

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CLARK COUNTY,

Appellant,

vs.

BRENT BEAN,

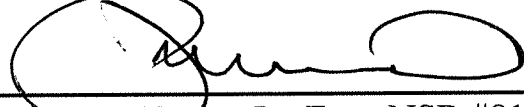
Respondent.

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Supreme Court Case No.: 78443  
District Court Case No.: A773957

**APPELLANT CLARK COUNTY'S PETITION FOR EN BANC  
RECONSIDERATION**

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**I.**  
**NEV. R. APP. P. 26.1 DISCLOSURE**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CLARK COUNTY,

Appellant,

vs.

BRENT BEAN,

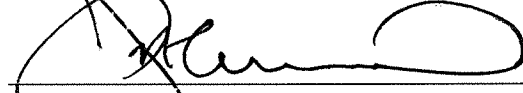
Respondent.

Supreme Court Case No.: 78443  
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The undersigned counsel of record certifies that the following are persons and entities described in Nev. R. App. P. 26.1 and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. Appellant is a governmental entity.

Appellant was represented by HOOKS MENG & CLEMENT in the underlying litigation and on appeal.

HOOKS MENG & CLEMENT



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#### IV. ARGUMENT

**A. Legal Standard**

This Court may consider a Petition for En Banc Reconsideration when “the proceeding involves a substantial precedential, constitutional or public policy issue.”

Nev. R. App. P. 40A(a). Rehearing was initially denied on November 23, 2020.

**B. En Banc Reconsideration is Necessary to Resolve the Precedential Question of Whether Retired Firefighters Who Henceforth Assert an Occupational Disease Claim in Retirement are Entitled to PPD.**

In its ruling, the Panel cited the district court’s rationale that “[p]ermanent partial disability is a medical benefit intended to compensate the injured worker for permanent physical damages caused by the industrial injury or occupational disease and not a form of disability compensation associated with lost wages.” The Panel’s characterization of PPD as a medical benefit is irreconcilable with the Nevada Legislature’s 2019 amendments to NRS 617.453, which codified that a retired firefighter “is not entitled to receive any compensation for that disease other than medical benefits.” NRS 617.453 (10) (2019); S.B. 215, 80th Session of the Nevada Legislature (2019); Ex. A at pp. 12–17. As discussed and explained *infra* Part B–1, the Legislature intended medical benefits include only medical treatment as opposed to disability payments such as PPD. Accordingly, en banc reconsideration is necessary to resolve the precedential issue stemming from the conflict between the Panel’s published opinion as currently drafted and NRS 617.453 (10).



**1. The Panel’s Opinion Has Created a Precedential Conflict with NRS 617.453 (10) as to Whether Retired Firefighters Who Henceforth File an Occupational Disease Claim Are Entitled to PPD as a Medical Benefit.**

The Legislature<sup>1</sup> amended NRS 617.453 in 2019 through Senate Bill 215. S.B. 215, 80th Session of the Nevada Legislature (2019); Ex. A at pp. 12–17. Senate Bill 215 removed NRS 617.453’s prior sixty (60) month limitation on retiree claims. *Id.* Firefighters who retire after July 1, 2019 who have served twenty (20) years may make an occupational disease claim for cancer at any point in their life. *Id.* However, Senate Bill 215 also *limited* a claim under NRS 617.453 (7) to *medical benefits only*. *Id.* In limiting retiree claims to medical benefits only, the Legislature intended to match compensation for cancer claims under NRS 617.453 to lung and heart claims under NRS 617.455 and NRS 617.457, respectively.<sup>2</sup> Mr. Rusty McAllister, testifying on behalf of the Professional Fire Fighters of Nevada, explained:

The other part we want to make sure we got on the record is, once you leave the job—it is put into the statute just as it was for the heart and lung benefits—the only benefit you are entitled to is medical care. You do not get any type of a permanent or partial disability, there are no disability payments after you leave employment—it is purely for medical care.

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<sup>1</sup> The pertinent Legislative History notes submitted as Appellant’s Supplemental Legislative Documents.

<sup>2</sup> NRS 617.455 (9) and NRS 617.457 (14) limit retiree lung and heart claims to medical benefits only.

S.B. 215, Hearing Before the Assembly Committee on Commerce and Labor, 80th Session of the Nevada Legislature (2019) (Statement of Rusty McAllister); Ex. B at pg. 213.

Under the Panel’s published opinion as currently written, retired firefighters who henceforth assert an occupational disease are entitled to PPD because the Panel mischaracterized PPD as a medical benefit. To the contrary, NRS 617.453 (10) (2019) mandates that a retired firefighter is *only* entitled to medical benefits, which do not include disability payments such as PPD. As explained by Professional Fire Fighters of Nevada lobbyist Mr. Rusty McAllister, medical benefits include medical care *only* as opposed to disability benefits such as PPD. S.B. 215, Hearing Before the Assembly Committee on Commerce and Labor, 80th Session of the Nevada Legislature (2019) (Statement of Rusty McAllister); Ex. B at pg. 213. Accordingly, en banc reconsideration is warranted to resolve the precedential issue as to whether retired firefighters who henceforth assert occupational disease claims are entitled to PPD under NRS 617.453.

**C. En Banc Reconsideration is Necessary Because the Issue of Whether a Retired Firefighter is Entitled to PPD Implicates Important Matters of Public Policy.**

The issue of whether a retired firefighter is entitled to PPD implicates important matters of public policy for two (2) reasons. First, the Panel’s opinion misapprehends the public policy advanced by PPD benefits. Second, the Panel’s

opinion is contrary to the Nevada Legislature's public policy goals in enacting NRS 617.453 as demonstrated by the statute's legislative history.

**1. The Panel Misapprehended the Public Policy Advanced by PPD Benefits.**

Without answering the threshold question of whether a retired firefighter is entitled to permanent partial disability benefits, the Panel assumed Respondent is automatically entitled to permanent partial disability and then evaluated how to calculate said benefit. In doing so, the Panel declared that "the Legislature created an entitlement program to compensate employees for disabilities resulting from an occupational disease that arises out of employment..."

Appellant posits that the Panel's analysis is a misunderstanding of workers' compensation law because this Court has held that "the purpose of Nevada's workers' compensation statutes is to give the proper amount of compensation, not to provide a panacea for all the ills of society at the expense of Nevada's employers." *State Indus. Ins. Sys. v. Bokelman*, 113 Nev. 1116, 1123, 946 P.2d 179, 184 (1997) (quotations omitted). Thus, before calculating a PPD award or any other benefit, the Panel should have answered the threshold question of whether Respondent is entitled to the benefit. NRS 617.358 (1) (2019); NRS 616C.150 (1) (2019).

**i. Workers' Compensation is Not an "Entitlement Program"; Rather, Claimants Must Establish Eligibility for Specific Benefits Depending on their Personal Circumstances.**

The Panel's conclusion that Respondent is automatically entitled to PPD benefits because he suffered an occupational disease represents a fundamental departure from the common understanding of Nevada workers' compensation law. Workers' compensation claimants are not entitled to specific benefits unless the facts of their case indicate they are entitled to the same. NRS 617.358 (1) (2019); NRS 616C.150 (1) (2019).

For example, Respondent is not automatically entitled to vocational rehabilitation benefits by virtue of suffering an occupational disease. NRS 616C.590. Instead, eligibility for vocational rehabilitation is a fact-based analysis requiring application of NRS 616C.590. Nor is respondent automatically entitled to unlimited medical treatment unrelated to his underlying condition. Rather, eligibility for each specific treatment must be decided by a preponderance of the evidence in accord with NRS 617.358 (1). Thus, this Court must decide whether the facts of the instant case entitle Respondent to permanent partial disability *before* undertaking an analysis of calculation methods. The Panel did not perform this analysis. Therefore, en banc reconsideration is appropriate.

**ii. Under Nevada Law and the Majority Approach Articulated in Larson's Workers' Compensation Law, a Claimant Must Demonstrate Both Medical Impairment and Economic Loss to Receive Any “Disability” Award.**

In determining whether an injured worker is entitled to “permanent partial disability” benefits, the Court must first seek to ascertain what “disability” means in the context of the act. “Disability” is not defined within the Nevada Industrial Insurance Act (NIIA). In workers’ compensation matters, awards “are not made for physical injury... but for ‘disability’ produced by such injury.” 6 Larson's Workers' Compensation Law § 80.02 (2020).<sup>3</sup> Larson's Workers' Compensation Law defines “disability” as a “blend of two ingredients”: medical impairment and inability to earn wages. *Id.* Larson explains that:

The key to the understanding of this problem is the recognition, at the outset, that the disability concept is a blend of two ingredients, whose recurrence in different proportions gives rise to most controversial disability questions: The first ingredient is disability in the medical or physical sense, as evidenced by obvious loss of members or by medical testimony that the claimant simply cannot make the necessary muscular movements and exertions; the second ingredient is *de facto* inability to earn wages, as evidenced by proof that claimant has not in fact earned anything.

*Id.*

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<sup>3</sup> The Nevada Supreme Court has cited Larson's Workers' Compensation Law with approval. See, e.g., *Buma v. Providence Corp. Dev.*, 453 P.3d 904, 907 (Nev. 2019); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 558 n.10, 188 P.3d 1084, 1088 (2008); *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1240 n.39, 147 P.3d 1120, 1128 (2006).

Accordingly, a compensable “disability” requires a “blend” of medical impairment and wage loss. *Id.* Larson explains that “[t]he proper balancing of the medical and the wage-loss factors is, then, the essence of the ‘disability’ problem in worker’s compensation.” *Id.* According to Larson, “disability” does not exist in the absence of either medical impairment or wage loss. Where, as is here, a claimant has not experienced both medical impairment and wage loss, “permanent partial disability” benefits are unwarranted as no “disability” exists.

Similar to the majority approach identified by Larson, all disability benefits set forth within the NIIA require the claimant fulfill both medical and wage loss elements. For example, an award of “temporary total disability” benefits pursuant to NRS 616C.475 requires a medical finding that the claimant is totally disabled while also requiring a showing of economic loss via the claimant’s average monthly wage. *Amazon.com v. Magee*, 121 Nev. 632, 637, 119 P.3d 732, 735 (2005) (discussing the link between physical disability and resulting work limitations when concluding that the claimant is not entitled to “*temporary total* disability”). Under NRS 616C.500, an award of “*temporary partial* disability” requires that the claimant demonstrate medical loss in addition to an economic loss as shown by the claimant earning less than the temporary total disability rate while working light-duty.

Likewise, an award of “*permanent total* disability” requires a medical finding that a claimant suffered a scheduled injury or is otherwise an odd-lot upon the labor

market as a result of an injury by accident arising out of and in the course of his or her employment in addition to a showing of economic loss via the claimant's average monthly wage. NRS 616C.435; *Nev. Indus. Comm'n v. Hildebrand*, 100 Nev. 47, 51, 675 P.2d 401, 404 (1984).

Nor can it be said that the Legislature has failed to account for retirees. NRS 616C.390 (11)(b) defines "retired" as a person who "[i]s not employed and earning wages" and instead receives retirement benefits or a pension. A retiree such as Respondent inherently cannot experience wage loss as he is not employed and is instead receiving a pension. The NIIA recognizes this important distinction between retirees and employees by, for example, limiting benefits to retirees upon reopening a claim pursuant to NRS 616C.390. Retirees' interests are protected under the NIIA to the extent they suffer loss which the NIIA is intended to protect.

The Panel has taken a position contrary to the majority opinion identified by Larson in ignoring wage-loss factors when holding that a retiree is entitled to permanent partial disability. The Panel has thusly misapprehended the public policy behind disability benefits in general and "permanent partial disability" in particular, which are intended to compensate for "disability." As discussed and explained above, "disability" is the product of injury and not exist in the absence of *either* medical and wage loss elements.

Further, there is no source of authority within the NIIA which directs or authorizes the Panel to sever the mandatory economic loss component from the threshold question of whether a claimant such as Respondent is entitled to “*permanent partial disability*” benefits or the calculation thereof. To do otherwise “disturb[s] the delicate balance created by the legislature by implying provisions not expressly included in the legislative scheme.” *Weaver v. State Indus. Ins. Sys.*, 104 Nev. 305, 306, 756 P.2d 1195, 1195 (1988).

**2. The Panel’s Decision is Contrary to the Public Policy Behind NRS 617.453**

The Panel began its analysis by determining that NRS 617.453 (4) is ambiguous and noted that an “ambiguous [statute] should be interpreted consistent with the Legislature’s intent, according with reason and public policy.” Without hearing argument from the parties regarding the Legislature’s intent in passing NRS 617.453 (4), the Panel mistakenly presumed that the Legislature intended to extend PPD benefits to retired firefighters. Rather than investigating that threshold question, the Panel focused on the methodology of how to calculate a PPD award where a retired firefighter earns no wages. Without answering the threshold question of whether the Legislature intended to grant permanent partial disability to retired firefighters, the Panel then evaluated how to calculate a permanent partial disability award where a retired firefighter earns no wages. However, when construing an ambiguous statute such as NRS 617.453 (4), the Court should first “look to



legislative history for guidance” because “legislative intent is controlling.” *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1302, 148 P.3d 790, 793 (2006).

NRS 617.453 became law in 1987 via the enactment of Assembly Bill 797. Ex. A at pp. 1–2. Importantly, Assembly Bill 797’s legislative history specifically rejects the notion, set forth by Respondent, that the Legislature intended to grant firefighters disability benefits in retirement. A.B. 797, Hearing Before the Assembly Committee on Labor and Management, 64th Session of the Nevada Legislature (1987) (Statement of Bill Bunker); Ex. B at pg. 19. Instead, Assembly Bill 797’s legislative history clearly establishes that the Legislature intended NRS 617.453 to serve as a mechanism for firefighters to more easily establish causation between cancer and their employment as firefighters in order to secure medical treatment only. *Id.*

Mr. Bill Bunker testified in support of Assembly Bill 797 on behalf of the Federated Firefighters. *Id.* According to Mr. Bunker, “one of the prime concerns of the subcommittee was if a firefighter left on disability it might be possible for him to draw more money than he would have if he had been working.” A.B. 797, Hearing Before the Assembly Committee on Labor and Management, 64th Session of the Nevada Legislature (1987) (Statement of Bill Bunker); Ex. B at pg. 23. Mr. Bunker “stressed that was not the intent of the bill.” *Id.* Instead, Mr. Bunker explained that

Assembly Bill 797's purpose was to change the burden of proof that a firefighter must fulfill to establish a compensable occupational disease claim for cancer. *Id.* Under the general occupational disease causation statute, NRS 617.440, firefighters were unable to secure medical treatment because "[t]here was no scientific evidence but a gut feeling from the firefighters [that] led to the pursuit of compensation for them." A.B. 797, Hearing Before the Assembly Committee on Labor and Management, 64th Session of the Nevada Legislature (1987) (Statement of Kim Mueller); Ex. B at pp. 29–30.

NRS 617.453 was next amended in 2003 through Assembly Bill 451. Ex. A at pp. 3–4. Assembly Bill 451 facilitated access to medical treatment for firefighters by establishing a list of carcinogens and associated cancers. A.B. 451, Hearing Before the Assembly Committee on Commerce and Labor, 72nd Session of the Nevada Legislature (2003) (Statement of Rusty McAllister); Ex. B at pg. 38.

Mr. Rusty McAllister testified on behalf of the Professional Fire Fighters of Nevada and explained that "[t]he reason that we bring this bill before you today is because there are several insurers that will not accept these claims even though we meet the requirements set forth in [NRS 617.453]." *Id.*

Mr. McAllister spoke of a firefighter who was unable to establish a causal connection between his cancer and employment as a fighter, and as a result, "[h]is claim has been denied and is still pending in the system." Ex. B. at pg. 39. Mr.

McAllister further explained that “[f]ortunately, this firefighter has gotten the appropriate treatment through his health insurance trust and is back on the job protecting the public.” *Id.* Mr. McAllister contrasted said firefighter with prison firefighters, who upon contracting cancer are provided with health care at government expense. Ex. B at pg. 52.

The Legislature amended NRS 617.453 in 2005, substituting “firefighter” for “fireman.” A.B. 507, 73rd Session of the Nevada Legislature (2005); Ex. A at pp. 5–8. Subsequent amendments to NRS 617.453 in 2009 via Assembly Bill 521 added additional known carcinogens to facilitate access to medical treatment. A.B. 521, 75th Session of the Nevada Legislature (2009); Ex. A at pp. 9–11. Mr. Rusty McAllister, testifying on behalf of the Professional Fire Fighters of Nevada, stated that “[w]e would like you to reconsider the amount of time you have to be a firefighter in order to have medical coverage for these types of cancers.” A.B. 521, Hearing Before the Assembly Committee on Commerce and Labor, 75th Session of the Nevada Legislature (2009) (Statement of Rusty McAllister); Ex. B. at pp. 103–04. Dr. Matthew Schwartz, M.D., also testified in support of the bill and indicated that “[i]t is a disservice to these men to not allow them medical coverage.” A.B. 521, Hearing Before the Assembly Committee on Commerce and Labor, 75th Session of the Nevada Legislature (2009) (Statement of Dr. Matthew Schwartz); Ex. B. at pg. 105. Fiscal notes submitted regarding Assembly Bill 521 indicate that the

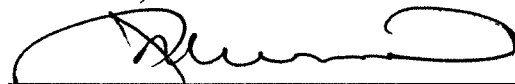
majority of Nevada local governments understood the impact of Assembly Bill 521 as expanding access to medical treatments.<sup>4</sup> Ex. C at pp. 223–26.

As discussed *supra* Part B-1, the Legislature amended NRS 617.453 in 2019 to explicitly limit retiree compensation to medical benefits. Ex. A at pp. 12–17. As a result, the Panel’s interpretation of the Legislature’s public policy in extended occupational disease benefits to retired firefighters conflicts with the same from NRS 617.453’s inception in 1987 through the 80th Session of the Nevada Legislature. En banc consideration is thus warranted to reconcile the Panel’s opinion with Nevada public policy.

## V. CONCLUSION

The Panel’s Opinion has created a precedential conflict with NRS 617.453 (10). Additionally, the Panel’s Opinion implicates important matters of public policy as it miscomprehended the nature of PPD benefits and the public policy advanced by NRS 617.453. En banc reconsideration is warranted.

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<sup>4</sup> Local Government Fiscal Notes, A.B. 521, 75th Session of the Nevada Legislature (2009).

**VI.**  
**CERTIFICATE OF COMPLIANCE**

I hereby certify that this Petition for En Banc Reconsideration complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Time New Roman 14 point font. I further certify that this petition complies with the type-volume limitations of Nev. R. App. P. 40A because, excluding parts of the brief exempted by Nev. R. App. P. 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and contains 2,999 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

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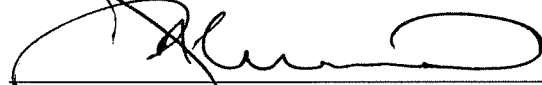
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accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7<sup>th</sup> day of December, 2020.

HOOKS, MENG & CLEMENT



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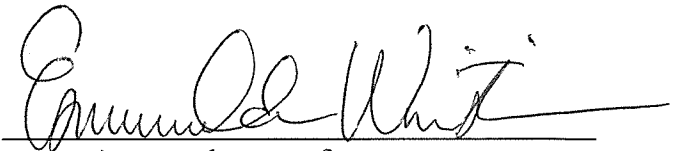
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Attorneys for Appellant, CLARK COUNTY

**VII.**  
**CERTIFICATE OF SERVICE**

The undersigned, an employee of HOOKS, MENG & CLEMENT hereby certifies that on the 7<sup>th</sup> day of December, 2020, a true and correct copy of **APPELLANT'S PETITION FOR EN BANC RECONSIDERATION** was served on the party set forth below by Notice of Electronic Filing via the CM/ECF system as maintained by the Court Clerk's Office as follows:

Lisa Anderson, Esq.  
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Hooks, Meng & Clement

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CLARK COUNTY,

Appellant,

vs.

BRENT BEAN,

Respondent.

Supreme Court Case No.: 78443  
District Court Case No.: A773957

**APPELLANT'S SUPPLEMENTAL LEGISLATIVE DOCUMENTS**

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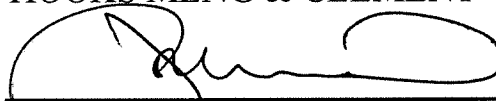
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## **CERTIFICATE OF SERVICE**

The undersigned, an employee of HOOKS, MENG & CLEMENT hereby certifies that on the 7<sup>th</sup> day of December, 2020, a true and correct copy of **APPELLANT'S SUPPLEMENTAL LEGISLATIVE DOCUMENTS** was served on the party set forth below by Notice of Electronic Filing via the CM/ECF system as maintained by the Court Clerk's Office as follows:

Lisa Anderson, Esq.  
GREENMAN, GOLDBERG,  
RABY & MARTINEZ  
2207 S. Maryland Pkwy., Ste. 100  
Las Vegas, NV 89109

A handwritten signature in blue ink, appearing to read "Emmeline Winters", is written over a horizontal line.

An employee of Hooks, Meng & Clement

EXHIBIT A

EXHIBIT A

Assembly Bill No. 797--Assemblymen Banner, Schofield, Callister, McGaughey, Wendell Williams, Kerns, Wisdom, Freeman, Dini, Garner, Adler, Sedway, Spinello, Brookman, Nevin, May, Porter, Triggs, Thompson, Craddock, Haller, Gaston, Tebbs, Myrna Williams, Price, Jeffrey, DuBois, Fay, Swain, Evans, Arberry, Sader and Kissam

## CHAPTER 481

AN ACT relating to occupational disease; including cancer as an occupational disease for firemen; and providing other matters properly relating thereto.

[Approved June 15, 1987]

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

**Section 1.** Chapter 617 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if:*

*(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:*

*(1) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or*

*(2) Acting as a volunteer fireman in this state and is entitled to the benefits of chapter 616 of NRS pursuant to the provisions of NRS 616.070; and*

*(b) It is demonstrated that:*

*(1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and*

*(2) The carcinogen is reasonably associated with the disabling cancer.*

*2. Compensation awarded to the employee or his dependents for disabling cancer pursuant to subsection 1 must include:*

*(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization; and*

*(b) The compensation provided in chapter 616 of NRS for the disability or death.*

*3. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any fireman described in this section. This presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his*

*employment. This presumption must control the awarding of benefits pursuant to this section unless evidence to dispute the presumption is presented.*

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Assembly Bill No. 354--Assemblymen Price, Sedway, Garner, Spriggs, Humke, Evans, Schofield, Arberry, Swain, Getto, Banner, Carpenter, Gaston, Freeman, Myrna Williams, Marvel, Spinello, Callister, Wisdom, Brookman, Kerns, Tebbs, Fay, Porter, Nevin, Bergevin, May, Sader, DuBois, Thomas, Adler, Kissam, McGaughey, Lambert, Craddock, Haller, Nicholas, Wendell Williams, Triggs and Thompson

## CHAPTER 482

AN ACT creating the commission for the bicentennial of the United States Constitution; making an appropriation for its support; and providing other matters properly relating thereto.

[Approved June 15, 1987]

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

**Section 1. Chapter 236 of NRS** is hereby amended by adding thereto a new section to read as follows:

*1. There is hereby created the commission for the bicentennial of the United States Constitution, consisting of the members appointed to the Nevada commission of the bicentennial of the United States Constitution by executive order of the governor.*

*2. The commission may accept gifts and grants of money and property and use those gifts and grants to recognize and celebrate the 200th anniversary of the United States Constitution.*

*3. NRS 353.335 does not apply to the provisions of this section.*

**Sec. 2. NRS 353.335** is hereby amended to read as follows:

353.335 1. Except as *otherwise* provided in subsections 4 and 5, and *section 1 of this act*, a state agency may accept any gift or grant of property or services from any source only if it is included in an act of the legislature authorizing expenditures of nonappropriated money or, when it is not so included, if it is approved as provided in subsection 2.

2. If:

(a) Any proposed gift or grant is necessary for the protection or preservation of life or property, the governor shall take reasonable and proper action to accept it and shall report the action, and his reasons for determining that immediate action was necessary, to the interim finance committee at its first meeting after the action is taken. Action by the governor pursuant to this paragraph constitutes acceptance of the gift or

Assembly Bill No. 451—Committee on  
Commerce and Labor

CHAPTER.....

AN ACT relating to occupational diseases; clarifying provisions governing compensation for certain firemen who develop disabling cancer as an occupational disease; and providing other matters properly relating thereto.

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

**Section 1.** NRS 617.453 is hereby amended to read as follows:

617.453 1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if:

(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:

(1) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or

(2) Acting as a volunteer fireman in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and

(b) It is demonstrated that:

(1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and

(2) The carcinogen is reasonably associated with the disabling cancer.

2. *With respect to a person who, for 5 years or more, has been employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers:*

*(a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer.*

*(b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer.*

*(c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.*

(d) *Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma.*

(e) *Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer.*

(f) *Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.*

(g) *Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haemotopoietic cancer.*

3. *The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer.*

4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to ~~{subsection 1}~~ *this section* must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization ~~{:}~~ *in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract;* and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

~~{3-}~~ 5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any fireman described in this section. This *rebuttable* presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This *rebuttable* presumption must control the awarding of benefits pursuant to this section unless evidence to ~~{dispute}~~ *rebut* the presumption is presented.

6. *The provisions of this section do not create a conclusive presumption.*

CHAPTER.....

AN ACT relating to public safety; changing the designation of fireman to firefighter; and providing other matters properly relating thereto.

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

**Section 1.** NRS 484.504 is hereby amended to read as follows:

484.504 1. Except as otherwise provided in this section, a peace officer, a ~~fireman,~~ *firefighter*, an emergency medical technician certified pursuant to chapter 450B of NRS or an employee of a pedestrian mall, who operates a bicycle while he is on duty, is not required to comply with any provision of NRS or any ordinance of a local government relating to the operation of a bicycle while on duty if he:

(a) Is responding to an emergency call or the peace officer is in pursuit of a suspected violator of the law; or

(b) Determines that noncompliance with any such provision is necessary to carry out his duties.

2. The provisions of this section do not:

(a) Relieve a peace officer, ~~fireman,~~ *firefighter*, emergency medical technician or employee of a pedestrian mall from the duty to operate a bicycle with due regard for the safety of others.

(b) Protect such a person from the consequences of his disregard for the safety of others.

3. As used in this section, “pedestrian mall” has the meaning ascribed to it in NRS 268.811.

**Sec. 2.** NRS 484.789 is hereby amended to read as follows:

484.789 1. The Department may issue permits for authorized emergency vehicles to vehicles required to be operated primarily for the immediate preservation of life or property or for the apprehension of violators of the law. The permits must not be issued to vehicles when there are available comparable services provided by agencies referred to in NRS 484.787.

2. The issuance of the permits to vehicles under this section must be limited to:

(a) Agencies designated in NRS 484.787;

(b) Vehicles owned or operated by an agency of the United States engaged primarily in law enforcement work;

(c) Ambulances designed and operated exclusively as such; and

(d) Supervisory vehicles which are:

(1) Marked and used to coordinate and direct the response of ambulances to emergencies;



or implied, oral or written, whether lawfully or unlawfully employed, and include, but not exclusively:

1. Aliens and minors.
2. All elected and appointed paid public officers.
3. Members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay.
4. Volunteer ~~firemen~~ *firefighters* entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145.
5. Musicians providing music for hire, including members of local supporting bands and orchestras commonly known as house bands.

**Sec. 52.** NRS 617.453 is hereby amended to read as follows:

617.453 1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if:

(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:

(1) Employed in this State in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or

(2) Acting as a volunteer ~~fireman~~ *firefighter* in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and

(b) It is demonstrated that:

(1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and

(2) The carcinogen is reasonably associated with the disabling cancer.

2. With respect to a person who, for 5 years or more, has been employed in this State in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers:

(a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer.

(b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer.

(c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.

(d) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma.

(e) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer.

(f) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.

(g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haematopoietic cancer.

3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer.

4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any ~~fireman~~ firefighter described in this section. This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented.

6. The provisions of this section do not create a conclusive presumption.

**Sec. 53.** NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious

gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in this State in a full-time salaried occupation of fire fighting for the benefit or safety of the public;

(b) Acting as a volunteer ~~fireman~~ *firefighter* in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; or

(c) Employed in a full-time salaried occupation as a police officer in this State.

2. Except as *otherwise* provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis during his employment.

3. A thorough test of the functioning of the lungs is not required for a volunteer ~~fireman~~ *firefighter*.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.

5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer or ~~fireman~~ *firefighter* for 5 years or more before the date of disablement.

6. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a ~~fireman~~ *firefighter* or police officer,

→ may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

**Sec. 54.** NRS 617.457 is hereby amended to read as follows:

617.457 1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a ~~fireman~~ *firefighter* or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or

CHAPTER.....

AN ACT relating to occupational diseases; expanding the list of substances which are deemed to be known carcinogens that are reasonably associated with specific disabling cancers for the purposes of the provisions governing coverage for cancer as an occupational disease; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, cancer which results in temporary disability, permanent disability or death is an occupational disease and compensable as such under the provisions of chapter 617 of NRS if the cancer develops or manifests itself out of and in the course of employment of a person who, for 5 years or more, has been employed as a full-time firefighter or has been acting as a volunteer firefighter and who, during the course of the employment, was exposed to a known carcinogen that is reasonably associated with the disabling cancer. Existing law also sets forth a list of substances that shall be deemed to be known carcinogens that are reasonably associated with specific disabling cancers. (NRS 617.453) This bill expands the list of substances which are deemed to be known carcinogens that are reasonably associated with specific disabling cancers.

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

**Section 1.** NRS 617.453 is hereby amended to read as follows:  
617.453 1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if:

(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:

(1) Employed in this State in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or

(2) Acting as a volunteer firefighter in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and

(b) It is demonstrated that:

(1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and

(2) The carcinogen is reasonably associated with the disabling cancer.



2. With respect to a person who, for 5 years or more, has been employed in this State in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers:

(a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer.

(b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer.

(c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.

(d) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma.

(e) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer.

(f) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.

(g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haemotopoietic cancer.

*(h) Diesel exhaust, soot, aldehydes and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with basal cell carcinoma, squamous cell carcinoma and malignant melanoma.*

*(i) Acrylonitrile, benzene and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with prostate cancer.*

*(j) Diesel exhaust, soot and polychlorinated biphenyls shall be deemed to be known carcinogens that are reasonably associated with testicular cancer.*

*(k) Diesel exhaust, benzene and X-ray radiation shall be deemed to be known carcinogens that are reasonably associated with thyroid cancer.*

3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer.



4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any firefighter described in this section. This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented.

6. The provisions of this section do not create a conclusive presumption.

**Sec. 2.** This act becomes effective on July 1, 2009.



Senate Bill No. 215–Senators Cannizzaro, Scheible, Parks, Woodhouse; Cancela, Denis, Dondero Loop, D. Harris, Ohrenschall and Spearman

CHAPTER.....

AN ACT relating to occupational diseases; revising provisions governing compensation for certain employees who develop cancer as an occupational disease; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Under existing law, cancer which results in temporary disability, permanent disability or death is an occupational disease and compensable as such under the provisions governing occupational diseases if the cancer develops or manifests itself out of and in the course of employment of a person who: (1) for 5 years or more, has been employed as a full-time firefighter or has been acting as a volunteer firefighter; and (2) during the course of the employment, was exposed to a known carcinogen that is reasonably associated with the disabling cancer. Existing law also sets forth: (1) a list of substances that are deemed to be known carcinogens that are reasonably associated with specific disabling cancers; and (2) conditions which, when met, create a rebuttable presumption that the cancer developed or manifested itself out of and in the course of employment. (NRS 617.453) This bill provides that such disabling cancer is an occupational disease and compensable as such under the provisions governing occupational diseases if: (1) the cancer develops or manifests itself out of and in the course of employment of a person who, for 5 years or more, has been employed as a full-time firefighter, investigator of fires or arson, or instructor or officer who provides training concerning fire or hazardous materials or has been acting as a volunteer firefighter; and (2) in the course of that employment or the performance of his or her duties, has been exposed to a known carcinogen that is reasonably associated with the disabling cancer. This bill also: (1) revises the list of substances which are deemed to be known carcinogens; (2) provides that disabling cancer is rebuttably presumed to be occupationally related under certain circumstances; and (3) provides that a person who files a claim for a disabling cancer after retirement from employment as a firefighter, investigator of fires or arson, or instructor or officer who provides training concerning fire or hazardous materials is not entitled to compensation for that disease other than medical benefits under certain circumstances.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

**Section 1.** NRS 617.453 is hereby amended to read as follows:

617.453 1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if:



(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:

(1) Employed in this State in a full-time salaried occupation ~~[of fire fighting]~~ *as:*

(I) *A firefighter* for the benefit or safety of the public;

(II) *An investigator of fires or arson; or*

(III) *An instructor or officer for the provision of training concerning fire or hazardous materials; or*

(2) Acting as a volunteer firefighter in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and

(b) It is demonstrated that:

(1) The person was exposed, while in the course of the employment, to a known carcinogen *, or a substance reasonably anticipated to be a human carcinogen,* as defined by the International Agency for Research on Cancer or the National Toxicology Program; and

(2) The carcinogen *or substance, as applicable,* is reasonably associated with the disabling cancer.

2. With respect to a person who, for 5 years or more, has been employed in this State ~~[in a full-time salaried occupation of fire fighting for the benefit or safety of the public,]~~ *as a firefighter, investigator, instructor or officer described in subparagraph (1) of paragraph (a) of subsection 1, or has acted as a volunteer firefighter in this State as described in subparagraph (2) of paragraph (a) of subsection 1,* the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers:

(a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer.

(b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer.

(c) *Asbestos, benzene, diesel exhaust and soot, digoxin, ethylene oxide, polychlorinated biphenyls and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with breast cancer.*

(d) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.





*(e) Diesel exhaust and soot, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with esophageal cancer.*

~~[(d)]~~ (f) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma.

~~[(e)]~~ (g) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer.

*(h) Benzene, diesel exhaust and soot, formaldehyde, 1,3-butadiene and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with leukemia.*

~~[(f)]~~ (i) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.

*(j) Arsenic, asbestos, cadmium, chromium compounds, oils, polycyclic aromatic hydrocarbon, radon, silica, soot and tars shall be deemed to be known carcinogens that are reasonably associated with lung cancer.*

~~[(g)]~~ (k) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or hematopoietic cancer.

~~[(h)]~~ (l) Diesel exhaust, soot, aldehydes and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with basal cell carcinoma, squamous cell carcinoma and malignant melanoma.

*(m) Benzene, dioxins and glyphosate shall be deemed to be known carcinogens that are reasonably associated with multiple myeloma.*

*(n) Arsenic, asbestos, benzene, diesel exhaust and soot, formaldehyde and hydrogen chloride shall be deemed to be known carcinogens that are reasonably associated with nasopharyngeal cancer, including laryngeal cancer and pharyngeal cancer.*

*(o) Benzene, chronic hepatitis B and C viruses, formaldehyde and polychlorinated biphenyls shall be deemed to be known carcinogens that are reasonably associated with non-Hodgkin's lymphoma.*

*(p) Asbestos, benzene and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with ovarian cancer.*



*(q) Polycyclic aromatic hydrocarbon shall be deemed to be a known carcinogen that is reasonably associated with pancreatic cancer.*

~~[(+)]~~ (r) Acrylonitrile, benzene and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with prostate cancer.

*(s) Diesel exhaust and soot, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with rectal cancer.*

*(t) Chlorophenols, chlorophenoxy herbicides and polychlorinated biphenyls shall be deemed to be known carcinogens that are reasonably associated with soft tissue sarcoma.*

*(u) Diesel exhaust and soot, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with stomach cancer.*

~~[(+)]~~ (v) Diesel exhaust, soot and polychlorinated biphenyls shall be deemed to be known carcinogens that are reasonably associated with testicular cancer.

~~[(+)]~~ (w) Diesel exhaust, benzene and X-ray radiation shall be deemed to be known carcinogens that are reasonably associated with thyroid cancer.

*(x) Diesel exhaust and soot, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with urinary tract cancer and ureteral cancer.*

*(y) Benzene and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with uterine cancer.*

3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen *or is reasonably anticipated to be a human carcinogen, including an agent classified by the International Agency for Research on Cancer in Group 1 or Group 2A*, that is reasonably associated with a disabling cancer.

~~[4.—Compensation]~~

*4. Except as otherwise provided in subsection 10, compensation* awarded to the employee or his or her dependents for disabling cancer pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260



or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. ~~[Disabling]~~ *For a person who has been employed in this State as a firefighter, investigator, instructor or officer described in subparagraph (1) of paragraph (a) of subsection 1, or has acted as a volunteer firefighter in this State as described in subparagraph (2) of paragraph (a) of subsection 1, disabling cancer is rebuttably presumed to have arisen out of and in the course of the employment of the person if the disease is diagnosed during the course of the person's employment described in paragraph (a) of subsection 1.*

6. *For a person who has been employed in this State as a firefighter, investigator, instructor or officer described in subparagraph (1) of paragraph (a) of subsection 1 and who retires before July 1, 2019, or has acted as a volunteer firefighter in this State as described in subparagraph (2) of paragraph (a) of subsection 1, regardless of the date on which the volunteer firefighter retires, disabling cancer is rebuttably presumed to have ~~[developed or manifested itself]~~ arisen out of and in the course of the person's employment ~~[of any firefighter described in this section.] pursuant to this subsection.~~* This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his or her employment. ~~[This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented.]~~

~~—6.— The provisions of this section do not create a conclusive presumption.]~~

7. *For a person who has been employed in this State as a firefighter, investigator, instructor or officer described in subparagraph (1) of paragraph (a) of subsection 1 and who retires on or after July 1, 2019, disabling cancer is rebuttably presumed to have arisen out of and in the course of the person's employment pursuant to this subsection. This rebuttable presumption applies to disabling cancer diagnosed:*



*(a) If the person ceases employment before completing 20 years of service as a firefighter, investigator, instructor or officer, during the period after separation from employment which is equal to the number of years worked; or*

*(b) If the person ceases employment after completing 20 years or more of service as a firefighter, investigator, instructor or officer, at any time during the person's life.*

*8. Service credit which is purchased in a retirement system must not be used to calculate the number of years of service or employment of a person for the purposes of this section.*

*9. A rebuttable presumption created by subsection 5, 6 or 7 must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented. The provisions of subsections 5, 6 and 7 do not create a conclusive presumption.*

*10. A person who files a claim for a disabling cancer pursuant to subsection 7 after he or she retires from employment as a firefighter, investigator of fires or arson, or instructor or officer for the provision of training concerning fire or hazardous materials is not entitled to receive any compensation for that disease other than medical benefits.*

**Sec. 2.** The amendatory provisions of this act apply only to claims filed on or after July 1, 2019.

**Sec. 3.** This act becomes effective on July 1, 2019.



EXHIBIT B

EXHIBIT B

ASSEMBLY COMMITTEE ON LABOR AND MANAGEMENT

Sixty-fourth Session  
May 26, 1987

The Assembly Committee on Labor and Management was called to order by Chairman James. J. Banner at 6:07 p.m. on Tuesday, May 26, 1987, in room 214 of the Legislative Building, Carson City, Nevada. Exhibit A is the meeting agenda.

MEMBERS PRESENT:

Chairman James J. Banner  
Mr. Louis W. Bergevin  
Mr. John C. Carpenter  
Mr. Jack Jeffrey  
Mr. Terry Tebbs  
Mr. Wendell Williams  
Mrs. Jane Wisdom

MEMBERS ABSENT:

Vice Chairman Robert W. Fay (excused)  
Mr. Danny Thompson

STAFF PRESENT:

None

GUESTS PRESENT:

Mr. Randy Walker, City of Las Vegas  
Mr. John Pappageorge, Clark County  
Mr. Laury Lewis, General Manager, SIIS  
Mr. Jim Wadhams, Self-Insured Employers Association  
Mr. Bill Bunker, Federated Firefighters  
Dr. Salina Bendex, Combustion Toxicologist  
Ms. Kim Mueller, Health & Safety Director, California Professional Firefighters

ASSEMBLY BILL NO. 319 Makes various changes concerning industrial insurance and occupational diseases.

Mr. Tebbs referred to section 2 on page 2 of the bill. He noted between lines 9 and 11 there was confusion as to whether or not an amendment had been agreed to. He recommended amending A.B. 319 using the amendment (Exhibit B) proposed by Mr. Jim Wadhams who represents the Self-Insured Employers. Mr.

Mr. Jeffrey requested the committee vote on the amendment separately.

A brief discussion ensued.

ASSEMBLYMAN JEFFREY MOVED NOT TO ADOPT THE AMENDMENT OFFERED BY THE SELF-INSURED.

ASSEMBLYMAN WISDOM SECONDED THE MOTION.

THE MOTION FAILED WITH ASSEMBLYMEN BERGEVIN, CARPENTER, TEBBS AND BANNER VOTING AGAINST THE MOTION AND ASSEMBLYMEN FAY AND THOMPSON BEING ABSENT FROM THE MEETING.

\* \* \* \* \*

ASSEMBLYMAN TEBBS MOVED TO AMEND AND DO PASS A.B. 319 BY DELETING SECTIONS 4 THROUGH 7, AND LINES 23-30 ON PAGE 2 AND INSERTING THE AMENDMENT PROPOSED BY JIM BARNES.

ASSEMBLYMAN BERGEVIN SECONDED THE MOTION.

THE MOTION FAILED WITH ASSEMBLYMEN JEFFREY, WILLIAMS, AND WISDOM VOTING AGAINST THE MOTION. ASSEMBLYMEN FAY AND THOMPSON WERE ABSENT FROM THE MEETING.

ASSEMBLY BILL NO. 797 Includes cancer as occupational disease for firemen.

Mr. Bill Bunker representing the Federated Firefighters finished testifying on A.B. 797. He referred to the previous hearing when the language was not the way the firemen wanted it. The chairman had assigned a sub-committee of Randy Walker, John Pappageorge, Laury Lewis and himself and they had met and achieved a workable solution. He stated the amendment (Exhibit D) was in firefighter language because it had not been to the bill drafter yet. He referred to two nationally known research papers on carcinogens in relation to the firefighter, one was the International Agency For Research On Cancer (Exhibit E) and the other was from the U.S. Department of Health and Human Services (Exhibit F). Mr. Bunker continued by stating instead of a causal relationship with cancer as an occupational disease they would like to use the words "reasonable link". If a reasonable link could be shown it would be up to the insurer to prove it unreasonable because the man smoked three packs of cigarettes a day. It would not be reasonable to say a man died of cancer from smoke inhalation while fighting fires if he got his lung cancer from smoking and those provisions were the only actual changes.

Mr. Bunker introduced Dr. Salina Bendex, a combustion toxicologist who holds a B.S. degree in chemistry from UCLA and a Ph D. in Zoology from UC Berkeley. He mentioned she had served for five years on the Environmental Protection Agency Administrators Toxic Substances Advisory Committee and she is currently a member of the National Fire Protection Association Committee on hazardous materials response personnel. Dr. Bendex is frequently consulted on occupational induced cancer in firefighters.

Dr. Salina Bendex declared, as a combustion toxicologist, she had been interested in the chemistry of smoke and the health consequences of inhalation by firefighters and other persons exposed to smoke. She stated everyone was more conscious of smoke inhalation because of the result of the MGM fire and there has been a change in the cause of death as a result of fire. Fire deaths used to be due to the direct effect of fire when people got burned. In the MGM fire and others, in recent years, many people have died who were not near the actual fire, these people died of smoke inhalation. Many people do not realize the people who survived after inhaling smoke have an increased risk of incurring cancer.

There have been eleven studies to look at cancer incidents in firefighters. Out of the eleven studies, ten of them have found an abnormally high rate of cancer in firefighters, and there were methodological problems with the eleventh. Various kinds of cancers were found. One study found an excessive amount of colon cancer while another, done in Massachusetts by the Harvard Medical School, found excessive cancer of parts of the respiratory tract as well as leukemia and lymphoma (Exhibit G).

After reading the results of Exhibit H, Dr. Bendex wondered what, in smoke was causing the excess of leukemia occurrences in at least four of the studies on firefighters. Classically, leukemia is associated by toxicologists as an exposure to benzene. A firefighter could be exposed to benzene through almost every plastic used in our society, as benzene is included as one of its products of combustion. In some of the most common substances such as PVC, benzene may be one of the main products of combustion; and, unlike other products, benzene can be found in all types of fires such as; smoldering fires, medium fires and real hot fires. She stressed there are some products which are only found under limited fire conditions. Benzene was not one of these products. The amount of benzene may vary but it would always form. Benzene is also found in gasoline, and firefighters are frequently called to deal with vehicle fires where a certain amount of gasoline will



burn. The problem may be currently increasing because gasolines are containing more benzene in the mix than they were ten years ago. Unlike many carcinogens which take a long time to manifest, benzene has a latency effect, and a person would not contract cancer right away. For most kinds of chemical carcinogens there is a lapse of at least ten years from the time of exposure to the appearance of clinically detectable cancer.

Asbestos is another generally recognized carcinogen which could take as much as 40 years to appear. Some of the cancers caused by asbestos are extremely peculiar. No one gets them unless they have been exposed to asbestos. Firefighters are all exposed to benzene and another causation of leukemia, which is accepted by the International Agency for Research on Cancer (IARC), as a carcinogen is carbontetrochloride. People who have been firefighters for many years have been exposed to this carcinogen, in the past, in fire extinguishers and when being used as a dry cleaning agent. More recently firefighters are exposed to carbontetrachloride because it is formed as a product of combustion of many kinds of plastics. Any kind of plastic such as PVC containing chlorine atoms can have carbontetrachloride as a product of combustion. Another product of combustion of polyvinylchloride which is an IARC carcinogen is hexachlorobenzene. Another is perchloroethylene which is the most commonly used dry cleaning agent in the United States. It is also a product of combustion of chlorinated plastics.

Lastly the soot which makes smoke look dark is also an IARC carcinogen which contains a whole series of known chemical carcinogens some of which are also associated with the induction of leukemia. Because of these facts it is not surprising to find an excess of leukemia in firefighters. Similarly a list of chemicals could be scanned to find other types of cancer. She expressed lung cancer in firefighters occurs for the same reason people who smoke cigarettes contract cancer.

Dr. Bendex has been asked how the firefighters do more damage by fighting fires than by smoking cigarettes because they do not enter that many fires during the course of a year. The answer is because many of these products are absorbed into the body and released over a period of hours or days depending on the chemical. In the case of perchloroethylene it takes 63 days for the chemical to clear the person's body after they were exposed. She stressed it was common for a firefighter to go home after a fire and after taking a shower and washing his hair the family notices they can still smell something which smells like smoke when the firefighter breathes out. This is

because there is so much of it in their lungs. She expressed she had had the same kinds of experiences in the laboratory with certain chemicals. It should be recognized that the exposure continues long after the firefighter fights a fire. Adequate protection for a firefighter has only been available for ten years and during the time most firefighters would have been fighting fires, there was no respiratory protection or it was inadequate. She expressed there is every reason to expect that cancer in a firefighter is associated with their exposures to chemicals and smoke on the job.

Ms. Kim Mueller, Health and Safety Director with the California Professional Firefighters explained what was presently happening in California. In 1980 a number of California firefighters indicated young firefighters were contracting cancer. The firefighters were too young to be stricken with cancer and felt it was related to their jobs. There was no scientific evidence but a gut feeling from the firefighters led to the pursuit of compensation for them.

Ms. Mueller declared the pursuit led them to Dr. Bendex who had done research when it was presumed smoke may have lasting effects on the firefighters. She stated her group had approached the California Legislature and they became convinced there was a need for some kind of compensation. The bill has been in existence since September 1982, so there have been some claims filed under that particular section of the labor code. She stated they have approximately 30,000 paid professional firefighters in the State of California. There is no systematic tracking system to mark the claims filed, but they do their best to keep in touch with Worker's Compensation and firefighters organizations. A maximum of 50 claims have been filed and not all of them were awarded. The firefighter had to prove exposure to a noncarcinogen. Of the cases filed, all of them have gone to qualified occupational doctors for review. She felt the process was fair. A recent study performed by a commission evaluating the number of claims to cost, identified very few filed in the state. She did not feel there would be a real rush but if a doctor thought the case was legitimate a claim would be filed.

Ms. Mueller stated although cancer in firefighters is the issue the ultimate would be prevention. Passing the presumptive legislation in California has focused on that issue and they now work for prevention. A firefighter's personal exposure recording system has been established. The handout is a summary of exposures recorded to date and includes only those people who wanted to participate. She noted there were more chemical exposures reported than incidents. There must be some multiple exposures going on where people could be exposed to

benzene and perchloroethylene at a fire. She mentioned she had a list of known carcinogens which have been reported and the list includes at least 20 reported by firefighters.

To give the committee a sense of how the information can ultimately prevent those exposures, again referring to the handout, she directed the committee to look under activity and note that "overhaul" received the most number of hours. Those hours are obtained during the mop-up stage which is when the firefighters are cleaning up the scene and making sure the fire is out. Some of the most dangerous types of exposures occur at this time. There may be lingering and toxic fumes if there are smoldering synthetics producing the types of materials Dr. Bendex referred to in an earlier testimony. There are asbestos fibers released by the fire and it is during that time the firefighter is the least protected.

Mr. Bill Bunker noted one of the prime concerns of the subcommittee was if a firefighter left on a disability it might be possible for him to draw more money than he would have if he had been working. He stressed that was not the intent of the bill.

Mr. Bunker drew attention to the fact of the firefighters wearing protective clothing and gear. They use a self-contained breathing apparatus to breathe oxygen on the job. He noted he was working on a benzene fire where a valve on a benzene tank had broken off and the fire could not be extinguished with water. He noted the fire itself lasted 7 hours and it was impossible to wear an air pack in 110 degree heat and fight the fire. He stressed a man could possibly wear the air pack for 20 or 30 minutes but that would be the maximum. The air packs had to be taken off because of the heat and the possibility of heat stroke. Mr. Bunker mentioned the foam never arrived to douse the fire. As a last result they put crash gear on one of the firefighters, turned four hose streams on him and had him walk through the fire to shut off the valve at the tank. He commented after hearing benzene is so bad for a person he wished he had not been at that fire.

At the MGM fire the firefighters could either leave the floors to refurbish with air or stay on the floors and evacuate people. They chose to evacuate the people by taking their air packs off and going to a window, when they needed fresh air, for a quick gasp of air. The people were taken up to the roof or down the stairwells to safety. Some of the firefighters spent hours and hours in the building without air bottles. After the command center was set up some of the firefighters were able to go to the floors below the fire and replenish with air bottles while others were never able to replenish. Mr.

Bunker noted the air bottles hold 20 minutes of air and during the overhaul on a normal house fire it would take at least an hour to clean up. The firefighters check for sparks in the walls before leaving the fire site so there is no danger of the rest of the house burning to the ground.

He noted the amendment was drastically different from the one originally printed and would answer any questions the committee might ask.

Mr. Banner asked Mr. Pappageorge to testify on the bill and asked if he had been working on the MGM fire.

Mr. John Pappageorge representing Clark County replied to Mr. Banner's question that yes he had worked the MGM fire. Referring to the bill he stated he was mostly interested in the benefits being given to all employees who might contract cancer through their job. The bill is not limited to firefighters but also covers painters etc. He mentioned after conversing with SIIS the cost would not affect the county so he does not oppose the bill. The bill mainly puts the burden of proof on the employer rather than the employee. He noted the employee must be able to point out an incident where he might have come into contact with a chemical which he claims caused his cancer. He had no objection to the employee pointing that out and felt he could live with the bill.

Mr. Banner asked if the bill would force the county to keep better records.

Mr. Pappageorge responded yes their records would be better and had been during the past 5 or 6 years.

Mr. Banner advised the committee that Mr. Pappageorge was the #2 firefighter in the county.

Mr. Laury Lewis, General Manager of SIIS, testified to his participation on the subcommittee and noted the bill would not be a costly piece of legislation. The employers pay the bills and in the case of the firefighters it would be the responsibility of the cities and counties. SIIS does accept cancer cases at present, if it can be related under the occupational disease act in the current statutes. The coverage is not expanded but shifts the burden of proof as previously stated. Mr. Lewis voiced a main concern was whether or not the presumption could be disputed in certain cases. The answer is yes, if there is medical evidence to show the particular cancer could have been or was related to another type of exposure. Mr. Lewis continued by reading from a prepared statement (Exhibit I). He stressed this would not mean if someone

contracted lung cancer they would be rejected. If someone smokes three packs of cigarettes a day and there is relationship then the medical evidence will be used for acceptability of the claim.

Mr. Randy Walker, representing the City of Las Vegas, declared he was in agreement with the previous testimony. The city's position was if a claim was shown to be job related they would compensate for that injury. He noted there was adequate protection in the language. If there is evidence of the cancer being caused from something other than being a firefighter, the city would be protected to show that evidence. He noted a number of cases which have been lost by the city were because of poor record keeping. This bill gives incentive to keep better records which is advantageous to all of the industrial claims.

Mr. Banner asked if the City of Las Vegas and Clark County were self-insured.

Mr. Walker noted they were both self-insured's and the City of Las Vegas administered in-house.

ASSEMBLYMAN JEFFREY MOVED AMEND AND DO PASS A.B. 797.

ASSEMBLYMAN WISDOM SECONDED THE MOTION.

THE MOTION CARRIED BY THOSE MEMBERS PRESENT WITH ASSEMBLYMEN FAY, THOMPSON AND TEBBS BEING ABSENT.

There being no further business the meeting was adjourned at 6:58 p.m.

Respectfully submitted,



Martha Barnes  
Committee secretary

A.B. 797

Minutes of testimony given in the Assembly Committee on Labor and Management on May 26, 1987, by Dr. Salina Bendex and Ms. Kim Mueller relating to A.B. 797.

Dr. Salina Bendex declared, as a combustion toxicologist, she had been interested in the chemistry of smoke and the health consequences of inhalation by firefighters and other persons exposed to smoke. She stated everyone was more conscious of smoke inhalation because of the result of the MGM fire and there has been a real change in the cause of death as a result of fire. Fire deaths used to be due to the direct effect of fire when people got burned. In the MGM fire and others, in recent years, many people have died who were not near the actual fire, these people died of smoke inhalation. Many people do not realize the people who survived after inhaling smoke, have an increased risk of incurring cancer.

There have been eleven studies to look at cancer incidents in firefighters. Out of the eleven studies, ten of them have found an abnormally high rate of cancer in firefighters and there were methodological problems with the eleventh. Various kinds of cancers were found. One study found an excessive amount of colon cancer while another, done in Massachusetts by the Harvard Medical School, found excessive cancer of parts of the respiratory tract as well as leukemia and lymphoma (Exhibit H).

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benzene and another causation of leukemia, which is accepted by the International Agency for Research on Cancer (IARC), as a carcinogen is carbontetrochloride. People who have been firefighters for many years have been exposed to this carcinogen, in the past, in fire extinguishers and when being used as a dry cleaning agent. More recently firefighters are exposed to carbontetrachloride because it is formed as a product of combustion of many kinds of plastics. Any kind of plastic such as PVC containing chlorine atoms can have carbontetrachloride as a product of combustion. Another product of combustion of polyvinylchloride which is an IARC carcinogen is hexachlorobenzene. Another is perchloroethylene which is the most commonly used dry cleaning agent in the United States. It is also a product of combustion of chlorinated plastics.

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Dr. Bendex has been asked how the firefighters do more damage by fighting fires than by smoking cigarettes because they do not enter that many fires during the course of a year. The answer is because many of these products are absorbed into the body and released over a period of hours or days depending on the chemical. In the case of perchloroethylene it takes 63 days for the chemical to clear the person's body after they were exposed. She stressed it was common for a firefighter to go home after a fire and after taking a shower and washing his hair the family notices they can still smell something which smells like smoke when the firefighter breathes out. This is because there is so much of it in their lungs. She expressed she had had the same kinds of experiences in the laboratory with certain chemicals. It should be recognized that the exposure continues long after the firefighter fights a fire. Adequate protection for a firefighter has only been available for ten years and during the time most firefighters would have been fighting fires, there was no respiratory protection or it was inadequate. She expressed there is every reason to expect that cancer in a firefighter is associated to their exposures to chemicals and smoke on the job.

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happening in California. In 1980 a number of California firefighters indicated young firefighters were contracting cancer. The firefighters were too young to be stricken with cancer and felt it was related to their jobs. There was no scientific evidence but a gut feeling from the firefighters led to the pursuit of compensation for them.

Ms. Mueller declared the pursuit led them to Dr. Bendex who had done research when it was presumed smoke may have lasting effects on the firefighters. She stated her group had approached the California Legislature and they became convinced there was a need for some kind of compensation. The bill has been in existence since September 1982, so there have been some claims filed under that particular section of the labor code. She stated they have approximately 30,000 paid professional firefighters in the State of California. There is no systematic tracking system to mark the claims filed, but they do their best to keep in touch with Worker's Compensation and firefighters organizations. A maximum of 50 claims have been filed and not all of them were awarded. The firefighter had to prove exposure to a non-carcinogen. Of the cases filed, all of them have gone to qualified occupational doctors for review. She felt the process was fair. A recent study performed by a commission evaluating the number of claims to cost, identified very few filed in the state. She did not feel there would be a real rush but if a doctor thought the case was legitimate a claim would be filed.

Referring to the handout (Exhibit F) Ms. Mueller stated although cancer in firefighters is not an issue the ultimate would be prevention. Passing the presumptive legislation in California has focused on that issue and they now work for prevention. A firefighter personal exposure recording system has been established. The handout is a summary of exposures recorded to date and includes only those people who wanted to participate. She noted there were more chemical exposures reported than incidents. There must be some multiple exposures going on where people could be exposed to benzene and perchloroethylene at a fire. She mentioned she had a list of known carcinogens which have been reported and the list includes at least 20 reported by firefighters.

To give the committee a sense of how the information can ultimately prevent those exposures, again referring to the handout, she directed the committee to look under activity and note that "overhaul" received the most number of hours. Those hours are obtained during the mop-up stage which is when the firefighters are cleaning up the scene and making sure the fire is out. Some of the most dangerous types of exposures occur at this time. There may be lingering and toxic fumes if there are

smoldering synthetics producing the types of materials Dr. Bendex referred to in an earlier testimony. There are asbestos fibers released by the fire and it is during that time the firefighter is the least protected.

MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR

Sixty-Fourth Session  
June 6, 1987

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:15 a.m., on Saturday, June 6, 1987, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman  
Senator Ann O'Connell, Vice Chairman  
Senator John M. Vergiels  
Senator Kenneth K. Redelsperger  
Senator Raymond C. Shaffer  
Senator Bob Coffin  
Senator Bill O'Donnell

STAFF MEMBERS PRESENT:

Cindy Vaughtner, Committee Secretary

OTHERS PRESENT:

Wm. Patterson Cashill, Nevada Trial Lawyer's Association  
Michael Siebert, AAA  
Jim Wadhams, American Insurance Association  
Teresa Rankin, Nevada Insurance Division  
Dave Guinan, Nevada Guaranty Association  
Bill Bunker, Federated Firefighters of Nevada  
Laury Lewis, State Industrial Insurance System

Chairman Townsend opened the hearing for Assembly Bill 811.

A.B. 811 - Revises provisions governing unfair practices  
of insurers. (BDR 57-2227)

Wm. Pat Cashill, representing Nevada Trial Lawyer's Association, proposed A.B. 811 for consideration along with the Coalition for Available and Affordable Liability Insurance, the Nevada State Medical Society, the National Federation of Independent Businesses and Mr. Jim Wadhams. Mr. Cashill explained the purpose of the bill was to

up the pieces . . . on behalf of Nevada insureds and Nevada claimants." He claimed the purpose of A.B. 750 was to amend a section in an act relating to judicial stays of certain causes of action involving the Guaranty Association. In a bill passed in 1971 a provision dealing with "all actions in which the insolvent insurance company was a party would be stayed for six months from the date of insolvency. . . . The Guaranty Association does not have the responsibility to defend the insolvent insurance company; we have the responsibility to defend the insured of the insolvent insurance company." He declared the language in the law to be narrowly construed to make the Association unable to obtain a stay when necessary. The reason the Association would need a stay was due to the fact when companies become insolvent it takes time to sort everything out.

SENATOR O'DONNELL MOVED TO DO PASS A.B. 750.

SENATOR SHAFFER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR REDELSPERGER WAS ABSENT FOR THE VOTE.)

\* \* \* \* \*

Chairman Townsend opened the hearing on A.B. 797.

A.B. 797 - Includes cancer as occupational disease for firemen. (BDR 53-1625)

Bill Bunker, representing the Federated Firefighters of Nevada, gave a history of A.B. 797:

When we got the BDR out of committee on A.B. 797 . . . it says that firefighters if they got cancer were covered for an occupational disease. That was not our intention at all. However, because it was written that way and because of the time element we took it to the committee that way. We had a hearing . . . and what our intentions were . . . if a firefighter becomes exposed to a known carcinogen through chemicals and plastics, . . . we wanted to have him covered under the Occupational Disease Act. . . . What brought it about . . . is two fires . . . one was a benzene fire . . . in which we fought the fire for approximately seven hours before we were able to contain it. Benzene is one of the known carcinogens for cancer. The other fire was the MGM Hotel. Downstairs in the lobby,

during that, through that casino the holocaust that caused this is where the smoke came from; the slot machines and the marquis out front were all new plastics. We don't even know what they'll do. We know some of the affects of some of the smoke that was burning; and of course our firefighters up in the upper floors that day would run out of air and they were in the process of evacuating people and they did not have time to go back down and get another air bottle . . . they just stuck their heads out the window, grabbed what they could and got the people out of there. . . . Dr. Salina Bendex came across and gave testimony to that committee [assembly] [gave a copy of the testimony of Dr. Bendex along with other articles and reports dealing with carcinogens (Exhibit D)] . . . that tied chemicals into the fire service. This law now is somewhat modeled after California legislation.

Mr. Bunker explained other information supplied to the committee, being, International Agency for Research on Cancer and a National Toxicology Program (NTP) and evaluation of carcinogens due to smoke (Exhibit D). He stated with the completion of the subcommittee the biggest concern was to clarify where Nevada was with occupational diseases as far as cancer within the fire service.

Mr. Bunker stated the aim of the fire service was to establish a record keeping system to set up preventative measures. In California firefighters maintain a personal exposure record which allows a firefighter to fight a fire and record the amount of exposure obtained, plus sending a copy of the exposure information into a computerized system for future reference.

Chairman Townsend asked the purpose of the record keeping system and why it was not mentioned in A.B. 797. Mr. Bunker replied a firefighter must keep a record for future reference to prove his exposure. Senator Vergiels pointed out the burden of proof in a claim would be with the claimant, therefore, the record keeping is on behalf of the claimant. Mr. Bunker stated they found a problem during the subcommittee dealing with firefighters who smoked. It was agreed within the subcommittee that the cause of cancer, if it was lung cancer for example, would be the discretion of the doctor.

Senator O'Donnell understood A.B. 797 to mean it was up to the state industrial insurance system (SIIS) to "presume, if documented [carcinogens], that the cancer was caused by

fighting the fire." Mr. Bunker agreed and added the presumption on the firefighter was to show the exposure.

Senator O'Donnell questioned Laury Lewis, general manager of the SIIS, what the fiscal impact would be on A.B. 797. Mr. Lewis responded the fiscal impact was zero and the reason was "cancer is currently covered under the Occupational Disease Act. The courts are very consistent in construing the act liberally in favor of the injured worker. . . . The courts say if there has been exposure . . . and it has been related, there is a degree of rebuttable presumption now. . . . Since it is already covered there is really no fiscal impact." Mr. Lewis concurred with A.B. 797 and spoke briefly concerning the smoker issue and referred to a handout (Exhibit E).

Senator O'Donnell questioned if the language in the bill stated "the presumption shifts if you are a smoker." Mr. Lewis stated it was not included in A.B. 797 and said:

I just wanted to put it in testimony as establishing legislative intent . . . so when this issue comes up in court and we have challenged that issue and a judge somewhere is not saying 'well there is a rebuttable presumption here,' and we're challenged based on the preponderance of medical evidence. . . . It was not the intent to establish a rebuttable presumption.

Senator O'Donnell was uncomfortable with shifting the burden of proof and asked whether a person could file a claim with SIIS under A.B. 797 after developing skin cancer from sun bathing but collecting from SIIS because he was also exposed to a carcinogen. Mr. Bunker indicated Senator O'Donnell was correct but said "he would have to have a pretty heavy preponderance of exposure to something under skin cancer as far as being covered." Chairman Townsend asked "do you perceive that to be a rebuttable presumption that would have to be weighed with the preponderance of the evidence?" Mr. Lewis described the present policy, "they must show there was a relationship to what they have contracted in the way of a carcinogen and their occupation; they must show that connection and that it happened in that course and scope."

SENATOR VERGIELS MOVED TO DO PASS A.B. 797.

SENATOR SHAFFER SECONDED THE MOTION.

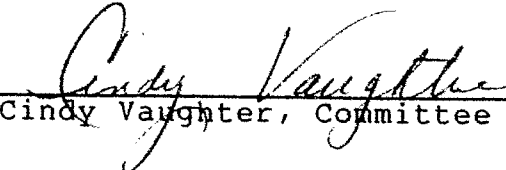
Senate Committee on COMMERCE AND LABOR  
Date: June 6, 1987  
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THE MOTION CARRIED UNANIMOUSLY.

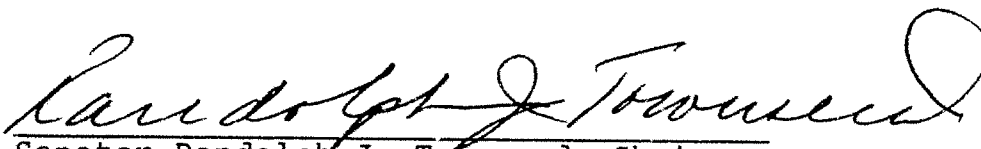
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There being no further business Chairman Townsend adjourned  
the meeting at 9:45 a.m.

RESPECTFULLY SUBMITTED:

  
Cindy Vaughter, Committee Secretary

APPROVED BY:

  
Senator Randolph J. Townsend, Chairman

DATE: 6/23/87

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

**Seventy-Second Session  
April 11, 2003**

The Committee on Commerce and Labor was called to order at 12:19 p.m., on Friday, April 11, 2003. Chairman David Goldwater presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**Note:** These minutes are compiled in the modified verbatim style. Bracketed material indicates language used to clarify and further describe testimony. Actions of the Committee are presented in the traditional legislative style.

**COMMITTEE MEMBERS PRESENT:**

Mr. David Goldwater, Chairman  
Ms. Barbara Buckley, Vice Chairman  
Mr. Morse Arberry Jr.  
Mr. Bob Beers  
Mr. David Brown  
Mrs. Dawn Gibbons  
Ms. Chris Giunchigliani  
Mr. Josh Griffin  
Mr. Lynn Hettrick  
Mr. Ron Knecht  
Ms. Sheila Leslie  
Mr. John Ocegüera  
Mr. David Parks  
Mr. Richard Perkins

**COMMITTEE MEMBERS ABSENT:**

None



**GUEST LEGISLATORS PRESENT:**

Assemblyman Jerry Claborn, District No. 19  
Assemblyman Jason Geddes, District No. 24

**STAFF MEMBERS PRESENT:**

Vance Hughey, Committee Policy Analyst  
Diane Thornton, Senior Research Analyst  
Wil Keane, Committee Counsel  
Patricia Blackburn, Committee Secretary

**OTHERS PRESENT:**

William Harnedy, Private Citizen  
Dean Hardy, Attorney, representing William Harnedy  
Greg Davis, President, Local Union # 1607, North Las Vegas, Professional  
Fire Fighters of Nevada  
John Ellerton, M.D., Oncologist  
Danny Thompson, Executive Secretary/Treasurer, Nevada State AFL-CIO  
Rusty McAllister, Vice President, Professional Fire Fighters of Nevada  
Buffy Gail Martin, Government Relations Director, American Cancer  
Society of Nevada  
Jon Pierce, Wildland Fire Fighter  
Daryl Moore, Director of Human Resources, City of Henderson  
Randy Waterman, Risk Manager, City of Sparks  
Wayne Carlson, Executive Director, Public Agency Compensation Trust  
Kimberly McDonald, Special Projects Analyst & Lobbyist, City of North  
Las Vegas  
Shari Peterson, R.D.H., M.Ed., Dental Hygiene Instructor, Community  
College of Southern Nevada  
Fred Hillerby, Legislative Advocate, representing Nevada State Board of  
Dental Examiners  
Tom R. Skancke, Legislative Advocate, Nevada Chiropractic Association  
Craig Hudson, Community Bankers Association  
Michael Alonso, Legislative Advocate, representing Toyota  
Robert R. Barengo, Owner, Western Thrift and Title Company  
Donal Hummer, Vice-President, Harley-Davidson Financial Services  
Larry Osborne, Legislative Advocate, Carson City Area Chamber of  
Commerce  
Timothy Hay, Chief Deputy Attorney General, Bureau of Consumer  
Protection  
Rose McKinney-James, Legislative Advocate, Energy Works Consulting

Joseph Johnson, Legislative Advocate, Sunrise Sustainable Resource Corporation, and Toiyabe Chapter of the Sierra Club  
Susan Fisher, Legislative Advocate, Barrick Gold Corporation  
David Noble, Assistant General Counsel, Public Utilities Commission, State of Nevada  
Jack Kim, Legislative Advocate, Nevada Association of Health Plans  
Stephanie Licht, Legislative Consultant, representing Elko County  
Nancyann Leeder, Nevada Attorney for Injured Workers  
Patricia Jarman-Manning, Commissioner, Department of Business and Industry, Consumer Affairs Division, State of Nevada

**Chairman Goldwater:**

Please note for the record that all members are present; a quorum is present. We will get started, hear the bills, and then go on to work session. We will introduce A.B. 451.

**Assembly Bill 451: Provides that certain forms of cancer contracted by firemen are occupational diseases under certain circumstances. (BDR 53-1197)**

**Rusty McAllister, Vice President, Professional Fire Fighters of Nevada:**

[Introduced himself. Spoke from prepared testimony (Exhibit C)]. On behalf of the Professional Fire Fighters of Nevada we would like to talk to you about A.B. 451. We bring this bill before you today in an attempt to get some help and clarification of existing statute regarding cancer protections currently in place for fire fighters. In 1987, the Legislature passed legislation to provide fire fighters protections for cancers due to the increased risk of repeated exposures to known toxic carcinogens. This legislation was put into law and currently exists under NRS (*Nevada Revised Statutes*) 617.453.

Currently, under NRS 617.453, the following needs to be established for a cancer claim for industrial insurance for fire fighters: First, you must have been a full-time salaried fire fighter for five years or more; second, you have to demonstrate that you were exposed, while in the course of your employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and third, the carcinogen that you have been exposed to needs to be reasonably associated with the disabling cancer. If you meet these requirements, you may file your cancer claim.

The reason that we bring this bill before you today is because there are several insurers that will not accept these claims even though we meet the requirements set forth in the statute. Denial is a common practice among some insurers. This will be more clearly exposed in later testimony. There are some

insurers that accept these claims. We have had claims accepted for some cancers, mostly because the physician stated that the specific cancer was absolutely caused by fire fighting.

[Mr. McAllister continued.] There are those insurers out there who will claim that we cannot show a correlation between the carcinogens we have been exposed to and the type of cancer that we have, even if we produce research and physician testimony that there is a correlation between the cancers and the carcinogen. An example of this is one recent claim that has been denied for a fire fighter with thyroid cancer. He has been on the job for over ten years; this fire fighter has repeatedly been exposed to soot, a known human carcinogen, during the course of his employment. This carcinogen has been shown to increase vulnerability to cancers in esophageal areas and cause thyroid cancer. His claim has been denied and is still pending in the system. Fortunately, this fire fighter has gotten the appropriate treatment through his health insurance trust and is back on the job protecting the public.

This bill is meant to provide clarification to insurers that certain types of cancers are associated with specific types of carcinogens. There have been many studies that show there is a greater instance of certain types of cancer in humans after exposure to certain types of carcinogens. We have copies of these studies. They are lengthy, and I did not want to burden you with huge amounts of paperwork because I know you already have that. I did provide an overview of a couple of studies that have been done recently that show some of the types of cancers fire fighters are more susceptible to, a description of some of the chemicals that are known carcinogens, and the types of cancers that they cause. These studies were done in Florida and Toronto, Canada. They are just two of numerous studies – some 14 or 15 studies at least, on fire fighters and cancer. This shows the increase of risk to humans and fire fighters, specifically. These carcinogens are produced in many of the environments that fire fighters face daily during the course of their employment, whether it is a house fire, a vehicle fire, or just a simple dumpster fire.

We have attempted to reaffirm the connection between certain types of cancer and certain types of carcinogens that fire fighters are routinely exposed to. This body established that connection in 1987. I believe the opponents of the bill will say that this will increase their costs drastically. We don't believe that to be the case. This bill doesn't change the number of cancer claims that will be filed. It doesn't increase the amount of compensation that is going to be awarded. It doesn't make this a conclusive presumption; the presumption is still rebuttable, just like it always has been. The law, right now, is that there is a presumption, but it is not conclusive. It doesn't change or extend the sunset clause that is already attached to the law. It doesn't change the definition of a

carcinogen or the specific agencies listed. As a matter of fact, it outlines specific types of cancer, which narrows the scope. It does not cover all cancers. It will provide insurers with the ability to rebut more easily those cancers not shown to be of higher prevalence in fire fighters.

[Mr. McAllister continued.] What it does is clarify that there are some cancers that have been shown to be of a higher incidence in fire fighters after exposures to specific carcinogens. We believe that this will not increase the cost as much as it will compel some insurers to start accepting claims they should have been accepting and paying all along. We believe this bill will help to clarify the intent of this existing statute.

Also in the packet that has been distributed (Exhibit C) are proposed amendments. This bill did not come out of bill drafting exactly as we proposed it. The first amendment would clarify that this new language would specifically relate to full-time, salaried, fire fighters. The other amendment concerns page 3, lines 5 through 11 that describes "any cancer." That was not our intent, so we wish to have those lines deleted. We only wanted to include those cancers for which studies had shown that fire fighters had greater risk and a greater prevalence of cancer for.

**Assemblyman John Oceguera, District No. 16 (Clark County):**

A.B. 451 has personal significance to me, not for the reasons you may be thinking, not because the bill speaks to cancers as an occupational disease for fire fighters, but for a different reason. The reason is Bill Harnedy. Bill Harnedy is a friend of mine. Bill is a fire fighter who served the public in Carson City and in North Las Vegas, ensuring their safety, for many years. In 2001, Bill Harnedy was diagnosed with cancer. When Bill was diagnosed, he came to me with a copy of *Nevada Revised Statutes* 617.453, knowing I was an Assemblyman and knowing that I was pursuing my law degree. Bill asked me, point blank, "John, am I covered?" At that moment I read NRS 617.453. To me, its meaning and intent are plain and clear. To me, Bill Harnedy qualified for disability compensation under that statute. However, the denial of Bill's claim was supported with a copy of NRS 617.453.

I submit to you that you, too, would have thought the same thing had you, yourself, read the statute. Bill Harnedy has traveled all the way from Las Vegas today, enduring the discomfort travel necessitates, given his advanced condition and subjecting himself to the stares that follow him due to his shocking appearance, in order to support this bill, even though the change A.B. 451 will bring forth will not change Bill's circumstances. Despite Bill Harnedy's belief and the belief of his family and the belief of his doctors and my belief that he qualified for disability compensation under the statute, his disability claim was

opposed, aggressively opposed. So Bill's presence here today is truly altruistic. With your permission, Mr. Chairman, I would like to invite Bill to the witness table to sit with me for the remainder of my remarks.

**Chairman Goldwater:**

Please. Welcome to Commerce and Labor.

**Assemblyman Ocegüera:**

Thank you, Mr. Chairman. Bill Harnedy's experience is not uncommon. Despite the plain and clear meaning of 617.453, fire fighters' disability claims and death claims are routinely opposed and denied. The approach carries over to claims of fire fighters and peace officers processed under the Heart and Lung statute of NRS 617.457. The Heart and Lung statute is different from the cancer statute since it contains a conclusive presumption that says that heart or lung conditions are caused by the stress of the job, yet fire fighters and peace officers who make claims under the heart and lung statute are routinely denied benefits and are being forced to appeal all the way to our Supreme Court in order to receive benefits that they were wrongfully denied for them and their families. I find this policy of oppose, deny, and force an appeal, so offensive that I have taken it upon myself to prepare an amicus brief in my capacity as a state legislator in several cases concerning peace officers who were wrongfully denied under 617.457. Here is my research [he showed the Committee a five-inch stack of papers]. I have made a request of the Legislative Commission that it direct the Legal Division to prepare an amicus brief on this issue as well.

You will note that A.B. 451 does not make any changes to NRS 617.453 that could be argued were intended to make it easier to make a claim under the statute or easier to qualify to receive benefits, or to increase the benefits available under the statute. That is not what A.B. 451 is all about. The concept behind this bill is simple. Since the plain and clear meaning of NRS 617.453 is not being recognized, or furthered, in its interpretation or enforcement, let's amend this statute to make it clear under what circumstances we believe a fire fighter who develops cancer should receive disability or death benefits.

If you hear any bitterness in Bill's voice during his testimony, do not mistake that bitterness for what it is not. It is not due to the fact that he may well not see his 40<sup>th</sup> birthday, nor is it due to the fact that his time with his family, with the passing of each day is coming to a close. It is because the system mistreated him, and his family, in his time of need. That is what he has asked me to speak about at his funeral. How the system let him down when he had only a sliver of hope remaining following his diagnosis. I have not been able to begin writing those remarks. It is my hope that with the passage of this bill I

will be able to end those remarks on a positive note and talk about how Bill changed the way fire fighters are treated in this state. That he made the difference when it came to fire fighters and cancers. Thank you again, Mr. Chairman, for your indulgence and for allowing me to make my remarks part of the record.

**Chairman Goldwater:**

Thank you, Mr. Ocegüera, for this very worthwhile bill.

**William Harnedy, Fire Fighter, City of North Las Vegas:**

I am an employee of the City of North Las Vegas. I moved to the great state of Nevada in December 1989 and was gainfully employed by the City of Carson City, Nevada, as a fire fighter/paramedic. Prior to March 1993, I went down to North Las Vegas to continue my career in the fire service. Like most fire fighters, I believe in physical fitness and we have annual medical physicals. In April 2001, my physical was clear. During the summer of 2001, I developed some right-sided pain. What I am going to do is give you an overview from October 2001 to where I am today.

On October 2, 2001, I was diagnosed with a mass in my right kidney. First, it was thought it was kidney stones, which are quite common in southern Nevada with the water. October 3, 2001, a CAT (computer axial tomography) scan showed the mass appeared to be cancerous. On October 6, 2001, the head of urology at the University Medical Center in Las Vegas removed my right kidney in a radical nephrectomy. On October 10, the pathology report noted that I still had active renal cells, which meant that although they got the tumor that was encapsulated in the kidney, it grew quickly enough to permeate through the kidney.

On October 17, 2001, I met with an oncologist. This doctor had no bedside manner. He said, "You have 7 months." It has been 16 months, and I am still fighting. At that time I was able to talk to the doctor and we filed the C-1 claim form to get the ball rolling for the workman's comp claim. Also at that time, we ordered a CAT scan of the chest and the abdomen. October 24, 2001, the CAT of the chest and abdomen showed spots in the right lung. A PET (positron emission tomography) scan was ordered at that time, but was denied three times by Sierra Health and Life as medically not necessary. That is the confusing part.

On November 10, 2001, I met with a kidney cancer specialist at California Pacific Medical Center in San Francisco, California. He again wanted a PET scan. I felt it was important to get the ball rolling on my treatment; I dug into my pocket and paid the \$3,300 for the PET scan out of my own pocket. On

November 21, the results of the PET scan were positive for tumors. At that time, we decided that we needed to go into my right lung to take a tissue sample to see if it were actually renal cell carcinoma in there. It was.

[Mr. Harnedy continued.] On December 17, 2001, I started a high-dose amino therapy. The protocol for renal cell does not cover chemo or radiation. This is a treatment where you are in the intensive care unit for a week at a time monitored by an ICU nurse because the body goes through such horrific effects. I truly felt that after the second treatment, which was sometime in January, I was going to give up. I couldn't give up; I had too much support from my family and my friends and all the support from the fire fighting community. I continue with the battle. This treatment continued every 21 days, one week in the hospital, two weeks at home, until the last week of February 2002.

March 20, 2002, was my follow-up day. CAT and PET scans were done. It only showed that the disease had progressed by 50 percent. In April 2002, I traveled to UCLA (University of California, Los Angeles) for an evaluation by the Chairman of UCLA's Medical Center urology department. He suggested a bone marrow transplant, if I had a sibling match. By the luck of the Irish, my brother was a match. The doctor suggested that I meet with another doctor at UCSF (University of California, San Francisco). He had just transferred from Chicago after doing many bone marrow transplants. It was determined that my type of cancer was O-19; they had had no success. I have a rare form of renal cell carcinoma.

Now my back was against the wall for treatment. I watched a news program on KBBC, Channel 3 in Las Vegas. It was called "Miracles in Mexico." It was a news clip that was done from the local Channel 3 news affiliate in Las Vegas. He interviewed some patients who had traveled to Mexico for their treatment. I interviewed a few of those patients, and I felt it would be worth my benefit to go down. I had nothing to lose. After talking to Dr. Vargas, he believed that low-dose chemotherapy and low-dose radiation with surgery for eradication of the tumors would be in my best interests.

In May 2002, I started that treatment. I had no ill effects from the chemo or the radiation, and after a six-week evaluation I had 60 percent tumor reduction. In the middle of July 2002, I had surgery. I had an open-chest aortotomy, similar to open-heart surgery. Then they closed me up and cut my side where my kidney was to remove five tumors. This was all done in Tijuana, Mexico. After four months I was still cancer-free and met with my doctor to be allowed to go back to work.

Unfortunately, by the end of October, I started to experience some right flank

pain. On a scale of 1-10, it was about 8. It came out of nowhere. The CAT scan showed a recurrence, which is common with my type of cancer. I went back to Mexico for additional radiation and now I am at the point where my body is at the maximum dose it could take of radiation. I was able to enjoy this past Christmas pain-free.

[Mr. Harnedy continued.] In the beginning of the year, I found a couple of trials on the Internet and consulted with doctors. After three rounds, the most recent ending March 15, 2003, we have a 20 percent tumor reduction and we are looking to do surgery at UCLA, possibly in the next few weeks. It seems that nobody wants to hurry up, but I do not have time to wait. I have learned, as an individual, you have to take charge of your own health care plan and follow it through. The doctors seem all too busy, but if you bring them the information, they will look at it and decide what would benefit the patient.

That was an overview of my treatment. That was a lot of pain and suffering. I think, more so, the pain and suffering was [from] knowing there was an NRS statute that I thought I was covered under. On November 1, 2001, my claim was denied, pending medical investigation. On December 13, 2001, the claim was denied by CDS as not an occupational disease. Monday, January 28, 2002, the state hearing officer, saying that it was not an occupational disease, affirmed the denial. In February, I received a letter from Dr. Miner stating he had been asked to consider changing the verbiage in the claim form from renal cell carcinoma to a disease process in the lungs. He felt agreeable to change it.

**Chairman Goldwater:**

Would you review that one more time?

**William Harnedy:**

Yes. The CDS sent a nurse down to San Francisco with me to meet with my doctor, Richard Miner, who was administering the therapy at the time, and asked them to change his wording in the claim form from a "renal cell carcinoma" to a "disease process of the lungs." That way, they would accept this claim under a workman's comp claim under the heart lung bill, yet still deny anything that had to do with the cancer. That is basically how the letter was written. Any more questions on that?

**Assemblywoman Giunchigliani:**

I think it was the third denial letter, they said it was not an occupational disease? Was there a basis for that?

**Chairman Goldwater:**

If you want some help from your attorney, I think he is in Las Vegas.



**William Harnedy:**

All they did was send a long letter saying a list of occupational diseases and attached the NRS statute, 617.453.

**Assemblyman Ocegüera:**

That is what I referred to in my remarks, where they attached the statute that is supposed to protect these folks. They attached that as a reason for denial.

**Chairman Goldwater:**

Does that clarify your question? Please continue.

**William Harnedy:**

The doctor in San Francisco was agreeable to sign off on lung disease or a disease process of the lungs. Therefore, I got a letter from CDS, saying they accepted the claim under the Heart and Lung Act, but any cancer aspect of it would be denied. In July 2001, we met in good-faith bargaining with representatives from the City of North Las Vegas, Leslie Bell from CDS, and their attorney Dan Schwartz. John Ocegüera was present, along with my legal counsel, Dean Hardy, and our union president. The meeting was in regard to seeing if we could consolidate the bill and get it covered. We made no headway whatsoever once they found out how much the cancer aspect of this bill was going to cost. They said they would get back to us.

They got back to us by saying that we could roll this into one appellate hearing, and since July of last year until now, it has been strung out. There is always some kind of continuation going on. The most recent, I was evaluated by an occupational medical doctor through the law offices of Dean Hardy approximately four months ago. CDS now wants to depose that doctor. They were going to depose him on April 2, 2003. I found out when I called Mr. Hardy's office this past week that CDS had forgotten to hire a court reporter. I know that there is a simple check list you use, even though I am not in the law field, you just can't forget to hire a court reporter. There are many aspects. Are you going to videotape this deposition, are you going to have it tape-recorded, along with the court reporter? It is just an excuse to continue this. I am here today to see that the right thing gets done. This bill is just a clarification of the language. No one needs to go through the pain and suffering that I have been through. It is very unfortunate, every time you think that everything will be resolved, you get chopped at the knees. I truly believe in my heart, they are hoping for me to die, and I will die soon. I am here today to speak to you, and I hope the point gets across, [about] what kind of pain and suffering some insurance companies can bring on an individual during their time of need.

**Chairman Goldwater:**

Thank you, Bill. We wish you the best of luck.

**Assemblyman Ocegüera:**

This case is not about telling you all about Bill's case, but I wanted to put a face to something that we hear all the time. We have been here several times with these issues, and, quite frankly, we hear the numbers. I thought this was relevant to bring someone, who is not a number, who is a friend of mine, and who is deserving of better treatment.

**Chairman Goldwater:**

I appreciate that. Speaking of numbers, we addressed this last session by compiling information to help you understand the denials a little bit better. I know you have reviewed that report. What did you find in that report?

**Assemblyman Ocegüera:**

Ironically, the numbers changed drastically from when they were not reported to when they were. In the year that they were not reported, there were a number of denials. In the year following the passage of that law, amazingly there was a lot of acceptance. Now, we do not know what that acceptance means, because those numbers are not specifically saying "we have accepted the entire claim," so those numbers, in my opinion, are acceptance of one portion or another, so they can put that in the column of "accepted." Mr. McAllister might have those numbers with him as well.

**Chairman Goldwater:**

He indicates he does not at this time. Basically, that is what I got from the report as well. Also, a number of those denials were revised on appeal, when they are appealed or if they are appealed. Mr. Hardy, I know you signed in to speak on this bill. The Committee is anxious to hear your testimony.

**Dean Hardy, Attorney, representing William Harnedy:**

Mr. Harnedy and Mr. Ocegüera spoke effectively about the nature of Mr. Harnedy's case and about the bill. I am not sure that I can add much to the prospects of this particular piece of legislation, but we were discussing it down here and I am down here with Mr. Greg Davis, who is the president of the union that Mr. Harnedy is a member of. We were talking, prior to the testimony. We agreed that this does not add to the responsibility of the various governmental groups, but it simply clarifies and should make it simpler, you would like to think, in terms of getting these claims on. When Mr. Ocegüera suggested that there was significant and serious opposition to this claim, that is as factual as it gets. The City of North Las Vegas has opposed this claim from the beginning,

opposed it vigorously, and has spent a significant amount of money in the litigation.

**Chairman Goldwater:**

On what grounds, Mr. Hardy? I think we are all curious. Just because the cancer was not contracted in the course and scope of the employment?

**Dean Hardy:**

That is exactly it. They have suggested from the beginning that we have not proven our case. I could not remember which Assemblywoman asked the question, but her question was on point. The first hearing was held, I don't have the date, but it was much longer than a year ago. Mr. Davis was present at that hearing and we both walked out of there feeling very comfortable, very confident that we had prevailed by presenting the evidence that we had. The evidence came from the National Toxicology Program, as well as the International Agency for Research on Cancer, which is exactly what the statute required. We presented evidence of what the exposures were and what the cancer was that Mr. Harnedy had contracted. We were both surprised, and I am sure Mr. Harnedy was equally surprised, when we got the decision that we did not prevail. We are on appeal as the appellant and we are 99.9 percent completed with the discovery on the claim. But, for that deposition that was supposed to go forward last week and did not, we feel very confident that we will prevail in this litigation. The City is equally confident that we will prevail in this litigation. However, we are still in litigation and they have not shown any signs of resolution.

I would like to just add that this is endemic to the entire arena of worker's compensation and not just fire fighters or cancer cases. Worker's compensation claims now are fought vigorously from start to finish and it was not that long ago when I would see people in my office that had just filed a claim for worker's compensation and it was clearly a compensable, acceptable worker's compensation claim. I would turn them away and tell them that the claim would be accepted, that this was not a claim that could be fought, and so they didn't need a lawyer and let them collect the benefits that were due them without the assistance of an attorney and without having to pay an attorney's fee. Now I do not say that to anyone that comes into my office. It is just for this reason that every claim is fought vigorously and every claim is one that, at some point, there will be an extreme difference of opinion as to the compensability or medical care, the direction of medical care, or the extent of any residual impairment. There are a myriad of issues that we fight on a daily basis and it has gotten to a point where the entire arena needs a check.

**Assemblyman Brown:**

The imposition or creation of a rebuttable presumption is fine with me, but they ought to rest on the strength of the correlation between the exposure and the likelihood of contracting the disease. In looking at Mr. McAllister's documentation, the CBC News article, it talks about Toronto. There were 14 deaths in 777 fire fighters, and it was found to be statistically significant. This is existing statute that we are clarifying. There are probably pre-existing studies that show those correlations. I would be interested in seeing that documentation if anyone has it.

**Assemblyman Ocegüera:**

Mr. McAllister has about 14 of those studies that he could provide you.

**Chairman Goldwater:**

[There were no further questions.] Mr. Hardy, Mr. Ocegüera, Mr. Harnedy, thank you. Regardless of what happens with A.B. 451, I think the Committee should be updated on the progress of your appeal. The purpose of having the Division of Industrial Relations collect data regarding denials and what the resolutions of those denials were, was to find out and be able to identify if there was a policy, or is a policy, of deny/appeal, rather than accept claims or deny on decent grounds. If it is the purpose of these denials to simply extend litigation or have a policy of attrition in order to reduce their claims, I think this Committee is going to be very upset and this Legislature is going to be very upset. Since you have no remedy under bad faith in the area of worker's compensation, I would like to extend to you my promise to seek out whatever remedy is possible under current statute and then fight for remedy of bad faith, if that proves to be true.

**Assemblyman Ocegüera:**

Thank you. I believe there are one or two other people wishing to speak.

**Greg Davis, President, Local Union # 1607, North Las Vegas, Professional Fire Fighters of Nevada:**

I just have a few brief statements to make. I think that a lot of the responsibilities for the problems, as far as the actions that have been taken, have come from CDS, now Comp First. On several occasions, I have had meetings with Leslie Bell. The first meeting we had with Mr. Harnedy, Mr. Ocegüera, and a few other representatives. The statement from her was that she did not feel the fire fighters should be covered under any portion of the cancer bill. I take offense to that. I think, in the past, we have had conflicting statements and concerns. The City of North Las Vegas has given CDS and Comp First direction to finish this case, and they have dragged their feet on every occasion that I have been involved in. We have been involved for about

18 months and we are still in the appeals process. As Mr. Harnedy has stated, the last we heard from them, they were going to have a court reporter report to the affidavit. Their attorney came half an hour late and did not have a court reporter. Now it has been delayed again. Mr. Harnedy has been waiting a long time and, as you can probably see, he doesn't look like he is doing very well. I resent the fact that they have delayed this to the extent that they have, so I don't think it falls so much on North Las Vegas, but I do feel it falls on Comp First for these delays.

**Chairman Goldwater:**

Mr. Davis, any information you can provide this Committee that litigation was extended beyond what was reasonable would be appreciated.

**Greg Davis:**

I will do that.

**John Ellerton, M.D., Oncologist:**

Mr. Hardy and I share a like opinion in this situation. I will reiterate Mr. Hardy's concern about the general worker's compensation, specifically in these kinds of cases. Several things are quite clear. We ask the fire fighters to do something that I sure do not want to do, but I sure want it available to me. It is clear that a number of cancers are related to occupational exposures. I think that kidney cancer is clearly related to an occupational exposure. It certainly is important that we define this, specifically, so that they are justly compensated. I would say, as a physician and as a cancer specialist, that this is a most appropriate piece of legislation.

**Assemblyman Ocegüera:**

Dr. Ellerton, I was just wondering if you ever had an opportunity to be retained by any of these folks to testify or to be an expert witness on cancer claims?

**Dr. John Ellerton:**

Yes, I have had the opportunity. The problem is, you look at the case, the scientific evidence exists for the causation. You look at the exposure that the patient has, and you can say "yes, there is a direct link." I have no doubt in my mind there is a direct link, and yet, there is a denial of responsibility by the people who are supposed to compensate the fireman in question. I do not understand this, because the evidence is clear. It is clearly a relationship between the carcinogen, or the substance, and the cancer. In the cases where I have been asked, they usually decline to use my testimony because it doesn't support their denial.

**Assemblyman Ocegueda:**

So, you are saying that you have said it is clearly related to the job, and then you were not retained because of your opinion?

**Dr. John Ellerton:**

I do not think they want to call me if I am going to support the other side. That is correct; I have not been asked to testify when I present the opinion that there was a causation between the exposure and the cancer that the fireman had.

**Assemblywoman Buckley:**

I think there needs to be tougher penalties for these types of denials. I don't see how it makes sense, just trying to wait somebody out so they don't have to pay the benefits. I think bad faith would solve that. I have a question for Dr. Ellerton, on page 2, concerning this language. You talked about the cases you have looked at; you can see the relationship between the exposure and the cancer, but sometimes people will get cancer, separate and apart from their job. How do you do that in statutory language as opposed to your individual assessment of the fires fought, the exposure, and the causation? For example, liver cancer. The study showed they were exposed to chloroform, soot, or vinyl chloride. Would any exposure, regardless of the amounts, establish that causation? Or, do you need more in terms of looking at the medical records, and that type of thing?

**Dr. John Ellerton:**

You would need to look at the medical records to some extent. The example you chose, liver cancer, is most commonly seen in people who have cirrhosis, particularly due to alcohol and also who are infected with hepatitis B or, even more importantly, hepatitis C. They are at extreme risk for developing liver cancer. Those would not be directly occupational hazards. I suppose, from a legislative point of view, you have to create somewhat of an arbitrary standard to make the decision on. You would have to look at the entire medical record. In the cases I was talking about, that is what I did. There did not seem to be another reasonable explanation for the causation in those cases, if that answers your question.

**Assemblywoman Buckley:**

It does, thank you.

**Chairman Goldwater:**

I don't know about other members, but it sends chills down my spine to think that you retain a medical expert, he gives his expert opinion, and if that opinion is not suited for your interests, that it is ignored. It has been alleged in this building since I have been here for the past five sessions that that occurs.

Proving that it occurs is difficult. This is the most conclusive proof I have ever heard. I do know that a lot more needs to be done.

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

[Introduced himself.] In 1987, we passed a law in this Legislature that said it was conclusively presumed, in heart and lung cases, to be the cause of their condition, or the resulting condition. That was changed [because] local government was dismissing these claims, out of hand. After that law was passed, I believe it got better for a while. In 1995, the law was amended. Prior to that time, if you felt that your case was being dismissed out of hand, you had the ability to bring a bad faith lawsuit against the insurer. In 1995, the law was amended to say that, in place of a bad faith lawsuit, in place of a trial in court, that you had to take an administrative fine. At that time, I believe the fine was \$2,000. The law said "up to" \$2,000. This money would be given to you if you could prove your case to an administrator, which brings politics into the whole thing, and then you would get this money. But, in the case of Mr. Harnedy, that amount of money is not going to solve his problem. That law still exists today, and I will tell you that if you want to do something to change this, do away with the inability to bring a bad faith suit. These people know when they are doing it. In addition to the fact that you can't bring a bad faith lawsuit, you can't sue your employer, you can't sue the MCO (managed care organization), you can't sue the insurer. You are stuck with the compensation and you are stuck with the bad faith penalty. Mr. Harnedy's only recourse is to clarify that point. The clarification of [the purpose of] this statute is very important, and I think this would be a good first step in helping future people who find themselves in the exact same circumstance.

**Chairman Goldwater:**

In addition to the fining mechanism, isn't it also possible to revoke your charter to be self-insurer?

**Danny Thompson:**

One of the provisions of that bill was that, if a self-insurer did this more than three times, you had the ability to pull his license. At the time, the AFL-CIO made the argument that it might not be a good thing to pull a large employer's license over one case, and that brings in another whole set of arguments. So, while that is in the law, it is truly ineffective because the chances are that will never happen.

**Chairman Goldwater:**

Mr. Keane, you have clarification on the amendment presented by Mr. McAllister?

**Wil Keane, Committee Counsel:**

On the recommended amendment to subsection 2, on page 2, the addition of "1." Is the intent there to specify that you want this to apply to the full-time fire fighters, not the volunteers?

**Rusty McAllister:**

Yes, the intent of adding in that Roman numeral 1 was to specify that this was full-time, salaried fire fighters, and that the new additions would be for full-time, salaried fire fighters, not volunteers, mainly with the idea being that they were at the greatest risk because of repeated exposure, as opposed to others who are at risk, but those others would still fall into the other provisions, but not this provision. State Risk Management had some extreme concerns because they insure volunteers, and, of course, they would have attached a huge fiscal note on this bill, even though we do not feel that it increases the cost. They were going to attach a fiscal note, and we all know what happens to bills when they get a big fiscal note put on them. It signs the death knell for them. We felt it was important to put that provision in there so that we could move this piece of legislation along without the fiscal note.

**Wil Keane:**

[I have] just a couple of quick follow-ups. So, the provisions of subparagraph 2 would still apply? We are just trying to narrow what applies under subparagraph 1?

**Rusty McAllister:**

Exactly.

**Wil Keane:**

Then, on the second change, would that be to delete lines 5 through 9?

**Rusty McAllister:**

That's affirmative. I need to change that to lines 5 through 9.

**Chairman Goldwater:**

That is an important point. Just for my own edification, don't our prisoners do a lot of fire fighting in the state?

**Rusty McAllister:**

That's true, Mr. Chairman.

**Chairman Goldwater:**

And if they contract cancer from fighting those fires, their health care is fully covered and taken care of?



**Rusty McAllister:**

I think that they would be under the correction system; their health care is provided for them under the protection of the state.

**Chairman Goldwater:**

Isn't that ironic. Is there further testimony on this bill?

**Assemblyman Hettrick:**

I perfectly agree with the intent of this bill and I think that the people who were here last time remember that I supported people getting stuck with needles and the like in the performance of their duties. Whether you are working in parks or cleaning out garbage, if you get hurt while you are at work, you should be paid. Having said that, I still have concerns. The first concern is what we have done here by saying "any." In every single case, it says we are, essentially, covering every single cancer, no matter what. If you have had an exposure, you are entitled to cancer coverage.

Then, in the next step, say that it doesn't apply to a volunteer. To me, the volunteers are doing this for free and fighting fires for people because there are no other people available to fight those fires. And, we are going to turn around and say on one hand it is "any," and on the other hand, it is totally ignored. I can't buy that. Beyond that, an individual can contract cancer, even though they have had exposures, and they may not contract cancers when they have had exposures. We don't know. To say "any," you might as well say, "cancer is covered." I don't think that is the intent; we have to do something that crafts this a little better than it is.

**Chairman Goldwater:**

Mr. McAllister, a response please?

**Rusty McAllister:**

Mr. Hettrick, the amendment takes out the language that says "any cancer." It is not our intention to cover any cancer. On page 3, where it says "any other form of cancer that has been exposed to" has been removed language.

**Assemblyman Hettrick:**

I understand you took out the section saying "any cancer." But above it says "bladder cancer," for instance, [line] 28, "bladder cancer and that he was exposed during the course of his employment to any diesel exhaust." You can't help but be exposed to "any diesel exhaust." Therefore, it is mandatory coverage. There cannot be any exception with that language, not under any circumstances. That is where my problem comes from. The other is the

elimination. If it is true that it is "any" bladder cancer, brain cancer, colon cancer, so on in your list – if it applies to a professional fire fighter, how can it be that the guy who fights for free doesn't have the same coverage?

**Rusty McAllister:**

Mr. Hettrick, I would agree with you wholeheartedly. It was certainly not our intention to deal out volunteers, by any means, but, realistically, I also know how this Legislature works . . . do you understand my situation?

**Assemblyman Hettrick:**

I do, and that is why I said I agree with what you are trying to do, but it becomes almost the same fairness issue that Mr. Harnedy had.

**Rusty McAllister:**

With the word "any" in there, it would be clearer to say if they were exposed "during the course of their employment."

**Assemblyman Hettrick:**

It does say that. Every line says bladder cancer, in that he was exposed during the course of his employment to "any." You see my concern. I don't know how to fix it either. I am trying, because I agree with your intent.

**Chairman Goldwater:**

I don't think it needs fixing, necessarily.

**Assemblywoman Giunchigliani:**

I see what both individuals are trying to do. In your earlier testimony, you used the term "repeated," or something along those lines. Maybe we could come up with something that indicates that. It is the repetition that is the exposure; one time formaldehyde, or one time some of these things, may not necessarily end up being contracted. So, maybe we could play with some language on that part of the bill. I would assume that is part of the case that gets made at some point. It was not just a one-time thing. I agree; if volunteers are included, it might affect the bill. We could always do one for volunteers and one for this group. In that way, we could move the one that affects the state separately from this one.

**Assemblyman Ocegueda:**

I do not believe that "any" verbiage is necessary. We can take out those "anys" and say "during the course and scope of your employment to." Please remember that this is still a rebuttable presumption, so you are going to have to prove your case anyway. A comment on the volunteers: we would certainly love to have the volunteers included. However, the difference between a

professional fire fighter and a volunteer in this situation is that, although we do the same job, the professionals are required to have an annual physical. A volunteer fireman is not. Some cancers would be caught, or should be caught, along the way. That is one distinction between the two.

**Assemblyman Brown:**

On the list on page 2, outlining the various different cancer forms, formaldehyde is listed quite a few times. I am wondering if all of these particular elements are found in almost every fire? Does burning drywall or fire-retardant wood contain most of these elements?

**Rusty McAllister:**

That is true. Vinyl chloride, as an example, is found in plastics, so the linoleum on your floor, the plastic, the plastic silverware, plastic cups, all the similar things, give off polyvinyl chloride when they burn, which is an extremely toxic carcinogen. These are found in your household cleaners and pesticides; many things contain these chemicals. These are the ones that are found, most prevalent, to cause these diseases. For example, during the research on this, I went back to 1987 at the Legislative Counsel Bureau and pulled up the original bill when it was heard and the exhibits that were attached to it. One of the exhibits was a list of carcinogens known, from this International Agency on Cancer Research, to be harmful to humans. It was one page long. Today, that same list is four pages long. So, as time goes by and research is gathered, we are finding that more and more of the things we are creating are harmful to us. These chemicals are byproducts of the combustion process in fires.

**Assemblyman Brown:**

So, in the course of five years of employment, probably everyone serving would have some contact with this?

**Rusty McAllister:**

Yes, Mr. Brown, that would be true. Even a dumpster fire. Everything you throw into your garbage is in there and we go to dumpster fires every day. The fire fighters are exposed to those chemicals every day.

**Assemblyman Brown:**

Would that be something you use a mask with?

**Rusty McAllister:**

We do wear a mask. But, even afterwards, the residual effects of the smoke in the air are present. You can't wear your air pack from the time you get off the rig to the time you get back on it and take it off inside the comfort of your fire engine. The stuff is in the air. When we overhaul a vehicle fire, which is one of

the most dangerous fires because the whole inside of your car is made of plastic, foam rubber, even carpeting has rubber backing; all of those things are extremely toxic. After you put the fire out, those vapors stay in the air for a long time. In the summers in Las Vegas, especially at 110 degrees, you cannot wear your air pack for an extended period of time. You are going to be exposed. That is part of the job.

**Chairman Goldwater:**

I, like Dr. Ellerton, would never do what you do, but I am certainly glad that you do it.

**Buffy Gail Martin, Government Relations Director, Nevada, American Cancer Society:**

We are in full support of this bill. I would like to state that we often take our fire fighters and our peace officers for granted. Unfortunately, listening to this testimony only serves to further illustrate our ingratitude, when we continue to deny them coverage. Cancer is a fight for your life and it requires every possible ounce of physical, emotional, spiritual, and sometimes even financial energy. By adding the struggle with the company, whether it be an insurance company or the state for coverage for your treatment, is only inhumane. On behalf of the American Cancer Society, we urge your support on this vital and important and just bill. Thank you.

**Jon Pierce, Wildland Fire Fighter:**

I have been a wildland fire fighter for seven years. I have witnessed several cases where the older generations in my field of work have been faced with similar cases of lung cancer, including my father. As a wildland fire fighter, we are not all at risk and not exposed to half the toxins as these gentlemen who sit here before you today. I am in full support of A.B. 451.

**Chairman Goldwater:**

[There were no further proponents of the bill.] There are some opponents signed in. Ms. Moore, from the City of Henderson, in Las Vegas?

**Daryl Moore, Director of Human Resources, City of Henderson:**

[Introduced herself.] I indicated [on the sign-in sheet] that I am against the bill, but I think it is important that we separate some of the issues that we have been talking about this afternoon. I don't think any of us disagrees that cancer is a horrible disease. The issue that we need to take a look at is whether it is a presumptive disability. We have been addressing some of the concerns, relating to a specific case in North Las Vegas, but I would ask that we separate that from this venue and take a look at this bill. There are a lot of reasons why cancer is caused. It can be genetic, certainly, and I think that under the current

bill, fire fighters do have a recourse. If they can prove that there is a correlation, it would be covered as a work-related illness.

**Chairman Goldwater:**

Ms. Moore? I think in the interests of the Committee, this bill, by testimony and by my reading, does not change the ability to rebut, or does not change the presumptive status of the claim. It is still a rebuttable presumption.

**Daryl Moore:**

I understand that. I share some of the same concerns that have been addressed today. It would still be a rebuttable presumption, but I think it would be very difficult when you look, statistically, at the number of illnesses that are, as a result of cancer. Whether it was rebuttable would be very difficult to prove. I would also like to address separating the long-term, unfunded liability of this claim. It would be very difficult without any further study. However, I do know that, with the presumptive disability right now for our heart and lungs, we recently had an actuary study that indicated we would need, for full funding, about \$132,000 for each of our employees for presumptive disability for heart and lung. Because cancer and heart disease are the number 1 and number 2 leading causes of death for most age groups, we would need to fund, additionally, in excess of six figures per employee. I would like to see more studies done before we make a determination on whether this should be presumed to be directly job-related. I would also ask why we are not considering this for other occupations. One of the other issues I would like to see addressed is, are the fire fighters any more at risk than certain individuals, for example, that drive trucks on a regular basis and would be exposed to diesel fuel for long periods of time.

**Chairman Goldwater:**

I think Mr. McAllister gave a very good outline of how a fire fighter would be more exposed.

**Assemblyman Griffin:**

I may have misunderstood, did you say up to six figures per employee that would be affected?

**Daryl Moore:**

The only information that I have, right now, is what the actuary had determined for the heart and lung presumptive disabilities. To fully fund that, for the number of fire fighters that we have, we would have to fund at \$132,000 per fire fighter. I don't have estimates for cancer at this point, because we have not had that study done.

**Assemblyman Ocegüera:**

How many claims has the City of Henderson had under the current provision of this cancer provision?

**Daryl Moore:**

We have no cancer claims right now.

**Assemblywoman Giunchigliani:**

Have you denied any?

**Daryl Moore:**

No, we have not.

**Assemblywoman Giunchigliani:**

So you have not received any at all?

**Daryl Moore:**

No.

**Chairman Goldwater:**

Further questions? Ms. Moore is there anyone else in Las Vegas who would like to testify or voice some concern?

**Daryl Moore:**

It does not appear so.

**Chairman Goldwater:**

Is there anybody here in Carson City who would like to testify, in opposition, or voice some concern to A.B. 451?

**Assemblywoman Buckley:**

I have just been talking back and forth with the legal counsel and Mr. Ocegüera in e-mail. I had some questions and I think they are answered. I wanted to know if paragraph A of the bill applied, as well. It would require that you meet all of these conditions, meaning that it manifests for someone who has been employed for more than five years, they were exposed to a known carcinogen, as defined, and the carcinogen is reasonably associated with the cancer. I didn't know if that was contradicted by the language of "notwithstanding." I think our legal counsel said it is not, because it specifically refers to paragraph A. So, in response to my earlier question concerning bladder cancer, cirrhosis would not be covered, because you have to meet all those requirements and the carcinogen that you were exposed to has to be associated with the cancer. So,

my questions have now been resolved and I think it is much tighter by virtue of that interpretation.

**Randy Waterman, Risk Manager, City of Sparks:**

Before I get started with a number of points, I would like to make it clear that we are not against the bill. We do have some concerns with the bill as written. I would also like to make it clear that self-insureds tend to fight every claim. I want it to be very clear that the City of Sparks does not fight every claim. We tend to fall into the advocate position for our employees and we tend to help them through the system, and not fight them on claims.

**Assemblywoman Buckley:**

Have you ever hired a doctor who gave you an opinion and you didn't like the opinion, so you kept shopping?

**Randy Waterman:**

We have not.

**Chairman Goldwater:**

Have you ever hired a managed care company that, to your knowledge, might have done that? Or claims manager?

**Randy Waterman:**

We have a managed care company, but we also have a TPA (third-party administrator). Right now, we deal with the same TPA that was brought up earlier, CDS, who has subsequently become Nevada Comp First. They have not taken this position on fighting claims for us, at least. I think they embrace the same philosophy, so that has not been an issue.

**Chairman Goldwater:**

Have they approached you with, perhaps, taking that strategy in managing claims?

**Randy Waterman:**

They have not.

**Chairman Goldwater:**

Do you know whether or not they do this on anyone's behalf?

**Randy Waterman:**

I don't know that. We have not had any cancer claims. We have not fought any cancer claims, and we would have to look at those claims on their merits on a case-by-case basis. Our concern with this bill is, while it doesn't specifically

state that coverage is conclusive, we do feel that, under the language that is contained in the bill, that it would be hard, if not impossible, to rebut a cancer case of a fireman. I think of all of those things listed in the bill as exposure; every single fireman in the room, and all of my firemen at the City of Sparks, could certainly say that they are exposed to those things.

[Mr. Waterman continued.] While discussing costs seems to be cold, there obviously is a cost associated with all of this. We would estimate that our costs would be in the \$50,000 to \$100,000 a year zone. That is a lot lower than what the City of Henderson has put on the table. We think that a lot of cancers are treatable, and we have several firemen, right now, who have various cancers and continue to work as full-time firemen. So, it is not necessarily a totally disabling disease. There is some language in Section 3 that talks about "full reimbursement for related expenses." I am not sure what that means. I think it would be clearer to have something in there that says "pursuant to fee schedules" or something along those lines. I would urge you to look at this. How much of an exposure creates an exposure that is going to cause a cancer? I don't know. I would suggest that you might want to look at that very closely before you pass this bill.

**Assemblywoman Leslie:**

I was a little unclear when you said you estimated this would cost the City of Sparks \$50,000 more. I don't think this legislation changes existing law, so do you think more fire fighters would be claiming benefits?

**Randy Waterman:**

Yes, I think more firemen would be claiming benefits based on national statistics alone. Because I do not have a case history to analyze, we would have to look at general numbers on cancer. I think about one in five people in this country develop cancer. I would assume that firemen would be in that same realm.

**Assemblywoman Leslie:**

But you have heard the testimony; not just anybody who develops cancer automatically gets the benefit.

**Randy Waterman:**

I would disagree with that, to an extent, at least. I think it really opens the gate to more claims. I don't know how many more claims, but I think we would see more claims, for sure. The other part comes into the cost factor, and I am not sure if you have heard testimony already on this, but in the situation of heart and lung, right now . . .



**Assemblywoman Leslie:**

Yes, I don't even want to go to heart and lung.

**Randy Waterman:**

What I am getting to here is that the excess worker's comp market has gone fairly nuts in that respect for public entities.

**Assemblywoman Leslie:**

You really don't want to get into an argument on that with this Committee. Trust me. Let's not start down that path.

**Randy Waterman:**

My premium this year for the City of Sparks has gone up 400 percent and my deductibles have gone up 400 percent.

**Assemblywoman Leslie:**

Well, I don't agree with your interpretation of the changes that we are making here. The more you talk, the angrier I am getting, and the more determined I am to pass some version of this. The fire fighters have to prove that the cancer is related to their job. That is the fundamental issue, and if that means that it is going to cost the City of Sparks \$50,000 more to address a very real occupational hazard for their fire fighters, personally, I think it is worth it.

**Chairman Goldwater:**

You are right on, and we can't forget where we came from. We took away their right to sue the employer a long time ago. [They] have to prove all these things, and they [have to] be remunerated, or at least indemnified. For taking that away, we have given a no-fault insurance system. Now, you want to go through all these things and now we have rebuttable presumptions in a no-fault system. We are trying to say that we are going to make it more and more difficult to presume they have cancer. Let's not forget where we came from.

**Assemblyman Griffin:**

A quick question to Mr. McAllister, or maybe Mr. Ocegura can answer it, on an incident report. When you come back from the scene, do you have to fill out any exposure? If you go to a dumpster fire, do you have to fill out that there was exposure? I know that would be very burdensome.

**Assemblyman Ocegura:**

We fill out an exposure form when there is something unusual. If I work tomorrow, I would guarantee you, I would go on three dumpster fires.

**Assemblyman Griffin:**

That would have to be reported, correct?

**Assemblyman Ocegueda:**

The report would say, "Responded to dumpster fire, extinguished with tank water, returned to quarters."

**Assemblyman Griffin:**

So there is a pretty deep record of what kind of exposure is going to happen, just by the presence of incidence reports, right?

**Assemblyman Ocegueda:**

Yes.

**Assemblyman Beers:**

Mr. Ocegueda, you have pointed out dumpster fires are not major incidences, but is there a more detailed report for a major incident? Looking through the literature here, there is quite a bit of discussion about when this sort of material burns, this nasty thing is put off of it. Are there records kept of that?

**Assemblyman Ocegueda:**

Not necessarily. Actually, dumpster fires and car fires are some of the most dangerous fires we go on. I require all the people who work for me to mask up on both of those fires. Some people don't. You never know what is in the dumpster. You have no idea. That is part of the problem. If we went to a chemical facility and put out a fire there, certainly then we would say these chemicals were involved. We would try to list everything in our report as specifically as we could. A normal house fire, who knows what is underneath the kitchen sink? [With a] dumpster fire, who knows what is in the dumpster?

**Wayne Carlson, Executive Director, Public Agency Compensation Trust:**

We provide coverage for the smaller rural governments. We have a lot of volunteer fire fighters and a lot fewer of the paid fire fighters. When I wrote out my original testimony (Exhibit D), I was under the impression, from reading the bill, that it was a conclusive presumption because of the nature of the exception under Section 2, and that it was lifetime, not limited to the 60 months. Based on the testimony I have heard, I would have to revise the numbers, that is, if I can figure out a way to do that for a five-year manifestation, because it wasn't clear in the original bill. Perhaps the drafters can further clarify if that was the intent. In our fiscal note, as you can see, the paid fire fighters were assuming a 20 percent probability during a lifetime, again that was under the assumption that they were eligible at any during their lifetime, based on my reading of the bill. With the volunteers, that number is substantially higher. I just wanted to

clarify the written intent, why the fiscal note was so substantial, it had a lot to do with how the bill was interpreted. I am not clear if it is rebuttable, but I will accept that that was the intent and if the bill drafter can make sure that is the case, that would certainly reduce the fiscal impact to us.

[Mr. Carlson continued.] As with Mr. Waterman's testimony, the excess insurance markets are also affecting us in terms of both cost and the amount of retention they require us to bear. We are facing the same kinds of problems in getting the excess to be in place. The alternative in the market is the assigned risk. That is much higher than our cost. We picked up some professional fire fighting paid departments in the last year and the number of volunteer departments, because the only other alternative they had in the fully insured market was the assigned risk at even higher cost. Again, if it is limited to the way the cancer is now, and we are just clarifying that is the intent – I am not sure the language does that; it needs to be worked on to make sure it is clear.

**Assemblyman Ocegüera:**

Mr. Carlson, that is the most favorable you have ever been to any of my bills. I appreciate it.

**Kimberly McDonald, Special Projects Analyst & Lobbyist, City of North Las Vegas:**

[Introduced herself.] I have to take a deep breath because, first and foremost, I have to let you know that it is extremely difficult to be here today. This is a very moving issue and we are compassionate, so this is very difficult for me. Again, we are very caring, we are sensitive regarding the testimony that you have heard this afternoon, but I must also say that we are very proud and thankful to have our North Las Vegas Fire Department, as well as all of our public safety men and women who give of themselves selflessly every day for our community. With all due respect, we are also very appreciative to our own Assemblyman, John Ocegüera, as well as Mr. Bill Harnedy. We are very mindful and protective regarding the health, the welfare, and safety of all of our employees.

Again, we are compassionate toward any employee with an occupational disease and it is our policy to do everything to approve treatment protocols that are available in the United States, in accordance with the American Medical Association. I'm sure you realize it is very difficult for our City to be in this position. Our concerns with A.B. 451 are merely regarding the potential significant fiscal impacts. We have forecasted that to be \$1 million per claim and then \$2 million in the future biennia. Of course, this would have a very severe fiscal impact, particularly during the state's current fiscal crisis, as well as with our City's competing needs to provide the services that we must

undertake. So, in closing, I want to thank you for hearing our position and understanding our difficulty and our concerns.

**Assemblywoman Buckley:**

Thank you for your testimony and I know you didn't make the decision in this case. What really bothers me is when an entity asks for a medical opinion, gets it, it says "pay the claim," and the company doesn't pay the claim and then shops for another opinion. That is just wrong. What would your position be if we passed an amendment that said if a company seeks out a Nevada licensed physician, gets an opinion that it cannot shop, that it has to rely on that opinion and pay the claim? At least there would be a presumption that you pay the claim until there is an appeal hearing. We need something to prevent this "opinion shopping" while someone needs cancer treatment, or lose their immunity from bad faith litigation.

**Kimberly McDonald:**

On the surface that sounds very logical. In this regard, because I am not very well versed in the process that our CDS undertakes, I cannot make that type of commitment today. On the surface, it certainly would seem to be something that we could explore. It sounds very logical. Again, our interest is the fairness for the employee and for their treatment and recovery, hopefully.

**Chairman Goldwater:**

Kim, do you know, and we are aware that you are representing your local government – are you aware of any instances where a medical opinion was sought and then ignored because it did not serve your interests?

**Kimberly McDonald:**

Mr. Chairman, not to my knowledge. All I know is that there are two claims currently that we are dealing with.

**Chairman Goldwater:**

You have had two claims? [Ms. McDonald indicated "yes."] And, have they been accepted?

**Kimberly McDonald:**

I believe they have, but again, I am not an expert or have all the details, so I really don't want to speak on this issue.

**Assemblyman Ocegueda:**

No questions. I just wanted to make it clear, for the record, in case this bill does pass and in case a judge or someone is reading the record, and for Mr. Carlson's sake. This bill does not, is not, was not, intended to create a

conclusive presumption; it doesn't say that and it doesn't mean that.

**Chairman Goldwater:**

Yes, and we will ask staff that if this bill proceeds, that that be part of the Floor statement and be read into the permanent record when the bill is taken up on the Floor of the Assembly. I will close the hearing on A.B. 451.

**Speaker Perkins:**

Thank you, Mr. Chairman, I am not sure how we are going to move forward with A.B. 451 in any fashion, but, regardless of that, before the rest of the witnesses leave, I would like to make my thoughts clear on the bill, if it meets with your approval.

**Chairman Goldwater:**

Please do. Speaker Perkins has some thoughts for us.

**Speaker Perkins:**

Government cannot be all things to all people. We ask some of our fellow citizens to provide us the safety that we, as a society, demand. There are fire fighters, police officers and other public safety employees. We often ask them to place the safety of our citizens above the safety of themselves. In exchange for that, we provide wages, benefits, and health care coverage that exists as our covenant with them to provide our collective safety and to respond in the face of great personal risk. If, and this is one of the most important things, if the argument is that we should not provide coverage and compensation for those risks and injuries, then so be it. Let's have that debate in a separate forum. I don't think the opponents want to go in that direction. If that is not the argument, then the opponents have really no leg to stand on. I am not an attorney, but I do know what the intent of this legislation was and is, in regards to this, and what the plain language in the statutes means. Can you imagine if the City of New York would have ignored the loss of life for those public safety employees when the World Trade Center towers collapsed? What if they had ignored the covenant they had with those public safety employees?

Many know that I have a son who is a cancer survivor, so I have a fairly good understanding of the importance to act swiftly in that treatment, so that when you have an aggressive cancer, you can attack it quickly and eradicate it. Dr. Ellerton said earlier that there is a disconnect he doesn't understand, when the causation is obvious. I understand the disconnect and I think that the disconnect is a violation of the covenant between the covering entity and the employee, and it is generally about money, probably because those decision-makers do not have to run into a fire themselves.

[Speaker Perkins continued.] There are too many heroes already walking the streets of heaven, and I think we need to do what we can do with this bill. Mr. Harnedy, you are a hero. I salute you and I would ask you to continue to fight this with all your remaining strength and will. You will continue to be an inspiration to others. I appreciate the opportunity to make these comments and would look forward to a positive action with this bill.

ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS  
A.B. 451 WITH THE AMENDMENTS PROVIDED BY  
MR. MCALLISTER.

ASSEMBLYMAN PERKINS SECONDED THE MOTION.

THE MOTION CARRIED WITH ASSEMBLYMAN HETTRICK AND  
ASSEMBLYMAN KNECHT VOTING NO.

**Assemblyman Hettrick:**

My "no" is in regard to the volunteers. I don't think this bill covers it and I don't think that is fair, and if the understanding of this Committee is that a fire fighter is entitled to this kind of coverage, then so are the volunteers and I cannot support the bill on this basis.

**Chairman Goldwater:**

I think the Minority Leader has the ability to make a bill draft request and I am certain the Speaker might grant him one if he wanted.

**Assemblyman Knecht:**

I join Mr. Hettrick's comment.

**Assemblyman Brown:**

I voted yes. I do agree with this bill. I am still quite interested in seeing whatever statistical information there is. I appreciate that.

**Chairman Goldwater:**

That motion passes. Gentlemen, thank you for your attendance today, and, Bill, best of luck to you. We will open the hearing on A.B. 489.

**Assembly Bill 489: Revises provisions relating to dental hygiene. (BDR 54-185)**

**Shari Peterson, R.D.H., M.Ed., Dental Hygiene Instructor, Community College of Southern Nevada:**

[Introduced herself.] The Dental Hygiene Association is requesting that you consider legislation that asks dental hygienists to become more accessible and

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

**Seventy-second Session  
May 6, 2003**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 7:18 a.m., on Tuesday, May 6, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chairman  
Senator Warren B. Hardy II, Vice Chairman  
Senator Ann O'Connell  
Senator Raymond C. Shaffer  
Senator Joseph Neal  
Senator Michael Schneider  
Senator Maggie Carlton

**GUEST LEGISLATORS PRESENT:**

Senator Terry John Care, Clark County Senatorial District No. 7  
Senator Mark E. Amodei, Capitol Senatorial District  
Assemblywoman Christina R. Giunchigliani, Assembly District No. 9  
Assemblyman David E. Goldwater, Assembly District No. 10  
Assemblyman John Ocegura, Assembly District No. 16

**STAFF MEMBERS PRESENT:**

Scott Young, Committee Policy Analyst  
Courtney Wise, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Maryann Elorreaga, Committee Secretary  
Lynn Hendricks, Committee Secretary

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know what the problem is. As I told the board, I did not want any sort of bill presented that would be contrary to their thinking. I have had the misfortune in the past 3 years to lose a good deal of my retirement income, as have a lot of people, and I need to seek another source of income. Podiatry is the only thing I know. Taking an examination designed to test the knowledge of recent graduates is very difficult for someone who has been in practice for over 50 years. I am very much indebted to Mr. Goldwater, who has done an admirable job for me, and to the committee for considering this bill.

CHAIRMAN TOWNSEND:

We will close the hearing on A.B. 231 and open the hearing on A.B. 443.

**ASSEMBLY BILL 443**: Provides additional penalty for selling or providing certain controlled substances in certain circumstances. (BDR 40-1281)

CHAIRMAN TOWNSEND:

This bill was referred to us in error and is more appropriate for the Senate Committee on Judiciary.

SENATOR HARDY MOVED TO RE-REFER A.B. 443 TO THE SENATE COMMITTEE ON JUDICIARY WITHOUT RECOMMENDATION.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIRMAN TOWNSEND:

We will open the hearing on A.B. 451.

**ASSEMBLY BILL 451 (1st Reprint)**: Provides that certain forms of cancer contracted by firemen are occupational diseases under certain circumstances. (BDR 53-1197)

RAYMOND C. "RUSTY" McALLISTER, LOBBYIST, PROFESSIONAL FIREFIGHTERS OF NEVADA: I have written testimony (Exhibit I).



We bring before you today A.B. 451. This bill is an attempt to make an addition to existing statute. Back in 1987, this Legislature passed a bill on NRS 617.453 that provided cancer coverage for firefighters. As a matter of fact, in reviewing the records of the hearings on that bill, Senator Townsend was the chairman of this committee back then, and Senator O'Connell was on this committee also. ... Under the statute that you helped create back in 1987, there were three things that you had to show to be covered for a claim for cancer if you were a firefighter. You had to have been a firefighter for 5 years or more, you had to show that you had been exposed to a known carcinogen that was recognized by the International Agency for Cancer Research or the National Toxicology Program, and there had to be a reasonable association between the carcinogen you were exposed to and the type of cancer you had. Under this bill that we're proposing, that doesn't change. Those requirements still need to be met.

But we have a problem. You passed this law in 1987, and since that time we've had an extremely difficult time getting insurers to accept claims for cancer for firefighters. That's not to say all insurers. There are a couple out there who are doing a good job; they're reviewing the cases, they're spending the appropriate amount of time to decide whether the case is legitimate or not. But there are insurers out there who claim that we cannot show a correlation between the type of cancer we have and the carcinogen listed within those agencies that we've been exposed. This occurs even after we produce research or physician testimony to the contrary, stating that there is a correlation.

A recent example of that is one firefighter who currently has thyroid cancer. He has been on the job for 10 years, so he meets the first requirement. He has been repeatedly exposed to soot, which is a known carcinogen and is recognized by both of those agencies. Research has shown there is a correlation between soot and certain esophageal cancers, especially thyroid cancer. And yet his claim has been denied. He is having to go through the process, and it is headed to the district court level.

The bill before you is meant to provide some type of clarification to the insurers that there are certain types of cancer that are associated with specific types of carcinogens. There have been many studies that show there is a correlation between certain carcinogens and being a firefighter. They are numerous, and they are lengthy. I can provide them for you if you like, but I didn't want to burden you with a stack of paper. Those studies show there are increased risks to firefighters when exposed to carcinogens that are recognized by those two agencies in their day-to-day operations. They go into house fires, vehicle fires, even dumpster fires, because everything that you have in your house you eventually use and throw into your dumpster. All those different types of exposures produce those carcinogens. Even inside the fire station there is excessive amounts of diesel exhaust. Every time they fire up the fire engine, diesel exhaust is put out. That's a known carcinogen to man, yet our dorms typically are stationed right next to, and we sleep right next to, right where the fire engines start up. We are attempting to reaffirm the connection established by the 1987 Legislature. We are not trying to change the existing statute other than to get some clarification in these correlations.

Originally there were some fiscal notes that were produced on this bill. The bill has been modified somewhat since its initial introduction, but we looked at these fiscal notes and we have some concerns with the way they were done. I think there was some misinterpretation by the insurers on how they were costing these out. I have provided a breakdown on those fiscal notes that were put in record in the Assembly (Exhibit I), but there are a couple that really stick out. I guess the two that really stick out for me are first of all, the State of Nevada initially had thought volunteers were in it, so they put a \$250,000 and a \$500,000 price tag on it. They have since revised that to \$25,000 and \$75,000. However, in talking to representatives from risk management, they told me they expected to have one claim per year. They still expect to have one claim per year. Yet they put a fiscal note on it of \$25,000 for the first year and an additional \$75,000 for the second year. My question to them would be, if

you had one yesterday, and if this bill passes you still have one, how come it costs more tomorrow when the bill passes or if the bill passes than it did yesterday when the existing statute was already in place? I'm not sure I understand that when you still only have one claim per year.

The second fiscal note I guess I would look at, probably the far other extreme of the situation, was the City of Henderson's fiscal note of \$15,354,600 per year. They assumed there was a conclusive presumption, which is not our intent, that's not what we're trying to do. They assumed there was a change to make it a lifetime benefit, which we're not asking for. There's a sunset clause on it. They have made a lot of assumptions that are not correct. They only have 157 firefighters. The City of Las Vegas has 475 firefighters and put a fiscal note of \$50,000 for the first year and \$75,000 for the second year. I don't understand how one entity would put that large a fiscal note on something when all the other entities are not even remotely close, and yet it might be three times larger than this particular department. We don't believe the fiscal notes are appropriate. They range all the way from \$25,000 a year to \$15,000,000 a year. That's quite a wide range of variation in actuaries within departments.

A couple of things the bill doesn't do: It's not going to increase claims from firefighters. We've had an existing statute since 1987. If a guy has cancer and he's going to file a claim, he's going to file a claim whether this bill passes or not. It doesn't change the amount of compensation or increase it. It doesn't change the presumption. If it does, that's not our intent. We certainly want to make sure we get that on the record, that this is meant to still be a rebuttable presumption. The intent is not to create a conclusive presumption. It doesn't extend the sunset clause. It's still the same as it always was since it started in 1987. It doesn't change the list of carcinogens that are recognized by these two agencies. And it doesn't change the initial requirements that you have to meet before you can even move on to the part of the bill that we're adding in. It doesn't cover all cancers. In fact, it narrows the scope; it reduces the number of cancers that we specifically

believe through research have been shown to be of a higher prevalence in firefighters.

The bill clarifies that some cancers have been shown to be of a higher incidence in firefighters after exposure to specific carcinogens. We believe this will not increase the cost as much as it will compel insurers to start paying claims that they should have been paying all along. We believe that this bill will help to clarify the intent of the existing statute that you passed in 1987.

In the material I provided to you, I put an amendment in there ... after talking to members of the insurance industry after the Assembly hearing. One of the cancers that was covered under there was lung cancer. They said that's already covered for under another provision of the law, NRS 617.455, and so we went ahead and removed it out of the cancers of this bill and let it continue to remain covered under existing statute.

SENATOR O'CONNELL:

"Rusty, did I understand you to say there's a sunset in the bill?"

MR. McALLISTER:

Within our bill there is not. In 1987, when you passed this law, you put a sunset in it then. The sunset is 3 months for every year of service to a maximum of 60 months after you leave the job. After that, you are no longer covered for this.

SENATOR O'CONNELL:

And in the fiscal note, on one of them they talk about \$1 million per claim. ... In your experience with people who have acquired cancer of some kind during their employment, do you have any idea of the cost?

MR. McALLISTER:

I do not know that because first of all, not many claims have been accepted. I do know that it depends on the type of cancer, the extent of the cancer. I think you'll get some testimony in a little bit on a specific individual who has cancer and is currently undergoing

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various types of treatment, and so he can probably give you a better clue or idea as to that. I find it kind of ironic that the State, although they say and list "up to \$1,000,000 in cost," if that's the case they put a \$25,000 fiscal note. That's a contradiction of what they're saying, to me.

CHAIRMAN TOWNSEND:

"They have an individual here who can testify to that."

MR. MCALLISTER:

"I'm not sure I exactly understand that."

SENATOR O'CONNELL:

"I believe it's over the period of the case. Maybe that is the \$25,000 on an annual basis. Could that be it?"

CHAIRMAN TOWNSEND:

"Jim, are you here to testify on behalf of the State? We have numbers floating around here, and we may as well get the State on record as to what is they're testifying to."

JIM FRY, WORKERS' COMPENSATION ANALYST, RISK MANAGEMENT DIVISION  
DEPARTMENT OF ADMINISTRATION:

The fiscal note that Rusty's talking about is based upon a cash-flow basis. I noticed when I went through some of the other fiscal notes from other entities that they looked at it as an incurred cost, what is the cost of the claim through its lifetime, which may be 10, 20, 50 years, where ours is based upon a cash flow. The first year of a claim, generally you do not have a high fiscal impact. Starting with the second year, you can usually expect it's double. That's where it goes from \$25,000, add another claim the next year, it goes from \$25,000 to \$50,000 in the second year. Add another claim at \$25,000. So that's how you come up with \$75,000. And then it just goes on.

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CHAIRMAN TOWNSEND:

"You basically self-insure, you have a huge deductible. Is that right? And then you buy reinsurance for the larger portion."

MR. FRY:

"We have a \$2 million deductible program."

CHAIRMAN TOWNSEND:

"So in essence, you self-insure for the first \$2 million and then move on."

MR. FRY:

"I should be careful what I say. I don't want to say that we are self-insured."

CHAIRMAN TOWNSEND:

"No, but the practicality is that the State is self-insured for the first \$2 million, and then you buy a policy, or you've bought a policy that has a \$2 million deductible."

MR. FRY:

"Yes, Senator."

CHAIRMAN TOWNSEND:

"Okay. And so therefore, you deal with this as a cash-flow issue because in fact your deductible is so high, as opposed to incurred claim, which goes to the lifetime of the client."

MR. FRY:

"Yes, sir."

CHAIRMAN TOWNSEND:

"Okay. ... "

ASSEMBLYMAN JOHN OCEGUERA, ASSEMBLY DISTRICT No. 16:

Assembly Bill 451 has personal significance for me, but not for the reason you may be thinking. Not because the bill speaks to cancer as an occupational disease of firefighters, but for a different reason. The reason is Bill Harnedy. Bill Harnedy is a friend. He's a firefighter who served the public in Carson City and North Las Vegas, ensuring their safety for many years. In 2001,

Bill Harnedy was diagnosed with cancer. When Bill was diagnosed, he came to me with a copy of the *Nevada Revised Statutes*, knowing I was an Assemblyman in our State Legislature, knowing that I was pursuing my law degree. Bill asked me point-blank. He said, "Am I covered?" And at that moment, I read NRS 617.453. To me, its meaning and intent were plain, and they were clear. To me, Bill Harnedy is qualified for disability compensation under the statute. However, the denial that Bill received was supported by an enclosed copy of that same statute. I submit to you, Mr. Chairman and members of the committee, that you too would have thought the same thing had you yourself read that statute.

Bill Harnedy has traveled all the way from Las Vegas today, enduring the discomfort travel necessitates, given his advanced condition, subjecting himself to the stares that follow him, in order to support this bill, even though the changes that A.B. 451 could bring about will not change his circumstances. You see, despite his belief, and the belief of his family, and the belief of his doctors, and my belief, that he qualified for disability compensation under the statute, his disability claim was aggressively opposed. I feel compelled to repeat that, Mr. Chairman: Bill Harnedy's disability claim was aggressively opposed.

So Bill's presence here today is truly altruistic. His experience is not, I assure you, uncommon. Despite the plain and clear meaning of NRS 617.453, firefighters' disability and death claims are routinely denied. This approach carries over to firefighters and peace officers processed under the heart and lung statute. The heart and lung statute is different from this statute. It contains a conclusive presumption that says heart and lung conditions are caused by the stress of this job. Yet firefighters and police officers who make claims under the heart and lung statute again are routinely denied benefits and are being forced to appeal all the way to the Nevada Supreme Court in order to receive benefits they were wrongly denied in the first place.

I find this policy of oppose, deny, and force an appeal so offensive that I have taken it upon myself to prepare an amicus brief in my

capacity as a State Legislator for filing in a case concerning two peace officers who were wrongfully denied benefits under NRS 617.457. I've also made a request to the Legislative Commission that was recently approved to prepare an amicus brief on this issue for the Legislature as well. You will note that A.B. 451 doesn't make any changes that could be argued were intended to make it easier to make a claim under the statute or easier to qualify for these benefits, or increase the benefits available under the statute. That's not what A.B. 451 is about. The concept behind A.B. 451 is simple. Since the plain and clear meaning of NRS 617.453 is not being recognized or furthered in its interpretation and enforcement, let's amend this statute and make it really, really, really clear under what circumstances we believe a firefighter who receives cancer should receive disability or death benefits.

Mr. Chairman, if you hear any bitterness in Bill's voice during testimony, I wouldn't mistake that bitterness for what it is not. It's not due to the fact that he will not live to see his 40th birthday. Nor is it due to the fact that his time with his family, with the passing of each day, is coming to a close. It's because the system mistreated him. That's what he asked me to speak about at his funeral. How the system let him down. I've not been able to begin writing those remarks, and it's my hope with the passage of a bill like this, at the end of those remarks, I can end on a positive note, talk about how Bill changed the way firefighters are treated and made a difference when it came to firefighters with cancer.

CHAIRMAN TOWNSEND:

"Who is the coverer? Is it a self-insured local entity? Did they purchase private insurance? If it was covered by self-insurance, is there a third-party administrator (TPA) involved in this particular case?"

MR. OCEGUERA:

"Mr. Harnedy was employed by the City of North Las Vegas, who is self-insured, and then Compfirst is the insurer."



CHAIRMAN TOWNSEND:

"And where is that in the process? Has it gone to the district court? Are you at the appeals level? Where are you in the process?"

MR. OCEGUERA:

"I think in Mr. Harnedy's presentation you'll get a good scope of where that's at."

WILLIAM HARNEDY:

What I'd like to do today is just give you a quick overview of what I've been through since October 2001. As a firefighter, I believe it's very important to stay in shape, and I felt that I was in pretty good solid shape. I started experiencing pain in my side through the summer of 2001. When I finally went to the doctor, we thought it was kidney stones. As the water in Las Vegas isn't really that good, kidney stones are prevalent. We diagnosed a mass on October 2, 2001, through ultrasounds and computerized axial tomography (CAT) scans. On October 6, I had a right radical nephrectomy; that is, they took out my right kidney, at University Medical Center. On October 10, 2001, I was told the pathology report came back as stage 4 renal cell carcinoma. I still had active cells in my renal fossa, which meant that I had to seek a medical oncologist for his interpretation. On October 17, I met with a general oncologist in Las Vegas. Right off the bat, he gave me life expectancy of 7 months at most. That was with or without any type of treatment. It's been 16 or 17 months since, so I'm still fighting.

At that time I filed a C-1 claim with the City of North Las Vegas. In November I received a letter from CDS Compfirst. They basically said my claim was denied. In the middle of November, 7 months wasn't a good diagnosis for me. I found a kidney cancer center in San Francisco and I met with a kidney cancer specialist out there. At that time, he wanted me to go through a positron emission tomography (PET) scan to see if the spots in my right lung were active cancer cells. On December 2, I had a thoracoscopy, and it showed that the spots in my right lung were renal cell carcinoma. December 17 was when I started interleukin therapy, which builds

your immune system. It's not chemotherapy; what it does is increase your white blood cells to fight the cancer. It's such an aggressive form of treatment that you have to be monitored in an intensive care unit. So I was in San Francisco a week at a time, one in December, one in January, and twice in February, going through this treatment. The treatment was extremely excruciating. Side effects of the treatment were completely unbearable.

As the process of my treatment was continuing on, I kept filing my claim. We appealed the decision by CDS, and on January 28, my denial was affirmed by a State hearing officer. We appealed that decision. In March 2002, I was reevaluated after my treatments in San Francisco and found that the cancer only had progressed by 50 percent. There was not much left that that kidney cancer specialist could do for me, and under the protocol by the National Cancer Institute, for renal cell carcinoma chemo and radiation were not an option. I saw a report on "Miracles in Mexico: The Tijuana Treatment" that was done by KBBC, Channel 3, in Las Vegas, and I followed up and went to Mexico and met with a Dr. Vargas down there, an oncologist. I went through low-dose chemo, low-dose radiation. In July 2002, I had an open thoracotomy, which is basically like open-heart surgery, to get tumors that were in my right lung, and then another tumor that had come back in my right renal fossa area.

I know that I was cancer-free for about 4 months. I was ready to come back to work. The City of North Las Vegas required me to meet with a specialist, and I met with an oncologist in San Francisco who evaluated my treatment in Mexico and signed off on me to come back to work, light duty. Then I started experiencing pain, and follow-up CAT scans 4 months after my surgery noted that I had a recurrence of the cancer. At this present time, the cancer is back in my right lung and my right renal fossa.

In January of this year I started treatment of aggressive chemotherapy, 96 hours of continuous intravenous (IV) infusion with a take-home and a pump. I became extremely ill after the second treatment and was in Sunrise Medical Center for 2½ weeks

recuperating. I'm in this condition now because of that chemotherapy, and it hasn't done anything. When I testified in front of the Assembly 3 weeks ago, at that time I was waiting for a phone call from the University of California at Los Angeles (UCLA) for an evaluation of my case. I received that phone call on Friday, and they said I'm not a feasible candidate for any further treatment.

Right now my back is against the wall. My time is short, and I won't see my 40th birthday. What I've learned is you have to take charge of your own health care any more. But throughout this whole process, I not only went through excruciating treatments, I continually got the letters of denial and continuances through this case from CDS. In fact, in April 2002, CDS sent a nurse from Reno to San Francisco to meet with me and Dr. Meyer, the specialist treating me with interleukin. Dr. Meyer followed up with them and changed my diagnosis from kidney cancer or renal cell carcinoma to "a disease process in the lungs." That produced this letter, which I received July 10, 2002. It says, "Dear Mr. Harnedy: On behalf of the City of North Las Vegas, Compfirst is accepting your claim filed on May 4, 2002, for lung disease. We accept this in accordance with NRS 617.455. Please be advised that the acceptance is limited to the disease process in your lungs, which is diagnosed as lung metastases from kidney cancer. It is our belief that this disease process involving the lungs is presumptive pursuant to NRS 617.455. The diagnosis of kidney cancer filed in claim #NV0100178, which was denied and is currently under appeal, will not be covered under this claim. Compfirst will authorize care and treatment recommended for the treatment and eradication of diseases of the lungs. Treatment and care which is specifically related to the diagnosis of kidney or for other affected areas outside of your lungs will not be authorized under this workmen's compensation claim. You should continue to seek authorization for the care of the kidney cancer from your group health insurance." And it continues, "Treatment will be limited to treatment in the continental United States."

When you have group health insurance, when you leave Nevada you come into the 70-30 rule. What that means is the insurance will cover 70 percent and you're liable for 30 percent because you're going out of the network. I couldn't receive this interleukin therapy in Las Vegas; I had to go to San Francisco to receive it. When I was diagnosed with this cancer I brought that bill to Assemblyman Ocegueda. It says, "You're compensated, you're going to be reimbursed and compensated." It's a never-ending frustration. In July of this year, we met in a good-faith attempt with representatives from the City of North Las Vegas, CDS, my legal counsel, our union president, and Assemblyman Ocegueda. We figured we'd meet in good faith, see if we could resolve the situation. What we did is combine the two claims into one, and we filed to go straight to the appeal officer, instead of going to a hearing officer first. The continuation went from August 26 to October 7, then they changed the date to October 14. Then something came up and we couldn't do it on October 14, and we figured December 13 would be a good date. Again it was put off. My legal counsel had me visit a doctor in Las Vegas to be evaluated under an occupational medical evaluation. That doctor was supposed to be deposed prior to the hearing; he wasn't, so they had a continuance of that. Then when he was supposed to be deposed, everyone showed up except a court reporter. They finally had the deposition, so now we're waiting for the final review of the deposition and all this to be in front of the hearing officer. No date has been set. That's where I'm at this time with my case.

CHAIRMAN TOWNSEND:

Well, sir, in spite of the former president who wrote a remarkable book called *Profiles In Courage*, I think you're Nevada's example of that. We really appreciate and respect your testimony here today. The process is supposed to work substantially more efficiently than this relative to your appeal. I don't know what's happened, and we'll certainly look into it, because we need to get resolution to this. That's a separate track from this bill, but it needs to be done, because that's the one that directly affects your needs. We'll assure you that before we adjourn sine die here in June, we'll have

an answer and we'll know exactly the time frame in which this process will move forward relative to your case.

MR. HARNEDY:

I was diagnosed 7 months. I'm putting up a fight; I'm going to put up a fight to the end. I have no options at this time. I'm researching on the Internet all the time for clinical trials. But I really feel I got put off hoping that I would die and this case would just disappear. But I have made a dying resolution to my friends and put it into my trust: should I pass, I want this to continue for the future. It's just a clarification of the language in this statute that we have. I think that's where the stumbling block is.

CHAIRMAN TOWNSEND:

Okay. Any questions, committee? Thank you, John. It's important that people like you are involved and bring these issues that are real, that have a face to them. Many times we just see stuff on a page. That's a little tougher to deal with. As I remember, your testimony is to remove paragraph (g) in subsection 2, the lung cancer portion, because it's redundant; it's covered in the other section.

SENATOR NEAL:

"Are there any other states that have this particular section on page 2, starting at line 25, going through to the next page?"

MR. MCALLISTER:

I am not sure there is anything that is exactly like this. But I do know that within the research that we have, there are laws in the states of Arizona, Massachusetts, Virginia, New York, and California, and we just had statutes passed with specific types of cancer very similar to this from studies that were done in Manitoba and Ontario, Canada.

SENATOR NEAL:

But you're asking this committee and this Legislature to make a finding based on the foregoing, starting at line 8 on page 3. You list those things beginning at line 25 on page 2, and then you say,

"The cancer is an occupational disease and compensable as such under the provision of this chapter." That is forcing we the committee to make that determination based on starting from paragraph (a) and skipping (g) to (h).

MR. MCALLISTER:

That was brought to my attention just a little bit ago, just prior to this hearing. It is not our intention to make this conclusive. That language was not in our initial drafting of this bill. This bill came out of drafting pretty much as you see it. That was not in the initial language we put in there. If that doesn't meet the requirements or the needs of the committee to allow it to be rebuttable, we'd certainly be amicable to trying to work language to make it so that it is. But we've identified a problem. This Legislature passed a bill in 1987 to cover firefighters for cancer, and at this point in time, that's not being done. And if we have a law that's not working, we either get rid of it or fix it. Let's make it so that it does work and do what it was intended in 1987. If this doesn't do that or this is too much, it wasn't our intention and we'd certainly be willing to try and work to make sure that we do accomplish what we're trying to accomplish.

CHAIRMAN TOWNSEND:

Do we have any research about those things that were appealed about cancer since the passage of the bill, and what the results were: those that were accepted, those that were denied, where they were denied? Because your point is a very important one. In other words, the point wasn't to have something on the law that no one ever gets a benefit from. That's eyewash, and none of us want to do that. Do we have that research? It's easy to get; it only takes half a day. Do you have the history of that?

MR. MCALLISTER:

"Do you mean here in the State of Nevada?"

CHAIRMAN TOWNSEND:

"Yes."

MR. MCALLISTER:

Last session you passed a bill that required reporting by local entities on a yearly basis for occupational disease, cancer claims, things like that. They've reported it, but they've got it bunched up so that it's not separated out. They just say, "Yeah, we had 3 cancer claims, and we had 15 exposures to an occupational disease. These claims have been submitted. We accepted five and denied ten." But they don't say, "We denied 3 cancer claims" or "We accepted 3 cancer claims." They never separated it out. They just bunched it all together and submitted all their data to the Division of Industrial Relations. Our feeling is it was an effort to make it so that we can't decipher that information out.

CHAIRMAN TOWNSEND:

"If we process this bill, we might want to clarify that."

MR. MCALLISTER:

"That would certainly be helpful."

CHAIRMAN TOWNSEND:

You need the information, not just gloms of it. The reason I asked this question was to number one, find out if what this committee thinks occurred is not being followed and it's being shortstopped by denial at the beginning but nobody's appealing those. That's one thing. People who appeal them and then get them to court and then the court rules, because they're the ones that look at this and say, "This is what the meaning is, based on the court's interpretation," gives us some guidelines. That's why I was asking the question. Because if it is not clear on what this is, and if your position is, I think, well stated that you do not want to make this a conclusive presumption, but in fact you think that what this maybe not just perfect language the way it sits, but maybe language that you're intending does clarify what it is, then we want to get to that. So we're looking for all kinds of help that could point us in the right direction. That's why I ask that question.

MR. OCEGUERA:

I'd just like to add there is quite a bit of case law in the heart and lung statutes. Not to move this over there at all, but what we did with the heart and lung statute was attempt to put an end to that controversy. What Senator Neal is asking, yeah, we are asking him to put an end to that controversy. We can bring 50 doctors that say that it is, and I'm sure they can find 50 doctors that say it isn't. That's what the Legislature does is make those kinds of decisions so that type of intent and that type of case law is certainly out there.

MR. MCALLISTER:

The only light I can shed is the only employer I know of at this point in time personally that has accepted a firefighter's cancer claim is Clark County. They have accepted some claims. I can speak on the City of Las Vegas. There have been to my knowledge, at least in my experience two claims filed. Both of them have been denied. One is still in the process; one of them, after he was denied he decided not to pursue it. And we also had one female with breast cancer who chose not to subject herself to that type of situation in a male-dominated environment. In North Las Vegas, I believe there are two cancer claims that have been filed. I don't believe either of them have been accepted, Mr. Harnedy's being one of those. The City of Henderson has not had any claims filed for cancer for an active employee. The two people that they had die of cancer were after they left the job, and they fell outside of the sunset clause, and therefore they didn't qualify under the legislation to be covered. And with that, that's the only ones I know of that I have at least personal knowledge of.

SENATOR NEAL:

When I look at the way this is written, it suggests to me that after you look at the language in subsection 2 on page 2 and you follow that with the enumerated alphabet language there, it suggests to me that the only qualification that you have to say whether a person has contracted these various cancers is that the person be a fireman. That's it. Once you've been a fireman, you're working,



you've contracted this, that's it. That's all the qualification that's needed. That's what it seems to suggest to me. I wondered whether or not you wanted that. What if a person just stays in an office and doesn't go into a fire, you see? He would still be classified as a fireman. This says that you contract bladder cancer or any of these cancers, it is esteemed and occupational disease and compensable as such.

MR. MCALLISTER:

First of all, I would say that there are to my knowledge no firemen who fight fire who sit in an office and are not exposed to these carcinogens. Second, I would say that it is not our intention to take away the ability for an insurer to rebut when there is evidence to prove or dispute the case otherwise. As an example, if they can produce evidence that the person is an alcoholic and he develops liver cancer and has cirrhosis, then by all means they should have the ability to rebut that. But what we're finding is the denials we're getting, they're denying on the ground that you can't show a correlation between the type of cancer that you have and the carcinogen you've been exposed to.

SENATOR NEAL:

But this language I see as totally eliminating any cause and effect here. The qualification of the person, the occupation of the person, that's it. And that's what this language seems to be suggesting here. And I of course question whether or not you want it that way because you're making this committee determine that if a fireman is a fireman, then the fireman would be compensated for any cancer that is contracted.

MR. OCEGUERA:

"I guess in a sense I agree with you. But that's what it said before."

SENATOR NEAL:

"And that's what it's saying now."

MR. OCEGUERA:

And what we're trying to do is clarify that. It said that before. And now, if you think about this on the opposite side, though, if the cancer falls outside of these cancers that we've listed, then you're definitely not going to get covered. They're already not covering them, so if it falls outside of these ones that are enumerated, you're not going to get covered.

CHAIRMAN TOWNSEND:

"Thank you. We will take this up in our work session ... on Thursday."

JOHN ELLERTON, M.D.:

I'm a physician and cancer specialist. I wish to speak in favor of this bill, and I'll be brief and specific. I have been on occasion asked by the insurers to look at these cases. I have a specific example of a case where the cancer was clearly related to the exposure that the fireman had. The insurer then thanked me very much for my opinion and disappeared into the sunset. I suggested that they settle whatever the case was because there was clear evidence of the relationship. That's why I support this bill, because by specifying the cancers and their relationship to the occupational exposure, it takes away the latitude of the insurance company to do inappropriate doctor-shopping to find an opinion that will support their unwillingness to compensate the firefighter fairly. I do agree that this should be a rebuttable presumption. Some of these cancers can have other causes, and in certain patients, certain firefighters, the exposure may not be the cause. But absent another explanation and given the appropriate exposure, I believe the firefighters should be compensated. It's clear, at least from my experience, that this is not the intent of the insurer. Therefore I would strongly urge you to pass these clarifications to beef up this valuable bill.

CHAIRMAN TOWNSEND:

I will suspend the hearing on A.B. 451 briefly. Committee, is there any interest in processing A.B. 231?

SENATOR CARLTON MOVED TO DO PASS A.B. 231.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR O'CONNELL AND SENATOR  
SHAFFER WERE ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIRMAN TOWNSEND:

We will resume the hearing on A.B. 451.

BUFFY GAIL MARTIN, LOBBYIST, AMERICAN CANCER SOCIETY/RENO:

We are in full support of A.B. 451. We often take our firefighters and peace officers for granted. Refusing their service-related workers' compensation claims further illustrates our attitude. Formaldehyde, vinyl chloride, soot, diesel exhaust, asbestos, benzene, nitrogen dioxide, organic solvent: all known cancer-causing chemicals. I am fairly certain that very few of us come into contact with these cancer-causing agents on a daily basis in our jobs. However, Nevada's firefighters do, and they do so without hesitation. Cancer is a fight for your life that requires every ounce of physical, emotional, spiritual, and sometimes financial energy. To add a fight with an insurance company or workers' compensation claim is inhumane. It is time to honor the dangerous and life-threatening work that firefighters do for our community without asking. They not only put their lives on the line for our safety, but also their health. On behalf of the American Cancer Society and our 6000 Statewide volunteers, we ask you to vote to support our professional firefighters and pass A.B. 451. Thank you.

ROBERT SCHREIHANS, PRESIDENT, CARSON CITY FIREFIGHTERS:

One of the questions was are there any cancer claims. I've been here for 20 years and Carson City hasn't had any that we've gone through. But we sat through all the other hearings where they said, "If it ain't broke, don't fix it." Well, this system is broke, and you kind of need to fix it. We had a heart-lung claim here a couple of years ago where we actually took a guy off line and had to take him to the hospital because he couldn't breathe. He had a lung

empyema and ended up having lung surgery, and the city denied his claim. We had to take it to the district court to process that. So there are some issues here with the process that these claims are not being covered. Every time we file a claim, we automatically know we have to go through the appeal, and it is expensive to take cases to district court and up to the Nevada Supreme Court. So whatever you guys can do to help us out, approve or pass these bills, fix the process so the insurers can't just automatically deny claims hoping that either one, the patient dies, or two, they can't afford to take it to district court, or they just go on through their own private insurance.

SENATOR HARDY:

Is there anyone else wishing to testify on this bill that needs to get on the record today? We'll take this up in work session. We appreciate those who have taken the time to do this. This is one of the toughest issues. I personally lost a brother-in-law at 34 years old, and this weekend had to go say goodbye to a very, very dear friend who I went to high school with. This is a tough, tough issue, so thank you.

WAYNE CARLSON, LOBBYIST, PUBLIC AGENCY COMPENSATION TRUST:

I'm handing out two things; one is my written testimony (Exhibit J), and the other is a proposed amendment (Exhibit K). I just want to highlight a couple things on my written testimony. When I prepared my testimony on the Assembly side, I had read the bill as a conclusive presumption-for-life provision, as I found the language to lead us to that conclusion. After that testimony, I revised my fiscal note and I also revised my testimony.

There are a couple things I think the committee needs to consider. We've had a lot of bills in the last session and this session in this whole area of occupational disease for police and fire. I've looked for studies that indicated one way or the other regarding these types of cancers, whether they were or were not particularly exposed for firefighters. I found the information mixed. Some were saying it was definitely connected, others said they were not, others said these the kinds of ones they were more susceptible to.

I think a lot more study needs to be done in that regard to make it clear where all these bills ought to go. But in terms of the attempt in this bill to clarify what existing intent was, the language is not quite there in the bill as the first reprint. What I'm suggesting might help clarify that.

I also think in addition that some study of the whole range of issues that I have listed in the rest of my testimony might help regarding this entire issue. The costs are becoming very difficult for those of us in rural Nevada to bear, all of these benefits for police and fire, primarily because of the conclusive presumption lifetime interpretation added a lot of cost burden to us.

In terms of my specific amendments, I understand that Assemblyman Ocegüera has removed the lung cancer. I prepared this prior to knowing that particular element. I tried to articulate the details, but I think it's a lot clearer just to look at the redraft language. In the first reprint and in the original bill, section 1 said, "except as otherwise provided in subsection 2," and then subsection 2 said, "notwithstanding any other provision of the chapter ... this is an occupational disease." That said to me conclusive presumption. So to try to narrow it to the intent of rebuttable presumption, let's get rid of all of that "except as." Let's go into 453 and just insert it. What I've done is insert in section 1(b), subsection 3. I've created a new subsection 3, so that's eliminated all these roman numerals in the bill, and just listed them there and said it's tied into everything above, or the disabling cancer. It's the same list with the exception of paragraph (g), as the other amendment would do. Then if you read the rest of it along that line, when you get to section 3, which is existing language, it says, "The disabling cancer is presumed to have developed or manifested out of the course of employment of any fireman described in this section." It goes on to say, "This presumption applies to disabling cancer diagnosed after termination if the diagnosis is within 60 months," and so forth. My interpretation of this approach is tying this more clearly to the rebuttable presumption language, preserving that the presumption applies, and in the last sentence, that the presumption controls the

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award "unless evidence to dispute the presumption is presented."  
So it leaves that all tied together as existing law. So in that sense  
it would not need the language in the first reprint.

CHAIRMAN TOWNSEND:

"Have you shared this with Mr. McAllister or Mr. Ocegüera?"

MR. CARLSON:

Yes. I gave it to Rusty last week for him to look at. As a result of  
our conversation, he decided to take the disease of the lungs piece  
out because the coverage under the lung-disease statute and  
coverage under the cancer statute when you have cancer of the  
lungs becomes a conflict of law. Obviously you could put it in one  
or the other, and he's chosen to request to have it left under the  
lung-disease statute and not put in the cancer statute. That's a  
public-policy choice as to where it should go. I think the  
amendment I've done has tried to clarify the issue of the  
conclusive presumption and the presumption for life with respect to  
cancer. That was the reason for the amendment.

RANDY WATERMAN, RISK MANAGER, CITY OF SPARKS:

First of all, I agree with Mr. Carlson about the cumulative effect of  
all the different occupational disease bills and laws that are  
currently on the books. However, specific to A.B. 451, I had earlier  
testified in the Assembly in opposition to this bill. I can tell you that  
our concerns would all but go away if the language in section 2  
were clarified to eliminate what I see as a conclusive presumption  
and maintain the rebuttability of the conditions.

CHAIRMAN TOWNSEND:

"I think that was the testimony of Mr. McAllister."

MR. WATERMAN:

"Exactly. And I want you to know I agree with that."

DON JAYNE, LOBBYIST, NEVADA SELF INSURED ASSOCIATION:

Essentially we're really neutral on this bill as an association.  
I wanted to go on the record as well that Senator Neal and

I actually agree that there is some question here on whether or not we've got a conclusive presumption or not. When we eliminate the "out of the course of employment," when we've got the sections in lines 8 and 9 on page 3 that the senator was addressing, we too share that concern as to whether or not we really have language here that would provide for the rebuttable presumption. The only other point we had on this bill was we wanted to see at least some reference to the Nevada medical fee schedule when we talk about full reimbursement in some of the language here. And that's what we have for today.

CHAIRMAN TOWNSEND:

Okay. Anyone else? What I suggest is meeting with the proponent of the bill, in this case Mr. McAllister as well as the sponsor, Mr. Ocegüera, that we take their good-faith effort here and all of us working with Mr. Young, who will take everyone's legal input and put it all together, then we'll give it to Mr. Powers to see if we have commonality on the issue of conclusive presumption. Then Senator Neal's point is an important one. If you take out that one section, the fact that you are employed as a firefighter, that makes another trigger that we need to be sensitive to. Rusty, if you and Mr. Ocegüera and I can kind of gather up all of the legal versions of what we think we heard, and we've got one from Mr. Carlson and one from Mr. Jayne, we'll clarify all of that. We'll give all of that to Mr. Young and then he can organize it. We'll sit with Mr. Powers and we'll say okay, this is what we heard, this is the testimony we took, this was the goal of the proponents, let's find the appropriate language that tries to accomplish that. Then we'll bring that back to this committee and go from there. Is that all right? I'd like to get that done fairly quickly, over the next couple days, while we have work sessions. ...

MR. JAYNE:

I had prepared an amendment that I didn't want to delay your committee today with, but I'll provide that to you (Exhibit L). I've provided it to Mr. McAllister already, and I'll make sure the committee has it. It's very similar in nature to what we talked about, and I'll provide that as well from our side.

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CHAIRMAN TOWNSEND:

There being no further business, we will adjourn at 11:18 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chairman

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



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

**Seventy-second Session  
May 8, 2003**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:12 a.m. on Thursday, May 8, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chairman  
Senator Warren B. Hardy II, Vice Chairman  
Senator Ann O'Connell  
Senator Raymond C. Shaffer  
Senator Joseph Neal  
Senator Michael Schneider  
Senator Maggie Carlton

**STAFF MEMBERS PRESENT:**

Scott Young, Committee Policy Analyst  
Courtney Wise, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Makita Schichtel, Committee Secretary  
Maryann Elorreaga, Committee Secretary

**OTHERS PRESENT:**

Lori T. Ashton, Lobbyist, Southwest Regional Council of Carpenters  
Robert A. Ostrovsky, Lobbyist, Nevada Resort Association and City of Las Vegas  
Susan Fisher, Lobbyist, Barrick Gold Corporation  
John M. Vergiels, Lobbyist, Nevada Financial Services Association  
Alfredo Alonso, Lobbyist, Money Tree, Incorporated  
Michael Alonso, Lobbyist, Nevada State Board of Opticians  
Samuel P. McMullen, Lobbyist

Chairman Townsend opened the work session on A.B. 451.

**ASSEMBLY BILL 451 (1st Reprint)**: Provides that certain forms of cancer contracted by firemen are occupational diseases under certain circumstances. (BDR 53-1197)

Chairman Townsend said the bill had been brought forward as the result of concerns about how employers could handle workers' compensation claims for the development of cancer. The intent of the bill was to afford a self-insured employer or the insurer of an employer the opportunity to rebut workers' compensation claims for the development of specific types of cancers. He said involved parties had met with Mr. Powers to craft language, which would meet the concerns of all involved. Chairman Townsend said the result of those efforts was the proposed amendment to A.B. 451 submitted for the committee's consideration (Exhibit D).

Mr. Powers said:

The amendment before you is essentially ... the bill as it is now is a one-section bill and this amendment completely replaces the section in the bill. So this is how the bill will look if the amendment is adopted. And then on page 2, that represents the new language that I drafted after being provided with the information by the parties and Mr. Young. And essentially, what the amendment does is addresses the existing statutory framework, which requires the injured employee to prove a series of elements to achieve the rebuttable presumption. And then, once the rebuttable presumption is achieved by the employee, then the insurer can present evidence to rebut that presumption. So what this amendment does for one of those elements, and if you look on page 1 of your amendment, page 1 lines 13 through 17, one of the elements requires the injured employee to prove or that it is demonstrated that he was exposed while in the course of his employment to a known carcinogen that's as defined by the two agencies and that the carcinogen is reasonably associated with the disabling cancer. So that's one of the elements that the injured employee would have to prove. On page 2, what subsection 2 does is make a legislative policy determination for that particular element that these types of carcinogens shall be deemed to be known carcinogens that are

reasonably associated with the specific cancer that's listed through paragraphs (a) through (g) as listed on page 2. It makes clear in subsection 3 of the proposed amendment that that's not an exclusive list. That an employee, on a case-by-case basis, can meet a burden of proof to show that a known carcinogen is reasonably associated with a disabling cancer.

Senator O'Connell said an employee had testified that he had to keep proving the same disability. That was not only very wearing on the employee but totally unnecessary. She asked if the amendment addressed such a situation.

Raymond C. McAllister, Lobbyist, Professional Firefighters of Nevada, said the problem that employee had encountered was establishing the reasonable association between the cancer from which he suffered and the known carcinogens to which he had been exposed. He said the amendment would help establish the reasonable association, but would not expedite the process if an employer rebutted a claim. Mr. McAllister said if insurers accepted some of the claims as reasonable associations, some cases could be accepted more readily.

Senator O'Connell said employees would not always have enough time to get through the claims process. Mr. McAllister said he agreed but did not know how the situation could be remedied.

Chairman Townsend said the amendment was the result of an important effort made by all the involved parties. He said everyone should have an opportunity to respond.

Don Jayne, Lobbyist, Nevada Self Insured Association, said he had worked with Mr. McAllister and Assemblyman John Ocegüera, Assembly District No. 16, on the language in the amendment. He said he agreed with and supported the changes in the bill.

Mr. Ostrovsky said he had reviewed the amendment and it met the intent of the committee to provide for a rebuttable presumption. He said he agreed the amendment would not solve the problem of the lengthy appeals process.

Chairman Townsend said Senator O'Connell had raised an important issue. The appeals process should not be lengthy in cases where timing was critical to a medical issue.

Mr. Jayne said a previous bill had provided for the accumulation of statistics, by the Division of Industrial Relations, regarding workers' compensation provisions unique to firefighters and police. He suggested expansion of the process to include data to be evaluated by members of the Legislature.

Chairman Townsend asked for insurers of firefighters and law enforcement personnel to provide suggestions for language to be included in NRS, which would advise administrative hearings officers, appeals officers, district court judges, and Nevada Supreme Court judges to treat time-sensitive claims as priorities.

Mr. Ostrovsky offered to help work on the amendment. He said there were long standing concerns over the lengthy process at the appeals officer level. Past attempts to solve the problem had been unsuccessful. He suggested imposing binding time limits on appeals officers.

SENATOR NEAL MOVED TO AMEND AND DO PASS A.B. 451.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chairman Townsend said A.B. 453 would be heard at the next scheduled work session.

**ASSEMBLY BILL 453 (1st Reprint)**: Makes various changes to provisions relating to insurance. (BDR 57-546)

Chairman Townsend opened the work session on A.B. 493.

**ASSEMBLY BILL 493**: Provides for money collected by Commissioner of Financial Institutions and Division of Financial Institutions of Department of Business and Industry to be deposited to and expended from the Fund for Financial Institutions. (BDR 55-463)

Chairman Townsend said he did not understand the need to create a separate fund. He said he had asked for an amendment to be prepared, which had

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

**Seventy-Fifth Session  
March 23, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:35 p.m. on Monday, March 23, 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Marcus Conklin, Chairman  
Assemblyman Kelvin Atkinson, Vice Chair  
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. Settlemeyer

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman David P. Bobzien, Washoe County Assembly District No. 24

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**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Paul V. Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau  
Trevor Hayes, Las Vegas, Nevada, representing Health Management Systems, Charlotte, North Carolina  
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services  
Tom McCoy, representing American Cancer Society-Cancer Action Network, Reno, Nevada  
Carla Brutico, RN OCN, State Health Policy Liaison for Nevada, Oncology Nursing Society, Carson City, Nevada  
Robert A. Ostrovsky, representing Health Plan of Nevada, Inc., Las Vegas, Nevada  
Leslie A. Johnstone, Executive Officer, Public Employees' Benefits Program, Carson City, Nevada  
Erin Russell Hayes, Las Vegas, Nevada, representing Aflac, Columbus, Georgia  
Lea Tauchen, representing Retail Association of Nevada, Carson City, Nevada  
Sherri Rice, Executive Director, Access to Healthcare Network, Reno, Nevada  
Lawrence P. Matheis, Las Vegas, Nevada, representing Nevada State Medical Society, Reno, Nevada  
Elisa Maser, representing Nevada Advocates for Planned Parenthood Affiliates, Reno, Nevada  
Jeanette K. Belz, representing Nevada Psychiatric Association, Reno, Nevada  
Lesley Dickson, M.D., Nevada Psychiatric Association, Las Vegas, Nevada

**Chairman Conklin:**

[The roll was taken.] We have a quorum. The first order of business is that I have three more bills to introduce.

**BDR 53-278** - Provides provisions governing coverage for cancer as an occupational disease of firefighters. (Later introduced as [Assembly Bill 521](#).)

ASSEMBLYMAN ATKINSON MOVED FOR COMMITTEE INTRODUCTION OF BDR 53-278.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BUCKLEY WAS ABSENT FOR THE VOTE.)

**BDR 54-773** - Implements the federal secure and fair enforcement of mortgage licensing act of 2008 (The Safe Act). (Later introduced as [Assembly Bill 523](#).)

ASSEMBLYMAN ANDERSON MOVED FOR COMMITTEE INTRODUCTION OF BDR 54-773.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BUCKLEY WAS ABSENT FOR THE VOTE.)

**BDR 58-1139** - Makes various changes relating to energy. (Later introduced as [Assembly Bill 522](#).)

ASSEMBLYWOMAN KIRKPATRICK MOVED FOR COMMITTEE INTRODUCTION OF BDR 58-1139.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BUCKLEY WAS ABSENT FOR THE VOTE.)

At this time we will open the hearing on [Assembly Bill 399](#).

**[Assembly Bill 399](#)**: Establishes provisions for the primacy of health care plans. (BDR 57-964)

**Assemblywoman Heidi S. Gansert, Washoe County Assembly District No. 25:**

This bill was one of the last to come out of drafting so it was not what I was expecting it to be. Legal did not have time to put together an amendment today, but it may be ready next week. I have, however, given you a conceptual amendment and a handout ([Exhibit C](#)) that reviews the objectives of what the

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

**Seventy-Fifth Session  
April 6, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:47 p.m. on Monday, April 6, 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Marcus Conklin, Chairman  
Assemblyman Kelvin Atkinson, Vice Chair  
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 Ocegura  
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:**

Rusty McAllister, representing Professional Firefighters of Nevada,  
Las Vegas, Nevada  
Dr. Matthew Schwartz, MD, Radiation Oncologist, Comprehensive Cancer  
Centers, Henderson, Nevada  
Danny L. Thompson, representing Nevada State AFL-CIO,  
Henderson, Nevada  
Robert Ostrovsky, representing the City of Las Vegas,  
Nevada Resort Association, and Employers Insurance Group,  
Las Vegas, Nevada  
Randall Waterman, representing the Public Agency Compensation Trust,  
Carson City, Nevada  
Renny Ashleman, Las Vegas, Nevada, representing the City of  
Henderson, Nevada  
Victoria J. Robinson, Manager, Insurance Services, City of Las Vegas,  
Las Vegas, Nevada  
Ed Finger, Comptroller and Director of Risk Management,  
Clark County, Nevada  
Gregory T. Hafen, Sr., Co-owner, Pahrump Utility Company, Inc.,  
Pahrump, Nevada  
M. Kent Hafen, President, Pahrump Utility Company, Inc., Pahrump,  
Nevada  
Vicki Hafen Scott, Treasurer, Pahrump Utility Company, Inc., Pahrump,  
Nevada  
Rebecca Willis, Steamboat Springs Waterworks Inc., Reno, Nevada  
David S. Noble, Assistant General Counsel/Utilities Hearings Officer,  
Public Utilities Commission of Nevada, Carson City, Nevada  
Bill Bradley, representing Nevada Justice Association, Reno, Nevada  
Fred Hillerby, representing Nevada Association of Health Plans and  
Renown Health, Reno, Nevada

Nancyann Leeder, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry, Carson City, Nevada  
George Ross, representing Nevada Self-Insurers Association, Nevada Restaurant Association, and the Las Vegas Chamber of Commerce, Las Vegas, Nevada  
Bryan Wachter, representing Retail Association of Nevada, Carson City, Nevada  
Dean Hardy, representing Nevada Justice Association, Las Vegas, Nevada  
Barbara Gruenewald, representing Nevada Justice Association, Reno, Nevada  
John Jeffrey, representing Laborers International Union of North America, Local #872, Las Vegas, Nevada, and International Union of Operating Engineers, Local #15, Henderson, Nevada  
Tray Abney, representing the Reno-Sparks Chamber of Commerce, Reno, Nevada  
Vance Christiaens, representing Nevada Motor Transport Association, Reno, Nevada  
Christopher B. Reich, General Counsel, Washoe County School District, Reno, Nevada  
Nicole Rourke, representing Clark County School District, Las Vegas, Nevada  
Daniel Markels, representing National Federation of Independent Businesses, San Carlos, California

**Chairman Conklin:**  
[Roll called.]

We will open the hearing on Assembly Bill 521.

**Assembly Bill 521:** Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

**Rusty McAllister, representing Professional Firefighters of Nevada, Las Vegas, Nevada:**

During the 73rd Session of the Nevada Legislature we came before you and asked for an amendment to change our cancer statutes. At the time, we were having problems getting claims accepted because insurers stated we could not show a causal relationship. So we tied the causal relationship back into the statute and were able to list only seven different cancers that documentation and research showed firefighters were at a greater risk for. We knew as time

progressed and we got more information and studies were completed, we would be able to present more evidence to you of other risks.

I have provided to you a group of articles ([Exhibit C](#)) that summarizes a study performed recently by the University of Cincinnati, Department of Environmental Health. They analyzed 20 studies of firefighters' risks for cancer to determine what forms of cancer for which firefighters were at greater risk. I can provide you with a copy of the study if you would like. The sections of the summary I have highlighted for you talk about different types of cancer and exposures. The biggest key for us is that the study shows there are greater incidences of certain cancers in firefighters. Page 2 shows the risk of testicular cancer is 102 percent greater than the average population, skin cancer is 39 percent greater, and prostate cancer is 28 percent higher. On page 3, in paragraphs (h), (i), (j), and (k) of this bill, we have added four new types of cancer. Based on the research gathered in these studies and the correlating association with certain types of chemicals to which firefighters are at a greater risk, we have added testicular, prostate, skin, and thyroid cancer to the bill for your consideration. The first three cancers I mentioned were listed in the study.

Thyroid cancer is much more difficult for us to pin down to a cause. We know that we are exposed to soot, benzene, and numerous unknown chemicals. Depending upon which survey you look at, statistics show the incidence of thyroid cancer in males in the general population is 4.3 to 8 per 100,000 people. The article I have provided you from the New York City Fire Department states that they have had eight diagnosed cases of thyroid cancer amongst their firefighters since September 11, 2001. These were the firefighters who were working on the rubble pile, searching for people for extended periods of time. The New York City Fire Department has over 11,000 firefighters, and they have eight confirmed thyroid cases.

Since we started doing thyroid screening two years ago in my fire department of 501 suppression firefighters, I have 9 confirmed cases of thyroid cancer. That is 100 times the national average. Most of those cases have required surgery. There is additional information in the handout that states what we are exposed to and the methods by which we are exposed. One of the ways we are exposed is absorption through the skin because pores dilate when we sweat.

There are a few more provisions we have added and ask that you consider. Under *Nevada Revised Statutes* (NRS) Chapter 617.453, section 1, subsection 2, it states that if a firefighter with five years or more of service gets one of the cancers listed, the cause of his illness will be considered a result of his employment. We would like you to reconsider the amount of time you have

to be a firefighter in order to have medical coverage for these types of cancers. Essentially you do not have to be a firefighter for five years, because it does not take five years of exposure to trigger these cancers. We have living proof of firefighters with less than five years on the job who have these cancers. One of our firefighters who was on the job for four years, eleven months, and two weeks, had a needle biopsy and was diagnosed with thyroid cancer. His claim has been denied because he had less than five years of service.

We have two firefighters who have brain cancer. One had four years and six months on the job and has been denied insurance coverage. The other firefighter had more than five years on the job but has also been denied because the insurance company is claiming that it metastasized from another type of cancer and that is how he got the tumor on his pituitary gland.

The last part of the bill I would like to examine is adding a thyroid ultrasound scan along with a prostate-specific antigen (PSA) test to our annual physical examinations. Early detection and treatment for any cancer is the best way to take care of these problems. There is a 90-plus percent chance of survival if you diagnose thyroid cancer in the first five years. We are requesting that these two tests be a part of our annual physicals.

**Dr. Matthew Schwartz, MD, Radiation Oncologist, Comprehensive Cancer Centers, Henderson, Nevada:**

The reason I am testifying today is I have had several firefighters with cancer who are patients of mine. It has come to my attention that young men who are firefighters are getting cancer from unknown exposures. Mr. McAllister discussed that it could be soot, benzene, or radiation. It is not exactly clear, but I feel from the literature I have reviewed there is definitely a higher risk of multiple types of cancer if you are a firefighter.

I would like to discuss the latency period. The development of cancer or carcinogenesis is a multistep process. Typically what we think happens is there is an initial process, or deoxyribonucleic acid (DNA) damage, which is referred to as initiation and which could be from various things. In this case we are assuming it is a carcinogen like soot, benzene, or radiation. There are other steps that have to happen for the cancer to grow and sometimes spread.

From the time of the initial step to the time a physician diagnoses the cancer is called the latency period. Typically the latency time period is years. In reviewing the literature it is hard to come up with a specific cutoff. I have looked at the latency period for thyroid cancer, and it ranges anywhere from a year to sixty-nine years. Where do you make the cutoff of when that exposure occurred to when the cancer develops? When would be the correct time to

make the cutoff? To arbitrarily say that the insurance coverage cutoff is five years is not correct, because obviously there have been other firefighters in their 20s and 30s who have been diagnosed with thyroid cancer in less than five years. It is a disservice to these men to not allow them medical coverage. I am not sure what the reasonable cutoff should be, but I think five years is too long. A year or two is more reasonable than five years in my opinion.

The number of thyroid cancer cases in firefighters in Las Vegas is very alarming. The number of new cases for thyroid cancer in the United States per 100,000 people is between 3 to 8.7 cases. So if 8 to 9 cases of thyroid cancer have been diagnosed in 1,000 firefighters, that is 100 times higher than what you would expect. I think this is alarming and should be investigated to determine the cause.

**Chairman Conklin:**

Are there any questions from the Committee? There are none.

**Rusty McAllister:**

I did some research to find out how we got five years for the time frame of insurance coverage. When the cancer bill was first presented to the Legislative Counsel Bureau in 1985 they were using a carcinogen report from 1984. There is nothing in the minutes that talks about five years of exposure time. Certainly cancer research has increased 100-fold since 1985. My suspicion is that the law at that point in time for heart and lung benefits for firefighters and police officers said that you had to be a firefighter or police officer for five years. So probably to mirror that language they put in five years, since there is nothing in the minutes that talks about why a firefighter is only covered after five years of service. I believe it is an arbitrary number that was pulled from previous legislation that was already in place. Currently there is no requirement with our physical exams for a thyroid ultrasound or PSA test. These are not required or mandated by state law for what is to be covered in our physical exams. Because firefighters are at a greater risk for cancer, we ask that these two tests be required in our physical exams.

**Chairman Conklin:**

Are there any questions?

**Assemblywoman Gansert:**

Do you document different types of exposures that you receive?

**Rusty McAllister:**

Every fire I go into is an exposure. Although I use an air pack and am not inhaling fumes, when I am sweating, the pores in my skin dilate, and the

toxic fumes are absorbed through my skin. If I go on a significant fire, there is a lot of thick, black smoke, and along with my bunker gear, I will be covered with soot from head to toe when I am done with that assignment. When I take all of the gear off, and then shower, for the next two days when I am working out at the gym and sweating, I can smell smoke.

Our local union has paid for a service through California that allows us to log on to a website to enter information about the fire we were just on. We enter the date of the fire, the incident number, what type of fire it was, and what was burning. This allows us to have historical records of the exposures we have had. Many departments have statistics about the fires but not who was there and what type of fire it was.

**Assemblywoman Gansert:**

Are there different levels of protective gear that you wear? I think that would be key to minimize your exposure.

**Rusty McAllister:**

We wear a helmet, gloves, a bunker coat, and bunker pants. Those pants are made of a thermal barrier on the outside, usually made of a fire resistant material and a vapor barrier that keeps moisture from coming in and going out. The moisture and thermal barrier is made up of batting to help protect us from the heat, but it does not stop the gases that come in around our neck. The materials are not completely resistant to the vapors. They are not barrier suits like what is worn on a hazardous material call. We do wear air packs, or a self-contained breathing apparatus that seals off our face, and breathe air from a confined bottle of clean air. If we take that off and are working around the structure in the overhaul phase, after the fire is out, everything is still off-gassing. We require our firefighters to wear their air packs during that phase also, since it is one of the most dangerous stages of the fire. So, we do not just breathe toxins; we also absorb them through our skin.

**Assemblyman Ocegueda:**

A lot of departments wash the person down after they come out of the fire and then put the turnout gear in a bag and have it professionally cleaned, which is costly. We use our second set of gear until the other set comes back from the cleaners to minimize the exposure. It is a dangerous job. When Mr. McAllister and I first started fighting fires, it was very different. We did not wear hoods and were exposed to much more. We now do everything possible to have the least amount of exposure possible, but unfortunately there is still exposure no matter what we do.

**Rusty McAllister:**

Our department now has a policy that you are not allowed to have your rubber boots and your bunker pants near our living quarters at the fire station. We have found that once those items have been exposed to all the chemicals there is an off-gassing. If you are sleeping next to those items it increases your exposure. Therefore, years ago we changed the policy so that these items are not allowed in the building.

**Assemblyman Settlemeyer:**

I agree with the whole bill. Can you think of any other time period that would be more appropriate? If someone has been employed for three days, gets a test done, and is diagnosed with cancer, it is clearly not from the job. If a person has a large tumor, that did not start in three days.

**Rusty McAllister:**

Dr. Schwartz suggested one to two years. That is better than five years. From the time a firefighter starts rookie school he is starting to work in live drill burns. Most of those drill burns are wood and furniture with certain fabrics that give off gases. A scenario that was brought to my attention prior to this hearing was about a probationary firefighter who gets out of rookie school and does not make probation. What happens when he is gone and then later is diagnosed with cancer? The law already provides that you only have coverage for three months for every year of service after you leave the job up to a maximum of sixty months. The maximum you can be covered is five years, and that is if you have been a firefighter for 20 years. A new hire would not be able to make a claim for minimal exposure. If there is room to work down from that five-year time frame, I would be more than happy to entertain anything. As I mentioned before, five years seems to be an arbitrary number that was picked because of previous legislation.

**Assemblyman Ocegueda:**

We have a diesel exhaust system that hooks up to the fire truck as you pull in and as you pull out, because the diesel smoke was going into our living area. Obviously we have seen a correlation between cancer and the diesel exhaust. We have tried to develop and implement the preventative measures for that issue.

**Assemblywoman McClain:**

I am less concerned about the insurance claim time limit than I am about getting the cancer diagnosed early with an annual exam. When a rookie starts, does he go through any kind of screening to set a baseline for any cancer?

**Rusty McAllister:**

Before every firefighter comes on a job they have an extensive physical examination. My understanding is that in the past other departments did not perform a thyroid ultrasound or a PSA test as part of the physical, since it is not required. Our department makes these tests a part of the annual exam. We typically hire the person who is healthier than the norm. If you do not meet certain physical standards you are not hired.

**Assemblywoman McClain:**

I would think there would be certain screenings that make sense for somebody who wants to be a firefighter so you have a beginning baseline to determine if something comes up later. If he did not have cancer when he was hired, has been in several fires, and now has cancer, you have a record of evidence.

**Rusty McAllister:**

I agree.

**Assemblywoman McClain:**

How do we fix that? Is cost the problem?

**Rusty McAllister:**

I am sure the people who are going to testify after I conclude my testimony are going to talk about cost. The firefighters who they currently do not have to provide coverage for up to five years are going to be an expense. As an example, of the 501 suppression personnel in my department, in the last five years 3 people have died from brain cancer and 2 are currently being treated for brain cancer. One of the firefighters being treated for brain cancer had his claim denied because he was employed less than five years, and the other firefighter has been denied coverage because they said it metastasized from bone cancer which is not covered. There have been nine thyroid cancer cases. One employee was diagnosed with breast cancer and one person was diagnosed with colon cancer. We have won the appeals for three years, and it is now going to the Nevada Supreme Court.

Regarding the diesel exhaust systems that Assemblyman Ocegueda mentioned earlier, in our department all of our stations have the recovery systems. Out of the 20 stations in the largest fire department in the State of Nevada, only 3 have it. It costs an average of \$10,000 to \$15,000 per station to put the recovery systems in.



**Assemblywoman McClain:**

I would think the cost of prescreening and the cost of annual physicals would save more money in the long run. I think it is shortsighted to wait until someone is dying from cancer and then fight it.

**Rusty McAllister:**

I agree 100 percent.

**Chairman Conklin:**

Are there any additional questions from the Committee? There are none.

**Danny L. Thompson, representing Nevada State AFL-CIO, Henderson, Nevada:**

I think that Mr. McAllister did a wonderful job. We are 100 percent in support of this bill.

**Chairman Conklin:**

Are there any questions from the Committee? There are none. Is there anyone wishing to get on record in support of A.B. 521? Is there anyone in opposition?

**Robert Ostrovsky, representing the City of Las Vegas, Nevada:**

I want to make sure you received a letter ([Exhibit D](#)) from Victoria Robinson, the Manager of Insurance Services for the City of Las Vegas, who I believe will be testifying from Las Vegas.

**Randall Waterman, representing the Public Agency Compensation Trust, Carson City, Nevada:**

The Public Agency Compensation Trust (PACT) sees A.B. 521 as being potentially expensive and certainly expands the current law. One of the concerns we have, which has already been discussed, is the from-day-one coverage, but it sounds like the Committee will be reviewing this. I would like to clarify that even though there may be a denial under workers' compensation, they are not sent on their way with no coverage. When I was the Risk and Benefits Manager for the City of Sparks for nine years, we had some of these cases. None of those people went wanting for lack of medical care.

**Assemblyman Ocegueda:**

Mr. Waterman, would you be in support of baseline testing so we would have an idea of where we are starting from?

**Randall Waterman:**

I think that baseline testing for whatever you are intending to cover is a great idea. Cost is always a factor.

**Chairman Conklin:**

Are there any additional questions for Mr. Waterman from the Committee?  
There are none.

**Renny Ashleman, Las Vegas, Nevada, representing the City of Henderson, Nevada:**

We had some concern about the elimination of the five-year time frame. I would have discussed it with Mr. McAllister, but I did not have a good alternative for a set of years to offer. A one to two year alternative sounds perfectly reasonable in our viewpoint. Just for your information, physical examinations would cost the City of Henderson approximately \$35,000. We are not saying that is a reason not to pass the bill, but I am informing you of the cost.

**Chairman Conklin:**

Are there any questions from the Committee for Mr. Ashleman?

**Assemblywoman McClain:**

Is that the total cost to the City of Henderson?

**Renny Ashleman:**

That is an additional cost for this bill.

**Assemblywoman Gansert:**

Does it matter whether the claim is filed under workers' compensation or group insurance? Does that affect disability insurance moving forward?

**Chairman Conklin:**

Normal workers' compensation covers everything: medical, disability, et cetera. Private medical insurance would, of course, cover your medical expenses. Usually a private disability insurance policy has time limits. Maybe Research can tell us if there is a standard time limit for workers' compensation claims.

**Assemblywoman Gansert:**

If you file for workers' compensation, does it automatically put you on a disability track if you are unable to work for a certain period of time?

**Chairman Conklin:**

Correct.

**Renny Ashleman:**

In a prior life I actually represented the firefighters for many years and worked on these types of bills. Typically in public employment you would not have a

private disability policy. In most cases it would be more advantageous to be covered under workers' compensation.

**Chairman Conklin:**

Is there anyone else in Carson City in opposition? Is there anyone in Las Vegas who is in opposition?

**Victoria J. Robinson, Manager, Insurance Services, City of Las Vegas, Nevada:**

[Spoke from written testimony ([Exhibit D](#)).]

**Chairman Conklin:**

Is your only opposition to this bill the five-year time frame?

**Victoria J. Robinson:**

Yes, we already provide the cancer testing that is indicated in the bill.

**Chairman Conklin:**

So you approve of the cancers listed in the bill, just not the five-year portion. Are there any questions from the Committee? There are none.

**Ed Finger, Comptroller and Director of Risk Management, Clark County, Nevada:**

Clark County has three concerns in opposition to this bill. The first was already addressed very well by Vicky Robinson, which is the five-year time line. The county would be more amenable to a possible three-year time frame. I will acknowledge that the issue before you is challenging.

Two of the four specific cancers mentioned are cancers known to be prevalent in those people who live normal lives. According to the National Cancer Institute if you live a normal life you are more likely than not to develop skin cancer. As a male, if you live a normal life span you are more likely than not to develop prostate cancer. It is very challenging as an employer to create this attachment to an industrial occurrence. Thyroid cancer, as Mr. McAllister acknowledged in his testimony, is challenged as it relates to demonstrating—scientifically, medically, or otherwise—a relationship to firefighting. Certainly with great concern for the persons he works with whom he mentioned, that information is anecdotal and perhaps less than evidentiary to support lawmaking.

Clark County, being a very large employer of firefighters, estimates the cost of the annual thyroid scan for firefighters to be in the range of \$500,000 per year.

[Written comments from Wayne Carlson, who did not testify ([Exhibit E](#)).]

**Chairman Conklin:**

Are there any questions from the Committee? There are none. Is there anyone in Las Vegas wanting to get on record in opposition? Is there anyone in the neutral position? We close the hearing on A.B. 521. We will open the hearing on Assembly Bill 355.

**Assembly Bill 355:** Revises provisions related to certain public utilities that furnish water or sewage disposal. (BDR 58-693)

**Assemblyman Ed A. Goedhart, Assembly District No. 36:**

This bill is going to make it easier for certain small utility companies that provide water and sewer services to adjust to market conditions for a rate request.

**Gregory T. Hafen, Sr., Co-owner, Pahrump Utility Company, Inc., Pahrump, Nevada:**

We currently have 450 sewer hookups and 620 water hookups. Because we are a small utility company we have the benefit of filing a rate case under *Nevada Revised Statutes* (NRS) 704.095, which mandates a simplified procedure for small utility companies. In 2007, like many of the developers and contractors in Nevada, we were surprised by the depth of the economic downturn. We realized immediately that in 2008 we needed to adjust our rates to cover operating losses that were going to be significant. We filed under the simplified procedure and found it was anything but simple or easy.

The cost of our rate case was over \$200,000 which was 42 percent of our gross revenue of \$475,000. This process resulted in over 400 formal and informal data requests from the Public Utilities Commission of Nevada (PUCN) staff and the Nevada Bureau of Consumer Protection (BCP). This was nothing out of the ordinary for a small utility company. The PUCN staff spent two days auditing our books onsite and had multiple conference calls with us to review financial information. This process took us six months to gather all of the required forms and exhibits to go with the application. As you can see at the testimony table, one of the binders is the application, one of the binders is the data requests and responses, and the other binders are our direct testimony that was required.

The complete process took one year. We were losing \$1,000 per day in operating losses during this overly burdensome process; we were drowning in red ink for that year. The regulatory lag was a problem since once you file your application it takes 210 days before there is a hearing and a decision. Not only was the regulatory lag and time frame a problem, but in addition to the

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

**Seventy-Fifth Session  
April 8, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:49 p.m. on Wednesday, April 8, 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/](http://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](mailto: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:**

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3  
Senator David Parks, Clark County Senatorial District No. 7  
Assemblyman Jerry D. Claborn, Clark County Assembly District No. 19

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Elizabeth MacMenamin, representing the Retail Association of Nevada,  
Carson City, Nevada  
Lea Tauchen, representing the Retail Association of Nevada, Carson City,  
Nevada  
Peter Maheu, Managing Member, Global Intelligence Network, and  
representing the Nevada Society of Professional Investigators,  
Las Vegas, Nevada  
Mike Kirkman, Owner, Las Vegas Detectives, and representing the  
Nevada Society of Professional Investigators, Las Vegas, Nevada  
Bob Varallo, Vice President, Nevada Association of Manufactured Home  
Owners, Inc., Las Vegas, Nevada  
Doris Green, President, Nevada Association of Manufactured Home  
Owners, Inc., Las Vegas, Nevada  
Karl Braun, Private Citizen, Las Vegas, Nevada  
Michael Phillips, representing Manufactured Home Community Owners'  
Association, Las Vegas, Nevada  
Marolyn Mann, Executive Director, Manufactured Home Community  
Owners' Association, Las Vegas, Nevada  
Larry Schnell, Owner, Lone Mountain Mobile Home Park, Carson City,  
Nevada  
Frank Kujac, Owner, Mobilair Park, Reno, Nevada  
Jeanne Parrett, Manager, El Dorado Estates, Las Vegas, Nevada  
Scott Sabraw, representing Panther Valley RV Park, Reno, Nevada  
John E. Jeffrey, representing the International Union of Operating  
Engineers Local #12 and Local International Union of North  
America #872, Henderson, Nevada

Danny Thompson, representing the Nevada State AFL-CIO, Henderson, Nevada  
Louis Loupias, Journeyman and Apprenticeship Training Coordinator, Southern Nevada Operating Engineers, Las Vegas, Nevada  
Shawn Kinsey, Business Representative, Operating Engineers Local #12, Las Vegas, Nevada  
Gary E. Milliken, representing the Associated General Contractors, Las Vegas Chapter, Las Vegas, Nevada  
Berlyn Miller, representing the Nevada Contractors Association, Las Vegas, Nevada  
Steve Rank, representing Ironworker Management Progressive Action Cooperative Trust Insurance Carriers, Sacramento, California  
Ralph Shindler, Chief Executive Officer, Reno Iron Works, Reno, Nevada  
Daniel J. Costella, Business Agent, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO Local Union #18, Sparks, Nevada  
Mary Cameron, Carson City, Chair, Certified Court Reporters' Board of Nevada, Las Vegas, Nevada  
Mark Taylor, Assistant State Controller, Office of the State Controller  
Larry Mosley, Director, Department of Employment, Training and Rehabilitation

**Chairman Conklin:**

[Roll called and meeting started as a subcommittee.] I will open the hearing on Assembly Bill 430.

**Assembly Bill 430:** Prohibits certain activity regarding unsafe cribs and other children's products. (BDR 52-464)

**Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:**

This bill has to do with making sure our children are safe. We have toys, furniture, and everything else being imported, including from China. Some of it is wonderful and some may not be. This bill aims to help in the effort to make sure that our children are safe. This is a partnership between Senator David Parks and me.

**Senator David Parks, Clark County Senatorial District No. 7:**

Assembly Bill 430 is a bill that ended up with a fiscal note. A few years back, a retailer in southern Nevada was informed that he had car seats that were being recalled and were not repairable. They were given instructions to return the car seats to the warehouse. The seats were given to a nonprofit thrift store. This bill intends to make sure that if you are a retailer or a reseller like a thrift store, you have an obligation to verify whether there is a recall on an item.

**Assembly Bill 521:** Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

**Dave Ziegler, Committee Policy Analyst:**  
[Read from work session document ([Exhibit P](#)).]

The amendments are in the form of a mock-up and were provided to staff by the Chairman and the parties. They changed the five-year rule to two years. They make some clarifications in the area of the physical examinations, on top of page 3 of the mock-up.

**Assemblyman Ocegura:**  
I would like to make the same disclosure that I am a firefighter.

**Chairman Conklin:**  
I think the mock-up accurately reflects questions and concerns of the Committee during the hearing. It puts back in the time frame of two years which the expert witness testimony said was ample time. It puts in the baseline testing provision. Are there any questions from the Committee? [There were none.]

**Assemblywoman Gansert:**  
I think the baseline testing is extremely important, but when I look at the expansion to skin cancers and prostate cancer, I think that is pretty broad. I am also concerned about moving to two years because of the fiscal impact on local governments.

**Chairman Conklin:**  
The baseline testing is for both the time line and those other things. I am not sure that it makes a point to have one without the other.

**Assemblywoman Gansert:**  
The baseline testing is important, but when you move from five to two years that concerns me as does the addition of the skin and prostate cancer. The probability of getting prostate cancer is almost 100 percent if you live to a certain age, and skin cancer is very prevalent especially in Nevada.

**Chairman Conklin:**  
Are there any questions from the Committee? [There were none.]



**Assemblyman Settelmeyer:**

I think the baseline testing needs to go ahead, and the inclusions of skin and prostate cancers do not bother me. The change to two years does bother me because we are putting a lot on the local governments.

**Assemblywoman Buckley:**

I will never forget the testimony of that firefighter who was near death when he came here and was fighting against his workers' compensation carrier until he weighed 90 pounds. Whether a firefighter contracts the disease in year one or in year five, if it is associated with his employment, I think it needs to be covered. With regard to skin cancer, in paragraph (h) of subsection 2 of section 1 of the bill, the rest of the line is diesel exhaust, soot, and the other things that are reasonably associated with. . . . It is not for sun-exposure skin cancers, but the dangerous chemical exposures. If you have baseline testing and a person is cancer-free, and then he is exposed to hazardous materials which leads to cancer, he has no remedy because it was contracted in the course and scope of his employment. This is the only access these firefighters have. I support the amended bill. I think baseline testing is the key to ensuring that it is not being used as another form of health insurance. That protection is critical in the evaluation of it.

**Chairman Conklin:**

Are there additional questions or concerns from the Committee? [There were none.]

ASSEMBLYWOMAN MCCLAIN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 521.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

Are there any questions on the motion? Is there any discussion? [There were none.]

THE MOTION PASSED. (ASSEMBLYMEN CHRISTENSEN,  
GANSERT, GOEDHART, AND SETTELMAYER VOTED NO.)

We will take up Assembly Bill 513.

**Assembly Bill 513:** Makes various changes to provisions governing licensing of escrow agencies and mortgage brokers, agents and bankers. (BDR 54-1136)

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

**Seventy-fifth Session  
April 29, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:46 p.m. on Wednesday, April 29, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Maggie Carlton, Chair  
Senator Michael A. Schneider, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Dean A. Rhoads  
Senator Mark E. Amodei  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Assemblyman Jerry D. Claborn, Assembly District No. 19  
Assemblyman Marcus Conklin, Assembly District No. 37  
Assemblyman John Ocegura, Assembly District No. 16

**STAFF MEMBERS PRESENT:**

Kelly S. Gregory, Committee Policy Analyst  
Daniel Peinado, Committee Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Cindy Jones, Administrator, Employment Security Division, Department of  
Employment, Training and Rehabilitation  
Josh Griffin, MGM Mirage  
Pilar Weiss, Culinary Workers Union Local 226

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Dave Garbarino, International Union of Operating Engineers Local 12  
Shawn Kinsey, International Union of Operating Engineers Local 12  
Louis Loupias, Apprentice Coordinator, International Union of Operating Engineers Local 12  
Clyde Raper, Perini Building Company  
Gary E. Milliken, Associated General Contractors, Las Vegas Chapter  
Jack Jeffrey, International Union of Operating Engineers Local 12  
Dylan Shaver, Southern Nevada Building and Construction Trades Council  
Phillip Kinser, Manager, Program Development, National Commission for the Certification of Crane Operators  
Marti Reis  
Ralph Walker  
Linda Walker  
Scott Canepa, Nevada Justice Association  
Peter Krueger, Subcontractors' Legislative Coalition  
Richard Peel, Subcontractors' Legislative Coalition  
Sherry Vyvyan, Southern Nevada Air Conditioning Refrigeration Service Contractors Association  
Jeffrey L. Westover, National Electrical Contractors Association, Southern Nevada Chapter  
Dave Bold, Done Right Plumbing  
Jim Wadhams, Southern Nevada Home Builders Association  
Bruce King, Nevada Subcontractors Association  
Jay Parmer, Builders Association of Northern Nevada  
David Gould  
Jim Wright, Chief, State Fire Marshal Division, Department of Public Safety  
Rusty McAllister, Professional Firefighters of Nevada  
Rebecca Gasca, American Civil Liberties Union  
Erin McMullen, Nevada Self-Insurers Association  
David F. Kallas, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Incorporated  
Bob Ostrovsky, City of Las Vegas  
Richard Gilbert, Contracts Manager, Department of Public Safety  
Wayne Carlson, Executive Director, Public Agency Compensation Trust  
Jeff Friend, Professional Firefighters of Nevada  
Tyler Ferguson, Las Vegas Fire Department  
Dean Fletcher, Professional Firefighters of Nevada  
Steve Driscoll, CGFM, City of Sparks  
Randy Waterman, Public Agency Compensation Trust

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Liane Lee, City of Las Vegas  
Sabra Smith-Newby, Director, Department of Administrative Services,  
Clark County

CHAIR CARLTON:

I will open the hearing for Assembly Bill (A.B.) 84.

ASSEMBLY BILL 84 (1st Reprint): Revises provisions governing unemployment compensation. (BDR 53-546)

CINDY JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

This bill amends provisions of chapter 612 of the *Nevada Revised Statutes* (NRS). Assembly Bill 84 was requested by the Employment Security Division to continue unemployment insurance program improvements recommended by the Legislative Counsel Bureau and the Department of Administration's Division of Internal Audits. The bill is specifically designed to protect the financial assets of the Unemployment Insurance Trust Fund on behalf of the Nevada employers who fund the unemployment insurance benefit program.

Concurrent with reductions in federal funding in past years, there has been a national shift to provide economical service delivery using remote methods, such as the Internet and telephone, for unemployment insurance claims. This has increased the potential for fraud by individuals who are not eligible for benefits and by those who file fraudulent claims through identity theft. In 2008, the Division identified and assessed fraudulent overpayments totaling \$3,830,000. This amount was twice that detected in 2007. The Division has added resources to fraud-prevention detection over the past two years to thwart unemployment insurance fraud. However, given the state of our economy, instances of fraud have increased. From January 1 through March 31, 2009, the Division has issued over 2,000 fraud determinations totaling more than \$3.1 million. At this rate, we expect to issue fraud determinations valued at over \$12 million by the end of the year. This bill seeks to give the Division tools to stem the tide of fraud and send the clear message that unemployment insurance fraud will not be tolerated. We are hoping to improve the fiscal integrity of the Unemployment Insurance Trust Fund system with this legislation.

CHAIR CARLTON:

We have had a number of workers' compensation bills come up this Legislative Session, and the DPS has not chosen to make a statement on any of them but this one. Is this the only bill you have concerns about?

MR. GILBERT:

All I can say is that I was asked to represent the DPS on this bill. I cannot speak to those other bills.

MR. McALLISTER:

With regard to Mr. Gilbert's concern, section 1, subsection 8 of A.B. 281 states a claimant may submit a contested claim directly to an appeals officer. If the claimant wants to go through the usual hearing process, they can. This provision is permissive and allows the claimant to speed things up if they choose to do so.

WAYNE CARLSON (Executive Director, Public Agency Compensation Trust):

We are opposed to this bill. I have a written commentary on A.B. 281 describing its unfavorable impact on rural governments and on the workers' compensation process ([Exhibit M](#)). We have no objection to accelerating the process. However, we are concerned that compressing the time to 60 days may be too tight for both sides of a dispute. It can affect the ability to do complete discovery by interrogatories or depositions since there are time limits for sending out notices. In talking to our attorney, we feel those time compressions could be problematic because both sides have to agree on the dates for depositions and that sort of thing.

The other major concern is the time required for the appeals officer to consider the merits of the case. Many times, the appeals officer may choose to ask the parties to submit supplemental briefs, and 15 days may not be sufficient time for that. The bill does not allow discretion for that, but only for medical examinations. That is an issue of fairness and due process for both sides and needs to be considered.

CHAIR CARLTON:

I will close the hearing on A.B. 281 and open the hearing on A.B. 521.

**ASSEMBLY BILL 521 (1st Reprint)**: Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

MR. McALLISTER:

I have provided a packet of articles regarding the increased risk of cancer for firefighters ([Exhibit N](#), original is on file in the Research Library). Cancer protection has been provided for firefighters in Nevada for certain types of cancers since 1987 under A.B. No. 797 of the 64th Session. The statute was amended in 2003, at which time we asked for coverage of specific types of cancers and association with specific chemicals we are exposed to on a regular basis. This was granted. Cancer research is an ongoing process, and the information in [Exhibit N](#) comes from a study by Dr. Grace LeMasters from the University of Cincinnati, where she is a professor of epidemiology and biostatistics. The study was sponsored in part by the Ohio Bureau of Workers' Compensation and was published in the *Journal of Occupational and Environmental Medicine* in November 2006. This study looked at 28 cancer studies and did a meta-analysis of the data to see if firefighters are at a greater risk of cancer than the general population. They found that firefighters had an increased risk for specific cancers compared to the general population: 102 percent higher for testicular cancer, 39 percent for skin cancer and 28 percent for prostate cancer. This bill would extend coverage to include those three cancers.

I have also included in [A.B. 521](#) coverage for thyroid cancer. That did not come out in the LeMasters study; instead, it is based on experiences within my fire department. A couple of years ago, we started using the National Fire Protection Association standard 1582, which covers comprehensive occupational medical programs for fire departments, to design our annual medical examinations. One of the tests included in this standard is an ultrasound of the patient's carotid arteries, kidneys and liver. During the course of that, our physician started looking at thyroid glands. He discovered 9 confirmed cases of thyroid cancer out of 501 firefighters. That may not sound like a lot, but the national average is 4.5 to 8 cases out of 100,000 people. New York City firefighters are complaining because they have identified 8 cases of thyroid cancer out of the 11,000 firefighters who worked on the cleanup of the terrorist attacks of September 11, 2001. Oncologists I have talked to say they do not start looking for signs of prostate cancer until age 55. We are finding men with prostate cancer at age 43, which is highly unusual.

Current statute gives firefighters access to cancer coverage after they have been employed full-time as firefighters for five years. I am not sure how this length of time was arrived at, since the Committee minutes from 1987 do not

explain this. The heart and lung benefits for firefighters, which were put in place in 1965 and 1967, start after five years of service, and the cancer statute may have taken the language from there. During the hearing on A.B. 521 in the Assembly Committee on Commerce and Labor, Dr. Matthew Schwartz, our physician, stated research shows it does not take five years of exposure to generate cancer. His research showed two years was probably sufficient. We originally submitted the bill with coverage starting on day one of employment. We amended it in the Assembly to two years to match Dr. Schwartz's testimony.

Another provision of the bill requires that a thyroid ultrasound test be given annually, based on our experiences with thyroid cancer. Currently, we are the only fire department in Nevada providing that test. We also asked for an annual prostate-specific antigen (PSA) test to check for prostate cancer. Also, to provide additional protections for employers, we asked for pre-hire testing of chest X-ray, a thyroid ultrasound scan, a blood panel, a urine occult blood test, a PSA test for men and a mammogram for women. These tests would provide baseline information for the employer to determine preexisting conditions.

When A.B. 521 was heard in the Assembly, I did not realize it had been drafted to include volunteer firefighters in this annual testing and pre-hire screening. They are included in the cancer coverage, although they have to show a causal relationship between exposure and the type of cancer they have. It was not our intent to include them in the testing provision, which would put a fiscal hardship on small rural governments. Currently, volunteer firefighters are tested every three years. We would be more than willing to amend this bill to say this portion of the bill only applies to full-time salaried firefighters.

CHAIR CARLTON:

Are you suggesting we change section 1, subsection 2, paragraph (a), subparagraph (2) of A.B. 521?

MR. McALLISTER:

No. I was speaking of section 1, subsection 4, which should be changed to: "Each person employed in this State in a full-time, salaried occupation of firefighting who is to be covered for cancer ... ." That removes the provision that volunteer firefighters would have to have the annual testing described. That removes the fiscal note for Esmeralda County, Lander County and some of the small rural counties. They have no full-time salaried firefighters, only volunteers.

CHAIR CARLTON:

I notice in section 1, subsection 2 of A.B 521 that diesel exhaust is listed as associated with most of the cancers listed.

MR. McALLISTER:

One of the leading carcinogens in diesel exhaust is benzene. Benzene is one of the most virulent carcinogens out there and the root cause of many of these cancers. Most of the fire stations in Nevada do not have a diesel exhaust recovery system in place. Every time you start a fire engine within the station, which happens many times a day, you are kicking up diesel exhaust in a closed environment that is typically located next to the sleeping quarters. This means all firefighters are exposed to diesel exhaust. Our stations have diesel exhaust recovery systems, which is a hose that connects to the tailpipe and vents the exhaust out the roof. However, the engine is not connected when it pulls out of or into the station. All of the carcinogens listed are recognized by the National Toxicology Program or the International Agency for Research on Cancer.

CHAIR CARLTON:

If we know what is causing these cancers, we should also be working on decreasing exposure. I understand this bill, but usually when we protect people, it is because we do not know what is making them sick. If we can pinpoint what is making them sick, why are we letting them get sick?

MR. McALLISTER:

Firefighters do wear protective clothing, including self-contained breathing apparatuses, while we are working a fire. That provides some level of protection. However, the clothing is not enclosed; it is a coat, a pair of pants and a pair of boots. They are thick and they have vapor and thermal barriers, but they do not block out the air. The primary way firefighters are exposed during a fire is not so much breathing in fumes and smoke as it is skin contact. The protective clothing is thick and heavy, and during the course of fighting a fire, you sweat. It is like wearing a ski coat and pants when it is 110 degrees. When you sweat, your pores open, and you absorb whatever chemicals are in the air. Every time I work a heavy fire, I smell like smoke for two days, especially when I work out at the gym and sweat. I have seen research stating that some of these carcinogens stay in your body for up to 63 days after you are exposed.



The statute is worded this way because we found insurers were routinely denying claims for cancer coverage under the provision that says you had to show association with a chemical that you had been exposed to or a known carcinogen and the type of cancer you had. This was our attempt to establish that association.

There are some things A.B. 521 does not do. It was stated in the Assembly hearing that all men have a chance of getting prostate cancer if they live long enough. The protection for employers here is that there is a sunset clause on cancer protection. It is not like the heart and lung coverage that goes with you into retirement. This coverage is limited to 3 months' coverage for every year of service, up to a maximum of 60 months. If you put in 20 years of service, you have a maximum of 5 years' coverage after you leave the job. If you develop cancer at 65 months, you are not covered. The question was also raised about someone who works for a year and leaves, and then gets cancer ten years later. That person is not covered, since coverage does not begin until after 2 years of service and stops 5 years maximum after service.

Finally, this is a rebuttable presumption. We have had heart and lung cases that went to the Nevada State Supreme Court in which a firefighter smoked, was told to stop and did not, and his claim was denied. We lost those cases because of failure to correct a preexisting condition. This bill does not take away the sunset provision, and it does not take away the rebuttable-presumption clause.

Since A.B. 521 was heard in the Assembly, a report has come out regarding a study that was paid for by the National League of Cities. They hired a company out of Maryland to look at whether firefighters were at greater risk for cancer than the general population. They looked at 17 firefighter-cancer studies and said they could not find any conclusive presumption that firefighters were at greater risk. In the executive summary, it states that researchers concluded there is a lack of substantive specific evidence to confirm or deny any association. It continues:

Although several studies found supporting associations between firefighting and bladder, brain, colon, Hodgkin's lymphoma, kidney, malignant melanoma, multiple myeloma, non-Hodgkin's lymphoma, prostate, testicular, thyroid, and ureter cancers, the researchers found that considerable research needs to be undertaken before definitive linkages can be supported or refuted.

This is the same argument we heard from the tobacco industry 30 and 40 years ago. They say we need to do more long-term longitudinal studies. That means you bring in a class of firefighters and track them throughout their careers, then see who has cancer after 25 years. This is a delay. This is a stalling tactic. I have included in [Exhibit N](#) 10 pages of resources used by the International Association of Firefighters listing over 200 relevant cancer studies and research papers.

I have been a firefighter with the City of Las Vegas for 25 years. In the last five years, three of our guys have died of brain cancer. I have two guys right now with brain cancer. One is 38 years old and has 4 1/2 years of service. His claim has been denied because he does not have five years of service. The other is 32 years old and has 14 years of service. His claim has been denied because they say his brain cancer metastasized from bone cancer, and bone cancer is not covered.

JEFF FRIEND (Professional Firefighters of Nevada):

I work for the City of Las Vegas as a firefighter and have been there six years now. In April 2008, I underwent a thyroidectomy to treat thyroid cancer. I work at a station where my captain had thyroid cancer and a coworker has brain cancer. My claim has been denied by the city, and we are not exactly sure why. My cancer was diagnosed five years after my employment. We are in the appeal process. The part that really gets me is that they are spending untold amounts of money on a lawyer who is not a city lawyer, so they are contracting with an outside agency to fight my case, and they have not spent a dime on trying to figure out what caused the cancer.

On behalf of the people who will come after me, I want to make this right.

TYLER FERGUSON (Las Vegas Fire Department):

Like Jeff, I work at the City of Las Vegas Fire Department and have been there six years. He and I were in the same class. In 2007, we had our annual physical and I had an ultrasound on my thyroid. It was noted as unremarkable. In 2008, a nodule was noted on my thyroid by the same doctor doing the same test. A few months later, in April 2008, I was diagnosed with metastatic thyroid cancer. It ended up being highly metastatic, and I spent most of last year in Houston at the University of Texas M.D. Anderson Cancer Center. My doctors there told me I should be thanking my employer for the annual physical that included an ultrasound on my thyroid because I had no other symptoms, no

family history and nothing that would indicate I was a candidate for thyroid cancer. Since I was 30 years old at the time, it was not something they would normally look for. I have had two surgeries, one in April 2008 and one in September 2008. In the second surgery, they removed all the lymph nodes in my neck, my thyroid gland and a small tumor on my carotid artery. They told me that if I had not been prompt in seeking treatment, I probably would be looking at a more serious cancer, such as lung cancer or liver cancer, and it would not be curable.

The city denied my initial claim on the grounds that they thought the evidence would show the cancer was diagnosed prior to my fifth year of employment. The test that found the nodule on my thyroid was done approximately 3 months prior to my 5-year anniversary. That has been an ongoing battle. I have had two hearings on this case in the last year, and I am still waiting on the results. They have to this point not covered anything to do with the case and are still denying the claim. Luckily, my insurance has covered the claim so far and enabled me to get treatment, without which I would probably not be able to sit here and testify today.

CHAIR CARLTON:

So your firefighter insurance has basically covered you so far, and once the case is resolved, they will hash out who will pay for what. Is that right?

MR. FERGUSON:

Yes, that is correct. Under our insurance, the way things work with the city is it would be covered under on-the-job injuries. I have had to take a lot of time off over the last year to go through this surgery and physical therapy. If it were not for our department that donated sick time, I could not have done it. I was out for more than 9 months, and I had only accrued about 600 hours of sick time, so it would not have come close to covering it.

CHAIR CARLTON:

It is ironic that we want to do tests to make sure everyone is healthy, but they used the test to deny you your benefits.

DEAN FLETCHER (Professional Firefighters of Nevada):

I am a Las Vegas firefighter and the president of the union. I have worked with both of these gentlemen, and I am also a survivor of thyroid cancer, one of the first diagnosed. We have a progressive department with turnout cleaning and

diesel exhaust. The problem is we have done everything we can. Right now, our legal fees are \$20,000 a month to fight for coverage for Mr. Friend and Mr. Ferguson. Other firefighters throughout the State do not get the screening test that caught their thyroid cancer at such an early stage, and we are fortunate that we do. It saves our fire department money to have our own physician and do the physicals the way we have. We have had to fight for that, but we have it as a tentative agreement in our new contract.

CHAIR CARLTON:

Mr. Friend mentioned that the city had contracted out for an attorney rather than pursuing this case with their own in-house legal staff. Is that correct?

MR. FLETCHER:

Yes. Every workers' compensation claim hearing or appeals hearing is handled by an outside attorney. We have spent \$80,000 fighting a denial on a breast-cancer claim for one of our retired female firefighters. It has been going on for three years now and has just gotten out of their final attempt in district court. The only avenue left for them to overturn that decision in her favor is to go to the Nevada State Supreme Court.

STEVE DRISCOLL, CGFA (City of Sparks):

We are opposed to this bill. I have written testimony explaining our concerns about the language and amendments in A.B. 521 ([Exhibit O](#)). You have seen the study published by the National League of Cities, and I have a handout comprised of the table of contents and executive summary of that study ([Exhibit P](#)).

CHAIR CARLTON:

As has been said, this is still a rebuttable presumption. Regarding your statements in [Exhibit O](#) about bad behavior and bad choices in lifestyle causing cancer, the rebuttable-presumption provision addresses that.

MR. DRISCOLL:

My understanding is that the presumption is rebuttable only as long as the person is employed. Once they retire, there are no annual physicals or doctors monitoring their behavior. There is no rebuttable process once they retire.

CHAIR CARLTON:

[Exhibit O](#) includes mention of a million-dollar case. Does that amount include the money you spend on attorneys to fight the case, or are those fees added to the cost?

MR. DRISCOLL:

That \$1 million is the actuarial estimate of the medical costs involved with the case. The City of Sparks has not had some of the experiences that were brought to you by previous testimony. We deal with the situation differently.

CHAIR CARLTON:

[Exhibit O](#) refers to the list of carcinogens in the bill and uses the term "unreasonable" to link them solely to the job of firefighter, that people could have been exposed to these substances outside the workplace. Not too many people I know of have huge diesel trucks in their garage and have to start them repeatedly each day.

MR. DRISCOLL:

I have a diesel.

CHAIR CARLTON:

I do not think it puts out the amount of exhaust a fire engine does.

MR. DRISCOLL:

But I am around it, and it is an exposure. I recognize what was in the previous testimony. Our fire stations have exhaust recovery systems, and when the engine comes back into the station they get the system on as quickly as possible. It is certainly not a perfect system.

RANDY WATERMAN (Public Agency Compensation Trust):

We are opposed to A.B. 521. This bill has a potentially significant fiscal impact on our 130 public-entity employers. Expanding the list of cancers that are presumptively covered and reducing the eligibility period from 5 years to 2 years could result in covering cancers that did not arise out of the work and materially increasing the cost of workers' compensation. We oppose this bill as an expensive and overly expansive extension of the presumptive benefits. Reducing the time frame for eligibility has the effect of shifting these cancers from a legal liability system to a health-benefit delivery system.

Regarding the dueling studies discussed earlier, I am not sure it is clear that firefighter cancer rates are any higher than the general population, or at least not for all the cancers addressed in A.B. 521. Clear scientific support should be a key consideration for adding presumptive benefits such as those in this bill. Not to delay, but the jury is still out, and it may be worth your while to review in detail before taking such a big step and expanding these very costly presumptive benefits.

MR. CARLSON:

I have a statement detailing the Public Agency Compensation Trust's concerns about this bill ([Exhibit Q](#)). We are a self-insured association for public entities, and we have to build in costs for expanded benefits into our program. Our renewal begins July 1, and this bill is effective on July 1, 2009. We have already submitted our rate filings to the Division of Insurance for regulation. That creates for us an exposure for which we cannot collect charges. Also, the additional testing is an additional expense for our local government members, and they already struggling with the expense of testing.

Mr. McAllister talked about preexisting conditions and the reason for the baseline study. Unfortunately, the Americans with Disabilities Act of 1990 (ADA) limits some of that testing. In addition, depending on the test, there may be problems that do not show up on the baseline but develop two years later. There could be some things we could not screen out with pre-employment testing, and we may have to deal with those as covered claims.

Mr. McAllister also mentioned a willingness to carve out the volunteer firefighters. We have both paid and volunteer firefighters, so we still have a fiscal impact. I am not sure, but there may be a conflict between A.B. 521 and Senate Bill (S.B.) 6, which affects testing for volunteer firefighters.

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

MR. CARLSON:

When we are talking about the expansion of benefits, it seems to me these are the kinds of things that should lend themselves to interim studies where you are looking at that evidence in an environment where you can study the data. The study from the National League of Cities just came out. You need to analyze all of these studies, and we are in a compressed time frame in the Legislative

Session. When you are expanding something that is this expensive, it is important to know exactly what you are doing.

The gentlemen who spoke earlier had good health insurance coverage, and not everyone has that. It may be that we are pushing issues from the health system into the workers' compensation systems to cover something that ought to be in the health system. These two silos have always created problems. The City of Las Vegas is self-insured in both health insurance and workers' compensation, but it is still the city's pocket. We are not in the same boat. Our employer members may have commercial insurance or they may be self-insured. With us, any claim that is shifted here becomes a cost to us that we have to bear and then build into the rates going forward.

LIANE LEE (City of Las Vegas):

We are opposed to A.B. 521. Our risk manager, Vickie Robinson, asked me to mention that the two cases of brain cancer that were referred to earlier are being treated for their illness, and treatment was not delayed. In addition, we have paid the claims of those cases of thyroid cancer that met the requirements of statute. I am not an expert in this issue, but I would like to bring your attention to the letter from Ms. Robinson detailing our serious concerns with this bill ([Exhibit R](#)). I would also refer you to the National League of Cities study, which states there is a lack of scientific evidence to confirm or deny linkages between firefighting and the elevated incidence of cancer.

CHAIR CARLTON:

Have you always used outside counsel for these cases, or did the city change their policy recently?

MS. LEE:

I do not know. I can find out for you.

CHAIR CARLTON:

I would also like to know the fiscal impact that hiring outside counsel has had on the city's budget.

Senate Committee on Commerce and Labor  
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SABRA SMITH-NEWBY (Director, Department of Administrative Services,  
Clark County):

We are opposed to A.B. 521. I have a letter from Ed Finger, our risk manager, detailing our concerns about the bill ([Exhibit S](#)). I believe my colleagues who testified previously have covered most of the points, and I echo them.

CHAIR CARLTON:

Does Clark County also hire outside counsel to deal with these issues?

MS. SMITH-NEWBY:

I am not aware that we use outside counsel. I will find out and get back to you.

CHAIR CARLTON:

I would also like to know the cost of outside counsel, if you use it.

Is there any further business to come before the Committee? Hearing none, I will adjourn the meeting at 5:04 p.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

---

Senator Maggie Carlton, Chair

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

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

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

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 12:46 p.m. on Wednesday, May 13, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Maggie Carlton, Chair  
Senator Michael A. Schneider, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Dean A. Rhoads  
Senator Mark E. Amodei  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Assemblyman William C. Horne, Assembly District No. 34  
Assemblyman James Ohrenschall, Assembly District No. 12

**STAFF MEMBERS PRESENT:**

Kelly S. Gregory, Committee Policy Analyst  
Daniel Peinado, Committee Counsel  
Suzanne Efford, Committee Secretary

**OTHERS PRESENT:**

Jon Sasser, Washoe Legal Services  
Ernie Nielsen, Washoe County Senior Law Project  
Jason Firth, Nevada State Bar Intellectual Property Section  
Daniel Wulz, Legal Aid Center of Southern Nevada, Inc.  
Graham Galloway, Nevada Justice Association

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Samuel P. McMullen, Las Vegas Chamber of Commerce  
Josh Griffin, MGM Mirage  
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State  
Rusty McAllister, Professional Firefighters of Nevada  
James Jackson, Coalition of Appraisers in Nevada  
Gail J. Anderson, Manufactured Housing Division, Department of Business and Industry  
Lisa Black, Nevada Nurses Association  
Beatrice Razor, Legislative Liaison, Nevada Nurses Association  
Stacy Shaffer, Service Employees International Union Nevada  
Bobbette Bond, Health Services Coalition  
Jim Wadhams, Nevada Hospital Association  
Judy Dosse  
David Pierson, President, Sierra Mobile Park  
Michael Phillips, Manufactured Home Community Owners' Association  
Marolyn Mann, Executive Director, Manufactured Home Community Owners' Association  
Steve Marzullo  
Bob Varallo, Nevada Association of Manufactured Home Owners, Inc.

CHAIR CARLTON:  
We will open the hearing on Assembly Bill (A.B.) 22.

[ASSEMBLY BILL 22 \(1st Reprint\)](#): Revises provisions relating to certain trade practices. (BDR 52-428)

JON SASSER (Washoe Legal Services):

This bill was requested by Washoe Legal Services, the Washoe County Senior Law Project and the Legal Aid Center of Southern Nevada. Assembly Bill 22 is a consumer-protection measure that does basically three things. It provides two additional tools to consumers who have been victims of deceptive trade practices. It allows them to sue for statutory damages and to seek equitable relief. It also creates a new deceptive trade practice, primarily affecting seniors, which was requested by the Washoe County Senior Law Project.

Deceptive trade practices are defined in chapter 598 of the *Nevada Revised Statutes* (NRS). It includes 50 specific acts aimed at deceiving and taking unfair advantage of consumers. Included are practices such as, telephone solicitations

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CHAIR CARLTON:

Is staff comfortable and have enough information from us? We can get more information from Ms. Anderson on exact language

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR CARLTON:

We will go to A.B. 521. There are no proposed amendments.

ASSEMBLY BILL 521 (1st Reprint): Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

SENATOR AMODEI MOVED TO DO PASS A.B. 521.

SENATOR COPENING SECONDED THE MOTION.

SENATOR HARDY:

It is always hard to vote against our firefighters, but I do not see enough of a nexus between the cancer and the carcinogen directly related to the occupational hazards. Therefore, I am going to have to vote no.

THE MOTION CARRIED. (SENATOR HARDY VOTED NO.)

\* \* \* \* \*

CHAIR CARLTON:

We will go back to A.B. 281. Vice Chair Schneider has requested this bill be moved to Friday to work on a couple of issues. We will reschedule this bill for Friday.

The work session is complete. We will go into hearing A.B. 10.

ASSEMBLY BILL 10 (2nd Reprint): Makes various changes concerning certain health care professionals who report certain information to licensing boards or other governmental entities or who cooperate in investigations of certain health care professionals. (BDR 40-219)

LISA BLACK (Nevada Nurses Association):

This bill was heard in the joint meeting of the Senate Committee on Health and Education and the Assembly Committee on Health and Human Services. More extensive testimony was presented at that time. I have submitted more extensive testimony in writing for the Committee ([Exhibit J](#)). I have also presented copies of a study that was conducted by the Nevada Nurses Association (NNA) in 2008 that queried experiences of Nevada nurses in advocating for patients in health-care situations that exposed patients to real or potential harm ([Exhibit K](#), original is on file in the Research Library). There are a couple of the findings of the study that I want to specifically address. You have the report in front of you.

Assembly Bill 10 was introduced as part of the response to the tragic outbreak of hepatitis C as a result of unsafe injection practices in endoscopy centers in southern Nevada. What came out of that, in part, was a culture of nurses and others employed in those facilities who were told to engage in practices that were unsafe or they would lose their jobs.

Of concern in this study was more than one-third of the registered nurses who responded indicated they were aware of patient safety concerns which were not reported. It is important that health-care leaders who respond to this in the spirit of the 1999 Institute of Medicine reports are able to take steps to encourage nurses in those situations, to report rather than bury the situations that can cause harm to patients.

Assembly Bill 10 helps to bridge the gaps in the existing statutory language that was codified in NRS 449.205. It does provide some level of legislative protection for nurses who are engaged in a wider variety of essential reporting situations. Specifically, A.B. 10 provides workplace protections for nurses who report conditions about patients being exposed to substantial risk of harm or who are requested to engage in conduct that would violate the nurse's duty to protect patients from actual or potential harm. It provides protection to nurses who refuse to engage in conduct that would violate chapter 632 of NRS and chapter 632 of the *Nevada Administrative Code* (NAC), which is the nurse practice act, or that would make the nurse reportable to the State Board of Nursing. It would protect a nurse who reports the actions of another nurse or nursing supervisor who engages in conduct subject to mandatory reporting to the State Board of Nursing. It would also enable nurses to report staffing concerns or situations that reasonably could contribute to patient harm.

During the Assembly deliberations on this bill, two substantive amendments were made to the bill language. First, the language was amended to state that reportable conduct must be willful on the part of the person being reported. The second change was to state that any report must be made in good faith. Good faith was defined as honesty in fact and reporting the information.

The definition of good faith reflects a compromise in language between the bill's sponsor, Assemblywoman Leslie, the NNA, other stakeholder associations and the Legislator who proposed the amendment. The NNA accepts both of these amendments and is comfortable with that language. The bill itself is supported by a number of key stakeholder organizations.

The Committee has copies of more extensive written testimony, and we urge your support of this important patient-safety legislation.

SENATOR COPENING:

On page 5, line 24, where the time limit of 60 days is mentioned, what if the action is discovered later? For example, someone discovers something that is not right. They report it, but the person being reported does not discover that it was a bad report until a year later. Does this cover that person, even though it is more than 60 days past the date of the report?

MS. BLACK:

The intent of the bill language is that the time window would exist and commence as of the time the report was made, moving forward from that point.

The point you are making is a good one. The situation that needed to be reported may, in fact, happen a substantial amount of time after the situation took place. The intended language of the bill is to move forward as of the time of the report.

CHAIR CARLTON:

Being involved with the hepatitis C crisis through a number of legislative hearings and then working with some of the victims to help them get the health care they needed afterwards, my concern is this. I find it very hard to believe that the nurses did not understand the "one, one, one" rule. I am not even in health care and I understand the "one, one, one" rule: one vial, one needle, one patient. I think that is very explicit. They violated that rule. That

they did it would not have been willful. Under this bill would those nurses have been protected?

A nurse's job is not more valuable than a person's health. If it means they lose their job because they reported something that was wrong, with the nursing shortage that we have, it would not be too difficult for a nurse to find another job. I am very disappointed it got to the level it did before any of the nurses came forward. But I will give them credit for actually stepping up and handing over their licenses even though a number of the doctors who were involved in that crisis still have their licenses to practice, but they are not practicing. Would this legislation actually have protected those nurses in that situation?

MS. BLACK:

I would agree with you. The question was asked, during the interim as the hearings were beginning, if additional education needed to take place for nurses in terms of education for exposure prevention and exposure control. I would agree with you wholeheartedly in this.

This is a difficult situation because we are an organization that represents nurses. I agree with you that nurses are professionals who are educated in infection control. Nurses are educated to understand completely the "one, one, one" rule in a lot of detail.

Legislation moved forward in 2005 that allowed nurses to be able to say no without losing their job. It moved forward without a lot of recourse other than in a court of competent jurisdiction.

Do nurses know that "one, one, one" rule? I absolutely believe they do, or a reasonable and prudent nurse should. That is the standard nurses are held to. We then run into the issue that nurses and nurse anesthetists know the rule and are then in a catch-22 situation. Do they engage in something they are told to do which may result in harm, or do they move forward knowing something they report will cause them to lose their job? In fact, this legislation would address that situation. They would be able to report that situation without being presented with that risk.

SENATOR CARLTON:

Unfortunately, the fact is the nurse is the last line of defense. The doctor is in and out of the room. The laboratory technician is doing their job. The front desk

is doing their job. The person who really makes sure the patient is taken care of is the nurse. That we have to give them legislation to protect their jobs so they protect the patients, gives me pause. I am disappointed in that but I understand why we are doing this. I do not want to have to put someone in a position of having to choose. I got a little disillusioned when I realized that people's health was truly put at risk and was balanced with the nurses' position in their employment.

Those are my concerns. I understand what we are trying to do here. I had to put that on the record because it is a frustration that I have had ever since I sat through all those hepatitis C hearings.

MS. BLACK:

I agree wholeheartedly. The nurse is the person at the bedside who is the final advocate. We ended up with about 500 responses from the study we conducted, which was a substantial response. We had mailed about 1,700 surveys, which was a 10-percent sampling of registered nurses in Nevada. About one-third of those nurses responded that there was a substantial concern about retaliatory activity in their workplace. They did not feel comfortable reporting those sorts of situations.

That is something we hate to move forward with the need to legislatively address. It appears there is that need to move forward and legislatively address that so nurses, who are the last line of defense for the patient, are able to do that.

CHAIR CARLTON:

Is there nothing else in State law that protects them? Could they have made a phone call to the Board of Medical Examiners and filed a complaint? Is there nothing else out there that would have protected them since they valued their job more than they did that patient in front of them.

MS. BLACK:

There is limited language that is currently codified in chapter 449 of NRS that provides some limited protection for reports to medical boards and other licensing agencies. It is very limited in scope. It limits recourse to a court of competent jurisdiction. It does not address most situations in which a nurse would need to report unsafe activity. It does not address the reporting of other nurses as in the hepatitis C situation in the endoscopy centers.

The physicians were directing nurse anesthetists who were working with registered nurses. At any point the nurses who were working with those nurse anesthetists could have made a report. There is no reporting protection for that. That report would have been made to State Board of Nursing.

CHAIR CARLTON:

I am not opposed to the bill. I understand what you are trying to accomplish. I have been an employee advocate for a very long time. I know you understand my frustration because I am sure the disillusionment with the whole situation was felt by many people.

MS. BLACK:

We felt it as well.

SENATOR HARDY:

I understand the intent of this and I really have no difficulty in going as far as we possibly can in protecting people from being retaliated against for reporting something. I am troubled by the language in section 1, subsection 1, lines 39 and 40: "Refuses to engage in the conduct that would violate the duty of the registered nurse ... ."

Presumably, the conduct would be requested by a doctor or a nurse who is a superior. My concern is that we may be getting into an area where a nurse could refuse the direct orders of a doctor because they disagree with the doctor's analysis on something. Does this deal with care? That is what I am concerned about. What ensures that we are not getting into that area?

MS. BLACK:

That is an excellent question. A common misperception in the health-care industry is that nurses are always, without question, obligated to carry out an order given by either a medical doctor or a nursing superior. The reality of the situation is that nurses being that last line of defense between whatever entity of health care and the patient, nurses are held by chapter 632 of NRS and chapter 632 of NAC, to be that last line of defense. They also are held to their own scope of practice and are mandated to decline to carry out an order that could potentially cause harm to a patient. For example, a nurse receives an order for 100 milligrams of morphine, which will kill most people. If the nurse carries out that order, which was given by a physician, and that patient dies, it is the nurse who is legally responsible for having carried out that order.



SENATOR HARDY:

And that is a case where there is actual harm. Based on your experience, you know harm is going to result. The bill says actual or potential harm; and it does not just go to the patient, it is broader than that. Is it anywhere in State law that registered nurses can refuse to perform an activity which would subject them to disciplinary action by the State Board of Nursing?

MS. BLACK:

It is, but I do not know the exact section of chapter 632 of NRS or if it falls under NAC. Chapter 632 of NRS and chapter 632 of NAC specifically state that any nurse who is aware of the violations of another nurse is legally mandated to report the actions of that nurse to the State Board of Nursing or face licensure action on their own part.

SENATOR HARDY:

I appreciate that clarification. The issue of when and where it is appropriate for a nurse to interfere or question a doctor has been well vetted. That is not what this is about. I just want to make sure that in doing this we are not stepping into that debate. That is not the intent.

SENATOR COPENING:

Ms. Black, I had a little bit of a different take on it. I know with the endoscopy clinic we were dealing with a very extreme situation, but correct me if I am wrong. This would also apply to a situation if you were working under a physician, for example, who you suspected to be taking drugs, such as cocaine, on a daily basis. You felt morally you had a responsibility to report that. Is this also designed for those types of protections? That would be a perfect example of how retaliation could take place if that doctor finds out. Is it also designed for situations like that?

MS. BLACK:

Yes, in fact, that would be a situation addressed because that could potentially cause harm to a patient. That is a situation in which a nurse is legally obligated, through chapter 632 of NRS and chapter 632 of NAC, to report anything that could potentially or actually cause harm to a patient.

SENATOR COPENING:

If the nurses are indeed proven to be guilty in the endoscopy clinic, I have no forgiveness for that. They should receive the appropriate punishment. But along

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those lines, in a situation where you have to report the actions of a doctor, such as suspicion they are taking martini lunches or whatever, retaliation does occur. I know that for a fact from people who have been in that situation. Sometimes these nurses are in very tough situations and sometimes retaliation can be forms of harassment.

BEATRICE RAZOR (Legislative Liaison, Nevada Nurses Association):  
I have submitted written testimony in support of A.B. 10 ([Exhibit L](#)).

STACY SHAFFER (Service Employees International Union Nevada):  
The Service Employees International Union (SEIU) Nevada supports A.B. 10. In May 2008, an SEIU member testified before the interim Legislative Committee on Health Care and shared her personal experience of losing her job for speaking out against unsafe practices. Due to the lack of teeth in the current legislation, her case dragged on for more than two years before she was found to have been illegally fired.

The single largest obstacle in getting health-care professionals to report unsafe practices is the fear of retaliation. Health-care professionals must feel they will be protected if they file a report, and they must know they have a course of action if they are retaliated against by their employer. This legislation begins to provide the depth that is needed to protect health-care professionals who come forward to report unsafe practices.

CHAIR CARLTON:  
Did you hear the conversation we had earlier about the issues? Is there anything within that area that you would like to put on the record? You heard my concerns. Is there anything you would like to put on the record?

MS. SHAFFER:  
No, our perspective is a little bit different based on the experience that our registered nurses have had. We do not represent the nurses who were involved in the hepatitis crisis.

BOBBETTE BOND (Health Services Coalition):  
The Health Services Coalition was very supportive of drafting statutes that would strengthen the ability for nurses to know where to report and when to report. These were some of the issues that came out of the endoscopy crisis. While the endoscopy situation is not happening today, we went through an

analysis last summer and there were two or three things that would most help avoid situations in the future. One of the things we really wanted to explore and see happen was some better, stronger, whistle-blower protection for consumers and medical staff, which is not exactly what this is. It was considered one of the most effective ways to stop future problems like this. The added protection for nurses, the added path and primarily knowing where to go and who to contact, which did come up in testimony several times, is something we support. We are happy to see this legislation and hope it can move forward.

JIM WADHAMS (Nevada Hospital Association):

We have appeared at all the prior hearings in support of this bill. Basically, this structure has been in place for hospitals since the 18th Special Session. It was added, as to hospital-based nursing in 2002, and in the experience of hospitals and the nurses who work there has worked very well. The hospitals' nurses are the critical component of our staff, and this bill was intended to add the same kinds of protections that hospital nurses have to those working in ambulatory surgical centers and clinical practice. That is why you end up seeing three parallel sections in this bill.

I heard, with interest, the question that Senator Copening asked. I would like to draw your attention to that because there is a little subtlety that is important in that answer. I am looking at page 5, line 22, regarding the reference to the 60 days. My reading of this is a period of time in which, if the action is taken within that period of time, the person protesting the action is entitled to a rebuttable presumption that the action was done in retaliation or discrimination. If the action was taken more than 60 days later, it would not be entitled to the presumption that it was retaliation. It does not mean it would not be actionable, but it is a subtlety that maybe is more often heard in the Senate Committee on Judiciary than here, but that shifts the burden of proof. If you do not have the presumption of guilt, then you have to prove the other party intentionally did the act in retaliation. If the action occurs within 60 days, this language would create a presumption that it was done in retaliation.

That is a significant shift which did not exist in the prior law. While it is significant, we do not have a particular problem with that because of the Assembly amendments which will lead me to address the amendment that I have offered ([Exhibit M](#)). The Assembly amendments were done by other parties, but they included that the allegation must be made in good faith and provided a definition for what constitutes good faith.

Our amendment was not heard in the Assembly; it was discussed with Assemblywoman Smith. I am not suggesting that she has signed off on it, but she has been made aware of it. The amendment is in three parts, but it is the same part being repeated through the bill.

On page 5, lines 4 through 6, the current language in the bill is "If a court determines that a violation of NRS 449.205 has occurred, the court may award such damages as it determines ... " That language was in the bill prior to the addition of the good-faith requirement. To conform this to the intention of the good faith versus the retaliation, the court should have the opportunity to award the attorney's fees to the prevailing party. That is why the language in the amendment says "In an action alleging that a violation of NRS 449.205 has occurred, the court may award to the prevailing party damages including, without limitation ... ," then it lists them. The purpose of the amendment that was added in the Assembly was to conform it to the basis of the good-faith requirement on that allegation.

We are in support of the bill. This is a balancing amendment to conform to the other amendment in the Assembly, but we want the record to show that we appear in support of this bill.

CHAIR CARLTON:

Is there a basic premise in court action that allows the judge to determine who gets what at the end, depending upon who prevails? Is there something that addresses that already? In reading this language, this would make it mandatory that the prevailing party get the damages and pick up the costs and the fees.

MR. WADHAMS:

That is an excellent question. There are certain levels of civil action in our Nevada system of courts, where attorney's fees are awarded at the discretion of the court to the prevailing party. The cut-off point is in suits alleging damages of less than \$20,000. That is not the issue in this matter. Otherwise, in Nevada, the rule is what has been referred to in the Committees on Judiciary of both Houses as the American rule. Parties just absorb their own attorney's fees.

This issue is a little bit different because the rebuttable presumption creates a distinct shifting of the burden of proof. In the Assembly amendment that allegation, particularly with that burden of proof shifting, must be made in good

faith. It gives the court the clear discretion, not the duty. The wording in my amendment is, " ... the court may award to the prevailing party ... " It is not a mandatory award. It definitely identifies that the court has the discretion to make an award in an action, whether the prevailing party was the whistle-blower or whether that whistle-blower acted in bad faith and the victim now becomes the institution or physician that had to respond. It is not automatic, obligatory or mandatory. It is simply discretion.

SENATOR COPENING:

Mr. Wadhams, can you tell me the difference between "If a court determines that ... " and "In an action alleging that ... "?

MR. WADHAMS:

Section 2, subsection 2, lines 4, 5 and 6 is set up so only the attorney's fees would be available to the person making the allegation. My language is grammatically restructured to accommodate that there could be, depending on how the case goes, one of two victims. Either the whistle-blower is the victim, or if there is bad faith, it could be the physician or the institution that has been alleged to be retaliating.

The principle has changed that the attorney's fees could be awarded to either party depending on whoever is determined by the court to be the victim. Basically, the difference in the language is to accommodate the alternative that the court has the discretion to award it to the party that it determines, after an action, to have been the victim of either retaliation or a bad-faith allegation.

SENATOR COPENING:

I am still not grasping it, but that is okay. I can talk to you a little bit later. I am not confused about the part that says "to the prevailing party" if that is what you were alluding to. It is the change in the words from "If a court determines" to "In an action alleging." Now we have, instead of a court saying yes we have found a violation, there is an alleged violation, yet the court is still awarding.

MR. WADHAMS:

The language in the bill in the second reprint is based on the allegation of a violation. If a violation is found, then the court may award the damages. If you read those damages, you will see they appear to be tuned towards a displacement from work. The reason I changed that was because the bill now requires and has an obligation on the person blowing the whistle to do so in

good faith. If they do not, they would then be responsible for acting in bad faith.

We could put a couple of sentences there, one saying, "If a violation is found, then this happens," and, "If the violation is not found and it is determined that the allegation was made not in good faith, then this happens." It is really a grammatical structuring. I certainly defer to the Committee. But I hope I have the principle correct, if not the explanation of the language.

SENATOR COPENING:

You do, and I understand it now.

CHAIR CARLTON:

Mr. Wadhams, your second explanation gives me pause, because now we have another thing that a nurse is going to be taking into consideration, in the back of her mind, when she is choosing between the patient and her job. Are we making this worse? In your client's mind, you are probably making it equitable. In my mind, when I hear this, it is going to be one more thing the nurse is going to consider before she drops the dime. It seems as though you are trying to move forward, but instead going two steps forward and one step back.

MR. WADHAMS:

This is new language that will apply in all three settings: hospitals, clinics and ambulatory surgical centers. The law we have lived under for the past seven years does not have any reference, in particular, to the awarding of attorney's fees. It was strictly at the discretion of the court.

What causes this to be an issue is the amendment in the Assembly. I apologize for not having all of the previous reprints in front of me. The language on good faith was added and there is a requirement that this allegation be made in good faith which means honesty, in fact, in reporting of the information or in the cooperation of the investigation concerned.

Based upon that language, there is now an issue. The Assembly language without my amendment, indeed, raises the bar so allegations are not made casually. That is the Assembly language that appears in the second reprint.

CHAIR CARLTON:

Is that with the "willful" language in it?

MR. WADHAMS:

That is with or without my amendment. The amendment changes the dynamic because of the good-faith obligation and the particularity with which it is expressed. There is a standard set on whistle-blowing so it is not casual or frivolous.

We have not had that experience in hospitals. We have lived under an early version of this law for seven years. With this change, the tightening and strengthening of the language, we are offering this amendment to balance with the language of the good-faith requirement that becomes an obligation of the person making the allegation.

CHAIR CARLTON:

We will close the hearing on A.B. 10 and open the hearing on A.B. 454.

[ASSEMBLY BILL 454 \(1st Reprint\)](#): Revises certain provisions relating to housing. (BDR 10-839)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

I am presenting A.B. 454, which has to do with mobile home parks. I was approached to introduce this bill by Jon Sasser, Washoe Legal Services, and Ernie Nielsen, Washoe County Senior Law Project, based on needed changes in the law and on an eviction case that occurred in my district.

It is a very simple bill and is what has survived from the Assembly after a lot of compromise. Section 5 specifies that, if you are going to be evicted, it is going to be for one of grounds set in statute, and it also clarifies existing law.

Section 6 attempts to bring about a level of parity. If you are an apartment renter right now, and your landlord decides to go through a summary eviction, and you lose at justice court, the current process is that you can post a \$250 bond to appeal to district court. If you are a mobile home resident and rent a lot in a mobile home park for your mobile home, which you have tens of thousands or hundreds of thousands of dollars invested in, if you want to appeal to district court, you must post twice the amount of the judgment and the costs. You have a lot more at stake in a mobile home park. You have invested a lot more to purchase the mobile home that is in the park. That is the reason for this bill.

**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Seventy-fifth Session  
May 20, 2009**

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 8:16 a.m. on Wednesday, May 20, 2009, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Bernice Mathews, Cochair  
Senator Steven A. Horsford, Cochair  
Senator Bob Coffin  
Senator Joyce Woodhouse  
Senator William J. Raggio  
Senator Dean A. Rhoads  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Senator Dennis Nolan, Clark County Senatorial District No. 9  
Assemblywoman Barbara E. Buckley, Clark County Assembly District No. 8  
Assemblyman John Ocegüera, Clark County Assembly District No. 16  
Assemblyman Kelvin S. Atkinson, Clark County Assembly District No. 17  
Senator Maggie Carlton, Clark County Senatorial District No. 2

**STAFF MEMBERS PRESENT:**

Brian M. Burke, Principal Deputy Fiscal Analyst  
Gary L. Ghiggeri, Senate Fiscal Analyst  
Tracy Raxter, Principal Deputy Fiscal Analyst  
Barbara Richards, Committee Secretary

**OTHERS PRESENT:**

Andrew Clinger, Director, Department of Administration  
Ben Graham, Governmental Advisor, Administrative Office of the Courts  
Ron Titus, Director and State Court Administrator, Administrative Office of the Courts  
Mark E. Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety  
Dotty Merrill, Ph.D., Executive Director, Nevada Association of School Boards  
Ross Miller, Secretary of State, Office of the Secretary of State of Nevada  
Bill Uffelman, President and CEO, Nevada Bankers Association  
Carole Vilardo, Nevada Taxpayers Association  
Jim Avance, Nevada Retail Gaming Association  
Bryan Wachter, Retail Association of Nevada  
Tom Clark, Director of Government Affairs and Public Relations, Holland and Hart, LLP  
Rusty McAllister, President, Professional Fire Fighters of Nevada



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Victoria J. Robinson, MBA, Manager, Insurance Services, City of Las Vegas  
Les Lee Shell, Administrator, Departmental Administrative Services, Department  
of Finance, Clark County Nevada  
Stephen W. Driscoll, CGFM, Assistant City Manager, City of Sparks  
Randy Waterman, Public Agency Compensation Trust

COCHAIR MATHEWS:

The Senate Committee on Finance will come to order.

BRIAN M. BURKE (Principal Deputy Fiscal Analyst, Fiscal Analysis Division,  
Legislative Counsel Bureau):

I will explain the language in the Authorizations Act that is intended to provide the authority and/or direction to various agencies in implementing the recommended expenditure plan for the biennium. This language is referred to as "back language," and is contained in Bill Draft Request (BDR) S-1317.

**BILL DRAFT REQUEST S-1317**: Authorizes expenditures by agencies of State Government. (Later introduced as [Senate Bill 431](#).)

The Authorizations Act generally authorizes expenditures not funded with appropriations from the General Fund and Highway Fund. There are certain General Funds that are authorized in this Act, such as the Gaming Control Board, but for the most part, this is just the authorized revenues. This is the smaller of the two bills you will be hearing today.

Section 2 of the Authorizations Act provides for the distribution of Tobacco Settlement proceeds. This is old language. It would go to the Attorney General (AG) Administration Fund for activities of the Tobacco Enforcement Unit. This section also includes transfers from the Fund for Healthy Nevada to the Elder Protective Services and Homemaker Programs and the Home and Community-Based Programs.

Sections 3 and 4 of the Act authorize the General Fund appropriations approved by the Senate Committee on Finance and the Assembly Committee on Ways and Means for the Gaming Control Board and the Gaming Commission. This is standard language.

Section 5 of the Act mandates that State agencies must expend authorized amounts pursuant to the provisions of the State Budget Act. This is old language.

Section 6 of the Act is standard language and provides that, subject to the limitations in Section 7 of the Act, authorized amounts may be augmented.

Section 7 of the Act provides that General Funds and Highway Funds must be decreased to the extent that authorized revenues are exceeded. Such decreases must not jeopardize the receipts of money to be received from other sources. This is old language that carries over year-to-year.

Section 8 authorizes expenditures of higher-education registration and tuition fees and retains the language providing additional registration fees generated from enrollment increases may be expended for instruction without the Interim Finance Committee's (IFC) approval. It also provides that the expenditure of nonresident tuition or resident registration increases not used for

COCHAIR HORSFORD:

The intent I see behind the bill is the statewide strategy, rather than any particular region. There are funding sources that can be brought from the federal government based on implementation of a long-term statewide plan with input from the Regional Transportation Authority. That provides for that type of process in this legislation. Correct?

ASSEMBLYMAN ATKINSON:

There was discussion in the Senate Committee on Energy, Infrastructure and Transportation Committee that you may come out of this with two questions. There may be a question that is beneficial to rural communities and other communities and then there will probably be a question for southern Nevada. The advisory committee could decide that. My vision is definitely statewide and not just Clark County.

COCHAIR MATHEWS:

It has a small fiscal note. Does this study have an expectation for staff from the LCB?

ASSEMBLYMAN ATKINSON:

The expectation was that the LCB would provide the staff.

COCHAIR MATHEWS:

We will close the hearing on A.B. 503 and now hear A.B. 521.

**ASSEMBLY BILL 521 (1st Reprint):** Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

RUSTY McALLISTER (President, Professional Fire Fighters of Nevada):

Assembly Bill 521 was heard in both the Assembly and the Senate Commerce and Labor Committees. It addresses provisions within the current statute for workers' compensation protection for firefighters with certain types of cancer. The bill adds four new types of cancer covered by provisions for workers' compensation. It reduces the number of years of service required from five to two for coverage of these particular types of cancer. The bill provides for annual physical examinations for firefighters, an additional thyroid ultrasound test and a prostate-specific antigen test for men. The Las Vegas Fire Department started providing ultrasound screening a couple of years ago. Through the course of that screening, we identified 9 out of 501 of our firefighters with thyroid cancer. The national average is 4.5 to 8 victims of thyroid cancer out of 100,000. We have 9 out of 501 which is why we want that test to be provided in the annual physical examination so that we can get a better perspective statewide about whether this is a problem.

COCHAIR MATHEWS:

You want an annual examination, and evidently, your insurance providers in the State are resisting this. Is that why you are here?

MR. McALLISTER:

I looked at the fiscal notes online from the state divisions, and there are no fiscal notes listed. There are fiscal notes listed for the local governments all over the board. They range, in terms of physical examinations and those added tests, from \$85 a person for both examinations up to \$445 in Clark County, which

states they need to conduct both tests. North Las Vegas said they require \$85 per examination for both of those tests.

A recent study, bought and paid for by the League of Cities, stated that firefighters were not at a greater risk. Their research indicated that, although there is an association throughout all the studies, there is nothing definitive. We feel we should study it further.

In 2006, a study from the University of Cincinnati assessed 35 different cancer studies for firefighters. They eliminated seven of those studies because they had problems with the methodology. Out of 28 studies, they identified firefighters, compared to the general population, as having 102-percent higher risk of testicular cancer, 39-percent higher risk of skin cancer and 28-percent higher risk of prostate cancer. That is the reason I am trying to add these different types of cancer screenings into current insurance coverage. There is no doubt in my mind that the local governmental employers will oppose this.

COCHAIR MATHEWS:

THE fiscal note ([Exhibit G](#)) we just received shows the costs of the additional medical tests to the Division of Forestry (NDF) as \$170,228 over the biennium.

MR. McALLISTER:

The NDF may have submitted a fiscal note. They may list 170 firefighters, but the current law says they have to be fulltime salaried firefighters. Currently, in the NDF, there are 14 fulltime salaried firefighters. Two are on probation who will become fulltime salaried firefighters shortly. Three are at the Mt. Charleston location, and the rest are at Spring Creek which is near Elko. They are the only fulltime salaried firefighters. The others do some wildland firefighting in the summer; the rest of the time they are crew foremen; they plant trees and they perform the duties of the NDF personnel, managing the forest areas throughout the State. They are not fulltime salaried firefighters for the protection of the public as the statute currently states.

This bill left the Senate Committee on Commerce and Labor without an amendment. I had intended to amend this bill. It was passed before it was amended. The bill, as it is currently written, came out of drafting with the provision that the annual physical examination would need to be provided for volunteer firefighters. That was not our intent. We did not want to put a fiscal impact on the small, rural counties. I sent an e-mail to you, Senator Mathews, and to Senator Horsford with an amendment to remove the volunteer firefighters' annual physical-examination requirement from the bill, to remove the fiscal impact on the small, rural counties.

Prior to the vote in the Senate Committee on Commerce and Labor, I offered to amend this further to try to lessen the financial impact on the local governments. The City of Las Vegas had no desire to negotiate with me on a compromise. I also went to the League of Cities and offered that same amendment. They never responded.

SENATOR MAGGIE CARLTON (Clark County Senatorial District No. 2):

Mr. McAllister brought up the issue of exempting the volunteer firefighters. We had a number of amendments in a long work session that day. I saw him in the audience and wondered if there was something else we needed to do with this

bill. It flew right by us; so yes, that was something that we were going to address, but we did not get it accomplished.

SENATOR COFFIN:

In the Senate Committee on Commerce and Labor, did you have testimony on the occurrences of cancer in the firefighter versus nonfirefighter population and how that would influence you to make sure this was an efficacious bill, somehow indicating that firefighters have a greater incidence of these illnesses? Did you have this kind of evidence in the Committee?

SENATOR CARLTON:

The young firefighters spoke of their particular cancers. They described living in a building where big diesel trucks fire up and fumes spread throughout the building where they sleep every night. Their exposure to the carcinogens convinced me that their incidence of cancers would be higher than normal. When you look at very young people who have these diseases, you begin to wonder, and with the propensity within firefighters versus the general population, you notice the difference in the numbers.

MR. McALLISTER:

During the hearings in both the Assembly and Senate Committees, I presented information regarding the studies that have been conducted and the higher incidence of cancer that had been identified. The University of Cincinnati study used an immune analysis. They took the studies and data from several hundred thousand firefighters, not only in the United States but internationally as well. They compared the studies with the general population. My Department has 501 suppression firefighters. In the last five years, five had brain cancer, three of them have passed away, one has bladder cancer, one has breast cancer and nine have thyroid cancer for a total of 16 cases of cancer.

SENATOR COFFIN:

I have had two types of cancer, and I understand one of the objections. After five years, in a sense, you are developing a disability component to a health insurance policy.

MR. McALLISTER:

I read the minutes from the 1987 Legislative Session when this law was first put in place. Nowhere in the minutes does it discuss years of service. I wondered where the requirement of five years of service came in. One of the testifiers we had in Las Vegas was a radiation oncologist who stated that exposures to these carcinogens can lead to these cancers within two years. The heart and lung provisions that firefighters currently have also use the same five years of service for eligibility which started in 1965 and 1967 and has never been changed. There is a strong possibility that the five year number was something which was already in the statute for heart and lung provisions.

SENATOR COFFIN:

I am not sure it was that extensive until 1987. Do you keep a diary regarding exposure incidents?

MR. McALLISTER:

We do not keep a diary; a log is kept on every fire and everyone on that fire is in the record. Our Department purchases, through a company in California, a record-keeping service that can be accessed online. The member can log onto

the incident number, input what was burning and review how long he or she was exposed. Later, if the claim is denied, we have the records. Some of the local governments testified that if a firefighter works for one day, we have him or her for the rest of their life. That is not true. The statute contains a sunset provision. We are providing three months of coverage for every year of service, up to a maximum of 60 months. A firefighter has to work for 20 years to have 60 months of coverage. The coverage stops when he or she leaves the job. Some of the employers testified that every man gets prostate cancer at 70 or 75 years old and the employer will be responsible. That is not what the law states.

VICTORIA J. ROBINSON, MBA (Manager, Insurance Services, City of Las Vegas):  
I am here to express our concern over the fiscal impact if this bill is passed. Proponents of this bill would have you believe it is about medically caring for our employees who have been stricken with cancer. While it is true that claims are denied when they do not meet the legal criteria required for acceptance under workers' compensation, no employee is ever going to go without medical treatment just because their claim is denied. Our employees are provided with the best possible medical care under generous health-care plans. In addition, the City of Las Vegas, under its wellness program, provides free annual health screenings and physical examinations, including cancer screenings, for every one of its employees regardless of what health-care plan they have or what their job entails.

In a larger sense, I am actually here, today, as a three-year cancer survivor because of the early detection and extensive treatment provided by the City. Those same benefits are already available to all of our employees, including our public-safety employees. I have testified many times about the expense of presumptive benefits. In the 20 years the City has been self-insured, we have paid \$18 million in benefits for the 132 claims filed under these statutes. Based on our required future spending, we will spend another \$18 million just on those existing claims. Every additional claim resulting from changing the current statute will result in expenditures of a minimum of \$25,000 and can be as high as \$1.4 million. Due to the frequency and expense of the claims, insurance companies will no longer provide coverage for these types of claims. Therefore, the City and other municipalities and local governments are completely financially responsible for the total cost and must fund them out of current revenues which have been dramatically shrinking for over the last year. The *Las Vegas Review Journal* headlines spoke of future layoffs in the City. This is not the time to increase benefits since they may come at the expense of someone else's job.

In discussing the incidence of cancer, I understand the concern. However, I think we all should be concerned. The American Cancer Society studies show that one in every two men and one in every three women will get cancer in their lifetime. Unfortunately, that means it is likely that a City of Las Vegas employee will suffer from cancer at some point in their lifetime, regardless of their job with the City. The underlying principal for presumptive benefits is that while a firefighter may not be able to pinpoint a particular carcinogen, he or she has been exposed to many substances over the course of his or her employment. Reducing the five-year requirement would mean that workers' compensation becomes just a group-health-benefit delivery system with the added benefit to the employee of indemnity payments. That is a benefit that can be in excess of \$1 million per claim. To make the presumption that cancer arose out of

employment as a firefighter, rather than a normal consequence of life, there should be a reasonable time on the job associated with that presumption. If new cancers are to be added to the list of covered diseases, there should be scientific evidence to support the addition of that coverage. Currently, that evidence does not exist as documented by the recent National League of Cities report ([Exhibit H](#)), which has been provided to you. No employer, least of all the City of Las Vegas, wishes to see any of its employees contract cancer, and when they do, we endeavor to provide them with the best medical treatment possible and with dignity and respect. Changing the statute to increase the number and types of convincible claims when scientific evidence supports such a change would significantly increase costs to the City when we are already struggling to meet current allocations. Therefore, we respectfully suggest that the language currently found in NRS 617.453 remain unchanged.

LES LEE SHELL (Administrator, Departmental Administrative Services, Department of Finance, Clark County Nevada):

We are in opposition to A.B. 521. Ms. Robinson did a great job in going over some of our issues, so I do not want to reiterate those points. The cost of the additional testing will be approximately \$500,000 a year. We currently have about 790 fulltime firefighters on our staff. Unfortunately, we are not able to put an actual fiscal impact on the cost of the claims. You have heard testimony that those are some of the more expensive claims in the system and that they are anywhere between \$200,000 and \$1.5 million over the course of the claim. Any impact we have in those workers' compensation programs will have to come from our revenues which impacts our ability to provide additional services.

SENATOR RAGGIO:

Is the objection primarily the reduction from the five years to the two years? Or, is the objection due to the additional carcinogens on the list?

MS. SHELL:

We are actually objecting to both. We believe there is inconclusive evidence that there is a higher rate of cancer in firefighters versus the general population for those types of cancers.

STEPHEN W. DRISCOLL, CGFM (Assistant City Manager, City of Sparks):

We oppose both changes, the shortening of the time and the addition of the six cancers. The primary reason for being opposed to the six cancers is because there is no scientific evidence that shows that the general population gets cancer less often than firefighters or that firefighters get more of these specific cancers. The additional costs of caring for them as a workers' compensation claim are very large, and the medical care is long-term.

COCHAIR HORSFORD:

Can I ask all of you to indicate if you would still be opposed to the provisions if the requirement remained at five years?

MS. SHELL:

We would still be opposed because of the presumptive coverage for the additional cancer types.

MR. DRISCOLL:

We would be opposed as well. There is no scientific evidence that shows firefighters contract these six cancers at a higher rate than the general population.

RANDY WATERMAN (Public Agency Compensation Trust):

I am here in opposition to this bill as well, on both factors: changing the five years to two years and also on covering these cancers for the same reasons. The studies are inconclusive and to extend coverage is extremely expensive. The big fiscal note comes with the claims, as was testified by Ms. Robinson. The medical cost of the claims can run from \$25,000 to several hundred thousand dollars. The major part of a lot of these claims is the indemnity part, the lost time compensation. These costs can run into hundreds of thousands and even millions of dollars.

SENATOR COFFIN:

There is something odd going on. There is either a strange cluster happening in that Department, or there is something else of significance. Chemicals are evolving. Maybe these studies have not gone back far enough. Home furnishings are different. Commercial construction is different. Insulation is different. If you review long-term studies, you may not decide what, in fact, is causing cancers. I have an open mind on this bill. I have not seen evidence to the contrary. I asked the firefighter representative if he had evidence to show that the firefighter incidence was greater than the national population. He could not show that, but I have not received any data that show it is not.

MR. WATERMAN:

Evidence out there is fairly inconclusive. As a result, going forward with inconclusive or questionable data would be very costly. I am not convinced that this is an area where we should go. Ms. Robinson stated that it is not that firefighters are going without treatment, they are being treated for their disease through their group-health plans. What they are not seeing is the indemnity payments.

MR. MCALLISTER:

I find it ironic that they would mention some of the things from their study because they are selectively picking parts of their study with the data they paid to have done. They looked at a limited number of studies that have been conducted. The International Association of Firefighters sends out a list of what they use for their cancer research. There are ten pages; over 500 cancer studies, not just specifically on firefighters but on carcinogens in general. They failed to mention that several studies found supporting associations between firefighting and bladder, brain, colon, Hodgkins lymphoma, kidney, malignant melanoma, multiple myeloma, nonHodgkins lymphoma, prostate, testicular and thyroid cancers. That is from their study and their information. They just failed to mention that part to you. They just said associations are not conclusive so they do not want to cover it at this point in time. They even identify, in their information, that the studies and research they assessed showed that there is an association. I wanted to get on the record that there is more to their study than what they are bringing out.

COCHAIR MATHEWS:

We will close the hearing on A.B. 521.

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MR. GHIGGERI:

Bill Draft Request S-1214 implements actions that were taken during the 2007-2009 interim to transfer funds from the Trust Fund for Public Health and the Fund for a Healthy Nevada to the State General Fund. This requires a Committee introduction.

**BILL DRAFT REQUEST S-1214**: Authorizes transfer of money in the Trust Fund for Public Health and the Fund for a Healthy Nevada to the State General Fund. (Later introduced as S.B. 430.)

SENATOR RAGGIO MOVED TO INTRODUCE BDR S-1214.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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COCHAIR MATHEWS:

With no further testimony or business to be conducted, we will adjourn this meeting at 11:36 a.m.

RESPECTFULLY SUBMITTED:

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Barbara Richards,  
Committee Secretary

APPROVED BY:

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Senator Bernice Mathews, Cochair

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



MINUTES OF THE  
SENATE COMMITTEE ON FINANCE

Seventy-fifth Session  
May 28, 2009

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 8:15 a.m. on Thursday, May 28, 2009, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Bernice Mathews, Cochair  
Senator Steven A. Horsford, Cochair  
Senator Bob Coffin  
Senator Joyce Woodhouse  
Senator William J. Raggio  
Senator Dean A. Rhoads  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Assemblyman John C. Carpenter, Assembly District No. 33  
Senator Dennis Nolan, Clark County Senatorial District No. 9

**STAFF MEMBERS PRESENT:**

Brian M. Burke, Principal Deputy Fiscal Analyst  
Brenda J. Erdoes, Legal Counsel  
Gary L. Ghiggeri, Senate Fiscal Analyst  
Patricia O'Flinn, Committee Secretary

**OTHERS PRESENT:**

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General  
Brian O'Callaghan, Representative, Las Vegas Metropolitan Police Department  
Rusty McAllister, Representative, Professional Firefighters of Nevada  
Dana Bilyeu, Executive Officer, Public Employees' Retirement System  
Leslie Johnstone, Executive Officer, Public Employee Benefits Program  
Michael Alonso, Representative, International Game Technology  
Cecilia G. Colling, Chief of Staff, Office of the State Treasurer

**COCHAIR MATHEWS:**

The Senate Finance Committee will come to order. We will open the hearing today with Assembly Bill (A.B.) 207.

**ASSEMBLY BILL 207 (2nd Reprint)**: Makes various changes concerning common-interest communities. (BDR 10-694)

ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 30):

I am here to testify regarding A.B. 207. The Attorney General's Office will take the fiscal note off the bill while waiting for more information regarding how many cases there will be.

MR. O'CALLAGHAN:

The real issue is, when there is an accident, who pays? It is the motorist, not the cyclist since the cyclist is not required to carry insurance. If there are damages to the motor vehicle the motorist's insurance pays. If the uninsured driver of the scooter is injured it is the University Medical Center or other public hospital that pays for treatment.

COCHAIR MATHEWS:

Is there anyone else who would like to testify on S.B. 309? We will close the hearing on S.B. 309.

We will open the hearing on A.B. 521.

**ASSEMBLY BILL 521 (1st Reprint)**: Revises provisions governing coverage for cancer as an occupational disease of firefighters. (BDR 53-278)

RUSTY McALLISTER (Representative, Professional Firefighters of Nevada):

Concerns were expressed at previous hearings about the reduction in years of service for coverage from five years to two years. We are proposing an amendment ([Exhibit E](#)) to Section 1 of A.B. 521 to reinstate 5 years of service to be eligible for coverage. In addition, the way the bill is currently written requires volunteer firefighters to have an annual physical. That was not the intent of the bill. They are required to have physical exams every three years. This would remove the fiscal impact on the rural counties which have volunteer firefighters.

SENATOR RHOADS:

Is there a new fiscal note on A.B. 521?

MR. McALLISTER:

Initially, there was no fiscal note. The Division of Forestry attached a fiscal note to cover approximately 170 firefighters in its Division. They included the forester I, forester II and crew foremen positions in the fiscal note. Those positions are not full-time salaried firefighters. There are only approximately 16 full-time firefighters who work for the Division of Forestry in Nevada.

COCHAIR MATHEWS:

The Division of Forestry claims the fiscal note is still valid. Is there anyone here to testify from the Division of Forestry?

MR. McALLISTER:

I understand those who are not full-time firefighters are not covered under the provisions of heart, lung or cancer at this time.

COCHAIR MATHEWS:

Are there any questions for Mr. McAllister?

SENATOR HORSFORD MOVED TO AMEND AND DO PASS A.B. 521.

SENATOR WOODHOUSE SECONDED THE MOTION.

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

**Eightieth Session  
March 22, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:08 p.m. on Friday, March 22, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Nicole J. Cannizzaro  
Senator James Ohrenschall  
Senator Chris Brooks  
Senator Joseph P. Hardy  
Senator James A. Settelmeyer  
Senator Heidi Seevers Gansert

**GUEST LEGISLATORS PRESENT:**

Senator Yvanna D. Cancela, Senatorial District No. 10  
Senator Melanie Scheible, Senatorial District No. 9  
Senator Joyce Woodhouse, Senatorial District No. 5

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Committee Policy Analyst  
Marjorie Paslov Thomas, Committee Policy Analyst  
Jennifer Richardson, Committee Secretary

**OTHERS PRESENT:**

Alfredo Alonso, Black Knight Sports and Entertainment LLC  
Rusty McAllister, Nevada State American Federation of Labor and Congress of Industrial Organizations  
Todd Ingalsbee, Professional Fire Fighters of Nevada

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Danny Thompson, International Brotherhood of Electrical Workers; International Union of Operating Engineers  
Tom Dunn, District Vice-President, Professional Fire Fighters of Nevada  
Terry Taylor, Fire Prevention Association of Nevada; Nevada International Association of Arson Investigators  
Steve Grammas, President, Las Vegas Police Protective Association  
Bruce Genter  
Herb Santos Jr., Nevada Justice Association  
Steve Alcorn  
David Catron  
Les Lee Shell, Clark County  
Shani Coleman, City of Las Vegas  
Michael Pelham, Nevada Taxpayers Association  
Dalton Hooks, Nevada Self Insurers Association  
Brian McAnallen, City of North Las Vegas  
Dagny Stapleton, Nevada Association of Counties  
David Cherry, City of Henderson  
Wes Henderson, Nevada League of Cities and Municipalities  
Sheri Russell, Carson City  
Jesse Wadhams, Las Vegas Metro Chamber of Commerce  
Jamie Rodriguez, Washoe County  
Jennifer Jeans, Washoe Legal Services; Southern Nevada Senior Law Program; Volunteer Attorneys for Rural Nevada; Legal Aid Center of Southern Nevada  
Lauren Peña, Legal Aid Center of Southern Nevada  
Bailey Bortolin, Washoe Legal Services; Southern Nevada Senior Law Program; Volunteer Attorneys for Rural Nevada; Legal Aid Center of Southern Nevada  
Autumn Zemke  
Gabriel Bayer  
Shane Piccinini, Food Bank of Northern Nevada  
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence  
Jordan Ross, Southern Nevada Rural Constable's Alliance  
Liz Ortenburger, SafeNest  
Nancy Brune, Guinn Center for Policy Priorities  
Christine Saunders, Progressive Leadership Alliance of Nevada  
Izzy Youngs, Nevada Women's Lobby  
Laura Cadot  
Kevin Sigstad, Nevada Realtors

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SENATOR SETTELMAYER:

Is the stakeholder amendment ([Exhibit D](#)) included in the bill?

MR. ALONSO:

The stakeholder amendment is amending the existing bill.

SENATOR SETTELMAYER:

Section 9, subsection 2, paragraph b of the stakeholder amendment refers to "knew or should have known". The language is broad. Can we change it to "knew or reasonably known"?

SENATOR WOODHOUSE:

Yes, we can accept that language in our stakeholder amendment.

There is one more edit we would like to add to our stakeholder amendment. Section 4 states "any additional fees and taxes". We would delete "and taxes".

CHAIR SPEARMAN:

We will take a vote on S.B. 131.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS S.B. 131  
AS AMENDED.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

We will close the work session on S.B. 131. We will open the hearing on S.B. 215. Senator Ohrenschall will lead the hearing.

**SENATE BILL 215**: Revises provisions relating to occupational diseases.  
(BDR 53-317)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I am presenting S.B. 215. Firefighters and police officers work every day to ensure Nevadans have a safe place to live, work and raise a family. Their jobs

put their lives at risk. Exposure to harmful substances during the course of their employment frequently results in a diagnosis of a serious disease.

Responding, battling, investigating or spending the day in the wake of a fire or car exhaust comes with the exposure to multiple carcinogens and other harmful elements. This exposure can and does leave men and women first responders with the question of what and when cancer will develop in their lives.

First responders diagnosed with cancer can be temporarily disabled, permanently disabled or die. They have an occupational disease that allows them to seek the treatment they need. To qualify for treatment, the first responders have to be employed for five years or more in a full-time capacity, be exposed to a known carcinogen that is associated with the disabling cancer and prove the cancer manifested out of and in the course of their employment.

We know our first responders are regularly exposed to carcinogens in the course of their job duties. There are many first responders who are not covered despite that knowledge.

The *Nevada Revised Statutes* (NRS) provide a list of substances that are deemed to be known carcinogens and provide a specific list of the associated disabling cancers. For example, NRS 617.453 subsection 2, paragraph (i) provides for known carcinogens linked to prostate cancer, and NRS 617.453 subsection 2, paragraph (j) outlines known carcinogens associated with testicular cancer.

There are provisions for liver cancer, kidney cancer, brain cancer and bladder cancer. If a type of cancer is not within statute, the first responders are obligated to fight for coverage by demonstrating that a substance is a known carcinogen and is reasonably associated with the disabling cancer.

Fighting the insurance companies on a case-by-case basis prevents the workers from pointing to a pattern of claims. It is exceedingly difficult for our first responders who do not fall within that enumerated list to obtain care.

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

We have many female first responders who are diagnosed with cancers not covered under the law. A female firefighter who is diagnosed with uterine cancer, cervical cancer or breast cancer must fight for needed health care to

save her life. Uterine, cervical and breast cancers are not covered under existing NRS provisions.

Senate Bill 215 seeks to solve this problem. The bill eliminates the enumerated list of specific, known carcinogens and related cancers. The bill provides that disabling cancer is an occupational disease and it is compensable so long as it develops in the course of employment by somebody who has been employed for two or more years as a police officer, arson investigator, full-time or volunteer firefighter.

The bill provides that disabling cancers are conclusively presumed to have developed or manifested out of, or during the course of, employment under the following conditions: the person has served for two or more years, the diagnosed disease causes disablement or death during the employment, the person serves for less than 20 years during a period equal to the length of time they served or they have served 20 years or more during any point in that person's life. Purchased service years credited toward retirement cannot be used toward the calculation of service time.

RUSTY MCALLISTER (Nevada State American Federation of Labor and Congress of Industrial Organizations):

I was a firefighter. The law protecting firefighters was put in place in 1887. We determined that claims were not accepted, because the employers and the insurers stated there was no relationship between a specific carcinogen, the type of cancer and the exposure of firefighters.

We are required to show when we were exposed to a specific carcinogen that would have caused the type of cancer that we have. Our claims are denied.

In 2003, we supported a bill to clarify the language. This language is what we see in statute that lists specific cancers and specific carcinogens we are exposed to on a regular basis. The language was written into statute and serves as the causal relationship between the type of cancer and the carcinogen.

Research is available and shows additional types of cancers affecting first responders. In 2009, we brought legislation to add additional cancers to the list in statute.

Cancers affecting female firefighters are excluded from statute. Female firefighters are showing effects of exposure to carcinogens, such as breast cancer, cervical cancer and uterine cancer. Their cancers are not included in statute.

In the City of Las Vegas, we took a case for a female firefighter who has breast cancer. The City denied her claim. We appealed the decision. The appeal officer agreed with us and approved her claim.

The City appealed the ruling in District Court. The District Court did not overturn the ruling. The City appealed the case to the State Supreme Court where the ruling was upheld. The female firefighter's breast cancer was related to her job. Her case took 5 years and over \$50,000 to litigate.

Research shows cancer in firefighters is more prevalent than cancer in the general population. This bill would eliminate the causal relationship and create a presumption that cancer occurs out of employment.

In regard to presumption, the bill matches the language in sections 455 through 459 of NRS 617, also known as the heart and lung statute. I worked with Senator Settlemeyer during the passage of the heart and lung statute in 2015. The language about coverage for the period of time after employment matches this statute.

We need this broad coverage because studies have shown that the latency periods for different types of cancer can range from 2 months to 20 years after exposure. Current legislation covers us for a maximum of five years after retirement. Many cancers do not manifest for seven years or more after exposure.

The intent is to match the language in the heart and lung statute and to extend coverage for first responders after retirement.

TODD INGALSBEE (Professional Fire Fighters of Nevada):

We are not testifying to convince the Committee that firefighters have a high risk of contracting cancer. Our current laws make this statement apparent. Legislation needs to be updated to keep up with the changing environment; in our case, the increase of cancers in the firefighting profession.



We are presenting this bill because new building materials and engineered thermoplastics, such as fluoride laminated veneer lumbars, increase the carcinogens we are exposed to during fires.

Today, residential fires have more in common with HAZMAT scene events than old-fashioned house fires due to the common materials in homes, such as plastics and other synthetic materials.

Because of budget cuts and staffing problems, our exposure time increases due to the limited number of available firefighters. Firefighters are responding to more calls than ever. Because of retirement restrictions, we work longer careers.

Cancer rates are underreported among firefighters because many firefighters do not discover they have cancer until after retiring. Many cancers do not metastasize until 5 to 25 years or more. At that time, retirees are considered to be part of the general population as compared to the group.

Improvements have been made to protect our members over the years. Nevertheless, we run into burning buildings to protect the lives and property of our citizens and visitors without concern for our own safety. Research studies make suggestions on how to prevent our contact with carcinogens, but the suggestions are denied due to budgetary reasons.

For example, my fire station does not have washer extractors to clean contaminated turnouts. After we respond to a fire, members are subjected to the carcinogens released from the contaminated turnouts. People on shift and the people in the oncoming shifts are exposed. Many of our members throughout the State do not have spare sets of turnouts, boots, helmets or self-contained breathing apparatuses.

The opposition states we need to narrow the list of cancers, because they cannot cover all the costs; it will be too expensive. We have conclusive presumptive language in our heart and lung coverage. We are asking for the same coverage for cancer because we do not know all the hundreds of recognized carcinogens we are exposed to over a 30-year career.

It is impossible to know what is contained in a commercial building, dumpster, wildland or house fire. Firefighters are 15 percent more likely to be diagnosed

and die of cancer than the general population. Since 2002, 65 percent of all the line-of-duty deaths are from cancer. Cancer is the leading cause of line-of-duty deaths among firefighters.

Since 2014, the Professional Fire Fighters of Nevada placed 29 members on a national firefighter memorial in Colorado Springs, Colorado. These members were someone's mother, father, sister, brother, son or daughter. Sixteen deaths were from cancer. There is a good chance one of us, if not all of us, sitting here today has cancer.

Times have changed and so has our cancer coverage. Current legislation does not address specific cancer coverage for women within the fire service. Specific to their gender, women firefighters deserve the same coverage as men. We need change for our sisters and for the 16 men and women whose names were placed on the memorial.

We discussed the bill with the opposition. We have discussed language with the sponsor to clarify rank classifications within various departments to prevent future denial of claims.

SENATOR HARDY:

One in eight women are diagnosed with breast cancer. There is a genetic propensity for some people. Is there an increase of cancer incidents in our female firefighters?

MR. MCALLISTER:

Yes, there has been an increase. Exposure to the carcinogen, benzene, drives a higher risk for breast cancer. There is a continual study ([Exhibit E](#) contains copyrighted material. Original is available on request of the Research Library.) by the San Francisco Fire Department, in coordination with other Bay Area fire departments, specific to female breast cancer and exposure for female firefighters.

SENATOR HARDY:

There are increased rates of cancer in firefighters over the last five to ten years. We have increased numbers of incidents because of the plastics and laminates in our environment. Have you seen increases in the last five to ten years?

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MR. INGALSBEE:

Yes, that is correct. We used these studies ([Exhibit F](#), [Exhibit G](#), [Exhibit H](#) and [Exhibit I](#)) in our language as references. [Exhibit H](#) and [Exhibit I](#) contain copyrighted material. Originals are available on request of the Research Library. Incidents of cancer have increased. In regard to breast cancer, we found cases of men in Nevada diagnosed with breast cancer.

SENATOR HARDY:

Firefighters are not dying from heart disease because we are better at treating heart disease. The general population has increased incidents of cancer.

MR. MCALLISTER:

Every state is required to report incidents of cancer in firefighters to a national registry so we may get a better idea of those numbers. Recent legislation at the national level requires a national registry.

SENATOR HARDY:

Will the police testify to the same effect?

SENATOR CANNIZZARO:

Yes, officers will testify about their exposure to carcinogens.

SENATOR SETTELMAYER:

We worked hard in 2015 on the heart and lung statute. The reality is, cancer is a function of age. Take prostate cancer for example. If you are 50 years old, you have a 50 percent chance of a prostate cancer diagnosis. At 75, you have a 75 percent chance of a prostate cancer diagnosis. At 100, you have prostate cancer. Several doctors have told me this.

Regarding the effective date of the bill, will coverage be going forward or will it go back? How will that work? Will firefighters need two additional years of service before they are covered?

MR. MCALLISTER:

I am not sure.

SENATOR OHRENSCHALL:

That is a question for our legal counsel. I will defer to the Legal Division.

SENATOR SETTELMAYER:

The scope of individuals involved would change. We require someone to work 20 years before they are covered for life. If they served for 20 years, they should be covered for life. We can add that into an amendment and try to clarify the language.

I have a problem with the "2 years" reference in section 1 of the bill. People need to be more vested in their careers than the minimum two years. We had the same discussion during the heart and lung bill. Most people do not stop being firefighters or police officers after two years. They traditionally quit prior to that.

The scope of individuals is not a large number. How many people work for two years and drop out of the profession? I would like that information.

SENATOR HARDY:

As a doctor, I see people with workers' compensation injuries and workers' compensation pays for it. If their private insurance knows about a work injury, they do not pay for it.

If a patient fails to declare a work injury, there is the question of who pays for medical care. Nobody pays, because the patient did not fill out a form.

Who pays for cancer treatments now and who pays for them after the bill passes?

MR. INGALSBEE:

The cost of care is the responsibility of the municipality and whoever handles the workers' compensation insurance for the injured person.

SENATOR HARDY:

If you get cancer right now, are you covered?

MR. INGALSBEE:

It depends. Most of the fire departments within Nevada are self-insured. If the diagnosis does not line up with what is currently in law, the claim is denied. We go through the process to find out. That is why we litigate so often.

If treatment is approved, it will be charged to the workers' compensation of the municipality. Some municipalities are self-insured.

If the person diagnosed is a retiree outside the guidelines or if the firefighter is under their self-trust, then the self-trust covers it. If they are covered under Medicare or Medicaid, then Medicare or Medicaid will pay for it.

SENATOR HARDY:

Are you covered through your regular insurance if you fall down and break your leg? Are all illnesses and injuries covered under your private insurance plan?

MR. INGALSBEE:

If I break my leg outside work, the cost of care is covered under my insurance plan.

SENATOR SEEVERS GANSERT:

I am concerned about cancers in women being left off the list of cancers and known carcinogens. I want to make sure that there is coverage for women. You mentioned breast cancer and cervical cancer. You mentioned a continued study out of San Francisco. Do cancers not covered by statute have a direct relationship to exposure?

The list in statute was derived because we were trying to find a nexus between exposure and cancer. The language in the bill is broad. It will be hard to underwrite something broad and undefined. If you add folks retroactively, the timeline becomes a concern. Consider being more specific.

The broad language and the retroactive timeline concerns me because I am not sure if we can secure coverage.

SENATOR OHRENSCHALL:

What percentage of firefighters are female?

MR. INGALSBEE:

Women encompass 10 percent to 12 percent of firefighters. The number grows every year.

DANNY THOMPSON (International Brotherhood of Electrical Workers, International Union of Operating Engineers):

We support S.B. 215. I was here in 1987 when the original bill was enacted. It was clear, through data and research, firefighters and police officers have a higher propensity to those types of diseases.

There was a company in southern Nevada making a product called chloral and ortho-dichlorobenzene, which is a byproduct of DDT when it is changed chemically. Inadvertently, this company was producing dioxin as a byproduct. Dioxin is the most toxic substance known. It was accidentally produced in the chemical plant in Henderson. There were multiple fires at their facility.

I was the head of the steelworkers union at the time of the plant fire. People who worked in that division died of a specific kind of brain cancer. The Environmental Protection Agency started investigating. They discovered the dioxin. The plant was shut down, cut up, hauled off and buried.

I introduced the conclusive presumption for the heart and lung statute because every case was denied. Denials still happen. These claims are fought in court.

TOM DUNN (District Vice-President, Professional Fire Fighters of Nevada):

We support S.B. 215. Firefighters are hired to do a job. That job is to preserve life and property, to keep our citizens in their homes and to keep our businesses open and vibrant. Whether it is a structure fire in Las Vegas, an airplane crash in Elko or a major wildland-urban interface fire in northern California, firefighters do their job professionally and honorably.

Firefighters are doing their job by having the required heart and lung physical. Firefighters are doing their job by lobbying Congress for grant funding so our communities can purchase safety equipment such as radios, self-contained breathing apparatuses, personal protective equipment and health and safety studies involving cancer and cardiopulmonary injury.

Firefighters are doing their job by improving policies involving hazardous exposures, such as clean cab programs, on-scene post-fire decontamination and sending our equipment out for proper cleaning and repair. Yet, our exposure to carcinogens and toxic byproducts increases.

There is no safe dose for a carcinogen. Every dollar we spend to get a cancer claim accepted is one less dollar we spend in a local restaurant, shopping in a local store or saving for our child's education fund.

I would like to close with the words of Governor Tasker Oddie from his message to the Legislature in 1911.

The legal doctrine that won for an injury to his person has sure speed and adequate remedy in the courts is not sustained by the statistics of workmen's injuries in this country. Compensation of injured employees has been anything but speedy and all but the exceptional case when carried in the courts has resulted in no actual recovery by the plaintiff. The continued cases of flagrant injustice to maimed employees and to the dependents of workers killed in the discharge of their duties has aroused public sentiment and sympathy with a result that in the past few years various commissions have been appointed by the states and in several of national character which have sought to provide a just and adequate remedy thereof.

We have the same problem with workers' compensation 108 years later. It is not about railroad workers and miners; it is for firefighters, female coworkers and our retirees. I encourage you to pass S.B. 215.

TERRY TAYLOR (Fire Prevention Association of Nevada; Nevada International Association of Arson Investigators):

We support S.B. 215. We are the people who hang out for a long period of time after a fire has been put out. We dig through the rubble and expose ourselves. We live with the fire to determine the origin and the cause. We have limitations regarding our personal protective equipment, and we arrive when the fire is in a smoldering state. This includes wildland fire exposure.

In 1989, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) while conducting a study noticed an alarming number of cancers in their arson investigators. They felt they had a causal connection between cancer overall and exposure at fire sites.

In 1997, the ATF conducted a second study and declared there was a problem with fire inspectors and arson investigators contracting cancer. We want to

make sure we are not forgotten. We have had issues with coverage when we are told we are not firefighters.

The statute lists arson investigators but not fire inspectors. We determine whether a fire is arson or not. When we are assigned, we go to the site of a fire and attempt to determine the origin and the cause. Fire inspectors perform this service part-time.

SENATOR SETTELMAYER:

I have to disclose that I know Mr. Taylor who has been to my property for agricultural fires.

I agree with you about bomb squads, arson investigators and individuals who inspect the fire from day one. Your investigators are sifting through that material. There is no question about that aspect of the profession.

I am perplexed with section 1 of the bill regarding the 2 year requirement versus the 5 year requirement. I am trying to figure out the time frame. In your profession, do you get hired into that position? Are you part of the regular fire department before you move to that specialty?

MR. TAYLOR:

Yes, in most cases investigators enter the profession from police or firefighter professions. We have specialized training and we are transferred to an arson bureau.

We do multiple functions. For example, I may spend a month engaged in fire investigations during wildland fire season. Other months, I may not do any investigations. My cumulative exposure time is over 30 years. I am retired now, so exposure will not affect me, but past exposure will affect my health.

SENATOR SETTELMAYER:

If the language states 2 years or 5 years, will most arson investigators be covered due to most of them coming from another part of the job prior to that?

MR. TAYLOR:

That is correct.



STEVE GRAMMAS (President, Las Vegas Police Protective Association):

We support S.B. 215. Law enforcement officers are routinely on the scene of a fire and exposed directly to known carcinogens. Whether it be from an auto accident, house fire, meth lab or marijuana grow operation, we are there.

I was directly involved in a specific incident of fire. I was at the Mt. Charleston fire several years ago and helped with civilian extractions, as well as provided traffic control. We were directly exposed to the smoke and burning fuel from the plane crash. We had the same exposure as the fire department, but we did not have protective gear. Our first responders do not have routine access to that gear. The most protection we have is to cover our nose and mouth with the front of our shirt.

BRUCE GENTER:

I support S.B. 215. The Police Protective Association asked me to testify about my experience with exposure to carcinogens in the law enforcement community.

My personal experience includes well over 200 exposures to meth labs, over 20 exposures to spice synthetic labs and several unknown substance labs that I have responded to.

I am involved with the Utah Meth Cops Project. They conducted research and found 90 percent of first responders, who respond to meth labs, had exposure to carcinogens and other unknown substances. They are exposed to more carcinogens than the cooks.

The majority of first responders go to the scene without any protection. They arrive to conduct the initial investigation before the fire department. We are exposed to synthetics coming from China, carcinogens coming from fires and to other substances we come in contact with over many years of work. Our first responders return to their work operations without taking a shower or changing clothes.

CHAIR SPEARMAN:

Will the people in Las Vegas stand if you support S.B. 215? I see the majority of the room standing.

HERB SANTOS JR. (Nevada Justice Association):

We support S.B. 215. Since 1991, I have represented injured workers in the State. The statute needs to be fixed. Workers' compensation laws are intended to ensure that workers receive timely medical treatment so they can recover and return to their jobs.

Eliminating the list of substances deemed to be known carcinogens reflects the reality that cancer causing substances are rapidly changing and expanding. Research is discovering new carcinogens, explaining how they cause cancer and provides insight on the ways to prevent cancer.

Cancer research is ongoing. The list of carcinogens allows an insurer to rebut the presumption and put a claim in litigation where the probability of delayed cancer treatment becomes a reality.

Is this what we want for the men and women who put their lives on the line to protect us? When we have a rebuttable presumption standard, the odds are that the claim is denied and goes to litigation.

Cancer claims for our first responders have no place in a courtroom. Senate Bill 215 will take the cancer claims out of the courtroom and back with the healthcare providers, so the men and women who risk their lives every day receive timely cancer treatment.

The opposition discussed genetic or predisposed genetic factors. The Nevada Supreme Court has upheld the statute for heart claims. Once one meets the qualification requirements for heart disease, whether the cause is congenital, idiopathic or otherwise introduced, they are covered despite any preexisting symptom or condition. Cancer should be no different.

Hearing a diagnosis of cancer is devastating enough; we add insult to injury when we allow an insurance company to manipulate the rules and delay cancer treatment by denying, delaying and defending claim denial. This bill will prevent that injustice from happening.

STEVE ALCORN:

I support S.B. 215. I am a retired firefighter. I retired May 2016. Two years later, I was diagnosed with cancer in my pancreas. I filed a claim with SafeBuilt

Insurance Services (SIS) of Nevada the day I was diagnosed. I had surgery to remove half of my pancreas and waited for SIS to respond to my claim.

My claim was denied pending further investigation. The claim workers at SIS notified me that they had not received enough information on my claim. As of last week, they have not made a decision on my claim. They are not sure when they will be able to make a decision.

DAVID CATRON:

I support S.B. 215. I will read from a prepared statement ([Exhibit J](#)).

CHAIR SPEARMAN:

Will the people in Carson City stand if you support S.B. 215? I see the majority of the room standing.

LES LEE SHELL (Clark County):

We oppose S.B. 215. I will contact the bill sponsors so we may discuss amendments as we move forward. Clark County shares the goals of the sponsors to ensure our first responders have access to benefits in the event of a work-related injury or illness. We are not opposed to including fire and arson investigators. We are not opposed to extending coverage for our female first responders.

We oppose striking out section 1, lines 16 through 25 of the bill. This section removes the nexus between occupational exposure and the disease. That is a tenant of workers' compensation. We would like to retain this. Striking out the entire section enables any cancer, for any reason, to be covered.

The expansion for retirees is a concern. We structure our budgets to know what that exposure is. It is a 5 year period. We fund our programs in such a way to cover this. Premium changes are decided by this calculation.

We have difficulty acquiring excess insurance coverage required by statute. Our underwriters cite our presumptive laws as the reason why. We are able to retain a single underwriter in Clark County to provide this coverage for us. We may not be able to continue to access coverage meant for catastrophic losses.

SHANI COLEMAN (City of Las Vegas):

We oppose S.B. 215. We support the provisions outlined by Clark County. The City recognizes the value firefighters bring to the citizens of Las Vegas. We want to do right by firefighters who may suffer from "occupational" harms due to the service they provide.

I emphasize "occupational", because that is the core of what workers' compensation is designed to address; an injury or harm that resulted from the work an employee performs.

Senate Bill 215 removes requirements that such harm suffered by a firefighter be related to the service he or she provided, which by its nature, is contrary to the intent of workers' compensation claims.

Stakeholders work together to identify carcinogens. Related cancer studies have shown the carcinogens are problematic to firefighters. The bill seeks to eliminate all the previous hard work stakeholders agreed relates to the occupational diseases correlated to firefighters.

The bill poses an additional concern with the addition of police officers and the removal of the 60-month post-employment diagnosis requirement. Removal of this provision will place the City of Las Vegas in the untenable situation of being underfunded because of the uncertainty of the number of claims that could arise from injuries that were originally beyond the 60-month timeframe.

We recognize the risk our firefighters take on. We understand and agree to the obligation to provide relief for a job-related injury. For the reasons stated, we are unable to support this bill. We are open to working with the stakeholders to find common ground.

MICHAEL PELHAM (Nevada Taxpayers Association):

We oppose S.B. 215. This bill will cost State and local governments too much money. Estimates show industrial insurance premiums increasing by 50 percent to 100 percent. Las Vegas has a fiscal note citing a cost of \$1 million per year. Clark County has a fiscal note citing a cost of \$7.5 million per year.

White Pine County states this bill will be devastating. The County will be unable to afford the cost related to broad and unquestionable coverages in workers' compensation. White Pine County will need to take on enormous additional

expenses without the ability to generate new revenue. The adverse impact cannot be overstated.

CHAIR SPEARMAN:

While working on another bill in 2013, it was brought to my attention a story about a correctional officer who intervened between two inmates during a fight. During the altercation, the officer broke his ankle. Months later he left work. People in town noticed he was swerving while driving and thought he was having a medical emergency related to his heart. His heart had stopped.

There was a blood clot in his ankle that moved to his heart. The coroner determined that the scuffle precipitated his death. Sometimes the cause of injury is known for sure and other times it is a different event that precipitates the illness. Is there room in the bill for that compromise?

Ms. SHELL:

There is room built into the process now. In that situation there were unknowns. They are taken on a case-by-case basis. We have a workers' compensation expert in Las Vegas who can answer the question.

DALTON HOOKS (Nevada Self Insurers Association):

I am an expert in workers' compensation. You are correct, in terms of the blood clot that occurred in that case. This is decided by a doctor making a medical determination that the blood clot was related to the occupational injury. Under those circumstances it would be compensable because a doctor made that determination.

BRIAN MCANALLEN (City of North Las Vegas):

We oppose S.B. 215. We did not submit our fiscal note to the Legislature in time for the bill. There is a \$4 million annual impact to the City of North Las Vegas.

We understand the challenges firefighters face on a regular basis. We are sympathetic to the issues they encounter. They are our first responders. They are essential to the community. There will be challenges with self-insured entities obtaining excess workers' compensation insurance if it is available at all.

MR. HOOKS:

I want to join the comments made by Clark County. I have been asked to present a practical perspective as a professional expert in workers' compensation. We would like to present to the Committee the norms dealing with the rebuttable presumption to a conclusive presumption. These changes transmute the workers' compensation system from what it is intended to be to something that is extensive.

Combining police officers and firefighters is a matter of public policy. Firefighters have singular unique exposures when they respond to a fire where it is impossible to determine the source of exposure. The inability of firefighters to file a claim based on that is unacceptable.

With respect to police officers, it is a different scenario. They are responding to scenes where they have specific records of what, why and when they are responding. This allows them to have specific details of the type of exposure.

CHAIR SPEARMAN:

Last summer there were many wildfires. It was so smoky in northern Nevada that the building was filled with smoke. I saw a person from the Sheriff's department on the news who had gone to the places where people lived to help people evacuate to safety. They were not firefighters; they were public safety officers. They would have been exposed to the same fires that the firefighters were exposed to.

Yes, police respond to scenes where they may know what is going on, but they also respond to fires. They do what they have to do to save lives and protect property. Can anyone address this?

DAGNY STAPLETON (Nevada Association of Counties):

We oppose S.B. 215. I cannot answer your question. There are others here who can. We support expanding coverage to arson investigators and others who are exposed to situations like the one you describe.

We want to reiterate that our members care about the health and safety needs of our first responders. They are at risk because of the work they do for the public. It is right to pay claims connected to the exposure risks that these individuals meet.

Nevada's urban counties and the 15 rural counties agree. The majority of the counties are insured by the Public Agency Compensation Trust (PACT) in association with self-insured public agencies, which is a non-profit risk sharing pool serving public entities.

Several sessions ago, PACT and other self-insured employers carefully crafted the existing statutory language in a joint effort with representatives of the firefighters. The list of covered cancers that was agreed on has a reasonable occupational connection. The bill overturns that compromise. As written, it will require public employers to cover diseases that may not be connected to their occupation. This includes the position that all cancers could be eligible for payment.

These expansions are proposed without an associated plan or ability for counties to prepare for these significant changes. Additionally, the increased unknown liability will make it difficult for local governments to obtain the statutorily required excess insurance that covers catastrophic exposure events.

These impacts to counties may be disproportional in rural jurisdictions. We expressed our concerns to the sponsor.

DAVID CHERRY (City of Henderson):

We oppose S.B. 215. We recognize our public safety professionals protect our community. Their occupations include activities that place them in contact with hazardous substances. We recognize our obligations under our workers' compensation system. We plan for this obligation and the resources needed to cover the claims for those who have been diagnosed with a disease related to their employment.

This bill would change the framework and widens the pool of those eligible to receive workers' compensation coverage. We are concerned with the elimination of the required nexus between exposure to carcinogens and cancer diagnoses.

We are against changing the minimum 5 years of service to 2 years of service, widening eligibility to include covering new jobs and changing the 5-year post-employment window to a lifetime window for individuals who served 20 years.

This makes it difficult for the City to calculate its potential liability and to plan accordingly because it is likely to result in a larger number of claims. We are concerned about how this bill could limit our ability to obtain liability coverage. This situation poses a severe fiscal risk to the City's self-insured fund.

We share the goal of those here today as it relates to covering those who are injured on the job, extending coverage to female firefighters and to others who have been left out of the current framework.

WES HENDERSON (Nevada League of Cities and Municipalities):

We oppose S.B. 215 for the same reasons stated by others opposed. We are willing to work with stakeholders on the bill.

MR. GRAMMAS:

I can answer the Committee's question about police responding to fires. Officers are heroes just like our brothers and sisters in the firefighting profession. When there is a fire and people are trapped, an officer will enter the building to save lives.

On October 1, 2017, our officers went to the 32nd floor knowing that they may not come down, but they still went. We know what we are up against; we have more information and we have more details during an emergency, and we go anyway. Folks still perform this job while putting safety aside for themselves. They think about others.

The argument is a weak point that officers know what they are exposed to; therefore, they do not need coverage. We know what we are up against and we still try to save a life.

The people who claim it will monetarily impact their municipalities take a back seat to the heroes willing to die to save a stranger's life.

SHERI RUSSELL (Carson City):

We oppose S.B. 215. We support the discussions about an amendment from Clark County. They include cancers that have an established link between carcinogens firefighters are exposed to, and this information is based on a 2016 report from the Centers for Disease Control and Prevention. Regardless of the cause of cancer, we want the same thing. We want employees to be treated and to be able to return to work.



Carson City provides excellent employee health insurance, as well as a retiree health insurance program. We believe the information we discussed with Clark County provides the clear legal guidance needed to avoid delays in treatment as different insurance companies struggle to figure out who is responsible for the payments.

JESSE WADHAMS (Las Vegas Metro Chamber of Commerce):  
We oppose S.B. 215. Our concern is with the language as drafted.

JAMIE RODRIGUEZ (Washoe County):  
We oppose S.B. 215 as drafted for the reasons previously stated. We understand the intent.

SENATOR CANNIZZARO:

It is important to talk about this issue and to recognize the sacrifices that men and women make to keep our communities safe. We will work with the stakeholders to create an amendment. There was mention of an amendment from Clark County, but there is no amendment for this bill at this point in time.

SENATOR SCHEIBLE:

I agree.

CHAIR SPEARMAN:

Because we have a time constraint, the following written statement ([Exhibit K](#)) has been submitted for the record. We will close the hearing on S.B. 215. We will begin the hearing on S.B. 256.

**SENATE BILL 256**: Revises provisions relating to discrimination in housing and various provisions relating to landlords and tenants. (BDR 10-569)

SENATOR YVANNA D. CANCELA (Senatorial District No. 10):

I am presenting S.B. 256. In the Interim, I participated in a committee to study issues related to affordable housing. The bill is a result of the testimony and issues we heard. There is a shortage of 200,000 affordable housing units in the State. Home ownership is out of reach for more than half of Nevadans. Renters are priced out of the market.

Renters are dependent on any housing they can secure and afford regardless of the problems with the unit. They are less likely to complain about repairs or

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

**Eightieth Session  
April 11, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 5:27 p.m. on Thursday, April 11, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Marilyn Dondero Loop, Vice Chair  
Senator Nicole J. Cannizzaro  
Senator Chris Brooks  
Senator Joseph P. Hardy  
Senator James A. Settelmeyer  
Senator Heidi Seevers Gansert

**GUEST LEGISLATORS PRESENT:**

Senator Yvanna D. Cancela, Senatorial District No. 10  
Senator David R. Parks, Senatorial District No. 7  
Senator Joyce Woodhouse, Senatorial District No. 5

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Committee Policy Analyst  
Bryan Fernley, Committee Counsel  
Jennifer Richardson, Committee Secretary

**OTHERS PRESENT:**

James Kemp, Nevada Justice Association  
Ann Silver, Chief Executive Officer, Reno and Sparks Chamber of Commerce  
Brian Walker, Retail Association of Nevada  
Paul Enos, Nevada Trucking Association

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Barry Gold, AARP Nevada  
Natalie Hernandez, Time to Care Nevada  
Jose Macias, Make the Road Nevada  
Hawah Ahmad, Silver State Government Relations  
Jocelyn Diaz, NARAL Pro-Choice Nevada  
Lindsay Knox, REMSA; C & S Waste Solutions  
Bob Ostrovsky, Nevada Resort Association  
Paul Moradkhan, Las Vegas Metro Chamber of Commerce  
Gary Milliken, Nevada Contractors Association  
Amber Stidham, Henderson Chamber of Commerce  
Kerrie Kramer, International Market Centers Inc.  
Jon Leleu, NAIOP Northern Nevada Chapter; NAIOP Southern Nevada Chapter  
Randi Thompson, National Federation of Independent Business  
Warren B. Hardy II, Nevada Restaurant Association  
Heidi Parker, Executive Director, Immunize Nevada  
Cassidy Wilson, Southern Nevada Home Builders Association  
Andrew MacKay, Nevada Franchised Auto Dealers Association  
Jared Busker, Children's Advocacy Alliance  
Christine Saunders, Progressive Leadership Alliance of Nevada  
Izzy Youngs, Nevada Women's Lobby  
Bianca Balderas, Make the Road Nevada  
Maria-Teresa Liebermann, Battle Born Progress  
LaLo Montoya, Make the Road Nevada  
Tom Dunn, Professional Firefighters of Nevada  
Susan Fisher, Board of Oriental Medicine  
Neena Laxalt, Board of Physical Therapy Examiners

CHAIR SPEARMAN:

We will open the hearing on Senate Bill (S.B.) 312.

**SENATE BILL 312**: Requires an employer in private employment to provide paid sick leave to employees under certain circumstances. (BDR 53-888)

SENATOR JOYCE WOODHOUSE (Senatorial District No. 5):

I am presenting S.B. 312 which requires an employer to provide paid leave to his or her employees. Paid leave is critical to the economic security of working families. The public increasingly recognizes this necessity. Many families do not have access to this basic workplace standard.

Senate Committee on Commerce and Labor  
April 11, 2019  
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**SENATE BILL 215**: Revises provisions relating to occupational diseases.  
(BDR 53-317)

MR. MELGAREJO:

I have the work session documents ([Exhibit Q](#)) which explain S.B. 215 and the conceptual amendment.

SENATOR SEEVERS GANSERT:

I support S.B. 215, but I reserve my right to change my vote at a later time. I am in support because of the provisions in the bill that support women.

SENATOR SETTELMAYER:

My concerns are in regard to the effective date of the bill. There does not seem to be an effective date meaning the bill applies retroactively.

TOM DUNN (Professional Firefighters of Nevada):

The intent for this bill is to apply coverage moving forward. It is not our intent to apply coverage retroactively.

CHAIR SPEARMAN:

We will take a vote on S.B. 215.

SENATOR DONDERO LOOP MOVED TO AMEND AND DO PASS S.B. 215  
AS AMENDED.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY AND SETTELMAYER  
VOTED NO.)

\* \* \* \* \*

CHAIR SPEARMAN:

We will close the work session on S.B. 215. We will open the work session on S.B. 256.

**SENATE BILL 256**: Revises provisions relating to discrimination in housing and various provisions relating to landlords and tenants. (BDR 10-569)

**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Eightieth Session  
May 22, 2019**

The Senate Committee on Finance was called to order by Chair Joyce Woodhouse at 6:38 p.m. on Wednesday, May 22, 2019, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Joyce Woodhouse, Chair  
Senator David R. Parks, Vice Chair  
Senator Moises Denis  
Senator Yvanna D. Cancela  
Senator Chris Brooks  
Senator James A. Settelmeyer  
Senator Ben Kieckhefer  
Senator Pete Goicoechea

**GUEST LEGISLATORS PRESENT:**

Senator Nicole J. Cannizzaro, Senatorial District No. 6  
Senator Marilyn Dondero Loop, Senatorial District No. 8

**STAFF MEMBERS PRESENT:**

Mark Krmpotic, Senate Fiscal Analyst  
Alex Haartz, Principal Deputy Fiscal Analyst  
Kimbra Ellsworth, Program Analyst  
Barbara Williams, Committee Secretary  
Jennifer McEntee, Committee Secretary

**OTHERS PRESENT:**

Chris Daly, Nevada State Education Association  
Brad Keating, Clark County School District

Senate Committee on Finance  
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Sarah Adler, Charter School Association of Nevada  
Mary Pierczynski, Nevada Association of School Superintendents  
Lindsay Anderson, Washoe County School District  
Julie Butler, Director, Department of Motor Vehicles  
Dawn Lietz, Administrator, Motor Carrier Division, Department of Motor Vehicles  
Paul Enos, Nevada Trucking Association  
Mary Walker, City of Carson City  
Alexis Motarex, Nevada Chapter Associated General Contractors  
Karl Wilson, Supervisor, Education Programs, Nevada Department of Education  
Sarah Nick, Management Analyst III, Nevada Department of Education  
David Dazlich, Las Vegas Metro Chamber of Commerce  
Nikki Bailey-Lundahl, Nevada Association of School Boards  
Paige Barnes, Communities in Schools  
Todd Ingalsbee, Professional Firefighters of Nevada  
Raymond McAllister, Nevada State AFL-CIO  
Deonne Contine, Director, Department of Administration  
Michael Ramirez, Las Vegas Police Protective Association; National Coalition of Law Enforcement  
Rick McCann, Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition  
Les Lee Shell, Chief Administrative Officer, Clark County  
Dagny Stapleton, Nevada Association of Counties  
Jamie Rodriguez, Washoe County  
Dalton Hooks Jr., Nevada Self Insurers Association  
Kathy Clewett, City of Sparks  
Warren Hardy, Nevada League of Cities and Municipalities  
Shani Coleman, City of Las Vegas  
Tom Dunn, Professional Firefighters of Nevada  
Melanie Young, Department of Taxation  
Kim Metcalf, Ph.D., Dean, College of Education, University of Nevada, Las Vegas

CHAIR WOODHOUSE:

We will begin the hearing with Senate Bill (S.B.) 321 which abolishes the Achievement School District (ASD).

**SENATE BILL 321 (1st Reprint)**: Abolishes the Achievement School District.  
(BDR 34-682)

student supports. We see great success through Victory Schools and support their continuation.

MS. ADLER:

We agree with what has been previously said. Mariposa Dual Language Academy Charter School is a Zoom School we operate in Reno.

SENATOR DENIS:

These have been great programs and a good investment for Nevada. I have not reviewed the fiscal note attached to S.B. 467; however, I am excited about the tools the NDE wants to use.

CHAIR WOODHOUSE:

We will close the hearing on S.B. 467 and open the hearing on S.B. 215.

**SENATE BILL 215 (1st Reprint)**: Revises provisions relating to occupational diseases. (BDR 53-317)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

Firefighters and police officers work every day to ensure Nevadans have a safe place to live, work and raise a family. Their jobs put their lives at risk and expose them to harmful substances during the course of their employment which frequently results in the diagnosis of a serious disease. Responding, battling and investigating, or spending a day in the wake of a fire or car exhaust comes with the exposure of multiple carcinogens and other harmful elements. This exposure can and does leave men and women first responders with the question of what and when cancer will develop in their lives. Often, it is not a question of "if" but a question of "what" and "when."

First responders who are diagnosed with cancer can be temporarily disabled, permanently disabled or can face death. They have an occupational disease that allows them to seek the treatment they need. Senate Bill 215 allows them to seek that treatment. To qualify for treatment, first responders have to be employed for five years, be exposed to a known carcinogen that is associated with a disabling cancer and must prove that the cancer manifested out of and in the course of their employment. This bill seeks to increase the number of carcinogens that cause a certain type of cancer. It also seeks to provide the additional coverage for these first responders who put their lives on the line every single day. This is the policy piece behind this bill.

Many first responders, including female firefighters, are diagnosed with cancers that are not covered under the current law. This is because when the list of cancers was drafted, cancers that are excluded were never considered. We know now that a female firefighter who is diagnosed with uterine cancer, cervical cancer or breast cancer must fight for the needed health care they deserve to save their lives. Senate Bill 215 addresses these inequities to ensure we are protecting the people who protect us every single day.

TODD INGALSBEE (Professional Firefighters of Nevada):

We are not here to convince you that firefighters have a high risk of contracting cancer. This is why we have current laws in place. As time goes by, legislation needs to be updated to keep up with the changing environment and increased cases of cancer in the firefighting profession. Today's residential fires have more in common with hazmat events than old fashioned house fires. This is due to materials that are common in houses such as building materials, household products, plastics and synthetics. The amount of exposure time has increased due to the limited number of available firefighters which are correlated with budget cuts and staffing problems. Today, firefighters are responding to more fire calls, and retirement restrictions have extended careers.

It is believed that cancer rates are potentially under reported among firefighters because many of them do not discover they have cancer until after retirement. Many cancers take between 5 to 20 years to metastasize. We have made improvements, and there is a current bill that provides us with some protection. We need to increase those protections. Since 2014, Professional Firefighters of Nevada has placed 29 members on a national firefighter memorial wall located in Colorado Springs, Colorado. These members are someone's mother, father, sister, brother, son and daughter.

We were approved to build a memorial, and construction will begin in June 2019. Out of our 29 members, 16 died from cancer. There is a good chance that myself or Raymond McAllister will have cancer, if not both of us. Our current legislation does not address specific cancer coverage for our female firefighters. They deserve and need coverage that is tailored to their gender. We need this change for female firefighters and all the men and women still responding to burning buildings. This is the promise they made when they graduated from their respective academies.



RAYMOND MCALLISTER (Nevada State AFL-CIO):

I have been dealing with this issue for an extended period of time, and many of the Committee members have heard about this. Section 1, subsection 1, paragraph (a) of S.B. 215 provides a clear definition of firefighters and discusses instructors or officers for the provision of training. Fire training officers work in the same environments and many of them will spend time in the field as firefighters and in the training division. While in the training division, they train rookies and conduct burns on burn towers. This section would include these officers.

Under section 1, subsection 2 of S.B. 215, language is added to include law enforcement officers, category 1 peace officers and category 2 peace officers. Section 1, subsection 3 discusses the types of cancers that are covered and their relationship to exposures. Over time, we have found the need to include these chemical relations in response to claims being denied multiple times by insurance companies. These claims were denied because claimants were unable to prove a relationship between contracted cancer and exposure to a specific chemical.

Research has found that these are the types of cancers firefighters are contracting. Expansion of the cancer list is secondary to the increased number of studies that have come out. These studies have found that firefighters are at a higher risk of contracting cancer, and very few studies have been conducted specifically on female firefighters. The number of female firefighters is growing in the ranks; there is a study being conducted in San Francisco, California, related to this that will be coming out soon.

Recently, there was a case in Nevada of a female firefighter who has breast cancer. It was denied throughout the life of the claim until it reached the Nevada Supreme Court. The claim was eventually upheld as a job-related exposure that caused the cancer. Section 1, subsection 4 of S.B. 215 clarifies the definition of carcinogens. Section 1, subsection 6 has matching language that is in the current NRS in regards to the heart and lung. This is a conclusive presumption that can arise throughout the course of employment as a firefighter. Even though there is rebuttable presumption which denies claims and treatment, the language in this bill is meant to make those claims more difficult to deny despite continued denials.

Section 1, subsection 6, paragraph (b) of S.B. 215 extends the period of coverage after a firefighter's employment has ended. Studies show that it takes a long time for certain types of cancers to metastasize. This language is not new. We worked on this in 2015 with Senator Settlemeyer to make sure that firefighters who work the longest get the most protection. Previously, we had a discussion with Senator Settlemeyer to retroactivity include retired firefighters. Changes were also made to law enforcement officers for rebuttable presumptions and to require documented exposures to known carcinogens.

SENATOR KIECKHEFER:

Is there a national standard or list we could adopt and reference? Every session we deal with these issues and continue to have members denied. There was a bill Senator Julia Ratti worked on regarding newborn screenings. Implementing a national list would be better than maintaining our own list every two years.

MR. INGALSBEE:

We have listed agencies in S.B. 215 to base these cancers off of. A national list is an option we could consider. There are hundreds of carcinogens that are not documented. I do not think there is a referenced list that everyone could agree on. We can not use the Centers for Disease Control and Prevention list that Senator Ratti used for her bill. If we had a list like this, we would support it. Many of these are National Institute for Occupational Safety and Health (NIOSH) studies conducted internationally. There is legislation at the federal level to create a cancer registry list that recently passed. This list would report all carcinogens found in fires throughout the United States; we could adopt this sometime in the future.

SENATOR KIECKHEFER:

Referring to the inclusion of category 1 peace officers and category 2 peace officers, are they included under heart and lung protections?

MR. McALLISTER:

Yes.

SENATOR CANCELA:

I would like to address the fiscal notes on S.B. 215.

CHAIR WOODHOUSE:

Would the presenters like to address the fiscal notes?

MR. INGALSBEE:

We can only use the most recent disaster risk reduction numbers based on 2017. It is unclear where the opposition got their numbers from. Senate Bill 215 requires that those records are kept on an annual basis. In 2017, there were 595 worker occupational disease claims of which 18 were cancer claims. Approximately \$1.9 million was spent. The average cost to treat those cancer claims was \$35,000 each.

SENATOR CANNIZZARO:

There are a couple of individuals here who will speak to their fiscal notes. Amendments were also proposed during the Commerce and Labor hearing.

DEONNE CONTINE (Director, Department of Administration):

The most recent unsolicited fiscal note is based on an amendment to further define terms and provide clarity. We reduced the fiscal note to \$71,761 for FY 2019-2020 and \$143,522 for FY 2020-2021. The Department of Administration's (DOA) Risk Management Division conducted their analysis based on the State's population and cancer statistics nationwide to extrapolate projections for Nevada. From this, two additional claims per year were determined.

SENATOR CANCELA:

It is concerning that there are different number sets. Thank you for the clarification.

CHAIR WOODHOUSE:

Next, we will open the hearing to support testimony on S.B. 215.

MICHAEL RAMIREZ (Las Vegas Police Protective Association; National Coalition of Law Enforcement):

We support S.B. 215.

RICK MCCANN (Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition):

We support S.B. 215. Earlier, there were individuals wearing shirts that said "what is a teacher worth?" What is a police officer worth? What is cancer worth? This needs to be done. First responders protect us every day. This is a growing problem, and S.B. 215 is a well-written bill. We appreciate the opposition and fiscal concerns.

CHAIR WOODHOUSE:

Next, we will open the hearing to opposition testimony on S.B. 215.

LES LEE SHELL (Chief Administrative Officer, Clark County):

We appreciate the sponsor of S.B. 215 and the stakeholders we have had conversations with. There are important components we agree with. The reprint of this bill addresses some of our concerns. There are two remaining issues involving a large fiscal note. The first issue is related to the broad expansion of post-employment coverage. Currently, a claim must be filed within 60 months. As the bill is written, claims can be filed throughout the lifetime of the claimant. This expands the timeframe of exposure from 5 years to 15 or more years.

The second issue deals with the expansion to include peace officers. This is a new population for us that we currently do not account for. The Clark County workers compensation fund has \$27 million in reserves for presumptive claims. A portion of this is only used for cancer claims. Depending on what actuarial data shows, this expansion may require an additional \$10 million to \$15 million in reserves that we are not prepared for. Annually, we are required by NRS to provide access to workers compensation coverage. This generally covers us in the event of an unexpected catastrophic loss and becomes more difficult for us to provide every year.

DAGNY STAPLETON (Nevada Association of Counties):

We are opposed to S.B. 215. Our members do care about the health, safety and needs of our emergency responders and the risks they face. This also applies to the State's urban counties and 15 rural counties where the majority are insured by the Public Agency Compensation Trust which is a nonprofit risk-sharing pool serving public entities. We are opposed for the reasons that were expressed by Clark County. The proposed expansions do not have an associated plan for counties to pay for these significant changes. The increased and unknown liability will make it difficult for local governments to attain the necessary and required excess insurance that covers catastrophic exposure events. Impacts to the counties may be disproportionate in the rural jurisdictions. We appreciate the proponents of the bill.

JAMIE RODRIGUEZ (Washoe County):

We appreciate the sponsor and proponents for their cooperation. The reprint of S.B. 215 clarified language that we requested. We are still opposed to the bill as written. We do support the expansion to cover other types of female cancers

and inclusion of arson investigators. For the reasons stated previously, we are opposed.

DALTON HOOKS JR. (Nevada Self Insurers Association):

Our members agree with comments made previously. There are very few excess carriers. With the fiscal notes and costs associated with S.B. 215, this number may dwindle further. We continue to revise our list of cancers. NIOSH and the International Agency for Research on Cancer provide lists of cancers and other information on carcinogens. Using a national list is possible and is currently done under the Occupational Safety and Health Act of 1970 under Title 29 CFR Part 1910, subpart Z which deals with toxinogens and carcinogens. This information is used to determine what type of protections are needed for personnel protective equipment that is used by firefighters, police officers and other employees in the Nation.

I am aware of issues the sponsors have discussed before. They believe it is more helpful to have an enumerative list as a basis for fending off denials that are inappropriate. We have a streamlined two-stepped process at the administrative level. An appeal to the district court is only on a petition for additional review. The level above this is the Supreme Court. To address the concern of lifetime protection under workers compensation, this ignores that age-related cancers are going to occur and need to be considered in terms of how we are expending this.

My daughter wants to be a firefighter; when she achieves this goal I want her to be treated with respect and protected. We also want to have laws that are fair, balanced, address the fiscal considerations and the need to provide coverage. There is a subsection that turns this into insurance for general purposes and our Supreme Court has been clear that the purpose of workers compensation is not intended to be a panacea. It is meant to address conditions that arise outside of the scope of employment.

MR. DAZLICH:

My colleagues from Las Vegas have expanded on the increased liability that they would be taking on if S.B. 215 is passed. Our opposition to this bill is concerned with the efficiency of taxpayer dollars. The additional liability could cost millions more. An actuarial study will need to be conducted to produce a firm number. Additional funds will come from taxpayers. A large percentage of that will be paid by small and medium sized businesses.

KATHY CLEWETT (City of Sparks):

We oppose S.B. 215. We agree with everything that has been stated previously.

WARREN HARDY (Nevada League of Cities and Municipalities):

We would like to express our concerns with the fiscal notes and uncertainties of S.B. 215. We would like to associate ourselves with the idea that Senator Kieckhefer suggested and find a way to deal with this once and for all. Our members are concerned with the fiscal notes and not the concept.

SHANI COLEMAN (City of Las Vegas):

We agree with what has been previously addressed. We are opposed to S.B. 215.

SENATOR CANNIZZARO:

Regarding the fiscal note from the Nevada System of Higher Education (NSHE), this would be lower or nonexistent because it covers individuals who were removed with Amendment No. 478 with respect to the officers who would be included. Senate Bill 215 was amended and the fiscal notes became available after the amendment was approved. This bill would require documentation for police officers and would need to be linked with a documented exposure.

MR. MCALLISTER:

Legislation was passed in 2001 that required all insurers in the State to report to the Department of Business and Industry's Division of Industrial Relations (DIR) every year on the number of occupational disease claims they have. On the DIR website, they have reports from 2014 through 2017 on all occupational disease claims that were filed in the State. This information is broken out by cancer, heart, lung, hepatitis and others ailments. They also list the cost for medical expenses for those types of claims. In 2017, there were 18 cancer claims by firefighters. Currently, only firefighters have cancer coverage.

The medical cost for all 18 claims was \$1.9 million. There are approximately 2,700 firefighters in the State. The Las Vegas Metropolitan Police Department has approximately 2,800 officers. It is estimated that they will have 135 claims per year. In 2016, there were 13 cancer claims by firefighters. In 2015, there were 8; in 2014, there were 6 claims. I am not sure where these numbers came from on the fiscal notes. Based on data from the DIR, the numbers would not show 135 claims with the requirement of documented exposure.

SENATOR KIECKHEFER:

I understand that in this profession there is repeated exposure over time. For category 1 peace officers and category 2 peace officers contraction of cancer hinges on one-time exposure with acute risk at the moment of exposure. There are always long-term risks of cancer based on a single exposure. Is there a process in place where all exposures are documented?

MR. MCALLISTER:

There is an occupational disease exposure form for this purpose. I have worked on fires involving meth labs. Police officers usually arrive on the scenes before firefighters to direct traffic or to run into the building looking for someone. Often these officers do not know that they are in a meth lab. In these instances, they have been exposed to all of the chemicals involved. On a regular house fire, they would be exposed to all of the same chemicals a firefighter is exposed to. The difference to this exposure is the length of time. These officers would also file an exposure form for proper documentation.

SENATOR KIECKHEFER:

Does the science show that a single exposure can give someone cancer 10 or 20 years after, or does there need to be frequent exposure?

MR. MCALLISTER:

The research shows that cancer can be caused by a single exposure. Repeated exposure is more prevalent. In S.B. 215, law enforcement officers do not have long-term coverage after they retire as opposed to firefighters. Police officers get 3 months for every year of service up to a maximum of 60 months.

CHAIR WOODHOUSE:

We will close the hearing on S.B. 215 and open the hearing on S.B. 322.

**SENATE BILL 322 (1st Reprint)**: Revises provisions relating to peace officers.  
(BDR S-918)

SENATOR CANNIZZARO:

Senate Bill 322 seeks to provide parity among law enforcement in the State. Under this bill, any officer who is under a paramilitary organization will be allowed a 10 percent pay increase for those who are at a level of sergeant or below and a 5 percent increase for those who are at a level of sergeant or higher. This bill also includes parameters to ensure that compensation between

**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Eightieth Session  
May 29, 2019**

The Senate Committee on Finance was called to order by Chair Joyce Woodhouse at 8:30 a.m. on Wednesday, May 29, 2019, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Joyce Woodhouse, Chair  
Senator David R. Parks, Vice Chair  
Senator Moises Denis  
Senator Yvanna D. Cancela  
Senator Chris Brooks  
Senator James A. Settelmeyer  
Senator Ben Kieckhefer  
Senator Pete Goicoechea

**GUEST LEGISLATORS PRESENT:**

Senator Nicole J. Cannizzaro, Senatorial District No. 6  
Senator Marilyn Dondero Loop, Senatorial District No. 8  
Senator Melanie Scheible, Senatorial District No. 9  
Assemblywoman Michelle Gorelow, Assembly District No. 35

**STAFF MEMBERS PRESENT:**

Mark Krmpotic, Senate Fiscal Analyst  
Alex Haartz, Principal Deputy Fiscal Analyst  
Russell Guindon, Principal Deputy Fiscal Analyst  
Cathy Crocket, Program Analyst  
Stephanie Day, Program Analyst  
John Kucera, Program Analyst  
Brody Leiser, Senior Program Analyst  
Colby Nichols, Program Analyst



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Jaimarie Ortega, Program Analyst  
Kristina Shea, Program Analyst  
Tom Weber, Committee Secretary  
Steven Jamieson, Committee Secretary

**OTHERS PRESENT:**

Zach Conine, Nevada State Treasurer  
Connor Cain, Nevada Bankers Association  
Richard Karpel, Executive Director, Nevada Press Association  
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada  
Daniel Honchariw, Senior Policy Analyst, Nevada Policy Research Institute  
Tonja Brown  
Dylan Shaver, City of Reno  
Warren Hardy, Nevada League of Cities and Municipalities  
David Cherry, City of Henderson  
Brian O'Callaghan, Las Vegas Metropolitan Police Department  
Vinson Guthreau, Deputy Director, Nevada Association of Counties  
John Fudenberg, Clark County  
Kelly Crompton, City of Las Vegas  
Brian McAnallen, City of North Las Vegas  
Brad Keating, Clark County School District  
Jamie Rodriguez, Washoe County  
Chris Nielsen, Public Employees' Retirement System of Nevada  
Mary-Sarah Kinner, Washoe County Sheriff's Office  
John Jones, Nevada District Attorneys Association  
Kathy Clewett, City of Sparks  
Julia Peek, Deputy Director, Programs, Department of Health and Human Services  
Melanie Young, Executive Director, Department of Taxation  
Shellie Hughes, Chief Deputy Director, Department of Taxation  
Michael Hackett, Nevada Tobacco Prevention Coalition; Nevada Public Health Association; Nevada Primary Care Association; Nevada Academy of Physician Assistants  
Joelle Gutman, Washoe County Health District  
Benjamin Schmauss, Nevada Government Relations Director, American Heart Association  
Tom McCoy, Nevada Director of Government Relations, American Cancer Society Cancer Action Network

Sarah Adler, Board President, Healthy Communities Coalition of Nevada  
Jared Busker, Children's Advocacy Alliance  
Marlene Lockard, Service Employees International Union Local 1107  
Carter Bundy, American Federation of State, County and Municipal Employees International  
Jesse Wadhams, Nevada Hospital Association  
Lisa Sherych, Interim Administrator, Division of Public and Behavioral Health, Department of Health and Human Services  
Michael Brown, Director, Department of Business and Industry  
Shannon Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry  
Chuck Callaway, Las Vegas Metropolitan Police Department  
LesLee Shell, Clark County  
Todd Ingalsbee, Professional Firefighters of Nevada  
Bruce Snyder, Commissioner, Local Government Employee-Management Relations Board, Department of Business and Industry  
Steve Kreisberg, Director, Collective Bargaining and Research, American Federation of State, County and Municipal Employees International  
Nicholas Montgomery, Nevada Highway Patrol Association  
Catherine Byrne, Nevada State Controller  
Cedric Williams, President, Sierra Range Chapter, American Federation of State, County and Municipal Employees Local 4041  
Rick McCann, Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition  
Tom Dunn, District Vice President, Professional Firefighters of Nevada  
Rusty McAllister, Executive Secretary-Treasurer, Nevada, American Federation of Labor and Congress of International Organizations  
Stephen Augspurger, Executive Director, Clark County Association of School Administrators and Professional-Technical Employees  
Chris Daly, Nevada State Education Association  
Scott Edwards, President, Las Vegas Peace Officers Association; Nevada Law Enforcement Coalition  
Jim Sullivan, Culinary Union  
Kent Ervin, Ph.D., Nevada Faculty Alliance  
Harry Schiffman, President, American Federation of State, County and Municipal Employees Local 4041  
Paul Moradkhan, Vice President of Government Affairs, Las Vegas Metro Chamber of Commerce  
Bryan Wachter, Senior Vice President, Retail Association of Nevada

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Michael Pelham, Director, Government and Community Affairs, Nevada  
Taxpayers Association  
Nick Vander Poel, Reno Sparks Chamber of Commerce  
Autumn Tampa  
Eric Jeng, Director of Civic Engagement, Asian Community Development  
Council  
Terri Shuman  
Natha Anderson, Nevada State Education Association  
Alexander Marks, Nevada State Education Association  
Mike Cathcart, City of Henderson  
Shani Coleman, City of Las Vegas  
Michael Ramirez, Las Vegas Police Protective Association  
Amanda Morgan, Legal Director, Educate Nevada  
Annette Magnus-Marquart, Battle Born Progress  
Paul J. Enos, CEO, Nevada Trucking Association  
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association  
Peggy Lear Bowen

CHAIR WOODHOUSE:

We will open the hearing on Senate Bill (S.B.) 82.

**SENATE BILL 82 (1st Reprint)**: Revises provisions relating to education.  
(BDR 31-479)

ZACH CONINE (Nevada State Treasurer):

Senate Bill 82 revises the administration of the Nevada college savings programs including the Nevada College Kick Start Program and the Nevada Higher Education Prepaid Tuition Program. The proposed changes will allow the Treasurer's Office to more effectively administer the programs and increase educational opportunities for all Nevadans by increasing the usage and usefulness of those programs.

I have submitted a visual presentation ([Exhibit C](#)) which will illustrate the points I discuss during my presentation of S.B. 82.

The Treasurer's Office is responsible for administering several programs designed to help Nevadans save for college and prepare for postsecondary careers. The programs include the Nevada Higher Education Prepaid Tuition Program, Nevada College Savings Plans and the Nevada College Kick Start

THE MOTION CARRIED. (SENATORS GOICOECHEA, KIECKHEFER AND SETTELMAYER VOTED NO. SENATOR CANCELA WAS ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIR WOODHOUSE:  
I will open the work session on S.B. 215.

**SENATE BILL 215 (1st Reprint)**: Revises provisions relating to occupational diseases. (BDR 53-317)

STEPHANIE DAY (Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

Senate Bill 215 revises provisions governing compensation for certain employees who develop cancer as an occupational disease. Section 1, subsection 1, paragraph (a), subparagraph (1) adds "an investigator of fires or arson; or an instructor or officer for the provision of training concerning fire or hazardous materials" to the list of persons eligible for occupational disease compensation. Section 1, subsection 2, paragraph (a) adds Category I and II peace officers to the list of persons eligible for occupational disease compensation. Section 1, subsection 3 amends the list of types of cancers covered and known carcinogens which are reasonably associated with disabling cancer.

The bill provides various periods for purposes in which an employee may claim and is compensable for such cancer as an occupational disease. The amendatory provisions of this bill apply only to claims filed on or after July 1, 2019.

The fiscal note submitted by the Risk Management Division of the Department of Administration indicates a fiscal impact of \$71,761 in FY 2020 and \$143,522 in FY 2021 based on the average cost per cancer-related workers compensation claims since 2001 which is based on an additional 2 claims per fiscal year.

The fiscal note submitted by the NSHE indicates a fiscal impact of \$100,000 in FY 2019 and FY 2020, and \$200,000 in FY 2021. Fiscal notes were received from 5 entities including a fiscal note from the Las Vegas Metropolitan Police

Department of \$9.9 million per year. A fiscal note of \$7.5 million was received from Clark County.

Proposed Amendment No. 6057 ([Exhibit O](#)) removes Category I and II peace officers from section 1, subsection 2 and provides that disabling cancer is rebuttably presumed to be occupationally related under certain circumstances.

SENATOR KIECKHEFER:

What effect does removing the peace officers and changing the presumption from conclusive to rebuttable have on the fiscal notes?

Ms. DAY:

We just received the mock-up this evening, so we do not know yet. Individuals from the various entities may be able to address that question.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We submitted our fiscal note based on projections of what we believed our costs would be. We support these benefits for officers, but the proposed amendment would eliminate our fiscal note.

LESLEE SHELL (Clark County):

The proposed amendment, [Exhibit O](#), will not significantly impact our fiscal note. Our concern continues to be the lifetime extension of the benefit which is where the majority of our fiscal note originates.

SENATOR KIECKHEFER:

Is that provision found in section 1, subsection 7, [Exhibit O](#)?

Ms. SHELL:

Yes. The current postretirement benefit is for a period of up to 60 months. The extension of that benefit is for the period of total time worked which is generally between 20 and 30 years.

SENATOR KIECKHEFER:

Your fiscal note is not affected by the exclusion of the peace officers because it is a separate entity. Is that correct?

Ms. SHELL:

A small adjustment to our fiscal note would be required, but the majority of law enforcement is covered with the Las Vegas Metropolitan Police Department. We do have juvenile probation officers, bailiffs and others who are classified as Category I and II peace officers.

SENATOR SETTELMAYER:

I am trying to find the change relating to the concept of postemployment. Current law is that a claim must be filed within 60 days after retirement. A version of the bill extended that to a lifetime claim. Is that provision included in the amendment? The deletion on page 6, line 28 of the proposed amendment, [Exhibit O](#), seems to turn this to a lifetime claim.

SENATOR KIECKHEFER:

To Senator Settelmeyer's comment, the version of section 1, subsection 7 deleted in [Exhibit O](#) talks about volunteers. The new section 1, subsection 7, paragraph (b), [Exhibit O](#), grants the lifetime presumption to someone who has served more than 20 years.

Ms. SHELL:

I interpret that section in the same way.

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

Senate Bill 215 is intended to follow the "Heart and Lung" bill in its comparison of people who are covered for their lifetime versus those who are covered based on the number of years of service. If the person was a volunteer for 5 years, or if the person served professionally for more than 20 years, the person receives full lifetime benefits.

TODD INGALSBEE (Professional Firefighters of Nevada):

Senator Scheible is correct. We crafted this language to mirror the "Heart and Lung" language. The coverage in this bill is based on the number of years of service after five years. Any service after 20 years qualifies a person for lifetime coverage.

We had 18 claims in 2017. The average cost per claim was \$32,000, or \$630,000 total. That is the highest number we have seen since we have had this coverage. The data on this coverage goes back to 2014.

SENATOR KIECKHEFER:

Do those numbers include all claims Statewide or just claims made at the State level?

MR. INGALSBEE:

These are the number at the State level. The total number of workers compensation claims in 2017 was 595. The total monetary amount for those claims including cancer, heart and lung claims was \$1.9 million; 18 claims were cancer related.

SENATOR SCHEIBLE:

I would like to present a conceptual amendment. The word "rebuttable" as it relates to the "rebuttable presumption" is used throughout the bill. We are seeking to remove it in certain sections for clarity.

MR. INGALSBEE:

We would like to remove the word "rebuttably" from line 20 of the Legislative Counsel's Digest in [Exhibit O](#). We also propose to remove the word "rebuttably" from page 5, line 16 and line 26, [Exhibit O](#), and page 6, line 7, [Exhibit O](#). We feel the issue is adequately addressed in section 1, subsection 9, [Exhibit O](#).

SENATOR KIECKHEFER:

There is either a rebuttable presumption or a conclusive presumption. I do not understand the problem of having clarity in the statute which you propose to remove in subsection 7 and subsection 5.

MR. INGALSBEE:

Subsection 9 talks about the rebuttable portion. By deleting the other uses of "rebuttable", we are trying to keep the bill language in line with language that has already been approved.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 215.

SENATOR DENIS SECONDED THE MOTION.

SENATOR KIECKHEFER:

I will support the motion at this time. I will reserve my right to look into the fiscal notes more thoroughly before I vote on the Senate Floor.

Senate Committee on Finance  
May 29, 2019  
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SENATOR SETTELMAYER:

I will also support the motion now. Due to these last minute amendments, I will have to see how it all works together before we vote on the Senate Floor.

THE MOTION CARRIED. (SENATOR GOICOECHEA VOTED NO.  
SENATOR CANCELA WAS ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIR WOODHOUSE:

I will open the work session on S.B. 263.

MR. KRMPOTIC:

Senate Bill 263 was heard previously in this Committee hearing. The bill requires certain alternative nicotine and vapor products including electronic cigarettes, hookahs, vape pens, and similar products and devices, to be regulated and taxed in the same manner as other tobacco products. Because the bill establishes alternative nicotine and vapor products as other tobacco products (OTP), wholesale and retail dealers of these products are required to obtain a license from the Department of Taxation (DOT). Wholesale dealers are required to collect and pay a tax of 30 percent of the wholesale price of these products.

The bill establishes the definition of "smoking" within the Nevada Clean Indoor Air Act and expressly applies the Act to the use of an electronic smoking device.

Senate Bill 263 removes the criminal penalties for certain violations and instead authorizes the DOT to impose a civil penalty for a person who sells, distributes or offers to sell certain tobacco products and OTP to a person under the age of 18. The bill revises the amount of civil penalties that may be imposed, establishes procedures for the issuance of a notice of infraction to the person who violates the prohibition on sales to minors and authorizes the person to request a hearing before the DOT. The bill creates the authority for the imposition of penalties on a licensee whose employee or agent violates this probation.

The bill requires a person who sells or distributes certain tobacco products and OTP through a computer, telephonic or other electronic network to ensure that the packaging in which the items are shipped is labeled "cigarettes or tobacco



products." The bill requires these sellers and distributors use certain age verification procedures.

The bill makes an appropriation of \$2.5 million in FY 2020 and \$2.5 million in FY 2021 to the DHHS for programs to control and prevent the use of tobacco.

The DOT issued a revised fiscal note for S.B. 263 which includes amounts of approximately \$500,000 in each year of the biennium. Fiscal staff would suggest the inclusion of the appropriations to the DOT for the implementation costs of the bill. The cost of implementation would include the cost of several new positions and other expenses including programing costs for the DOT system.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 263.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SETTELMAYER VOTED NO.  
SENATOR CANCELA WAS ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIR WOODHOUSE:

I will open the hearing on S.B. 135.

**SENATE BILL 135 (1st Reprint)**: Provides for collective bargaining by state employees. (BDR 23-650)

MR. BROWN:

I am here on behalf of Governor Steve Sisolak to present Proposed Amendment No. 6030 to S.B. 135 ([Exhibit P](#)). The bill with its proposed amendment will achieve the Governor's vision for empowering State workers to bargain collectively in Nevada. As the Governor said at the recent signing of legislation on the prevailing wage, Nevada is a union State, a place where workers can access the middle class and have an opportunity to provide for their families.

Since 1969, local government employees have enjoyed the right to bargain collectively. The oversight of local government collective bargaining rests with

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

**Eightieth Session  
June 2, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:49 p.m. on Sunday, June 2, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/App/NELIS/REL/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen B. Spiegel, Chair  
Assemblyman Jason Frierson, Vice Chair  
Assemblywoman Maggie Carlton  
Assemblyman Skip Daly  
Assemblyman Chris Edwards  
Assemblywoman Melissa Hardy  
Assemblywoman Sandra Jauregui  
Assemblyman Al Kramer  
Assemblywoman Susie Martinez  
Assemblyman William McCurdy II  
Assemblywoman Dina Neal  
Assemblywoman Jill Tolles  
Assemblyman Steve Yeager

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

Minutes ID: 1383



**STAFF MEMBERS PRESENT:**

Patrick Ashton, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Karen Easton, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada  
Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO  
Thomas D. Dunn, District Vice President, Professional Fire Fighters of Nevada  
Scott A. Edwards, President, Las Vegas Peace Officers' Association  
Mike Ramirez, Director of Government Affairs, Las Vegas Police Protective Association Metro, Inc.  
Jason Mills, representing Nevada Justice Association  
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers  
Les Lee Shell, Chief Administrative Officer, Office of the County Manager, Clark County  
Dagny Stapleton, Executive Director, Nevada Association of Counties  
Shani J. Coleman, Deputy Director, Office of Administrative Services, City of Las Vegas  
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association  
Dalton Hooks, representing Nevada Self Insurers Association  
David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce  
Misty Grimmer, representing Nevada Resort Association  
Michael Brown, Director, Department of Business and Industry

**Chair Spiegel:**

[Roll was called. Committee rules were explained.] We will open the hearing with Senate Bill 215 (2nd Reprint).

**Senate Bill 215 (2nd Reprint):** Revises provisions relating to occupational diseases. (BDR 53-317)

**Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada:**

We are here today to present Senate Bill 215 (2nd Reprint) which cleans up some of our cancer language. I do not know if Senator Cannizzaro or Senator Scheible will be here, so I will go over why we are proposing this bill, then I will go over the bill. If you have any questions, we will go from there. We are not up here today to convince you firefighters have a high risk to get cancer; I think we can all agree that is why we have the current laws in place. As time goes by, sometimes legislation needs to be updated to keep up with the

changing environment and, in this case, the increase in cancers in the firefighting profession. We are presenting this bill because with the changes in the new building materials in the form of energized thermoplastics, all the carcinogens that we have now in the manufacturing of buildings, products, and things like that, we are seeing an increase in cancers in our profession. Today, residential fires have more in common with hazardous materials events than old-fashion house fires due to the material now common in homes—such as plastics and synthetics.

The amount of exposure time has increased due to the limited number of available firefighters, either due to budget cuts or staffing problems. Firefighters are responding to more calls than ever and, because of retirement restrictions, have to work longer careers. It is also believed that cancer rates are potentially underreported among firefighters. Many firefighters do not discover they have cancer until after retiring, because many cancers do not metastasize until 5 to 20 years later, at which time the firefighters are then considered to be part of the general population comparison group.

We have made improvements to protect our members over the past years, but like our brothers and sisters did before us, we still run into burning buildings to protect the lives and property of our citizens and visitors without concern for our own safety. Even with suggestions made by research and study, many of the improvements to prevent our contact with carcinogens are denied for budgetary reasons. You will hear from the opposition that we need to narrow down to a list of cancers and that the cost of this coverage is going to be expensive to cover.

We have conclusive presumptive language for our heart and lung coverage, and we are here today asking for similar coverage for cancer. We do not know the hundreds of recognized carcinogens we are exposed to over a 30-year career—it is impossible to know exactly what is contained in a commercial building fire, house fire, dumpster fire, or wildland fire. We do know that firefighters are 15 percent more likely to be diagnosed with and die of cancer than the normal population present today. We do know that 65 percent of all line-of-duty deaths since 2002 are from cancer. Cancer is now the leading cause of line-of-duty deaths among firefighters.

Since 2014, the Professional Fire Fighters of Nevada has placed 29 members on a national firefighter memorial wall, which will be located right on the grounds outside of this building. This is someone's mother, father, sister, brother, son, or daughter. Sixteen of the 29 members on our Nevada professional firefighter wall have been from cancer. There is a good chance one of us sitting in front of you today will have cancer, if not both of us.

Times have changed and so must our cancer coverage. Our current legislation does not even address any specific cancer coverage for our sisters within the fire service. They deserve and need coverage just like I have, but specific to their gender. We need this change for our sisters and for those who have passed before us. We have had good discussions with some of the opposition and have come close on a lot of agreements, but there are still a few sticking points. I think this bill is needed and what our members deserve.

**Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO:**

The two main changes in the bill are the changes we are proposing in the statute. We amended the law in 2003 and again in 2009, as new cancers in relationship to firefighters' working conditions came forward with new studies. Section 1 gives a clearer definition of what are considered to be fire investigators. Fire investigators go inside the same buildings we do; they are inside with all of the same chemicals. There are also instructors. The instructors work in training centers where they are performing drill fires on a constant basis with recruits—most of those come from the ranks of firefighters themselves.

The second change is in section 1, subsection 2, paragraphs (a) through (y), which list additional types of cancers. The list came from the International Association of Fire Fighters as a compilation of the different types of cancers they have identified, and the chemical or causal relationship of the certain chemicals that would cause those cancers. Years ago we put in the causal relationship because we were having a difficult time getting workers' compensation claims accepted due to the language which said you had to show a relationship of time between the chemical you were exposed to and the type of cancer you had. They said you could never show the exact exposure you had to cause the type of cancer. We put the carcinogens in the statute to say, If you have been exposed to these, then you get this type of cancer. It creates a rebuttable presumption that you have a type of cancer as a result of your employment as a firefighter.

The last change is in section 1, subsection 7, which changes the length of coverage for the period of time after you leave the job. Through research it was found that many of these cancers metastasize at different rates; many of them metastasize after your employment ends. The statute currently says you have 60 months of coverage after you leave employment—three months per year, up to 60 months maximum. Many of these cancers metastasize well after that time period.

In 2015 we worked with Senator Settlemeyer on the heart and lung language to change the length of time firefighters and police officers were covered for heart and lung conditions after they left employment. The contention from Senator Settlemeyer was that the people who have been there the longest deserve to have the longest coverage, not the guys who just come for a few years then move on. The proposed language in this bill would mirror the language currently in statute for the heart and lungs, so all three of those occupational diseases would have the same level of protection. That was our intent when we made these changes.

**Chair Spiegel:**

A childhood friend's dad died of lung disease complications. I have seen the devastation this causes on families of firefighters and know just how important this is. I want to also thank you for your service and the service of the firefighters in this state. Most of us run away from fires and you run towards them—we owe you for that.

**Assemblywoman Neal:**

In section 1, subsection 2, paragraph (s), I read the existing statute and I understand there are risks with this job. What data did you put in the record for the rectal cancer?

**Todd Ingalsbee:**

We used a National Institute for Occupational Safety and Health report that studied over 1,000 fires and found out that 98 percent of those fires contained these carcinogens. We also looked to our International Association of Fire Fighters, who have been tracking and studying this for the last several years to see where there were spikes in cancer. That is how we got the numbers of carcinogens attached to the cancer. We hope to have this legislation on a federal level. Legislation on a federal level has been passed to track this; the bill was passed in Washington, D.C. Hopefully, we will have more data by the next time this comes around so we will have more specific numbers. This was all based on studies that we have.

**Assemblywoman Neal:**

Could you send me the research? I did not see any information on how the diesel exhaust, soot, and formaldehyde turns into a cancer-causing agent. For my own information, I would like to know how it reaches into the other parts of the body. Clearly we are all at risk if diesel exhaust is something we are encountering at that level—I just want to see the research. You can email me a link.

**Rusty McAllister:**

There are numerous studies completed and we will provide you with them. The International Association of Fire Fighters recently completed a lengthy study of tens of thousands of firefighters. This study spanned 40 years in the cities of Philadelphia, Chicago, and San Francisco. Every firefighter within those three cities was tracked for 40 or 50 years—they even went back and found the firefighters who were retired. The study tracked what types of cancers the firefighters were susceptible to. The list of chemicals are on the International Agency for Research on Cancer and the National Toxicology Program—every one of the chemicals is a recognized carcinogen we are exposed to during the course of our career. Any fire you go into, some or all of these chemicals can be present. One thing I forgot to mention, the changes made to this legislation are prospective in nature only. They are not retrospective. As an example, I am already retired from the fire department and knew what my benefit was when I left—I am covered for 60 months. This is only for those firefighters who will be employed in the future. Again, it is prospective in nature, not retrospective.

**Assemblywoman Jauregui:**

These new cancers are not currently covered at all, so if a firefighter retired and later developed pancreatic cancer, they would not be entitled to any sort of compensation. Currently it is just bladder, brain, colon, kidney, liver, hematopoietic, malignant melanoma, prostate, testicular, and thyroid—the others would all be additional.

**Todd Ingalsbee:**

That is correct. They were additional cancers based on the most recent studies and the most recent effect that we are seeing the carcinogens directly connected to these cancers. If Rusty came down with pancreatic cancer now and it is past his 60 months, he would not be covered.

**Assemblywoman Jauregui:**

If this moves forward, it would not be retroactive for anybody who developed any of these cancers prior to this being passed.

**Todd Ingalsbee:**

The bill passing on July 1, 2019—it would take effect from that point forward.

**Assemblyman Kramer:**

I recognize the work you do and the risks firemen take, but I think you still have to recognize everybody dies of something, and a lot of people die of cancer who were never firefighters. Some firefighters, or at least one in the whole world, must have come up with cancer that was not caused by fighting fires. As good as your argument is, I think you are ignoring that and saying, No matter what cancer you come down with, no matter when you come down with it, you want to be compensated as though it was a work-related cancer. It seems like that just stretches it a step further than I think the statistics would show; that is my difficulty with this bill.

**Assemblywoman Tolles:**

I appreciate it is separate but similar of putting yourselves on the line for us. I feel like you are our veterans and we want to take care of you. I appreciate your concern with this and some of the statistics you presented at the beginning. In section 1, lines 13 and 14, in addition to firefighters or fire investigators, you also include instructors or officers for the provision of training. How are they exposed to these chemicals in the instructing environment?

**Todd Ingalsbee:**

Most of these people come up through the ranks. They start out going through the same fire academy that I go through, and these positions are through promotions. They could have a career of 20 years and then a spot came open to be an instructor of hazardous materials or an instructor to teach at our academies. Therefore, they have been exposed to the same carcinogens we are exposed to for their whole career. They are also teaching fire training to our new recruits and new cadets. The only way they can do it is by going into live training burns where we are in control, but obviously there are lots of carcinogens in those trainings. The fire investigators go in to discover the cause of the fire and everything is still off-gassing during that time—that is why we put those people in the bill as well.

**Assemblywoman Neal:**

Inmates are used as volunteer firefighters. Is that a volunteer envisioned under this bill? Or are they not considered volunteers?

**Rusty McAllister:**

In my early life, I was a crew foreman taking crews out on a daily basis to work the wildland fires. You are correct; they work building fires and wildland fires. I do not know the definition contained within this bill; it never has considered them to be volunteers.

**Wil Keane, Committee Counsel:**

The volunteers to be covered by this provision are in section 1, subsection 1, paragraph (a), subparagraph (1) and subparagraph (2), states, "Acting as a volunteer firefighter in this State and is entitled to the benefits of Chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145." *Nevada Revised Statutes* (NRS) 616A.145 is the definition of volunteer firefighters; it is contained in a different chapter, but it applies. It is defined as, volunteer firefighters who belong to a regular organized and recognized fire department, while engaged in their duties in any voluntary community service which they may undertake, and while acting under the direction of the fire chief or any of the assistants of the fire chief in the protection of life or property, during fire, flood, earthquake, windstorm, ambulance service or other rescue work. If those people are volunteers, they shall be deemed employees of the town for purposes of workers' compensation. The key part is, volunteer firefighters belonging to a regular organized and recognized fire department.

**Assemblywoman Carlton:**

We have had a lot of conversations in the past, especially with Senator Goicoechea, about the physical exams to be taken; the volunteers taking the exams; the cost to the county. I believe there is an exam upon hiring; and there is an annual exam every year. To Assemblyman Kramer's point, those exams would hopefully give us some indicator if there was a problem. What you are saying here is, because of these chemicals and how carcinogenic they are, even if they had a yearly exam something could still happen in that year. I have heard about some of these guys being exposed, a couple months later they are sick, and a couple months later they are gone—it is that fast and that bad. I think it would be good for the community to understand the exam process and how we make sure they get the physicals.

**Rusty McAllister:**

You are correct. There is a physical exam process that is required on an annual basis to qualify for heart and lung benefits. It includes blood test, hearing test, eye test, lung test, physical fitness exams through VO<sub>2</sub> max, treadmill, and ultrasound. All that is done during an annual physical. It is done before they start employment; it is not an exam conducted on inmates when they perform on a wildland fire crew. They do what is called a Step Test where they step on a box that is a certain height for five minutes and they test their heart rate before and their heart rate after and their blood pressure. If they fall within a certain range they qualify, if they do not, they are not put on the crew.

The department I worked for has a doctor who is employed by the city who conducts those exams. He received an ultrasound machine. He wanted the ultrasound machine to look at carotid arteries, aorta, liver, and kidneys, to make sure there was no problem, and while he was there he started looking at thyroids. One of the reasons we added thyroid cancer years ago was that just out of my department alone—the rate for thyroid cancer I think is somewhere in the range of 1 in 70,000 people—out of those exams, we had 13 of our guys who had thyroid cancer out of 500. The numbers speak for themselves. Some of them were severe cases of thyroid cancer; most of them had their thyroids removed. Two of them had to go to MD Anderson Medical Center and had massive surgeries—it had grown into their lymph nodes. Along those lines, the workers' compensation system, through some of the



courts who have looked at these things, has chosen to side with the employee in cases where you can find ten doctors who say, It was not as a result of the job, and the other side can find ten that said, It is. The courts have chosen to side with the worker to say, It was a result of the job.

Added into these cancers are three primary to females—ovarian, breast, and uterine cancers. The only breast cancer case I know of that was accepted for a female firefighter was in the state of Nevada. The employer of the female firefighter fought the case all the way to the Nevada Supreme Court. The Nevada Supreme Court looked at all the evidence and ruled in favor of the female firefighter for her breast cancer. The other part we want to make sure we get on the record is, once you leave the job—it is put into the statute just as it was for the heart and lung benefits—the only benefit you are entitled to is medical care. You do not get any type of a permanent or partial disability, there are no disability payments after you leave employment—it is purely for medical care.

**Assemblyman Yeager:**

I was looking at the iterations of the bill and it looks like the original bill included police officers. I see it was taken out by an amendment in the Senate Committee on Commerce and Labor. Do you know why police officers were removed from the bill? Having not had a chance to look at the Senate Committee on Commerce and Labor minutes, I just wanted to know what the rationale was.

**Todd Ingalsbee:**

We worked with those in opposition and basically came to an agreement. The current NRS allows police officers to file a claim through a C1 [workers' compensation form] if they have an exposure. If they come down with a cancer specific to those carcinogens at a call, whether they went into a burning building, a meth lab, et cetera, they still have the ability to file a claim. We removed police officers because of the opposition.

**Assemblyman Yeager:**

As the bill exists today, all of the blue language is the new additional language added for the different types of carcinogens and cancers. If we enacted this particular bill, would police officers still be able to seek coverage, which you suggested they can do now, for the new kinds of things added in this bill?

**Todd Ingalsbee:**

That is correct. They would have the same coverage extended to them.

**Chair Spiegel:**

Is there any testimony in support of S.B. 215 (R2)?

**Thomas D. Dunn, District Vice President, Professional Fire Fighters of Nevada:**

We are here in support of this legislation; we brought it forward and we are sponsoring it. I wanted to answer a couple of questions from the Committee. The reason we have these specific cancers listed, as well as a couple of references to where to find what those

carcinogens are, is there is no safe exposure level recognized by the federal government or the International Rescue Committee for exposure to a carcinogen. What we are seeing specifically to firefighters, after the course of their 20- to 30-year career, it is the total exposure you have received your entire lifetime. Mr. McAllister talked about his department having had issues with thyroid cancer. Several years ago we had an issue where, in a very short amount of time, ten firefighters were diagnosed with prostate cancer—out of the blue. They were definitely younger in age—in their 40s—when they were diagnosed, so there was a spike there. Along with that, specific to some of the cancers, we had a retired firefighter who testified six months after his presumption dates under statute had expired, he was diagnosed with breast cancer. His was directly tied to the job based on his exposure limits. Another fact: it is not only through breathing it, it is also because of the high temperatures we are dealing with when we go into a structure fire or car fire. For every five degrees increase in ambient air temperature, the absorption level to our skin increases 400 percent. It is based on the exposure through our hoods, and as our skin starts to swell and sweat we get a lot of exposures. There are studies being conducted on how to improve our safety gear and protective equipment to ensure we are addressing those occupational safety and health issues, but we are not quite there yet.

**Scott A. Edwards, President, Las Vegas Peace Officers' Association:**

We represent the corrections officers and sergeants at the City of Las Vegas Detention Center, and I am a proud member of the Nevada Law Enforcement Coalition. We are here in support of this bill. I had a close friend die from cancer which was directly related to his job as a corrections officer, so this is near and dear to me. As the father of a Las Vegas firefighter and three metro police officers, I ask you to support this bill.

**Mike Ramirez, Director of Government Affairs, Las Vegas Police Protective Association Metro, Inc.:**

We thank the Senator for bringing this forward. As mentioned earlier, we were in the discussions with the amendment and we are here to support the bill.

**Jason Mills, representing Nevada Justice Association:**

We are in support of S.B. 215 (R2). As I practice in the field, I heard Mr. McAllister's and Mr. Ingalsbee's testimony and agree wholeheartedly with what they said, particularly with how it applies from a legal standpoint.

**Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:**

We are here in support of S.B. 215 (R2). We believe this is a highly compelling bill for firefighters and fire investigators; and do not forget it is an extremely compelling bill for female investigators and firefighters. It has never been recognized in the statutes before—it is going to be now.

**Chair Spiegel:**

Is there anyone to testify in opposition to S.B. 215 (R2)?

**Les Lee Shell, Chief Administrative Officer, Office of the County Manager,  
Clark County:**

I would like to take the opportunity to thank the sponsor and the stakeholders of this important bill. I am happy to say that we worked closely together to iron out a number of our concerns and issues and only have one remaining issue which is in section 7—the extension of the post-retirement benefit. Even in this reprint, there was an additional change that had an incorrect date for that additional benefit. We remain concerned about the move from the 60-month anchor to the lifetime coverage. The current structure of our program does not contemplate the long-term liability. We are running a workers' compensation program that covers multiple employees, and our concern is always to balance the coverage. One of our primary concerns is our ability to get and maintain what is called excess workers' compensation coverage, which is required by statute. We have had a struggle getting that coverage over the last couple of years. Underwriters have told us it is primarily due to the exposure for presumption. We appreciate the movement and are in support of adding those additional cancers. To answer Assemblywoman Jauregui's question, this is not an exclusive list, and we do consider claims outside of this list if we believe there is an occupational relationship—if the claim comes to us that way. Even with this list, if there were other cancers we would consider them as well.

**Dagny Stapleton, Executive Director, Nevada Association of Counties:**

I want to echo the comments of Ms. Shell and also reiterate that our members care about the health safety and needs of county emergency responders, especially when they are at risk for the work they do on behalf of the public. It is the right thing to do to pay those claims connected with the everyday risks those individuals are exposed to—this goes for our urban counties as well. As you heard from Clark County, as well as the 15 rural counties, many of which are insured by the Public Agency Compensation Trust, a nonprofit risk-sharing pool serving public entities. We remain opposed also, but just in regards to section 7, the post-retirement portion which would extend it to a lifetime benefit if the first responder worked more than 20 years and retired after the implementation date in the bill. Especially in the rural areas, there is a disproportionate impact to the extension of the benefit in this way. We are also concerned about the ability to get the excess coverage that Ms. Shell mentioned.

**Chair Spiegel:**

Does the rebuttable presumption help with that? I would think that it would. Do you have letters from any carriers that documents the challenge you have had?

**Les Lee Shell:**

Yes, rebuttable presumption would obviously assist us. Again, when you spoke earlier about our active employees, we do the baseline physical as well as the annual physical, so we are working our way through those. We always argue that we never really want to get a claim, we want to try to avoid them—we are working through it. I can get you some information from our carriers for our last renewal that give that indication.

**Dagny Stapleton:**

I can get that information as well about the excess coverage from POOL/PACT, the rural county insurer.

**Shani J. Coleman, Deputy Director, Office of Administrative Services, City of Las Vegas:**

We share the same concerns represented by Clark County and the Nevada Association of Counties in regards to the lifetime benefit. I want to address Assemblyman Kramer's comment. Over a lifetime, the American Cancer Society says one in three adults will have a probability of obtaining cancer; one in eight women will develop breast cancer; and one in nine men will develop prostate cancer. We are looking at S.B. 215 (R2) as something related to workers' compensation. How do we delineate the difference between something they will probably get over their lifetime versus something specifically related to their job?

**Chair Spiegel:**

I have some questions for you from the Committee; and I would also ask you for a letter documenting any challenges you have had getting excess coverage as well.

**Assemblywoman Carlton:**

Using the American Cancer Society numbers is kind of like comparing apples and oranges. The normal person does not have a level of exposure to these carcinogens that other people have. As a waitress, I had to go through many trainings because of all the chemicals in the hotels. There were signs everywhere and places I could not go because there were certain chemicals. We keep everyday people away from those chemicals, but we send these people in to be exposed to those chemicals. I am not sure if using American Cancer Society numbers is fair as far as what would normally happen to someone. On this dais here, I am sure there is a percentage of cancer survivors. It is not the same as when your job is going in to deal with these things. I would have concerns about using that particular data set.

**Assemblywoman Neal:**

I am critical, too, but at the end of the day, since the hearing started, I looked up the information. There is a San Francisco study which says there are new building materials and upholstery that cause tons of carcinogens people did not even imagine would be in mattresses and other things. While I was reading all this information, I already knew this was a hazardous position to begin with, but it seems to be super hazardous now that there is new construction and the way things are being created. I hear what you are saying, but I thought about this and I just realized this is a job that will ultimately kill somebody. If you do not like the 60 months and you do not like the lifetime, what is your middle? I have never wanted to be a firefighter, but I understand if you are choosing to be a firefighter you are choosing to place yourself in a super hazardous environment. If all of these studies are coming up that say the new materials that people are constructing things with is making it worse to walk into the building and put out the fire, what do we do? I know you are

representing a city, but I just think we need to be a little more empathetic. I already had empathy, but I wanted to know what was going on with these extended cancers. Seeing that there is research that supports the extended cancers because of the materials, you need to figure out something.

**Shani Coleman:**

I do not disagree with anything anyone has said. You are absolutely right, Our firefighters do a tremendous job. All of us have increased exposures. Those mattresses throw off dangerous things when they are burned; are we 100 percent sure they are not throwing off dangerous things when we are sleeping on them? We are all exposed to more carcinogens than we have been over the years. I do not want to diminish anything our firefighters do and am proud of the service they provide. I am just questioning how we create a difference between something work-related from something not work-related.

**Assemblywoman Tolles:**

I am looking at the language and it sparked a thought. Where it mentions breast cancer, I come from a long line of women with breast cancer and I know they have genetic testing to see if you are predisposed to breast cancer. On page 5, lines 14 through 16 [section 1, subsection 5], it says, "disabling cancer is rebuttably presumed to have arisen out of and in the course of the employment of the person if the disease is diagnosed. . . ." Not being a lawyer, I looked up rebuttable presumption which says, a particular rule of law that may be inferred from the existence of a given set of facts that is conclusive, absent contrary evidence. Can I assume if that person develops breast cancer and they also have that genetic line, it would be discussed in the process of whether or not they were eligible? But if they did not, then we would look to the list of factors that show they were being exposed to carcinogens. My point is the backstop—how do we determine whether or not it is? The exposure to the carcinogens versus some other factor is written into the law and would be a part of this process, so it would address the concern.

**Les Lee Shell:**

Absolutely, those are all considerations when we receive a diagnosis. As an administrator of the program, we are relying on the medical evidence being provided to us in order to make a claim. There are abilities for us to look into it and decide if there is a genetic predisposition. The doctor provides us with the evidence, then we can consider it. It gets really grey, and that is why we have the whole hearing administrative process. We sometimes end up in court disagreeing over what the medical records say and what they indicate. It is not as clear cut as it could be for us at Clark County. I looked back at the records for the last three years; we had two denials for these cancer claims—those were ultimate denials because it initially presented as a cancer and, subsequently it was not a cancer. It is very difficult to say those are not exposures you had during your occupation. I think it becomes tricky post-retirement, while you are an employee. I am not going to argue that these things do not manifest over the course of time. I have my own personal experiences with cancer, occupationally-related

as well. While you are an active employee we are annually testing you. Once you retire there is a period of time—our average age of retirement is 47.5 in Clark County—where you could have a secondary career that could have secondary exposures. There are a lot of complicating factors.

**Assemblywoman Tolles:**

I guess the point I am trying to make is there is a process put in place. To me this bill just adds a lot of clarification to the process on behalf of our firefighters.

**Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association:**

While we recognize that our firemen are pillars of our society, we also recognize this bill will be costly for our local governments. Ultimately, taxpayers potentially have to foot the bill, either through a decrease in services or an increase in revenue where available.

**Assemblywoman Carlton:**

Along those lines, let us look at this holistically—these are citizens of the state. Sometimes they are required to live in the jurisdiction where they work and sometimes they are not. They are taxpayers in those jurisdictions, so they deserve some of the benefits of being a taxpayer in that jurisdiction. The jurisdiction denies the benefit, therefore their private insurance picks it up—anyone in that insurance pool ends up paying for it. If they do not have private insurance, they end up on Medicaid. We have seen many times where health bills will bankrupt families. Therefore, they end up with taxpayer dollars through Medicaid. When you are talking about health care and health care dollars, it is not just a hard line. If you deny them and say taxpayers should not pay for it here, somewhere along the line someone else is going to pay for it; that is how insurance works. Everybody pays into the pool and when someone gets sick they get to use the benefit they paid for.

Just on a side note, the exact same comments were made when these provisions were put in as rebuttable presumption. We discussed these previously in the Senate when they were revised; also in the Assembly, and the same excuses were used. I have not seen Clark County, or any of the other cities, come before us and tell us how horrible this has been. There are some jurisdictions who are still buying \$15,000 palm trees. I really do not get the concern on providing benefits to someone who is very ill and their family has to deal with a sick family member.

**Dalton Hooks, representing Nevada Self Insurers Association:**

I want to join the comments that were made by Ms. Shell and the other opponents, but I also want to address that I agree with Assemblywoman Carlton. We have to look at the bill holistically. Like Mr. Mills, I am a practitioner in this area and I am a lawyer—this is what I do day in and day out. Holistically, it is important to remember where we are in the act. The workers' compensation act is intended to address work-related injuries. As the Nevada Supreme Court has said in its pronouncements on this, it is not a panacea nor is it intended to address every health concern. With respect to the comments made by Ms. Shell regarding

the lifetime benefit for those who have 20 years of service, the Committee needs to understand, you may be transmuting the workers' compensation act—which is intended to address injuries that arise out of the course and scope of employment—into general insurance—which is not what it is intended to do.

With respect to our firefighters, I join with everyone in respecting the work they do and valuing their heroism. My own daughter is intending to be a firefighter. When she does that, looking holistically at how she will be protected, it is not simply this act—there is also the Occupational Safety and Health Act. There were questions about newer materials in mattresses and other building materials, and what the exposures are from those. Unlike the cocktail waitress, when she goes into a fire she will not be going in unprotected. It begins with engineering controls which will include personal protective equipment, such as self-contained breathing apparatus. There is going to be testing—part of the testing you referred to earlier—in terms of pre-employment and ongoing testing to make sure we identify those exposures. There is a 360-degree net of protection and it does not all come from the workers' compensation act. You also have private insurance, which my daughter will get through her employment when she becomes a firefighter. The question is, where does that belong?

With respect to the balance issue, again we want to be sure there is protection for these heroic workers. There was a question whether the list of cancers is complete and whether someone who was exposed to a chemical on the job and later developed a disabling cancer would be protected for police officers or firefighters; the answer is yes. It does not matter what the cancer is, whether it is enumerated in this list, whether it is enumerated by the National Institute for Occupational Safety and Health as a cancer, or the International Agency for Research on Cancer, which you have in the act as well. Any cancer that arises out of the employment can be compensable under this act—irrespective of whether you are a firefighter, police officer, nurse, or a waitress.

What we are looking at here is shifting the burden every claimant bears to establish that the claimant's cancer, whatever the condition is, arose out of the employment. What we have decided to do here is to switch the burden. If it is an exposure to one of the toxins enumerated, you get a rebuttable presumption that it arose out of your employment. The reason we do it for firefighters is with the example of a burning mattress. You are not going to be able to pinpoint what specific chemical came out of the conflagration that caused the potential cancer. The rebuttable presumption is a good tool to address it. The issue comes, when the rebuttable presumption turns into a lifetime entitlement to general insurance, rather than workers' compensation insurance, which did not arise out of the employment. For those reasons, the Nevada Self Insurers Association joins with the counties and appreciates the work done to improve this bill dramatically, but for those reasons we will oppose.

**David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:**

I am going to echo the concerns we heard from the Nevada Self Insurers Association, the counties, and the municipalities. The Las Vegas Metro Chamber of Commerce comes at this with the concern that we hold for all additional liabilities counties and municipalities are taking on. We do have the concern of moving from the 60 months to the lifetime coverage, and for the long-term fiscal impact that is going to have.

[([Exhibit C](#)) was submitted but not discussed.]

**Chair Spiegel:**

Is there anyone to testify in neutral to S.B. 215 (R2)? [There was no one.] We will close the hearing on S.B. 215 (R2), and we will open the hearing on Senate Bill 381 (2nd Reprint).

**Senate Bill 381 (2nd Reprint): Revises provisions relating to workers' compensation. (BDR 53-1157)**

**Jason Mills, representing Nevada Justice Association:**

I would like to thank you for your time to hear Senate Bill 381 (2nd Reprint). I would also like to thank Senator Cannizzaro for sponsoring and bringing this bill, and I would like to thank the majority stakeholders in the industry who participated and worked hard with us to make this compromise in legislation. Those stakeholders included the Nevada Resort Association, Nevada Self Insurers Association, and organized labor.

I want to explain the two primary issues this bill addresses; specifically, adequate choice of doctors to treat an injured worker and, by providing that adequate choice, it will result in faster treatment to the injured workers which should translate to being able to return to work faster, thereby meaning saving costs to insurers and employers throughout our state. Existing Nevada law, specifically *Nevada Revised Statutes* (NRS) 616B.5273, already requires every insurers' provider panel list contain an adequate choice of doctors for the treatment of an injured worker's claim—that law has existed for many years. However, the problem is that it is not defined. Adequate choice is not defined in our statutes and adequate choice is not defined in our regulations. Also under existing law, the Nevada Division of Industrial Relations (DIR), within the Department of Business and Industry, has maintained a panel of treating doctors who have demonstrated an interest in treating Nevada's injured workers by agreeing to follow the Nevada workers' compensation statutes and regulations, and they will never charge more for their services based upon the existing Nevada medical fee schedule, which is also adopted by statute and existing regulation already in place.



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

**Eightieth Session  
June 3, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:50 p.m. on Monday, June 3, 2019, behind the bar of the Assembly.

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen B. Spiegel, Chair  
Assemblyman Jason Frierson, Vice Chair  
Assemblywoman Maggie Carlton  
Assemblyman Skip Daly  
Assemblyman Chris Edwards  
Assemblywoman Melissa Hardy  
Assemblywoman Sandra Jauregui  
Assemblywoman Susie Martinez  
Assemblyman William McCurdy II  
Assemblywoman Dina Neal  
Assemblywoman Jill Tolles  
Assemblyman Steve Yeager

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Al Kramer (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Patrick Ashton, Committee Policy Analyst  
Kelly Richard, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Karen Easton, Committee Secretary  
Katelyn Malone, Committee Secretary

**OTHERS PRESENT:**

Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada



**Chair Spiegel:**

[Roll was taken.] We will open the work session on Senate Bill 215 (2nd Reprint).

**Senate Bill 215 (2nd Reprint): Revises provisions relating to occupational diseases. (BDR 53-317)**

**Patrick Ashton, Committee Policy Analyst:**

[Read from ([Exhibit C](#)).] Senate Bill 215 (2nd Reprint) provides that disabling cancer is rebuttably presumed to be occupationally related and compensable if a firefighter, investigator of fires or arson, instructor or officer who provides training concerning fire or hazardous materials, or volunteer firefighter has served in such a capacity for five years or more before contracting the disease and demonstrates certain factors. The bill revises the list of substances that are deemed to be known carcinogens. Finally, the bill provides that a person who files a claim for a disabling cancer after retirement from employment as a firefighter, an investigator of fires or arson, or an instructor or officer who provides training concerning fire or hazardous material, is not entitled to compensation for that disease other than medical benefits under certain circumstances. There are no amendments to the bill.

**Chair Spiegel:**

Is there any discussion on the bill? [There was none.] I will entertain a motion to do pass.

ASSEMBLYWOMAN CARLTON MADE A MOTION TO DO PASS  
SENATE BILL 215 (2ND REPRINT).

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN KRAMER WAS ABSENT  
FOR THE VOTE.)

We will close the work session on Senate Bill 215 (2nd Reprint) and open the work session on Senate Bill 381 (2nd Reprint).

**Senate Bill 381 (2nd Reprint): Revises provisions relating to workers' compensation. (BDR 53-1157)**

**Patrick Ashton, Committee Policy Analyst:**

[Read from ([Exhibit D](#)).] Senate Bill 381 (2nd Reprint) establishes the substantive right of an injured employee who has a claim under the Nevada Industrial Insurance Act to choose a treating physician or chiropractor. The bill requires an insurer to include a certain number of physicians or chiropractors on its list from the panel of health care providers established and maintained by the administrator of the Division of Industrial Relations of the Department of Business and Industry.

The bill prohibits involuntary removal of a physician or chiropractor from an insurers list, except under certain circumstances, and authorizes a physician or chiropractor to voluntarily

EXHIBIT C

EXHIBIT C

Local Government Responses  
AB521 / BDR 53 - 278

City/County: **City of Henderson**

Approved by: Carol S. Turner, Accountant - Special Projects

Comment: The proposed bill will have a fiscal impact on the City of Henderson. For our 188 fire personnel, the City will incur additional medical costs of the thyroid exam (\$150 per Fire employee each year) and prostate-specific antigen tests (\$37 per Fire employee each year). Due to the proposed bill's removal of the 5 year service requirement, we estimate the City will incur one additional claim per year. Heart/Lung/Cancer claims range from a \$1.5 million cancer claim for some to \$200,000 for medical treatment for a 70 year old with cancer who happened to spend 10 days as a fire fighter in his youth.

Impact	FY 2008-09	FY 2009-10	FY 2010-11	Future Biennia
Has Impact	\$0	\$1,035,156	\$1,035,156	\$2,070,312

City/County: **City of North Las Vegas**

Approved by: Jackson Wong, Financial Analyst

Comment: The enactment of AB521 will have a significant long-term negative fiscal impact on the City of North Las Vegas. As written, the bill calls for the elimination of five year employment requirement for a full-time or volunteer firefighter as covered under Chapter 617 of NRS for occupational diseases. Additionally, this bill also requires each firefighter who qualifies for coverage for cancer as an occupational disease to submit to an annual physical examination at the expense of the employer. In the current fiscal year, the City of North Las Vegas has already spent \$110,920 on annual physicals for 188 firefighters. Additional testing to include a thyroid ultrasound scan and a prostate-specific antigen on an annual basis would increase the cost to \$126,900. Furthermore, the potential financial liability for the City will be significant in the future years if every firefighter is covered for occupational diseases regardless of years of service. With that said, the position for the City of North Las Vegas is "OPPOSE" on AB521 as this bill will have a significant long-term negative fiscal impact on the City.

Impact	FY 2008-09	FY 2009-10	FY 2010-11	Future Biennia
Has Impact	\$0	\$0	\$0	\$0

City/County: **Las Vegas**

Approved by: Susan Hauht, Administrative

Comment: Passage of this bill would have significant fiscal impact on the city of Las Vegas. This bill eliminates the requirement that an individual have worked as a firefighter for 5 years in order to be entitled to presumptive coverage under workers' compensation. Theoretically, an individual could be hired on Monday, diagnosed on Tuesday and covered for the rest of their life (at an estimated cost of \$1.4 million). This bill would put the City in the position of actually being required to pay over \$40,000 a year (tax-free) for their lifetime (with an annual cost-of-living adjustment), and then possibly the lifetime of their spouse, even if they had only worked for us for one day.

City/County: <b>Las Vegas</b>				
Impact	FY 2008-09	FY 2009-10	FY 2010-11	Future Biennia
Has Impact	\$40,000	\$40,000	\$40,000	\$40,000

City/County: <b>Reno</b> Approved by: RMILLER, INTERN Comment: Testing costs - additional \$77,000 annually; additional claims costs approx \$75,000 per claim				
Impact	FY 2008-09	FY 2009-10	FY 2010-11	Future Biennia
Has Impact	\$77,000	\$77,000	\$77,000	\$77,000

City/County: <b>Carson City</b> Approved by: Nickolas A. Providenti, Finance Director Comment: This could have an effect on Carson City with the possibility of additional premium costs in the future.				
Impact	FY 2008-09	FY 2009-10	FY 2010-11	Future Biennia
Has Impact	\$0	\$0	\$0	\$0

City/County: <b>Clark County</b> Approved by: Ed Finger, Comptroller Comment: This bill proposes to: 1. Remove the requirement that a firefighter be employed for 5 years before cancer is considered an occupational disease; 2. Makes skin cancer, prostate cancer, testicular cancer, and thyroid cancer diseases reasonably associated with firefighting; 3. Require annual testing which is to be paid for by the employer. This proposal will have a significant impact. The costs associated with cancer treatment is unknown as there are too many unknown factors. However, the annual costs for testing is as follows: Tests under the Nevada Medical Fee Schedule is \$445.83 each. Total number of Firefighters is 719. Total number of Volunteer Firefighters is 391. Grand Total is 1,110 times the cost of test: Thyroid Ultrasound Scan \$445.83 =  Cost per year of test = \$494,871.30				
Impact	FY 2008-09	FY 2009-10	FY 2010-11	Future Biennia
Has Impact	\$0	\$494,871	\$494,871	\$989,742

City/County: <b>Churchill County</b> Approved by: B T Goetsch, Co Manager Comment: Huge increase in coverage area that is already headed for potential disaster with heart lung coverage. No increased benefits or abatements which cost tax dollars should be considered until Nevada has a comprehensive, sustainable tax strategy and can pay existing obligations.				
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City/County: <b>Churchill County</b>				
<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
Has Impact	\$10,000	\$18,000	\$32,000	\$100,000

City/County: <b>Douglas County</b> Approved by: Darcy Worms, Human Resources Manager Comment: Instead of requiring local government agencies to continue to pay for these unfunded mandates, why doesn't the legislature mandate that firefighters and police/deputy sheriffs are required to be non-smokers? Smoking causes cancer and local government agencies and their workers compensation carriers continue to pay for cancer related claims for firefighters and deputy sheriffs that smoke.				
<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
Has Impact	\$0	\$74,329	\$76,000	\$152,000

City/County: <b>Esmeralda County</b> Approved by: NANCY BOLAND, COMMISSIONER Comment: Exam Cost estimated at \$300/firefighter for 09-10, \$325 per for 10-11, and \$350 per for future biennia.  Travel, meals estimated at \$188/firefighter throughout as tests required are not available locally.  Assumes 15 volunteers for 4 departments in county				
<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
Has Impact	\$0	\$7,320	\$7,695	\$10,890

City/County: <b>Lander County</b> Approved by: rhill, L.C. Finance Dir. Comment: Would have a fiscal impact by adding the additional testing to their yearly physicals.				
<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
Has Impact	\$0	\$0	\$0	\$0

City/County: <b>Lincoln County</b> Approved by: jlovelady, County Mgr Comment: Possible overall increase in insurance cost and additional cost to the County for physical exams required in bill.				
<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
Has Impact	\$0	\$0	\$0	\$0

City/County: **Nevada Association of Counties**

Approved by: Wes Henderson, Government Affairs Coordinator

Comment: Would impact counties if insurance costs were increased as a result of mandated coverage and/or claim approval

<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
Has Impact	\$0	\$0	\$0	\$0

City/County: **White Pine County**

Approved by: charlie Rodewald, finance director

Comment: No Impact

<b>Impact</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

The following cities/counties did not provide a response: Nevada League of Cities, Sparks, Elko County, Eureka County, Humboldt County, Lyon County, Mineral County, Nye County, Pershing County, Storey County, and Washoe County.