

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

**Seventy-fifth Session
February 18, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:35 p.m. on Wednesday, February 18, 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 David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

COMMITTEE MEMBERS ABSENT:

Senator Michael A. Schneider, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Assemblyman Joe Hardy, M.D., Assembly District No. 20

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Carol Allen, Committee Secretary

OTHERS PRESENT:

Dr. Renee Coffman, Dean, College of Pharmacy, University of Southern Nevada
Ana Negrete

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Chris Moore, Nevada Diabetes Council
Steven Hogue
Judy Fremont
Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada;
Retail Chain Drug Council
Denise Selleck Davis, CAE, Executive Director, Nevada Osteopathic Medical
Association
Gail J. Anderson, Acting Administrator, Manufactured Housing Division,
Department of Business and Industry
Tracey Woods, Nevada Housing Alliance
Michael Phillips, Manufactured Housing Community Owners Association
Ernie Adler, former Senator, Board of Massage Therapists
Lisa Cooper, Executive Director, Board of Massage Therapists
Billie Shea, Chair, Board of Massage Therapists
Brian O'Callaghan, Detective, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
George Flint, Nevada Brothel Owners Association
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada
Bridgette Dolgoff
Timothy Glenn
Janine Hansen, Nevada Eagle Forum
Janet M. Antonelli
Daniel Joseph
Carol Schutte
Kelli Storka

Chair Carlton opened the meeting with hearings on Senate Bill (S.B. 72).

[SENATE BILL 72](#): Authorizes a registered pharmacist to perform certain
screening tests. (BDR 54-376)

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8, submitted
proposed amendment 3128 to S.B. 72 to clarify the intent of the original bill
([Exhibit C](#)). She said the intent of the amendment is for a screening testing only.
She pointed out that Nevada was one of only three states not allowing
pharmacists to administer a Federal Drug Administration approved blood glucose
screening test. Under the amendment, a pharmacist would be able to instruct
patients on the proper use of their equipment by performing screening tests and
referring them to doctors if necessary. She emphasized the importance of the

word "screening." The bill would also adopt regulations over the screening tests. Newly diagnosed diabetics usually do not know how to use the blood glucose screening devices. There are 8 million undiagnosed diabetics in the United States and allowing a pharmacist to perform a screening test only, increases the likelihood that these people would be tested and referred to a doctor for diagnostics and a treatment. Chair Carlton advised she had looked through the amendment and the bill and could not find the word screening. Chair Carlton questioned whether the amendment should define the wording for health screening more clearly. Senator Cegavske agreed.

Assemblyman Joe Hardy, M.D., Assembly District No. 20, in support of the bill, added pharmacies could be another venue for patient's health evaluations. He was concerned about the liability of a caregiver administering the test and asked that the language be addressed in the bill's regulation. He said the referral to a physician was another critical step that should be included in the regulation of the bill. Senator Copeny asked about the sterile environment of a pharmacy. Assemblyman Hardy agreed there was risk of infection, and appropriate supervision was needed. Student nurses may need to be involved.

Dr. Renee Coffman, Dean, College of Pharmacy, University of Southern Nevada, submitted written testimony in support of S.B. 72 and its amendment ([Exhibit D](#)). She stated students have 132 classroom hours understanding diabetes as a disease. Dr. Coffman indicated that was the equivalent of a three semester course taken over a year and a half, plus students had over 2,000 hours in practical experience working in the field with pharmacists. Part of their training was a six hour workshop on blood glucose testing. She asserted if students could perform the blood glucose tests at health fairs as a screening, they could help diabetic patients know if their therapeutic regimen was working.

Dr. Coffman referred to the well-known Asheville project, in its eleventh year, where pharmacists are intimately involved in the screening and management of patients with diabetes and how the savings outcomes improved \$2,000 per year in the first years. By 2006, the savings were almost \$3,000 per patient, per year. Ana Negrete, a second year student pharmacist at University of Southern Nevada and the president of University of Southern Nevada Student Alliance, testified that while participating in health fairs, the students were able to set up the equipment, but not administer the screening tests on patients. Many patients would refuse to draw their own blood and not take part in the

blood screening. Dr. Coffman added pharmacists were well versed on where to refer patients who may get screened and then need insurance assistance.

Chris Moore, Nevada Diabetes Council, spoke in support of the bill. He noted 8 percent of Nevadans have diabetes and that diabetes health care has cost Nevada over \$167 million. He said the Agency for Health Care Research and Quality Age recently gave Nevada a weak to very weak performance indicator on diabetes with a control and prevention budget of only \$384,915. He quoted the U.S. Centers for Disease Control and Prevention, the Department of Health and Human Services, the National Institutes of Health and the National Diabetes Education Program's booklet entitled, *Working Together to Manage Diabetes*, a guide for pharmacy, podiatry, optometry and dental professionals, as listing these professionals as one of the first lines of defense in controlling diabetes. Mr. Moore emphasized that passage of the bill and its amendment would allow over 1,700 pharmacists to become part of the diabetic's safety net.

Steven Hogue spoke about his lack of insurance and how he obtained control over his diabetes with the help of his pharmacist and early education. He supported the bill. Next, Judy Fremont testified her pharmacist was able to identify her possible diabetes and direct her to a physician for treatment.

Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada, representing the Retail Chain Drug Council, stated the bill recognizes the pharmacist as a vital part of our health-care community. Senator Parks asked if blood glucose screening would be a free service. Ms. MacMenamin stated she believed it would just be an extension of any health conversations between the patient and pharmacist.

Chair Carlton asked if anyone was in opposition of the amended version of the intent of what the bill was supposed to do from the beginning.

Denise Selleck Davis, CAE, Executive Director, Nevada Osteopathic Medical Association, spoke on behalf of her association's concerns. Their major concern was if a patient was tested and told they were fine, when in fact, they had more risk factors and needed further treatment. They also had concern about the stress a patient may be under when taking the screening test, a patient's need for a full fasting glucose test and a patient's family and medical history. She warned a single test was not going to tell a full story. When a patient hears bad news, their comprehension goes down, by the severity of the news. Nurse

educators are specialized in diabetic training and are the people who are supposed to be teaching a diagnosed patient how to operate a glucometer. Follow-up visits are very important. Ms. Davis stated her association had no issue if the intent of the bill was to allow a pharmacist to educate a patient on how to use the testing equipment, but they were opposed to a pharmacist who might advertise he offered ongoing health screenings.

Chair Carlton closed the hearing on S.B. 72 and opened the hearing on S.B. 89.

SENATE BILL 89: Makes various changes to the provisions governing manufactured housing. (BDR 43-427)

Gail J. Anderson, Acting Administrator, Manufactured Housing Division, Department of Business and Industry, presented a summary of comments on S.B. 89 (Exhibit E, original is on file in the Research Library). She stated S.B. 89 would amend two chapters of the *Nevada Revised Statutes* (NRS). The first, NRS 489, concerns mobile homes and manufactured homes and NRS 118B deals with landlord and tenant relationships in manufactured home parks. Ms. Anderson summarized her testimony by stating the Real Estate Division, Department of Business and Industry, was bringing forth the amendments so their laws and definitions would match those of the Federal Department of Housing and Urban Development.

Tracey Woods, Nevada Housing Alliance, said they supported the bill, especially sections relating to escrow and audit.

Michael Phillips, Manufactured Housing Community Owners Association, in support of the bill, added they would like to add language to S.B. 89 in section 74 to read that in order for a person to be qualified as a certified appraiser a person must "be a licensed dealer pursuant to chapter 489 and..." then the rest of the language is correct. Ms. Anderson agreed to the proposed change.

Chair Carlton closed the hearing on S.B. 89 and opened the S.B. 119 hearing.

SENATE BILL 119: Revises provisions governing massage therapists. (BDR 54-162)

Chair Carlton disclosed S.B. 119 was one of her bill drafts, requested by the Board of Massage Therapists and had been worked on for the past year.

Ernie Adler, former Senator, Board of Massage Therapists, voiced the main purpose of the bill was for the Board to have tighter control over the action of its members and those persons practicing without a license. The Board insisted on actual licenses, not photocopies, in places of business and no false advertising. The Massage Therapy Board wanted authority to go to the Public Utilities Commission of Nevada and get a shut-off order on someone's telephone number if they had been convicted of prostitution. That would close down an illegal and dangerous operation. The Massage Therapy Board asked that administrative fines be gradually increased from \$1,000 up to \$50,000 based on the number of violations. The high end of the fines would be for those individuals conducting human trafficking. Senator Adler stated that under the bill, the Board would be allowed to administer citations, temporary suspensions, fine unlicensed persons and obtain criminal records. He added a person would be allowed to contest a citation or suspension. Failure to comply or pay fines may be grounds for removal of a license. Fines would be changed from \$1,000 per day to a flat rate up to \$10,000 per violation. Emergency suspensions of a massage therapist license could be extended up to 60 days if public health and safety is threatened by continuing operation. He offered up statistics on arrests and citations given throughout the State ([Exhibit F](#) and [Exhibit G](#)).

Senator Copening suggested the wording of S.B. 119, section 7, line 32 be changed from "has reason to believe" to "has declared" a person has committed an act. Senator Adler said the bill referred to probable cause and that the same line referred to "substantial evidence" which was a higher standard than a "preponderance of evidence." Chair Carlton stated they would check the proper wording with the bill drafter.

Chair Carlton asked for the intent of page 13, line 7, in regard to names on telephone lists. She wanted to know if they were referring to printed and Internet lists. Senator Adler said the wording was developed in consultation with the Legislative Counsel Bureau and he believed it was any directory where a telephone number appears. Chair Carlton asked if anyone could ever end up unintentionally on a list compiled by someone else. Lisa Cooper, Executive Director, Board of Massage Therapists, answered the majority of names they are looking for are purposely posted by the therapist on craigslist.

Billie Shea, Chair, Board of Massage Therapists, recalled in the last three and one-half years since the law has been passed, they have worked closely in the communities to promote better relationships with the policing agencies. She is proud of the enforcement job they are doing. Chair Carlton said the number of telephone calls she has received proves how dedicated the Board has been.

Brian O'Callaghan, Detective, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department (Metro), stated full support of S.B. 119 to identify persons arrested for engaging in sexual activity while practicing massage. The only concern Metro had was giving away the identity of an undercover police officer. Chair Carlton will have the protection of the officers written into the bill as legislative intent.

George Flint, Nevada Brothel Owner's Association reminded the Committee their association is exempt from NRS 640C.100 and wants to remain the same. He advised that there are 25 pages in the Las Vegas phone book advertising massage, that are really illegal prostitution, and he admires the Committee's attempt to curb the problem.

Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada (ACLU), stated the ACLU was not in opposition of the bill but had concerns about some of the administrative language and wanted clarification of intent. Prior to the Committee meeting, Ms. Gasca met with Senator Adler and reviewed section 233B of the Nevada Administration Procedures Act. He assured her the due process concerns she had were covered. Ms. Gasca submitted testimony ([Exhibit H](#)) requesting the Committee extend the appeal time a massage therapist has before their telephone could be turned off. Ms. Gasca reported that standard process for a cease and desist notice was three days after a citation had been mailed. Senator Adler agreed and said he would share the language for the bill with Committee Counsel.

Bridgette Dolgoff submitted her written testimony against S.B. 119 ([Exhibit I](#)). She stated the *Constitution of the United States of America* and the *Constitution of the State of Nevada* talk about "not impairing the obligation of contracts shall ever be passed." She was worried that if the Board made a mistake, they would cause harm to people's phone and advertising contracts. She cited the U.S. Constitution Bill of Attainder defines a legislative act that singles out an individual or group for punishment without trial. She said this bill did not have a lot of due process, and she was speaking for those people who

did not fit under the Board's jurisdiction or under prostitution. She is not a licensed massage therapist and feels she has been in the middle of the Board's poor judgment and poor behavior. She wanted to know who was going to monitor the Board and make sure they did not overstep their authority.

Timothy Glenn also presented written testimony in opposition of the bill ([Exhibit J](#)). He was concerned about the disparity between the Board and actions taken by administrators on the Board's behalf. He said he felt the administrators had been abusing their authority, issuing cease and desist orders to legitimate practitioners who were not regulated by the Massage Board. Ms. Dolgoff then submitted five more letters from people unable to attend the Committee meeting who had complaints against the Board ([Exhibit K](#)). Chair Carlton said the Board should not respond during this hearing to any conflicts still ongoing, but she would ask them to respond to the Committee in writing.

Janine Hansen, Nevada Eagle Forum, stated issues with the Massage Board issuing citation tickets up to \$50,000. She protested page 7, line 10, that states if a person did not file a written request for a hearing to contest a citation within the time allowed, the citation would be deemed the final order and not subject to review by any court. She said she felt that the Board was acting as judge, jury and executioner and not allowing enough appeal time before penalties were applied. She also expressed concern for how criminal records might be used. Chair Carlton advised the \$50,000 fine was tied to prostitution or violent crime and suggested Ms. Hansen discuss her concerns directly with the Massage Board.

Janet M. Antonelli read from her written testimony ([Exhibit L](#)), stating she had been forced out of work by the Massage Board and that the new bill would give them even more power. Chair Carlton wanted it stated on the record that Ms. Antonelli's case was presently before the Board. Senator Copening asked her to briefly describe what she did in her work. Ms. Antonelli said she was in cranial therapy for 15 years. Daniel Joseph pointed out that if we have laws on prostitution, the bill looked like a duplication effort and the police should handle it. Chair Carlton stated one of the goals in this bill was that both agencies work together so that people doing illegal acts could not find a place to hide. Carol Schutte presented written testimony ([Exhibit M](#)) in her opposition. Kelli Storka voiced her concern that there needs to be less government involvement.

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Chair Carlton closed the hearing on S.B. 119. She stated S.B. 72, S.B. 89 and S.B. 119 would be held over for further work sessions. Chair Carlton opened the work session on S.B. 6 ([Exhibit N](#)).

SENATE BILL 6: Revises provisions regarding occupational diseases of volunteer firefighters. (BDR 53-46)

SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 6.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS PARKS AND SCHNEIDER WERE
ABSENT FOR THE VOTE.)

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There being no further business, the meeting of the Senate Committee on
Commerce and Labor was adjourned at 4:04 p.m.

RESPECTFULLY SUBMITTED:

Carol Allen,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____