

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Third Session  
March 14, 2005**

The Committee on Commerce and Labor was called to order at 2:04 p.m., on Monday, March 14, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Ms. Barbara Buckley, Chairwoman  
Mr. John Ocegüera, Vice Chairman  
Ms. Francis Allen  
Mr. Bernie Anderson  
Mr. Morse Arberry Jr.  
Mr. Marcus Conklin  
Mrs. Heidi S. Gansert  
Ms. Chris Giunchigliani  
Mr. Lynn Hettrick  
Ms. Kathy McClain  
Mr. David Parks  
Mr. Richard Perkins  
Mr. Bob Seale  
Mr. Rod Sherer

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County  
Assemblywoman Ellen Koivisto, Assembly District No.14, Clark County

**STAFF MEMBERS PRESENT:**

Brenda J. Erdoes, Legislative Counsel  
Diane Thornton, Committee Policy Analyst  
Russell Guindon, Deputy Fiscal Analyst  
Keith Norberg, Deputy Fiscal Analyst  
Sarah Gibson, Committee Attaché

**OTHERS PRESENT:**

Lisa Black, M.S., R.N., Executive Director, Health Policy Administrator,  
Nevada Nurses Association  
Melanie Sisson, R.N., B.S.N., Vice President, Service Employees  
International Union, Sunrise Hospital, Las Vegas, Nevada  
Robert Dean, R.N., B.S.N., Service Employees International Union,  
Sunrise Hospital, Las Vegas, Nevada  
Debra Scott, Executive Director, Nevada State Board of Nursing  
James Wadhams, Legislative Advocate, representing Nevada Hospital  
Association  
Thomas Morley, Political Action Director, Laborers' International Union  
Tommy Ricketts, President, Las Vegas Employees' Association  
Larry O'Leary, Secretary-Treasurer, International Bricklayers and Allied  
Craftworkers, Local 13, Las Vegas, Nevada  
Penny Steward, Contractor, Las Vegas, Nevada  
Lisa Mayo-DeRuso, Consultant, International Bricklayers and Allied  
Craftworkers, Local 13, Las Vegas, Nevada  
Danny Thompson, Executive Secretary-Treasurer, Nevada AFL-CIO  
Richard Daly, Business Manager, Laborers' International Union of North  
America, Local 169, Reno, Nevada  
Frank Brusa, Legislative Advocate, representing Clark County Association  
of School Administrators and Technical Employees  
Jack Jeffrey, Legislative Advocate, representing Southern Nevada  
Building Trades Council  
Susan Fisher, Legislative Advocate, representing the Washoe County  
Employees Association  
Christina Dugan, Director, Government Affairs, Las Vegas Chamber of  
Commerce, Las Vegas, Nevada  
George Ross, Legislative Advocate, representing the Retail Association of  
Nevada  
Lucille Lusk, Chairman, Nevada Concerned Citizens  
Rose McKinney-James, J.D., Legislative Representative, Clark County  
School District

John Madole, Executive Director, The Associated General Contractors of America, Incorporated, Nevada Chapter  
Michael Pennington, Public Policy Director, Reno-Sparks Chamber of Commerce  
Mary Liveratti, Deputy Director, Nevada Department of Human Recourses,  
Robert Desruisseaux, Advocate, Northern Nevada Center for Independent Living; Chairman, Disability Strategic Plan Accountability Committee  
Connie McMullen, Vice Chair, Senior Strategic Plan Accountability Committee  
Tina Gerber-Winn, Chief, Continuum of Care Services, Nevada Division of Health Care Financing and Policy,  
John Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Reno, Nevada  
Susan McNamara, R.N., Private Citizen, Reno, Nevada  
Thom M. Gover, Senior Deputy Attorney General, Insurance Fraud Control Unit, Office of The Attorney General of Nevada  
Robert L. Compan, Government Affairs Representative, Farmers Insurance Group  
Michael Geeser, Media/Government Relations, AAA Nevada (Automobile Association of America)  
Jeanette Belz, Legislative Advocate, representing Property and Casualty Insurance Association of America  
Ken Hutchinson, Special Agent, National Insurance Crime Bureau  
John R. Orr, Deputy Commissioner of Insurance, Insurance Division, Nevada Department of Business and Industry  
Phil G. Battin, President, International Association of Special Investigative Units, Nevada Chapter  
Tom Norton, Senior Investigator, National Insurance Crime Bureau

**Chairwoman Buckley:**

[Meeting called to order and roll called.] We have four bills on our agenda today. We will go ahead and open the hearing on Assembly Bill 183 first.

**Assembly Bill 183: Prohibits medical facilities from retaliating or discriminating unfairly against certain nurses for refusing to provide nursing services under certain circumstances. (BDR 40-927)**

**Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County:**

Joining me at the table today, and in the audience are members of the Nevada Nurses Association. I present A.B. 183 to you today on their behalf.

It is a very interesting bill. In a nutshell, Nevada's nurses are statutorily mandated to decline an assignment for which they do not possess the knowledge, skills, and/or ability to provide safe care. If they violate this code, it may result in license sanction up to and including revocation of practice and privileges by the Board of Nursing. However, Nevada employment law does not provide any protection for nurses who act in accordance with the Nevada Nurse Practice Act, and a nurse can be terminated for refusing a patient assignment that he or she deems unsafe. Nurses who act on behalf of their patients' safety often face discipline by their employer for insubordination or patient abandonment. You will hear real-life stories from nurses today to whom this has happened. As you can imagine, this puts our nurses in a catch-22 situation because they have to work in a setting that encourages them to put patients' safety at risk by accepting assignments they are unable to perform safely, and by performing acts that they are not qualified to do. Not only is this a serious problem for the practicing nurse, but it also creates an enormous threat to the safety of patients cared for in Nevada's health care facilities.

Essentially, this bill protects nurse employment while also protecting the safety of the patients. You will hear that the American Nurses Association says that more and more nurses are concerned about patient care assignments that would appear to place their patients at risk or their licenses in jeopardy.

Research has shown a strong link between patient outcomes and the number of nurses assigned to each patient in a given setting. More specifically, the Aikens Study showed a 7 percent increase in mortality for each patient added to the workload of a nurse in an acute-care setting. Survey research done by the U.S. Department of Health and Human Services shows that Nevada nurses and their patients are uniquely affected by this issue because Nevada has fewer nurses per 100,000 population than any other state.

The nurses are here today to ask for your consideration to make sure that their employment is protected when they must reject an unsafe assignment. This bill is not about a nurse saying, "I'd rather not do that." You will hear some horror stories today and understand exactly what I am talking about. This is about a nurse saying, "I'm not going to take one more patient because I am already overloaded and I am not going to be able to provide the patients under my care the kind of nursing care that they need."

**Lisa Black, M.S., R.N., Executive Director and Health Policy and Education Administrator, Nevada Nurses Association:**

This issue will be brought before the Nevada State Board of Nursing this Thursday. As things happened this legislative session, the language on this came for a hearing really fast. We don't anticipate them having concerns with the bill.

[Read from [Exhibit B.](#)] Nurses in Nevada are statutorily mandated to decline an assignment for which they do not possess the knowledge, skills, and/or ability to provide safe care. Violation of *Nevada Administrative Code* may result in licensure sanction up to and including revocation of practice privileges. However, Nevada employment law does not provide protection for nurses who act in accordance with the Nevada Nurse Practice Act, and a nurse can be terminated for refusing a patient assignment that she deems unsafe.

Once again, this isn't about a nurse just saying, "I don't want to." It's about a nurse saying, "My job is to advocate for my patients and I believe that my patients' safety is in jeopardy."

Consequently, Nevada nurses practice within an environment that incentivises them to "gamble" with patient safety and accept assignments they are unable to safely manage, to perform acts they aren't qualified to do, or to work longer hours than they believe they can physically or mentally endure and still provide safe patient care. Nurses face licensure sanction for accepting an unsafe assignment, yet their employment may be terminated for declining to care for a given patient load as assigned. Unfortunately, the immediacy of the effect of declining an assignment—termination of employment—can outweigh the potential effect of causing harm to a patient in the nurses' decision-making process. This "Catch-22" of the Nevada direct care registered nurses creates a legal quagmire for the practicing nurse, but more importantly, creates an enormous threat to the safety of the patients cared for in Nevada's health care facilities.

Therefore, a registered nurse faces a situation in which she must choose between advocating for her patients and possibly losing her job, or remaining silent and potentially creating a situation where a patient is harmed by her inability to provide safe nursing care. While this proposal appears to be and is an issue of nurses advocating for nurses, the true crux of the issue is the public safety threat created when nurses have no remedy other than to accept assignments for which they cannot provide safe care or lose their employment.

[Lisa Black, continued.] The most frequent questions received in response to this proposal are, does this really happen? Don't nurses already have civil remedy to address this issue? The answer to the first question is resoundingly yes. This does happen and we will discuss this as I move forward with my testimony.

Included with my testimony ([Exhibit B](#)) is a story of two nurses who were terminated for refusing to accept an assignment for which they did not believe they were qualified to provide safe care. The nurses were scheduled to work a shift at a southern Nevada acute care facility. They were familiar with the conditions of the patients on the unit and communicated their belief that they did not have the ability to provide safe care to that given set of patients. The two nurses were terminated for refusing to accept an assignment for which they believed they did not possess the knowledge, skills, and ability to provide safe nursing care.

I would like to read for you a couple stories that we have received from nurses. One is from a nurse employed in a Las Vegas acute care facility who feared for her job if she were to come and testify. She sent us her written remarks, and I will be reading those into the record for your consideration.

In the words of a Reno nurse:

I would like to voice my support for A.B. 183. I had the experience of being terminated from a position at a local extended care facility for refusing an unsafe assignment. I was scheduled to work my usual assignment of 57 patients on an extended care unit. Upon arriving for duty, I was informed that due to a call-in I was being reassigned to a 60-bed Medicare unit to which I had not been oriented. I was also to be the "night supervisor," a position that I had not been oriented to, either. Related to patient safety issues, I refused to accept the assignment. Subsequently, I was told by the Assistant Director of Nursing to "go home and don't come back." I interpreted that statement as a notice of termination, and I ended my employment with that employer.

Cathy Reid, R.N., B.S.N.

This next story is very compelling. I think this best articulates the importance of this issue and really what the issues are that nurses face at the bedside. In the words of another Las Vegas nurse:

[Ms. Black read from [Exhibit B](#).] I was personally impacted by an ethical decision I made in this state as a registered nurse. I am a pediatric nurse at [facility name withheld] in Las Vegas. On a night shift in 2003, I arrived to find that the holes in the schedule that had been identified a week prior had not been filled and we had an additional call-in. My assignment when I arrived to the floor included an infant who was hemodynamically unstable who needed to be checked every 15 minutes and given medication twice an hour; a child who had just returned from the operating room after having a malignant brain tumor resected; a 2-month old infant who had been extubated [taken off a ventilator] the same morning and was breathing 85 times per minute with deteriorating respiratory effort; 18-month old child who had been severely beaten by a caregiver and had an intracranial bleed and frequent seizures; a 16-year-old girl who had sustained a severe head trauma in a motor vehicle accident; a 5-year-old child who was severely rejecting a previously transplanted heart and was receiving end-of-life care; and two other patients with lesser but still acute nursing needs.

The usual load on my unit was four to five patients of moderate acuity. On this night, my assignment included eight patients, six of whom had intensive nursing needs. After reviewing my assignment and receiving report, I reported to my supervisor that my assignment was not manageable and that I feared for the safety of my patients. An hour into my shift, the 2-month-old baby I was caring for went into acute respiratory distress.

While managing the crisis, my dying 5-year-old took a sudden turn and her death was imminent. I was unable to provide emotional support for the parents of this child because I was managing the crisis with my other patient. Calls to the nursing supervisor were met with no additional assistance. My final desperate call for help included insistence that another nurse be sent from somewhere—it didn't matter to me from where he or she came. My patients needed help.

No nurse ever came. Two hours before the end of my shift, I received a call that an urgently ill infant was in the emergency room and needed to be admitted to my unit. I refused to accept the report on the patient and insisted that the child be maintained in the emergency room until additional help was available.

The next day, I was called in to my supervisor's office when I arrived to work and was terminated for refusing to provide care to an acutely ill patient. I sought legal advice after this occurrence and was informed that because Nevada is a "right-to-work" state, there was no recourse for my situation.

Every day, our decisions put our employment and the public at risk. We are expected—more frequently than the public could ever imagine—to work in potentially dangerous situations. We deal daily with inadequate staffing and administrations that have "heads and beds" mentality, and we are expected to care for the sick, the demented, and the physically impaired, no matter our working environment. It is wrong that an ethically based decision by a nurse can get her fired and he or she has no recourse. Nevada being a right-to-work state keeps us in that catch-22. The right-to-work law affects the quality of health care in this state. An amendment to the law should be made to exclude health care workers from termination if they perceive an unsafe working environment. The quality of nursing and the burnout rate would drastically change for the better if this bill were passed.

[Lisa Black, continued.] The answer to the second question regarding whether nurses already have civil remedy for such incidents is an even more resounding "no." Existing law prohibits a medical facility or its agent or employee from retaliating or discriminating unfairly against an employee who reports certain conduct of a physician to the Board of Medical Examiners or the State Board of Osteopathic Medicine or who cooperates or otherwise participates in an investigation conducted by such boards [*Nevada Revised Statutes* 449.205].

Some of the arguments against this sort of legislation are that it already exists and therefore isn't needed. The current statute does not address the issue that we are discussing at all.

Under current law, an employee who believes he or she has been retaliated or discriminated against in such a case may file an action in court for appropriate relief. The issue being discussed here is entirely different and is not addressed in existing, state, municipal, or federal statute or regulation. This bill prohibits a medical facility or an agent or employee of the facility from retaliating or discriminating against a registered nurse, licensed practical nurse, or certified nursing assistant who declines to provide services to a patient if the nurse, in good faith, reports to his immediate supervisor that the services may be harmful to the patient, unless the refusal constitutes unprofessional conduct as defined by our Nurse Practice Act, NRS 632 [*Nevada Revised Statutes*], the statute that



governs nursing practice in Nevada. This bill further prohibits retaliation or unfair discrimination against a nurse or nursing assistant who declines to provide nursing services to a patient, if the nurse or nursing assistant acts in good faith and reports to his immediate supervisor that he or she does not possess the knowledge, skill, or experience to comply with an assignment.

[Lisa Black, continued.] In summary, this bill ensures nurses the ability to effectively advocate for patient safety by providing employment protection for nurses who decline their assignment based on their perceived inability to provide safe care. This policy remedy would provide direct care nurses with increased autonomy and a more visible voice in their decision-making process that lead to the distribution of nursing care and therefore patient safety. Highly educated registered nurses would be relied upon to interject expert knowledge into the administrative processes, which may also serve to enhance the professional image of nurses, who will be better positioned to actively advocate for the safety needs of those for whom they provide care.

Again, while this is an issue important to nurses and their professional livelihood, it is even more important for patients. The reality is, every one of us in this room will one day be a patient. With the emergence and worsening of the national nursing shortage, nurses are increasingly concerned about patient care assignments that they perceive place their patients at risk and their licenses in jeopardy. As has previously been brought before this and other legislative bodies, much research has demonstrated a strong link between patient outcomes and the number and type of patients assigned to each nurse in any given care setting.

While the implications of this growing body of research clearly suggest that patient outcomes are improved when nurses' workloads are maintained at manageable levels, nurses continue to voice these concerns. Each of these factors have been shown in the cited research to adversely affect patient safety and to result in increased incidences of sentinel medical errors, patient infections, falls, and cases of "failing to rescue" a patient who needs urgent medical care. I have provided you a reference list ([Exhibit B](#)) that includes citations for much of the literature and the research that has been published in this area over recent years.

The questions that I would leave to you are the following: When you or your family member is in need of nursing care, do you want to be cared for with the confidence that your nurse possesses the knowledge, skill, and the ability to provide the level of care that you or your loved one require? Secondly, if that nurse cannot meet those three standards of care, do you wish for that nurse to provide service to you? Or would it be your wish that your nurse advocate on

your behalf to ensure that you receive the care that you need? My wish is the latter.

I thank you for your consideration of this important patient safety legislation. I failed to introduce at the beginning of my testimony Pamela Johnson, president of the Nevada Nurses Association.

**Chairwoman Buckley:**

I am a big supporter of nurses' rights and have worked with Assemblywoman Koivisto on the nurse/staffing ratio issues as well as both her and Assemblywoman Leslie as we battled to get this existing whistleblower language in.

There is one thing that concerns me a little bit. Let's say a nurse gets a call from a supervisor to come in and the load is clearly unprofessional and dangerous. If a nurse is able to refuse it and not seek retaliation, would we make the situation for the patients worse? Is it better to address working conditions and unsafe loads than to potentially have nurses be able to refuse and then we have no one?

**Lisa Black:**

Those are very good questions. Those are things we certainly need to address. Part of the response to that comes in the context of yes, we absolutely do need to address working conditions; we need to address working environments that nurses practice in. We need to do the two simultaneously because even as we address those, there still may arise situations where a nurse faces a crisis situation in which they need to be able to advocate for their client. The difficulty arises when you question whether you want to have some care that may be unsafe care or whether we want to send a very clear message that we absolutely must have the resources available to be able to provide the care in Nevada's health care facilities that we have committed to. My suggestion would be to have resources and on-call resources to have nurses available who can come in and address issues when a crisis arises. The short answer is, I think we need to do both.

**Assemblywoman Giunchigliani:**

Are the supervisors licensed practitioners?

**Lisa Black:**

The immediate supervisors that nurses report to are registered nurses.

**Assemblywoman Giunchigliani:**

Could they not fill in?

**Lisa Black:**

In many cases they could. The nursing supervisor and the nursing administrator have the same obligation and also the same right to articulate if they are able to provide a safe level of care. Would a nursing administrator who has not worked at the bedside in 10, 20, or more years be able to safely fill in at the bedside?

**Assemblywoman Giunchigliani:**

If they didn't do their job as management, then I probably wouldn't want them at the bedside either, but I think that there needs to be some conclusion here. I was a schoolteacher and when we ran into problems, sometimes I wasn't sure if I wanted the principal to actually step into the classroom. I think part of what you're trying to get here is not only the professional side, but also how you deal with some of those emergency situations. Then that's a whole other issue regarding the understaffing in the first place.

As a sponsor of the bill last session for the interim study on staffing, unfortunately, it did not move forward, and this may be a result of some of that again, dealing with improper workload which puts the patient at risk. To me, that should be the bottom line. There may be other questions as we mull this over on how procedurally we deal with making sure that we enforce what is in the practices law as well as what is in statute. Has the Nursing Board ever had any discussion or findings regarding the requirement to reject an unsafe assignment?

**Lisa Black:**

I am, and I believe Debra Scott will be speaking to that as well. The short answer and prelude is yes, very much so. The State Board of Nursing presents regularly to nurses and nursing students about their role in patient care situations when they feel the need to refuse an unsafe assignment and Nevada law mandates that they do so. The point of this bill is then to provide them the tools to be able to do that while not jeopardizing themselves professionally and personally.

If I can revisit your initial question regarding the nursing administrator and the nursing supervisor stepping in, in many cases they do. Often, what makes this the most concerning and the most problematic is that nursing care takes place 24 hours a day. Nursing administrators and supervisors are there during the day, but at night there is generally one nursing supervisor who oversees an entire acute care facility. The question is, how much further can that one person be spread?

**Assemblywoman Giunchigliani:**

That is important because it is 24/7 and we tend to forget that. Somehow, it didn't deal with what the nurses' staffing load was, and they may have made management decisions that really impact having backup support.

**Melanie Sisson, R.N., B.S.N., Vice President, Service Employees International Union, Sunrise Hospital, Las Vegas, Nevada:**

I have been a nurse for 25 years in Las Vegas. This issue has been the heart of nursing for the last several years. Our first commitment is to our patients, who rely on us to be their advocates and stand up for them. Nursing is hard work and sometimes we are asked by our management to take on assignments that are not in the best interests of our patients. The Nevada State Board of Nursing advises us to stand up for our patients and for our professional licenses and refuse the assignment.

The Board is not alone here; nearly every professional organization of nurses recognizes a nurse's obligation to refuse assignments that put their license or patients in jeopardy. Under the best circumstances, when we stand up to management and say no, management rescinds the directive and the patient's safety is put first. Under the worst circumstances, management makes us choose between taking the assignment and violating our standard of practice and potentially putting our patients at risk or refusing the assignment and getting fired. Obviously, we are placed in the catch-22, as Lisa said. This is not a hypothetical scenario. Nurses are fired for refusing assignments all the time. We brought our case to the Legislature three years ago after two southern Nevada nurses were fired for refusing an assignment.

I work at a hospital that has a union, and through our union contract we have negotiated a process for resolving workplace issues, including unsafe assignments, which allows us to advocate for our patients and address unsafe work assignments. Because of this process, we as union nurses know that there is only one way to ensure that patients get the care they deserve, and that is that all nurses are protected in their role as advocate for their patients. No nurse should be fired for standing up for their patient. We wholeheartedly support the intent of this bill and urge its passage.

We often hear that we are in the midst of nursing shortage. We contend that what we are experiencing is a shortage of nurses willing to work in Nevada hospitals under the conditions we are forced to work under. If we hope to retain skilled, experienced nurses, we must provide them with the support they need to do their jobs. We support A.B. 183 and urge you to vote in favor of its passage.

**Robert Dean, R.N., B.S.N., Member, Service Employees International Union,  
Sunrise Hospital, Las Vegas, Nevada:**

I am here with my colleagues in support of A.B. 183. I have worked at Sunrise Hospital for the last six years. This is very important legislation, not only for us as nurses, but for anyone who might find themselves as our patients.

While I am a nurse with six years of experience and four years of education, there are plenty of units throughout our hospital where I do not feel I possess the skills to operate in a safe manner. I am a highly specialized neo-natal intensive care nurse. You can give me any baby that comes through our door and I'm the guy you want to have there. But if you float me to a floor with teenagers or adults, it is an unsafe environment for me and it is unsafe for the patients.

In any hospital, nurses can be given an assignment for which they don't believe they have the skills or the training. The nurses are faced with a difficult decision—accept the assignment and put the patient and themselves in jeopardy or refuse the assignment and risk discipline including termination. This bill provides us first a process for objecting to the assignments and then provides us with the important protection against retaliation if we refuse the assignment. I encourage you to support A.B. 183 and do the right thing for nurses and for your constituents, the patients of Nevada.

**Debra Scott, Executive Director, Nevada State Board of Nursing:**

As much as I would like to come and give you a formal statement, the Board is not able to make a decision on this until this week at our Board meeting.

Patient abandonment complaints do come to the Board. When they do, we look at a very specific definition of patient abandonment. That definition includes the nurse doing all three things—the licensee was assigned and accepted the duty; the licensee departed from the site of the assignment without ensuring that the patient was adequately cared for; and that as a result of the departure, the patient was in potential harm or actually harmed. When we have these complaints, we investigate and find out if all three of those aspects have been met; if they have, then the nurse may be found guilty of patient abandonment. It happens very rarely, but we do get complaints and we do investigate.

As Lisa said, my staff and I have done many presentations on patient abandonment. This is a big issue in the State of Nevada and I think across the nation. We come across statements by the nurses such as, "We may not lose our license, but we may lose our job." That is out of the Board's jurisdiction, but you have an opportunity here for legislation that may or may not solve that

problem. I will give you as it comes the formal stance of the Board. I did want to come and give you the information that I have today.

**Assemblyman Anderson:**

Ms. Scott, I'm looking at the bill at page 3, paragraph (c), part 2: "refuses to provide nursing service to a patient based on his "belief"..." The term "belief" raises a certain level of concern. From your experience, do you ever have to deal with validating the belief of your nurses before the Board?

**Debra Scott:**

We don't look at belief; we look at what the law says and we look at evidence. That is how this Board makes its decisions.

**Assemblyman Anderson:**

How do you think that you would interpret that part if it were to come up?

**Debra Scott:**

As this bill is written, the Board is not the one making the decision about the belief. I don't think this Board would go there. We would look at the evidence and whether or not any of those three patient abandonment criteria had been met. We don't look at what the nurse believed to be true but what the evidence is.

**Assemblyman Anderson:**

I guess that would be based on their preliminary testing of their knowledge and the specificity of their license. The gentleman who came in front of us who indicated one area of expertise but not another, would he be supported or not? How would you determine that?

**Debra Scott:**

Nurses are required to work within their own competencies, which are based on their basic nursing education and continuing education. There are certain competencies that are available and documented for certain nurses and there are some that are not. For instance, I am an advanced practice psych nurse; I would not go take care of the babies [Mr. Dean] talked about.

**Assemblywoman Giunchigliani:**

You said that the first category of the three was that they were assigned and accepted the duty. Is there a standard practice whereby one can say, "No, I don't wish to accept this duty"? How do they prove it when you investigate?

**Debra Scott:**

We give counsel to nurses when they call and they ask that exact question: "What does it mean that I have accepted a duty?" Our suggestion to them is that they talk with their direct supervisor. You really don't know whether you can accept an assignment until you get the report. They have to get the report, and if they can't accept that assignment, then they talk with their immediate supervisor; if that person can't help with giving them more resources, then they should go to their director of nursing. Our law defining unprofessional conduct holds the director of nursing responsible for making sure that human resources are used to provide safe care for patients.

**Assemblywoman Giunchigliani:**

When you say that you hold them responsible, what happens in that kind of a case?

**Debra Scott:**

In a situation where we have found that the director of nursing may or may not have met the requirements of their professional responsibility based on our law, we will initially refer that complaint to the Bureau of Licensure and Certification. They will do a survey of the situation, and then they will let us know whether the director of nursing is still in a situation where they may or may not have met the requirements of the law. At that point, we do an investigation where the respondent would be the director of nursing.

**Assemblywoman Giunchigliani:**

Could you provide a flow chart? I didn't realize that the Bureau of Licensure got involved because I thought your Board would be the one that it gets referred to. I am looking at timelines. Is it two months, six months, a year down the road that somebody says it was their director of nursing, even though they informed them, they put it in writing and documented it?

**Debra Scott:**

Some are very short investigations, some are longer investigations, but we work very closely with the Bureau, and in my experience that time frame has been short but I don't have specifics.

**Assemblywoman Giunchigliani:**

What would you define as short, 30 days?

**Debra Scott:**

I would say one to two months.

**Assemblywoman Giunchigliani:**

Then they can consult with their director again or they can call you and ask for advice. If they are on at midnight and they get told that this is not their assignment, who do they consult with?

**Debra Scott:**

They have to bank on their supervisor or their Director of Nursing and then they call us in the morning.

**Assemblywoman Giunchigliani:**

There is no procedure that you are aware of or documentation that exists within the field itself, regardless of what kind of hospital is involved, for people to document this so they can show that they did raise an objection?

**Debra Scott:**

I think there are some forms in some facilities. Those forms can be used to communicate between nurses at the bedside and nursing administration. As far as a standard of practice, I don't know of any way to do it except in a memo.

**Assemblywoman Giunchigliani:**

Who generally brings the complaint? The individual? Does the hospital bring the complaints about someone that is abandoned?

**Debra Scott:**

It's generally either the nursing supervisor or the director of nursing.

**Assemblywoman Giunchigliani:**

So if someone refuses an assignment, then their boss, even though they are the liable party, are the ones who bring the charges against them.

**Debra Scott:**

I would say generally that is correct.

**Assemblywoman Giunchigliani:**

Generally. Is there a mechanism for that nurse then to say their supervisor was the one who didn't bother to find the staffing and had a schedule for a week?

**Debra Scott:**

As soon as we get the complaint, the first thing we look at is whether or not it meets those three parts of patient abandonment. Oftentimes we don't even open a complaint because it doesn't meet those three requirements. If we need to do an investigation to find out whether or not they meet those requirements, we do open a complaint. Both the nurse and the complainant get a certified



letter immediately saying we have received a complaint and need to hear their side of the story. Often we do get a report from the nurse who is being complained against.

**Assemblywoman Giunchigliani:**

Do you provide, in either your newsletter or however you do it, the number of investigations opened, the number closed, or the number of types of investigations that were made?

**Debra Scott:**

Yes, we have all that information in our annual report.

**Assemblywoman Giunchigliani:**

That would be helpful to see. I have a feeling that a lot don't get reported because they feel like there is no place to go in the first place.

**Debra Scott:**

We have approximately 700 complaints a year, and very few don't get opened.

**James Wadhams, Legislative Advocate, representing Nevada Hospital Association:**

I am here on behalf of Nevada Hospital Association and they are not opposed to the concept of this bill. I am, however, a bit troubled by some of the ambiguity that may be created by the language. We are certainly willing to work with all interested parties on that language.

In particular, the problem I see is the inconsistency between the word that Mr. Anderson identified, "belief," and the prohibitions in NRS 632.0169 and 632.018 on medical diagnosis. I think the two are implicit in there that somebody may be very well engaging in medical diagnosis, which is a prohibited act under those existing definitions. I am also concerned, particularly for those of us who are lawyers, the notion of "belief" as opposed to fact, as Debra Scott pointed out. It is a very critical element of this. I think the testimony from the State Board of Nursing is comforting in that they have a tripartite analysis they apply to patient abandonment, and one of those elements is not simply belief, it is fact. As we drift away from a fact-based system to a belief-based system, I think we run into potential conflict with the existing language of the Medical Practice Act. Having said that, particularly for those members here from southern Nevada, I think you are very well aware of the extreme issue we are facing in southern Nevada. There are a number of bills dealing with the population influx and its medical needs in southern Nevada, which precipitates issues such as those identified. I am in no way suggesting that wrongful

termination is appropriate. I am suggesting that given the pressure of population growth in southern Nevada, the pressure on health care is enormous.

[James Wadhams, continued.] This ends up, as some of you are well aware, pushing people into the emergency room, and from the emergency room into the parking lot. There is currently a bill under discussion in a counterpart committee in the other house about what is sometimes called the "ambulance drop-off," or the "emergency divert." We have an entire system in a very fragile state in southern Nevada dealing with health care response to the tremendous population growth. As we talk about patients, we are talking about patients who are the result of our population.

I think there are some areas that need to be addressed in terms of the language of this bill. We will work with this Committee and any other interested parties in seeing that the language can be fair, refined, and defensible.

**Assemblyman Perkins:**

The example that was given about the nurse who was trying to take care of a number of significantly ill patients and being thrust into an even deeper quagmire by having additional patients on the way is but one example. I am sure that this Committee has an interest in making sure that we are not penalizing those folks who are there to care for us because they have been put in a virtually impossible situation.

**Chairwoman Buckley:**

We will close the public hearing on A.B. 183. We will open the public hearing on Assembly Bill 69. We have Assemblywoman Ellen Koivisto here, who was part of the effort along with Speaker Perkins last session in doubling our nursing program for the State of Nevada.

**Assembly Bill 69: Authorizes employer to enter into fair share agreement with labor organization. (BDR 53-956)**

**Assemblywoman Ellen Koivisto, Assembly District No. 14, Clark County:**

A.B. 69 authorizes an employer to enter into a fair-share agreement with a labor organization. This bill in no way violates the Right to Work Act, it simply amends it. It does not force people to join a union as a condition of employment. Those people who opt not to join a union will still be able to enjoy all of the benefits of wages, health care, life insurance, et cetera, that the union negotiates in their behalf as well as for their paying members. This bill does give the union the right to charge a service fee. Unions provide representation in

grievance and arbitration proceedings. Those activities can be very costly, and it is unfair to expect those who choose to be dues-paying members to pay for that representation for persons who opt out of being union members.

**Thomas Morley, Political Action Director, Laborers' International Union, Reno, Nevada:**

I would like to thank you for hearing this bill today. There is an old law on the books that needs to be addressed and changed. It is discriminatory and it is unfair. Several times a year, we have to represent non-union members. We have no problems doing that, especially when you are trying to correct a problem of unfair termination.

[Mr. Morley read from [Exhibit C.](#)] I would like to point out several examples why this is discriminatory. Other associations in Nevada get to charge a fair share for representation, yet it seems like employee associations don't get to do the same thing. My first example is homeowners associations. As we all know, if the person does not pay their homeowner's dues, often drastic steps are taken by the homeowners association. You can't just refuse to pay your assessed fees and remain in the community with others who pay their assessed fees. My second example would be trade organizations. Nevada Contractor's Association is a group of paving and heavy highway contractors. They have members and they provide services such as representing contractors at arbitrations, grievance procedures, and contract negotiations. We do the same thing; however, they get to charge for their representation, yet we don't.

This law is also unfair because employee organizations are required to provide services to individuals regardless of their membership status. So what does that mean when we talk about services? That could mean spending hundreds of hours, which can mean thousands of dollars on dues paying members over grievance issues for a non-paying member. The current law indicates that we must provide that service regardless of their membership status.

For another example, the grievance that I provided for you shows what it costs our local union for my personal man hours and attorney costs ([Exhibit D](#)). This person was unfairly dismissed. After investigating the charges and meeting many times with management, the employee was eventually reinstated. That happened in 2002 and she remains on the job to this day. The costs incurred for this grievance were over \$4,500 to my dues-

paying members. We prevailed for this employee and it was the right thing to do to get her job back. However, this is an example of a non-member who benefited from our services at the expense of the members.

[Thomas Morley, continued.] Clearly, this law is not fair when members must bear the cost of services provided to non-members. To my knowledge, that happens in no other membership organization in the state.

I would like to cite a case relevant to the issue before us ([Exhibit E](#)). The case is *Cone v. Nevada Service Employees Union* [116 Nev.473 (2000)], heard in the Nevada Supreme Court. This case determines that an individual who opts to hire his or her own counsel and forgoes giving the union any money can do so without fear of losing his or her job. By charging non-union members a service fee for an individual grievance representation, the court cited that they saw no discrimination or coercion in requiring non-union members to pay reasonable costs associated with individual representation and that the unions did not violate any right-to-work statutes.

In the conclusion it states, "We hold that the policy is not violative of Nevada's right-to-work laws."

If you were to walk into an attorney's office, the attorney would charge you for representation for grievance and arbitration. Why is it that we don't have the same rights to do so? We would just like to see this language enacted.

I have prepared some amended language, which actually came from A.B. 182 of the 72nd Legislative Session ([Exhibit F](#)). It made it through the Assembly and Senate but died on the Floor last time. The language seemed more palatable to the Senate and some of the opposition approved this language versus the way it was originally written. The language basically states that, should the employee come to us for representation, we have the right to charge a fair share on what it costs our membership to represent that particular person. I don't think that is asking too much. I hope that you will pass this language.

**Tommy Ricketts, President, Las Vegas Employees' Association:**

I did give testimony on this bill in 2003 when it was A.B. 182 of the 72nd Legislative Session and am prepared to give almost the exact same testimony. I have provided you with three documents ([Exhibit G](#), [Exhibit H](#), [Exhibit I](#)). The city employees are directly in favor of this bill.

[Mr. Ricketts read from [Exhibit G](#).] The Nevada Supreme Court has recognized that all employees in a bargaining unit, not just union members, should share in the cost of services. In the case of *Cone v. Nevada Service Employees Union* from May 2000, our Supreme Court stated the following dicta:

“We are convinced that the exclusive bargaining relationship establishes a ‘mutuality of obligation’; a union has the obligation to represent all employees in the bargaining unit without regard to union membership, and the employee has a corresponding obligation, if permissible under the CBA [Collective Bargaining Agreement] and required by union policy, to share in defraying the costs of collective bargaining services from which he or she directly benefits.”

We thus request that you agree with our Supreme Court and give employee organizations such as ours the ability to spread the costs of collective bargaining services among all the employees who might benefit from those services.

We currently charge non-members \$100 an hour to meet with myself or one of my representatives and \$400 an hour to meet with our attorney. I think it is an outrageous price, but we are forced to do so from a business standpoint to provide that representation. We are in favor of employees having the representation and the benefits that our collective bargaining agreements give classified City of Las Vegas employees: their pension; their medical benefits; their leave so that they can spend the time with their families; and the opportunity to have a pre-secured job in a growing environment such as southern Nevada. This bill would not force them to be part of any union. We are an employee association. It would help us to be able to defray some of the cost, and we would be able to discontinue our service fee of charging a non-member for representation.

I also prepared a document to show how [A.B. 69](#) would affect the Las Vegas Employees Association ([Exhibit H](#)). Our 2004 labor and negotiating costs were about \$214,000. We have 1,564 eligible classified City of Las Vegas employees. There are 26 pay periods in a year. We do have dues deduction. The fair share fee for a non-member, \$137 a year, would be \$5.26 per payday. For a regular member who chose to be a member and receive the discounts and the other benefits we provide our members, the cost would be \$351.52 per year. We have almost 1,000 members who pay that, or \$13.52 a payday. So there is a stark difference in what a person would be requested to pay under a fair-share

service fee. They can write off a portion of those fees. The employee who chose not to be a member is still able to receive the benefits of the job, the benefits of the contract, the security that it provides, and they would be paying a nominal fee.

[Tommy Ricketts, continued.] The third piece I have presented is some questions and answers ([Exhibit I](#)). There are some general questions and answers coming from our perspective about how A.B. 69 would affect members and non-members. On the second page at the top there is a statement from a Supreme Court case. I will read the quote. [Read from [Exhibit I](#).]

A union shop arrangement has been thought to distribute fairly the cost of these (representatives) activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become free riders to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees.

U.S. Supreme Court, *Aboud v. Detroit Board of Education*  
[431 US 209 (1977)]

The City of Las Vegas Employees Association is an independent labor organization representing classified city employees in their collective bargaining efforts. I am a full-time employee of the City of Las Vegas, but my full-time job is taking care of the union. By doing so, I pay my fair share, and I want to state this for the record: I just received my second award from the Chamber of Commerce for being a sustaining member. We belong to the Chamber of Commerce as a small business and it is our ability to provide those employees the necessary availability to low-cost insurance through their plans. I am paying my fair share to the Chamber of Commerce, my \$300-plus a year, so that I can make sure that my employees who are not covered under a collective bargaining agreement get the benefits that my members so graciously get.

**Assemblywoman Giunchigliani:**

On the amendment, what is "adjusting a grievance"? I am not familiar with that terminology. "The employee requests the services of a labor organization in adjusting a grievance." Does that mean taking the grievance on?

**Tommy Ricketts:**

Yes. Adjustment of settlements, basically.

**Assemblywoman Giunchigliani:**

That makes better sense to me. So maybe in the drafting over in the Senate it didn't quite pick up all the exact verbiage that you were looking for. I thank my colleague for bringing this back one more time.

**Assemblyman Hettrick:**

I am not excited with the Senate's drafting of the language, if this is their language. Section 7, lines 11 through 13: "If the employer enters into such an agreement, an employee shall pay..." It strikes me that the employer is contracting for the employee, and I am not sure that is appropriate. The employee has the job and has chosen not to enter a union; I don't know that I think it is appropriate for the employer to be able to enter into an agreement that obligates them to pay. It strikes me that the cost ought to be divided, not paid out to the individual who brought the case, because when they negotiate a grievance for an individual they are benefiting all the members of the union. I think it should be divided by the members, not that you get to charge this person \$300 an hour times nine hours and you get to charge them \$58 an hour. Everybody in the union is benefiting, not the one individual. That is their very claim in terms of why they say they shouldn't have to pay a fee. I don't think you can have it both ways. Pick one or the other. Either they should be able to avail themselves and pay the \$100 or \$400, or you divide the cost out amongst everybody who is a member of the union because everyone is benefiting from it. I have problems with the language.

**Thomas Morley:**

I do believe the language addresses that where it says that they shall not pay a service fee that exceeds the monthly membership dues. Basically, that is a cost breakdown of what it would cost to represent each member.

**Chairwoman Buckley:**

Mr. Morley, could you point out what page and what line number? That may have been in the original bill.

**Thomas Morley:**

Yes, I believe it is. I apologize, Mr. Hettrick. Our second comment was, decide on one or the other. I would be willing to amend it to state that it would not exceed monthly membership dues for the basic duration of how long we represent you.

**Assemblyman Hettrick:**

So if you represented them for one day at the hearing, you would charge them monthly dues prorated on the day? [Mr. Morley answered affirmatively.] I would like to see that in the language. So if that's what you are going to do and then

you divide it by the number of people who are in the union, I would probably get to where I could support this.

**Thomas Morley:**

I would be willing to do so.

**Assemblyman Anderson:**

Don't you have people who come in to talk to you in advance and then you have to help them and counsel them relative to their questions, specifically to where in the contract itself the article, section, and clauses of your agreement pertain to them and what the steps and process are? So you are going to spend a little bit of time with them on that day, are you not? [Mr. Morley answered in the affirmative.] Then you are going to try to go with them to settle it without having to go through arbitration or anything else. That will take up some of your time, will it not?

**Thomas Morley:**

Meeting with employers, superintendents, witnesses.

**Assemblyman Anderson:**

Then if it moves along, you are going to have secretarial time and a limited time period to make sure it is in the proper context so it doesn't violate the contract which you spent a good deal of time negotiating. Is that not so? [Mr. Morley answered in the affirmative.] It's not like I show up one time and that is it.

**Thomas Morley:**

Correct. Maybe I misunderstood Mr. Hettrick; I thought your statement was that you would be willing to support such language. It was my understanding of your statement that every time I met with the employee and started representation we charged that fee.

**Assemblyman Hettrick:**

I would like to see the language that would delineate exactly how you would charge. If you spend one day doing all of what you do, are you going to prorate the \$30 a month dues down to one day? Are you foregoing the \$100 and the \$400? I need to see it all laid out. I don't have a problem with a reasonable charge. I read that description of cost as what was being applied. That I didn't agree with. I think you answered that question. Now I would like to see what you actually would intend because the language as submitted in the amendment doesn't specify what the charge would be; it just says to pay the fee required by the agreement but doesn't specify what the fee is. It says "required by the agreement."



**Thomas Morley:**

I think that I can sit down with some of the people I represent and come up with a flat-rate service fee. You also have to realize that membership numbers are going to vary by organization. Are you asking for just my numbers or are you asking for the numbers of this association? Do you want to see a flat rate across the board for anybody chartered with the Southern Nevada Building Trades or chartered with the AFL-CIO [American Federation of Labor–Congress of Industrial Organizations]?

**Chairwoman Buckley:**

Instead of trying to get into those specifics right now, why don't we give you a chance to go back to your membership and to come back to us. I know you are trying to define it as reasonable. As you point out, that might vary based on the membership. We will let you have time to come back to us with something that would work for everybody.

**Tommy Ricketts:**

As I pointed out, in the little breakdown I provided those costs, at least what it would look like to my organization. That's exactly what I would be looking at. The \$5.26 a payday would be the service fee that it would cost a non-member, classified City of Las Vegas employee, for their entire employment with the City of Las Vegas.

**Larry O'Leary, Secretary-Treasurer, International Bricklayers and Allied Craftworkers Local 13, Las Vegas, Nevada:**

At this time I would prefer to refer to employers and employees rather than making this a union issue, because really this is nothing more than asking everybody to pay their share of the bill. The thing that is overlooked is that we have about 1,400 people working right now in Nevada; 25 percent of those people are probably non-union. In our office we have three people working the front desk who receive 200 to 300 phone calls a day. Those people get paid. Then we have two people who look for further employment for members. We have administrators, attorneys, field agents. When you add up all of these professional services, one guy pays the bill and one guy doesn't. I think that's all it comes down to.

In the bricklayers union, the members pay a certain amount of money monthly to be a member, then when they go to work they pay working dues. That pays for all those services I just talked about. The people ask for a list of contractors, we print it off at no charge. If they need people at a job site because of unsafe conditions, they are there. If they have unsafe working conditions, we are there to represent them. We have no bias for the employee. The employee is represented equally out of our office with all of those professionals at any given

time. All of the people who work for our companies work for our companies because they enjoy those benefits. The people who work for union shops do so because they want a pension, they want the health insurance, and they want the working conditions that we represent.

[Larry O'Leary, continued.] If I told you that you didn't have to pay for something, you would not pay for it, either, which is why all these people keep saying if you didn't have to pay your association fees you wouldn't pay them. I think it is just a wrong that needs to be made right. It is not fair for any man to work under the conditions they work in construction today and one guy pays the bills and one guy doesn't.

**Penny Steward, Contractor, Las Vegas, Nevada:**

I am a local contractor here in Las Vegas. I have people in my field who pay dues and don't pay dues. Basically, it becomes a dissension between the workers when they work for the same company and they are on the same job. Some of them feel that people are getting things for free. It is like they are not paying their bills or paying their share. I think that is all that we are asking to have done, that they are allowed to do that or required to do that.

**Lisa Mayo-DeRuso, Consultant, International Bricklayers and Allied Craftworkers, Local 13, Las Vegas, Nevada:**

I have spent a lot of time working with several of the unions helping them with business decisions and helping them to devise strategies within the community. I have done a lot of research on the fair share bill on this proposal that they have sitting in front of you. I wanted to take it into more of a business, economic, and holistic view when you look at this. When I am called in to consult a business, whether it be a large business, a gaming entity, or whatever it may be, one of the things that is just a good business practice is to allocate your cost, labor being one of the largest costs within a business.

I will give you an example. Let's say you work at a bank or you work for a company where you are required to wear a uniform or wear a certain shirt. In a lot of businesses you may have a cleaning cost for that uniform. If some people in the business were required to pay for this cost and others were not, and you were to go back in a business and try to allocate those costs across your labor pool, it would become an unfair allocation. I think we have to look at this from a business standpoint.

The other thing I think is important is to look at it from an economic standpoint: the health benefits, welfare benefits, retirement benefits, and vacation pay that are provided to non-members when they are working on a union job. Look at the economics of southern Nevada and the health care situation and how many

people don't have health care in the economic circle. Those workers who are not provided health care or retirement ultimately become a burden to us in the state of Nevada, going into hospitals and not having insurance for required care, going into our welfare system and other systems. I think the unions and these non-union members that take advantage of that are getting a great benefit. It is also assisting the taxpayer and the community in not having to bear those burdens when the occasion arises for health care or retirement.

[Lisa Mayo-DeRuso, continued.] I would urge you as a Committee to not look at this as just a union or non-union issue, but as a business issue and its effects on the entire community and the economics of our community.

**Danny Thompson, Executive Secretary-Treasurer, Nevada AFL-CIO:**

We support the proposed amendment that Mr. Morley presented to the Committee ([Exhibit F](#)). Running any organization, especially a union, is not about making a profit, it is about covering the costs. The amounts of the dues are not calculated so that the union can make money. The amounts of the dues are calculated so that you can cover the cost. This issue is just a matter of fairness. There is not a homeowner's association in this state wherein if you stopped paying those homeowner's fees they wouldn't put a lien on your house. The Chamber of Commerce would not represent you if you stopped paying those fees, nor would any other organization in this state. This is simply a matter of fairness.

This amendment may need a little bit of work because it is unclear in some areas. That is all this is about. I don't see where anybody could have a problem with this. The Supreme Court said it doesn't violate Nevada's right-to-work law based on the fact that the person has the right to go hire their own counsel if they want. If they choose to come to the union, the costs can be exorbitant. Right now, if somebody walks in the door and says that they want you to protect them and represent them, we have to do that. It can be tens of thousands of dollars. It is just a matter of fairness for everyone else who chooses to belong. We wholeheartedly support this bill.

**Richard Daly, Business Manager, Laborers' International Union of North America, Local 169, Northern Nevada:**

I wanted to get on the record in support of the fair-share concept. I believe that it is just a fundamental inequity. It is unfair that labor organizations are the only ones put into this situation. When I pay taxes, I don't get a choice; I have to pay them to get police or fire protection. I would love to be able to just pay it when I get service and all of the rest of the time get my money back. No, I am paying over the course of time, a little bit at a time for the time I get to use it.

[Richard Daly, continued.] When a person comes to get services, they are on the back of everyone that has been paying over a long period of time. When you need services from the union, they spend more money in that short period of time than the person's cumulative monthly dues. I would challenge any government or organization to operate the way you are requiring unions to operate—it couldn't work. I can get police, I can get fire, I can get courts, I can get the whole system, but taxes are optional?

**Frank Brusa, Legislative Advocate, representing Clark County Association of School Administrators (CCASA):**

Just for the record, CCASA negotiates for 1,200 school administrators in Clark County, of that 1,165 are members. We support this fair-share agreement in A.B. 69.

**Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building Trades Council:**

We too are in full support of this piece of legislation.

**Susan Fisher, Legislative Advocate, representing the Washoe County Employees Association:**

On behalf of our 1,250 members, we too support A.B. 69 and the amendment.

**Chairwoman Buckley:**

We have a letter in the record from Paula Berkley on behalf of SEIU [Service Employees International Union] in support of the legislation ([Exhibit J](#)). The proposal is to amend it to only require it when someone is using the services of the grievance, with the amendment still to be further refined to make it clearer and to be able to work with the sponsors with that knowledge. I would still welcome any testimony against anyone who has concerns on A.B. 69.

**Christina Dugan, Director, Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada:**

We have roughly 6,800 members. Those 6,800 members employ more than 180,000 individuals in the southern Nevada area. I would agree that this is not an issue about unions versus non-unions; this is an issue about individuals and businesses functioning in a manner that is appropriate for a free market system. While we are a member organization, we do things that benefit the entire business community, whether members or not. In essence, we too have the collective action and free rider problem that the unions have, yet we are not here asking for you to make it compulsory that various businesses pay us a percentage of their profits because of the work we do every day to create a strong local economy.

[Christina Dugan, continued.] Speaking specifically to the bill and the amendment itself, it is our understanding that both the national labor relations law as well as the Supreme Court case that was cited earlier today do allow the unions to receive compensation in the situation of a grievance where they represent a non-union employee. We would suggest that codifying this with the current issue before us is really not necessary. Moving forward, we prefer to allow unions to make the decisions that they can and to recruit the members as they should on a fair and even playing field. I have some information with respect to how right-to-work states and non-right-to-work states have changed over the years with respect to both the growth of jobs, the growth of individual salaries, and the decline in union membership over the last several years. Currently, roughly 7.9 percent of private-sector employees belong to a union, so you can see that individuals are choosing on their own not to become union members.

**Assemblywoman McClain:**

Did you just say that your non-member business people can access the same benefits as your members?

**Christina Dugan:**

I'm not saying that they can access 100 percent of the benefits of the members, but they do in fact derive a benefit from the work that the Las Vegas Chamber of Commerce does every day.

**Assemblywoman McClain:**

How is it different from non-union employees who receive the same benefits as the union members? Why should they not have to be a member to get the benefits?

**Christina Dugan:**

I think in the instance that we are talking about you are making the same point I was making—we have businesses in the state of Nevada that derive benefits from the work that the Chamber is doing, and yet I don't think the Legislature is going to make compulsory dues for the Chamber of Commerce.

**Assemblywoman McClain:**

No, it's the other way around; your non-members do not get the same benefits as your members.

**Christina Dugan:**

One hundred percent of those, correct.

**Assemblywoman McClain:**

Non-union members do get the same benefits as the dues-paying members.

**Christina Dugan:**

They have the option in a grievance situation to go and get outside counsel. They don't have to go to the union for representation.

**Assemblywoman McClain:**

I understand, I'm just saying that it is only fair. This is totally unfair and it has been for years and years. Why should the people get the same benefits by not paying into as the people that have to pay into it?

**Chairwoman Buckley:**

It sounds like a statement we will carry over to our work session. My question is, if the Supreme Court already allows a fee, what is wrong with codifying that a fee is allowed to be charged? I ask because a lot of people turn to Nevada law to learn about Nevada law and they don't have access to the Supreme Court database, so an average person who wants to look at the labor law can pull up the chapter and read what is allowed and what is not allowed. What is wrong with codifying if someone uses the services that a fee is allowed to be charged?

**Christina Dugan:**

We would simply argue that it is redundant and unnecessary because those rights already exist both for the unions and the individuals going forward. I don't know if I would categorize something as being wrong with it or morally opposed to it. It just seems to be an unnecessary intervention of state government when we already have that ability for both parties.

**Chairwoman Buckley:**

We often try to keep up with the Supreme Court and try to keep our statutes reflecting what they say. It would be like the juvenile death penalty. Even though the U.S. Supreme Court made the final call, we still update our statutes. It is just about consistency. I appreciate your perspective.

**George Ross, Legislative Advocate, representing the Retail Association of Nevada:**

We appreciate this opportunity to state our opposition to A.B. 69. This is a right-to-work state. Every individual has the choice to join a union or not to join a union, whether to avail themselves of the benefits that the union has for him or not to have his dues taken out and not necessarily get all of those benefits. We see this as a slight step away from being a right-to-work state.

[George Ross, continued.] Basically, an individual in this situation may have to have his dues deducted, and we would prefer for that individual to have that right if he still needs that money to spend not to have to join the union.

**Assemblyman Anderson:**

If the employee has the right not to join, then when he goes to utilize the contract, which requires the use of the employee group, and he calls upon this group to provide him a service, shouldn't he have to pay for that as he would for an attorney? He has a choice of going to one or the other. Would he then not have the obligation to pay in both instances?

**George Ross:**

As I understand it, under that Supreme Court decision, the union would have the right. Frankly, if I were working with 99 percent union guys, I would hire an outside attorney. I wouldn't want to be in that situation at work.

**Assemblyman Anderson:**

I'm trying to draw the parallel just brought forth that they can go to an attorney or they can go to the union folks who have put together the contract and with whom they may feel comfortable because they recognize that. Would they not feel an obligation to pay for them since they are actually using them?

**George Ross:**

You would think he might, but we feel that legally he should not have to do that. As a state where one has the individual choice not to join the union, he shouldn't have to do that.

**Assemblyman Anderson:**

They have a requirement to provide because they have the exclusive right to bargain.

**Assemblywoman Giunchigliani:**

I just reviewed the Supreme Court decision, and it says, "Accordingly, we conclude that the policy"—the policy being that they would not prohibit the union from charging non-members fees for individual representation—"that the policy does not violate Nevada's right-to-work laws." I think the fundamental question goes back to the Chairwoman's rephrasing. We have probably been looking at this bill so many times over the years that subsequently we had a ruling that came out. I think now it is time to make it clear they can charge for certain things and it does not violate the right-to-work state law. I think that is all we are trying to get to in this piece. Maybe the language has not been fleshed correctly yet, but it does comply with what the Supreme Court intent was.

**Lucille Lusk, Chairman, Nevada Concerned Citizens (NCC):**

I have had a chance to review the amendment ([Exhibit F](#)) and I appreciate that being made available. If I am reading it correctly, it appears that the consideration would be primarily of the amendment rather than the original bill, so I will address that rather than the original bill.

I would like to start by pointing out that NCC has long advocated that non-union employees should have to negotiate separately with their employers for their wages and benefits and should not be automatically included in a union agreement. That is the basis of where we are coming from. We do believe that there is and should be a right to work and a right to choose whether or not to join a union. Looking at the amendment to A.B. 69, I do need to ask a few questions. The amendment goes to charging fees for individual representation upon request by a non-member as opposed to spreading the fees amongst the totality of the work force. Why under those conditions would you need an agreement with an employer? It has been stated that the unions are already charging these kinds of fees and that the Supreme Court has said that they may do so.

An agreement between an employer and a union leaves out the only person who is going to be affected, and that is the non-union member. I don't see the purpose in creating such an agreement. In addition, why does it need to be a condition of employment as written in this amendment? If you don't pay, you don't get the representation. It seems to me that if you want to do something with this, there is a valid way to do so. That would be to codify a recognition that the unions can charge upon request by an individual non-member, but to perhaps put in place a structure of charges so that those charges are reasonable rather than using the word "reasonable," which has no real meaning.

**Chairwoman Buckley:**

"Reasonable" does have a meaning. It has been interpreted by courts and is the basis of negligence law. It is not specific, which I think is your point, but it has been defined.

**Rose McKinney-James, J.D., Legislative Representative, Clark County School District:**

The school district does take issue with certain aspects of the bill, particularly those aspects that would make this tantamount to a condition of employment. Further, I think the question is related to the who. I have listened to the testimony and I think the equity issues on the table are fairly compelling, but the question is: Who should be involved in the agreement? The district takes exception as an employer with being involved in the agreement. The amendment would appear to at least provide the ability of an employer to step



aside and allow the members of the association/union and the non-members to come to terms consistent with the findings of the Supreme Court decision.

[Rose McKinney-James, continued.] You have indicated or at least suggested that there will be a work session. I am reluctant to make any finite comments until I have at least had the opportunity to present the language of the amendment to my client, but I do appreciate the opportunity to be here. We would appreciate the opportunity to participate in a work session.

**John Madole, Executive Director, The Associated General Contractors of America, Incorporated, Nevada Chapter:**

I have reviewed the amendment and we are opposed to A.B. 69, but I think everything has pretty much been said so I will satisfy you by going on the record and leaving it at that unless you have any further questions.

**Michael Pennington, Public Policy Director, Reno-Sparks Chamber of Commerce:**

For the record, we did come here initially to oppose A.B. 69 in its original form, but, given the conversation today, we would have an interest in sitting down and working with the Committee and the stakeholders in finding some appropriate language.

**Chairwoman Buckley:**

With that, I will close the hearing on Assembly Bill 69. I will ask the sponsor, Assemblywoman Koivisto, to see if she wants to meet with any of those who have expressed concern and see if there is a way to address those concerns and then bring it back for us in our work session. We will assess it from there.

We will open the public hearing on Assembly Bill 126.

**Assembly Bill 126: Revises provisions governing provision of care by personal assistant for person with disability. (BDR 54-167)**

**Chairwoman Buckley:**

This was requested by the Department of Human Resources Director's office.

**Mary Liveratti, Deputy Director, Nevada Department of Human Resources:**

With me today is Tina Gerber-Winn of the Division of Health Care Financing and Policy and representatives from our Strategic Plan Accountability Committees. We are here this afternoon to present A.B. 126, which was requested by the Department on behalf of the Disability and Senior Strategic Plan Accountability Committees.

[Mary Liveratti, continued.] A.B. 126 revises the provisions regarding care provided by unlicensed personal care assistants. Currently, a personal care assistant may perform specific medical, nursing, or home health care services for a person with physical disabilities without being licensed as a health care provider if specific conditions are met. The services must be simple and the performance must not pose a substantial risk of harm to the person with disabilities. This allows persons with disabilities to self-direct their own care after a provider of health care determines that the personal assistant has the knowledge, skills, and ability to perform services competently.

The Division of Health Care Financing and Policy offers services as described under NRS 629.091 [*Nevada Revised Statutes*] for about 30 individuals in the waiver for persons with physical disabilities. As currently written, NRS 629.091 has been interpreted that the person with the disability must be able to direct the care themselves. It has excluded children and adults with cognitive disabilities. This bill would provide clarification and comparability by allowing a parent or legal guardian to direct the care for their child or a spouse, parent, or adult child to direct the care for a person with cognitive impairments. This revision would allow Medicaid to include this service delivery to all Medicaid recipients.

Section 2, subsection 4(c), requires that the parent, guardian, spouse, or adult child must be present when the services are performed in order to direct the care provided by the personal assistant. This section was suggested by the Nursing Board to ensure the health and safety of the child or person with cognitive disabilities.

The school district is somewhat concerned if there would be an impact on the services that are provided to children with disabilities who attend school and receive those services under the Individual Education Plan (IEP). We need to look at the possible impact this could have because it is not our intention to impact those services in schools. We are looking mainly at these services being provided in a person's home.

**Robert Desruisseaux, Advocate, Northern Nevada Center for Independent Living;  
and Chairman, Disability Strategic Plan Accountability Committee:**

Objective number 40 in the Strategic Plan addresses this. The desire of the Planning Committee or the individuals involved in the drafting of that 10-year strategic plan was to try to provide the same opportunities to benefit from this that individuals with physical disabilities were able to get. We have heard from many individuals who were recipients under other plans and other programs within the state. However, they were not able to take advantage of this

because of the way it was originally written specifically for people with physical disabilities.

[Robert Desruisseaux, continued.] As Ms. Liveratti alluded, there was an issue of comparability. Just as an example, an individual of lower income, let's say SSI [Supplemental Security Income] level, would be eligible for these same types of services under the state plan Medicaid. However, because that state plan also includes individuals with other types of disabilities, not just physical, they were unable to offer that across the board. Some other things have changed throughout the last year. Some of it has been beneficial, yet created some additional problems. For instance, when we first started looking at this issue, we heard from individuals who had physical disabilities but aged out of the physical disability waiver and went into the aging waiver. They were unable to take advantage of that. That has changed since then. Individuals no longer age out of the physical disability waiver; they have the option of staying on. However, not being able to take advantage of this opportunity in the aging waiver could create a disincentive for individuals to move on to another waiver, thereby overloading the physical disability waiver. We would not want to see that as the deciding factor in an individual selecting which waiver or which program was going to provide their service. It should be based on which program is best going to meet their needs overall.

**Connie McMullen, Vice Chair, Senior Strategic Plan Accountability Committee:**

We are in favor of A.B. 126, which revises the provision of care regarding people with cognitive disabilities. The Accountability Committee has been following A.B. 126 in its efforts to craft this legislation. The bill supports concepts of our strategic plan enabling people to remain in their home or group care setting to maintain independence, personal hygiene, and safety, and to receive the unskilled care they need in the most efficient, cost-effective, and least restrictive environment possible. For people with cognitive disabilities, this is extremely beneficial because the care is provided under the direction of a family member in a familiar setting without the burden of having to be transported to a new setting for unskilled care. This can be quite comforting to both the family members and the person receiving the care. In this regard, A.B. 126 improves access to care, ensuring people receive services when they need them.

The bill also identifies parameters under which care can be given. The Committee supports the recommendation that care cannot be given in the absence of a guardian, family member, or spouse. Similarly, the bill also benefits the spouse or a family because care is continued in the setting of choice. Care giving spouses or family members themselves may be suffering from a serious disability or a chronic illness. Directing care of a loved one through a

personal assistant eases stress by knowing that the job will get done. A.B. 126 enjoys the support of the Accountability Committee because it favors directing consumers to home- and community-based services either through the CHIPS [Community Home-based Initiative Program] waiver or the other waiver when possible. It helps people maintain their independence, dignity, and ultimately prevents premature institutionalization. We are in joint support with the Accountability Committee for people with disabilities on this measure.

**Chairwoman Buckley:**

I would really like to commend the work of the task force and the work of the Department. I think it has done outstanding work over the last couple of years. We really appreciate everything that you all have done to try to streamline and improve our services, so thank you.

**Assemblywoman Giunchigliani:**

I will wait to see what you find out from the district, because there are home-bound situations educationally that may come into play depending on if that person's case worsens to some extent, which may cause them to have to stay home. If that is the case, then you might want to look on page 3 at the "18 years" because the districts are in charge if they're under an IEP up to age 21. That might be another place that needs to be looked at.

If I look on page 3, 4(c) on line 20, "...the person with the disability is not able to direct his own services." The parent or guardian would have to follow the disabled individual. They would be able to direct their own care, but what happens if they are still under the age of 21 and still under the care of the family? What if the family member chooses or tries to go in a different direction than where that individual wishes to go?

**Tina Gerber-Winn, Chief, Continuum of Care Services, Division of Health Care Financing and Policy, Nevada Department of Human Resources:**

I can only speak for our Division as far as process, but originally the law was asking that a physician or a provider of health care designate what services should be provided that the person's condition is stable and predictable, and only those services should be rendered to that individual. The same would be true for someone under the age of 18. A physical therapist would have to work with that person and their guardian to decide the most appropriate task that should be completed by the personal care attendant.

**Assemblywoman Giunchigliani:**

I just wasn't sure how that process would work if there became a disagreement. That is why I figured a guardian ad litem would not be able to make those changes because that is giving a little bit more authority to

someone that you probably didn't want to. There is a plan that is laid out, you are saying, that they would follow along with that, and if not then you could get involved. Is that kind of how it works?

**Tina Gerber-Winn:**

Again, only for our Division can I state that we set a plan of care that designates which tasks should be addressed in the delivery of care. I am not sure how other agencies would manage that, but generally it is through a plan of care.

**Debra Scott, Executive Director, Nevada State Board of Nursing:**

A.B. 126 is going to be formally addressed at our board meeting this week. The Department of Human Resources, in particular Robert Desruisseaux and Mary Liveratti, have worked very closely with the Nevada State Board of Nursing and added the part that we thought really needed to be added where we thought the guardian, the parent, or the spouse needed to be there when the care was being given. I expect that during our board meeting our board will support this, but I can't make that formal statement today.

**John Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Reno, Nevada:**

I did work with the Plan Accountability Committee, with Chairman Desruisseaux, and with the Department over the last couple of years around this area. This will have several benefits. One that was kind of alluded to is that the federal government has denied Nevada's ability to pay for these services under our regular Medicaid program because of the theory that we were not offering comparable services to people with cognitive disabilities as opposed to those with mental disability. This expands the ability of the Medicaid program to provide these services and the regular program and not take up valuable slots in the waiver program that Mr. Desruisseaux alluded to.

It also has the second benefit of expanding services to individuals who are not able to take advantage of them at all. This is of course an exception to the Nurse Practitioner Act. Now we will be able to provide services by non-licensed personnel to the people with cognitive disabilities both young and over 60. It is a step in the right direction. I would be glad to work with the Committee on any of the technical stuff that comes up.

**Susan McNamara, R.N., Private Citizen, Reno, Nevada:**

I am recently retired from the Division of Health Care Financing and Policy. I wish to offer my testimony in opposition to A.B. 126. I have over 35 years' nursing experience in various hospital departments, but I spent the last 14 years in the Division of Health Care Financing and Policy Personal Care Aid Program

that brings me here in opposition to A.B. 126. I worked for seven and a half years in the Reno District office as a PCA [personal care attendant] case manager and then in the central office for seven years working on home care programs. Home health private duty, but primarily as a specialist in the PCA program. I am very knowledgeable about the workings of the program.

Nevada Medicaid can be very proud of their optional PCA state program, which has been in existence since prior to 1979. Within the last four years, it has been changed and expanded to provide more services and more choices of providers to more individuals in activities of daily living such as toileting, bathing, et cetera; also instrumental activities of daily living which might be shopping, laundry, et cetera; thus enabling more Medicaid recipients to stay at home. The current PCA program was developed in concert with recipients, advocates, caregivers, and sister agencies within the parameters and the approval of CMS [Centers for Medicare & Medicaid Services].

NRS 629.091 [*Nevada Revised Statutes*] is an exemption to the Nurse Practice Act. It was improved in 1995 by the Legislature after much discussion with the Board of Nursing, advocates, Medicaid, and others who ultimately compromised that it would be limited to the physically disabled population who could direct their own care. I want to mention also that the bill currently before you today is an extension of NRS 629 and is not part of the state plan program because it didn't meet the comparability.

What we are talking about now is not just personal care aid tasks which I mentioned, such as bathing, grooming, and toileting, but licensed tasks or skilled tasks that normally would be provided by a licensed provider like an R.N. or a physical therapist. A.B. 126 is also not limited to the Medicaid population. There is nowhere that says that it is to be confined to Nevada's Medicaid population. It would be available to any Nevada resident with a disability including any entity, private-paid, HMO, or insurance company to allow PCAs to provide these skilled tasks. These skilled tasks might be G-tube feeding, suctioning, catheter insertion, wound care, et cetera, and not just to the physically disabled. This really expands the scope of NRS 621.091, which I think puts a lot of Nevada residents in jeopardy regarding safety issues.

I think this bill should not be approved and has significant ramifications if approved for individual safety. Currently this option is available to recipients through the Waiver for Independent Nevadans (WIN) as has been mentioned. Under the waiver, Medicaid provides case management services and skilled services by an unskilled individual. It is limited because of comparability. The Medicaid program adheres to the law, monitors the physically disabled for ability to direct care, and for the appropriateness of care. Under the WIN program,

each recipient receiving these services has a case manager who contacts the recipient on a monthly basis, making a quarterly visit, or more often as needed.

[Susan McNamara, continued.] Once this is expanded to the general Medicaid population and beyond, case management goes away. The WIN case load is currently limited. I am not sure how many individuals may access it, but the PCA population as a whole is greater than 2,500. You are going from a very small group who have some case management issues to a much larger and broader spectrum of people who will have no case management and no supervision. NRS 629.091 has nebulous guidelines.

First of all, a provider of health care has many components. It not simply just a physician; it can be a dentist, a licensed nurse, a dispensing optician, an optometrist, a practitioner of respiratory care, a registered physical therapist, podiatrist, licensed psychologist, licensed marriage and family therapists, chiropractor, athletic trainer, Doctor of Oriental Medicine, medical laboratory director or technician, pharmacists, or a licensed hospital as the employer of any such person. That means that the individual who may be eligible for personal care aid services could have someone come in and say this PCA can perform these specific tasks. The problem with that is we are hoping they will work within their scope, but I have known through experience that this is not always true.

Also, in NRS 629.091, after a provider of health care has authorized a specific skilled medical nursing or home health care task and has determined that the individual PCA is competent to provide the task, no further authorization of supervision is required. That means that no supervision for some complicated tasks can proceed for years. This is very problematic, as most physicians require a visit at least one time a year to check on the overall status of the client, particularly those with chronic illnesses who change in status and can deteriorate slowly. It is also not determined whether the PCA or the legally responsible patient who may now direct care may know the consequences or complications of many procedures. PCAs have very limited training. If they get 16 hours plus some CPR, they are lucky.

We all know that medicine is becoming increasingly technical. As a nurse and student nurse, I did really dumb things, such as give a patient who was on bed rest a massage on their legs. You wouldn't think that would be a problem, right? I was being nice and helpful. I could have sent a clot into the brain if that individual had a DVT [deep vein thrombosis]. You may not think that a catheter is very complicated, but you can develop strictures. If you try and insert the catheter beyond the strictures, it is very painful and causes problems.

[Susan McNamara, continued.] In conclusion, I would just like to say that NRS 629.091 or the revision of that and A.B. 126 has a lot of serious problems and puts the entire Nevada disabled population at risk. I think it should be denied. I would suggest that at sometime a new bill be created that is specific for Medicaid clients and health care tasks such as catheterization, bowel care, and medication application and not have the broad scope that this current bill would allow.

**Acting Chairman Anderson:**

We will close the hearing on A.B. 126 and proceed with A.B. 135.

**Assembly Bill 135: Increases maximum annual amounts that may be assessed against certain insurers for purposes relating to investigation of insurance fraud. (BDR 57-1071)**

**Thom M. Gover, Senior Deputy Attorney General, Insurance Fraud Control Unit, Office of the Attorney General, State of Nevada:**

[Read from Exhibit K.]

I am one of three prosecutors assigned to the Unit with an active and growing case load. I appreciate the opportunity to present to you A.B. 135, which would allow us to better address the problem of insurance fraud within the State of Nevada.

A.B. 135 is a simple bill. It seeks to amend NRS 679B.700 to increase the ceiling on the annual amount that may be assessed on each insurer within the State for the purpose of funding the Insurance Fraud Control Unit (IFCU). Pursuant to information from the Division of Insurance, the current assessment was insufficient to fund even the budget of the Fraud Unit for fiscal year 2005. It was only due to the collection of late fees that the Division was able to completely fund the Unit. Obviously, the assessment is inadequate to support the Fraud Unit's budget request for fiscal year 2006 and 2007 to add two desperately needed investigators. Simply put, the Fraud Unit has outgrown the ability of the assessment to fund its activities.

Nevertheless, the Insurance Fraud Control Unit is having a good year. Its success has been driven by teamwork, including investigators and prosecutors working together early to identify cases that can be successfully prosecuted, and by individual



members of the unit stepping up and working harder. For FY2005, the Unit's investigators set a goal to work up and present at least one case for prosecution per month. The prosecutors agreed to take on whatever amount of cases the investigators present and also to look to outside agencies for prosecutable cases. As a result, the Unit already has more convictions this fiscal year than it had in all of FY2004 and is conservatively projected to obtain 40-50 convictions during FY2005; more than any previous year. Most recently, IFCU investigators, as members of the Nevada Health Care Fraud Task Force, were credited for their efforts in a U.S. Department of Justice announcement of the successful indictment of SDI Future Health, Inc., a diagnostic laboratory, the indictment charging various counts of health care fraud and illegal kickbacks to Nevada physicians, with an estimated loss to insurance companies and Medicare of over \$20 million. Even with its successes, the Unit can and needs to do more.

[Thom Gover, continued.] The Insurance Fraud Control Unit has documented a 58 percent increase in the annual amount of referrals of suspected fraudulent activity from 279 referrals in FY2000 to 442 referrals in FY2004. A recent referral sharing arrangement with the National Insurance Crime Bureau has resulted in 499 referrals in FY2005 to date, which strongly suggests that the incidents of suspected fraudulent activity have been underreported in past years. The increasing amount of referrals results in an investigation backlog and results in our Unit having to decline to prosecute otherwise prosecutable cases of insurance fraud. In the short term, an increase to the assessment will aid the Unit by funding the budget request for the needed investigators. In the long term, the assessment will allow the expansion of the Unit as needed to combat insurance fraud and as controlled by The Executive Budget process.

The insurance industry recognizes the increasing trend in the prevalence of insurance fraud within the State of Nevada. I believe that is why we have been well received as we have presented our situation to the industry and I continue to seek the industry's support of our Unit today.

One of the entities that is supporting the Unit in its request that could not be here today is the Coalition Against Insurance Fraud. They have presented a letter ([Exhibit L](#)) addressed to Chairwoman Buckley dated March 10, 2005.

[Thom Gover, continued.] The materials provided to you from my office ([Exhibit K](#)) include a memorandum in support of A.B. 135. It more specifically outlines the current state of our Unit, the factors that were considered in formulating the amendments to the statute, and also justifying our request for investigative resources.

**Robert L. Compan, Government Affairs Representative, Farmers Insurance Group:**

Farmers Insurance is very active in the prevention and identification of fraud. Our Special Investigation Unit is actively involved with the Las Vegas Metropolitan Police Department (Metro) Auto Theft Detail, Metro's VIPER Crime Unit [Vehicle Investigation Project for Enforcement and Recovery], Reno's Auto Theft Unit, as well as other municipalities. Our Special Investigations Unit is also actively involved with the National Insurance Crime Bureau and the Attorney General's Office Insurance Fraud Unit.

Last year, Farmers Insurance of Nevada office handled 354 suspected fraud claims in both homeowner and auto claims. Of those, we referred approximately 60 to the Attorney General's office. Currently the AG's office is working on 10 open prosecution cases for us. Prosecuting these types of crimes demonstrates our company's commitment not only to identifying theft but to also deter these types of crimes. We feel the more you investigate, the more you can prosecute. You get it out to the media and to the public and it is more of a deterrence from these types of crimes.

We are in support of A.B. 135 and we would accept the additional assessments that were about this bill.

**Michael Geeser, Media/Government Relations, AAA Nevada (Automobile Association of America):**

We support this bill and believe in increasing the assessment and the number of investigators within the Attorney General's Office; this is long overdue. I have passed out a letter of support to each of you, which contains some numbers ([Exhibit M](#)), which really help explain our position.

AAA Nevada currently has two people in southern Nevada assigned to combating insurance fraud. They look into insurance fraud on both lines of business that we have, auto and homeowners. In the year 2004 we referred 178 cases to the Office of the Attorney General. The total number of cases they received in that year is 442. That means we are responsible for 40 percent of their workload alone; that is not counting any other insurance company within the state. So far in this year, our Special Investigations Unit has sent them 39 claims and we are not through March. We think this really highlights a

need for them to get more investigators and more people working on these cases to help us. We would like to ask for your support. We are willing to pay our fair share to stamp out insurance fraud and we hope we will get your vote on A.B. 135.

**Jeanette Belz, Legislative Advocate, representing Property and Casualty Insurers Association of America (PCI):**

Presently 268 PCI [Property Casualty Insurers Association] companies are doing business in Nevada. They are responsible for about 41 percent of the property and casualty insurance premiums written here. A.B. 135 would increase the assessment that these insurance companies would pay to support the efforts of the Insurance Commissioner and the Attorney General to investigate and prosecute insurance fraud. PCI is impressed with their efforts and supports the increases proposed by A.B. 135.

Back in 2001 we passed A.B. 134 of the 71st Legislative Session, which created the system that we have now and actually established those fees back then. We would encourage the Legislature to continue to have the Insurance Commissioner and the Attorney General report on what kind of progress they have made, because obviously they are very busy and with the growth that we are experiencing in this state they will continue to be so.

**Acting Chairman Anderson:**

It is always interesting to see somebody in front of the Committee who was here when the legislation was first created actually recognizing that it worked, and now it is going to cost us a little bit more money to do it right. Is that a fair statement to make? [Ms. Belz agreed.]

**Ken Hutchinson, Senior Special Agent, National Insurance Crime Bureau:**

I am a senior special agent with the National Insurance Crime Bureau. I am here representing National Insurance Crime Bureau in support of A.B. 135. National Insurance Crime Bureau is a national not-for-profit corporation, and we are supported by approximately 1,000 property casualty insurance companies nationwide. Working with our member companies and law enforcement, we investigate organized criminal conspiracies dealing with insurance fraud and theft. I am the agent who works in northern Nevada with the Attorney General's Office out of Reno.

My company believes that insurance fraud affects almost every man, woman, and child financially. Any resources we can provide for investigators, those people who discover, investigate, and prosecute insurance fraud, can only be financially beneficial to every one. I will give just a quick synopsis of a couple

local cases that I was involved in that benefited insurance companies.

[Ken Hutchinson, continued.] We had a local car dealership that had an employee who had a habit of taking company vehicles out and wrecking them. Then they would backdate registration information to register the vehicle in his name. He then filed a claim with his personal insurance company. He went to the well one too many times and I was contacted by the insurance company when they suspected this was going on. I passed this information on to the AG's Office and we worked together on this investigation, which resulted in his arrest, conviction, and \$130,000 in restitution back to this insurance company.

Another large problem we have that has benefited the insurance companies here in northern Nevada is staged car thefts, where the vehicles are being shipped to Guatemala. These vehicles go across the border into Guatemala and we track these vehicles as they go across. People wait about 30 days and report them stolen to try to collect money from their insurance companies. We have uncovered several of these scams, and as a result of the investigation by the AG's Office, they have been able to successfully prosecute and the insurance companies have been able to deny these claims. I have been working with the northern Nevada AG's Office for the last six and a half years. I have found that all of the investigators and prosecutors there are very efficient, very hard-working, and very productive; I enjoy working with them quite a bit.

I have a letter written by Judith Fitzgerald, who is our senior vice president member in government affairs ([Exhibit N](#)). Our company is very much in support of A.B. 135.

**John R. Orr, Deputy Commissioner of Insurance, Nevada Insurance Division,  
Department of Business and Industry:**

My purpose here today is to confirm what Mr. Gover explained to you, that the capacity of the fraud assessment levels which were set in 2001 have been exceeded by the Attorney General's expenses. If it is the will of the Legislature to fund the Special Fraud Unit at the level that the Attorney General has requested in his budget, then this bill must pass. The bill would increase the capacity by roughly \$450,000, which is not necessary to fund the AG's 2006-07 budget but, it would create the excess capacity which would mean that we wouldn't have to return every two years to raise that threshold. The AG's 2006 and 2007 needs will require an increase of about 12 percent. We would set the actual assessments within those sliding bands to just raise that amount.

**Assemblywoman Giunchigliani:**

Will this need to go to Ways and Means because it is establishing an account?

**Chairwoman Buckley:**

I think we have the account set up.

**Assemblywoman Giunchigliani:**

I think the account is there so we shouldn't. You are just increasing it, right?

**John Orr:**

The Special Investigative Account exists and it is funded pursuant to NRS 679B.700. The account is to be managed by the Insurance Commissioner.

**Phil G. Battin, President, International Association of Special Investigation Units, Nevada Chapter (IASIU):**

I am here to address the Committee in favor of the end results of A.B. 135, which will increase the overall effectiveness of the Nevada Attorney General's Insurance Fraud Unit in finding insurance fraud. The IASIU overall membership is made up of more than 46,000 individuals representing more than 600 insurance companies around the world whose members belong to one of 40 chapters. IASIU members are employees of insurance companies, or self-insured special investigative units, special agents or supervisors of the National Insurance Crime Bureau, or other state and local insurance crime prevention units.

I have been employed as an Insurance Special Unit investigator for over 15 years. In my current capacity as an insurance investigator and as the IASIU chapter president, I have routine contact with the Nevada Attorney General's Insurance Fraud Unit. The Nevada chapter of IASIU is comprised of 28 individuals whose sole purpose is working with special investigative units of the various insurance companies. Our Nevada membership is augmented with an additional 25 SIU [Special Investigative Unit] personnel who are physically located in adjacent states and periodically attend our Nevada chapter meetings. Senior Deputy Attorney Thom Gover is one of the individuals who attend all of our meetings and is an integral part of these monthly exchanges. Moreover, all of our membership has routine contact with the Nevada Attorney General's northern and southern Insurance Fraud Units.

Our membership relies on the Insurance Fraud Unit's criminal investigative efforts when one of our respective company's investigations has documented one or more of the various types of insurance fraud committed by or against an insurer. Although the Insurance Fraud Unit has enjoyed success in prosecuting some individuals that have engaged in insurance fraud, there have been, in our opinion, many instances that warranted further investigation and possibly subsequent criminal prosecution but could not be pursued by the Insurance Fraud Unit due to limited investigative resources. Our chapter membership has

noted that the staffing for the Insurance Fraud Unit has remained stagnant over the past years despite Nevada's exploding population and growth, especially here in southern Nevada, and a corresponding number of individuals and entities who obtained business insurance, homeowners insurance, auto insurance, and other types of insurance coverage. The Nevada IASIU chapter fully supports the favorable consideration by this Committee in taking action to increase the Nevada Attorney General's Insurance Fraud Unit's effectiveness relating to investigation of the ever-expanding insurance fraud here in Nevada.

[Phil Battin, continued.] In closing, I would like to state that the Association's bylaws say that we are to support legislation which acts as a deterrent to the crime of insurance fraud.

**Tom Norton, Senior Investigator, National Insurance Crime Bureau:**

I have been stationed in Las Vegas for the last 23 years and have been an insurance fraud investigator for the last 26 years. I have had a very close working relationship with the Nevada Attorney General's Insurance Fraud Unit ever since it was formed. I really only had two points that I wanted to make today. The Insurance Fraud Unit has done an exceptional job with funding. Unfortunately, they have been underfunded and understaffed since their inception about 15 years ago. In the past 15 years, the population of southern Nevada has grown tremendously, and with that the insurance fraud problem has grown just as fast, if not faster.

The second point is that the type of insurance fraud has changed in the last 10 to 15 years. When I first came here in the 1980s most of the fraud was called "mom and pop" fraud. Those were legitimate types of claims or legitimate losses that were inflated, whether it be to cover deductible or just to make a little extra money. Those are relatively easy to investigate. What happened in the 1980s and 1990s is that some of these staged-accident rings moved in, and organized insurance fraud rings moved in, mostly from southern California. Those have become very difficult and time consuming to investigate. It is essential that the Attorney General's office be given this additional funding to hire additional investigators to do those.

As we all know, the cost of insurance fraud is ultimately passed on to the consumer. Nevada already has one of the highest rates of insurance in the nation. I hope that this bill would help curb some of that and keep it in check.

**ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 135.**

**Assemblyman Anderson:**

I think the industry made very compelling reasoning why there was a need and the industry doesn't seem to be objecting to the dollars spent; it seems like a good thing to do.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

Since we are on a roll, could we turn to one other bill that we are not waiting for consensus or amendments or that didn't need to be hammered out further, and that is A.B. 137.

**Assembly Bill 137: Revises provisions governing insurance payments in settlement of certain third-party liability claims. (BDR 57-503)**

This was a bill, sponsored by Assemblyman Anderson, that basically stated an insurer shall not issue a check of \$5,000 or more to a lawyer without sending notice to the claimant. There was no opposition testimony. I think it was just to ensure that timely notifications about the issuance of proceeds of checks were received.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS  
ASSEMBLY BILL 137.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

**Assemblywoman Gansert:**

This is just sending a notice after you have sent the check?

**Chairwoman Buckley:**

Yes, on line 8, mailing a written notice of the payment to the claimant at the last known address.

**Assemblyman Anderson:**

I will be happy to explain it. This partially makes the attorney not be able to hold it in his bank account for a long period time and that the person who is supposed to get it knows where it is. There is a notification there. Most attorneys get them out in a relatively timely fashion, but occasionally there is a bit of a hangup. This particular piece is a good piece of legislation.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

I just want to tell members that there have been two bills withdrawn by the sponsors, A.B. 14 and A.B. 122. Any further business to come before the Committee? Seeing none, we are adjourned [at 4:44 p.m.].

RESPECTFULLY SUBMITTED:

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Sarah Gibson  
Committee Attaché

APPROVED BY:

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Assemblywoman Barbara Buckley, Chairwoman

DATE: \_\_\_\_\_



**EXHIBITS**

**Committee Name: Committee on Commerce and Labor**

**Date: March 14, 2005**

**Time of Meeting: 12:00 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
183	B	Lisa Black, Nevada Nurses Association	Written testimony and letters
69	C	Thomas Morley, Laborers' International Union, Local 872	Written testimony
69	D	Thomas Morley, Laborers' International Union, Local 872	Cost breakdown for grievance
69	E	Thomas Morley, Laborers' International Union, Local 872	Cone v Nevada Service Employees Union
69	F	Thomas Morley, Laborers' International Union, Local 872	Proposed amendment
69	G	Tommy Ricketts, Las Vegas Employees' Association	Letter in support of A.B. 69
69	H	Tommy Ricketts, Las Vegas Employees' Association	Breakdown of how A.B. 69 would effect the LVCEA
69	I	Tommy Ricketts, Las Vegas Employees' Association	Question and answer
69	J	Paula Berkley, Service Employees International Union, Local 1107	Letter in support of A.B. 69
135	K	Thom Gover, Attorney General's Office, Insurance Fraud Control Unit	Written testimony and memorandum
135	L	Thom Gover, Attorney General's Office, Insurance Fraud Control Unit	Letter from the Coalition Against Insurance Fraud
135	M	Michael Geeser, AAA Nevada	Letter in support of A.B. 135
135	N	Ken Hutchinson, National Insurance Crime Bureau	Letter on behalf of Judith Fitzgerald