

have any access to. Again, these are buried in contracts, and people do not know they are getting into them until they have a problem.

At the other end of the extreme, there is a United States Supreme Court case that said if you have an arbitration clause in your contract, that means you have agreed to that way of resolving the dispute. Therefore, you cannot use a class action mechanism to go after an illegal practice by a company that may steal a few hundred dollars from thousands of people. These arbitration clauses are now an absolute bar to those class action suits, so they continue to get away with it because it is worth no one's while to pursue them.

Our organization was involved with a bill two sessions ago that tried to take the law as far as it could back toward the consumer in this area. I do not know where the line is. There is some federal law here that preempts some of what you can and cannot do. We had a bill that covered right up to the line, and it was vetoed by the Governor at that time. It was overridden by the Assembly but not the Senate. We had national testimony that came to talk about these clauses and the difficulties there are. It also talked about the arbitrators and what small percentage of the cases they actually move for the consumer if you get in front of an arbitrator.

This is an area that we are very concerned about. There may be some limit to the ability to attack it from state law, however.

Chairman Bobzien:

Are there any questions for Mr. Sasser? [There were none.] Is there anyone else wishing to testify in favor of the bill? [There was no one.] Is there anyone in opposition to the bill? [There was no one.] Is there anyone in the neutral position? [There was no one.]

Assemblyman Aizley, we are waiting to hear from the Legal Division as to the germaneness of the amendment ([Exhibit J](#)). We will go forward from there. With that, we will close the hearing on A.B. 326.

We will open the hearing on Assembly Bill 322 and welcome Assemblyman Paul Anderson to the table.

Assembly Bill 322: Revises provisions concerning casualty insurance.
(BDR 57-1038)

Assemblyman D. Paul Anderson, Clark County Assembly District No. 13:

Assembly Bill 322 is an attempt to correct a discovery loophole that has been in statute, and it simply removes a single word from statute. In *Nevada Revised Statutes* (NRS) 690B.042, there is a term that says "private passenger car." The goal of this bill is to remove the term "private." In no other part of NRS is "private passenger car" defined; however, "passenger car" is defined. We are removing the word "private" and adding a reference to where "passenger car" is defined.

I will explain why this has become an issue. In my business we have eight vehicles that are used for our technicians. It is an information technology business, and we send people around all over Las Vegas and elsewhere to work on businesses. They are just passenger cars: small SUVs, Chevrolet Malibus, and others. However, because they are used for a commercial purpose, if my driver is involved in an accident, and a litigation proceeds, the term "private passenger car" changes the discovery rules because my vehicle was a private passenger car being used for a commercial purpose. This affects when there are medical records that need to be released. In statute it says that every 90 days each person's medical records may need to be released to each party's representatives.

Because of this disparity in the language, one party is complying with that component, and the other party does not have to comply with that component, or at least using the language as a loophole. Oftentimes, this potential litigation is sitting on the books for up to two years, running up to the statute of limitations, and all of a sudden a bomb is dropped with two years' worth of medical data released at that point, with only ten days to respond until that statute of limitations runs out.

It puts the party that is not able to gain this information in a bad situation, and it is not a fair situation. We have dubbed this the "open discovery statute" that allows for an equal opportunity for discovery of those medical records.

Again, we are removing the word "private" and leaving the term "passenger car" and referencing to the correct NRS statute that defines "passenger car." That is the summary of the bill, and I would be happy to take any questions. I believe we have some people who want to testify in support of the bill who can offer further details on the legal aspect of it.

[Submitted prepared testimony ([Exhibit K](#)).]

Chairman Bobzien:

Do we have any questions for Assemblyman Anderson?

Assembly Committee on Commerce and Labor

March 27, 2013

Page 57

Assemblyman Frierson:

We spoke about this earlier, and I appreciate you reaching out. Your explanation provided me with some clarity. Initially, I read it as "private" excluding taxicabs, and it sounds as if that is not what you are interested in addressing specifically, but more using a private vehicle for commercial purpose. Could you address what conversations you have had about the implications on taxicabs and that kind of situation?

Assemblyman Paul Anderson:

It is my understanding that this language would change it for them as well. I am not sure if that is the reason for this bill per se. It would include any vehicle being used in a commercial purpose. I would assume taxicabs, as long as they are defined as passenger cars, would be included in this statute.

Assemblyman Frierson:

I know the rules regarding taxicabs are different. There are some different statutes. To make one small change that might have some implication throughout NRS is a concern of mine if that was not necessarily what your intention was.

Assemblyman Paul Anderson:

The idea is that this statute applies to any accident and the release of medical records if there is litigation that ensues from that accident. Removing the word "private" would make it so everybody has the same discovery.

Assemblywoman Carlton:

After yesterday's taxicab marathon, we still have taxicabs on the brain. When I was looking at this, I was thinking the same thing as Assemblyman Frierson. We discussed the common carrier, carrying someone for a fee, and the different levels of liability. It was very complicated. I think when you see the term "private passenger car" it means your car, my car, the Chairman's car. There is a business passenger car, which you use for your business, and then there is the common carrier that charges a fee to move someone. I would be a little apprehensive. I do not know if you have had any discussions with anyone on that particular topic.

Assemblyman Paul Anderson:

I would appreciate any legal clarification on that. I was not there for that discussion, and I am not familiar with the three different tiers.

Chairman Bobzien:

Mr. Mundy, would you like to weigh in?

Matt Mundy, Committee Counsel:

I will read the definition from NRS 482.087, which is for the term "passenger car." It means "a motor vehicle designed for carrying 10 persons or less, except a motorcycle or motor-driven cycle." That term would capture taxicab to the extent it is not carrying more than 10 people.

Assemblyman Livermore:

We all purchase liability insurance for our motor vehicles. Does this change the classification of that? Would we pay a lesser or greater amount?

Assemblyman Paul Anderson:

I am not qualified to answer that. I would certainly have to defer to somebody who has qualifications on that side of it. I am sure there is somebody in the room who can answer that.

Assemblyman Livermore:

I would not want to cause unintended consequences.

Chairman Bobzien:

Do we have any further questions for Assemblyman Anderson? [There were none.] Let us bring up the proponents of the bill.

Nick Vassiliadis, representing Capital Insurance Group:

Assemblyman Anderson did a good job walking through the bill, so I am going to turn it over to our client, Thomas Scherff from Capital Insurance Group.

Thomas Scherff, Vice President, Claims and Special Market Development, Capital Insurance Group:

One of our companies is called Nevada Capital Insurance Company, which is domiciled here in Nevada. We have been writing insurance in Nevada for 20 years, both property and casualty. *Nevada Revised Statutes Chapter 690B* has a clear purpose to share information. It simply says the insurance company must provide specific information to the claimant and his or her attorney about their limits of coverage and any other potential coverage issue, so they know exactly what they can potentially recover. In exchange for that, the claimant and his or her attorney are asked to provide medical information to the insurance company and the consumer to allow them to better evaluate the exposure and handle the case more quickly.

The endgame of the whole sharing of information is to bring the case to resolution more quickly, fairly, and efficiently to keep it from going into litigation and into a discovery process. Litigation takes time from the Nevada courts and adds additional costs from the injured party's perspective as well as the

insurance consumer's perspective. We have been trying to get this information from the claimants' attorneys for a long time. We eventually approached the Division of Insurance and asked them to give us some assistance because it is a regulatory matter. Of course, they control the industry and the obligations to notify the other side of their limits and coverage issues.

The Division of Insurance is fully supportive of this. They have taken on the role of writing a letter to the claimant's attorney requesting they comply with NRS Chapter 690. However, they have concerns it applies only to the privately owned vehicle rather than the commercial vehicle. They are more than willing to work with us in terms of that, but they feel the law needs clarification. That is all we are trying to do. We are trying to get the law clarified. This exchange of information, which works between private passenger vehicles, should certainly be able to work with a commercial vehicle. All we are exchanging is information. There is no change of legal liability or legal duties owed. If we can get information, we can evaluate a case more quickly, more fairly, and more efficiently to get it resolved prior to litigation. I think it is in the best interests of the injured party, the insurance consumer, and the state of Nevada in the sense that we keep a lot of this out of the courts.

A "private passenger car" is a passenger car whether it is driven in a commercial environment or in a personal environment. The protections of the law would help both sides. They would get information and we would get information that would help resolve the case more quickly.

Chairman Bobzien:

Are there any questions for Mr. Scherff? [There were none.]

Robert Compan, representing Farmers Group, Inc.:

Recently, I became aware of the legislation while going through bill tracking. It seems to have struck a nerve. I remember back in 2007, we were trying to strengthen this statute with Senate Bill No. 359 of the 74th Session. It passed through the Senate but never made it out of the Assembly. We are finding the conceptual language of the statute is great, but it has no teeth in it. After 90 days, as required by statute, we ask for medical report, and the plaintiff's attorney is asking for limits of liability, so we in good faith do that. Unfortunately, since 1997, we are seeing cases where we are not getting the medical reports other than maybe an emergency room bill. The accident we looked at had perhaps \$250 worth of damage, and after two years—10 days prior to the statute of limitation—we will get a 450-page demand package asking for our policy of limits in excess of whatever they are. If we do not act within that 10 days, we are responsible for opening up our policy limits to our insurers. In that case, we could be culpable for bad faith of the first party.

Assembly Committee on Commerce and Labor

March 27, 2013

Page 60

I commend what the proponents of the bill are trying to do, because we have a large commercial book, but unfortunately, the way the statute still reads, I believe there is some leeway with the Division of Insurance, but they can only go so far. If you have to appeal to the court to get information to which you are entitled by the statute, I do not think that is the intent of the original law. This is a good statute, but it is not working because it has no teeth in it. We may be revisiting this issue in two years asking you for some reconsideration.

Chairman Bobzien:

Are there any questions for Mr. Compan?

Assemblywoman Carlton:

I was beginning to wonder if this was déjà vu or if we actually had this discussion a few years ago. I knew it was when I was in the Senate. I am having a hard time blending the issue you talked about, regarding the medical records, with the purpose behind this amendment. It is just a description of a car. I am not sure if you or someone else at the table can help me with this.

You heard us say earlier that if taxicabs are included, we have another discussion to have. I do remember the teeth issue in the statute. We had a long conversation about that.

It seems to me that redefining something will not ultimately address the issue of sharing the medical records. When you get into the discovery phase, I do not know how that blends either.

Robert Compan:

I am not going to say that every attorney is doing this. Some attorneys are very competent. When you ask for the medical records within 90 days, this would afford it on commercial accidents as well. By Nevada statute, we are mandated to set reserves, and when setting reserves, we have to show we have enough money in our bank account to satisfy our customers' exposure to bodily injury claims should they be involved in an accident. If we have a commercial driver get in an accident with \$150 worth of damage and in two years you get medical records because you have been asking for them every 90 days with no response, then there is an issue. I agree with the teeth issue, and we will have to do that. There are some attorneys who will, every 90 days, be providing you with that information whether they are medical imaging tests, treatments with a chiropractor, or whatever.

It also allows the insurance company to properly investigate the claim. If there is minor damage, they may want to hire an expert to take a look at the engineering aspect of that accident and what kind of impact it caused or could

March 27, 2013

Page 61

have caused to a body. It will work in certain cases. I am just saying there are some actors out there who are not properly abiding by the rules of the law.

Assemblywoman Carlton:

My concern is still changing the definition of the car. How does this play into the whole scenario? I do not seem to understand that.

Thomas Scherff:

Everything that was just said is correct. I am not going to disagree with anything. It does not solve the complete problem, but it does not mean that every step you take has to solve every issue out there. What this does is open up better communication to get information both from the insurance company to the claimant and from the claimant to the insurance company. This is information that must be turned over as part of the lawsuit anyway. Why would we not want to encourage that sort of open communication? We do it in a personal auto perspective, so what is the difference in a commercial auto perspective?

We are not talking about legal duties but about exchanging information, namely, the medical information being given from the claimant to the insurance company and/or the consumer. I think that would work toward a greater, quicker, and fairer resolution of claims.

Assemblywoman Carlton:

With private auto, commercial, common carriers, et cetera, there are some very bright lines there, and when we start crossing them, I think it would be best if we rereferred this bill to the Assembly Committee on Judiciary.

Thomas Scherff:

I will accept any recommendations you have.

Chairman Bobzien:

Are there any additional questions? [There were none.] Is there anyone else wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone ambivalent? [There was no one.] We will close the hearing on A.B. 322.

We will open the hearing on Assembly Bill 226. We welcome Assemblywoman Bustamante Adams to the table.

Assembly Bill 226: Enacts provisions governing certain policies of insurance, annuities and retained asset accounts. (BDR 57-588)