

THE FIFTY-SEVENTH DAY

CARSON CITY (Monday), April 4, 2011

Senate called to order at 11:12 a.m.

President Pro Tempore Schneider presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Larry Unterseher.

Almighty God, humbly we pray for power from heaven, that for this day, You will give these dedicated women and men wisdom, strength and skill to do their appointed tasks.

We pray they will not grow weary in doing good, even when meetings are many and long and the labor seems thankless.

Help each of these willing servants to both protect this State we love and to help move her people forward in the continuing quest of making Nevada the greatest State in the Nation.

We pray these things in Your most Holy and precious Name.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce, Labor and Energy, to which were referred Senate Bills Nos. 207, 208, 242, 289, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Commerce, Labor and Energy, to which was referred Senate Bill No. 117, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL A. SCHNEIDER, *Chair*

Mr. President:

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 301, 337, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which were referred Senate Bills Nos. 27, 97, 114, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Health and Human Services, to which were referred Senate Bills Nos. 423, 429, 437, 447, 452, 471, 480, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Finance.

ALLISON COPENING, *Chair*

Mr. President:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 6, 25, 29, 67, 72, 89, 101, 222, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

VALERIE WIENER, *Chair*

Mr. President:

Also, your Committee on Natural Resources, to which were referred Senate Joint Resolutions Nos. 3, 4, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Your Committee on Natural Resources, to which was referred Senate Bill No. 119, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK A. MANENDO, *Chair*

Mr. President:

Your Committee on Revenue, to which were referred Senate Bills Nos. 13, 34, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

SHEILA LESLIE, *Chair*

MESSAGES FROM THE GOVERNOR
OFFICE OF THE GOVERNOR

April 4, 2011

THE HONORABLE ASSEMBLYMAN JOHN OCEGUERA

Legislative Building, 401 S. Carson Street, Carson City, Nevada 89701

RE: Assembly Bill No. 183 of the 76th Legislative Session

DEAR SPEAKER OCEGUERA:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill No. 183, which is entitled.

AN ACT relating to school districts; revising the provisions regarding the establishment and maintenance of a reserve account for payment of the outstanding bonds of a school district; and providing other matters properly relating thereto.

This bill relates to the maintenance of reserve accounts established to support the repayment of school bonds. It proposes to reduce the amount of money held in those accounts in order to facilitate school improvements. Supporters of the bill assert that it will result not only in an improved educational environment for the State's children, but in an increased number of construction jobs as well.

The bill has merit; a quality educational environment is important to the success of our students, and our State has far too many unemployed construction workers. But the condition of our schools and the struggles of the construction industry are not the only challenges we confront. Indeed, with an unemployment rate of 13.6 percent and the Nation's worst graduation rates, rarely has our State been so severely tested. In the face of such difficulty, we cannot afford to be parochial. Instead, we must pursue policies that present the greatest chance of success to the greatest number of Nevadans.

Improving the quality of instruction our children receive and fostering the success of workers across our economy are essential steps in moving the State forward. Because this bill makes it harder to do these things, I will veto it. In appropriating bond reserve money for construction, proponents of the bill have reduced the amount of funds available for classroom instruction by approximately \$301 million. Along the way, they have misleadingly cited those who voted for the issuance of school bonds in the past as supporting their cause today, unfairly attributing to them their narrow view. What is more, they have failed to provide an accounting of the cost of this bill.

If these reductions stand, they will necessarily result in deeper cuts—cuts that will cost over 5,000 teachers their jobs. Alternatively Assembly Bill No. 183 will require a new tax at a point when our economy is presenting limited but promising signs of recovery. This bill justifies neither choice. I therefore exercise my constitutional grant of authority to veto Assembly Bill No. 183, and return the bill to you without my signature.

Sincere regards,
BRIAN SANDOVAL
Governor of Nevada

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, March 31, 2011

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 53.

MATTHEW BAKER

Assistant Chief Clerk of the Assembly

ASSEMBLY CHAMBER, Carson City, April 1, 2011

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bills Nos. 113, 174, 201.

MATTHEW BAKER

Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Copening moved that Senate Bills Nos. 423, 429, 437, 447, 452, 471, 480 be re-referred to the Committee on Finance.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 53.

Senator Wiener moved that the bill be referred to the Committee on Transportation.

Motion carried.

Assembly Bill No. 113.

Senator Wiener moved that the bill be referred to the Committee on Education.

Motion carried.

Assembly Bill No. 174.

Senator Wiener moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Assembly Bill No. 201.

Senator Wiener moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 63.

Bill read second time.

The following amendment was proposed by the Committee on Commerce, Labor and Energy:

Amendment No. 22.

"SUMMARY—Revises provisions relating to industrial insurance and the Uninsured Employers' Claim Account. (BDR 53-476)"

"AN ACT relating to industrial insurance; establishing provisions for the collection of certain amounts owed to the Division of Industrial Relations of

the Department of Business and Industry for payments from the Uninsured Employers' Claim Account; revising provisions governing the penalty for failure to provide mandatory industrial insurance; prohibiting certain conduct by persons who fail to pay certain amounts owed to the Division; ~~for payments from the Uninsured Employers' Claim Account; providing a penalty;~~ and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Sections 1 and 5 of this bill establish a process whereby the Division of Industrial Relations of the Department of Business and Industry may apply for the entry of summary judgment against an employer who fails to pay to the Division an amount owed for payments from the Uninsured Employers' Claim Account which were paid on behalf of that employer. **Sections 1 and 5** also provide that, upon entry of summary judgment, the Division may record the summary judgment with the recorder of any county and the judgment constitutes a lien against all real and personal property of the employer that is located in the county. The duration of the lien is 6 years, and the lien may be extended for additional 6-year periods. **Section 7** of this bill provides that the provisions of **sections 1 and 5** apply to certain amounts owed to the Division on or after July 1, 2011.

Existing law provides general penalties for failure to comply with the provisions of law governing the provision of industrial insurance, including, without limitation, the imposition of an administrative fine of not more than \$15,000 for failure to provide and maintain mandatory coverage. (NRS 616D.120, 616D.200) **Section 2** of this bill deletes a redundant provision that authorized the imposition of an administrative fine of \$10,000 against an employer who failed to provide such coverage.

Section 4 of this bill prohibits the owner of a business that owes money to the Division for **certain unpaid administrative fines, benefit penalties, unpaid premiums or interest or** payments from the Uninsured Employers' Claim Account from becoming, or inducing or procuring another person to become, the owner of a similar business and prohibits a person from knowingly aiding or abetting such conduct. ~~A violation is punishable as a gross misdemeanor, and in addition, the~~ person who commits ~~the~~ **such a** violation is liable for the costs associated with investigating and acting upon that conduct. **Section 4 also revises provisions which prohibit a private carrier from knowingly insuring any business which engages in such conduct by expanding the prohibition to apply to the following insurers: (1) a self-insured employer; (2) an association of self-insured public employers; (3) an association of self-insured private employers; and (4) a private carrier.**

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this subsection, if an employer fails to pay to the Division any amount due pursuant to NRS 616C.220, the Division may, after the date on which the debt became due, file with the office of the clerk of a court of competent jurisdiction an application for the entry of summary judgment against the employer for the amount due. The Division may not ~~file an application for the entry of summary~~ enforce a judgment against an employer if an appeal requested by the employer pursuant to NRS 616C.220 is pending.

2. If the Division intends to file an application for the entry of summary judgment, the Division shall, not less than 15 days before the date on which the application is filed, notify the employer of the Division's intention to file the application. The notification must be sent by certified mail to the last known address of the employer and must include the name of the employee for whom the claim was paid, the amount sought to be recovered and the date on which the application will be filed with the court.

3. An application for the entry of summary judgment must:

(a) Be accompanied by a certificate which specifies:

- (1) The amount owed by the employer, including any attorney's fees, interest and administrative costs due;
- (2) The name and address of the employer; and
- (3) That the Division has complied with the applicable provisions of law relating to the determination of the amount required to be paid; and

(b) Include:

- (1) A request that judgment be entered against the employer for the amount specified in the certificate; and
- (2) Evidence that the employer was notified of the application for the entry of summary judgment in accordance with subsection 2.

4. The court clerk, upon the filing of an application for the entry of summary judgment which complies with the requirements set forth in this section, shall forthwith enter a judgment against the employer in the amount of the debt, plus any attorney's fees, interest and administrative costs, as set forth in the certificate. The Division shall serve a copy of the judgment, together with a copy of the application and the certificate, upon the employer against whom the judgment is entered, either by personal service or by mailing a copy to the last known address of the employer.

5. An abstract of the judgment entered pursuant to subsection 4, or a copy thereof, may be recorded in the office of the county recorder of any county.

6. From the time of its recordation, the judgment constitutes a lien upon all real and personal property situated in the county that is owned by the employer, or which the employer may afterward acquire, until the lien expires. The lien has the force, effect and priority of a judgment lien and continues for 6 years after the date of the judgment so entered by the court clerk unless sooner released or otherwise discharged.

7. Within 6 years after the date of the recording of the judgment or within 6 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by recording an affidavit of renewal in the office of the county recorder. From the date of recording, the lien is extended for 6 years to all real and personal property situated in the county that is owned by the employer or acquired by the employer afterwards, unless the lien is sooner released or otherwise discharged.

Sec. 2. NRS 616C.220 is hereby amended to read as follows:

616C.220 1. The Division shall designate one:

(a) Third-party administrator who has a valid certificate issued by the Commissioner pursuant to NRS 683A.085; or

(b) Insurer, other than a self-insured employer or association of self-insured public or private employers,

↳ to administer claims against the Uninsured Employers' Claim Account. The designation must be made pursuant to reasonable competitive bidding procedures established by the Administrator.

2. Except as otherwise provided in this subsection, an employee may receive compensation from the Uninsured Employers' Claim Account if:

(a) The employee was hired in this State or is regularly employed in this State;

(b) The employee suffers an accident or injury which arises out of and in the course of his or her employment:

(1) In this State; or

(2) While on temporary assignment outside the State for not more than 12 months;

(c) The employee files a claim for compensation with the Division; and

(d) The employee makes an irrevocable assignment to the Division of a right to be subrogated to the rights of the injured employee pursuant to NRS 616C.215.

↳ An employee who suffers an accident or injury while on temporary assignment outside the State is not eligible to receive compensation from the Uninsured Employers' Claim Account unless the employee has been denied workers' compensation in the state in which the accident or injury occurred.

3. If the Division receives a claim pursuant to subsection 2, the Division shall immediately notify the employer of the claim.

4. For the purposes of this section ~~††~~ **and section 1 of this act**, the employer has the burden of proving that the employer provided mandatory industrial insurance coverage for the employee or that the employer was not required to maintain industrial insurance for the employee.

5. Any employer who has failed to provide mandatory coverage required by the provisions of chapters 616A to 616D, inclusive, of NRS is liable for all payments made on behalf of the employer, including any benefits, administrative costs or attorney's fees paid from the Uninsured Employers' Claim Account or incurred by the Division.

6. The Division:

(a) May recover from the employer the payments made by the Division that are described in subsection 5 and any accrued interest by bringing a civil action or filing an application for the entry of summary judgment pursuant to section 1 of this act in a court of competent jurisdiction. For the purposes of this paragraph, the payments made by the Division that are described in subsection 5 are presumed to be:

- (1) Justified by the circumstances of the claim;
- (2) Made in accordance with applicable law; and
- (3) Reasonable and necessary.

(b) In any civil action ~~brought~~ or application for the entry of summary judgment filed pursuant to section 1 of this act against the employer, is not required to prove that negligent conduct by the employer was the cause of the employee's injury.

(c) May enter into a contract with any person to assist in the collection of any liability of an uninsured employer.

(d) In lieu of a civil action ~~or~~ or filing an application for the entry of summary judgment pursuant to section 1 of this act, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

7. The Division shall:

(a) Determine whether the employer was insured within 30 days after receiving notice of the claim from the employee.

(b) Assign the claim to the third-party administrator or insurer designated pursuant to subsection 1 for administration and payment of compensation.

↳ Upon determining whether the claim is accepted or denied, the designated third-party administrator or insurer shall notify the injured employee, the named employer and the Division of its determination.

8. Upon demonstration of the:

(a) Costs incurred by the designated third-party administrator or insurer to administer the claim or pay compensation to the injured employee; or

(b) Amount that the designated third-party administrator or insurer will pay for administrative expenses or compensation to the injured employee and that such amounts are justified by the circumstances of the claim,

↳ the Division shall authorize payment from the Uninsured Employers' Claim Account.

9. Any party aggrieved by a determination made by the Division regarding the assignment of any claim made pursuant to this section may appeal that determination by filing a notice of appeal with an appeals officer within 30 days after the determination is rendered. The provisions of NRS 616C.345 to 616C.385, inclusive, apply to an appeal filed pursuant to this subsection.

10. Any party aggrieved by a determination to accept or to deny any claim made pursuant to this section or by a determination to pay or to deny the payment of compensation regarding any claim made pursuant to this section may appeal that determination, within 70 days after the determination

is rendered, to the Hearings Division of the Department of Administration in the manner provided by NRS 616C.305 and 616C.315.

11. All insurers shall bear a proportionate amount of a claim made pursuant to chapters 616A to 616D, inclusive, of NRS, and are entitled to a proportionate amount of any collection made pursuant to this section as an offset against future liabilities.

12. An uninsured employer is liable for the interest on any amount paid on his or her claims from the Uninsured Employers' Claim Account. The interest must be calculated at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the claim, plus 3 percent, compounded monthly, from the date the claim is paid from the account until payment is received by the Division from the employer.

13. Attorney's fees recoverable by the Division pursuant to this section must be:

(a) If a private attorney is retained by the Division, paid at the usual and customary rate for that attorney.

(b) If the attorney is an employee of the Division, paid at the rate established by regulations adopted by the Division.

↪ Any money collected must be deposited to the Uninsured Employers' Claim Account.

14. ~~In addition to any other liabilities provided for in this section, the Administrator may impose an administrative fine of not more than \$10,000 against an employer if the employer fails to provide mandatory coverage required by the provisions of chapters 616A to 616D, inclusive, of NRS.~~

~~15.~~ If the Division *has not obtained a civil judgment or an entry of summary judgment pursuant to section 1 of this act and the Division* assigns a debt that arises under this section to the State Controller for collection pursuant to NRS 353C.195, the State Controller may bring an action in his or her own name in a court of competent jurisdiction to recover any amount that the Division is authorized to recover pursuant to this section.

Sec. 3. NRS 616D.200 is hereby amended to read as follows:

616D.200 1. If the Administrator finds that an employer within the provisions of NRS 616B.633 has failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS or that the employer has provided and secured that compensation but has failed to maintain it, the Administrator shall make a determination thereon and may charge the employer an amount equal to the sum of:

(a) The premiums that would otherwise have been owed to a private carrier pursuant to the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS, as determined by the Administrator based upon the manual rates adopted by the Commissioner, for the period that the employer

was doing business in this State without providing, securing or maintaining that compensation, but not to exceed 6 years; and

(b) Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid.

➔ The money collected pursuant to this subsection must be paid into the Uninsured Employers' Claim Account.

2. The Administrator shall deliver a copy of his or her determination to the employer. An employer who is aggrieved by the determination of the Administrator may appeal from the determination pursuant to subsection 2 of NRS 616D.220.

3. Any employer within the provisions of NRS 616B.633 who fails to provide, secure or maintain compensation as required by the terms of chapters 616A to 616D, inclusive, or chapter 617 of NRS, shall be punished as follows:

(a) Except as otherwise provided in paragraph (b), if it is a first offense, for a misdemeanor.

(b) If it is a first offense and, during the period the employer was doing business in this State without providing, securing or maintaining compensation, one of his or her employees suffers an injury arising out of and in the course of his or her employment that results in substantial bodily harm to the employee or the death of the employee, for a category C felony punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years and by a fine of not less than \$1,000 nor more than \$50,000.

(c) If it is a second or subsequent offense committed within 7 years after the previous offense, for a category C felony punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years and by a fine of not less than \$1,000 nor more than \$50,000.

4. In addition to any other penalty imposed pursuant to paragraph (b) or (c) of subsection 3, the court shall order the employer to:

(a) Pay restitution to an insurer who has incurred costs as a result of the violation in an amount equal to the costs that have been incurred minus any costs incurred that have otherwise been recovered; and

(b) Reimburse the Uninsured Employers' Claim Account for all payments made from the account on the employer's behalf, including any benefits, administrative costs or attorney's fees paid from the account, that have not otherwise been recovered pursuant to NRS 616C.220 ~~††~~ **or 617.401, or included in a civil judgment or a summary judgment entered pursuant to section 1 or 5 of this act.**

5. Any criminal penalty imposed pursuant to subsections 3 and 4 must be in addition to the amount charged pursuant to subsection 1.

Sec. 4. NRS 616D.210 is hereby amended to read as follows:

616D.210 1. Any person who:

(a) Is the legal or beneficial owner of 25 percent or more of a business which terminates operations while owing a premium, interest or penalty to a private carrier and becomes, or induces or procures another person to become, the legal or beneficial owner of 25 percent or more of a new business engaging in similar operations; or

(b) Knowingly aids or abets another person in carrying out such conduct, ➔ is liable in a civil action for the payment of any premium, interest and penalties owed to the private carrier and the reasonable costs incurred by the private carrier to investigate and act upon such conduct.

2. ~~The~~ **Any person who:**

(a) ***Is the legal or beneficial owner of 25 percent or more of a business which terminates operations while owing money to the Division for any unpaid administrative fine imposed or benefit penalty ordered pursuant to NRS 616D.120, unpaid premium or interest charged pursuant to NRS 616D.200 or payments made from the Uninsured Employers' Claim Account pursuant to NRS 616C.220 or 617.401, including attorney's fees, administrative costs, interest or penalties, and becomes, or induces or procures another person to become, the legal or beneficial owner of 25 percent or more of a new business engaging in similar operations; or***

(b) ***Knowingly aids or abets another person in carrying out such conduct, ➔ ~~is guilty of a gross misdemeanor and, in addition,~~ is liable for the payment of any amount owed to the Division and the reasonable costs incurred by the Division to investigate and act upon such conduct.***

3. ~~A private carrier~~ ***An insurer*** shall not knowingly insure any business which engages in the conduct described in ~~subsection~~ :

(a) ***Subsection 1*** unless the premium and any interest and penalties owed to the prior insurer have been paid to that insurer ~~+~~
—3—; or

(b) ***Subsection 2*** unless the amount due the Division pursuant to ***NRS 616C.220, 616D.120, 616D.200 or 617.401, including any attorney's fees, administrative costs, interest and penalties, has been paid to the Division.***

4. As used in this section, "business" includes, but is not limited to, a firm, sole proprietorship, general or limited partnership, voluntary association or private corporation.

Sec. 5. Chapter 617 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ***Except as otherwise provided in this subsection, if an employer fails to pay to the Division any amount due pursuant to NRS 617.401, the Division may, after the date on which the debt became due, file with the office of the clerk of a court of competent jurisdiction an application for the entry of summary judgment against the employer for the amount due. The Division may not ~~file an application for the entry of summary~~ enforce a judgment against an employer if an appeal requested by the employer pursuant to NRS 617.401 is pending.***

2. *If the Division intends to file an application for the entry of summary judgment, the Division shall, not less than 15 days before the date on which the application is filed, notify the employer of the Division's intention to file the application. The notification must be sent by certified mail to the last known address of the employer and must include the name of the employee for whom the claim was paid, the amount sought to be recovered and the date on which the application will be filed with the court.*

3. *An application for the entry of summary judgment must:*

(a) *Be accompanied by a certificate which specifies:*

(1) *The amount owed by the employer, including any attorney's fees, interest and administrative costs due;*

(2) *The name and address of the employer; and*

(3) *That the Division has complied with the applicable provisions of law relating to the determination of the amount required to be paid; and*

(b) *Include:*

(1) *A request that judgment be entered against the employer for the amount specified in the certificate; and*

(2) *Evidence that the employer was notified of the application for the entry of summary judgment in accordance with subsection 2.*

4. *The court clerk, upon the filing of an application for the entry of summary judgment which complies with the requirements set forth in this section, shall forthwith enter a judgment against the employer in the amount of the debt, plus any attorney's fees, interest and administrative costs, as set forth in the certificate. The Division shall serve a copy of the judgment, together with a copy of the application and the certificate, upon the employer against whom the judgment is entered, either by personal service or by mailing a copy to the last known address of the employer.*

5. *An abstract of the judgment entered pursuant to subsection 4, or a copy thereof, may be recorded in the office of the county recorder of any county.*

6. *From the time of its recordation, the judgment constitutes a lien upon all real and personal property situated in the county that is owned by the employer, or which the employer may afterward acquire, until the lien expires. The lien has the force, effect and priority of a judgment lien and continues for 6 years after the date of the judgment so entered by the court clerk unless sooner released or otherwise discharged.*

7. *Within 6 years after the date of the recording of the judgment or within 6 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by recording an affidavit of renewal in the office of the county recorder. From the date of recording, the lien is extended for 6 years to all real and personal property situated in the county that is owned by the employer or acquired by the employer afterwards, unless the lien is sooner released or otherwise discharged.*

Sec. 6. NRS 617.401 is hereby amended to read as follows:

617.401 1. The Division shall designate one:

(a) Third-party administrator who has a valid certificate issued by the Commissioner pursuant to NRS 683A.085; or

(b) Insurer, other than a self-insured employer or association of self-insured public or private employers,

↳ to administer claims against the Uninsured Employers' Claim Account. The designation must be made pursuant to reasonable competitive bidding procedures established by the Administrator.

2. Except as otherwise provided in this subsection, an employee may receive compensation from the Uninsured Employers' Claim Account if:

(a) The employee was hired in this State or is regularly employed in this State;

(b) The employee contracts an occupational disease that arose out of and in the course of employment:

(1) In this State; or

(2) While on temporary assignment outside the State for not more than 12 months;

(c) The employee files a claim for compensation with the Division; and

(d) The employee makes an irrevocable assignment to the Division of a right to be subrogated to the rights of the employee pursuant to NRS 616C.215.

↳ An employee who contracts an occupational disease that arose out of and in the course of employment while on temporary assignment outside the State is not entitled to receive compensation from the Uninsured Employers' Claim Account unless the employee has been denied workers' compensation in the state in which the disease was contracted.

3. If the Division receives a claim pursuant to subsection 2, the Division shall immediately notify the employer of the claim.

4. For the purposes of this section ~~4~~ **and section 5 of this act**, the employer has the burden of proving that the employer provided mandatory coverage for occupational diseases for the employee or that the employer was not required to maintain industrial insurance for the employee.

5. Any employer who has failed to provide mandatory coverage required by the provisions of this chapter is liable for all payments made on behalf of the employer, including, but not limited to, any benefits, administrative costs or attorney's fees paid from the Uninsured Employers' Claim Account or incurred by the Division.

6. The Division:

(a) May recover from the employer the payments made by the Division that are described in subsection 5 and any accrued interest by bringing a civil action or filing an application for the entry of summary judgment pursuant to section 5 of this act in a court of competent jurisdiction. For the purposes of this paragraph, the payments made by the Division that are described in subsection 5 are presumed to be:

(1) Justified by the circumstances of the claim;

(2) Made in accordance with applicable law; and

(3) Reasonable and necessary.

(b) In any ~~civil action brought~~ **or application for the entry of summary judgment filed pursuant to section 5 of this act** against the employer, is not required to prove that negligent conduct by the employer was the cause of the occupational disease.

(c) May enter into a contract with any person to assist in the collection of any liability of an uninsured employer.

(d) In lieu of ~~a civil action brought~~ **or filing an application for the entry of summary judgment pursuant to section 5 of this act**, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

7. The Division shall:

(a) Determine whether the employer was insured within 30 days after receiving the claim from the employee.

(b) Assign the claim to the third-party administrator or insurer designated pursuant to subsection 1 for administration and payment of compensation.

↳ Upon determining whether the claim is accepted or denied, the designated third-party administrator or insurer shall notify the injured employee, the named employer and the Division of its determination.

8. Upon demonstration of the:

(a) Costs incurred by the designated third-party administrator or insurer to administer the claim or pay compensation to the injured employee; or

(b) Amount that the designated third-party administrator or insurer will pay for administrative expenses or compensation to the injured employee and that such amounts are justified by the circumstances of the claim,

↳ the Division shall authorize payment from the Uninsured Employers' Claim Account.

9. Any party aggrieved by a determination made by the Division regarding the assignment of any claim made pursuant to this section may appeal that determination by filing a notice of appeal with an appeals officer within 30 days after the determination is rendered. The provisions of NRS 616C.345 to 616C.385, inclusive, apply to an appeal filed pursuant to this subsection.

10. Any party aggrieved by a determination to accept or to deny any claim made pursuant to this section or by a determination to pay or to deny the payment of compensation regarding any claim made pursuant to this section may appeal that determination, within 70 days after the determination is rendered, to the Hearings Division of the Department of Administration in the manner provided by NRS 616C.305 and 616C.315.

11. All insurers shall bear a proportionate amount of a claim made pursuant to this chapter, and are entitled to a proportionate amount of any collection made pursuant to this section as an offset against future liabilities.

12. An uninsured employer is liable for the interest on any amount paid on his or her claims from the Uninsured Employers' Claim Account. The interest must be calculated at a rate equal to the prime rate at the largest bank

in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the claim, plus 3 percent, compounded monthly, from the date the claim is paid from the Account until payment is received by the Division from the employer.

13. Attorney's fees recoverable by the Division pursuant to this section must be:

(a) If a private attorney is retained by the Division, paid at the usual and customary rate for that attorney.

(b) If the attorney is an employee of the Division, paid at the rate established by regulations adopted by the Division.

↪ Any money collected must be deposited to the Uninsured Employers' Claim Account.

14. ~~In addition to any other liabilities provided for in this section, the Administrator may impose an administrative fine of not more than \$10,000 against an employer if the employer fails to provide mandatory coverage required by the provisions of this chapter.~~

—15— If the Division *has not obtained a civil judgment or an entry of summary judgment pursuant to section 5 of this act and the Division* assigns a debt that arises under this section to the State Controller for collection pursuant to NRS 353C.195, the State Controller may bring an action in his or her own name in a court of competent jurisdiction to recover any amount that the Division is authorized to recover pursuant to this section.

Sec. 7. 1. The amendatory provisions of section 1 of this act apply to any amount owed by an employer on or after July 1, 2011, to the Division of Industrial Relations of the Department of Business and Industry pursuant to NRS 616C.220, including, without limitation, any amount owed for payments made from the Uninsured Employers' Claim Account and for any attorney's fees, interest and administrative costs.

2. The amendatory provisions of section 5 of this act apply to any amount owed by an employer on or after July 1, 2011, to the Division of Industrial Relations of the Department of Business and Industry pursuant to NRS 617.401, including, without limitation, any amount owed for payments made from the Uninsured Employers' Claim Account and for any attorney's fees, interest and administrative costs.

Sec. 8. This act becomes effective on July 1, 2011.

Senator Parks moved the adoption of the amendment.

Remarks by Senator Parks.

Senator Parks requested that his remarks be entered in the Journal.

Amendment No. 22 to Senate Bill No. 63 restores references to the authority of the Division of Industrial Relations to bring a civil action to recover certain payments due from employers.

The amendment also specifies the particular types of payments owed to the Division that can result in a civil action against certain persons who seek to evade or help other employers evade payment of those obligations.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 237.

Bill read second time.

The following amendment was proposed by the Committee on Education:

Amendment No. 72.

"SUMMARY—Revises provisions governing the Nevada Youth Legislature. (BDR 34-9)"

"AN ACT relating to education; revising certain provisions governing the Nevada Youth Legislature; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides for the creation, membership, powers and duties of the Nevada Youth Legislature. (NRS 385.505-385.575) **Sections 6 and 16** of this bill provide for the creation of a nonprofit corporation, with a Board of Directors appointed by the Legislative Commission, to provide educational programs and opportunities and administer and oversee the activities of the Youth Legislature. Pursuant to **sections 6, 9-12 and 16** of this bill, the Board, working cooperatively with the Legislative Counsel Bureau, assumes most of the duties currently performed by the Bureau and the Director of the Bureau. **Sections 5 and 14** of this bill provide for the creation of the Nevada Youth Legislature Fund, into which gifts, grants, donations and legislative appropriations must be deposited and from which the expenses and operations of the Youth Legislature are paid. **Section 8** of this bill increases the term of a member of the Youth Legislature from 1 year to 2 years, with the possibility of a single, successive 2-year reappointment if the member continues to meet the qualifications for initial appointment. **Section 9** of this bill provides that if a member of the Youth Legislature changes his or her residency or school of enrollment in such a manner as to render the member ineligible for his or her original appointment, the member must so inform the Board, in writing, of that fact. **Section 9** also expands the eligibility requirements to allow pupils in grade 9 to apply for appointment to the Youth Legislature. **Section 10** of this bill sets forth that: (1) the position of a member of the Youth Legislature becomes vacant upon the unexcused absence of the member from any two official, scheduled meetings, courses, events, seminars or activities of the Youth Legislature; and (2) insofar as is practicable, a vacancy on the Youth Legislature must be filled within 30 days after the date on which the vacancy occurs. **Section 12** of this bill provides that, in addition to conducting at least one meeting, each member of the Youth Legislature must perform such other activities relating to the Youth Legislature as may be assigned by the Board. **Section 15** of this bill extends the date of reversion for the initial appropriation made to the Youth Legislature in 2007 from 2011 to 2013.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *As used in NRS 385.505 to 385.575, inclusive, and sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 385.505 and sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Board" means the Board of Directors described in subsection 2 of section 6 of this act.*

Sec. 4. *"Fund" means the Nevada Youth Legislature Fund created by section 5 of this act.*

Sec. 5. 1. *There is hereby created as a special revenue fund in the State Treasury the Nevada Youth Legislature Fund.*

2. *Money for the Fund must be provided:*

(a) By direct legislative appropriation; and

(b) Through the acceptance of gifts, grants and donations as authorized pursuant to paragraph (c) of subsection 2 of NRS 385.545.

3. *The Fund must be administered by the Board.*

4. *The money in the Fund may be used only:*

(a) For the educational programs and operations of the Youth Legislature;

(b) To provide administrative support for the Youth Legislature;

(c) To pay for expenses directly related to the Youth Legislature; and

(d) For such other purposes directly related to the Youth Legislature as the Board may approve.

5. *The interest and income earned on the money in the Fund, after deducting any applicable charges, must be credited to the Fund. All claims against the Fund must be paid as other claims against the State are paid.*

6. *Any money remaining in the Nevada Youth Legislature Fund at the end of a fiscal year does not revert to the State General Fund, and the balance in the Nevada Youth Legislature Fund must be carried forward to the next fiscal year.*

7. *Each year, the Board shall submit an itemized statement of the income and expenditures for the Fund to the Legislative Commission.*

Sec. 6. 1. *The Youth Legislature must be administered by a corporation for public benefit, as that term is defined in NRS 82.021, which must include providing educational programs and opportunities as its primary organizational goal.*

2. *The corporation for public benefit must be governed by a Board of Directors consisting of ~~five~~ seven members appointed by the Legislative Commission.*

3. *A member of the Board serves a term of 2 years and until his or her successor is appointed. A member of the Board may be reappointed.*

4. The members of the Board shall elect a Chair and a Vice Chair from among their number. The term of office of the Chair and the Vice Chair is 1 year.

5. The Board:

(a) Shall administer the provisions of NRS 385.505 to 385.575, inclusive, and sections 2 to 6, inclusive, of this act.

(b) Shall administer the Fund.

(c) May provide to the Youth Legislature such administrative, financial and other support and guidance as the Board may determine to be necessary or appropriate.

(d) May employ one or more persons to provide administrative support for the Youth Legislature or pay the costs incurred by one or more volunteers to provide any required administrative support.

(e) Shall oversee the activities of the Youth Legislature.

(f) May solicit and accept gifts, grants and donations from any source to provide educational programs and opportunities and for the support of the Youth Legislature in carrying out the provisions of NRS 385.505 to 385.575, inclusive, and sections 2 to 6, inclusive, of this act. Any such gifts, grants and donations must be deposited in the Fund.

(g) May perform such other functions in whatever manner the Board determines will best serve the interests of this State and the Youth Legislature.

Sec. 7. NRS 385.505 is hereby amended to read as follows:

385.505 ~~{As used in NRS 385.505 to 385.575, inclusive,}~~ "Youth Legislature" means the Nevada Youth Legislature created by NRS 385.515.

Sec. 8. NRS 385.515 is hereby amended to read as follows:

385.515 1. The Nevada Youth Legislature is hereby created, consisting of 21 members.

2. Each member of the Senate shall, taking into consideration any recommendations made by a member of the Assembly, appoint a person who submits an application and meets the qualifications for appointment set forth in NRS 385.525. A member of the Assembly may submit recommendations to a member of the Senate concerning the appointment.

3. After the initial terms:

(a) Except as otherwise provided in subsection 4, appointments to the Youth Legislature must be made by each member of the Senate before March 30 of each year.

(b) The term of each member of the Youth Legislature begins June 1 of the year of appointment.

4. If a member of the Senate does not make an appointment to the Youth Legislature by March 30 of a year, the members of the Assembly whose assembly districts are at least partially located within the senatorial district of that member of the Senate must collaborate to appoint a person who submits an application and meets the qualifications for appointment set forth in NRS 385.525.

5. Each member of the Youth Legislature serves a term of ~~11-year~~ **2 years** and may be reappointed *to one successive 2-year term* if the member continues to meet the qualifications for appointment set forth in NRS 385.525.

Sec. 9. NRS 385.525 is hereby amended to read as follows:

385.525 1. To be eligible for appointment to the Youth Legislature, a person:

(a) Must be:

(1) A resident of the senatorial district of the Senator who appoints him or her;

(2) Enrolled in a public school or private school located in the senatorial district of the Senator who appoints him or her; or

(3) A homeschooled child who is otherwise eligible to be enrolled in a public school in the senatorial district of the Senator who appoints him or her;

(b) Must be enrolled in a public school or private school in this State in grade 9, 10, 11 or 12 for the school year in which he or she serves or be a homeschooled child who is otherwise eligible to enroll in a public school in this State in grade 9, 10, 11 or 12 for the school year in which he or she serves; and

(c) Must not be related by blood, adoption or marriage within the third degree of consanguinity or affinity to the Senator who appoints him or her or to any member of the Assembly who collaborated to appoint him or her.

2. *If, at any time, a person appointed to the Youth Legislature changes his or her residency or changes his or her school of enrollment in such a manner as to render the person ineligible under his or her original appointment, the person shall inform the Board, in writing, within 30 days after becoming aware of such changed facts.*

3. A person who wishes to be appointed or reappointed to the Youth Legislature must submit an application on the form prescribed pursuant to subsection ~~3~~ **4** to the Senator of the senatorial district in which the person resides, is enrolled in a public school or private school or, if the person is a homeschooled child, the senatorial district in which he or she is otherwise eligible to be enrolled in a public school. A person may not submit an application to more than one Senator in a calendar year.

~~3~~ **4.** The ~~Director of the Legislative Counsel Bureau~~ **Board** shall prescribe a form for applications submitted pursuant to this section, which must require the signature of the principal of the school in which the applicant is enrolled or, if the applicant is a homeschooled child, the signature of a member of the community in which the applicant resides other than a relative of the applicant.

Sec. 10. NRS 385.535 is hereby amended to read as follows:

385.535 1. A position on the Youth Legislature becomes vacant upon:

(a) The death or resignation of a member.

(b) The absence of a member for any reason from ~~two~~ :

(1) *Two meetings of the Youth Legislature, including, without limitation, meetings conducted in person, meetings conducted by teleconference, meetings conducted by videoconference and meetings conducted by other electronic means;*

(2) *Two activities of the Youth Legislature;*

(3) *Two event days of the Youth Legislature; or*

(4) *Any combination of absences from meetings, activities or event days of the Youth Legislature, if the combination of absences therefrom equals two or more,*

↪ *unless the absences are, as applicable, excused by the Chair [of the Youth Legislature.] or Vice Chair of the Board.*

(c) A change of residency or a change of the school of enrollment of a member which renders that member ineligible under his or her original appointment.

2. A vacancy on the Youth Legislature must be filled ~~for~~ :

(a) *For* the remainder of the unexpired term in the same manner as the original appointment.

(b) *Insofar as is practicable, within 30 days after the date on which the vacancy occurs.*

3. *As used in this section, "event day" means any single calendar day on which an official, scheduled event of the Youth Legislature is held, including, without limitation, a course of instruction, a course of orientation, a meeting, a seminar or any other official, scheduled activity.*

Sec. 11. NRS 385.545 is hereby amended to read as follows:

385.545 1. The Youth Legislature shall elect from among its members, to serve a term of 1 year beginning on June 1 of each year:

(a) A Chair, who shall conduct the meetings and , *in cooperation with the Board*, oversee the formation of committees as necessary to accomplish the business of the Youth Legislature; and

(b) A Vice Chair, who shall assist the Chair and conduct the meetings of the Youth Legislature if the Chair is absent or otherwise unable to perform his or her duties.

2. The Director of the Legislative Counsel Bureau ~~is~~ *upon request of the Board:*

(a) Shall provide meeting rooms and teleconference and videoconference facilities for the Youth Legislature.

(b) Shall, in the event of a vacancy on the Youth Legislature, notify the appropriate appointing authority of such vacancy.

(c) May accept gifts, grants and donations from any source for the support of the Youth Legislature in carrying out the provisions of NRS 385.505 to 385.575, inclusive ~~is~~ , *and sections 2 to 6, inclusive, of this act. Any such gifts, grants and donations must be deposited in the Fund.*

Sec. 12. NRS 385.555 is hereby amended to read as follows:

385.555 1. The Youth Legislature shall:

(a) Hold at least two public hearings in this State each school year. The Youth Legislature may simultaneously teleconference or videoconference each public hearing to two or more prominent locations throughout this State.

(b) Evaluate, review and comment upon issues of importance to the youth in this State, including, without limitation:

- (1) Education;
- (2) Employment opportunities;
- (3) Participation of youth in state and local government;
- (4) A safe learning environment;
- (5) The prevention of substance abuse;
- (6) Emotional and physical well-being;
- (7) Foster care; and
- (8) Access to state and local services.

(c) Conduct a public awareness campaign to raise awareness about the Youth Legislature and to enhance outreach to the youth in this State.

2. During his or her term, each member of the Youth Legislature shall ~~conduct~~ :

(a) **Conduct** at least one meeting to afford the youth of this State an opportunity to discuss issues of importance to the youth in this State.

(b) **Complete such other activities as may be assigned to him or her by the Board as a member of the Youth Legislature.**

3. The Youth Legislature may, within the limits of available money ~~+~~ **and if approved by the Board:**

(a) During the period in which the Legislature is in a regular session, meet as often as necessary to conduct the business of the Youth Legislature and to advise the Legislature on proposed legislation relating to the youth in this State.

(b) Form committees, which may meet as often as necessary to assist with the business of the Youth Legislature.

(c) Conduct periodic seminars for its members regarding leadership, government and the legislative process.

~~+(d) Employ a person to provide administrative support for the Youth Legislature or pay the costs incurred by one or more volunteers to provide any required administrative support.]~~

4. Except as otherwise provided in this subsection, the Youth Legislature and its committees shall comply with the provisions of chapter 241 of NRS. Any activities of the Youth Legislature which are conducted solely for purposes of training, including, without limitation, any orientation programs conducted for the Youth Legislature, are not subject to the provisions of chapter 241 of NRS.

5. On or before May 30 of each year, the Youth Legislature shall submit a written report to the ~~Director of the Legislative Counsel Bureau~~ **Board** and to the Governor describing the activities of the Youth Legislature during the immediately preceding school year and any recommendations for legislation. The ~~Director~~ **Board** shall transmit the written report to the

Legislative Committee on Education and to the next regular session of the Legislature.

Sec. 13. NRS 385.565 is hereby amended to read as follows:

385.565 The Youth Legislature may:

1. Request the drafting of not more than one legislative measure which relates to matters within the scope of the Youth Legislature. A request must be submitted to the Legislative Counsel on or before December 1 preceding the commencement of a regular session of the Legislature unless the Legislative Commission authorizes submitting a request after that date.

2. Adopt procedures to conduct meetings of the Youth Legislature and any committees thereof. Those procedures may be changed upon approval of a majority vote of all members of the Youth Legislature who are present and voting.

3. Advise the ~~{Director of the Legislative Counsel Bureau}~~ **Board** regarding the administration of any appropriations, gifts, grants or donations received for the support of the Youth Legislature.

Sec. 14. NRS 385.575 is hereby amended to read as follows:

385.575 The members of the Youth Legislature serve without compensation. To the extent that money is available ~~{, including, without limitation, money from gifts, grants and donations,}~~ **in the Fund**, the members of the Youth Legislature may receive the per diem allowance and travel expenses provided for state officers and employees generally for attending a meeting of the Youth Legislature or a seminar conducted by the Youth Legislature.

Sec. 15. Section 8 of chapter 345, Statutes of Nevada 2007, as amended by chapter 74, Statutes of Nevada 2009, at page 256, is hereby amended to read as follows:

Sec. 8. 1. There is hereby appropriated from the State General Fund to the disbursement account created by section 1 of this act the sum of \$35,000 to fund the Nevada Youth Legislative Issues Forum created by Senate Bill 247 of the 2007 Legislative Session.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, ~~{2011,}~~ **2013**, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September ~~{6, 2011,}~~ **20, 2013**, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September ~~{6, 2011,}~~ **20, 2013**.

Sec. 16. As soon as practicable after the effective date of this act, the Legislative Commission shall:

1. Create or cause to be created the corporation for public benefit described in section 6 of this act. The corporation must be created in accordance with the requirements set forth in chapter 82 of NRS.

2. Appoint a Board of Directors for the corporation for public benefit described in section 6 of this act.

3. Perform such other activities as are necessary to provide initial support to the corporation for public benefit described in section 6 of this act.

Sec. 17. All money previously appropriated, donated, granted or otherwise supplied to the Nevada Youth Legislature, or its successor in interest, remaining unexpended and unencumbered on the effective date of this act must be transferred to the Nevada Youth Legislature Fund created by section 5 of this act on or before July 1, 2011.

Sec. 18. This act becomes effective upon passage and approval.

Senator Denis moved the adoption of the amendment.

Remarks by Senator Denis.

Senator Denis requested that his remarks be entered in the Journal.

Amendment No. 72 to Senate Bill No. 237 expands from five to seven the number of members of the Board of Directors of the non-profit corporation created to support the Nevada Youth Legislature.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 42.

Remarks by Senators Breeden, Hardy, Gustavson, Halseth, Brower, Horsford, Lee, Cegavske and Kieckhefer

Senator Breeden requested that the following remarks be entered in the Journal.

SENATOR BREEDEN:

Senate Bill No. 42 requires that a vehicle operator involved in an accident that results in the death of another person submit to a breath test for the presence of alcohol.

SENATOR HARDY:

Thank you, Mr. President. I am concerned as I read the bill that it sounds like a person who is in a pile up of 18 cars on the freeway who is at the tail end of that pile up along with each and every one of those drivers may have to have blood test done. The ACLU may have some concerns that I agree with on this one.

SENATOR GUSTAVSON:

Thank you, Mr. President. Can we already do this without this piece of legislation?

SENATOR BREEDEN:

It was discussed in testimony that currently law exists where if a person dies as a result of an automobile accident that person is automatically tested. What this bill does is to require all parties involved in an accident in which a fatality occurs, to be tested. Drivers from the other vehicles could be impaired by alcohol use.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 11:32 a.m.

SENATE IN SESSION

At 11:41 a.m.

President Krolicki presiding.

Quorum present.

Senator McGinness moved that Senate Bill No. 42 be taken from the General File and placed on the Secretary's desk.

Motion lost on a division of the house.

SENATOR HALSETH:

During committee I asked the Attorney General's Office, as well as police officers, what "reasonable grounds" meant. This bill takes away "reasonable grounds" to test someone for alcohol if involved in a fatal accident. Neither the Attorney General's Office nor any police officer could tell me what "reasonable grounds" meant. They also came to my office, but could not tell me what "reasonable grounds" was. They said it was undefined. I did not see a valid reason for them to take away the "reasonable grounds" if as they stated they could ask anyone to submit to a breathalyzer test. Without that definition, I will be voting "no."

SENATOR BROWER:

Thank you, Mr. President. I regret that we cannot delay this bill briefly so that we can have members' questions answered. I have concern with this bill because, currently, when you get a driver's license you are agreeing that if you are suspected by the police of being under the influence you have consented to a breathalyzer test at the scene. If you do not agree to the breathalyzer test you can be arrested. That arrest is based upon reasonable suspicion by the police that you have violated the law and you are driving under the influence. As I read this bill, if it passes, drivers will also be consenting to give a breathalyzer test at the scene if they are driving a vehicle that is involved in an accident that results in a fatality. That does not mean that the driver violated the law, but they could be arrested for refusing the breathalyzer. This is an unprecedented step we would be taking.

There are some legitimate questions remaining. A hearing was held. Questions have been asked. This bill was previously on Second Reading. Questions could have been answered. That did not happen. I would like to think that we could move forward as a body with a full understanding of all of the implications of the proposal. My experience in the other House was that whenever there was this much confusion Leadership was quick to say, "Let us roll it, let us get all of the questions answered. Let us give the members a deadline to do that. Then let us vote." I would like to see us do that at least once before we have to vote without a full understanding of all of the implications of this bill. My understanding is that there was opposition to this legislation in committee. Those of us who would like to talk to those who oppose the bill would like an opportunity to do so before we have to vote.

SENATOR HORSFORD:

Thank you, Mr. President. I am not going to speak to the content of the bill. There are other members of the Committee on Transportation who can do that, but I do want to respond to my colleague from Washoe District No. 3.

This is the second time I have been challenged on the Floor about our process. I know he served in the other House, but in the Senate, you give the Chair of the committee and the members of this body respect when you have a question on a bill before it is on General File. That did not happen. I do not know what the concerns or questions are. The member from Clark District No. 9 had a question about probable cause under the bill. That should have been addressed in committee when this bill was voted out on March 29 and to the present time. It has not been done. We have an enormous amount of work to do as a body and I will hold bills where there are legitimate concerns or questions, but I will not allow chairs of committees not to have the common courtesy to be approached about a concern before it is on the General File. It is my

understanding that this bill came out of committee unanimously. If there were concerns, they should have been raised before now.

SENATOR LEE:

Thank you, Mr. President. This is not a caucus bill. We have never talked about this bill. This was a committee bill. We discussed it in committee. We went through the process.

I am speaking as a chair. We will have 177 bills in Government Affairs. It is not incumbent upon us to hear the bills here; it is incumbent upon you as members to study these bills when you leave this building at night. Go home and read your bills. We have no problem with what we are doing here today. For you to just wake up seven days after the bill has been passed and say, "I just thought of something, I want to slow this bill down," you have to give the chair the opportunity to defend these bills to you. You have a responsibility as a member of the committee to say, "I have had second thoughts, I do not want to vote for that bill." Let the chair know. If you have issues you want raised, let the chair know. He will put it on the desk. We should not have a caucus meeting every time someone throws up a question on a bill. We have another house. We can follow the question to the other side and educate them on your concerns. I am asking, as a chair, for you to come to us and to not turn these into caucus wars. We are not ramming and jamming. We are trying to move the system properly. You will get the respect from each of our chairs if you bring up these interesting and noble remarks.

SENATOR CEGAVSKE:

Thank you, Mr. President. I did take my work home with me. I did look at these bills. This is one of the bills I had concerns about all weekend. I talked to different people about it, not only in my own caucus, but with the people who sat on the committee; and we have a few attorneys in our caucus I spoke with. I spoke to different district attorneys offices just to ask them some of the questions about which I had concerns. My concerns were addressed, but my colleague from Clark District No. 12 brought up an issue I had not considered. I decided I needed more confirmation as to what that issue would involve. I was comfortable with the idea that just the person who was suspected of causing the accident was tested. I felt good about the bill knowing that, but when the other drivers were included, I was not comfortable with the bill. This idea about the other drivers was new to me.

This is part of the process. Even though we study bills, we often think of things at the last minute. That is what happened today. One of our thoughtful Legislators was trying to do the right thing. He looked at the other possibilities within the bill. His question brought up questions. That was all that was being asked. It was not to divide anyone. It was not to insult anyone or to show disrespect to a chair. It was something that came up on the Floor today.

SENATOR KIECKHEFER:

Thank you, Mr. President. My understanding of our presumed consent law is that the discretion still remains with the officer as to whether or not to test. There is not a mandate in our presumed consent law that they do test. I would appreciate a correction if I am mistaken in my understanding of the law.

SENATOR BREEDEN:

Thank you, Mr. President. That is correct. It requires all drivers to submit to a preliminary breath test for the presence of alcohol if a police officer has reasonable grounds to believe that the driver was involved in a fatal accident. Part of the key phrase is "presence of alcohol."

The reason why this bill came about was that it was requested by the Attorney General's Advisory Coalition on Impaired Driving. The language amends the current statute. It was requested because of the increasing statistics. By passing this bill, it will provide more accurate data on the scope of the alcohol related driver impairment and the number of traffic fatalities that can be attributed to alcohol. I hope my colleagues will change their "no" vote to a "yes" for this bill.

SENATOR BROWER:

I do not know who is voting for or against this bill. This is not a caucus issue. This is not a political issue. This is a confusion problem that happens from time to time and is usually remedied by a one-day delay. To rush into trying to pass a bill that is at the heart of civil

liberties, is foolhardy. We need to take our time on something as fundamental as authorizing an arrest.

To the Majority Leader's point, the Chair of the Committee suggested that we hold this so the questions could be answered. The Chair of the Committee does not seem to be offended by this discussion. What is ironic is that we have spent nearly 30 minutes on this. We have wasted our time. This could have been put on the desk. The questions could have been answered. We could have walked in here tomorrow and voted.

I have a question for the Chair. As I read subsections (a), (b) and (c), it looks like the bill proposes the deletion of "or" at the end of subsection (a), but does not replace the "or" with another "or" or an "and." Can a person be arrested if they refuse to give a breath test if they are suspected of drunk driving and they were in an accident involving the death of another person or is it "or." It may be a drafting error, but as I read it the presence of an "or" or an "and" or the lack thereof can change the meaning of the bill.

SENATOR BREEDEN:

There was no discussion on the drafting. The way the bill was written was exactly how it was proposed.

SENATOR BROWER:

Is it the Chair's understanding that a person can be arrested for refusing to give a breath test if he or she is suspected by the police of being under the influence or is involved in an accident in which someone dies? Or do both of those things have to be present for there to be an arrest? There is some real confusion about what this bill says and what it means.

SENATOR BREEDEN:

My understanding is that if the officer feels there is a presence of alcohol and the driver fails to submit to the test that they could be arrested.

SENATOR BROWER:

That is the current state of the law as I understand it. The bill would seem to be unnecessary if that is what the bill does. I was informed that the bill creates another situation that is, not that the police suspect the driver of being under the influence, but simply that the driver was involved in an accident that included a fatality.

SENATOR BREEDEN:

This bill is to require all drivers who are involved in an accident in which a fatality occurs to be tested, yes.

SENATOR BROWER:

Regardless of whether the police on the scene suspect that driver was under the influence. Is that correct?

SENATOR BREEDEN:

It is probable cause. If they suspect they are under alcohol abuse.

SENATOR BROWER:

With all due respect. I do not see that the bill says that. I do not see the words "probable cause" anywhere in the bill.

Senator Lee moved that Senate Bill No. 42 be taken from the General File and placed on the Secretary's desk.

Motion carried.

Senate Bill No. 91.

Bill read third time.

Remarks by Senator Manendo.

Senator Manendo requested that his remarks be entered in the Journal.

Thank you, Mr. President. All the provisions contained in this bill exist under current law. This lowers the trigger from 0.18 to 0.15 with the treatment options made available to first DUI offenders. Offenders pay for this type of evaluation. It passed unanimously in committee. I urge your support.

Roll call on Senate Bill No. 91:

YEAS—21.

NAYS—None.

Senate Bill No. 91 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 186.

Bill read third time.

Remarks by Senator McGinness.

Senator McGinness requested that his remarks be entered in the Journal.

Senate Bill No. 186 revises the information that a judgment creditor must include in the affidavit recorded in a civil judgment or decree. The required information must be based on personal knowledge and include: (a) certain personal identification numbers; (b) parcel information and proof of ownership of the judgment debtor's real property; and (c) the location, serial number, and proof of ownership of a manufactured home or mobile home if one is included in the lien.

The document number of a recorded judgment is also added to the information required in an affidavit that is filed to renew a lien on real property, which is to be titled "Affidavit of Renewal of Judgment."

The bill requires certain letters concerning the estate of a decedent to be recorded in the county recorder's office for each county in which real property of the estate is located.

Finally, Senate Bill No. 186 requires a cover sheet containing the guardian's name, address, and telephone number, along with certain property information, to be attached to the letters of guardianship recorded by the guardian in each county where the ward has real property.

Roll call on Senate Bill No. 186:

YEAS—21.

NAYS—None.

Senate Bill No. 186 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 193.

Bill read third time.

Remarks by Senator Horsford.

Senator Horsford requested that his remarks be entered in the Journal.

Thank you, Mr. President. The bill is relatively self explanatory. The Public Works Board attempted to cancel a number of public projects which were previously approved by the Legislature. This would allow for that approval to take place with the approval of either the Legislature or the Interim Finance Committee.

Roll call on Assembly Bill No. 193:

YEAS—21.

NAYS—None.

Assembly Bill No. 193 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Bills Nos. 10, 11, 66, 103.

Senator Horsford moved that the Senate adjourn until Wednesday, April 6, 2011, at 11 a.m.

Motion carried.

Senate adjourned at 12:11 p.m.

Approved:

BRIAN K. KROLICKI
President of the Senate

Attest: DAVID A. BYERMAN
Secretary of the Senate