

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

**Seventy-fifth Session
March 16, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:36 p.m. on Monday, March 16, 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:

Senator Terry Care, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Carol Allen, Committee Secretary

OTHERS PRESENT:

Keith Lynam, Legislative Chair, Nevada Association of Realtors
Teresa McKee, General Counsel, Nevada Association of Realtors
Pamela M. Kinkade, SRA, President, Coalition of Appraisers in Nevada
Michael L. Brunson, Vice President, Government Relations Chair, Coalition of Appraisers in Nevada
Michael R. Cheshire, Government Chair, Appraisal Institute, Las Vegas Chapter; Government Relations Committee, Coalition of Appraisers in Nevada

Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry
Teri Braegelmann
Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada;
Retail Chain Drug Council

Chair Carlton opened the meeting with Senate Bill (S.B.) 184.

SENATE BILL 184: Establishes provisions relating to broker's price opinions.
(BDR 54-234)

Senator Schneider introduced his bill saying there was a difference of opinion between Realtors and appraisers on the Broker's Price Opinions (BPO). Appraisers feel it is their job to do appraisals, and real estate agents say they are just giving an estimate of value, or what a house should sell for. The opinions given in S.B. 184 are not for financing purposes.

Keith Lynam, Legislative Chair, Nevada Association of Realtors, copresented S.B. 184 with Senator Schneider. He said the issues of BPOs have never been more critical than in today's market where reports of over 80 percent of transactions in the greater Las Vegas area are Real Estate Owned, property taken back by lender; resales; short sales or foreclosures. Mr. Lynam said last summer the Nevada Association of Realtors requested the Real Estate Commission create the BPO Task Force to address a real estate licensee's ability to perform Broker's Price Opinions. The Task Force was comprised of three real estate licensees, two appraisal licensees, three attorneys and the then Real Estate Division Administrator, Ann McDermott. He said the Task Force met four times to reach its conclusions and recommendations for the Real Estate Commission.

Mr. Lynam recalled all meetings were very well attended by the public and received hours of comment from appraisers and real estate licensees as well as other members of those industries. The Task Force took an in-depth look at BPOs, how they are used, who is requesting and preparing them and how licensees are paid. They reviewed existing laws and regulations, recommending changes if needed. He said one of the most important points was to clarify that preparing a BPO falls within the scope of a real estate licensee's duties. Chapter 645 of the *Nevada Revised Statutes* (NRS) does not currently address the issue.

He noted the Task Force needed to reiterate that BPOs are prohibited from being used where an appraisal is required by law. He concluded that at the request of the Real Estate Commission and approval of the Nevada Association of Realtors, the recommendations of the Task Force were summarized as S.B. 184.

Teresa McKee, General Counsel, Nevada Association of Realtors, stating support in favor of S.B. 184, read the bill as it amended chapter 645 of NRS, pointing out each condition of the BPO. She said problems were arising by not having enough information to identify who was writing the BPO. Verification of an agent's name, license number and supervising broker were needed. Also, a disclaimer was created in 14-point bold type because lenders and owners were sending out electronic forms, with misused wording, asking for values of properties. The Association wanted to make sure real estate licensees could fill out the forms by adding this paragraph:

Notwithstanding any preprinted verbiage to the contrary, this opinion is not an appraisal of the market value of the property. It is intended only for the benefit of the requesting party to assist that party in deciding the listing, offering, sale, exchange, option, lease or acquisition price of the real property, and not for any other purpose, including obtaining financing.

Ms. McKee said anytime an actual appraisal is desired, a licensed, certified appraiser was needed. She said the definition of a BPO was a written analysis, opinion or conclusion that a real estate licensee prepares for a seller, purchaser or third party, making decisions related to the disposition of real property, including listing, offering for sale, etc. Chair Carlton asked if the bill would stop the so-called drive-by appraisal. Ms. McKee said it should. Chair Carlton said the bill looked like it would do a good job protecting the consumer.

Pamela M. Kinkade, SRA, President, Coalition of Appraisers in Nevada, submitted written testimony in support of S.B. 184 ([Exhibit C](#)). She said she had served on the BPO Task Force for the Real Estate Division, working five months on creation of the bill, and was proud of its contents.

Michael L. Brunson, Vice President, Government Relations Chair, Coalition of Appraisers in Nevada, spoke in support of the bill, and said he was part of a fact-finding group working with Ms. Kinkade and the Task Force to research how other states dealt with BPOs. He said there were several industry and

regulatory agencies issuing position papers on BPOs and their regulations. He congratulated the Committee for taking up the issue legislatively.

Michael R. Cheshire, Government Chair, Appraisal Institute, Las Vegas Chapter; Government Relations Committee, Coalition of Appraisers in Nevada, voiced his support of S.B. 184. He said the Association of Appraiser Regulatory Officials, a group created by Congress of the United States, which controls all licensing of appraisers throughout the United States, had just issued a report to the Secretary of the Treasury, U.S. Department of the Treasury, the Chairs of the House of Representatives and the U.S. Senate Committee on Finance regarding BPOs. He said their concern is that BPOs not be used in the reevaluation of the write-downs for the current mortgage lending crisis. He said he felt S.B. 184 put Nevada at the forefront of doing something to help the situation. Ms. Kinkade said she would leave all written documents referred to by her, Mr. Brunson and Mr. Cheshire with the Committee Secretary ([Exhibit D](#), original is on file in the Research Library).

Senator Amodei asked how a BPO differed from an appraisal and the cost of each. Mr. Brunson stated the difference was an application of knowledge. He said appraisers were trained on the economic concept of value and the specific application of that concept to a broad body of the typical buyer. He said a BPO looks at the potential price for the purposes of marketing a property, and an appraisal looks at the value for predominately a lending decision. He said, depending on the depth of the appraisal, an appraiser could charge from \$50 to several thousand dollars for a thorough analysis of highest and best use. He said a real estate licensee writing a BPO would usually charge from \$40 up to a couple of hundred dollars.

Senator Amodei then asked if the BPO was just the broker's stated opinion. Mr. Cheshire said that was basically correct; it was from a marketing standpoint, with a point of sale or purchase recommended. He repeated that an appraisal deals in value and is more encompassing. Senator Amodei said it was a challenging profession.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry, stated full support of S.B. 184, and said the bill clarifies regulation for real estate licensees.

Senate Committee on Commerce and Labor
March 16, 2009
Page 5

Senator Schneider commended everyone for working together to prepare the bill before submitting it to Committee. Senator Parks disclosed he is a licensed real estate agent and that the bill would not affect him any differently than any other licensee.

Chair Carlton closed the hearing on S.B. 184 and then announced S.B. 207 would not be heard during committee.

[SENATE BILL 207](#): Revises provisions relating to unlawful discrimination in places of public accommodation. (BDR 54-738)

Chair Carlton opened the hearing on S.B. 168.

[SENATE BILL 168](#): Revises provisions relating to prescription drugs. (BDR 54-1011)

Senator Terry Care, Clark County Senatorial District No. 7, sponsor of S.B. 168, said he was aware of arguments against his bill, but he wanted the Committee to consider their support.

Teri Braegelmann submitted written testimony supporting S.B. 168 ([Exhibit E](#), original is on file in the research Library). She recounted how her 22-year-old son Joshua committed suicide after a reaction to an antidepressant drug he was taking. She said she and her family had no idea until after his death that the Federal Drug Administration (FDA) required a strong warning, called the black box, be inserted on the beginning of a prescription package. It contained the necessary information to prevent serious adverse events which are essential in patient decision making and drug effectiveness. The black box warned taking antidepressants increased risk of suicidal thinking and behavior in children, adolescents and young adults under the age of 25. She said she was shocked to find such serious risk versus benefit information pertaining to young adults tucked away in a box and probably never read by most patients. She added there was no directive to this vital information on her son's bottle of medication; it said to take with food or milk; may cause dizziness. She said she equates the black box warning to information found after a plane crashes. She said she never knew what side effects could appear.

Ms. Braegelmann continued with statistics from the Office of Suicide Prevention, Department of Health and Human Services, listing Nevada as having

the second highest rate of suicide in the Nation. Suicide is the sixth leading cause of death for Nevadans and the third leading cause of death for our youth, ages 10 to 24. She also read a portion of the FDA black box: "Families and caregivers should be advised of the need for close observation and communication with the prescriber."

Ms. Braegelmann read from 2 reports by the U.S. Food and Drug Administration proposing new warnings about suicidal thinking and behavior in young adults, ages 18 to 24, taking antidepressant medications. One report referred to a series of hearings held in Washington, D.C., by the FDA, Center for Drug Evaluation and Research, where Paul Seligman, M.D., M.P.H., Associate Director, Safety Policy and Communication Staff, said his agency was aware that sometimes medication guides were not getting into the hands of patients as intended. He said that a 2004 FDA study of 5,000 randomly selected pharmacists found that 29 percent were not familiar with the medication guides, and a 2005 risk communication meeting documented cases where medication guides were not even being distributed. She also read a letter from U.S. Senator Harry Reid sharing her concerns.

Ms. Braegelmann said while taking care of her elderly mother, she met with many health-care providers and was never advised of the black box warning, even though her mother took several of the medications listed by the FDA. She stated she has great concern for the veterans returning from war who might be prescribed these drugs.

Senator Copeny asked if the bill was speaking only about antidepressants or all drugs. Ms. Braegelmann said she would like to see something on all drug labels. Senator Copeny replied she did not believe all drugs needed to have this warning as it could draw attention to antidepressants. She mentioned not all age groups take the same drugs, and too much information on a drug label may cause people to ignore it. Ms. Braegelmann said she felt more information was better than not enough.

Chair Carlton used the example of picking up a prescription for the first time and the pharmacist wanting to advise her of the warnings and documents. She asked if the black box warning would be among those documents. Ms. Braegelmann said it was in the patient package insert that comes with the medication. She said because pharmacies get medications in bulk, they do not always have enough copies of the black box warning. Chair Carlton asked if

Ms. Braegelmann wanted to see something written on every pill bottle. She answered yes, a directive for anyone under the age of 25, or their adult care giver, to read the black box warning.

Senator Copening asked why the age of 25 was chosen. Ms. Braegelmann said in all the data, it seemed to be the largest population, in the highest risk group. Senator Care said he would follow up on questions asked by Senator Copening. Chair Carlton advised putting a warning sticker on the cap of every bottle would be hard to miss. She suggested the sticker for all bottles.

Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada; Retail Chain Drug Council, speaking in opposition of S.B. 168, stated the Institute for Safe Medication Practices had statistics proving the more information listed on bottles of medicine, the less consumers read them. She provided a copy of prescriptions just picked up from the pharmacy as an example of all the current labeling included with each prescription ([Exhibit F](#)). She said the Retail Chain Drug Council would be willing to apply the stickers to some specific drugs that could be problematic, and perhaps they could discuss concerns with Ms. Braegelmann and Senator Care. She explained in Joshua Braegelmann's case, the doctor and the pharmacist should have counseled the patient.

Senator Schneider mentioned a television commercial for a drug used for restless leg syndrome, and all the side effects listed at the end of the commercial. He said some of those side effects were extremely dangerous and they should be addressed as well. He said by the time people have watched most of the commercial, their attention span is way down, and people have tuned out the warnings. He said it would be in the public's interest to cover any drugs with severe side effects.

Senator Hardy asked if the black box warnings existed on every drug. Ms. MacMenamin said no, only those with specific needs. Senator Hardy agreed with her assessment that the more written on the pill bottles, the less people would read. He said there is an assumption by the public that if something is really dangerous, someone will tell them. He suggested the counseling time with pharmacists and doctors should be raised enough to get people's attention.

Chair Carlton asked about an institute Ms. MacMenamin had cited at the beginning of her testimony. Ms. MacMenamin repeated the Institute for Safe

Senate Committee on Commerce and Labor
March 16, 2009
Page 8

Medication Practices works closely with the FDA and pharmacists to curtail prescription errors. Chair Carlton wanted to know if they were a funded association. Ms. MacMenamin was not sure; she said she believed they were an academic association, but she would check. Chair Carlton was interested in their motivation.

Chair Carlton closed hearing on S.B. 168 and asked for a motion on S.B. 184.

SENATOR COPENING MOVED TO DO PASS S.B. 184.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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There being no further business, the meeting of the Senate Committee on Commerce and Labor was adjourned at 2:40 p.m.

RESPECTFULLY SUBMITTED:

Carol Allen,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____