed. We affirm the trial court.

Defendant, Federal Prescription Service, Inc., is a pharmacy located at Madrid, and is registered under both federal and Iowa law to dispense controlled substances. Defendant Rasmussen is the manager of the pharmacy. Defendant pharmacy receives prescriptions by mail, fills them and returns them by mail to the person to whom the prescription was issued. Some of such prescriptions received by mail are written by nonresident physicians who are not registered to prescribe controlled substances by the Iowa issuing authority, the Iowa Board of Pharmacy Examiners. The central question in this case is whether the Iowa Uniform Controlled Substances Act (Chapter 204, The Code, 1973) should be construed so as to prohibit the filling by Iowa pharmacists of prescriptions written by nonresident physicians who are not registered by the Iowa authorities to prescribe controlled substances.

The parties are in agreement that the Iowa Act prohibits the filling by Iowa pharmacists of prescriptions written by physicians resident in Iowa who are not registered by the Iowa authorities to prescribe controlled substances.

We are asked to determine whether registration of a nonresident physician under the federal Act pertaining to drugs is sufficient to permit a resident pharmacist to fill a prescription of such nonresident physician, and whether the Iowa Uniform Controlled Substances Act is intended to regulate only intrastate transactions.

I. Section 204.308, The Code, 1973, provides in pertinent part:

> "1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.
>
> "2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 204.306. No prescription for a schedule II substance may be refilled.
>
> "3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under section 155.3, subsections 9 and 10, shall not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner."

All of the controlled substances involved in the matter before us are defined in schedules II, III and IV of the Act.

> "'Dispense' means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Section 204.101(9), The Code, 1973.
>
> "'Practitioner' means either:
>
> "a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

> "b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state." Section 204.101(22), The Code, 1973.

The above definition of "practitioner" incorporated in the Iowa statute is the same definition for "practitioner" as that adopted by the National Conference of Commissioners on Uniform State Laws for the Official Draft of the Uniform Controlled Substances Act. See also definition of "practitioner" in 21 U.S.C.A., § 802(20).

II. Trial court found that the term "controlled substances", insofar as the term applies to the Iowa Controlled Substances Act, covers the same substances as are referred to in the United States Comprehensive Drug Abuse and Control Act of 1970. The trial court further found the Iowa Act permits Iowa pharmacists to dispense drugs only on prescription issued by Iowa licensed practitioners, whereas the federal Act permits Iowa pharmacists to dispense drugs on prescriptions issued by any practitioner licensed by the jurisdiction in which he practices. The court further found that the filling of prescriptions in Iowa of practitioners licensed in other states constitutes interstate commerce.

In its legal conclusions the trial court determined that the requiring of all of the physicians in the United States and its territories to register in Iowa before they could prescribe drugs to Iowa residents and have their prescriptions filled by Iowa pharmacists would be unrealistic and an unreasonable burden on interstate commerce; that the State of Iowa has the right to regulate medical licensing within its borders, but does not have the right or jurisdiction to require a nonresident physician to register in Iowa; that the word "registered" as it appears in section 204.101, The Code, 1973, refers to physicians registered under the

United States Comprehensive Drug Abuse and Control Act, and that there is no conflict between the Iowa Act and the federal Act, as the Iowa Act is intended to regulate intrastate commerce only. The trial court, accordingly, ordered and adjudged that the Iowa Controlled Substances Act is intended to regulate intrastate transactions and the registration required by the United States Comprehensive Drug Abuse and Control Act of 1970 constitutes sufficient compliance by a nonresident practitioner to come within the purview intent and purposes of the Iowa Act.

III. The Uniform Controlled Substances Act was promulgated by the National Conference of Commissioners on Uniform State Laws at its annual conference at St. Louis in August of 1970. The following is excerpted from the prefatory note to the Uniform Act then drafted by the Conference:

> "This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.
>
> * * *
>
> "Much of this major increase in drug use and abuse is attributable to the increased mobility of our citizens and their affluence. As modern American society becomes increasingly mobile, drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a State are easily transported for sale to another part of that State or even to another State. Nowhere is this mobility manifested with greater impact than in the legitimate pharmaceutical industry. The lines of distribution of the products of this major national industry cross in and out of a State innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between States, while at the same time securing such States against drug diversion from legitimate sources, it becomes critical to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the State and local level on a uniform basis.
>
> * * *
>
> "Another objective of this Act is to establish a closed regulatory system for the legitimate handlers

> of controlled drugs in order better to prevent illicit drug diversion. This system will require that these individuals register with a designated State agency, maintain records, and make biennial inventories of all controlled drug stocks."

We must presume the Iowa legislature, in adopting the Uniform Controlled Substances Act, intended to come within the scheme of complementary federal-state control of the distribution of drugs and to create an "interlocking trellis" to assure effectiveness of the Act. We deem it entirely reasonable with such purpose that the Iowa legislature intended the Iowa Act to apply only to those resident practitioners conducting a business of filling prescriptions within this state, with control of the filling of prescriptions of out-of-state practitioners within the purview and contemplation of the federal Act. Such an interpretation of the Iowa Act would insure "the continued free movement of controlled substances betwee States, while at the same time securing such States against drug diversion from legititmate sources . . . ."

Plaintiff argues the prescribing of drugs is an integral part of the practice of medicine, and that when a prescription is filled in Iowa by a pharmacist that such filling of prescription constitut the practice of medicine in Iowa and that the practice should not b permitted to circumvent the licensing requirements of Iowa while carrying on a professional practice elsewhere.

Plaintiff further argues that the State "cannot be certain that physicians who are registered by other states are competent to prescribe drugs which are dispensed by pharmacies in Iowa", and therefore the State of Iowa should be able to prohibit all practitioners not registered with the Iowa authorities from filling prescriptions in Iowa.

In construing statutes, we are guided by the principle that where a statute is fairly subject to different constructions, one of which will render it constitutional and another unconstitutional or of doubtful constitutionality, the construction by which it will

be upheld will be followed and adopted. State v. McGuire, 200 N.W.2d 832, 833 (Iowa 1972). If we were to adopt plaintiff's arguments in this connection, such a result would contravene both the supremacy and the commerce clauses of the United States Constitution.

We consider first the matter of preemption. In enacting the Federal Controlled Substances Act, Congress certainly did not intend to occupy and preempt the field of drug abuse control. 21 U.S.C.A., § 903 provides:

> "No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, *unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.*" (Emphasis supplied).

In Powers v. McCullough, 258 Iowa 738, 744, 140 N.W.2d 378, 382, this court said:

> "The term 'direct conflict' means hostile encounter, contradictory, repugnant, so irreconcilably inconsistent, each with the other, as to make one actually inoperable in the face of the other. (Citations)."

The State argues there is no positive conflict between the federal Act and the Iowa Act, and that a nonresident physician can comply with the Iowa Act by simply registering with the Iowa authorities. We are unable to agree with the State's conclusion. To require all nonresident physicians to register in Iowa would be in practical effect negating the operation of the federal Act in this state. The following appears in the U.S. Code Congressional and Administrative News, 91st Cong., 2d Sess., 1970, Vol. 3, pp. 4571-4572, regarding P.L. 91-513, the Federal Controlled Substances Act:

> "The bill is designed to improve the administration and regulation of the manufacturing, distribution, and dispensing of controlled substances by providing for a 'closed' system of drug distribution for legitimate

> handlers of such drugs. Such a closed system should significantly reduce the widespread diversion of these drugs out of legitimate channels into the illicit market, while at the same time providing the legitimate drug industry with a unified approach to narcotic and dangerous drug control."

We conclude the construction placed upon the Iowa statute by plaintiff would bring about a positive conflict in policy so that the two statutes could not consistently stand together.

IV. A holding by this court that the Iowa Act applies to all practitioners attempting to have their prescriptions filled in Iowa would present constitutional problems under the commerce clause of the United States Constitution, as such construction would impose unreasonable burdens on interstate commerce.

If a state statute, on its face, is for the protection of local economic benefit, such a statute is *per se* unconstitutional as it would place an undue burden on interstate commerce. In Pike v. Bruce Church, Inc., 397 U.S. 137, 145, 90 S. Ct. 844, 849, 25 L. Ed.2d 174 (1970), the court said:

> "For the Court has viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere. Even where the State is pursuing a clearly legitimate local interest, this particular burden on commerce has been declared to be virtually *per se* illegal. (Citations)."

The Iowa statute does not discriminate in its language between foreign practitioners and those registered in Iowa--all are required to register under the provisions of the Iowa Act in order to dispense drugs in Iowa. We do not regard such a provision as being *per se* unconstitutional.

However, if the effect of the law is to insulate in-state business against interstate competition (assuming for sake of argument no preemption problem), it is our responsibility to balance the purpose of the Act with its effect, and to assess the State's interest in adopting that particular statute in light of any reasonable alternatives available. In the absence of conflicting

legislation by Congress, this court is the final arbiter of the competing demands of state and national interests. See Southern Pacific Co. v. Arizona, 325 U.S. 761, 769, 65 S. Ct. 1515, 1520, 89 L. Ed. 1915 (1945); Dean Milk Co. v. City of Madison, 340 U.S. 349, 71 S. Ct. 295, 95 L. Ed. 329.

We do not question the right of a state to regulate for the health and safety of its citizens. Breard v. Alexandria, 341 U.S. 622, 71 S. Ct. 920, 95 L. Ed. 1233 (1951); State v. Koscot Interplanetary, Inc., 191 N.W.2d 624 (Iowa 1971). The protection of the health and safety of the citizens of Iowa is the stated purpose of Iowa's Uniform Controlled Substances Act. Plaintiff therefore argue

> "The State of Iowa has a legitimate health related interest in maintaining and enforcing its own standards for those who are permitted to prescribe controlled substances which are dispensed by pharmacies in Iowa."

Plaintiff cites and relies upon Huron Portland Cement Co.v. City of Detroit, 326 U.S. 440, 80 S.Ct. 813, 4 L. Ed.2d 852 (1960). In this case the City of Detroit imposed penalties on federally-licensed steamships for violation of city smoke-emission controls. Inspection of the boilers of steamships which were responsible for smoke emissions was part of the federal-licensing procedure also. *Huron* is cited by plaintiff for authority that federal licensing does not prevent a state from imposing stricter licensing requirements. In *Huron* (362 U.S. at 448, 80 S. Ct. at 818), the United States Supreme Court said:

> "State regulation, based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity, may constitutionally stand. (Citations)."

Obviously, the Huron case was decided primarily on the basis of the facts of the case and on an analysis of the facts on a preemption rationale.

For our purposes here, we must consider the need for uniformity in registration for practitioners and balance the right of the state to control licensing standards for all practitioners with the need

for uniformity in administering controls in drug trafficking. The following, from 21 U.S.C.A., § 801, we consider pertinent:

> "(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because--
>
> > "(A) after manufacture, many controlled substances are transported in interstate commerce,
> >
> > "(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
> >
> > "(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.
>
> "(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
>
> "(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.
>
> "(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic."

The need for national registration was anticipated by Congress although it permitted the mechanics of registration to be adopted or at least supplemented by the several states. The federal authority issues licenses to dispense to accomplish the purposes of federal legislation for the control of drug abuse, and has therefore acted definitively with respect to the interstate prescriber of controlled substances. See 21 U.S.C.A., § 822. Such an interest clearly outweighs any local interest that Iowa might have in allowing only practitioners registered in this state to prescribe here, and for pharmacists in this state to fill prescriptions emanating from out-of-state.

V. On the basis of all of the foregoing, we must recognize the constitutional infirmities which would result from adopting plaintiff's construction of the Iowa Act. In order to avoid such problems, we therefore limit the application of sections 204.308 and 204.101(22), The Code, 1973, to practitioners registered in Iowa. We must therefore affirm the trial court in its ruling that practitioners registered under the Federal Controlled Substances Act, although not registered in Iowa, and not resident in this state, are governed solely by the federal Act, and that prescriptions emanating from out-of-state may be filled by duly authorized Iowa pharmacies.

We therefore affirm the trial court.

AFFIRMED.

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF SUPREME COURT)
RULE 21)

ORDER

After due consideration the court concludes Court Rules 18 and 21, read together with rule 350, Rules of Civil Procedure, may create a question relating to time for filing a petition for rehearing in a criminal case appeal. It is the further conclusion of the court that R.C.P. 350 should be made clearly applicable to both civil and criminal case appeals.

It is therefore ORDERED that Court Rule 21 shall be and is hereby revoked.

Done this 16th day of November, 1973.

THE SUPREME COURT OF IOWA

By C. Edwin Moore
Chief Justice

Copies to:

Members of the Supreme Court

Iowa State Bar Association

Philip J. Willson
Council Bluffs, Iowa

Mo March 23 - Hearing Pledge filed for ORPP

EXHIBIT K

James H. Clarke
Laurence F. Janssen
Frank M. Parisi
Spears, Lubersky, Campbell & Bledsoe
800 Pacific Building
Portland, Oregon 97204
Telephone: (503) 226-6151

Lawrence I. Brandes
Miller, Singer, Michaelson & Raives
555 Madison Avenue
New York, New York 10022
Telephone: (212) 752-8830

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

OREGON RETIRED PERSONS PHARMACY, INC., EDITH ATKINS, FRANK ATWOOD and AL HASCAL, Plaintiffs,	)	Civil No. _____
v.	)	COMPLAINT
OREGON STATE BOARD OF PHARMACY, FREDRICK CORBIN, POWELL GRAHAM, CARL SHEFCHEK, RUTH VANDEVER, ELINOR WALNUM, GARY PRICKETT and BARBARA WATSON, members of the Board of Pharmacy, and JAMES BROWN, Attorney General of the State of Oregon, Defendants.	)	

Plaintiffs allege:

JURISDICTION AND PARTIES

1. This is an action under 28 USC § 2201 for a declaratory judgment determining a matter in actual controversy between the parties. The matter in controversy

exceeds $10,000, exclusive of interest and costs, and arises under the constitution and laws of the United States and under an Act of Congress regulating commerce. Jurisdiction of the court is based on 28 USC §§ 1331(a) and 1337.

2. Venue lies in this court under 28 USC § 1391(b).

3. Plaintiff Oregon Retired Persons Pharmacy, Inc. (ORPP) is a nonprofit corporation organized and existing under the laws of Oregon. ORPP is licensed by defendant Oregon State Board of Pharmacy (the Board) to operate a pharmacy in Portland, Oregon, at which it employs pharmacists licensed by the defendant Board to fill prescriptions, over-the-counter and by mail and fast freight, for pharmaceutical products issued by medical practitioners in Alaska, Colorado, Hawaii, Idaho, Montana, Washington, Wyoming and Oregon to members of the American Association of Retired Persons (AARP) and National Retired Teachers Association (NRTA). AARP is a nonprofit corporation organized and existing under the laws of the District of Columbia. Membership is open to persons over the age of 55 years. NRTA is a nonprofit corporation organized and existing under the laws of California. Membership is open to teachers and their spouses over the age of 55 years. There are about 11,000,000 members of AARP/NRTA in the United States, including 870,000 members in the eight western states. In its prescription business, ORPP charges AARP and NRTA members substantially lower retail prices for many pharmaceutical products than are

800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 228.6181

generally charged by other retail pharmacies in the communities where they live.

ORPP and all pharmacists employed by it are registered with defendant Board under ORS 475.125 and with the Attorney General of the United States under the Federal Drug Abuse Prevention and Control Act, 21 USC §§ 801-966 ("the Act"), and are authorized by federal and state law to dispense drugs covered by the Act ("controlled substances").

Under the Act, every person who manufactures, distributes, prescribes or dispenses controlled substances, including pharmacists and medical practitioners, must register with the Attorney General of the United States, and persons so registered are authorized to distribute or dispense such drugs.

4. Plaintiff Edith Atkins is a member of AARP and is a resident of Camas, Washington. Edith Atkins' primary care physician is E. M. McAnnich, MD, a medical practitioner who is licensed by and practices in the state of Washington and is registered with the Attorney General of the United States under the Act and is authorized by federal and state law to prescribe controlled substances. In the course of his treatment of Edith Atkins, Dr. McAnnich prescribes for her Tylenol # 3, a controlled substance classified in Schedule III of the Act.

5. Plaintiff Frank Atwood is a member of AARP and is a resident of Lewiston, Idaho. Frank Atwood's primary

800 PACIFIC BUILDING
PORTLAND, OREGON 97204 - 228-6181

care physician is James B. Fisher, MD, a medical practitioner who is licensed by and practices in the state of Idaho and is registered with the Attorney General of the United States under the Act and is authorized by federal and state law to prescribe controlled substances. In the course of his treatment of Frank Atwood, Dr. Fisher prescribes Valium, a controlled substance classified in Schedule IV of the Act.

6. Plaintiff Al Hascal is a member of AARP and is a resident of Everett, Washington. Al Hascal's primary care physician is Willard G. Wagner, MD, a medical practitioner who is licensed by and practices in the state of Washington and is registered with the Attorney General of the United States under the Act and is authorized by federal and state law to prescribe controlled substances. In the course of his treatment of Al Hascal, Dr. Wagner prescribes Valium, a controlled substance classified in Schedule IV of the Act.

7. Defendants Fredrick Corbin, Powell Graham, Carl Shefchek, Ruth Vandever, Elinor Walnum, Gary Prickett and Barbara Watson are members of the Oregon State Board of Pharmacy.

8. Defendant Board is an agency of the state of Oregon and is charged by ORS 689.600-689.620 with responsibility to administer and enforce the statutes of Oregon relating to the practice of pharmacy, including ORS 689.665(3). Defendants Fredrick Corbin, Powell Graham, Carl Shefchek, Ruth Vandever, Elinor Walnum, Gary Prickett and Barbara Watson are the only

800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

appointed and acting members of the Board. Defendant James Brown is the Attorney General of the State of Oregon and is charged with enforcement of the said statutes.

9. ORS 689.665 (1975) provides

> "(1) A prescription written by a licensed medical practitioner of a state or territory of the United States, other than Oregon, may be filled only if the pharmacist called upon to fill such prescription determines, in the exercise of his professional judgment:
>
> "(a) That it was issued pursuant to a valid patient-licensed medical practitioner relationship;
>
> "(b) That it is authentic.
>
> "(2) However, if the licensed medical practitioner writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of the prescription.
>
> "(3) The authorization contained in this section to fill out-of-state prescriptions does not apply to medications covered by the Federal Controlled Substances Act."

10. ORS 689.665 prohibits persons, including ORPP and all pharmacists employed by it, who are licensed by defendant Board, are registered under the Act and are authorized under state and federal law to operate a pharmacy and dispense controlled substances, from filling prescriptions for such drugs written by medical practitioners who are licensed by and practice in any state or territory other than Oregon and who are registered under the Act and are authorized by state and federal law to prescribe such drugs.

The defendant Board has stated that it will, and it does regularly and consistently enforce said statute against Oregon pharmacists who violate its terms by filling such prescriptions, and will enforce it against ORPP if said plaintiff were to do so. Defendant Attorney General had advised the defendant Board that it can enforce the Act against licensed pharmacists who violate its terms.

FIRST CLAIM FOR RELIEF

11. In the course of its regular pharmacy business ORPP receives prescriptions for drugs by mail from members of AARP and NRTA in Oregon and other western states, and fills said prescriptions and delivers said drugs to such members by mail or fast freight. In 1979 ORPP received and filled such prescriptions mailed from other states representing total interstate sales of $6,139,439. The mailing of said prescriptions by members of AARP and NRTA in other states to ORPP in Oregon and the filling of said prescriptions and delivering of drugs by ORPP to such members in other states occur in and constitute a substantial and continuing course of interstate commerce.

12. Many of the prescriptions received by ORPP in the course of its said pharmacy business from members of AARP and NRTA are for controlled substances, which prescriptions have been written by medical practitioners who are licensed by and practice in the states where such members reside, and who are registered under the Act and are authorized by state

800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 228-6181

and federal law to prescribe such drugs. Said prescriptions are sent to ORPP to be filled by mail, and ORPP desires to and would fill said prescriptions and desires to and would send said drugs to said members and would secure additional drug business of said members, except for the prohibition against dispensing controlled substances in ORS 689.665(3). Many additional prescriptions for controlled substances would be sent to ORPP by members of AARP and NRTA in other states to be filled except for said prohibition against dispensing such drugs in ORS 689.665(3).

13. Plaintiffs Atkins, Atwood and Hascal desire to and would send their prescriptions for controlled substances to ORPP to be filled by mail or fast freight, and would be charged substantially less by ORPP than by pharmacies in their communities, and ORPP desires to and would fill said prescriptions, except for the prohibition against dispensing such drugs in ORS 689.665(3).

14. Plaintiffs contend that ORS 689.665(3), insofar as it prohibits Oregon pharmacists who are authorized by the Act to dispense controlled substances from filling prescriptions for controlled substances that are written by medical practitioners who are licensed by and practice in other states, and who are registered under the Act and are authorized by state and federal law to prescribe controlled substances imposes a direct, substantial and unreasonable burden on interstate commerce and violates the Commerce

800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 228-6151

Clause of the United States Constitution (Article I, Section 8, cl 3). Defendants deny that contention, and there is a controversy between the parties with respect thereto.

SECOND CLAIM FOR RELIEF

15. Plaintiffs reallege paragraphs 1-13.

16. The Act establishes comprehensive federal regulation of interstate transportation of and commerce in controlled substances, including their classification, manufacture, import, export, distribution, dispensing and use. In the Act, Congress has declared that a major portion of the traffic in controlled substances flows through interstate commerce, and that federal regulation of the interstate and intrastate incidents of commerce in controlled substances is necessary.

17. Plaintiffs contend that ORS 689.665(3), insofar as it prohibits Oregon pharmacists who are authorized by the Act to dispense controlled substances, from filling prescriptions for such drugs written by medical practitioners who are licensed by and practice in other states and are authorized by the Act to prescribe such drugs, is inconsistent with the Act and stands as an obstacle to the accomplishment and execution of its purpose to regulate interstate commerce in controlled substances, and is unenforceable under the Supremacy Clause of the United States Constitution (Article VI). Defendants deny that contention, and there is a controversy between the parties with respect thereto.

THIRD CLAIM FOR RELIEF

18. Plaintiffs reallege paragraphs 1-13.

19. Plaintiffs Edith Atkins, Frank Atwood and Al Hascal are prohibited by ORS 689.665(3) from having their said prescriptions for controlled substances written by Drs. McAnnich, Fisher and Wagner filled by ORPP by mail or fast freight, although ORPP would do so and would charge plaintiff lower prices than are charged by pharmacies in their respective communities in Washington and Idaho.

20. Plaintiffs Edith Atkins, Frank Atwood and Al Hascal and substantially all other out-of-state members of AARP and NRTA and other nonresidents of Oregon are served by medical practitioners who are licensed by and practice in the states in which said members live.

21. Plaintiffs contend that ORS 689.665(3), insofar as it prohibits Oregon pharmacists who are authorized by the Act to dispense controlled substances, from filling prescriptions for such drugs written by medical practitioners who are licensed by and practice in other states and are authorized by the Act to prescribe such drugs, discriminates against plaintiffs Edith Atkins, Frank Atwood and Al Hascal and all other out-of-state members of AARP and NRTA and other nonresidents of Oregon with no substantial justification and is in violation of the interstate Privileges and Immunities Clause of the United States Constitution (Article IV, Section 2) and violates the Due Process and Equal Protection Clauses

of the Fourteenth Amendment. Defendants deny that contention, and there is a controversy between the parties with respect thereto.

WHEREFORE, plaintiffs demand judgment declaring that ORS 689.665(3), as applied to plaintiffs and to the dispensing of controlled substances by ORPP to members in other states as alleged above, is in violation of the Commerce Clause of the United States Constitution (Article I, Section 8, cl 3); the Supremacy Clause of the United States Constitution (Article VI); the interstate Privileges and Immunities Clause of the United States Constitution (Article IV, Section 2); and the Fourteenth Amendment to the United States Constitution; for plaintiffs' costs and disbursements, and for such other relief as the Court deems proper.

MILLER, SINGER, MICHAELSON & RAIVES
LAWRENCE I. BRANDES

SPEARS, LUBERSKY, CAMPBELL & BLEDSOE
JAMES H. CLARKE
LAURENCE F. JANSSEN
FRANK M. PARISI

By _____
James H. Clarke

Attorneys for Plaintiffs

Testimony - Senate Comm. 3/23/81 SB 391

Exhibit L

MR. CHAIRMAN, MY NAME IS WILLIAM MCCULLOUGH AND I'D LIKE FIRST TO THANK YOU AND ~~YOUR COLLEAGUES~~ The Members of this Com. FOR THIS OPPORTUNITY TO MAKE A BRIEF APPEARANCE BEFORE YOU TODAY.

I AM CHAIRMAN OF THE NATIONAL RETIRED TEACHERS ASSOCIATION - AMERICAN ASSOCIATION OF RETIRED PERSONS NEVADA JOINT LEGISLATIVE COMMITTEE. OUR ASSOCIATIONS HAVE MORE THAN 12.5 MILLION MEMBERS NATIONALLY AND OUR LEGILATIVE COMMITTEE REPRESENTS ~~THE~~ The MORE THAN 50,000 WHO LIVE HERE IN NEVADA. I have lived in B.C. 50 yr. 21 yrs C.B. S.P.

MR. CHAIRMAN, WE OPPOSE CERTAIN PROVISIONS OF SENATE BILL 391, SPECIFICALLY THOSE IN SECTION 16, ~~WE CONCUR WITH THE OBJECTIVES PRESENTED BY THE NEVADA RETIRED PERSONS PHARMACY'S COUNCIL AND MANAGEMENT. TO~~ WHICH PROHIBITS LICENSED NEVADA PHARMACISTS FROM FILLING PRESCRIPTIONS WRITTEN BY OUT-OF-STATE PHYSICIANS FOR CONTROLLED SUBSTANCES UNLESS THOSE PHYSICIANS ARE REGISTERED WITH THE NEVADA BOARD OF PHARMACY. THIS DOES INDEED SEEM TO INTERFERE WITH INTERSTATE COMMERCE AND, AS SUCH, IS MOST LIKELY UNCONSTITUTIONAL.

THESE ARE LEGAL QUESTIONS AND THEY ARE IMPORTANT ONES FOR YOUR CONSIDERATION. MOREOVER OUR NEVADA MEMBERS ARE QUITE CONCERNED ABOUT THE FUTURE WELL-BEING OF THE NATIONAL RETIRED TEACHERS ASSOCIATION - AMERICAN ASSOCIATION OF RETIRED PERSONS PHARMACY SERVICE IN NEVADA. IT SEEMS TO US THAT THE PROVISIONS OF SECTION 16 ARE AIMED DIRECTLY AT RESTRICTING OUR PHARMACY's ABILITY TO PROVIDE MUCH NEEDED SERVICE TO OUR FELLOW MEMBERS IN CALIFORNIA, UTAH, AND ARIZONA.

THE PHARMACY SERVICE IS WELL KNOWN FOR ITS ABILITY TO PROVIDE HIGH QUALITY AND EFFICIENT SERVICE AT SUBSTANTIAL SAVINGS TO

OUR MEMBERS THROUGH ITS MAIL ORDER OPERATIONS. JUST AS IMPORTANT, THE WALK-IN SERVICE IN LAS VEGAS PROVIDES ALL CITIZENS WITH THE OPPORTUNITY TO TAKE ADVANTAGE OF THE COMPETITIVE PRICES THE SERVICE OFFERS.

BECAUSE THE NEVADA RETIRED PERSONS PHARMACY'S FINANCIAL HEALTH DEPENDS ON THE SERVICE IT PROVIDES AND BUSINESS IT DOES WITH ASSOCIATION MEMBERS IN OTHER STATES WE CAN FORSEE GREAT PROBLEMS FOR ITS ABILITY TO CONTINUE TO SERVE OUR NEVADA MEMBERS IF SECTION 16 of SENATE BILL 391 IS ENACTED INTO LAW.

YOU MUST RECALL THAT WHILE OLDER PEOPLE REPRESENT SOME 11% of THE POPULATION, THEY ACCOUNT FOR NEARLY 25% OF PRESCRIPTION DRUG CONSUMPTION. MORE IMPORTANT, OLDER PEOPLE SPEND MORE THAN 2½ TIMES THE AMOUNT YOUNGER AMERICANS SPEND FOR MEDICINE.

OUR NEVADA RETIRED PERSONS PHARMACY ~~GOES~~ HAS GONE ALONG WAY TOWARD REDUCING THIS HEAVY HEALTH COST BURDEN SINCE IT BEGAN OPERATIONS LAST YEAR. THE SERVICE HAS BECOME A GREAT HELP TO NEVADA'S OLDER CITIZENS. ENACTMENT OF SECTION 16 OF SENATE BILL 391 COULD LIMIT A NEVADA BUSINESS' ABILITY TO HELP ITS OWN CITIZENS.

ON BEHALF OF THE JOINT COMMITTEE AND THE MORE THAN 50,000 OLDER NEVADANS IT ~~REPRESENTS~~ REPRESENTS, WE WOULD ASK YOU AND YOUR ~~COLLEAGUES~~ Committee TO DELETE THE PROVISIONS OF SECTION 16 BECAUSE WE CANNOT SEE IT SERVING THE PUBLIC INTEREST.

THANK YOU