

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

**Seventy-Fifth Session
May 13, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:39 p.m. on Wednesday, May 13, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Karen Fox, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Robert Ostrovsky, Las Vegas, Nevada, representing Employers Insurance Group, Reno, Nevada
Ray Badger, Carson City, Nevada, representing Nevada Justice Association, Carson City, Nevada
John Jeffrey, Henderson, Nevada, representing Laborers International Union of North America #872, Las Vegas, Nevada; and International Union of Operating Engineers Local #12, Pasadena, California
Sam McMullen, Las Vegas, Nevada, representing Nevada Self-Insurers Association, Las Vegas, Nevada
Fred L. Hillerby, Reno, Nevada, representing Nevada State Board of Pharmacy, Reno, Nevada
Helen Foley, Las Vegas, Nevada, representing National Association of Professional Employers Organization, Alexandria, Virginia

Chairman Conklin:

[Roll was called.] We are in subcommittee. We will not hear Senate Bill 310 or Senate Bill 365 today. We will start with Senate Bill 195 (1st Reprint). I would like to remind everyone that this is not a hearing on S.B. 195 (R1), since we are in work session. Senate Bill 195 (1st Reprint) is a workers' compensation bill that had a provision in it similar to Assembly Bill 178. You may recall in our final work session before first house passage that we moved A.B. 178 to Ways and Means so parties could continue to work on it, and have now agreed to the compromise language before you. Mr. Ostrovsky, will you begin?

Senate Bill 195 (1st Reprint): Revises provisions governing workers' compensation. (BDR 53-1077)

Robert Ostrovsky, Las Vegas, Nevada, representing Employers Insurance Group, Reno, Nevada:

We were tasked with an effort to negotiate and agree on the provisions of A.B. 178 and other open items, relative to workers' compensation. I am pleased to tell you that the working group, which included Employers Insurance Group, representatives from some of the third party administrators (TPA), self-insured employers, Nevada Justice Association, and organized labor, including the AFL-CIO, independent labor unions, local government labor unions, and the culinary unions, all participated in meetings where we were able to come to agreement on all of the remaining issues in the area of workers' compensation.

The staff has prepared a mock-up amendment ([Exhibit C](#)) to S.B. 195 (R1) into which the provisions of A.B. 178 would be amended if this Committee chooses to. That bill includes nine major areas of consensus. The first area is the acceptance of a claim. There was a dispute that the letters sent to claimants, accepting a claim on a body part for example, were then used as a method for denying claims in the future—if the claimant had an arm injury and had to add a hip injury if both body parts were injured during the same incident. There were issues that the acceptance letter was being used as a weapon to deny those claimants the right to expand their claim. To solve that problem, we added language that would clearly indicate the letter of acceptance is not an exclusion, and not an automatic denial for other body parts. It does not mean they will automatically be accepted, but it does mean you will get the opportunity to litigate those matters before an appropriate appeals or hearing officer, and/or discuss them with the parties.

The second major change has to do with the use of the *AMA Guides to the Evaluation of Permanent Impairment*, Fifth Edition. The parties have agreed that the smartest thing to do at this time is to stay with the Fifth Edition. We are suggesting that the Fifth Edition be used as the reference guide and there be no automatic movement to the Sixth or Seventh Edition. We will come back in future years to visit that issue. We also suggest that this be effective on passage and approval, which will stop the current regulatory process to codify the Sixth Edition into the *Nevada Administrative Code* (NAC). There is no increase to the cost for the employers, since they are already paying for and working from the Fifth Edition now.

The third major change has to do with light duty. Under the current law, if you return to work on a light duty release, and you are terminated for misconduct,

you will lose your temporary total disability. If you recall in Assembly Bill 24, you added language to make sure that the individual who lost their temporary total disability would continue to receive rights to a permanent partial disability (PPD) award and vocational rehabilitation. The change we are proposing is to change the word "misconduct" to "gross misconduct." It was determined that the word misconduct was too broad, and gross misconduct has a narrower focus. If you return to work and are terminated for poor workmanship, being late for work, or any of a list of things, you will continue to get your PPD. If you come to work intoxicated or have a physical altercation with a coworker, that probably will be considered gross misconduct. The statute does not have a definition of gross misconduct, so, essentially, that is an item that probably needs to be litigated in the future with a hearing or appeals officer. Gross misconduct is a much higher standard than just misconduct.

Chairman Conklin:

Is misconduct versus gross misconduct approximately the same thing in law as misdemeanor versus gross misdemeanor or negligence versus gross negligence?

Robert Ostrovsky:

I am going to ask Mr. Badger, who is a trial lawyer in these matters.

**Ray Badger, Carson City, Nevada, representing Nevada Justice Association,
Carson City, Nevada:**

Gross misconduct would be of a greater degree. Driving through a stop sign is not gross negligence, but driving 40 miles over the speed limit might be. The term gross means large or higher degree.

Robert Ostrovsky:

Fourth, currently there is a concern that when you appear before a hearing or appeals officer, the only medical reports that the hearing or appeals officer considers are those offered by the insurer and our panel of physicians. The parties ask that we consider adding some ability for the judges to look at other examining physicians' reports in making decisions. We have added language so the judges may consider an examining physician's report for medical issues at both the hearing and appeals levels. We feel this levels the playing field. It is certainly a "give" on the part of the employers, but I think it is not an unreasonable "give" for us to be able to say that we are appearing in a room before a judge where he is able to have as much reasonable evidence in front of him in order to make a decision. To exclude certain medical reports handicaps the claimants.

The fifth item has to do with PPD or Permanent Total Disability awards. Under the current law, in order to get a disability award, you must have some type of

physical impairment. If you recall, in A.B. 178 the proponents of that bill asked us to expand that definition to include other things beyond physical impairment. As a compromise, we said for the purposes of stress claims, which are very narrowly defined in the statute, you will now be entitled to a PPD award for that stress item. It does not expand to all claims. You have heard stories of victims of rape and crime at the workplace, but there may or may not be a residual PPD factor. Now we are able to request a PPD-rating physician to determine whether there is a residual payment to be made.

Item number six concerns death benefits. We increased the death benefit from \$5,000 based on actual cost, which hardly pays for a funeral today, to \$10,000 up to actual cost. Outside of the \$10,000 cap, the insurer would also have to pay for the transportation of the remains. We added that because two years ago there was an issue of moving the remains of a deceased worker to Mexico City. There was an argument whether it was going to be paid for. We will now move the deceased person's remains to the appropriate site of the burial, and then pay for the actual funeral services up to \$10,000.

Item number seven has to do with *Nevada Revised Statutes* (NRS) 616D.120, which is the penalty provision of the law. We have added a new penalty that is called "pattern and practice of late claims payments." We have discovered that we have certain administrators, insurance companies, or their administrators who consistently have been making late claims payments, either for an individual claimant or for a number of claimants. If they engage in that pattern of practice, it will now be subject to both a benefit penalty and a fine.

The current penalty cap is \$37,500. We have increased the benefit penalty cap to \$50,000, but it does not mean that every benefit penalty will be \$50,000. A regulation adopted by the Division of Industrial Relations (DIR) has a point system that calculates how egregious the violation is by reviewing a number of things including what your payment history has been. This system determines what the penalty should be. Raising the penalty cap will give more incentive to TPAs and insurers to make good decisions that can be defended.

We have also increased the maximum fine cap from \$1,500 to \$3,000 in order to give the DIR a little bigger hammer. In addition to that, we have added language to the statute regarding proportionality. For a very large insurer who administers a large number of claims, it is easy to make several errors over a five-year period which would be held against them for all other future errors. So, we have added language to create some proportionality in the regulation, which we have left to the DIR to adopt. It will be a test added to the current regulation to determine how large the penalty should be.

There were TPAs in the past that did not pay their fines, filed bankruptcy, and no one ever collected the money. We have determined that the same TPAs posted at the Division of Insurance (DOI), have a bond. The bond is there to insure against fraud. We have now expanded the use of the bond to include all fines and penalties assessed by the DIR so that the DIR will not find itself in a situation of not being able to collect the fines or penalties.

We have also added language regarding continuous care coverage, which was a subject that was not directly discussed in this Committee. Workers' compensation insurance is a property-and-casualty-insurance product line, commonly called P&C products. The proposed language will allow life and health insurance agents to get a special license from the DOI after appropriate training and testing. This will enable them to sell a continuous care product which will be workers' compensation and health insurance as a single product with two different policies. That way they will not commingle the policies. The advantage to that is we can lower the rate on workers' compensation insurance. The industry has discovered if you work for an employer that offers both health and statutorily required workers' compensation insurance, the number of claims decrease because there is no incentive to create a claim. If someone has health insurance and they do not feel well, they will go to the doctor. We find that in some cases where no health insurance is offered, we develop workers' compensation claims rather than health insurance claims. This language is included in various sections of the bill.

The last section is a big change in the way TPAs are licensed. Third party administrators are now licensed by the DOI. Once you get your license you can do any type of third party administration. The law will now require that a license, issued for the purposes of a TPA performing workers' compensation services, will require the approval of the DIR. The Division of Insurance will continue to process the applications, but they will be sent to the DIR for final approval in case there are bad actors that close their shop and then move to another location with a new name.

The parties have agreed to drop Assembly Bill 511, which is the exclusive remedy bill having to do with the right to sue over bad faith. That bill has been withdrawn as a part of the negotiations.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Horne:

Where is the requirement for the Fifth Edition guidelines? Do we still have to use the Fifth Edition if the Sixth Edition comes out?

Robert Ostrovsky:

The purpose of the change was to codify the Fifth Edition into law. The Fifth Edition will be the edition for the state. There will not be an automatic move to the Sixth Edition or any other edition. There is no language that states there will be an automatic move to a future edition. That decision will have to be made as policy of this legislative Body in the future.

Assemblyman Horne:

What type of substantive change can occur from edition to edition for it to be good public policy for a state to lock itself in on one edition? Something substantive could change that may be beneficial to the state, but we are precluded from using the Sixth Edition because we have codified that we would have to use the Fifth Edition.

Robert Ostrovsky:

The parties believe that the Sixth Edition, as it currently exists, was so controversial that it was too difficult for us to reach a consensus, other than the Fifth Edition. To leave the current language in the law would force us to go to the Sixth Edition at a future date, under the current law by July 1, 2009. This is not the best solution, but it is the solution that the parties can live with the best. Clearly, we are going to have to review this again. Most of the changes in each edition reflect the state of medicine, such as new types of diagnostic tools and treatment. Each edition, however, also appears to be clearly influenced by the parties, such as claimant representatives and insurance companies. We feel the Sixth Edition included more political decisions than health care decisions, which resulted in the controversy. We do not think the Sixth Edition is appropriate at this time.

Assemblyman Horne:

I was not aware there was a Sixth Edition.

Robert Ostrovsky:

The Sixth Edition has been published and is available.

Assemblyman Settlemeyer:

I remember the testimony that because of advances in technology, the Sixth Edition was superior. I agree with Mr. Badger's testimony back in 2003 on Assembly Bill 168 of the 72nd Session, that the most current edition is the best edition. I would like to address section 7, subsection 5, at page 8, where it refers to a stress test. *Nevada Revised Statutes* 616C.180 says "injury or disease caused by stress." What doctors are qualified to conduct stress tests?

Robert Ostrovsky:

To my knowledge there are two factors involved in stress claims. One is the stress injury has to happen under certain circumstances. The stress injury is diagnosed by a psychiatrist who determines that the individual needs treatment as a direct result of the stressful situation. That was very carefully crafted in language back in 1993 because there was an effort to include all stress claims. There was an agreement among the parties that it was inappropriate. If you fall and break your arm at work there is some stress involved. We do not cover that in Nevada and do not intend to cover it. A medical professional will make the determination. If the insured disagrees, then a judge will make the determination.

Ray Badger:

This law would apply to a very unusual situation. You have to have a single event causing extreme stress in times of danger. Statistically there are very few incidents at work when you are truly in danger. A robbery where a weapon was pointed at you, but you were not injured, might be a situation. There might be a time of danger when something falls from above and just misses you. Those are very unusual situations and must be proven by medical or psychiatric evidence. Again, you would have to have a medical doctor or a psychiatrist give their opinion that you have met the criteria of a stress claim. The law specifically says that nothing resulting from a personnel issue or dispute, such as if you are terminated, laid off, or disciplined about your job, can result in a compensable claim.

Assemblyman Settlemeyer:

It seems very subjective to me.

Assemblywoman Gansert:

I have the same problem as other members regarding the amendment because I do not know whether we can keep up with what the state of the art is in medicine, and surgeries change with the different technologies that are used. The most current edition would reflect the new, corresponding recovery times. I have a hard time with this bill given we would have to come back for a change if we wanted to go with a different edition to move forward.

Chairman Conklin:

Are there any additional questions for Mr. Ostrovsky? Would you like to add any comments, Mr. Badger?

Ray Badger:

I do not think there is a great cost to this bill. Mr. Jeffrey has taught me that you move inches not miles. I know I am biased, but I do not think there is a huge change in this bill.

John Jeffrey, Henderson, Nevada, representing Laborers International Union of North America #872, Las Vegas, Nevada; and International Union of Operating Engineers Local #12, Pasadena, California:

We are in agreement with the changes that were suggested and support the bill as amended. The Sixth Edition is a controversial document. There is plenty for both sides to disagree with, and I think that is what we concluded. I am not an expert in these matters, but my understanding is the "activities of daily living" language is what the businesses oppose. Businesses also oppose the expanded psychological treatment, and the cuts in PPD and vocational rehabilitation is what we oppose for the sake of the injured worker. If you review all of the pros and cons of the Sixth Edition, I do not see any good reason to worry about whether it is adopted or not. We did not want to lock anything in because the Legislature has the ability to change it in two years. Basically, the proposal is to leave everything where it is at the present time and review it in two years.

Sam McMullen, Las Vegas, Nevada, representing Nevada Self-Insurers Association, Las Vegas, Nevada:

We support this compromise regarding all of the workers' compensation issues in front of the Legislature and concur with all of the comments made. There is always a certain amount of new training when adopting a new edition, so we believe it is best to review it again in two years.

Chairman Conklin:

I commend all of your efforts and appreciate everyone's hard work on this issue.

Assemblyman Anderson:

It looks like a good piece of legislation and I appreciate it.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO
PASS SENATE BILL 195 (1st REPRINT).

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CHRISTENSEN,
GANSERT, AND SETTELMAYER VOTED NO. ASSEMBLYWOMAN
BUCKLEY WAS ABSENT FOR THE VOTE.)

Chairman Conklin:

We will turn our attention to Senate Bill 6 (1st Reprint).

Senate Bill 6 (1st Reprint): Revises provisions regarding occupational diseases of volunteer firefighters. (BDR 53-46)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document ([Exhibit D](#)).]

Chairman Conklin:

I think the cost of this bill was minimal or less.

ASSEMBLYMAN ANDERSON MOVED TO DO PASS SENATE BILL 6 (1st REPRINT).

ASSEMBLYMAN SETTELMAYER SECONDED THE MOTION.

Assemblyman Ocegüera:

These volunteer firefighters do such a good service for us and our country, especially in this state, where the majority of the firefighters are volunteers who are doing what I get paid to do. I think this is the least we can do by giving them the assurance that if they get heart disease due to their part-time service to the community, we will take care of it.

Assemblywoman Gansert:

I missed the hearing on this bill because I was gone. I want to know if there is a fiscal impact from this.

Chairman Conklin:

The testimony was that the fiscal impact is minimal because the language in the bill requires active status. The fiscal note was on the local government. The Chair will place the question.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND HORNE WERE ABSENT FOR THE VOTE.)

Senate Bill 184: Establishes provisions relating to broker's price opinions. (BDR 54-234)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document ([Exhibit E](#)).]

Chairman Conklin:

This is compromise language. We did not see this at first House passage, but had a similar bill that was sponsored by Assemblyman Christensen. There were two competing bills. I think the bill is good, and I also propose that we amend Assemblyman Christensen as a sponsor on the Assembly side. I have confirmed this with Senator Schneider who is the sponsor of this bill, and he is pleased to have this amended as well.

Assemblyman Anderson:

Could someone please explain the new language in section 1, subsection 2?

Chairman Conklin:

This is a list of things that a broker's price opinion can be used for. The broker's price opinion does not set the price, since the homeowner always does that. The homeowner can, however, use the broker's price opinion in determining what price he wants to set. However, the last item on the list clearly says that a broker's price opinion cannot be used in approving a home loan.

Assemblyman Anderson:

I cannot imagine someone selling a property without relying on his realtor's knowledge of the market in order to determine the value of the property.

Chairman Conklin:

Are there any questions from the Committee? Mr. Anderson has made a motion to amend and do pass the mock-up with the addition of Assemblyman Christensen being the Assembly sponsor.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
SENATE BILL 184.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND HORNE
WERE ABSENT FOR THE VOTE.)

[Senate Bill 72 \(1st Reprint\)](#): Authorizes a registered pharmacist or a registered intern pharmacist to perform certain screening tests. (BDR 54-376)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document ([Exhibit F](#)).]

Chairman Conklin:

I will entertain a motion on Senate Bill 72 (1st Reprint).

ASSEMBLYWOMAN MCCLAIN MOVED TO DO PASS
SENATE BILL 72 (1st REPRINT).

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND HORNE
WERE ABSENT FOR THE VOTE.)

[Senate Bill 89 \(1st Reprint\)](#): Makes various changes to the provisions governing
manufactured housing. (BDR 43-427)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document ([Exhibit G](#)).]

Chairman Conklin:

There was a mock-up provided in the Senate that was all-inclusive of everything you see in this exhibit plus the bill as we received it. It was passed, but when it came back from reprint, it was missing provisions that were in the mock-up. This is putting back into the bill what was originally agreed to, voted on in Committee, but not caught before the first House passage. Assemblyman Manendo, have your questions been resolved?

Assemblyman Manendo:

Yes, they have.

Chairman Conklin:

I will accept a motion on Senate Bill 89 (1st Reprint).

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
SENATE BILL 89 (1st REPRINT).

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND HORNE
WERE ABSENT FOR THE VOTE.)

Senate Bill 168 (1st Reprint): Revises provisions relating to prescription drugs.
(BDR 54-1011)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document ([Exhibit H](#)).]

Chairman Conklin:

This requires that the label on a prescription drug must contain a warning, a black box warning to read all of the details. The testimony was that the original black box warning was not written for patients; it was written for doctors. The problem is that some patients take a drug with a black box warning and are not aware of the precautions. This mock-up is based on that testimony and takes out the black box warning. If a prescription has a black box warning, the pharmacist will be required to at least inform them of the downside of the drug and advise them that they might want to have a person who is close to them watch out for some of the side effects. This would be more effective than asking someone to read the black box, but at the same time would encourage more communication, particularly on the drugs that potentially have significant harmful side effects.

Assemblyman Settlemeyer:

Can we add that the pharmacist must at least offer to talk with them? What if the patient refuses to be consulted? I suggest that we add, "must offer to communicate," or something along those lines.

Chairman Conklin:

Right now, as I understand it, the pharmacist is not obligated to offer, but they can offer. We want to make sure the pharmacist does offer to consult with the patient, but are you suggesting allowing the patient to decline the offer of consultation? That would be their free choice.

Assemblyman Settlemeyer:

If the patient is not interested in a consult, I think the pharmacist needs to have an obligation to at least try to inform them about the medication, but I am not sure "they must communicate" is good language.

Assemblywoman Kirkpatrick:

A good pharmacist will already try to explain the medication to you. Do I think this is going to change things in the future for the person who lost their child over this? No, but this is a step to bring awareness to the issue so that it may save a life in the future. There are no enforcements for this requirement. I do not have a problem with the bill as it is.

Assemblywoman Gansert:

Subsection 2 says you can provide communication with something in writing. So, if you could include language that notes "if you cannot do it in person or by phone," then I think it works.

Chairman Conklin:

Mr. Hillerby, can you come forward and clarify this for us?

Fred L. Hillerby, Reno, Nevada, representing Nevada State Board of Pharmacy, Reno, Nevada:

This bill is in response to an unfortunate circumstance where a person committed suicide and they did not get...

Chairman Conklin:

We got that. We just have specific questions. Is the language acceptable the way it is written to require a practitioner to warn the patient? Does it need to say, "must offer"? That way if the patient refuses, they are no longer obligated.

Fred Hillerby:

Are you asking if the pharmacist must offer to give the patient consultation, even if the patient declines the counseling?

Chairman Conklin:

You cannot force someone to listen to what you are about to tell them.

Fred Hillerby:

We require pharmacists to give patient counseling on any new drug that a patient gets. I am not sure that we need that protection from liability. I think the pharmacist is supposed to disclose that information. Even with the case of the black box label, I think it is important that patient counseling occur.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

My idea was that when you go to the pharmacy and decline the consult, you sign something that states that you declined consultation. The way the bill is written is that the pharmacist must communicate. How do you communicate to someone who does not want to be consulted?

Fred Hillerby:

You are right, there can be declination, but these kinds of drugs are in a different category. I agree that you cannot make someone listen. I am sure there can be some kind of language crafted to make it clear.

Assemblyman Atkinson:

If we are using the language "must," to me that means there has to be some kind of enforcement, and I do not know who can do that.

Chairman Conklin:

Enforcement is addressed in *Nevada Revised Statutes* (NRS) 639.310.

Assemblyman Atkinson:

That does not tell me who is going to enforce it.

Chairman Conklin:

If a legitimate complaint came forward it would be investigated by the Pharmacy Board, and there would then be a misdemeanor citation.

Fred Hillerby:

We would have to get a complaint before we would know the patient was not counseled. Then we would be in a position to take disciplinary action against the pharmacist who did not consult.

Assemblyman Atkinson:

Then the pharmacist is going to say, "I did consult the patient." It is subjective. Not only could he say he did; will he remember it? I have a problem with this.

Chairman Conklin:

When you pick up a prescription, do you check a box that says the pharmacist has told you about the drug?

Assemblyman Atkinson:

No. I go to Walgreens all the time and they do ask, but I do not want a good pharmacist to be penalized because he forgot to ask because he has 25 customers waiting in line.

Fred Hillerby:

I doubt, if it was only one instance, there would be serious discipline. There is a problem when you have a pattern of a pharmacist who is not consulting when he should be.

Assemblyman Atkinson:

I am not sure you can say that. I think it happens. I have an issue with this, Mr. Chairman.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

Would you take a motion to amend and do pass with the language "must offer to communicate to the patient"?

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

I think Assemblyman Settelmeyer has a good point, that it does not specify the black box label, but says a regular narcotic.

Chairman Conklin:

None of the black-box-labeled prescriptions are narcotics.

Assemblyman Anderson:

I appreciate the effort that has been put forward for this piece of legislation based on tragic circumstances, but I do not believe this solves that particular problem. I think we are putting into place what reputable pharmacists have long adopted as their current practice. Physicians who communicate with their patients have to clearly monitor and make other people aware of the drug they are taking. It is a very sensitive issue; however, I do not believe this helps the patient or the other groups that we are trying to reach. I have a hard time putting this additional burden on anyone.

Chairman Conklin:

We will take this back to Committee.

Fred Hillerby:

This was not the Pharmacy Board's bill. We were trying to help, and I hope we did not confuse the issue. The notion initially was to put one more label on a prescription bottle. Soon you will need a quart-sized jar for your 20-pill prescription in order to have enough space for all the labels.

Chairman Conklin:

We are going to pull Senate Bill 193 from the agenda. We will now move to Senate Bill 227 (1st Reprint).

Senate Bill 227 (1st Reprint): Revises certain provisions concerning identity theft. (BDR 52-72)

Dave Ziegler, Committee Policy Analyst:
[Spoke from work session document ([Exhibit I](#)).]

Chairman Conklin:

Assemblywoman Kirkpatrick, since you worked on this bill, would you like to add information about this bill?

Assemblywoman Kirkpatrick:

There were 19 people involved in the conversation and as it was explained, the reason the mobile companies were having problems is that a lot of their data transfers and does not go into storage. We addressed everyone's concerns, cut out the 65 amendments, and determined which one should be left in. The Payment Card Industry (PCI) national standard, which I had concerns about, changes at different times and is a standard from the industry itself, to protect the encryption of the numbers. I would like it on record that when the new standards come out, you would still be within the safe harbor if you did not adopt the new standards the next day, which is indicated in the first part of the bill where it says "shall" stay up with the standards. There were a lot of individuals who had questions about how much time they had to comply when the standards changed. All issues were addressed. Senator Wiener requested that any other amendments come forward today. So what is here is what has been worked out by the industry and Senator Weiner has agreed to it.

Assemblyman Anderson:

Will this lessen any of these groups' responsibility in terms of encrypting or keeping confidential elements? Are we giving them carte blanche not to keep the same standards of behavior for the protection of the public interest?

Assemblywoman Kirkpatrick:

They are being held to the highest standard. There was a last minute amendment that would have cut them out and put peoples' identities in harm's way—which was not accepted.

Assemblyman Anderson:

I think that was ensured because of the national encrypted standards being utilized as the baseline.

Assemblywoman Kirkpatrick:

Correct.

Chairman Conklin:

Are there any other questions?

Assemblywoman Gansert:

Does the industry set the date for compliance?

Assemblywoman Kirkpatrick:

They have workshops and the industry is involved throughout the whole process, so they set the date. As a similar example, the State of Nevada adopted the 2.1 Leadership in Energy and Environmental Design (LEED) Standards, whereas the current LEED standards are 2.6; but if you are at 2.1, you are still in compliance.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
SENATE BILL 227 (1st REPRINT).

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND HORNE
WERE ABSENT FOR THE VOTE.)

Chairman Conklin:

Mr. Ziegler, can we please take up Senate Bill 230 (1st Reprint)?

Senate Bill 230 (1st Reprint): Revises provisions governing certain licenses issued by the Real Estate Division of the Department of Business and Industry. (BDR 54-864)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document ([Exhibit J](#)).]

Chairman Conklin:

This seems fairly reasonable. The Real Estate Division is asking for this technical amendment to reflect that the fees not be more than doubled.

Assemblywoman Kirkpatrick:

Under Rule 23, I would like to disclose that my sister is a realtor.

Chairman Conklin:

Are there any questions from the Committee?

ASSEMBLYMAN SETTELMAYER MOVED TO AMEND AND DO
PASS SENATE BILL 230 (1st REPRINT).

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND OCEGUERA WERE ABSENT FOR THE VOTE.)

Senate Bill 252 (1st Reprint): Revises provisions relating to solicitations of charitable donations. (BDR 52-843)

Dave Ziegler, Committee Policy Analyst:
[Spoke from work session document ([Exhibit K](#)).]

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Anderson:
Why are peace officers and professional firefighters specifically listed in this bill as compared to other groups?

Chairman Conklin:
When we heard this bill there was some question as to whether or not you could do this and whether you were capturing people who did not want to be captured in the bill. The Legal Division has advised me that they believe the language in this bill is sound and defensible. This particular amendment was brought forth by the organizations listed as a way to say: if you do not want to go all the way—I think we should do without the amendment—and you are fearful that other organizations are listed but do not want to be, you could draft it this way, as an option. I am personally fine with it in its original form.

Assemblyman Anderson:
That is the reason I asked the question.

Assemblywoman Kirkpatrick:
As I am on the phone many times for nonprofits, I wanted to understand how I would disclose all the requirements, but Legal assured me that I do not have to disclose my personal address if I am making phone calls from home. I only need to disclose the address of the nonprofit organization. Therefore, I am fine with the bill in its original form.

Assemblyman Settlemeyer:
I still think you are going to be affecting only Nevada-based businesses, and are not going to seriously reduce the number of problematic phone calls from out of the area, because they do not have to obey our law. This is similar to a bill we

had last session. In that respect, I think it is unduly burdensome to Nevada corporations, so I will be voting no.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

I also make phone calls for nonprofit organizations. Does this extend to anyone who is making calls to help an organization?

Assemblywoman Kirkpatrick:

I had that same concern, but I typically have my own list of who I am calling, so I would not necessarily be in violation because it would be my list. What happens with a lot of nonprofits is they sell lists and then set up call centers to make the calls.

Chairman Conklin:

Assemblywoman Gansert, does that answer your question?

Assemblywoman Gansert:

I do not see where it says you have to have a call list provided by anyone. It looks to me that if you call on behalf of any organization, you are supposed to disclose the information, whether it is your list or their list.

Chairman Conklin:

So right now, if this bill was to pass and you were making a call, you would have to say your full name, and state: "I am calling on behalf of Nevada Partnership for Homeless Youth. We are an organization housed in the State of Nevada, and we help homeless kids." Is that too onerous?

Assemblywoman Kirkpatrick:

If I know what state they are calling from, it might shorten the call because if I get a phone call from New Jersey, I might wait and contribute to a nonprofit from Nevada. I find when I get those calls, it is hard to find out what area they are from. I was one of the most opposed on this, but after doing more research, I am much more comfortable with it.

Assemblywoman Gansert:

I appreciate the intent of the bill, but I still think it captures everyone. I do not know if it can be narrowed or not. Organizations call trying to solicit money, you really do not know who they are, and they mislead you into believing they are a local police officer's organization. I do not want to pick up all individuals who are going to be calling on behalf of their schools and churches—making

personal phone calls—versus making solicitations from an organization that does solicitations.

Chairman Conklin:

First of all, you have to be a charitable or nonprofit organization, or established for a bona fide religious purpose. Charitable is not school, and nonprofit is not school.

Assemblywoman McClain:

The language is, "on behalf of a charitable or nonprofit organization which is established for the benefit of peace officers or professional firefighters." It does not say anything about Girl Scouts or schools.

Chairman Conklin:

That is actually the amendment. We are debating whether we like the bill and the amendment, or is there a better solution? We all agree there is a potential problem of people not disclosing when we think they should. The question is, is this too broad?

Assemblywoman McClain:

The other problem is the amendment says for "peace officers or professional firefighters." There are also questionable organizations that represent themselves as veterans' organizations.

Chairman Conklin:

We are debating not accepting the green language on lines 6 and 7 and accepting the original bill. Everyone is of the opinion that if we do it, it should be good for everybody. Are there any questions from the Committee?

Assemblyman Settlemeyer:

If my local Veterans of Foreign Wars (VFW) calls trying to get donations and they forget to give the required information, would they be in violation? Are we still dealing with penalties where the first call is a misdemeanor, the second is a gross misdemeanor, and the third is a felony? That would mean if they call five people, all of a sudden they are a felon.

Chairman Conklin:

The reality is, if your VFW office calls and says, "I am the VFW down the street in Gardnerville", they just gave you all the information they are required to. The only other thing they have to do is disclose whether they are paid or not, and I doubt seriously that any paid people would be calling.

Assemblyman Anderson:

I still have a certain level of discomfort with the bill. The phrase, "The state in which the organization was formed," could have two different meanings. One could be Boy Scouts of America that came out of England—the principal headquarters. Or it could be the VFW in your town as compared to the VFW someplace else. I think the intent of the bill is correct, that we want to know if this is a worthy organization before we allow them to solicit on the telephone, but I think if we are going to ask organizations to be required to add this to the introductory statement, we want to be as clear as possible so that they are not giving somebody deceptive information.

Chairman Conklin:

Is the issue that we do not like to disclose, or is the issue the volunteer? If you are getting paid to do this, you need to disclose all the information. If you are a volunteer who is going to volunteer to collect money that they...

Assemblywoman Gansert:

I agree with you that the issue is solicitation and whether you are paid to solicit funds for an organization, versus someone who volunteers to do it.

Chairman Conklin:

Mr. Yu, could we just say, "a person paid to conduct or execute a solicitation on behalf of any of these organizations," and leave out the firefighters and others? If we clean up the language to comply with that, it does not capture volunteers; it only captures individuals who are paid to solicit for these folks, in which case we want you to disclose certain information. How can a person volunteering be covered under deceptive trade practices?

Dan Yu, Committee Counsel:

I do not think there would be any drafting or legal problems with bifurcating or splitting out the difference between the person who is doing it for pecuniary gain or for compensation and somebody who is doing it on a volunteer basis. I do not see any obstacles in drafting it in that manner.

Chairman Conklin:

Would anyone like to make a motion?

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS SENATE BILL 252 (1st REPRINT) STRIKING LINES 6 AND 7 OF THE MOCK-UP AND ADDING LANGUAGE AT LINE 4 TO REFLECT THAT A PAID SOLICITOR WOULD HAVE TO DISCLOSE REQUIRED INFORMATION.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

Chairman Conklin:

Are there any questions on the motion?

Assemblyman Christensen:

My colleague has informed me that we have moved past comment. If so, I will respect that.

Chairman Conklin:

No, we are in discussion.

Assemblyman Christensen:

I try to save my comments for a time when I really want to share. I respectfully am in a completely different position on this bill than you are, Mr. Chairman. We are saying that if someone is paid they must disclose, and that puts us in a spot where we are legislating speech, and I do not feel this is the role of government. I feel we are trying to protect our constituents, where some people are trying to take advantage of the vulnerable. Rather than passing this bill, we would get further with a resolution encouraging people to be smart with their money before they write a check. They need to do their homework to find out who they are talking to on the phone to determine if the group is legitimate. If so, then write a check. I will definitely be a no.

Chairman Conklin:

Mr. Yu, did you want to get something on the record?

Dan Yu, Committee Counsel:

I would like to say, for the record, that I completely understand Assemblyman Christensen's concerns, especially when this bill is about a very touchy subject, an issue of First Amendment speech rights. As we all remember, the American Civil Liberties Union (ACLU) was here to present testimony on that very topic. I have reviewed the case law that the ACLU presented to us. It is the opinion of our office that this bill as it is currently drafted in the original form would not violate any constitutional provisions. Secondly, ultimately the decision as to whether or not this would be okay as proposed in the amendatory form by Assemblywoman Kirkpatrick would have to be approved by the Legislative Counsel. However, personally, as of right now, I do not think that there is a constitutional issue that we would be in violation of.

Chairman Conklin:

Are there any other questions on the motion?

THE MOTION PASSED. (ASSEMBLYMEN CHRISTENSEN, GOEDHART, AND SETTELMAYER VOTED NO. ASSEMBLYMEN BUCKLEY AND OCEGUERA WERE ABSENT FOR THE VOTE.)

Senate Bill 288 (1st Reprint): Revises provisions relating to occupational safety and health. (BDR 53-163)

Dave Ziegler, Committee Policy Analyst:
[Spoke from work session document ([Exhibit L](#)).]

Chairman Conklin:
Are there any questions from the Committee?

ASSEMBLYMAN HORNE MOVED TO DO PASS
SENATE BILL 288 (1st REPRINT).

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CHRISTENSEN, GANSERT, GOEDHART, AND SETTELMAYER VOTED NO. ASSEMBLYMEN BUCKLEY AND OCEGUERA WERE ABSENT FOR THE VOTE.)

Senate Bill 361 (1st Reprint): Revises provisions relating to employee leasing companies. (BDR 53-1125)

Dave Ziegler, Committee Policy Analyst:
[Spoke from work session document ([Exhibit M](#)).]

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Christensen:
Is the \$500 renewal fee an increase?

Chairman Conklin:
Ms. Foley, can you come and clarify this for us?

Helen Foley, Las Vegas, Nevada, representing National Association of Professional Employers Organization, Alexandria, Virginia:
This is an increase that has been agreed to and requested by the Employee Leasing Companies.

Assemblyman Christensen:

Where does the \$500 fee go to?

Helen Foley:

We knew there would be additional work for the Division of Industrial Relations (DIR) because of having a master policy.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

It looks like it is a new fee. Is this an additional fee to what they are already paying?

Helen Foley:

There was a \$500 fee already, so this would be an additional fee.

Assemblywoman Gansert:

Are they paying the \$500 twice?

Helen Foley:

Yes.

Chairman Conklin:

We will pull this back to Committee.

Assemblyman Horne:

I would appreciate clarification from Mr. Yu regarding sections 7 and 8.

Dan Yu, Committee Counsel:

In reviewing sections 7 and 8 of this bill, I notice that you are correct. There seems to be some redundancy, and in fact it looks like section 7 is trying to amend *Nevada Revised Statutes* (NRS) 616B.679, as is section 8. I am not entirely sure why this is being repeated in separate sections, so I will have to double check with Legislative Counsel and the drafter of this bill to see if I am missing the intent or if there is an oversight. Unfortunately, I cannot answer your question at this point.

Assemblyman Horne:

It also would be helpful if Ms. Foley could check with her client to determine whether they meant to double the obligation of registration and renewal fees.

Chairman Conklin:

I have already pulled this back to Committee, Ms. Foley; so before I bring this back, I would suggest that you connect with a few folks that have questions. That is not a guarantee that I will bring it up again. Are there any questions from the Committee?

[Meeting adjourned at 3:26 p.m.]

RESPECTFULLY SUBMITTED:

Karen Fox
Committee Secretary

Denise Sins
Editing Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 13, 2009

Time of Meeting: 1:39 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
SB 195(R1)	C	Dave Ziegler, Policy Analyst	Work Session Documents
SB 6(R1)	D	Dave Ziegler, Policy Analyst	Work Session Documents
SB 184	E	Dave Ziegler, Policy Analyst	Work Session Documents
SB 72(R1)	F	Dave Ziegler, Policy Analyst	Work Session Documents
SB 89(R1)	G	Dave Ziegler, Policy Analyst	Work Session Documents
SB 168(R1)	H	Dave Ziegler, Policy Analyst	Work Session Documents
SB 227(R1)	I	Dave Ziegler, Policy Analyst	Work Session Documents
SB 230(R1)	J	Dave Ziegler, Policy Analyst	Work Session Documents
SB 252(R1)	K	Dave Ziegler, Policy Analyst	Work Session Documents
SB 288(R1)	L	Dave Ziegler, Policy Analyst	Work Session Documents
SB 361(R1)	M	Dave Ziegler, Policy Analyst	Work Session Documents