

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

**Seventy-third Session
May 10, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 10:25 a.m. on Tuesday, May 10, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 Maggie Carlton, Chair
Senator Joe Heck
Senator Sandra J. Tiffany

STAFF MEMBERS PRESENT:

Kelly Gregory, Senior Research Analyst
Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine M. Wittenberg, Committee Secretary

OTHERS PRESENT:

John M. Vergiels, Euphoria Salons and Day Spas
Ernie Adler, American Massage Therapy Association, Nevada Chapter
Stan Olsen, Las Vegas Metropolitan Police Department
Patricia A. Patton, L.M.T., Board of Massage Examiners, City of Reno

CHAIR CARLTON:

I now open the hearing to Assembly Bill (A.B.) 250.

Staff and I went through the bill and prepared a list of issues pertaining to the bill ([Exhibit C](#)).

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ASSEMBLY BILL 250 (1st Reprint): Provides for licensing and regulation of massage therapists. (BDR 54-733)

JOHN M. VERGIELS (Euphoria Salons and Day Spas):

There has been discussion about the massage therapists being overseen by the State Board of Cosmetology (BOC). The BOC has agreed to oversee them if that is the only way to get them licensed. We support the bill and the concept of licensing and control. We respect the views of the Las Vegas Metropolitan Police Department (Metro) and will support the subcommittee on the direction you take with this bill.

SENATOR CARLTON:

We want to ensure that we include all the public-safety measures we can as far as licensing.

I have concerns on page 16, beginning on line 6. I think the more appropriate way to handle this would be for the appropriate law-enforcement agency, upon arrest of the licensee, to notify the board. The board would then suspend the license.

KEVIN POWERS (Committee Counsel):

"... that is a reference to a business license. ... that would be suspension of a local business license and not the state license. That is why the local law enforcement agency would be involved"

SENATOR CARLTON:

Would that be the business license only?

MR. POWERS:

Yes.

ERNIE ADLER (American Massage Therapy Association, Nevada Chapter):

I think it is important that if the police department enters an establishment where there has been a "trick roll," an act of violence or sexual activity, that they be able to suspend the license immediately. This would be the same process used when someone is arrested for driving under the influence (DUI). These are dangerous situations where the public needs to be protected.

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SENATOR CARLTON:
Do you mean the business license?

MR. ADLER:
Yes and even the board license.

SENATOR CARLTON:
Law enforcement would then have to notify the board. The board would be the regulatory body which would immediately suspend the State license upon further investigation.

MR. POWERS:
... The first part of subsection 4 [of section 32] refers to the business license. ... Unfortunately on line 11, it then turns to ... the board. ... That is really an unfortunate way of drafting it. ... It should be after the suspension of a business license and the law enforcement agency reports that suspension to the board ... the board goes through its own process of determining what to do with the State license.

CHAIR CARLTON:
Mr. Olsen, would you like to provide some input?

STAN OLSEN (Las Vegas Metropolitan Police Department):
It is not a secret that prostitution is a significant problem in the massage industry. With the estimated 5,000 to 7,000 massage therapists in Clark County, even at 10 percent, there would be a lot of illegal prostitution within the massage industry. Our concern would be the amount of time between the event, when we arrest the person and the board disciplinary action taking place at a scheduled board meeting.

MR. ADLER:
On page 16, subsection 4 of section 32, line 12, it states they have 15 days to resolve the matter. I think 15 days is reasonable.

SENATOR CARLTON:
I believe Mr. Olsen's concern was how soon the suspension would go into effect upon notification from the Metro to the board.

MR. POWERS:

... We need to focus on the fact that there is dual licensure of every profession. ... The business license component would be taken care of at the local level. ... Whether or not the board acted quickly would not determine whether or not the local government could act. So the suspension of the business license would involve the business license by the local government. ... That suspension would have to be heard by the local entity that deals with business licenses for that local government. Once you report it to the board, they would deal with the State component. But, at the local level that procedure is separate and apart. ... if you don't have a business license at the local level, you cannot operate.

MR. OLSEN:

Sometimes, when we arrest a massage therapist in Clark County, they then move to a different county. If the information is not transferred because it is not a state action, they could actually begin to operate again under someone else's license, and that person would not be aware of the previous arrest.

SENATOR TIFFANY:

How long does it take for a guilty conviction?

MR. OLSEN:

A court date for prosecution takes time. Their license to operate as a massage therapist is taken at the time of arrest.

SENATOR TIFFANY:

Just because they are arrested, is their business license taken away?

MR. OLSEN:

Yes.

SENATOR TIFFANY:

What happens if they are found not guilty?

MR. OLSEN:

They will have their business license reinstated.

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SENATOR TIFFANY:

Can the license be taken, guilty or not, for 15 days?

MR. OLSEN:

It can be suspended temporarily.

SENATOR TIFFANY:

Other than the time, what is the process?

MR. OLSEN:

If a person is arrested on Friday night and sent to court on Monday with no charges filed, for whatever reason, then the revocation or temporary suspension is reversed.

SENATOR TIFFANY:

Is it automatically reversed, or do they have to go through an appeal with the city council?

MR. OLSEN:

I believe if the charges are dismissed, it is automatically reversed. If charges are still pending, the suspension stands until the charges are adjudicated.

SENATOR TIFFANY:

If the district attorney feels justified moving forward with charges, what is the process and the time it generally takes to find the person guilty?

MR. OLSEN:

It could be six months. They need to hire an attorney and prepare their case.

SENATOR TIFFANY:

Do you think it is fair to take away someone's license when they have not been found guilty?

MR. OLSEN:

The license is a privilege and not a right. It is the legal process.

SENATOR TIFFANY:

I do not think it is right to take someone's professional license when they have not received their due process.

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MR. OLSEN:

If they are engaged in prostitution while engaged in massage therapy, which is criminal activity, how can you legitimately allow them to continue their activity?

SENATOR TIFFANY:

I do not feel it is always black and white. How many cases are there where there is not enough evidence to convict?

MR. OLSEN:

I do not have that number but, can tell you that most prostitution cases are convicted.

SENATOR TIFFANY:

Perhaps, we could look at an emergency measure if we do have a massage therapy board, and under certain circumstances, they could temporarily suspend the license until a full hearing or further information was available.

MR. ADLER:

I would suggest if you are going to have an emergency suspension, it should come from the executive director of the board. This would avoid Open Meeting Law violations instead of contacting board members directly.

SENATOR TIFFANY:

That could be the answer. I do not want law enforcement to be able to take away the professional license.

MR. POWERS:

... Whether at the State or local level, if there is a ... temporary suspension of the license, upon an arrest, that person under the due process clause is going to be entitled to some post-deprivation administrative hearing shortly after the temporary suspension. It cannot last indefinitely until the court makes a determination on the conviction. There has to be some administrative component that provides due process. Even at the local level.

SENATOR TIFFANY:

I agree. We need to take into consideration Mr. Olsen's statement that they sometimes move from county to county.

MR. POWERS:

... Upon notification from the local law-enforcement agency, the executive director could issue an order of temporary suspension. ... Then you would have to have a post-deprivation hearing within a short period of time, probably 15 to 20 days, for that person to have constitutional due process.

SENATOR TIFFANY:

Could we put that in this bill?

MR. ADLER:

I think the 15-day provision is in the bill. The temporary up-front suspension from the executive director is not. All of these issues can be sorted out. As was stated earlier, the license travels with the massage therapist, and they could go to another county unless the license is suspended.

MR. POWERS:

Again, to maintain the demarcation between the local and the state jurisdiction ... the local government would suspend the business license, notify the state board, the executive director would then suspend the state license. ... There would be dual procedures going on at local and state levels but both licenses would be suspended at that point.

SENATOR CARLTON:

Mr. Olsen, my concern is that the notification occurs quickly. Do you think it is better for local government to forward the suspended-license information to the board or law enforcement?

MR. OLSEN:

I think law enforcement should be the notifying agency. We could fax a form to the board at the time of arrest.

PATRICIA A. PATTON, L.M.T. (Board of Massage Examiners, City of Reno):

If someone is an employee of an establishment, they will not have a business license.

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SENATOR CARLTON:

Then, the notification would only go to the state board. I do not think that will be a problem.

MR. ADLER:

That makes sense to me.

MR. OLSEN:

We currently fax a form to the Department of Motor Vehicles notifying them of an arrest for DUI and issuance of a temporary driver's license.

MR. POWERS:

"Does that need to be done statutorily or is that administrative procedure that the local governments follow?"

MR. OLSEN:

I believe the temporary driver's license is done statutorily.

SENATOR CARLTON:

I want to avoid too much paperwork but this may be the way to address this problem.

We have run out of time for this meeting. I would like everyone to review [Exhibit C](#) and provide us with your comments and concerns later throughout the day. We will hear this bill one more time.

MR. ADLER:

We will provide you with a list later today after review of [Exhibit C](#).

MR. OLSEN:

We will put something in writing for each subcommittee member.

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CHAIR CARLTON:

The meeting of the subcommittee of the Senate Committee on Commerce and Labor is now adjourned at 10:53 a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____