

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

**Seventy-third Session
April 22, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Friday, April 22, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27
Assemblyman John Ocegüera, Assembly District No. 16

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Shirley Parks, Committee Secretary

OTHERS PRESENT:

John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual
Company

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Roger Bremner, Administrator, Division of Industrial Relations, Department of
Business and Industry
Don Jayne, Nevada Self Insurers Association
Rose E. McKinney-James, Clark County School District
Diaz Dixon, STEP 2, Join Together Northern Nevada
Mike Moran, President, Project Care
James Jackson, America's Health Insurance Plans
Janice C. Pine, Saint Mary's Health Plans
Christina Dugan, Las Vegas Chamber of Commerce

CHAIR TOWNSEND:

The first item of business will be the hearing on Assembly Bill (A.B.) 58.

ASSEMBLY BILL 58 (1st Reprint): Enacts various provisions relating to industrial insurance. (BDR 53-250)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):

I am here today to provide a brief introduction to A.B. 58. This is one of four measures recommended during the interim by the Senate Committee on Commerce and Labor to study Nevada's industrial-insurance program. This bill before you is a consensus bill. A compromise has been agreed to by the Assembly Committee on Commerce and Labor.

This bill makes two changes to the Nevada Industrial Insurance Act. The first change concerns reporting requirements. The administrator of the Division of Industrial Relations (DIR) is required to prepare an annual report detailing fines and benefit penalties imposed to enforce workers' compensation laws. In addition, the chief of the Hearings Division of the Department of Administration (DOA) is required to prepare an annual report containing information about the disposition of cases involving workers' compensation claims. The second change relates to the payments of compensation to an injured worker who has returned to work, but needs follow-up medical treatment.

Injured workers who live in the rural areas of Nevada are often compelled to lose a full day's pay when they must travel several hours in each direction to obtain medical treatment for work-related injuries. Although this is a way to help rural injured workers, it is also beneficial to urban workers. In the case of urban workers, traffic congestion or the location of the doctor's office could result in taking a full day to seek medical treatment. Many of these people are hourly

workers who do not receive paid leave. They do not receive a wage when they miss work. This bill would entitle these workers to an additional amount of workers' compensation to cover their lost wages if they miss work and travel more than 50 miles one way from their workplace to receive medical treatment for their injuries. The bill would prohibit an employer from requiring an employee to use sick leave or any other type of leave while they are receiving this medical treatment.

JOHN (JACK) E. JEFFREY (Southern Nevada Building and Construction Trades):
I want to add several comments. The largest problem we have had in this area has been the third-party administrators. Some of these people deny worker's claims routinely. The bill originally called for licensing of claims adjusters; we finally agreed it would be ambitious at this point. The bill provides information to the parties involved and in doing so, oversees the injured worker's claim. We have found the people involved with the industry legitimately want to take care of the injured worker so they can return to work. The bill requirements will create a change in the reporting systems of the DIR and the Hearings Division of the Department of Administration (DOA). The cost to improve the reporting process will be very little.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):

I would like to explain several sections of the bill. One purpose for the annual report from the DIR and the Hearings Division of the DOA is to collect statistics for the data that will be available for future reference. This will help to determine where the real problems are located within the system. The other purpose creates a new benefit for the injured worker who has to travel a long distance to get medical treatment. This benefit is for those people who qualified previously for a temporary total disability. Once qualified, the worker would receive benefits for travel of 50 miles one way. There are some other requirements for the DIR to adopt as regulation. This last item would be important to the insurance industry. This benefit only applies to injuries that occurred on or after January 1, 2006. It will not create a back benefit. It is a new provision.

SENATOR TIFFANY:

Mr. Jeffrey, have you questioned anyone at the DIR as to this reporting request? Will there be a need for additional staff? Will this be a more thorough expansion of existing reports?

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MR. JEFFREY:

Yes. We have had conversation with the DOA and the existing staff will be adequate.

SENATOR TIFFANY:

Do you not anticipate any extra costs for the Executive Branch?

MR. JEFFREY:

They have been collecting data but have not broken it down into specifics. Mr. Bremner has indicated that there is no need of additional staff.

ROGER BREMNER (Administrator, Division of Industrial Relations, Department of Business and Industry):

We are prepared to do this now. We have been collecting data. If there is a cost, it would be for the regulatory hearing. I see no expense related to this bill.

SENATOR TIFFANY:

Will there be an added cost to the employer?

MR. JEFFREY:

We have not spoken with individual employers.

MR. OSTROVSKY:

We anticipate some costs, because this is a new benefit. We are unsure of the amount. Eventually, by January 1, 2006, these costs will be added into the premium fees. The cost issue, for example, will revolve around travel expense and medical treatment for the injured worker from a rural area. There are no statistics to help with answers as to specific costs. It should be minimal.

DON JAYNE (Nevada Self Insurers Association):

I had the opportunity to work with the sponsors of this bill. I have watched it progress through the Assembly. I want to address the fines and the reporting mechanisms in A.B. 58. The DIR has the resources to do the reporting. They have accumulated some data to date. I want to go on the record representing the last report that was done by the DIR of which I have copies for the Committee (Exhibit C). The report reflected there were 65,488 claims filed in the fiscal year 2003, and of the 65,488 claims, 5,139 claims were denied. This reflects about 93 percent of the claims are accepted and about 7 percent are denied. There have been different conversations regarding these issues during

this Legislative Session; they have been described accurately. The statistics will give a clear picture of where there are problems and specifically how to deal with them.

The Nevada Self Insurers Association is unable to predict the costs related to the bill because of the rural injured worker's travel and treatment. We do not know the impact. For a number of Legislative Sessions, we have had testimony brought to us about individuals who live in the rural areas and were unable to get services in those areas. Also, there were employers who would not support them with time off. We have tried to help solve the problem with the new benefit.

A request was made, as a matter of record, to include a letter addressed to Chair Townsend and the Senate Committee on Commerce and Labor from Mike Livermore, Claims Supervisor, of Alternative Service Concepts (ASC), a licensed third-party administrator of workers' compensation. He asks for a deletion of section 2 of A.B. 58 and any other section with language related to: "lost wages caused by travel to obtain medical treatment" ([Exhibit D](#)).

SENATOR HECK:

Of the claims that were denied, was there a final denial, or were they a denied claim at some given point in time? Out of this report, how many claims were denied initially and ultimately found to be worthwhile claims?

MR. JAYNE:

I do not have a breakdown of the final statistics. Perhaps Mr. Bremner would be able to explain it. I would look at the initial submission of the claim, and looking at these numbers, my thought would be that these are the initial claims.

MR. BREMNER:

The report is the initial denials. This is one of the purposes of a report. Some of these claims would have been appealed and some may have been reversed. This is the value of statistical information.

ROSE E. MCKINNEY-JAMES (Clark County School District):

We are in support of the bill as amended. We had the opportunity to work with the sponsors of the bill. We appreciate their willingness to accommodate our concerns. We are one of the largest employers in the state. We are one of the largest self-insured employers in the state.

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CHAIR TOWNSEND:

What would the employee numbers equate to?

Ms. MCKINNEY-JAMES:

There are 32,400 employees in the Clark County School District. It is one of the largest employers in the state.

CHAIR TOWNSEND:

We will close the hearing on A.B. 58 and open the hearing on A.B. 63.

ASSEMBLY BILL 63 (1st Reprint): Prohibits certain practices by health insurers with regard to injuries sustained while under influence of alcohol or controlled substance. (BDR 57-207)

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

This bill was brought to my attention by trauma doctors in our State. It would have been helpful to have them speak to the bill, but their schedules are not as flexible as we would have hoped. I will relay their concerns and what was said in the Assembly regarding this issue. We will ask them to contact this Committee more directly ([Exhibit E](#)). This bill is about the Uniform Accident and Sickness Policy Provision Law (UPPL). The UPPL allows insurance companies to deny payment of health insurance claims if the patient is documented as under the influence of alcohol or a controlled substance at the time of their treatment. This provision most often applies when someone appears in the emergency room or trauma center.

The bill proposes to repeal the UPPL in Nevada, prohibiting insurance coverage from being denied or cancelled because alcohol or drugs were a factor with the injury. This proposal gives no mandate of any kind on a trauma center or an insurance company. In the Assembly, we did add the felony exclusion some insurance companies have in our state. This part of the law would remain unchanged. Wrongdoing is not the concern except for the felony exclusion under the UPPL of Nevada. Alcohol need not be the cause of the injury for an insurance company to deny a claim. A person who slips and falls at home and goes to the emergency room with a broken wrist could see the claim denied if the presence of alcohol at any level is detected in the blood. You do not have to be legally intoxicated for a claim denial to apply; it is any trace of alcohol or controlled substance. In essence, the UPPL discriminates against people whose medical treatment is a result of alcohol or drug use at any level.

More than 40 percent of patients seen in emergency rooms across the country are under the influence of either alcohol or drugs, but only 15 percent are screened. We heard riveting testimony from trauma doctors in Las Vegas who said up to 80 percent of the people they see in the trauma center in Las Vegas were under the influence of alcohol or drug use at the time of their injury. Studies indicate the doctors are less likely to screen patients for alcohol or drug problems in states where the UPPL applies. Emergency room screenings could reduce the risk of reinjury by 50 percent.

The UPPL was adopted in the 1950s in an attempt to reduce insurance costs. There is no demonstrated evidence this has happened. There is no evidence, should A.B. 63 be processed, that it will result in increased health insurance premiums. What is happening now is the trauma-center doctors are not screening for alcohol and drugs. A trauma doctor at Washoe Medical Center said that at one time they did screen and had a followup for those people they saw many times in the emergency rooms usually for an alcohol-related injury. The person would be referred to treatment. The insurance companies refused to pay some large bills. This screening program was stopped altogether. There are now no referrals. It is a frustrating "catch-22" for doctors. They want to provide the best treatment possible, but to screen could mean the insurance companies would not pay the bill.

Efforts to repeal the UPPL are supported by many groups. In 2003, the National Conference of Insurance Legislators passed a resolution urging all states to repeal the UPPL. Other groups in support of this repeal include the National Association of Insurance Commissioners, Centers for Disease Control, American Medical Association, National Highway Transportation Safety Administration and the National Association of Addiction Medicine. Many states have repealed the UPPL provisions. Measures to repeal the UPPL have been introduced in many other states. I will do my best to answer any questions the Committee may have.

SENATOR TIFFANY:

How chronic is this problem? Is this a preemptive strike?

ASSEMBLYWOMAN LESLIE:

At first, I was not convinced this was a problem. I am basing my information on the trauma doctors' experiences. No one is keeping track of these alcohol- and drug-related injuries. The insurance companies are paying the bills, because they

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have no way of knowing if the injury is related to alcohol or drug abuse. There is no data to prove the point on either side of the issue.

SENATOR TIFFANY:

I was not aware of this problem.

ASSEMBLYWOMAN LESLIE:

The trauma doctors would give the best description of this problem. I hoped they would be here today to present their firsthand, everyday experiences.

SENATOR TIFFANY:

I imagine if someone were a chronic inebriate and continued to have a problem with injuries, the insurance companies could drop their health care. This would be an option.

ASSEMBLYWOMAN LESLIE:

I am more concerned with the treatment side of the issue, screening and encouraging people to get help. We know that when people are in crisis, it is the best time for them to accept assistance. Trauma doctors see these same people repeatedly and are unable to screen for further referrals, for example, to counseling in a treatment center. Some insurance companies do not have the UPPL provision. There is no way to know the number.

SENATOR CARLTON:

I first heard about this issue when I attended a conference of the National Conference of Insurance Legislators. Nevada is not a national member, but I wanted to become more informed about insurance issues. They are dealing with some of the same problems regarding this issue all across the country. There is no way to really document what is happening, because it is basically a "do-not-ask, do-not-tell" type of scenario. Just treat the injured person, and if there are underlying factors with alcohol or drugs, hope the family doctor or another attending doctor will deal with it.

DIAZ DIXON (STEP 2, Join Together Northern Nevada):

I am chief executive officer of STEP 2, a substance-abuse-treatment program in Reno. I am here in support of A.B. 63.

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MIKE MORAN (President, Project Care):

Currently, I am the president of the board of directors to an organization called Project Care.

MR. DIXON:

We look at the treatment side of this issue. There are many people who come into the emergency rooms or trauma centers with injuries who are not given the screening to determine alcohol or other substance abuse. The doctor is concerned about the financial ramifications to the care facility. As it currently stands today, this is a missed opportunity to refer someone for treatment, evaluation and education which gives insight and awareness to a chronic problem needing attention. We are a private nonprofit organization. Our programs strengthen the community.

MR. MORAN:

We are here to support of A.B. 63. The organization that I work with, Project Care, provides life-skill training for people struggling with substance-abuse issues and who are involved with the criminal-justice system. Since I have become involved with this organization, I have looked for ways to break down the stigma associated with addiction. I encourage people through treatment and support groups to deal with their addiction before the traumatic emergency-room experience. This is why I support A.B. 63. Screening for alcohol and drug abuse leads to referrals for counseling and treatment. This will, over a period of time, save money for the health-care system as well as saving lives.

JAMES JACKSON (America's Health Insurance Plans):

I am neutral to the bill. I did want to comment on the re-inclusion of the felony exclusion. I appreciate this feature of the bill. We recognize that under a long line of Nevada case law, felony acts are considered intentional acts. Intentional acts are almost always excluded from any type of insurance.

SENATOR SCHNEIDER:

Is there a felony driving under the influence (DUI) that is not covered?

MR. JACKSON:

If someone is injured as a result of committing a felony DUI, then the felony act exclusion could apply.

JANICE C. PINE (Saint Mary's Health Plans):

Saint Mary's Hospital supports the bill, but there are some concerns. In our view, the bill becomes a mandate. We oppose new mandates in any form. The insurers to whom this would apply provide health benefits basically to one-third of the population. The responsibility for any wrongdoing needs to be placed upon the wrongdoer and the felony, which we do appreciate, does not include other criminal acts. The statute is clear on unlawful driving while under the influence of alcohol. Workers' compensation is another area where payment is not made if the injury happened while under the influence of alcohol or drugs. We have no concern with policy or the language that deals with cancellation. We suggest that section 1, subsection 1, paragraph (a), through sections 8 and 10 be deleted as well as section 14.

CHAIR TOWNSEND:

What exactly would this leave in the bill?

MS. PINE:

This leaves all the language, except where I am asking for deletion. Section 1, subsection 1, paragraph (a), and in section 3, subsection 1, paragraph (a), and section 4, subsection 1 paragraph (a) and so on in each section of the bill where this issue is added, including section 14, I am asking that these portions of the bill be deleted that deal with the felony issue.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):

The Las Vegas Chamber of Commerce has a philosophical objection to additional mandates related to health insurance, under the concept health-insurance costs will increase. Small businesses could be priced out of the market or the result could be that they would have to cost-share, shifting more of the health-care-benefit costs to employees. We ask that you consider the costs when making your final decision on A.B. 63 and turn down any mandates.

SENATOR CARLTON:

Your disagreement is with the potential-cost impact. It is my understanding that we are paying for it now. There is no preventative measure. To acknowledge what is happening, and refer the constituent to treatment, solves the problem and will eventually save money in the future.

MS. DUGAN:

I understand your position. Our position is more philosophical in nature. We are asking that you consider the various ramifications of the bill. There are two ways to look at the issue. In the long term, you may save money, but there is the possibility of additional costs as well. From our position, we see a government mandate to a private group to provide coverage instead of allowing the private group to process their own decisions.

SENATOR CARLTON:

I do not understand this philosophy. It does not fit the issue. The system is broken now. We want to fix it with information and provide real care. I do not see how this could be considered a mandate. I do not see this bill in the mandate realm. This bill is asking trauma doctors to fill out their screening forms and provide the referrals as needed.

SENATOR HECK:

If a person is a Medicaid beneficiary and they enter a trauma center with this substance abuse problem, will Medicaid withhold the payment?

ASSEMBLYWOMAN LESLIE:

I do not have an answer to this question. Since there is no screening, they would pay at this point in time. As was pointed out, insurance companies are already paying the bills.

CHAIR TOWNSEND:

I would suspect the same goes for Medicare. This bill touches on a small component of a much larger issue. There is definitely a problem for the doctor in the trauma center with regard to screening for alcohol and drug use. The question begs to be asked, "How are we to move beyond this bill?" Passing this bill will not get us to the next level, and I am not suggesting we add anything more to this bill. Do you have insight as to how we may get help for these individuals? They are now dealing with the realities of their problem. Has there been dialogue on this issue?

ASSEMBLYWOMAN LESLIE:

Actually, we have had some discussion with Dr. Gomez who is chief of the trauma center at Washoe Medical Center. He brought this issue to my attention. He told me of a program that Washoe Medical Center has in place. They have support from social workers on staff at the hospital. The trauma-center doctor

will call upstairs and describe a patient who has had screening results that indicate alcohol or substance abuse and that this is a recurring problem for the individual. The social worker will become involved immediately with the doctor and the patient in the emergency room, encouraging a referral for treatment. The referral may only work 30 percent of the time, and the patient may need several referrals. Dr. Gomez was concerned that some insurance companies would not pay the bill because of the UPPL. Washoe Medical Center has stopped their screening process and the social worker program. He suggested that if we could solve the insurance portion of the issue, and let the doctors continue the screening, then the connection with the social worker program could be resumed.

CHAIR TOWNSEND:

Senator Heck, with your expertise, have you had any similar trauma-center experiences described by Assemblywoman Leslie?

SENATOR HECK:

Yes. There is a significant amount of research that shows the utility of what is termed "brief interventions" in the emergency room or trauma center decreases the recidivism rate of the individual returning to the hospital intoxicated. In most cases of a claim denial, there may be a notation on the chart that states, "This person seems intoxicated" with no blood-alcohol level test ever completed. Insurance companies could deny the claim on this evidence; or do they deny only on measured blood-alcohol levels? If so, what are the levels? How is this determined? There could be different levels of acceptance.

Screening is a multipronged questionnaire that identifies a person's alcohol- or substance-abuse addiction. These screening tools are protected by federal law from the insurance companies. The "work-around" is a back-door method of receiving payment and getting help for the injured person. If the medical record, which the insurance company is entitled to see in order to pay the claim, is not documented and you do not have any other documentation or write any observations on the medical chart, but you have a social worker come in and process the questionnaire screening tool, the insurance companies cannot have the results because the screening is protected by federal law. This way the hospital or trauma center receives payment, and the patient receives necessary help.

This is not a perfect solution, but it is a way around the system. I can attest from my own personal experience that in Clark County the majority of people treated in the trauma center are under the influence of alcohol or drugs.

ASSEMBLYWOMAN LESLIE:

I agree with Senator Heck's statements. The national statistics for patients seen in trauma centers is that 40 percent of the cases will be alcohol- and substance-abuse related. The trauma doctors in Las Vegas testified that 80 percent of their cases were alcohol- and substance-abuse related. The "work-around" is very cumbersome. I will point out that there are many insurance companies that have done away with the UPPL.

CHAIR TOWNSEND:

An emergency-room experience is a serious time of diagnosis and treatment. Management of all the varied problems has to be difficult and then to add evaluation of a patient for screening and counsel because of alcohol and substance abuse exemplifies dedication and hard work on the part of these medical professionals. Looking at the statistics and specifically addictions with regard to the bill, there is a societal cost that we all bear. It is a complex and interesting issue and deserves our attention.

The hearing is closed on A.B. 63.

SENATOR CARLTON:

I will propose an amendment to Senate Bill (S.B.) 226 regarding inclusion of hospitals in the bill. The discussions revealed that the hospitals have concerns. We decided that we do not need to change the Committee amendment, and we have removed their inclusion from the bill.

[SENATE BILL 226 \(1st Reprint\)](#): Makes various changes to provisions governing payment of certain workers' compensation claims. (BDR 53-891)

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CHAIR TOWNSEND

There being no other business, the meeting of the Senate Committee on
Commerce and Labor is adjourned at 9:09 a.m.

RESPECTFULLY SUBMITTED:

Shirley Parks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____