

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

**Seventy-Third Session
April 11, 2005**

The Committee on Commerce and Labor was called to order at 12:25 p.m., on Monday, April 11, 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:

Assemblyman Garn Mabey, Assembly District No. 2, 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
Vanessa Brown, Committee Attaché

OTHERS PRESENT:

Elaine Wynn, Owner, Wynn Resorts, Las Vegas, Nevada
Christy Cano, Director of Spa and Salon, Wynn Resorts, Las Vegas, Nevada
Stan Olsen, Lieutenant, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada; and Nevada Sheriffs' and Chiefs' Association
Chris Cooke, Field Inspector, Nevada State Board of Cosmetology
David Perlman, Administrator, Nevada Commission on Post-Secondary Education
Joanne Leming, Director, Nevada Career Institute, Las Vegas, Nevada
Jim Mavis, Nevada Manufactured Housing Association
Jim Nadeau, Legislative Advocate, representing the Nevada Association of Realtors
Gail Anderson, Administrator, Department of Business and Industry, Real Estate Division
Renee Diamond, Administrator, Division of Manufactured Housing, Nevada Department of Business and Industry
Gary Milliken, Legislative Advocate, representing the Associated General Contractors of Nevada (AGC)
Laura Fitzsimmons, Attorney, representing Nevada landowners
Gerald Gillock, Nevada Trial Lawyers Association
Tammi Campa, Nevada Licensed Broker; Nevada Certified General Appraiser; and Member, Nevada Appraisal Institute
Collins Butler, Nevada Licensed Real Estate Appraiser and Broker
Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Washoe County
Michael Cheshire, Director, Appraisal Institute, Las Vegas Chapter; and Nevada Certified General Appraiser
Gail Anderson, Administrator, Real Estate Division, Nevada Department of Business and Industry
Pam Kinkade, Certified General Appraiser, Las Vegas, Nevada

Debbie Huber, Senior Residential Appraiser; President, Huber Appraisal, Incorporated; and Chair, the Nevada Appraisal Commission, Las Vegas, Nevada

Julie Ott, President, Appraisal Institute, Reno-Carson-Tahoe Chapter

Heidi Mireles, Chief Right-Of-Way Agent, Nevada Department of Transportation

Dan Leck, Independent Fee Appraiser; and Member, Appraisal Institute, Carson City, Nevada

Alice A. Molasky-Arman, Commissioner of Insurance, Division of Insurance, Nevada Department of Business and Industry

Van Mouradian, Life and Health Section, Division of Insurance, Nevada Department of Business and Industry

Bob Ostrovsky, Legislative Advocate, representing the Nevada Resort Association; and Employers Insurance Company of Nevada

Robert Vogel, CPA, Owner, and Vice President of Operations, Pro Group Captive Management Services; and representing the Nevada Captive Insurance Association

Kay Lockhart, Executive Vice President, Independent Insurance Agents, Nevada; and Secretary/Treasurer, Board of Directors Nevada Surplus Lines Association

Jim Wadhams, Legislative Advocate, representing Nevada Captive Insurers Association and the American Insurance Association

John Orr, Deputy Commissioner of Insurance, Division of Insurance, Nevada Department of Business and Industry

Peter Maheu, President, Nevada Society of Professional Investigators

Michael Kirkman, Investigator, Nevada Society of Professional Investigators

Ronald Dreher, Owner, Advocacy and Private Investigation Services, Reno, Nevada

Gina Crown, Private Investigator, Owner, Crown, Stanley and Silverman, Reno, Nevada

Mechele Ray, Executive Director, Nevada Private Investigators Licensing Board

Rusty McAllister, President, Professional Fire Fighters of Nevada; and Treasurer, Las Vegas Fire Fighters L-1285

Roger Bremner, Administrator, Division of Industrial Relations, Nevada Department of Business and Industry

Don E. Jayne, Legislative Advocate, Nevada Self-Insurers Association

Keith Lee, Legislative Advocate, representing the Nevada State Board of Medical Examiners

Tony Clark, Executive Secretary, Nevada State Board of Medical Examiners

Dr. Daniel Royal, President, Nevada Board of Homeopathic Medical Examiners
Jim Avance, Legislative Advocate, representing Nevada Manufactured Housing Association
Sam Sorich, Vice President, Property Casualty Insurers Association of America

Chairwoman Buckley:

[Meeting called to order. Roll called.] I'm planning on taking A.B. 496 first, but I would like to say that if you're here on A.B. 555 and you have concerns with the sections of the bill having to do with homeopathic medicine, I will be striking those provisions from the bill, exercising the prerogative of the Chair. If you're here to testify against those provisions, you don't need to stay because I'm not going to allow those sections to go forward. I'll open the public hearing on A.B. 496. We'll start with the sponsors or proponents.

Assembly Bill 496: Revises certain provisions governing licensing and regulation of cosmetology. (BDR 54-1182)

Elaine Wynn, Owner, Wynn Resorts, Las Vegas, Nevada:

I want to explain the genesis of our support for this matter. We are about to open a new resort in Las Vegas called Wynn Las Vegas. Prior to organizing our spa and beauty salon program, we were evaluating our need and direction and how we could modernize and accommodate some of the newer developments and trends in this increasingly popular part of our business, which is the spa and beauty business.

When we were operating in the Bellagio, we had several special events, and, much like bringing in special celebrities who were either celebrity chefs or celebrity performers, we were inclined to bring in celebrity hairstylists as well. We were somewhat restricted in being able to do that because we were not able to charge clients for their services unless they were registered elsewhere and went through some kind of elaborate mechanism to be compliant with the State. We did it in conjunction with a charity event, so we paid them a fee, then offered their services free to our participants.

Going forward with this project, we have discovered that there would be a need for us to punctuate many of our marketing and special events by bringing in a variety of very high-profile cosmetologists to offer these services to our customers but also have them paid for by our clientele and have it pass through

our system. The additional concern we had in doing our spa programming is that we're offering some more elaborate whole-body spa treatments.

[Elaine Wynn, continued.] I asked our staff to research the current laws and tell us what we needed to do in order to recommend some adjustments to the law that could make us compliant when we want to offer special new treatments and guest visitors. As a result, we have come up with this bill in its current form, and that is what we're here to support. We think it will help modernize the services we can offer here in Las Vegas without jeopardizing any of our local salons or local operations. It clearly would be something suitable for the larger resort hotel operations.

Christi Cano, Director of Spa and Salon, Wynn Resorts, Las Vegas, Nevada:

I'm in agreement with Mrs. Wynn. It would not only be good for our property, but for a lot of properties here so you have one lengthy service instead of inconveniencing the guest by having them move from room to room for different services. Some employees have training in aesthetics, which falls under the State Board of Cosmetology, and also in massage, and we'd like them to be able to perform more services and help streamline the process by which they get their licenses.

Chairwoman Buckley:

I've heard some concern about melding facials and the massage together or getting one outside the scope of the other. What exactly are you trying to combine?

Christi Cano:

We're trying to combine a service where you can offer a facial and a massage in the same service, or offer a facial with more than just a nice little shoulder massage or foot massage, which is what you can currently do. We want to be able to offer an upgraded service to our clients to where they feel more satisfied and that they're not inconvenienced in any way.

Elaine Wynn:

There is a special service currently only offered in London called crème de la mer that brought our attention to it. It's a very exclusive and innovative kind of treatment. We'll be only the second place in the world to offer this. We want to be able to do it in the way it was originally envisioned and is now being delivered in London.

Chairwoman Buckley:

So, is your point that two licenses would be too much and that it should be combined under one, or is it the difficulty in trying to get both folks to process

the application at the same time and get it issued? I'm trying to determine, if it is the process that's not working, or needing two licenses.

Christi Cano:

Currently, they need two separate licenses, one from the State Board of Cosmetology and one from the county, for them to be able to perform massage. We're not asking that they not have the proper massage training or the proper aesthetics training; they would still need the required training in their respective schools. We're just asking that their licensing process be streamlined and made easier for a massage if they do have the proper training and have met the requirements set forth for massage.

Chairwoman Buckley:

At our last work session we passed out A.B. 250, which would license massage therapists, so instead of having the county procedure, it would be a State board similar to the Cosmetology Board. One way we might want to go on this is, if that legislation passes, we could consider doing an amendment to the effect that the two Boards would have to develop through regulation a joint process to handle these types of melded licensures so the processes can be done together in a more streamlined way. That might be one way we could handle that, and if that bill doesn't pass the Senate, perhaps we could amend the bill in a manner to enable the counties and the Cosmetology Board to work together in a more streamlined way. That might be one option for the Committee to explore.

Assemblywoman Giunchigliani:

One thing we're looking at doing in proficiency exams this year is creating endorsements that could be allowed to various licenses. That way, if you're licensed properly in the massage, but you also meet the requirements for the cosmetology end of it, you could have an endorsement added to the licenses.

**Stan Olsen, Lieutenant, Executive Director, Office of Intergovernmental Service,
Las Vegas Metropolitan Police Department; and Nevada Sheriffs' and
Chiefs' Association:**

We have no problem with merging the two Boards. Our only concerns would be that the amendments made in other legislation are placed into the same standards to prevent the abuses that may and in some cases have occurred. We would be in support of merging them and using the amendments from the other piece of legislation.

Chris Cooke, Field Inspector, Nevada State Board of Cosmetology:

The Board of Cosmetology opposes the legislation because of the exponential growth in the state of Nevada. We are kept busy regulating our own profession, let alone regulating the Massage Board. We do support your amendments. That

was a good idea, but those concepts are already in the process in a lot of different areas. They can share rooms, they can do those services together, and we do have a number of dually licensed individuals who currently do those procedures, massage and facial techniques.

[Chris Cooke, continued.] As far as the temporary license issue is going, the Nevada Board of Cosmetology is very concerned about promoting public health, safety, and welfare in the state of Nevada. Many people are currently licensed in other states that have lower standards than the State of Nevada has. Nevada is on the cutting edge of the cosmetology field when it comes to a national standard. We apply national exams copyrighted to make sure people in this state are well trained for that, and at this time the Nevada Board of Cosmetology would oppose a temporary license being issued to people who don't meet Nevada's qualifications.

Chairwoman Buckley:

When you have one of the best hotel resorts in the world wanting the top people in the profession, it's hard for me to believe that it's going to erode our standards. Isn't there something you could devise as long as they are licensed in good standing with equivalent qualifications?

Chris Cooke:

There are a lot of different things that could be worked out along those standards as far as making sure those individuals are properly licensed and properly trained. They are via certification letters from other states, and the Nevada Board of Cosmetology would be more than happy to work on that. However, it goes to the point of, are these people truly qualified? We have a number of outstanding individuals in this state already who can cut hair very well and can massage, do facials, manicures, and pedicures on par with the world standard. There are people in this state who perform outstandingly in the cosmetology field and they aren't licensed.

Chairwoman Buckley:

I know that, but that's not the point. If someone wants to bring in the best from New Orleans and New York to have some sort of event, what in the public health would preclude us from being able to offer such a thing? I just don't see it. I'll ask you to draft up some language for our work session on Wednesday.

David Perlman, Administrator, Nevada Commission on Post-Secondary Education:

I'd like to speak today on the education issue, not to licensure. The Commission has been working to get massage out of the dark ages. I think we've made good progress. We worked with Reno, Carson City, Clark County, Las Vegas,

and Henderson, and we came up with a standard of education because we licensed these schools that train the massage providers. We have 14 licensed schools, and over 1,000 students graduated in the last fiscal period from massage programs. There are some reasons in my opinion that the Commission on Post-Secondary Education should be the licensing agency for massage training. One, we have a binding requirement that far exceeds what the State Board of Cosmetology has, and if it sounds like I'm speaking not to A.B. 496, I'm really speaking to A.B. 496, A.B. 250, and S.B. 333, which, when combined, look like they're going to make the State Board of Cosmetology the de facto approving agency for all of massage, whether it be licensure of individuals or training.

[David Perlman, continued.] If you look at some of the ways these bills are worded, I don't think the dual regulation would be if there's going to be some disparity in what the schools are allowed to do just because some of the rules are a little bit different for massage and cosmetology. We have worked with cosmetology and had dually licensed schools in the past and when there were problems at those schools, the former director and I worked together to resolve all the problems and issues.

Chairwoman Buckley:

If we created and set a streamlined process where people could still have licenses under both, would you be in support of that?

David Perlman:

Are we talking about licensure of the schools?

Chairwoman Buckley:

No, we're talking about licensure of the occupation.

David Perlman:

I'm an advocate of anything that helps people get their license from one source to perform their profession.

Chairwoman Buckley:

In this last short week, we have 50 bills to process and a work session. I'm going to take the prerogative of the Chair and throw this out. I think that's where we're headed, and I see some nods to that affect. This should alleviate your concerns. We're not going to meld the Boards, nor do wholesale changes, but work with the process as well as considering the temporary short term to allow celebrity events.

Joanne Leming, Director, Nevada Career Institute, Las Vegas, Nevada:

We currently have a massage therapy program on our campus and have been working very meticulously with a lot of entities to try to help our graduates become employed in a much faster manner. I think the thing that upsets me and concerns me about A.B. 496 is that this would only take into consideration those who were taking a massage therapy course at a cosmetology school and not those taking a message therapy course at a currently licensed post-secondary education facility. When our graduates finish, it takes them approximately 9 to 12 weeks in order to take their national certification board, which is required by the city and the county. In addition to the requirements by Metro for the county and the city licensure, we certainly don't want to put anything in place that is going to make this a longer process. Some graduates find themselves at 4 to 5 months post-graduation still not able to legally be employed. Our goal would be that whatever bills come from this Legislature would make it a much shorter process so that they can become employed in their field of study.

Chairwoman Buckley:

Thank you for your testimony. We share that goal, so we appreciate it. I'll close the public hearing on A.B. 496, and we'll ask if the Board can draft some language, share it with Ms. Wynn, and get it back to us by Wednesday at 12:00 p.m. We would appreciate it. We'll go ahead and look at our Work Session Document ([Exhibit B](#)), and start with A.B. 114.

Assembly Bill 114: Revises provisions governing manufactured homes, mobile homes and Real Estate Education, Research and Recovery Fund. (BDR 43-1162)

Diane Thornton, Committee Policy Analyst:

This bill is sponsored by Assemblyman Marvel and was heard on March 9. A.B. 114 removes the requirement that the Manufactured Housing Division adopt regulations for the issuance of limited dealer licenses and exempts licensed real estate brokers and their licensed salesman from any additional licensing requirements for sales of a used manufactured or mobile home.

There were two proposed amendments. Behind Tab A ([Exhibit B](#)) is the proposed amendment from Gail Anderson, and behind Tab B is a combined amendment from Jim Nadeau and Renee Diamond.

Chairwoman Buckley:

Are all of these amendments consistent with each other and approved by everyone you mentioned?

Diane Thornton:

Yes, Madam Chair, they all worked together on the language and have agreed to it.

Chairwoman Buckley:

One of the concerns that I became aware of from Ms. Diamond is that the recovery fund for folks who are injured was much different between the Boards. Manufactured Housing was higher than the real estate licensees, and her concern was that if by changing the rules we put more folks in the real estate chapter, people would lose the benefit of that fund. I had a meeting with the head of the Real Estate Division and the interested parties, and the Real Estate Division agreed to make their fund consistent with the Mobile Home Recovery Fund. They thought they had the money to do it without any additional fees, and now it would be a level playing field, which is probably better. They took away that concern of Ms. Diamond. Does Mr. Nadeau or Ms. Diamond have concerns with what was presented by Diane?

Jim Mavis, Nevada Manufactured Housing Association:

Does the real estate section have the ability in their Recovery Fund to handle manufactured housing that is not attached to land where it's personal property and not residential property? That's our concern under the Recovery Fund. If there's not enough time to address it and if that's a problem, we could solve it in the Senate.

Chairwoman Buckley:

It was my understanding from the meeting that they felt that they did have the funds and they were able to do it.

Jim Nadeau, Legislative Advocate, representing the Nevada Association of Realtors:

I'll let Ms. Anderson answer that question, but it's our understanding that the Recovery Fund attaches to the deal and not necessarily the property.

Gail Anderson, Administrator, Real Estate Division, Nevada Department of Business and Industry:

The terms for making a claim are actually identical between Manufactured Housing and the Real Estate Division. Ms. Diamond stated that when that law was written, they took the language from the Real Estate Recovery Fund and the processes through which a person obtains a final judgment in any court of

competent jurisdiction against any licensee or licensees pursuant to this chapter upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required pursuant to this chapter. We feel that language does tie, if it's allowed for a real estate licensee to do this transaction so that it would be covered by the Recovery Fund.

Chairwoman Buckley:

Additionally, this only applies when the manufactured home is attached to the land and is real property, so it's not going to apply when someone is, for example, in an urban area in a mobile home park and is just buying the home. Is that correct?

Gail Anderson:

That is correct. And it is a used home only also.

Chairwoman Buckley:

Do you still have concerns, Jim?

Jim Nadeau:

No, I'm satisfied with that.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 114.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Conklin was not present for the
vote.)

Chairwoman Buckley:

Let's consider A.B. 287.

Assembly Bill 287: Requires contractors and certain subcontractors to provide bona fide health care plan for certain employees employed on certain public works. (BDR 28-723)

Diane Thornton, Committee Policy Analyst:

This bill is sponsored by Assemblyman Ocegueda and was heard on March 28. This bill provides that every State contract for a public work must require a

contractor or subcontractor to provide a bona fide health care plan for a workman whom the contractor or subcontractor employs in connection with the public work. This bill requires that the coverage under a bona fide health plan must begin before work commences on the public work and continue during the period in which the workman is performing the work. This bill further provides that a contractor or subcontractor that fails to provide the required coverage is subject to civil and criminal penalties similar to those imposed for failure to pay to a workman the required prevailing wage. Jim Sala proposed the amendment under Tab C ([Exhibit B](#)).

Assemblyman Ocegüera:

I think the amendment addresses all the issues I heard with the bill. All the parties I knew were interested worked diligently to come up with some language to cover everyone's concerns.

Chairwoman Buckley:

Diane, do you want to go through the amendments with us?

Diane Thornton:

Amendment 1: Every contract for a public work of \$100,000 or more to which a public body of the State is a party must require a contractor or subcontractor who performs the work under the contract: (a) to provide coverage under a bona fide health care plan, and, under that, who a contractor or subcontractor employs to perform work under the contract and is deemed to be employed on the public work pursuant to NRS 338.040; and (b) to pay the entire cost of the premiums or contributions for the coverage required to be provided pursuant to paragraph (a).

Amendment 2, suggested by Jim Sala: The provisions of these sections shall apply to all prime contractors and those subcontractors who provide labor or a portion of the work on the public work to the primary contractor for which the subcontractor will be paid an amount exceeding 1 percent of the primary contractor's total bid or \$50,000, whichever is greater.

Amendment 3 is: The bona fide health care plan required to be provided pursuant to paragraph (a) must be established before the commencement of work on the applicable public work and must be maintained for the entire period during which the workman is performing the work.

Amendment 4: As used in this section, the coverage shall be understood to include the period from which the workman has been enrolled as a participant in the bona fide health care plan and contributions made on his behalf by the contractor or subcontractor to the period in which the benefits go into effect.

Amendment 5: If a workman is otherwise covered by a bona fide health care plan, he may elect to decline the coverage provided for in this section. Paragraph (a): The contractor or subcontractor shall include a signed statement from the workman to be submitted along; and paragraph (b): The provisions of this section shall not supersede a collective bargaining agreement.

[Diane Thornton, continued.] Amendment 6: The Labor Commissioner shall by regulation establish the minimum standards for the coverage to be provided under the bona fide health care plan.

Chairwoman Buckley:

What is the pleasure of the Committee? I had some concerns about what is a "bona fide health care plan." We have different uses of that term. We came up with one for the HIFA [Health Insurance Flexibility and Accountability] legislation, because, if we were passing on some tax savings, we wanted to have it not be a sham plan. It was to let the Labor Commissioner do it in hearings to look at the industry and the norm in the industry.

Assemblyman Oceguera:

Madam Chairwoman, that was a compromise, and not everybody is completely ecstatic with that; however, we were trying to make it broad enough that we could move forward.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 287.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

Assemblywoman Giunchigliani:

Is this a different definition for "bona fide," or would this parallel what we already did in the HIFA?

Chairwoman Buckley:

I think it's to allow the Labor Commissioner to hold hearings and to look at the various factors.

THE MOTION CARRIED WITH ASSEMBLYWOMAN GANSERT,
ASSEMBLYMAN HETRICK, ASSEMBLYMAN SEALE, AND

ASSEMBLYMAN SHERER VOTING NO. (Mr. Conklin was not present for the vote.)

Chairwoman Buckley:

We will consider A.B. 343.

Assembly Bill 343: Revises provisions relating to manufactured housing.
(BDR 10-769)

Diane Thornton, Committee Policy Analyst:

This bill is sponsored by Assemblywoman Giunchigliani and was first heard on April 1, 2005. The bill revises several provisions regarding manufactured homes. It requires the Manufactured Housing Division to prepare a checklist of information from landlords; prohibits connecting any manufactured home to an electrical system of a utility; requires landlords of manufactured home parks with a master-metered water system to make certain disclosures; requires owners of manufactured home parks to pay an annual fee of \$10 to fund an account; requires all manufactured homes to be equipped with smoke detectors; and prohibits a person from constructing or expanding a manufactured home park unless he has obtained a permit from the State Health Officer or the local board of health. A mock-up of the proposed amendment from Assemblywoman Giunchigliani is behind Tab D ([Exhibit B](#)).

Assemblywoman Giunchigliani:

I met with Renee Diamond with Manufactured Housing and I talked to Thelma Clark [of AARP Nevada]. We removed some of the language that Mr. Varallo mentioned that they didn't need to be specifically named within statute, but just incurred them to work with the various associations for the drafting of the checklist. It did not need to include the Department of Environmental Protection any longer. The Health Department will be the main focus group, and they will handle that, so we did not have to include it. We clarified about the notice that needed to be published. We removed the fees and just allowed for the condemnation to be included in the current provision so at least local governments could recollect money if they wanted to under the current fund.

We clarified some language in NRS 461 [*Nevada Revised Statutes*] under the substandard language that already existed so that we referenced that back in a couple of different places. Diane helped me find a couple where I had them located in the wrong place statutorily.

Chairwoman Buckley:

For clarification, the fees have been removed? [Assemblywoman Giunchigliani answered affirmatively.] The summary said they were still in there, but they are not.

Assemblywoman Giunchigliani:

They are not, so we would need to correct the summary as well.

Chairwoman Buckley:

The proposed mock-up amendment appears to take out many of the concerns that I remember from the hearing. Ms. Diamond, do you have anything to add?

**Renee Diamond, Administrator, Division of Manufactured Housing, Nevada
Department of Business and Industry:**

We've been working closely with Assemblywoman Giunchigliani on this bill. This morning she agreed to remove the section on double inspections, which is Section 14. That was our last remaining concern. We approved everything else and helped her with a little bit of language, so we thank her very much for the opportunity to do that.

Assemblywoman Giunchigliani:

You'll see the deletion on page 11, paragraph 3, lines 15-21.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 343.

ASSEMBLYMAN PARKS SECONDED THE MOTION

THE MOTION CARRIED. (Mr. Conklin was not present for the
vote.)

Chairwoman Buckley:

Let's consider A.B. 363.

Assembly Bill 363: Makes various changes relating to consolidated insurance programs. (BDR 53-252)

Diane Thornton, Committee Policy Analyst:

The bill is sponsored by the Committee on Commerce and Labor and the Interim Study Committee on Nevada's Industrial Insurance Program. It was first heard on April 6, 2005. A.B. 363 relates to consolidated insurance programs. The bill requires an owner or principal contractor who establishes and administers a consolidated insurance program to submit a monthly affidavit to the Commissioner of Insurance indicating that the safety coordinator and claims administrator were on site during the preceding month as required. An owner may submit an affidavit indicating that no safety or claims personnel were on site if no work was being done during the month.

The bill also provides that if a person violates the provisions that require a safety coordinator or a claims administrator to be on site while the work is being performed, the Occupational Safety and Health Review Board has the authority to order the owner or principal contractor to cease all activity.

The bill imposes an administrative fine of \$5,000 per day for each that the Board determines the owner or principal contractor failed to comply with the law, and further provides that if the owner or principal contractor falsified the affidavit or violates these provisions, he is prohibited from establishing or administering a consolidated insurance program for five years.

Steve Holloway from the Associated General Contractors proposed the amendment behind Tab E in your Work Session Document ([Exhibit B](#)).

Gary Milliken, Legislative Advocate, representing, the Associated General Contractors (AGC) of Nevada:

What Steve Holloway tried to do here was just change this from monthly to quarterly. We went to "administrator" instead of the word "commissioner." If you turn to page 2, that new section mentions the orders, what should be done upon receiving an order to cease all activities, and how it's handled when you don't have a safety person on the job site as required by the law. We took out the language on the Occupational Safety and Health Review Board. We did not put that in there originally; LCB put that in, and then we added this other language in there to clarify what happens.

Chairwoman Buckley:

Assemblyman Ocegüera, you also worked on this amendment. Do you have anything to add?

Assemblyman Ocegüera:

Mr. Milliken described it. That section he talked about is basically a due process section so that there is some type of process if they do shut down the job site.

Parties agreed to change from a monthly report to a quarterly report, and those were their two major concerns. The other part was semantically changing from "commissioner" to "administrator."

Assemblyman Hettrick:

I don't have a problem with the amendment, but I'm curious if it removes the requirement for two-thirds vote. It appears that it's opposing a fee, and I can't find that. Did it remove it?

Chairwoman Buckley:

Diane, did the amendment remove the fee? Was it the fine that was causing two-thirds? It shouldn't be, because it's if the law was violated, the fine goes up, which is not the Legislature raising a fee. We'll ask that be checked at Legal when it goes back through for clarification for removal of that two-thirds requirement. We'll clarify that as it goes through the amendment process. Are there any other concerns or questions? Is the Committee comfortable on processing the bill?

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 363.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Conklin was not present for the vote.)

Chairwoman Buckley:

That's it for the work session for now. Let's go back to our hearing agenda and open the hearing on A.B. 341.

Assembly Bill 341: Exempts persons who assess property in connection with eminent domain proceeding from provisions governing real estate appraisers. (BDR 54-1261)

Assemblyman David Parks, Assembly District No. 41, Clark County:

I brought forward this bill at the request of several individuals, primarily Ms. Laura Fitzsimmons, who will present to you. This bill deals with protecting landowners when property is taken through condemnation proceedings.

Laura Fitzsimmons, Attorney, representing Nevada landowners:

I've been a trial lawyer in Nevada for almost a quarter of a century, and for the last nine years, I've exclusively represented Nevada's landowners when their property is taken by various governmental agencies. These are hard-fought battles. [Referred to [Exhibit C](#)]. When the government needs somebody's property for a road or something like that, they hire one of their listed appraisers, and that appraiser comes in with a compensation figure. They offer that to the landowner, and if the landowner does not believe it is sufficient, then the landowner must go to court and prove the amount of compensation sufficient to pay for what's being taken from them. Appraisers are key to this process, and under current law, the same government that is taking private property has the power to discipline the appraisers who stand up for landowners in Nevada's courts and testify as to just compensation. This is a grave threat to landowners' rights, and this is not an academic bill. We have seen this in action. We have seen NDOT [Nevada Department of Transportation] lose a case, try to hire the landowner's appraiser unsuccessfully, and then file a complaint against the landowner's appraiser based on the same issues for which it lost a case in front of a jury. This is causing a chilling effect on landowners' ability to obtain appraisal testimony in these cases and stand up for their rights.

There are approximately 200 certified general appraisers in the state of Nevada, but there are only about 15 who actually specialize in condemnation law. Of that number, most of them work routinely for government condemning agencies. Only a few work independently for landowners, and they are increasingly unwilling to put themselves in a situation where they face a sore loser complaint by a condemning agency. These complaints are made—in the NDOT case—made by the State and the Attorney General, prosecuted by the State and the Attorney General. There is a basic conflict here that is hampering the adversary system, as outlined in a treatise called *Nichols on Eminent Domain*, which is in your materials ([Exhibit D](#)). In almost every opinion, the Nevada Supreme Court has rendered in the past 50 years on condemnation, they have turned to *Nichols* for guidance, and *Nichols* warns against exactly what this bill will remedy. It warns against the state's ability to regulate opposing experts and then bring sore loser complaints against them, wherein even if the appraiser is vindicated, their reputation is lost. In the case that I just went through, the appraiser incurred over \$150,000 defending himself, and, ultimately, no discipline was found.

The appraisal industry has mobilized opposition to this bill, as have the various condemners who take people's property and want to control the appraisers who stand up for landowners. The people opposing this bill are going to say, "There has to be some kind of accountability. You can't just have an appraiser go in there and express an opinion; we have to be able to discipline them." *Nichols*

notes ([Exhibit D](#)) that this is a fundamental conflict, which can only be remedied when appraisers in condemnation cases—because those are the cases the government is always a party in—are liberated from this disciplinary process.

[Laura Fitzsimmons, continued.] Of course the condemning agencies want to have a hammer over the head of opposing experts, but why should they be the only party in civil proceedings that has that power? Condemnation cases are the only proceedings in which it is required that an expert witness be licensed by the state, and that is not a requirement put in by the court system, that requirement is part of state law, in NRS Chapter 645C, which was adopted for an entirely different purpose. It was adopted because after the savings and loans scandals, the feds started regulating appraisers because of bank loans, and they wanted to make sure that the same procedures were always used in bank loans. An unintended result of this bill is that under Nevada law, any person who is not a state-licensed appraiser who goes into court as an expert witness and expresses an opinion of value will be subject to prosecution by the state for a misdemeanor.

These are the only cases that are regulated. These are civil cases, and if in any case, including if this bill passes, in condemnation cases, the judge has to make a decision under existing Nevada law, on page 4 ([Exhibit D](#)), that the expert has specialized knowledge that's going to assist the jury in making a determination. Then there are three levels of protection in the judicial system.

After an expert is qualified by a judge, the opposing counsel—and *Nichols* recognizes this too—if the expert is wrong or has faulty data, the lawyer's job is to point that out and tear them down in front of the jury. The third level of protection that will continue to exist in Nevada law is, in every civil case, the jury is issued in a standard instruction that they are free to completely ignore the testimony of any expert. This keeps these important constitutional proceedings on a level playing field and it makes condemnation cases the same as any other civil case where the courts are in charge of who are going to be experts and they regulate their testimony.

This is necessary because in most cases, certified, licensed appraisers are going to be the best witnesses, and any lawyer is going to want to call the best expert witness, but in some cases appraisers aren't the best witnesses. In some cases involving specific evaluations, such as time-share capitalization rates, there are professors at UNLV [University of Nevada, Las Vegas] who are world experts and they can't testify. Instead, they have to talk to the appraisers and tell them what they know, and then the appraiser has to go into court. The jury is entitled to hear the best evidence to get to the truth in these cases, and that's what we're seeking in this bill.

[Laura Fitzsimmons, continued.] There has been a great deal of controversy about the Las Vegas airport land exchanges and evaluations done by government-selected appraisers in those situations. What the appraiser's opinion was is not at all what the market value has turned out to be. The appraiser at issue in that case is fully licensed under the State of Nevada, he's a member of the Appraisal Institute, and he's been involved intimately in all of this regulation of appraisers. Still, following the laws, his opinions are still subject to challenge. Appraisal is not science, but, rather, an opinion, and it's for a judge, opposing counsel, and a jury to go after a witness and get the truth out.

When people are having their houses taken for a road widening, NDOT will hire an appraiser, and if the landowner thinks the value is too low, the equity in their biggest asset is a huge deal. But there are so few condemnation appraisers that have control of the market, they will charge several thousand dollars just to do a report. At that point, the landowner's access to the court system is basically foreclosed because that's a lot of money to pay one expert. If we were able to get a real estate broker or a real estate agent who has sold five similar houses in that area to come in for a few hundred dollars, that would open up this access to court, and it would allow Nevada's homeowners to protect their biggest asset and level the playing field.

Gerald Gillock, Nevada Trial Lawyers Association:

This is the only area where a license is required for an appraiser in a condemnation action in eminent domain. Any other expert witnesses can be qualified by the court. This bill will maybe hit some of them in the pocketbooks, but other than that, there could be no justification as long as you have qualified judges ensuring experts are qualified to testify in their courtrooms.

I think it's necessary to remember that eminent domain is only a very limited area, and you have a person licensed by the state and over half of the states in our country allow appraisers of other states. It doesn't make any sense to limit it and require a state appraiser to give testimony against the state agency in an eminent domain proceeding. I've tried many cases before juries and judges, and they've always put me to the test on qualifications of my experts. I think you would see that continue and people would be protected because they would have what they need.

**Tammi Campa, Nevada Licensed Broker; Nevada Certified General Appraiser;
and Member, Nevada Appraisal Institute:**

I specialize in condemnation appraising, primarily for landowners. I also do some work for government agencies, although I've never done any work for the airport land swaps. I've never done any appraisals against NDOT because, like

many appraisers, it's a big risk to testify against the agency that regulates your license, especially for those of us who have enough work and don't really want to stick our necks out and face sore loser complaints.

[Tammi Campa, continued.] I became interested in supporting this bill because I sat through a sore loser complaint against a very fine appraiser that lasted 10 days, as Ms. Fitzsimmons was talking about. I was involved because I was aware of some of the judge's rulings in that case that conflicted with some of the guidelines that are followed in NRS 645. *The Uniform Appraisal Standards for Federal Land Acquisitions*, published by the United States Department of Justice, recognizes that there are often overriding federal laws that conflict with the state law, and in those cases, the judge is going to make the determination that property should be valued. When you follow a judge's ruling, if the state loses and they don't like the outcome of that, jeopardizing your license is too big of a risk for many of us to take. Landowners are entitled to have appraisers work for them who aren't intimidated.

The more controversial aspect of this bill is that it opens the door to other experts testifying in court, and I'm one of probably only 15 appraisers who actually do this kind of work in the state. While it's nice that the state has legislated me job security, I don't think it's fair. In most cases, an appraiser is the best expert, but there are cases in special use properties where we're not. I would be entitled as a licensed appraiser to give an opinion of value on the Bellagio Hotel, but Steve Wynn, because he no longer owns it, would not. I think there are clear instances where there are other experts who should be allowed to testify, usually in conjunction with an appraiser.

Less than half of all states require that appraisers be licensed to testify in judicial proceedings, including California, New York, Florida, and Arizona. Licensing has only existed in this state since 1991, so prior to 1991, all of the appraisers who testified in judicial proceedings were unlicensed appraisers. To determine who's going to be hired after, if this bill passes, will be the same people who were hired before there was licensing. It's probably going to be members of the Appraisal Institute. Attorneys are going to try to find the most qualified experts that they can, so those are reasons I support the bill.

Collins Butler, Nevada Licensed Real Estate Appraiser and Broker:

I'm the past president of the Appraisal Institute, Southern Nevada Chapter, and I've been appraising for approximately 21 years both in the north and the south. I was also a witness to the disciplinary hearings by the Nevada Real Estate Division, and I was representing the defense of two of these four instances that have come into question. Essentially no discipline was ruled with the gang tackle that was mounted toward this one appraiser. He is an out-of-town

appraiser, and there may be some resulting animosity, but essentially what is happening in the current situation is the government agencies are able to mount a gang tackle because they can petition discipline upon an opposing appraiser that lost the case. It takes them out of the appraisal process for landowners, and that threatens just compensation.

Assemblywoman Giunchigliani:

Appraisers would still retain a state licensing, but for the position of utilizing them as an expert witness in a case of condemnation only, they need not be licensed in order to be an expert witness.

Laura Fitzsimmons:

That is absolutely correct. Appraisers will still be licensed. For the reason they become licensed, which is doing lending appraisals for banks, they're still going to have to be licensed, so those protections will still be in place. This is carving out an exception for appraisers who are witnesses who express opinions of value in condemnation cases alone.

Assemblywoman Giunchigliani:

And other types of witnesses who could be used would be whom?

Laura Fitzsimmons:

For instance, the professor who's the world's expert in timeshare evaluation.

Assemblywoman Giunchigliani:

Are there other state-licensed employees who could be expert witnesses whose licensing should also be carved out for the purposes of this?

Laura Fitzsimmons:

I don't believe so. I think this will allow the judge, the jury, and everyone else to figure out who the best witness to get to truth is. Right now, this is the only law of its kind that threatens an expert witness not a licensed appraiser who comes in to value property with prosecution for a misdemeanor.

Assemblywoman Giunchigliani:

Nothing in this would exempt the issue of the public lands and the issue down in southern Nevada that's being looked at. If someone were to be disciplined, it would not be because they had appeared as a witness on behalf of condemnation; it was because they had actually conducted the appraisal.

Laura Fitzsimmons:

None of those cases involve condemnation; those are BLM [Bureau of Land Management] land swaps, and those are public lands going out to chosen

developers based on appraised values. Any appraiser would still be subject to licensing and discipline.

Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Washoe County (RTC):

I'm not here because I'm part of a conspiracy with other state and local agencies in opposition to this bill. I don't think it's a good bill, and I disagree with the comments made by Ms. Fitzsimmons and others regarding landowners and their rights and that they're at some disadvantage in the condemnation proceeding. I don't perceive that to be true, and that hasn't been my experience. I'm familiar with the Himes case that was mentioned and was the focus point of this bill. I think Mr. Himes is a fine appraiser, but even assuming that there were problems with that prosecution by the Real Estate Division, I don't think it's appropriate when there's millions of dollars involved in condemnation work. For the RTC alone, we do millions of dollars of condemnation work every year in an effort to provide an appropriate infrastructure for the traveling public in Washoe County and also for public projects.

As Ms. Fitzsimmons said, the appraisal is the most critical part of a condemnation case. The taxpayers of Washoe County and the state in general are entitled to expect that the appraiser who is going to come in and testify with respect to the value or just compensation in a condemnation case is fully and completely qualified.

Chairwoman Buckley:

As a lawyer, I get expert witnesses coming into court and have the opportunity to cross-examine and to bring up the issue of current licensure. It works very well for many expert witnesses, so why wouldn't it work here?

Stan Peck:

I don't disagree with you. As Ms. Fitzsimmons says, you do have an opportunity to cross-examine and to offer information relating to mistakes or poor quality of the appraisal and so forth, to the extent that you can readily identify those. Certainly, as a lawyer, we hope that we can by the time we get to trial. My concern is that fact that, absent the ability to fully and completely cross-examine and sell the position of this particular expert to the jury that there are mistakes, there is no real recourse as I see it under this bill.

Chairwoman Buckley:

How is there recourse with any other expert witness? Let's say it's a medical malpractice case and you have a physician from California come in and you didn't like it—

Stan Peck:

One of the concerns that Ms. Fitzsimmons has is the possibility a witness could be singled out and prosecuted under NRS Chapter 645C for mistakes and/or improper procedures followed. The way this is written, that's no longer viable and they're excepted out. A witness who's paid handsomely by the parties in any case can come in, and while they're subject to cross-examination by the lawyer, they have no professional consequences as a result of whatever their testimony may be. There's no oversight.

Chairwoman Buckley:

What about perjury? They'll have that right?

Stan Peck:

If they lie, that's different, but I'm talking about if you violate standards for appraisal practices.

We rely on our appraisers. I think the appraisers know that other appraisers are better suited to determine whether or not they followed the rules than anybody else. This bill as written would take them out from under that, and that's not in the best interest of the taxpayers of this state. I represent the taxpayers of Washoe County, primarily, but we're all representing taxpayers throughout the state, including the landowners. I have a major problem with this bill, and I don't think it's in the best interest of the public. I have more than 25 years of practice, and I've had cases with Ms. Fitzsimmons. I've never filed a complaint against any appraiser based on an appraiser report. I think what we're trying to do here is react to an isolated incident.

Michael Cheshire, Director, Appraisal Institute, Las Vegas Chapter; and Nevada Certified General Appraiser:

We oppose this bill.

[Read from [Exhibit E](#)]. The Las Vegas Chapter of the Appraisal Institute has 122 members. The Appraisal Institute's mission is to support and advance its members as the choice for real estate solutions and uphold professional credentials, standards of professional practice, and ethics consistent with the public good. The Appraisal Institute is the acknowledged worldwide leader in residential and commercial real estate appraisal education, research published, and professional membership designation programs.

We did receive an open letter from one of our members, Ms. Campa, who spoke to you in favor of the bill. That letter is attached with our written testimony

([Exhibit E](#)). Based upon public information obtained from the State of Nevada Department of Business and Industry, Real Estate Division, records indicate that NDOT had only submitted two appraisals to the Nevada Appraisal Commission within the past 15 years. This was confirmed by Mr. Ron Dietrich with NDOT. Our Board was of the opinion that NDOT does not have a policy of routinely turning in appraisers who testify against them or filing sore loser complaints. There were two complaints in 15 years and they were both the same appraiser. We didn't see that as a valid reason to support this bill.

[Michael Cheshire, continued.] Our Board has no opinion on whether a procedural problem exists within the Attorney General's Office (AG) with regard to representing NDOT and the Nevada Appraisal Commission. If that's the case, and we're not sure it is, it seems that would be a structural problem within the AG's Office. Why would you legislate against appraisers when there's a problem in the AG's Office? The whole purpose of appraisal licensing 15 years ago was not because banks wanted to make sure that all appraisals were being done the same way. The way we went through appraisal licensing is to provide minimum levels of training, competence, standards, and ethics to protect the public. When we're talking about protecting the public, we're not just talking about the landowners, we're talking about the citizens of the state of Nevada. If an appraiser is not subject to the scrutiny of the Appraisal Institute, if this bill were to pass, I'd still be subject to the Uniform Standards of Professional Appraisal Practice (USPAP) because I'm a member of the Appraisal Institute. Another appraiser who isn't a member of the Appraisal Institute would not be subject to USPAP. We're afraid, if you're not subject and you're practicing real estate appraisal, there could be widespread abuse. This is not a valid reason for supporting [A.B. 341](#).

With regard to *Nichols on Eminent Domain*, that was correctly quoted and that's an excellent treatise. It was published in 1994, and even though it states there are several states that have exemptions in eminent domain cases, we found that was not the case in today's practice. Attached to our information ([Exhibit E](#)) is a letter from Brenda Kindred-Kipling, an appraisal officer of the Nevada Real Estate Division, who personally spoke with the directors of every state named in that treatise. They were told that these states do indeed enforce USPAP in eminent domain appraisal proceedings. If you have a license in California and you do eminent appraisal work, you are subject to USPAP. If you don't, you're not. Based upon those things, we found that the arguments presented for [A.B. 341](#) didn't sway us to support it.

We have a mandatory licensing law, and if you're an appraiser of real estate in the state of Nevada, you're going to abide by the uniform standards and professional practice. This isn't something that our organization came up with.

USPAP is written and authored by the Appraisal Foundation, which is a private, not-for-profit corporation charged by Title 11 with the responsibility of establishing, improving, and promoting uniform, minimal standards and appraiser qualification criteria. USPAP is our minimum standard. It's what you minimally have to do to come up with a real estate appraisal and to report that appraisal. All state-certified appraisers have to meet Appraiser Qualification Board qualifications and basically perform to USPAP's standards.

[Michael Cheshire, continued.] We had some other problems with the language of A.B. 341, which is misleading to us. The bill proposes to exempt persons who assess property in eminent domain proceedings from the provisions governing real estate appraisers. The word "assess" does not appear in the definition section of USPAP. The *Real Estate Appraisal Dictionary* defines "assess" as, "To value property officially for the purposes of taxation, and to fix or determine by a court or commission the compensation to a property owner for the taking of real property."

It really wasn't clear to us whether the intent or the effect of this bill is simply one whereby you would not have to be licensed to perform an appraisal for condemnation purposes, or that the Nevada Appraisal Commission would be precluded from enforcing USPAP in matters involving licensees who prepare an appraisal or testify in a condemnation proceeding. Obviously, there's a big difference. If A.B. 341 were to pass, the Appraisal Institute would still hold me to USPAP. If I'm on one side of the condemnation case and an unlicensed appraiser is on the other side, I'm held to them, and they're not. It's unbalanced.

Assemblywoman Giunchigliani:

There are about 200 certified general appraisers in this state?

Michael Cheshire:

There are 200 certified general appraisers and about 1,500 licensed appraisers.

Assemblywoman Giunchigliani:

How many actually practice in condemnation areas?

Michael Cheshire:

I can think of about 20 in southern Nevada.

Assemblywoman Giunchigliani:

So we're really looking at a small number to protect for the purposes of making sure that if my property were being taken illegally by government, I'd want to make sure that I had somebody who felt very comfortable in testifying to the

truthfulness and the accuracy of what was being taken. I see this actually as protection for you. You still have to be licensed and you can be on the other side from your statement here, but you also would not be penalized simply because you disagreed with what the governmental appraiser had said.

Michael Cheshire:

I'm not going to be penalized, but I'm going to be forced to follow standards and ethics. In our testimony ([Exhibit E](#)), there is much discussion on the ethics rule.

Assemblywoman Giunchigliani:

Are you saying that anybody who has currently acted on behalf of an eminent domain condemnation is not ethical?

Michael Cheshire:

No, because they're under USPAP and they have been.

Assemblywoman Giunchigliani:

Because someone licenses you, you're ethical, and if you're not licensed, then you're not ethical?

Michael Cheshire:

It's a matter of if you're not ethical, you're held accountable for the state and you could lose your license. Ms. Fitzsimmons mentioned the Himes case. They say that no disciplinary action was taken, but if you read the conclusion of law in that case, they didn't fine him and they didn't take his license, but he was guilty of six violations in USPAP. They thought his attorney fees, as substantial as they were, were punishment enough, plus there's another case pending.

Assemblywoman Giunchigliani:

My reading of this bill simply says you don't have to not be licensed, you're still licensed, but for the purpose of doing eminent domain cases, you would be protected from being singled out or challenged by a governmental agency.

Michael Cheshire:

Which I don't believe is occurring.

Assemblywoman Giunchigliani:

Regardless of whether it's occurring, you never gave me anything other than two cases in 15 years. Maybe they didn't file a complaint.

Michael Cheshire:

I'll give you that maybe they never filed a complaint, but why wouldn't you file a complaint if you found a problem?

Assemblywoman Giunchigliani:

Because when people are afraid of what's going to happen with their license, they tend not to do those types of things.

Chairwoman Buckley:

I still have the same problems I did a moment ago. I'm an attorney licensed by the State of Nevada. I have ethical obligations that are spelled out in our court rules. If someone called me to be an expert witness in California on a legal matter, I'm not required to be licensed in California, and the provisions that would ensure that I'm doing my best to testify in an honest manner would be that I'm testifying under penalty of perjury and my own ethical concerns about my licensing back in the other state and not getting torn to shreds on a witness stand. If you weren't licensed as an appraiser and you were an expert witness in an eminent domain case, wouldn't you follow those guidelines anyway by virtue of your professional ethics?

Michael Cheshire:

One would hope so, but I'm sure there are individuals out there who wouldn't and that are what our concern is. This is my chosen profession and I take a lot of pride in it. I'm certain there are individuals out there who don't take that pride and who are out to abuse the system, and the current laws prevent that. I can't see any reason to change the law to make a loophole in one area of the law, because you can't tell me that in order to get a credible opinion of value for eminent domain purposes, you have to do away with USPAP. It just doesn't make sense.

Chairwoman Buckley:

I'm viewing it more from the procedures that the legal process currently gives. If someone is being paid \$10,000 to give an off-the-wall opinion, the lawyer on the other side is pretty good at tearing them to shreds and leaving the impression that their opinion doesn't match other standards, or the standards of the other experts. Maybe that's because I'm coming from that viewpoint as opposed to yours.

Assemblyman Seale:

As a CPA [certified public accountant], I have spent a significant amount of time in the courtroom doing business evaluations as an expert witness. As Ms. Buckley has indicated, you have to be qualified as an expert, and frequently I find myself opposite of someone who is not a CPA, but who has some

significant experience in doing those kinds of functions. Quite frequently, they're qualified as an expert and we battle it out. To argue the ethical standards that I have to stand by as a CPA are probably more intense than someone who is not a CPA and doesn't have a license—I don't see this situation as all that much different, so I have trouble with your argument there. If what I'm testifying to isn't accurate, the attorney is going to probably rip me to shreds, and if not him, certainly the expert witness, so I have a problem with your argument.

Gail Anderson, Administrator, Real Estate Division, Nevada Department of Business and Industry:

With all respect to the bill's legislative sponsors, I'm here today to speak in opposition to A.B. 341. Contrary to what I heard represented by supporters of the bill, it is my understanding from my research that once an appraiser becomes state certified, the Uniform Standards of Professional Appraisal Practice require compliance with the standards regardless of the reason for the appraisal.

The effect of passing this legislation would be twofold. Any Nevada certified appraiser performing an appraisal for eminent domain purposes must comply with all requirements imposed by Nevada's certification laws and would be subject to regulation by the state. A Nevada appraiser licensee could not claim exemption for performing a specific eminent domain appraisal and then step back inside regulatory jurisdiction to perform another appraisal assignment. Any non-Nevada certified appraiser could come into this state and perform appraisals for eminent domain purposes and would not be subject to the State's jurisdiction. My concern is that this law would put Nevada-certified appraisers at a disadvantage. A Nevada appraiser would be held to the State standards of practice, whereas an individual who was a qualified appraiser in some other jurisdiction would not.

A.B. 341 creates two classes of appraisal practice in this state: Those under the jurisdiction of the State through the Real Estate Division and the Commission of Appraisers, and those not.

Chairwoman Buckley:

Thank you for your testimony. I'm going to go to Las Vegas.

Pam Kinkade, Certified General Appraiser, Las Vegas, Nevada:

Back in the late 1980s and early 1990s, I helped draft this legislation that we now call NRS Chapter 645C. I have a huge stake in this profession in this state. I want to say that I agree with everything that Mr. Cheshire has previously said. I'd like to clarify a few things presented to the Committee. I hope that nobody

on the Committee at this point is confusing eminent domain with the controversy that's been in the media regarding the land exchanges at the airport in Las Vegas. They are two separate animals. As an aside, you can't use an appraisal that's two years old in a rapidly appreciating economy and hope that you have the right value.

[Pam Kinkade, continued.] This whole discussion has been directed to certified general appraisers in commercial farm and ranch domain, where you're talking about large properties with very special uses. I'm a residential specialist, even though I have a certified general license and I have done eminent domain appraisals for residences. When you talk about only 15 or 20 people in the state who do eminent domain work, you're talking about a very highly specialized group who do commercial eminent domain work. Many of us residential specialists appraise houses all the time for both sides.

One of the things about USPAP is that through the standards and ethics, we are not allowed to be biased, and our state stands behind that. I have probably completed 200 to 250 residential appraisals for either a public agency or for private homeowners in this area of Las Vegas, and a lot of us in the residential arena do that. Tammi Campa stated that NDOT regulated appraisers, but NDOT has nothing to do with the regulation of appraisers.

Laura Fitzsimmons mentioned that these appraisals are very expensive, and they are when they're very complicated and they deal with multi-million-dollar properties with very sophisticated considerations in terms of land use, highest use, and best. My appraisal fee for eminent domain purposes on a residence in Las Vegas is no different than it would be for the bank or the mortgage company. I think it's important to remember that this legislation, if it were to pass, is much more than looking at the Himes case. It is going to have ramifications throughout the entire evaluation community, not just this one case. To believe that this legislation is fair and reasonable to the people whose land might be taken and is reasonable to the state agencies that represent the citizens of this state, you would have to believe as a Committee that there is some kind of huge conspiracy afoot between the Attorney General's Office, NDOT, and the Appraisal Institute. This is really a ploy and I ask you to consider, who is this protecting?

Debbie Huber, Senior Residential Appraiser, President of Huber Appraisal, Incorporated; and Chair, Nevada Appraisal Commission, Las Vegas, Nevada:

[Submitted [Exhibit F](#)]. I want to concur completely with the testimonies of Mr. Cheshire, Ms. Anderson, and Ms. Kinkade. I have conducted eminent domain

residential appraisals in Las Vegas and I've also heard cases before the Commission. I'm giving you my personal opinions on this bill and this matter.

[Debbie Huber, continued.] The complexity of doing eminent domain appraisals for commercial properties and complex properties is the reason so few experts are qualified to testify and do this type of work. Serving on the Commission, I know the system works as it is in place. The law is in place; we have USPAP; there is no "gang tackle." Everything is done according to the law and the Open Meeting Laws, and there is no conspiracy. There is complete independence of all of the parties involved. I feel very strongly these insinuations that are not true.

When I took the oath to be a Commissioner, I promised to uphold, protect, and defend the *Constitution of the United States* and the *Constitution of the State of Nevada* against all enemies. The verbiage in this bill is very ambiguous. When we're talking about assessments, as appraisers, we don't use the term "assessment," and I feel this bill in its ambiguity will muddy the waters, change what already works, and will open the door to abuses of the system that are in place. I highly oppose this bill, and I implore you to put an end to this bill to protect the homeowners and property owners of Nevada, because the system in place does work.

Chairwoman Buckley:

Thank you for your testimony. Let's move back to Carson City.

Julie Ott, President, Appraisal Institute, Reno-Carson-Tahoe Chapter:

I'm not here just on behalf of protecting appraisers' interests; I'm here because the purpose of the law is to protect users of appraisals, not just private property owners, government agencies, and taxpayers. The bill says there is no fiscal impact, but that should probably be reexamined. I want to make sure there are some federal funds here that should be investigated a little further. There can be quite a bit of fiscal impact when it comes to creating a battle over evaluations and not following the law. Also, other appraisers from other states can certainly be expert witnesses. There is reciprocity in place that they can be grandfathered, as long as their states meet standards like USPAP and everybody uses them. So I don't think there's a big issue on getting other appraisers and other potential expert witnesses to become licensed, at least for a short term.

Heidi Mireles, Chief Right-Of-Way Agent, Nevada Department of Transportation (NDOT):

I'm here to speak to the possible impacts to the NDOT with regard to federal funds. The Federal Highway Administration has asked about this bill, and it's their position that if Nevada permits unlicensed persons to act as appraisers in

eminent domain proceedings, they will not allow federal dollars to be spent on any court awards or settlements in which an unlicensed appraiser is used. The Federal Highway Administration may not allow federal dollars to be spent on any portion of the right-of-way acquisition for a project in which an unlicensed appraiser is used.

Chairwoman Buckley:

Do you have a letter from the feds?

Heidi Mireles:

I can get you one.

Chairwoman Buckley:

Where did you get what you're reading from?

Heidi Mireles:

It's my presentation based on conversations with Jeff Weinman with the Federal Highway Administration.

I'm sure he'd be willing to put it in writing for you. The Federal Highway Administration may not allow federal dollars to be spent on any portion of right-of-way acquisition for a project in which an unlicensed appraiser is used, and the extreme, the Federal Highway Administration may withdraw all federal funds from a project if unlicensed appraisers are used.

Chairwoman Buckley:

If NDOT wanted to take my house in Las Vegas to build a highway through, I would get a licensed appraisal, you'd get a licensed appraisal, and we'd try to work it out. Is that right? [Ms. Mireles answered in the affirmative.] Then, if I disagreed with your appraisal and you disagreed with mine, we'd go to court and you'd seek to take the property by eminent domain? [Ms. Mireles answered in the affirmative.] In the first instance, if I had an unlicensed appraiser or you did, or we couldn't agree on a common one, then you tried to get federal money, the feds would not reimburse anything? [Ms. Mireles answered in the affirmative.] That's the first scenario, so we're not talking about doing that? We're talking about who can be an expert witness in an eminent domain matter?

Heidi Mireles:

No, what does happen in the case of a settlement or a court award with regard to the use of appraisers is, the Federal Highway Administration may not come forward with the money at that point in time, but if we're able to support the number that is presented as the award, the Federal Highway Administration will

participate in that. What they're indicating is that if we use an unlicensed appraiser and there's a court award, or the owner uses an unlicensed appraiser and we lose and there's a court award, then they're not going to participate in that unless there is impact on the state funds.

Chairwoman Buckley:

In a typical case, though, you would have a value from an appraiser early on and both would have licensed appraisers. Then, ultimately, if a court issues an order, there is a court order to pay and still the Highway Department would disagree with the judicial determination of value and strike it down?

Heidi Mireles:

We're going to do what the courts indicate. The majority of the right-of-way program for this state is purchased with federal dollars, and they've indicated that if an unlicensed appraiser is used, they will not provide in that specific property's court award or judgment, and potentially, which I think is a real risk, they've indicated that they will pull all money from my right-of-way program on that specific project. The worst-case scenario would be they would take even the construction dollars out of that project. The State would ultimately be the one to pay that check if the Federal Highway Administration did not want to participate.

Chairwoman Buckley:

If you'll get that letter to us, can you get it by tomorrow?

Heidi Mireles:

I'll do everything that I can.

Assemblywoman Giunchigliani:

So the feds regularly review our legislation?

Heidi Mireles:

They do.

Assemblywoman Giunchigliani:

How did they find out about A.B. 341, since you just had a conversation with the person and nothing was reduced to writing? Who contacted whom?

Heidi Mireles:

I can't tell you for certain. I have a lot of staff that help me analyze these bills.

Assemblywoman Giunchigliani:

Your testimony is that perhaps somebody from the Department contacted the feds?

Heidi Mireles:

Possibly, because I have staff specialists.

Assemblywoman Giunchigliani:

First of all, I would ask you to try to find that out. Secondly, where in this legislation does it say that they are not licensed? If you look at Section 1, this is current law; they currently do not have the chapter apply to a federal or state employee in subsection 1, subsection 2, and subsection 3. Subsection 3, "A board of appraisers acting pursuant to NRS 269.135" Subsection 4 says, "A person licensed pursuant to chapter NRS 645 or 684A of NRS, or certified pursuant to chapter 645D of NRS, while he is performing an act within the scope of their license or certificate." I would say this still requires the individual to be licensed. I don't really understand what the issue is?

Heidi Mireles:

I've heard a lot of different interpretations of what the bill means and who makes an assessment of the evaluative property in connection with the proceeding. I think that means there can be a broad range of people making that assessment.

Assemblywoman Giunchigliani:

So you're saying if an expert witness is brought in on behalf of the state from another state to argue in a case, and they are licensed in that state but not in the state of Nevada, then the feds withhold their money?

Heidi Mireles:

No, if it's someone who has been qualified, and they can be from California, Utah—

Assemblywoman Giunchigliani:

Qualified or licensed?

Heidi Mireles:

Both. We have to go through a qualification process to put them on our approved list, and they are licensed.

Assemblywoman Giunchigliani:

Who gets on your list and what qualifications do they have?

Heidi Mireles:

Right now there's a solicitation out with all of the appraisers who are within the body of this group. We're asking for a new list.

Assemblywoman Giunchigliani:

I would like to see a copy of what you put down as your qualifications.

Heidi Mireles:

I'll be happy to provide that.

Chairwoman Buckley:

We appreciate that. We'll move to our final testimony.

Dan Leck, Independent Fee Appraiser; and Member, Appraisal Institute, Carson City, Nevada:

What's being discussed here really doesn't make any difference to me because we have standards that we live by, but what you're proposing here are double standards: anybody involved in eminent domain does not have to be certified or meet the standards.

Instead of using the word "assessment," put "appraisal" or "whoever makes an appraisal." Appraisals are both oral and written. According to Ms. Fitzsimmons, I'm one of the appraisers that supposedly are intimidated; I'm not. I prepare reports for both government agencies and private parties and I've never been intimidated by any government party. People have filed complaints on me with the Real Estate Appraisal Board. I've been before it.

There is exception within the appraisal guidelines for expert witnesses. It's called a jurisdictional acceptance, and a judge can allow it if the attorney can represent that an individual has the qualifications within that special scope. In a lot of these eminent domain cases, you have some very specialized criteria. Sometimes you do need some expert and outside help, and I will go and see them. I will ascertain their expertise. Attorneys want to make changes. It's not the public coming before you for this change in the law, it's the attorneys. If you want to impose this, let's just do away with licensing. I don't like government telling me what to do, but as I see it, this is an isolated instance. I've reported appraisers in violation of the law, but is this something that we do need to waste our time on?

Chairwoman Buckley:

Ms. Fitzsimmons, would you like to come back? I don't want you to address any of the superfluous name-calling, this incident, that incident, conspiracy theories, or anything with regard to the federal government not reimbursing the

state and, in particular, any comments regarding what the language actually means in terms of assessment of the value.

Laura Fitzsimmons:

Those are the two points that I appreciate a brief opportunity to address. Concerning the word "assess," if you look at the Appraisal Institute's material on page 3, he says the word "assess" is defined in *The Dictionary of Real Estate Appraisal* as "to fix or determine by a court or commission the compensation due a property owner for the taking of real property." That's exactly why "assess" is the perfect word. The Legislative Counsel found that word for this circumstance because it shows they are limiting this only to these compensation cases. I'm surprised that was raised as an issue.

Concerning federal funds, as Assemblywoman Giunchigliani already noticed, there's already an exemption for any federal or state employee doing appraisals in condemnation work if it's part of their work. Under the Uniform Act, if there's a public works project being undertaken with federal funds, the condemner needs to make their offer based on an appraisal made by a licensed appraiser. I think the entire picture was not provided by Ms. Mireles because we know that in many states where their highway departments receive federal funds, their appraisers are not licensed, so how can the states possibly withhold federal funds in Nevada when qualified witnesses or non-licensed appraisers as in other cases can testify in these cases? Under a book that governs the acquisition by NDOT using federal funds, there are requirements that they use a licensed appraiser. Because of that, I would anticipate in these cases, landowners will use, if they can get them, licensed appraisers if they're not afraid. The suggestion that federal funds would be withheld doesn't hold water when you realize in many other states receiving federal funds, there is no license requirement.

Chairwoman Buckley:

I'll close the public hearing on A.B. 341. Would the Committee like to move this bill?

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS
ASSEMBLY BILL 341.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. McClain and Mr. Perkins were not present for the vote.)

Chairwoman Buckley:

We'll open the public hearing on A.B. 338.

**Assembly Bill 338: Makes various changes relating to insurance.
(BDR 57-232)**

**Alice A. Molasky-Arman, Commissioner of Insurance, Division of Insurance,
Nevada Department of Business and Industry:**

We appreciate the opportunity to present our biennial bill, A.B. 338. This bill is intended to enhance insurance regulation in Nevada. The bill has 84 sections (Exhibit G), but it contains two principal topics, several minor yet important changes, and some housekeeping and technical cleanup changes. I would also like you to consider our proposed amendments to the bill (Exhibit H). These represent corrections that have come to our attention since the bill was first drafted. Please review the text of these amendments along with an extended presentation (Exhibit I) of this testimony.

The first major topic of this bill deals with discount health plans. A legitimate discount health plan offers consumers a discount card that is recognized by medical and benefit providers who have agreed to discount the cost of their services for cardholders. These plans, though legitimate, are not presently regulated. I cannot assure you or any Nevada consumer that any particular plan is solid or will keep the promises it has made. Sections 1 through 16 would establish my authority to provide that assistance and assurance.

Together with the need to regulate legitimate discount health plans is the need to investigate and prosecute fraudulent plans. These plans prey upon small businesses that are eager to provide employee benefits, upon senior citizens who are desperate to find affordable health care in a tough market, and upon low-income uninsured people who are anxious to find some assistance with their medical expenses. Promised benefits are seldom if ever delivered, or the extent of the benefit is often exaggerated.

I distributed an issue brief (Exhibit J) published by Georgetown University. The writer tested 5 of the 27 discount cards that were advertised in the Washington, D.C., market and she found widespread problems, including high-pressure sales tactics, misleading or inaccurate promotion, exaggerated claims of savings, difficulty in finding participating doctors, and providers who fail to give cardholders promised discounts. This legislation would enable the

Commissioner to address these problems in Nevada for the protection of our consumers.

[Alice Molasky-Arman, continued.] We have identified already in Nevada 23 of these discount health plans marketing in our state. You have a card that illustrates the method of marketing these plans ([Exhibit K](#)). This design will be used in the 2005 media program of the Nevada Surplus Lines Association and the Nevada Independent Insurance Association. The public education outreach by these associations to combat insurance fraud has been invaluable. Their success has been seen in a survey titled *Bogus Discount Health Plans Awareness Survey* ([Exhibit L](#)). The survey shows that in slightly over 2 years of the existence of our anti-fraud program in cooperation with these associations, the public's awareness of fraudulent insurance has been raised from 3 percent to 50 percent, a phenomenal increase.

The second major topic of our bill involves captive insurance and risk retention groups. The purpose of these sections is to make Nevada more attractive as a domestic state. A captive insurer is a closely held insurance company. Their business is primarily supplied and controlled by its owners. Since the captive law was enacted in 1999, 40 companies have chosen to domicile their captives in this state. This has proven to be a boon to Nevada's economy in terms of employments and establishment of services. The Hawaii Captive Association has estimated for every captive formed in a state, there is \$250,000 in economic benefits. The captive states have become highly competitive in bringing captives to domicile in their jurisdictions.

Our bill will make Nevada more appealing and would amend NRS Chapter 694C by expanding the types of captive insurers who can be authorized by adjusting the minimum surplus requirements to remain competitive with other states and by capping the annual premium tax liability at \$175,000 as an incentive for the very largest captives that come to Nevada. I hope that doesn't give you sticker shock, but I want you to realize that if we cap premium taxes at \$175,000 by a single insurer, that means that insurer must have at least \$113 million in premium, which is an extraordinary amount. The normal large captives have approximately \$20 million to \$30 million in premiums, so this is a huge amount. Those who would pay and be subject to the \$175,000 would be few and far between.

In connection with refining our captive laws, this bill contains provisions on risk-retention groups. A risk-retention group is an entity created under the Federal Liability Risk Retention Act of 1986 [15 USC 65], which allows such groups to be licensed in any one state in order to write liability insurance in any state. They must register with non-domiciliary states. These groups are special

multi-owner captives, and if domiciled in Nevada, they're licensed as association captives. The spirit of the Federal Risk Retention Act expects states to encourage these low-cost alternatives to the traditional insurance market and not to discourage them through the imposition of excess premium taxes and fees.

[Alice Molasky-Arman, continued.] Currently, Nevada's registration fee and annual certificate fee are more than twice as high as the next highest state. These have been declared illegal in states where challenges have arisen. Likewise, Nevada's premium tax is the highest in the country for risk-retention groups. Nevada domestic risk-retention groups are exposed to retaliation by other states that increase their taxes and their fees to match the higher taxes and fees imposed by this state. Those retention groups are captive insurers if domiciled in this state, and they do provide an economic benefit. It is worth our while to encourage as many risk-retention groups as possible to domicile in this state. To make Nevada more welcoming to these groups, we are proposing to reduce the tax rate from 3.5 percent to 2 percent and to decrease the registration fee and the annual certificate fee from \$2,450 to \$250.

Chairwoman Buckley:

I appreciate what you're trying to do here and I support it. I'm a little worried that if we reduce the fees, we might attract some undesirables as well as desirables. During the Interim when we had our hearings on health insurance and what we could do to expand it, you gave a presentation on unauthorized insurers, which I know you'll also get to later in your presentation, and I was very alarmed to note that a few unauthorized folks had set up shop in Nevada and were giving us a bad name and needed to be shut down. That's up to the Attorney General's Office after you do your job. I'm wondering what the progress has been through your mutual effort at bringing action against some of that. If we're not where we need to be, could this cause a problem?

Alice Molasky-Arman:

I appreciate and share your concerns; however, the risk retention groups are limited. They are essentially formed to provide liability coverages. They would not encompass the fraudulent health insurance plans we see, and if we were to track them as true domestics and they were properly licensed here, that would give us even greater authority.

Chairwoman Buckley:

So it's a pretty narrow line. I'll ask you and the Attorney General's Office to come back and do a presentation on what we're doing to crack down on unauthorized insurers and we'll throw in some credit scoring; I understand you just did your report. We'll analyze how credit scoring is working and have an

insurance day in here and find out how the state of insurance is working in Nevada.

Alice Molasky-Arman:

I do have in the proposed amendments ([Exhibit H](#)) a proposal to enact three statutes. Those are the direct result of what the Attorney General's Office has determined is the unconstitutionality of the provisions that you established in 2003 to criminalize unauthorized insurance. The Attorney General's Office responded to us when we referred a case to them for criminal prosecution that had been through the administrative process. They indicated to us that law that was enacted in 2003 was most likely unconstitutional, A.B. 453 of the 2003 Legislative Session.

Chairwoman Buckley:

Did the Attorney General's Office testify on that bill?

Alice Molasky-Arman:

No, they did not, but we have worked with their Office in the amendments ([Exhibit H](#)), which should really eliminate any problem. We have been told those sections we are proposing ([Exhibit G](#)) must remain separate as three separate sections for the criminalization process.

If a risk-retention group was domiciled in this state, its fees in other states, if it did business in 35 other states, would be \$85,750. If they were domiciled in the District of Columbia, it would be approximately one-tenth of that because of our current fees due to the retaliatory provision; it would cost them \$8,750 to do business in those same 35 states.

The remainder of our bill does include several additional important changes. There were recent investigations by several insurance commissioners and the Attorney General of New York that highlighted the problem with the disclosure of commissions paid to brokers by both clients and insurers. Sections 24 through 26 of A.B. 338 clarify the responsibility of producer agents who represent the insurer and producer brokers who represent the insured. The sections also clarify when and under what circumstances commissions may be paid or accepted. These sections will provide important consumer protection by eliminating conflicts of interests in insurance transactions.

Another important component of the bill is found in Sections 33 through 35, which will clarify the ability of the Nevada Insurance Guaranty Association to administer the workers' compensation claims against insolvent self-insured employers and associations of self-insured employers. At the present time, the Division of Insurance is handling those claims and using the services of six third-

party administrators. It would be far more efficient and effective for the claimants under these to have them administered under a single third-party administrator and use the services of the Guaranty Association. The amendment also will clarify that the claims bar date for claims against insolvent insurers as paid by the Guaranty Association does not apply to excess workers' compensation policies.

[Alice Molasky-Arman, continued.] A.B. 338 enables a licensed life insurance producer to sell a viatical settlement agreement without having to obtain a separate viatical license. This change will broaden the portfolio of products a licensed life insurance producer may offer to consumers. With their more detailed understanding of life insurance contracts, they will be certainly able to better explain the transactions of a viatical settlement to the policyholder and the investor.

The housekeeping issues I mentioned earlier include provisions to broaden the allowable investments which can be made by our domestic insurers in recognition of economic realities of the twenty-first century; to amend NRS 683A to comply with FBI [Federal Bureau of Investigation] fingerprinting requirements; to amend the licensing conditions for insurance adjusters under NRS 684A; and to amend NRS 689A and NRS 689B to bring Nevada in compliance with federal HIPAA [Health Insurance Portability and Accountability Act of 1996] laws and regulations. We were notified by the federal authorities that our law on pre-existing conditions did not comply with the HIPAA law.

Chairwoman Buckley:

I had an employee with cancer and they went to move to a different state. She thought HIPAA would follow her, and we were told that because we have an HMO/PPO [healthcare maintenance organization] insurance product, HIPAA doesn't apply, so she wasn't eligible under HIPAA. We called your office and spoke to someone who verified that HIPAA doesn't apply to Nevada-based HMOs. We researched it, and I'm wondering if that's an option that a state has, because it defeats the purpose. The employee was willing to pay for it himself, but it defeated the whole purpose of HIPAA.

**Van Mouradian, Life and Health Section, Division of Insurance, Nevada
Department of Business and Industry:**

Was it a HIPAA-eligible person you're talking about? [Chairwoman Buckley affirmed it was.] When they purchase a HIPAA product and they choose to move out of that service area, once they've made the choice, they've given up their eligibility. You're only HIPAA-eligible once, except for one specific situation where you get to reapply again. But once they've made their selection and

they've chosen the product, once they move out of that service area, that product cannot follow them if it's localized to a service area.

Chairwoman Buckley:

What I didn't understand is the product had an HMO, PPO [preferred provider organization], and out-of-network piece, so I could see why the HMO network—the new state's not going to have a network that makes sense for the HMO side, but when someone has an out-of-network component, why wouldn't it still apply?

Van Mouradian:

The product you're talking about was not a HIPAA-guaranteed plan, it's a multi-HMO plan. If you're talking the basic and standard plan that the HIPAA individual bought, if they had an HMO one, it was a straight HMO product. If they bought a PPO basic or standard, they had an in- and out-of-network rate, but by the federal law, when you move out of the service area for that product that you buy, the product cannot follow you.

Chairwoman Buckley:

Is there anything any states have done to make that clear? Because if someone has a plan that has a PPO component and now the network component, they're going to think HIPAA applies as far as portability. I'm wondering if there's a better way for employers, because with an out-of-network as an employer, attorney, and legislator, I thought HIPAA would apply, but it didn't. Maybe have the brokers work with employers better to identify what a HIPAA moving plan is and what's not.

Van Mouradian:

If an employer contracted with a national firm that has the product in either all 50 states or a larger number of the states, then there's a good chance that would be able to be serviced. Usually the areas that the product cannot follow are where the carrier who's issued the product is not licensed.

Chairwoman Buckley:

So HIPAA only applies if the person's moving to a state in which the insurer is licensed?

Van Mouradian:

No, I'm not saying HIPAA applies, the product would follow. The HIPAA guarantee to the HIPAA-eligible person guarantees them a right to a particular product if they cannot get another product. As far as the portability goes, the credible coverage is what was applied when you move from the employer, not necessarily the product; it doesn't say the product moves.

Chairwoman Buckley:

I wonder why they call it a portability act, when it's not very portable in certain circumstances.

Van Mouradian:

When you leave employment, your credible coverage, if you don't have a gap of 63 days, is the portable piece, not the product itself.

Chairwoman Buckley:

That's a big loophole.

Alice Molasky-Arman:

There are a few remaining provisions. There is an amendment to NRS 687B.325 with the reasons for cancellations of an insurance policy with NRS 616B.033, by adding a new reason for cancellation of a workers' compensation policy with 10 days' notice, which has to do with the failure of the insured to pay the deductible portion. Among the technical provisions are provisions that would enable disciplinary actions to surplus lines brokers. It was amended by error when we changed the producer laws and to correct the fee schedule for motor clubs.

Chairwoman Buckley:

Thank you for your testimony; we appreciate it. I had asked your office to look at the issue of credit insurance. We had seen a report showing that we had some of the weakest laws in the country on the issue of people selling credit insurance along with the product. I got an email that you worked diligently over the weekend looking at various models from some different states and I wanted to thank you for looking at that. Do you have any comments on that issue as well?

Alice Molasky-Arman:

No, we are continuing to look at that, compare three model acts, and provide some recommendations on how we might update those laws that have been on the books for quite some time and it's questionable as to how much they really protect consumers in this state.

Chairwoman Buckley:

Anyone who is interested in that topic, please feel free to get in touch with either me or the Insurance Commissioner as we look at that issue. I'm looking to see if we can put some model act language as an amendment. Thanks for the excellent presentation and handouts. Anyone who would like to testify in support of A.B. 338?

Bob Ostrovsky, Legislative Advocate, representing the Nevada Resort Association, and the Employers Insurance Company of Nevada:

The Commissioner of the Nevada Resort Association has worked diligently with the gaming industry. Some members of the Nevada Resort Association and some non-members are trying to convince the gaming industry to create captives here in this state, or to move captives that are currently established in other states. Part of that process is trying to improve the captive law, and we believe the changes she has proposed in this bill relative to captive—I'm only speaking to that portion of the bill—would be very helpful in convincing large captive holders to establish the relationship with the state, creating both tax revenue and a proper regulatory environment, so we strongly support this bill. I can't guarantee you that any member will open a captive here, but many are interested in looking at creating captives here with these proposed changes in the law.

On behalf of Employers Insurance Company of Nevada, we have talked to the Commissioner about a proposed amendment to this bill, which the Commissioner is not prepared to accept, involving continuous care coverage, and we're not going to propose it to you. I want to alert you to the fact that we will continue to meet with the Commissioner and try to work on continuous care coverage. This is a product sold in other states, like California, which solves one of the big problems we've had in workers' compensation for many years in this state.

When a workman gets injured and we tell him he can't go see his family physician, he has to go see somebody on this other panel of doctors who are qualified to do workman's compensation, the product we're talking about is a combined network of doctors, meaning an injured employee could go to see their family physician because the networks are the same. That continuous care product is sold in California and is sold by health and life agents who are authorized to sell workers' compensation, which is a casualty product, so it's a little twist on what health and life people sell.

Right now this product can only be sold by casualty agents here. The Commissioner has some concerns about other statutes in the law relative to her authority to regulate such a product, and we will continue to work with the Commissioner to see if we can't arrive at some understanding. The product can currently be made available in Nevada. Two agents have to sell it to you. A life and health agent sells one product; the casualty agent sells another, or someone who is dually licensed. We're trying to find an easier way to do that, and we'll continue to do that in an effort to bring better and improved products here. This is a product employers like, and we think workers would like it.

Robert Vogel, CPA, Owner, and Vice President of Operations, Pro Group Captive Management Services; and representing the Nevada Captive Insurance Association:

We're in support of this bill regarding the captive portion and the risk retention portion. This is strong bill that will help Nevada become strong in the captive industry. The Pro Group Captive Management Services is forming managing captives, and there are a lot of companies who are waiting for this bill to be passed to start risk retention groups and captives in the state.

Kay Lockhart, Executive Vice President, Independent Insurance Agents, Nevada; and Secretary/Treasurer, Board of Directors, Nevada Surplus Lines Association:

I'm speaking to the piece of the Commissioner's bill about the broker commissions. When that became a national issue, our Insurance Commissioner was extremely concerned about any effects it may have in the state of Nevada. As a part of the reenactment of the Nevada Surplus Lines Association, we were charged with doing an annual major risk survey, and the Commissioner asked us this year to do our survey on the issue of broker commission and the disclosure thereof ([Exhibit M](#)).

Jim Wadhams, Legislative Advocate, representing Nevada Captive Insurers Association:

I would offer an amendment ([Exhibit N](#)). It's a slight variation in Section 76. Currently—and this was what was originally adopted when the bill was passed—10 percent of the revenues from this tax go to the regulation, and I think the cautionary note that Ms. Buckley raised is important, that the opportunity to regulate be adequately funded. The key to captives is they don't sell to the general public and are limited to a captive audience, but it is that scrutiny prior to licensure that's critical. We've simply recommended a slight reallocation of that percentage of revenue from 10 percent up to 25 percent.

Chairwoman Buckley:

How much money is that?

Jim Wadhams:

I'll have to defer to the Division.

Chairwoman Buckley:

Would it cause the bill to go to the Ways and Means Committee, and how much money is it?

Alice Molasky-Arman:

It's my understanding the bill must be presented to the Ways and Means Committee because of some of the provisions there on the registration fees and the taxes with respect to the risk retention groups, the other captive piece. John Orr may have the figures as far as the premium taxes are concerned. Premium taxes for captive insurers are considerably different from normal premium taxes. One of the reasons is that a captive insurance company that has risk located all over the U.S., for example, must pay a premium tax on all the exposures to Nevada, so there is some significant difference there.

Chairwoman Buckley:

What would the cost be?

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

In 2005, the captive premium tax that we collected was \$421,000, and 90 percent of that went to the General Fund and 10 percent was retained by us, which was \$42,000. I have the projection for fiscal year 2006 because the growth in that industry is \$985,000 in captive tax, and we would retain \$98,500, with 90 percent going to the General Fund.

Chairwoman Buckley:

We know the Insurance Division has been underfunded over the years, so maybe it's something that would help your office.

Alice Molasky-Arman:

The other states who have established captive domiciles are funded by their general fund, and we never were. Vermont is funded by their general fund, which is derived secondarily from captive premium taxes, but they also receive 10 percent, which is dedicated to the services to be performed. This is something that we really didn't consider in 1999 when the captive bill was first enacted, but we are getting to critical mass where we have to provide the services and be able to do the appropriate monitoring.

John Orr:

There is a failsafe. The balance forward in the budget account that houses this money is capped. It's currently capped at \$100,000 because we've added staff to that budget account, the bill request raising that cap to \$500,000, but even with Mr. Wadhams' amendment, that cap would keep us from collecting an exorbitant amount of money without reverting.

Chairwoman Buckley:

We appreciate that. I'll close the public hearing on A.B. 338, and I'm going to hold the bill to see what we can do on credit insurance.

I'd like to open the public hearing on A.B. 491.

Assembly Bill 491: Revises provisions governing private investigators, private patrolmen, process servers, repossessioners, dog handlers, security consultants, and polygraphic examiners or interns. (BDR 54-160)

Peter Maheu, President, Nevada Society of Professional Investigators:

Months ago, we determined that the Board that regulated our industry needed additional help protecting the citizens of Nevada. We formed a committee comprised of private investigators, patrol operators, and security guards to make changes to A.B. 491. We strongly support these changes, even though some of them could be considered excessive as far as fines, increases in fees, et cetera. We feel that our Board needs these funds and needs these increases to properly protect the citizens of Nevada and our particular industry.

Chairwoman Buckley:

Do you want to walk through what the changes are for the Committee?

Peter Maheu:

The first change is we define that "calendar quarter" means a period of three consecutive months commencing on the first day of January, April, July, or October in any year.

The second change is under Section 5. We added the sentence "or who contracts with or employs an unlicensed person to perform an act for which a license is required."

In Section 6, page 4, we increased the fee for a dog handler's license from \$100 to \$150 to cover the cost of an examination in the field, and we increased the fee from \$100 to \$150 if he had to be re-examined.

In Section 3, page 4 (a): "The board shall not issue or renew a license or work card pursuant to this chapter if the applicant is a natural person who..." We only added the phrase "the board shall not issue or renew."

We increased the fee for an investigation and indicated we change the word "shall" to "must deposit with the Board at the time and make initial application

for any license, a fee of..." and we increased it from \$750 to \$1,500 for the first category of license, and we increased from \$250 to \$500 for each additional category of license. We're increasing these fees because this act has been in place for a long time, and it costs a lot more to do an investigation of an individual or a company today than it did two years ago.

[Peter Maheu, continued.] We took out "individual applicant who is a resident of Nevada is liable for the entire cost of the investigation up to a maximum cost of \$1,500 for the first category license, and \$500 for each additional category of license for which application is made, a corporate or individual applicant who is not a resident of Nevada." We took out that entire section and just put "applicant is liable for the entire cost of the investigation."

Chairwoman Buckley:

On page 7, I've received the most questions about that section and what your intent was with regard to the experience. I heard from one person who was retired law enforcement and was concerned that type of credit wasn't being given. Could you tell us what your thought process was here?

Peter Maheu:

This section was actually proposed by a member of the Private Investigators Licensing Board to clarify exactly what "experience" is and what it means. I've also heard some opposition to one section and we have no problem in changing it. We indicated, at the request of the Private Investigators Licensing Board member, that one year of experience consists of 2,000 hours of experience. We could easily change that to 2,000 hours of experience or documented experience, because I know that was one of the problems we were having with that particular section. We could remove paragraph (b) of this section, which states that "Not more than 2,000 hours of experience may be accrued in any consecutive 12-month period." They were finding a lot of applicants would come to the Private Investigators Licensing Board hearings with their applications and they were trying to get experience prior to 20 years immediately preceding the date the application to be considered. His intent at that point was, when you go back over 20 years, it's almost impossible to verify employment records and records of that nature.

According to a Board member, the Board was having problems defining activities that are not acts of investigation for purposes of experiences toward licensure as a private investigator, and that's where we listed 1 to 6 and 6 (e). We don't feel those functions listed are private investigation functions. If the activities of employment include activities that qualify as a bona fide experience, as well as activities that do not, the Board may determine an appropriate percentage of bona fide experience the applicant is entitled to

credit. If someone was a police officer, or more likely a sheriff's deputy and also served process, the Board can appropriate the hours of serving process in a different manner than it appropriates the sheriff's deputies' investigative hours, or actual hours conducting investigations as a deputy sheriff. But they also serve process, which is not an investigative procedure.

Chairwoman Buckley:

One of the Committee members asked about the changing of "may" to "shall" and whether that might tie the Board's hands and allow them to use their discretion on a case-by-case basis. What's your thought process there?

Peter Maheu:

The Board has reviewed this, and all these changes have been presented to the Private Investigators Licensing Board. Every time we've presented it, the majority of the Board had no objections. Chairman [Attorney General Brian] Sandoval's comment was, "Let's see how it comes out of the Legislative Counsel Bureau." The Board appreciates taking the "may" out and putting the "shall" in because it does tell them they have to do certain things that right now are undecided. The amount of unlicensed activity in this state by unlicensed private investigators is enormous, and the citizens of Nevada are being taken on a regular basis by unlicensed investigators who have no reporting requirements to the State whatsoever. Our addendums to the bill are designed to make unlicensed activity a severe punishment and to try to diminish the number of people who are coming into our state and practicing this profession without a license. Some of this is actually burdensome to us as investigators who are licensed in this state. It's a two-way street. We're giving the Board the power and telling them they "shall" take unscrupulous investigators who are licensed in this state and take them out of the state or punish severely for doing acts that are inappropriate.

Assemblyman Conklin:

How many current, licensed investigators do we have in the state?

Peter Maheu:

We have approximately 270.

Assemblyman Conklin:

On an annual basis, how many new ones do you license?

Peter Maheu:

There are four quarterly meetings of the Board, and I would guess on average 5 to 8 at each calendar quarter meeting are licensed.

Assemblyman Ocegüera:

You increased the fines, and then you also said change "may" to "shall," so why couldn't we increase your fines if that's what you need? Then, you still have the discretion to issue those citations.

Chairwoman Buckley:

I think the suggestion was that it's pretty unusual in a board charter to have "shall" on the issuance of fines. Usually if they're concerned about an increase in either unlicensed activity or other activities, you increase the fines, not do mandatory issuance.

Peter Maheu:

We didn't change the language of the Board's "shall assess." That language has existed in this bill. We did increase the amount, but we didn't increase Board "shall assess" under Section 4. If the Committee feels it should be "may assess," we certainly are capable of living with that, but we didn't change "shall" to "may."

Chairwoman Buckley:

Thank you for that clarification.

Michael Kirkman, Investigator, Nevada Society of Professional Investigators:

I've been licensed since 1978 in California, and in Nevada since 1994. With the rapid increase in population in southern and northern Nevada, the amount of unlicensed activity from people who are coming to Nevada to make some quick money has been enormous, and it's my opinion, based on all the years I've been involved in this business, that if you make the fines significant enough, you can stop it, but if you only slap hands, they'll come back because it doesn't hurt. I encourage you to consider the changes for those reasons.

Chairwoman Buckley:

Let's switch to Las Vegas for those in favor of the bill.

Peter Maheu:

We have four members of our association and I who are here and in favor of the bill. Our association is in favor of the bill.

Chairwoman Buckley:

Let's move to opposition of the bill.

Ronald Dreher, Owner, Advocacy Investigation Services:

I'm requesting you oppose A.B. 491. A.B. 491 seeks to exorbitantly increase the fees and fines for private investigators and others included in NRS 648.

Nevada is one of the most regulated states in the U.S. when it comes to licensing private investigators. We are probably one of the most accountable private businesses in Nevada. I spent 26-plus years as a Reno police officer and retired in 1999. Shortly thereafter, I applied for and tested to become a licensed private investigator and process server in Nevada. The cost just to get the licenses was nearly \$2,000 at that time. In addition, I was required to purchase errors and omissions insurance, and each year I've had to pay a yearly licensing fee for each license, a business license fee, and obtain a yearly errors and omissions insurance policy. The yearly cost now is over \$3,000.

[Ronald Dreher, continued.] When I first reviewed A.B. 491, I wondered what prompted this legislation. I learned that Mr. Maheu, owner of the Global Intelligence Network, had requested the bill. I called Mr. Maheu and had a lengthy conversation with him. The results were that the bill was being recommended by a newly formed private investigation association that desired to increase accountability with the Private Investigators Licensing Board with proposed increased fees, language changes, and fines meant to stop unlicensed firms from conducting business in our state. I don't have a problem with what they're trying to accomplish, but I feel the current language already covers their concerns.

Mr. Maheu complains that out-of-state unlicensed businesses are coming into our state and being fined only \$2,500 for each occurrence. He reports that a fine of \$2,500 does nothing to a major business, with which I concur. Furthermore, he complains that the Board continues to license unqualified applicants. I explained to Mr. Maheu the existing language in NRS 648 allows for increased penalties for all subsequent violations; even the largest companies could and should be fined at the \$10,000 limit each subsequent violation. Apparently, this has not been done, and I do not see a reason for increasing the fines from \$10,000 to \$100,000 when \$10,000 fines are not being used to stop out-of-state licensing or unlicensed companies from doing business in our state. I'm not sure that the Private Investigators Licensing Board has not fined big business in this matter.

An investigator is employed by the Board to conduct background checks to determine if those applicants applying for licenses in Nevada meet the minimum qualifications. If unqualified applicants are being licensed, as Mr. Maheu suggests, then the problem is not with the minimum qualifications, it is with the staff making the recommendations. When I applied for my license five years ago, I was put through a very rigorous background check, and I had no problem being thoroughly investigated to make sure I fulfilled the minimum requirements. I've never been fined.

I believe if we have laws that are already enacted but are not being enforced, increasing the fees, qualifications, and fines is meaningless. I do understand that the proposed increases will cause sole proprietors such as me to analyze whether or not it is worth it to stay in business. I have no problems with the majority of Sections 1, 2, 3, 4, 5, 6, 7, 15, 18, 19; however, taking away the discretionary aspects of the Licensing Board that is chaired by the Attorney General of our state is not really appropriate.

[Ronald Dreher, continued.] The remainder of the bill poses extreme concerns to me as the owner of a small business. I'll start with Section 8.2. This subsection actually increases the fees by 100 percent for the background checks for an applicant and increases the fees by 100 percent for a subsequent license. Background checks are to be paid for by the applicant currently, and if you're a Nevada resident, it's capped at \$1,500. There is no known reason to double this fee.

In Section 9.4 (d), I suggest the portion dealing with only counting the 20 years immediately preceding obtaining a license does not make sense. I do not have an objection to the rest of the language of the section. I had 26-plus years of experience with Reno and I think my experience should have counted for all of it, as it did.

Subsection 10.1 increases the yearly fees by 50 percent for renewal of my licenses. Mr. Maheu stated that we need to increase fees in order to employ another investigator to assist in background checks and investigating violations. With the most recent increases that went from \$350 per license to \$500 per license, to increase to \$750 is not going to accomplish the goals they want because we already have it.

Section 10.2 would increase the renewal of each license held in advance by 250 percent for each license. Again, I don't see any justification for this.

Section 10.4 increases the amount for reinstatement of each license held in advance by 100 percent. Again, there is no reason for this other than to penalize small business owners.

Subsection 11.3 increases the registration fee by 50 percent to register unlicensed employees should I desire to employ one. Accordingly, current language of NRS 648 [*Nevada Revised Statutes*] regarding increased penalties for each subsequent violation need to be meted out. They're there already.

Section 12 increases the application fee by 100 percent if I have not renewed my license in time.

Lastly, we do not need private investigators in our state who are not ethical. If the point of this bill is to go after unlicensed investigators, then do so. I'm not aware of any other state-regulated board that oversees private businesses that have seen these types of increases or fines levied. I do have the authority of the Attorney General, Brian Sandoval, to state to this Committee from him, and he chairs the Private Investigation Licensing Board that he does not, nor has the Board, do they support A.B. 491, as they have not discussed A.B. 491, as Mr. Maheu suggested. I would respectfully request those sections I listed be opposed by the Committee. This bill snaps at potential monopolies, taking out small business owners such as myself, and I would ask this Board not do that to the small business owners who are private investigators in the state.

Gina Crown, Private Investigator, Owner, Crown Stanley and Silverman, Reno, Nevada:

I talked with my colleagues, and with the current status of this bill, I cannot support it. I have concerns the Board has not reviewed it in this form. I have concerns about raising the cap on the fees for licenses to \$750 per category. I, like many investigators, have two licenses, a security license and an investigative license, so conceivably, I would be paying annual licensing fees of \$1,500 a year, which is more than doctors, attorneys, or any other occupational licensing fee in the State of Nevada.

I also have concerns over how the State Board feels about this. I don't know if they need more money because they did just raise our fees to \$500.

Chairwoman Buckley:

I'm going to stop you for a moment. Let's take the testimony from the Board and then I'll come back to you.

Mechele Ray, Executive Director, Private Investigators Licensing Board:

The Board has not taken a position. They saw the beginning language in June 2004, and they have not met as a body to look at the proposed changes that came back from LCB, so there is no position from the Board.

Chairwoman Buckley:

What was your position as it was originally drafted?

Mechele Ray:

It was just as Mr. Maheu said that they may take a look at it when it came back from LCB [Legislative Counsel Bureau]. They didn't think the changes from "may" to "shall" would stand.

Chairwoman Buckley:

In terms of your budget and being able to ferret out unlicensed activity, take appropriate disciplinary measures, or conduct investigations when warranted, is your current fee structure sufficient to allow you to undertake those activities?

Mechele Ray:

The Board met a year ago and they raised fees from \$360 to \$500 per year, and we recently hired a second investigator who is housed in Las Vegas.

Chairwoman Buckley:

What about having clarification on what experiences are needed in order to be given a license? Did the Board indicate they would like to see some legislative action on that item?

Mechele Ray:

That was drafted by a Board member. His explanation to me was perhaps somebody who had only been in this type of field for 5 years or under 5 years might try to get a license and, going off of their hours, may only have 4 years actually working as an investigator, but have in excess of 2,000 hours for a particular year. He didn't feel that was a good idea.

Chairwoman Buckley:

My sense of it is that while there may be some things in the bill that are worth processing, when the Board itself doesn't think they need fees, especially with the level of increases, those probably won't be processed by the Committee. It might be that we would benefit from having you all try to work together to come up with recommendations, taking out the fee increases, perhaps working on clarifying the experience level needed and some of the other provisions of the bill, and give your recommendation. If you would be willing to do that, you could do it tomorrow so we could process the bill on Wednesday, and at least we'd have the benefit of seeing what your recommendations are before the Committee can decide what it wants to do. Would that be amenable, Mr. Maheu?

Peter Maheu:

That's fine, Madam Chair. It doesn't increase the licensing fees immediately. It gives the Board the power to increase them to \$750 from \$500. This law is going to be on the books in this form, however it comes out of Committee, for the next 10 years, and in 10 years we're probably going to have our fees increased and that's what it allows the Board to do.

Chairwoman Buckley:

The Legislature likes to keep a pretty tight rein on these things. If for some reason the market changes, they can come back to us. We compare these with other professions, and we try to keep some kind of parity.

Peter Maheu:

We have no problem coming back and discussing it. It allows the Board to increase certain fees, some of the fees we're asking to be mandated. I'm not sure who you want us to work with, Mechele or the Board member who participated in the process of drafting this originally.

Chairwoman Buckley:

I'd say with as many people as possible with your other colleagues who are here in the northern part of the state as well as the Board. If you can present something back to us that's more of a consensus, that will make our evaluation of it go a little quicker.

Peter Maheu:

We'll do our best.

Gina Crown:

I agree with Mr. Maheu and my colleagues in the south that unlicensed activity is very excessive. Here in the north, I probably get one call a month trying to sell me services that are unlicensed in Nevada. I have filed complaints with the Nevada Board, and I used to be the investigator for the Board. I see unlicensed activity, and I hear about both investigations and security all the time. There's a private listserv that investigators belong to online, and there's thousands of investigators talking to each other, primarily California, but could be other places. I and several of my colleagues always take the time to talk to them, explain to them about Nevada law, and remind them they need a license to do what they're planning to do. It's a never-ending story, and I'm delighted the Board hired a new investigator. I think we're willing to have our fees go up to the \$500 level to accommodate that I've been here 25 years and the unlicensed activity is out of control. I support anything we can do to stop the unlicensed activity, but I think we need to work on this, and I'll be in touch with Mr. Maheu.

Chairwoman Buckley:

We appreciate that. I know you don't have much time. If bills aren't voted on in final form by Friday, they are dead, and we only have work sessions this Wednesday and Friday. Any bill that's left to Friday is risky. If you can work on it today or tomorrow, that would be better. We appreciate your testimony. I'll close the public hearing on A.B. 491, and I'll open the hearing on A.B. 186.

Assembly Bill 186 (1st Reprint): Authorizes one-time payment of additional compensation for a permanent total disability to certain injured employees and their dependents. (BDR S-251)

Assemblyman John Ocegüera, Assembly District No. 16, Clark County:

As with a few of these last bills on the Interim Committee that studied Nevada's industrial insurance program, I was the vice chair of that Committee, so I'm presenting those bills for you. A.B. 186 relates to the permanent total disability payments. These are workers' compensation payments to people who are so severely injured on the job that they're unable to return to any gainful employment. These people are sometimes referred to as pensioners, because under Nevada's workers' compensation law, they are entitled to receive monthly payments for the rest of their lives.

This bill is designed to address an ongoing problem of the erosion of the purchasing power of pension beneficiaries over time. Some people who are currently receiving pension benefits were injured many years or decades ago. Many of these people have been receiving a fixed amount of money based on the wages they were receiving at the time they were injured. They have not received an increase in benefits, even though the cost of living has gone up substantially since they were injured. These injured workers are perhaps the best examples of people who are truly on fixed incomes.

Take, for example, a hypothetical person who was injured in 1985. His pension benefit was based on 66 and 2/3 percent of his monthly wage, and he has been receiving \$600 a month for the last 20 years. At the time of his injury, \$600 a month may have seemed like a fair amount of money, but in the last 20 years, the cost of living has risen substantially. This means that in today's dollars, his \$600 monthly payment will only be about \$339 worth of goods and services. Just to break even, that injured worker would now need a monthly benefit of around \$1,063. In the next 20 years, this person's financial problem will only get worse unless we address and resolve the issue once and for all.

During the 2003 Legislative Session, we did fix this problem for anyone determined to be permanently and totally disabled on or after January 1, 2004. The pension benefit for these people is now adjusted annually by the Consumer Price Index. However, no cost-of-living increases were provided for individuals who were determined to be permanently and totally disabled prior to January 1, 2004.

[Assemblyman Ocegüera, continued.] Over the past three decades, the Legislature has wrestled with this issue many times until last session, when benefits were indexed for certain pensioners on a going forward basis. The stop-gap solution has provided occasional small increase in benefits. In 2003, the Legislature authorized a one-time payment of additional compensation to each injured employee receiving compensation for a permanent total disability for which a final determination had been made before January 1, 1996. This payment was funded by an assessment imposed on each entity providing industrial insurance in this state. Unfortunately, some injured workers were left out because of the cutoff date selected. In addition, the amounts of the payments were not sufficient to fully alleviate the adverse effects of years, or, in some cases, decades, of inflation.

This bill came out of the Committee as an interim study with a one-time lump sum payment again. After consulting with some of the guys who had been to the interim study, they thought maybe we might have a solution to the problem. We decided to amend that study out and bring that possible solution to your Committee to see if we can work through this once and for all.

Rusty McAllister, President, Professional Fire Fighters of Nevada; and Treasurer, Las Vegas Fire Fighters L-1285:

I've been working on this for awhile with some of the other members of the insurance industry. As Assemblyman Ocegüera said, the Legislative Session of 2003, we were able to do some things. We were able to add 2.3 percent cost-of-living increases annually to someone who's been permanently disabled. The Legislature was able to provide \$500,000, which was distributed by the Division of Industrial Relations through what would have been an assessment to all insurers ([Exhibit O](#)). Ultimately, that assessment ended up being taken out of the uninsured employer's fund. That's the fund assessed across all insurers anyway, so instead of charging an assessment, they just took the \$500,000 out of that fund that was already assessed across all insurers. They distributed that to those persons who were disabled prior to January 1, 1996. I want to say there were about 886 claimants who received that money, which ranged from approximately \$350 to \$1,000, depending on how long the person had been disabled. They received that money in a one-time lump sum during the interim.

The solution would be if we did it once, we could do it again. We took the money out of the uninsured employer's fund last time, which was a \$500,000 assessment. We have information from Mr. Bremner that fund sits at about \$12.8 million right now. Over the last 5 years, it's generated about \$250,000 to \$450,000 in interest. The proposal is to use the money that's generated in interest per year, along with an assessment across the employers, to make a

pool of \$500,000 and distribute that money on an annual basis to all those persons who are disabled prior to January 1, 2004.

Roger Bremner, Administrator, Division of Industrial Relations, Nevada Department of Business and Industry:

I'd like to make a technical correction. We did not take \$500,000 from the uninsured claim fund and spend it on something that was not authorized. We lowered that year's assessment from \$2 million to \$1.5 million and put \$500,000 in the assessment for that purpose. We did not take the money from the uninsured claim fund.

Chairwoman Buckley:

We appreciate that correction.

Rusty McAllister:

As time goes by, this pool of people is going to get smaller. It's a fixed number of persons. The intent is not to give a windfall to anyone. I don't believe they're looking for a windfall; they're just looking for a leg up. We put a cap; the maximum that anyone can receive out of that fund would be \$1,200 a year. Once that group of individuals gets so small, \$500,000 will be more than enough to provide \$1,200. That's the plan in conceptual form, and I passed out an amendment ([Exhibit O](#)).

Chairwoman Buckley:

We appreciate that.

Bob Ostrovsky, Legislative Advocate, representing Employers Insurance Company of Nevada (EICON):

This seemed to be a reasonable solution. It's not perfect, but it's an existing fund that does generate interest. We know we're going to be assessed for a portion of this. In high-interest environments, we may not have any assessment. In low-interest environments, we may have a larger assessment spread across all insurers. We would rather it had been collected in premiums way back when, but it wasn't. This is a reasonable way to approach this. Understand there are a lot more than 900 people who will be affected by this, because we're picking up the people from 1996 to 2004 whom we didn't cover originally, so we're not sure exactly how much each claimant will get. That can be worked out through the agency, and hopefully it will be enough to make a difference to those individuals.

Don Jayne, Legislative Advocate, Nevada Self-Insurers Association (NSIA):

I'm neutral on the bill because once we passed the legislation last session indexing PTD [permanent total disability] benefits in the future, that's a public

policy of Nevada and not it's a matter of figuring how to take care of those we missed last time. In many ways, I would emphasize what Mr. Bremner testified to earlier. The money we collect into an uninsured fund is designed to protect injured workers from employers who do not have workers' comp insurance. That may be a technicality to some, but in the insurance world, we live in technicalities. NSIA would rather see us stand a loan assessment for the monies necessary to administer this program and monitor those as a line item than to draw the money out of the interest of the uninsured claims fund.

Assemblyman Ocegueda:

You're proposing a separate fund and a separate assessment?

Don Jayne:

I don't know that we need a separate fund, but if the Division of Industrial Relations collects the money for the assessment, we would rather see the administrator, if he felt it was appropriate, allowed to reduce other areas of assessment. Mr. Bremner testified in another committee he would intend to suspend the assessments for the uninsured fund because he believes that fund to be adequate, so maybe it is a technicality, but whether we draw the money out of the uninsured fund from interest and just an assessment or an assessment for the amount, we would prefer an assessment for the amount.

Chairwoman Buckley:

We could always do something within the financial limits of what is currently being assessed with the uninsured fund that we'd be allowed to create a separate one-time fund in this amount with a separate line item and do the same thing.

Don Jayne:

We recognize what we're acknowledging that we're doing a retroactive movement on a benefit increase. That is the public policy, and how to fund that becomes the issue. In the very same report that Mr. McAllister referenced for the \$886 permanent total disabilities, only 57 of them are self-insured, which is less than 6 percent, but we're into what the assessment is and we're in for our share because a retroactive benefit, once public policy, has to be shared amongst all of the employers in the state and all of the taxpayers in the state, whatever the broad base is that we share it on. If it is a retroactive benefit increase that we're funding here, that's one of the reasons we'd like to see it separate.

Bob Ostrovsky:

We think going to the uninsured fund is exactly the right place because this is an uninsured benefit. This is an increase for which we did not receive premiums,

so this is the appropriate source pool for the funding. Understating is a risk. If that self-insured fund gets hit hard by some other employers in the future, we're going to be on the hook for larger assessments to refund it, but we know about that going in.

Chairwoman Buckley:

I'll close the public hearing on A.B. 186.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 186 WITH AMENDMENTS ([Exhibit O](#)) OFFERED
BY RUSTY MCALLISTER, MAKING THE FUND A SEPARATE LINE
ITEM IN THE BUDGET SO IT CAN BE IDENTIFIED.

Chairwoman Buckley:

The only other one to consider is whether it would be within the limits of the fund and allow it to really be no net increase, because the other areas would be decreased. We'll have the Legal Division work on it closely with you all, but ultimately then it would not be a new assessment, because it would be offset by a reduction to cover folks who are less stranded by previous actions. We would be defining it in a no-net-new-fee manner in the amendment.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

Assemblyman Hettrick:

I support the bill and I don't have any problem with the fee, the assessment, or how you're going about it. I am concerned, however, that the Governor may or may not sign the bill. I would like to vote yes in Committee and reserve the right to have some communication with the Governor's Office and to change that vote on the Floor.

Assemblywoman Gansert:

I will also reserve my right to vote no on the Floor.

Chairwoman Buckley:

I will not do that because I think it's our role to decide what we want, and the Governor can do what he wants. If he wants to leave all these injured workers stranded, that would be his choice.

THE MOTION CARRIED. (Ms. McClain was not present for the vote.)

Chairwoman Buckley:

We'll open the hearing on A.B. 555.

Assembly Bill 555: Makes various changes relating to provisions governing medical professionals. (BDR 54-570)

Assemblyman Garn Mabey, Assembly District No. 2, Clark County:

Madam Chair, I appreciate you removed Sections 7, 8, and 9, but we also need to remove Section 12, which also has to do with those sections, and change Section 13 ([Exhibit P](#)).

Keith Lee, Legislative Advocate, representing Nevada State Board of Medical Examiners:

You have our amendment ([Exhibit Q](#)). Section 10 of the bill as presently written was done on behalf of the licensed respiratory therapists who are under our jurisdiction. Their interest in this was to be able to draw blood and to analyze the blood gases. In working with Alex Haartz and the Division of Health, we determined the way we were going was not the appropriate way, or the way that would satisfy the parties with an interest in this particular matter. The amendment to Section 10 ([Exhibit Q](#)) deletes the present section in its entirety and inserts a change to a different section in Chapter 652 that is represented in the present Section 10. I had a discussion with Mr. Haartz, the administrator of the Division of Health, and he agrees with this and authorized me to represent to you that he has no objection to this particular amendment ([Exhibit Q](#)).

Tony Clark, Executive Secretary, Nevada State Board of Medical Examiners:

Section 1 deals with unrestricted licenses to administrative physicians. Currently, the law only authorizes the Board to grant an administrative license to a physician who is a public employee, and this would extend it to private employers, like an HMO or an insurance company who has a doctor on staff. Section 2 would change the title of the chief administrative officer of the Board from "executive secretary" to "executive director" to conform to the other health care boards and agencies in the state. Section 3 is a fine for the failure to timely advise the Board of a new address. We sent out 6,000 renewal notices for physicians and physician assistants, and we've already had more than 100 come back undeliverable. This provides a fine for those who do not notify the Board of a change of address and start practicing medicine there.

Chairwoman Buckley:

We want everybody to send in the change of address card but if a doctor forgets and he just moves to another office and he's in the phone book, isn't \$500 kind of high?

Tony Clark:

I don't know if it's high. Somewhere down the line, we need authority to make people comply with the requirements of the law.

Assemblyman Mabey:

I think it's too high.

Assemblywoman Gansert:

I'm wondering if the requirement could be upon renewal, because I know the only time a lot of physicians ever see the renewal is when they look at the application to be able to change something. They usually don't initiate any communication with your Board.

Tony Clark:

Every year we send out an individual booklet that has all the statutes that are applicable to our licensees. They're supposed to be up to date with all of those. I suppose it can be in conjunction with the application every two years, but that doesn't really give the Board information concerning licensees who change addresses within a two-year period. It gives us difficulty in trying to communicate with licensees.

Assemblywoman Gansert:

Maybe that's the time when you can request the address change. Since you're communicating with the manual, that might be an opportunity to clean up the addresses at the same time.

Keith Lee:

One of the problems also is having current addresses on these physicians so that if we receive a complaint against them, we're able to get in contact with them as quickly as possible, send them a copy of the complaint to the investigative reporter, and ask them to respond. It's important we have updated addresses; perhaps \$500 is not the appropriate hammer to use on these folks, but there has to be some way for us to enforce this provision.

Tony Clark:

Section 4 deals with the failure to timely comply with the change of address for those who are no longer actively practicing and have inactive licenses. That was

a fine of up to \$250. Section 5 deals with administrative physicians and sets forth the limitation that they cannot see patients in the state of Nevada and will not conduct a clinical practice. It's only an administrative license. Section 6 deals with NRS 630.299, the letters of concern, which were passed into law in the 2003 Legislative Session. That gave the Board the authority to issue those letters. We would like to add to the law the investigative committees of the Board because those are the ones who deal with the complaints directly and would issue those letters on a regular basis.

[Tony Clark, continued.] We've knocked out Sections 7, 8, and 9, so that takes us to Section 10, which Keith already addressed with respect to respiratory therapists. Section 11 would allow another group of licensees of this Board, the physician's assistants to make the pronouncement of death as registered nurses can, under the physician's authorization. That concludes those things that are still left in the bill.

Assemblywoman Giunchigliani:

If you don't have their addresses, how do you find them?

Tony Clark:

When the mailings come back, we start going through phone books. I've noticed that with all of the new office buildings going up in Las Vegas, especially medical centers, you find professionals moving on a regular basis, and sometimes we have trouble catching up with them, but that's the way we try to do it.

Assemblywoman Giunchigliani:

Would they not have to have a business license in order to have a medical building or facility?

Tony Clark:

I'm sure they do have to have a business license.

Assemblywoman Giunchigliani:

Do the local governments work with you to assist with that, or is there another source?

Tony Clark:

That's another source our Licensing Division uses to try to find our licensees who don't keep us currently apprised of an address.

Assemblywoman Giunchigliani:

Maybe you should be able to put a lien on the license. I understand you have to fine them, but if you don't know how to find them, how can you fine them?

Tony Clark:

There are a number of ways our licensing experts utilize, but the phone book and licensing facilities for business licenses are another way.

Assemblyman Mabey:

I think \$100 would be the appropriate number for those. And for the inactives, I would say the same.

Assemblywoman Buckley:

We appreciate that. We'll now take testimony in opposition to A.B. 555.

Dr. Daniel Royal, President, Nevada Board of Homeopathic Medical Examiners:

[Referred to [Exhibit R](#).] We appreciate you striking Sections 7, 8, and 9 in the ancillary sections and Sections 12 and 13 related to that ([Exhibit S](#)). We do not oppose the bill on those grounds, but I did have some questions about Section 10 in the amendment that has been proposed. The amendment includes osteopathic physician's assistant, but it does leave out some other licensed technicians. These include phlebotomists, for example, who have a national certification. We also have under the Homeopathic Board advanced practitioners of homeopathy and homeopathic technicians, known as APH and HT. These both practice under the supervision of a physician in their office. I propose that either these technicians we add to the amendment or that an amendment be provided here, which says that Section 10 does not affect other statutes. Nevada recognizes three forms of health care. We have the allopathic Board of Medical Examiners, which are the M.D.s; the Osteopathic Board, which are the D.O.s; and the Homeopathic Board, which are the H.M.D.s.

One of our initial concerns with A.B. 555 is that when it was reviewed by the allopathic Board, the Homeopathic Board never had any communication from any representative of that Board regarding the content or intent of the proposed initiative. However, we did receive a copy of it through a third party, and as a Board we unanimously rejected it because there are some concerns about this amendment. It does seem to impact all three of the Boards. The Homeopathic Board not being consulted on this initiative, I would recommend that either the amendments I suggested today be added, or the bill be tabled and sent back to the Boards until the three of them, the Osteopathic, allopathic, and the Homeopathic, can work out language which would be unanimously agreeable to all the Boards and be presented again in the 2007 Legislative Session.

[[Exhibit T](#) and [Exhibit U](#) submitted by Flemming Fuller Royal, M.D., H.M.D., Secretary-Treasurer, Nevada State Board of Homeopathic Medical Examiners, Las Vegas, Nevada.]

Assemblyman Anderson:

Does the Homeopathic Board normally send its proposed changes to the other Board? Do you send any of your regulations to the other Board for their examination?

Daniel Royal:

No, we do not. [A.B. 555](#) as initially written impacted the Homeopathic Board significantly, and when a bill is being written by one Board and it has a significant impact upon the other Board, but does not discuss the content or intent of that legislation with the other Board, it is unfair and deceptive.

Chairwoman Buckley:

I'll close the public hearing on [A.B. 555](#) and I'll open the hearing on [A.B. 427](#).

[Assembly Bill 427](#): Makes various changes relating to manufactured homes, mobile homes and commercial coaches. (BDR 43-191)

Jim Avance, Legislative Advocate, representing Nevada Manufactured Housing Association:

This piece of legislation is a result of 18 months of work with the Division of Manufactured Housing, Ms. Renee Diamond and her investigators. [A.B. 427](#) would consolidate the licensing categories of installers, servicemen, and rebuilder into a single category called a general serviceman. It imposes no additional changes or requirements in the type of work. It also creates a specialty service and licensing category that replaces the current limited license. It more clearly spells out the licensing requirements and the actual scope of work under these licenses. It provides for business signage as prescribed by the Division. It spells out what constitutes violations to the licensing requirements, and it provides for appropriate penalties. The remainder of [A.B. 427](#) is needed to be sure that all sections of the law reflect the changes of licensing categories. Both the Division of Manufactured Housing and the Association strongly support these.

Our amendments ([Exhibit V](#)) result in not getting the bill draft request in time to find errors in drafting. The amendments are not changes in any intent; they were just left out.

[Jim Avance, continued.] Section 1 creates the general servicemen. Section 2 creates specialty servicemen. Section 3 indicates what the specialty serviceman does. Section 4 establishes that each place of business must put up a sign as prescribed by the agency. Section 5 indicates that the license may not be used for any other person. Section 6 allows the administrator to order a cease and desist. All of those reflect back to the last page of the document, which is the text of the repeal sections. We're merely changing the names and clarifying based on current standards of what those will be. These haven't been changed since 1970. Section 7, for example, makes it unlawful for a person to engage in the business without the license. Section 8 goes on to the violations. The rest of it then is merely changing the wording throughout the text of that particular NRS to conform to what we've done there.

Going to the proposed amendments ([Exhibit V](#)), it says, "add the following amendment to NRS 489.311," on page 6, lines 25 and 26. Bill drafting had left out "no person may engage" and "or offer to engage," which is advertising for the service that they're not licensed to do.

That amendment goes in at page 21, line 35. That corrects the problem the agency would have if we had all of these licenses coming due at the certain date. It changes it to 2007 and lets them renew between now and then.

Chairwoman Buckley:

We appreciate your testimony. It's straightforward and shows you've worked on it for so many months.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 427 WITH THE AMENDMENTS OFFERED
BY THE NEVADA MANUFACTURED HOUSING ASSOCIATION.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Anderson, Mr. Arberry, and
Ms. McClain were not present for the vote.)

Chairwoman Buckley:

We'll open the public hearing on A.B. 326.

Assembly Bill 326: Revises provisions governing changes in rates for certain insurance. (BDR 57-1058)

Sam Sorich, Vice President, Property Casualty Insurers Association of America (PCI):

We're an association of insurance companies. We have about 200 member companies doing business in Nevada, and I'm testifying on behalf of PCI, but also other members of the insurance industry in support of A.B. 326. Currently, personal lines insurance rate changes are subject to the Division of Insurance's prior approval. Rate changes for personal lines may not be put into effect unless the Division of Insurance gives prior approval to those changes. That's not the only way to regulate insurance rates. Many states, including Arizona, Colorado, Utah, and Oregon, allow rate changes without first obtaining the prior approval of the insurance regulator. In those four western states I mentioned, car insurance and homeowner's premiums are lower than they are in Nevada.

Prior approval requires the Division of Insurance to review and give approval to every rate change, no matter how minor, before that change can be put into effect. That puts a strain on the resources of the Division of Insurance, and it also results in delays in putting insurance rate premium changes out into the market. Prior approval also creates disincentives for insurance companies to lower their rates. Under prior approval, an insurer is likely to be reluctant to lower its rates when it knows that if an analysis that indicated a lowering of rates turns out to be mistaken, the insurance company has to face a prior approval regulatory system that can take many weeks or months to go through. The safe thing to do then is to not lower rates, and that hurts consumers. A.B. 326 seeks to inject some flexibility into insurance pricing and to encourage insurance companies to take the chance and lower their rates.

Under the bill, a rate band is created, and within that band, a personalized insurance carrier would be able to decrease or increase its rates, but the bill does not diminish the Insurance Commissioner's authority. The Insurance Commissioner continues to have the authority for those rate changes within the band to disapprove rates if excessive, inadequate, or unfairly discriminatory. The bill is based on the model act adopted by the National Conference of Insurance Legislators (NCOIL). Like the NCOIL model, it used a 12 percent band. Currently, there are successful flex rating systems operating in the states of Kentucky, Pennsylvania, Rhode Island, South Carolina, and Louisiana.

We in the insurance industry support A.B. 326 for several reasons. One, it encourages more dynamic insurance pricing that reflects current market conditions and the actual costs. It also encourages companies to lower their rates. Secondly, it improves the competitiveness of the Nevada homeowners and auto insurance markets. The booklet the Division of Insurance issues on

auto insurance regulations shows that there is much competition already in the marketplace. What A.B. 326 will do is inject even further competition and give consumers more choices. We believe this is moderate, non-radical change to the rating system. It preserves the prior approval system and, within the rating band that is established, allows the Commissioner to continue to exert her authority to disapprove rates.

[Sam Sorich, continued.] Finally, this is a significant step toward modernizing insurance regulation. There are many who are calling for federal regulation of insurance under the belief that states can modernize systems that have been in place for a number of years. That's why NCOIL adopted their model act: to put it before the states to show that there are alternatives to the way insurance is being regulated now. We believe the enactment of this bill would be a significant step towards modernizing insurance regulation and showing that regulation should be done at the state level, not sent to Washington.

Jim Wadhams, Legislative Advocate, representing the American Insurance Association:

The American Insurance Association is a similar trade association to the one Mr. Sorich represents. We have about 480 members, and many participate in the auto insurance market. In reviewing this bill, I spotted something on page 2, line 12. This is just one example where it appears. The line reads "forth in the filing are the rates set forth in the filing," and there are two phrases here, "inadequate" or "unfairly discriminatory." A third word is missing, which is "excessive." What Mr. Sorich said is correct: this is really not intended to be an attempt to change the standards, but merely the regulatory process. The Commissioner can review the rates after the fact, within that band, as opposed to before.

I find the book Mr. Sorich held up as fascinating ([Exhibit W](#)). There are a variety of examples, and I have one that's relevant on page 32 ([Exhibit W](#)). I found one that's not quite my age range, but typical to the area that I live in, which is the older part of Las Vegas, zip code 89107. I look at the various prices being charged for a family of two driving a 1998 Volvo, and it's incredible. If you look at the variations between some of the more common named companies, such as Progressive and GEICO, for this example person in this zip code, the difference in rates is 40 percent between Progressive and GEICO. The difference between Allstate and USAA Casualty Insurance Company is 28 percent. The difference between Allstate and Geico is 15 percent. After reading these examples, I wondered if maybe I should call and change my insurance.

This flex rating has an effect on this kind of pricing because the differentials among these competitors should be moving a little faster, and that's the inertia

the current system imposes. In a perfect environment with perfect consumer knowledge, every consumer would consult this price guide before they bought their insurance and look for the lowest price, but most of us don't. Once we get insurance, we keep renewing it and complain about it. What this flex rating will do for those of us who get lazy and keep renewing is see a little more change in that rate because we're too lazy to pull out this price guide ([Exhibit W](#)) and shift our business.

[Jim Wadhams, continued.] The dynamic that Mr. Sorich was talking about does come out of this flexibility. One might suggest the entire marketplace ought to be rated in the manner this bill suggests. Based upon the NCOIL model, this bill allows the State to take a look and see how it works within a band, 12 percent up or down is what the NCOIL model has of what's in this bill. It's fairly straightforward and it's a limited attempt for this Body to look over the course of the session and see if the differentials between these rates or the examples here begin to change a little quicker or more.

Alice A. Molasky-Arman, Commissioner of Insurance, Division of Insurance, Nevada Department of Business and Industry:

We are neutral on this bill in some respects. We believe the insurance companies and the public might benefit from a more flexible plan. We've been meeting with members of the industry, and it was my understanding there would be some amendments proposed to this bill to alleviate some of the concerns that I have. I do have concerns about the 12 percent level there. I believe as an aggregate number it is too far reaching, insofar as the impact and how it would apply to individual policy holders. There should be some sort of cap that would limit the effect on individuals. The Division of Insurance has an unofficial rule whereby we do not like to see—and it is extraordinary if the public does see—a rate filing that is going to impact one individual or a group of individuals with greater than a 20 percent increase in their rates in one policy here.

I also have some concerns because this would apply to medical malpractice rates, workers' compensation rates, as well as individual health insurance policy rates, and we believe these provisions should be inapplicable. In 2003, there was a bill in the other house that we had also worked with the industry on, and there was a provision in there which stated that even in a competitive market, if the Commissioner found that an insurer's rates required closer supervision because of the financial condition of the insurer or because the insurer had engaged in rating practices which were unfairly discriminatory, we could revert to our current system of reviewing the rate filings prior to their implementation. They would be submitted 60 days in advance of becoming effective.

[Alice Molasky-Arman, continued.] I'm also concerned with some of the due process provisions in here, which establish a different kind of process. NRS 686B.110 already establishes what is a very sound process. While I have respect for NCOIL and its efforts, on page 2, line 39, that's very broad. It talks about the hearing process and requiring a 10-day notice for all insurers and rate service organizations determined by the Commissioner that would be affected by such an order. In today's regulation, if we notice a hearing, we notify the insurer who is directly affected and not all insurers. The way this reads, it could be rate service organizations affected by the order, but there would be none, because the rate service organization does not file the rates for insurers. In the event an insurance company was notified to attend a hearing, if it used a rate service organization, I believe it should be incumbent upon them to bring their rate service organization along.

Assemblyman Conklin:

Commissioner, in your opening statement, you stated you felt this had some benefit for consumers. What are those potential benefits?

Alice Molasky-Arman:

I believe, from Mr. Sorich's remarks, that our current system would deter insurers from decreasing rates, and that's primarily due to the expense of the process itself and to make their adjustments as the economic circumstances change.

Assemblyman Conklin:

You would agree an overall decrease for the consumer is a good possibility. There is also a lot of statistical data in the states that have tried flex rating that their actual rates are more stable.

Alice Molasky-Arman:

That's what I understand, and I believe Mr. Sorich mentioned several states, like Louisiana, had some very positive effects. I don't know exactly what they are because I've only seen that from various press releases. I had asked for that information myself because I thought it would be very helpful.

Sam Sorich:

The Louisiana law has been in effect now for about a year. Car insurance premiums generally have gone down about 5 percent. The point the Commissioner made is an important one. One of the effects of flex rating is the great swings in rates up and down are done away with, and there is more rate stability because the insurance company doesn't have to go through the long planning process of making the rate filing and going through the prior approval system. Rates can be modified constantly, which is good for consumers, and it

helps a family plan to pay for car insurance and homeowner's insurance in the future, rather than getting a big bump in rates.

Chairwoman Buckley:

And no consumer has their rate increased prior to the term of their contract? So if I have a year, you don't raise it during that policy year, correct?

Sam Sorich:

That's correct, Madam Chair, that's in the bill. We don't have any written amendments, but we are very willing to work on amendments to narrow the band, exclude the lines the Commissioner thought should be excluded, focus on situations where there is a troubled company that should not be participating in the flex band, and take those people out. Also, we want to do something about the hearing process. The hearing process in here is modeled after the NCOIL model. We want to make sure the hearing process is compatible with Nevada law. On each of those four points, we do want to work with you. We can work out some amendments on those.

Chairwoman Buckley:

What's your position on outer bands for an individual?

Sam Sorich:

We don't think they're an appropriate idea because inherently, when an insurance company makes a filing, it has evidence that shows what the appropriate rate should be. If we choose an arbitrary level of 15 or 20 percent and cap it, those people are paying a rate that is not commensurate with their risk of loss, and other people are going to have to pay more.

Chairwoman Buckley:

You can still file it, though. It just means you couldn't use the flex rating for it, isn't that correct?

Sam Sorich:

The concept I think the Commissioner was talking about was within that flex band, if you were using a 12 percent or 6 percent band, there would be a further requirement for an outer band or effect on an individual. We don't think that is an actual, sound concept, and we are willing, for the purposes of moving this bill forward, because we think the concept is extremely important, to work with the Commissioner and come out with some outer band and see how it operates over a period of time.

Assemblyman Conklin:

There are members in this House who have specific concerns revolving around credit scoring. The real concern around this is that there's a certain amount of socioeconomic injustice to an individual whose rate is based in any part to credit scoring. In the 2003 Legislative Session, this Committee tried to address credit scoring, and it has not gone away. The Commissioner's report is out and there are some concerns with it. It would seem to me that an outer band that begins to address this particular issue is a good idea, because what we're saying is, we'll allow you to change your rate, but we won't allow you to go willy-nilly in how you rate individuals. It doesn't make sense to lower your rate 4 percent, but 10 percent of your clients see a 20 percent increase so that you can lower everyone else 5 percent. The dynamic here in terms of rate classification and how you rate your clients is something this Body is concerned with. I would suspect that's why the Commissioner potentially likes the idea of setting a band, and we all know she has a policy as an outer band as well.

Sam Sorich:

I understand the point, and we're willing to come up with an outer band that is acceptable to the Commissioner to address that concern.

Chairwoman Buckley:

I think we could really use an interim study on insurance, whether it is credit scoring or flex rating. No one opposes making the system of insurance quicker and easier in an attempt to lower their rates. Everybody is concerned about where our rates are and, whether it's an insurance fraud division or whether it's more flexibility or simplifying the insurance process, if there's a way to reduce rates. Maybe it's time we took a systematic look at insurance in our state and had the benefit of hearings on all of these different topics with all of us working together to see what we could do to make our system better.

Sam Sorich:

We do have an opportunity to do something different and modest to inject more flexibility into the system, and we're very willing over the next day to try to work something out that will be new. The purchasers of auto and homeowner's insurance will benefit.

Alice Molasky-Arman:

I would like to dispel any idea that flex rating means that we would only receive the filing and put it on a shelf. That is far from the truth. I appreciate your belief that it might alleviate some of our review. I don't share that because we will certainly under a flex rating system be reviewing the filings just as intensely as we do now, and perhaps even more rapidly that you might expect. Regarding the remarks about Louisiana, it might be a good idea, if this bill required some

sort of study of the effects if this were enacted, that there be a report by the insurers to the Commissioner so the Commissioner could report to this Legislature how effective this measure really was.

Chairwoman Buckley:

Thank you very much. I know there are many insurers who support this bill, and I appreciate you leaving it up to your designees to do the testimony. I'll close the public hearing A.B. 326. With that, the meeting is adjourned [at 4:55 p.m.].

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 11, 2005

Time of Meeting: 12:27 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		AGENDA
	B	Diane Thornton, Committee Policy Analyst	Work Session Document
341	C	Laura Fitzsimmons, Trial Lawyer, representing Nevada landowners	Document on A.B. 341
341	D	Laura Fitzsimmons, Trial Lawyer, representing Nevada landowners	"Sore Loser" Document
341	E	Michael Cheshire, Director, Appraisal Institute	Opposition to A.B. 341
341	F	Debbie Huber, Huber Appraisal; Incorporated; and Chair, Nevada Appraisal Commission	Opposition to A.B. 341
338	G	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	A.B. 338 Section Summary
338	H	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	Proposed Amendments to A.B. 338
338	I	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	Presentation
338	J	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	Discount Medical Cards: Innovation or Illusion?
338	K	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	Nevada Discount Health Plan Inquiries
338	L	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	Bogus Discount Health Plans Awareness Survey
338	M	Kay Lockhart, Vic President, Independent Insurance Agents	Division of Insurance Major Risk Survey

338	N	Jim Wadhams, representing the Nevada Captive Insurers Association	Revision to A.B. 338
186	O	Rusty McAllister, President, Professional Fire Fighters of Nevada and Treasurer, Las Vegas Fire Fighters L-1285	Conceptual Amendment for A.B. 186
555	P	Assemblyman Garn Mabey, Assembly District No. 2, Clark County	Amendments to A.B. 555
555	Q	Keith Lee, Legislative Advocate, representing the Nevada State Board of Medical Examiners	Board of Medical Examiners Proposed Amendments to A.B. 555
555	R	Dr. Daniel Royal, President, Nevada Board of Homeopathic Medical Examiners	Letter regarding Section 7, 8, and 9
555	S	Dr. Daniel Royal, President, Nevada Board of Homeopathic Medical Examiners	Recommended Changes to Sections 7, 8, and 9
555	T	Flemming Fuller Royal, M.D., H.M.D., Secretary-Treasurer, Nevada State Board of Homeopathic Medical Examiners	Recommended Changes to Sections 7, 8, and 9
555	U	Flemming Fuller Royal, M.D., H.M.D., Secretary-Treasurer, Nevada State Board of Homeopathic Medical Examiners	Letter from the Board of Homeopathic Medical Examiners
427	V	Jim Avance, Legislative Advocate, representing Nevada Manufactured Housing Association	Amendment to A.B. 427
427	W	Alice A. Molasky-Arman, Division of Insurance, Department of Business and Industry	Nevada 2003 Consumer's Guide to Auto Insurance Rates