MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fifth Session
April 3, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 12:47 p.m. on Friday, April 3, 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
Senator Joyce Woodhouse, Clark County Senatorial District No. 5

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Vicki Folster, Committee Secretary

OTHERS PRESENT:

Barry Gold, Associate State Director, AARP Nevada
Julianna Ormsby, MSW, League of Women Voters of Nevada
Michael D. Hillerby, State Board of Pharmacy; Association of Settlement Companies; Board of Dental Examiners of Nevada

Rocky Finseth, Managing Partner, Carrara Nevada; Pharmaceutical Research and Manufacturers of America
Derek Naten, Director, State Government Affairs, Bayer HealthCare LLC; Task Force Chair, Pharmaceutical Research and Manufacturers of America
Jessica Ferrato, Griffin Crowley Group; Pfizer, Inc.
Patricia Durbin, Executive Director, Great Basin Primary Care Association
Joel F. Glover, D.D.S , Glover Dentistry; Nevada Dental Association
Michael R. Kerr, Legislative Director and General Counsel, Uniform Law Commission
Mark Guimond, American Association of Debt Management Organizations
Robert Linderman, The Association of Settlement Companies
Michele Johnson, President/CEO, Consumer Credit Counseling Services
Stefanie Ebbens, Legal Aid Center of Southern Nevada, Inc.
Jon L. Sasser, Washoe Legal Services; Washoe County Senior Law Project
Scott J. Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
John Mangan, Regional Vice President, American Council of Life Insurers
Mary Pierczynski, Foster Consulting; Allstate Insurance
Jesse A. Wadhams, Jones Vargas; Nevada Independent Insurance Agents; Nevada Association of Insurance and Financial Advisors
James (Jim) Wadhams, Nevada Independent Insurance Agents
Matthew (Matt) Sharp, Nevada Justice Association
Carolyn Ellsworth, Securities Administrator, Securities Division, Office of the Secretary of State
Helen Foley, Faiss Foley Warren; Employee Leasing Companies
Karen Caterino, Risk Manager, Risk Management Division, Department of Administration
Kay Lockhart, Nevada Independent Insurance Agents
Jim Noriega
Ernie E. Adler, Board of Massage Therapists
Elizabeth (Liz) MacMenamin, Retail Association of Nevada
Keith L. Lee, Nevada Board of Medical Examiners

CHAIR CARLTON
We will open the hearing with Senate Bill (S.B.) 211. Senator Woodhouse will present the bill to the Committee.

SENATE BILL 211: Enacts provisions relating to manufacturers and wholesalers of prescription drugs. (BDR 54-1056)

SENATOR JOYCE WOODHOUSE (Clark County Senatorial District No. 5):
I am here today to introduce S.B. 211 for your consideration and have provided my written presentation for the record (Exhibit C). This bill requires drug wholesalers and manufacturers to disclose information regarding any gifts or other benefits given to certain health care providers.

This bill is very similar to A.B. No. 128 of the 74th Session, sponsored by Assemblyman Conklin. This bill required wholesalers and manufacturers of pharmaceuticals to adopt a written marketing code of conduct. Senate Bill 211 takes this concept back to its original path by requiring full disclosure of that conduct. I urge your support of S.B. 211.

SENATOR HARDY:
Last Session we worked with Assemblyman Conklin on A.B. No. 128 of the 74th Session. I am concerned whether there is any indication that the method we chose last time is not working. Is there a problem that has arisen that is not being addressed by that bill?

SENATOR WOODHOUSE:
No, there is no problem. This bill takes the arrangement passed last Session one step further for greater transparency. I have no problem with that bill.

SENATOR HARDY:
We talked about this last Session and part of the thought process was that a lot of this stuff required the federal level as well. That is why we went with A.B. No. 128 of the 74th Session. I just wanted to check to see if maybe A.B. No. 128 of the 74th Session was not working or if there was a problem between then and now that led you to bring this forward.

SENATOR WOODHOUSE:
That is correct. I will also inform the Committee that in speaking with individuals within my district, both in town hall meetings and on the campaign trail in 2006 and 2007, the issue came up. Basically, people are worried about their health care. It is one of the pieces and the reason I am taking it one step further.

SENATOR AMODEI:
You just talked about health care and costs. Is there any information available you or someone else could provide that would link this sort of conduct with

prescriptions costing more? My understanding is that most of the payment of prescriptions is done through various and sundry health organizations who are not getting along great in terms of generic drugs. Have you had some instances that would indicate when somebody is getting gifts? It changes prescription policies through the various supplier networks which results in increased prescription costs for Nevadans.

SENATOR WOODHOUSE:
No, I do not have any information that indicates that and possibly other individuals testifying today will address that. It is just on the bottom line we are trying to add one more level of transparency for our people.

CHAIR CARLTON:
As elected officials, we fill out disclosure forms letting people know who we work for. Is the disclosure within this bill any more onerous than the disclosure you and I have to go through with our disclosures?

SENATOR WOODHOUSE:
Absolutely not, Chair Carlton. I think it is part of the society that we live in now, as I indicated in my testimony; all professions need to be setting forth their disclosures. We do it as Legislators and pharmaceutical companies need to do the same. I am sure there are other professions we need to look at as well.

BARRY GOLD (Associate State Director, AARP Nevada):
Today I am here representing AARP and its 330,000 members across the State, and I have provided written testimony in support of S.B. 211 (Exhibit D).

I would like to refer the Committee to a three-page handout from the report on Vermont's disclosure law, titled, "Pharmaceutical Marketing Disclosures, Report of Vermont Attorney General, William H. Sorrell, July 8, 2008" (Exhibit E). This handout is an executive summary highlighting the pharmaceutical manufacturer's distribution of money within the Vermont medical community. The disclosure reported that 84 pharmaceutical manufacturers spent over $3 million for fiscal year (FY) 2007. This represents a 33-percent increase over what was reported in FY 2006.

The drug lobby argues that the Office of Inspector General's (OIG) Compliance Program Guidance for Pharmaceutical Manufacturers and the federal

Anti-Kickback statute regulates this area. The OIG guidelines relate only to the federal health-care business and they state the following:

> The anti-kickback statute is a criminal prohibition against payments in any form, whether the payments are direct or indirect made purposefully to induce or reward the referral or generation of federal health care business.

This addresses Senator Hardy's question about whether this is regulated at the federal level. The federal Anti-Kickback law does not address concerns regarding individual providers and consumers.

On March 31, 2009, I received an e-mail letter from Steven E. Rubin, a practicing geriatric psychiatrist (Exhibit F). He says he understands what is going on with regard to the pharmaceutical industry's attempt to educate physicians, and the marketing efforts are not for educating physicians, but to influence their prescribing habits.

SENATOR AMODEI:
"Marketing and detailing," from your testimony Mr. Gold, sounds like other words for "wining and dining," or taking someone on a trip. Briefly, can you tell me what marketing and detailing mean in your testimony?

MR. GOLD:
It means whether they wine them or dine them or bring gifts into the place of business; a common practice for them is to provide lunch for offices. There are a number of different things they may do. Marketing and detailing is a synonymous concept. This bill sets a threshold of spending at $100. If they want to bring in Starbucks and a couple of pizzas, that is okay. We have excluded items for direct consumer benefit such as personalized stethoscopes or a medical textbook, because those are very expensive and are things that help you and me. To have a dinner at Adele's or somewhere, where they discuss their newest drug, costs a lot of money, and those are the kind of things that you and I need to know about. I would like to know how much my doctor is accepting from pharmaceutical companies or corporations as it relates to what drugs he may be dispensing. If the drug companies did not spend these enormous sums on marketing, they could pass along the savings to consumers. Doctors are kept up to date on the newest drugs in other ways, such as magazines or written literature.

If you look again at the Exhibit E report, you will notice there are doctors who received hundreds of thousands of dollars. It talks about which specialties we see the most, usually psychiatrists and cardiac surgeons receive on average, over $100,000 of these types of economic benefits. The key to this is transparency. Where is the money going, and how come it costs so much to purchase drugs?

SENATOR AMODEI:
Let us agree on transparency. As I read the bill there are a couple of thresholds. One is over $100 and another one is over $1,000 per year. Do I understand this correctly?

MR. GOLD:
That is exactly correct. For something to be reported to the State Board of Pharmacy, the individual gift, economic benefit or meal, has to be over $100 and then they have to disclose what it is. An example would be if I take one of you to lunch or I give you something that costs more than two dollars in the month, I have to report it to the Legislative Counsel Bureau. The $1,000 threshold would mean that in the course of a year, if a certain physician accepts $1,000 or more as an aggregate total, then his name would be attached to the report.

SENATOR AMODEI:
If you have the transparency and there is a report that indicates who is doing what to whom, marketing detailing, is there anything in the bill that requires money saved on detailing to be passed on to consumers? I do not see anything here that indicates the savings will be passed on to the consumer if money is saved from marketing or detailing. You need to, in some way, make the pharmaceutical companies accountable for those savings being passed onto the consumer. It is okay to talk about the point of transparency, but do not talk about how prices are going to go down, because there is nothing in the bill that says, "If you save money not buying Dr. "X" a bunch of meals in a year, please pass that on to blood-pressure medicine recipients." Is there anything indicating the result of this transparency and as the costs go down we want to see those savings passed on to consumers?

MR. GOLD:
Unfortunately, there is nothing directly in the bill. What I think we are hoping for is that if the public and the policy makers can see the enormous sums that are

passed on, then maybe there will be some pressure put on the drug companies to start lowering their prices. Also, like any business, if overhead goes down, then it would make sense to lower prices. There is some hope that they will respond to market pressure. In today's economic times, people are making choices about choosing to pay for food, paying the rent or buying medicine. The hope is that by exposing these practices and letting people see what it is, it will help them to decide what they want to contribute to. One of the ways they can pass along the savings is to not spend these billions of dollars, lower their overhead and allow them in their business model to lower the costs.

SENATOR AMODEI:
I agree with you, but please see the model on gas companies and insurance companies. Mandatory seat-belt law, first offense, reduces personal injury, reduces death; see the testimony of those types of marketing folks, because I can assure you, they have no plans to lower prices for insurance premium payers in Nevada.

In regard to the trade-secret item as it relates to the pharmaceutical field, I am thinking that trade secrets are what the manufacturer puts into the drug. I am very uneasy with putting the Pharmacy Board in charge of "keeping the gate" for anything that is a law in trade secrets. Would you be open minded to something that allows a questionable concern to be brought before a State agency that would be better at handling trade secrets? Because giving a board or commission in Nevada jurisdiction over keeping the gate for what is or is not a trade secret in the pharmaceutical business is something I find "sporting" to say the least.

MR. GOLD:
I would tend to agree that the definition of trade secret is necessary in terms of protecting the industry, because that is something they would oppose. I do not know if the term "trade secret" is defined in the *Nevada Revised Statutes* (NRS). If this Committee feels that it is an important amendment to put into the bill, or to have a process to do that, that would be welcome. That would strengthen the process.

JULIANNA ORMSBY, MSW (League of Women Voters of Nevada):
This bill is about greater transparency and accountability. The League of Women Voters has supported a number of bills in this area, and we think this could have a positive impact on consumers. We urge your support of S.B. 211.

MICHAEL D. HILLERBY (State Board of Pharmacy; Association of Settlement Companies; Board of Dental Examiners of Nevada):
We are necessarily neutral on the policy issues of the bill because that is your purview and not the State Board of Pharmacy's. The Board is able to enact the provisions as outlined in the bill for reporting, and we will obviously work with you if any changes are made to those provisions.

SENATOR AMODEI:
Has the Board had any discussion about the trade-secret issue? Do they have anything in place regarding trade-secret operations on behalf of the State Board of Pharmacy or is this a new area for them?

MR. HILLERBY:
I will get more specific information for you after the hearing. I can tell you they do have some substantial experience with taking care of protected information. As you will recall in the mid 1990s, there was some statutes passed about controlled substances and looking for providers, pharmacies and pharmacists who overperscribe. There were some very long debates in the session where those laws were passed. The State Board of Pharmacy had some experience with very successfully being able to segregate that information and making sure that does not become public. They are familiar with having protected information and handling it. I will get more specific information on their experience with trade secrets.

SENATOR AMODEI:
If you could, get information on whether there were any problems in the past in this area that resulted in litigation or hearings. Is there some type of procedure for notification stating we believe this not to be trade-secret information and making it part of a public record? Is there a chance to afford any due process in that context? Having some sort of procedure, since we are into transparency, ought to apply in a trade-secret sense.

MR. HILLERBY:
We will get that information back to the Committee as quickly as possible.

ROCKY FINSETH (Managing Partner, Carrara Nevada; Pharmaceutical Research and Manufacturers of America):
With me today is Derek Naten, from Bayer Pharmaceuticals who will present Pharmaceutical Research and Manufacturers of America's (PhRMA) testimony.

Derek Naten (Director, State Government Affairs, Bayer HealthCare LLC; Task Force Chair, Pharmaceutical Research and Manufacturers of America):
I have provided you with written testimony describing PhRMA's opposition to S.B. 211 (Exhibit G). While we sincerely appreciate Senator Woodhouse's concerns, we assert that the marketing practices this bill is attempting to address have already been addressed through very stringent guidelines that have been developed through elaborate consultation with the federal Department of Health and Human Services (HHS) and PhRMA. Marketing guidelines, established originally in 2002 and further strengthened again this past January, dictate strict parameters guiding interaction between manufacturers and health professionals. These guidelines are under close scrutiny of the federal OIG and ensure that interface with providers is held to the highest ethical standards.

Further, the industries marketing practices are subject to no less than five sweeping federal laws, including the Off-label Marketing Rule, the Anti-Kickback Statute, the False Claims Act and the antitrust laws. Had we been having this discussion several years ago, I could not state that marketing practices were beyond reproach. Indeed, there were numerous practices that could be best described as tawdry. Activities such as fine dinners, meetings in exotic locations and the like as a result of several laws as well as the PhRMA Code, developed with HHS, do not define the industry today. Under the PhRMA Code of Conduct, as well as the individual company compliance programs, my own individual company's compliance program is no less than 205 pages. Interchange with providers must be designed solely toward education of providers and patients, and must be modest in nature.

This issue as mentioned earlier was also the subject of considerable debate in the 74th Legislative Session. A bipartisan agreement was reached on legislation by Assemblyman Conklin which requires every drug manufacturer to maintain a written marketing code governing sales and marketing activity, and these guidelines must be reported annually to the State Board of Pharmacy per A.B. No. 128 of the 74th Session. There is absolutely no evidence that this legislation does not work.

Further, testimony of AARP seems to imply that doctors will also forego medical judgment in their Hippocratic Oath because of a pizza. Those are words to certainly ponder. Important legislation in Congress by U.S. Senator Grassley is seeking to establish a uniform set of guidelines for limits and transparency of

interactions with providers. Such a measure would create a consistent set of rules, rather than a 50-state patchwork of rules and reporting requirements that would arguably add to the cost of health care and not take it away. It is widely believed that this legislation will pass this summer.

In closing, while we appreciate Senator Woodhouse's intent as well as the concern surrounding marketing practices of the past, we feel that this particular bill is unnecessary and duplicative. We are happy to work with Senator Woodhouse and to continue to address her concerns over the interim while we also await action in Congress to further refine this issue on a broad and consistent basis. If it is demonstrated that these changes which I have outlined are not sufficient, we will happily stand before you in subsequent meetings to address this very issue.

CHAIR CARLTON:
Are there any questions from the Committee?

SENATOR COPENING:
In the compliance report that you mentioned, how does it differ from what Senator Woodhouse is requesting? In other words, this bill is detailed in what she wants. How does it differ?

MR. NATEN:
The guidelines that have been set forth in Senator Woodhouse's legislation are consistent with many of the guidelines that are set forth in the PhRMA Code. Our biggest concern on behalf of the industry is seeing a 50-state patchwork of rules and regulations dictating reporting requirements that can incur additional liability on manufacturers for trying to comply with this complex patchwork. We are simply looking for a consistent set of solutions that are being proposed in a bipartisan way by U.S. Senator Grassley of Congress that we expect to take effect this summer.

CHAIR CARLTON:
If I wanted to look on the Internet to find out information on what Senator Woodhouse is trying to share, could I find that right now? Is that information available; for example my doctor's disclosure information?

MR. NATEN:
With respect to that, there are some practices in some companies that will individually disclose, but there are no set of requirements that mandates this sort of disclosure as required in the bill.

CHAIR CARLTON:
Under U.S. Senator Grassley's proposed legislation, would I then be able to find that information?

MR. NATEN:
Yes, the legislation does propose a much greater transparency of those interactions with providers and would make this information public knowledge.

CHAIR CARLTON:
At what levels? Is there a monetary amount within that legislation?

MR. NATEN:
With apologies, I do not know the specifics of the individual requirements of the legislation. I know, having just been reintroduced in this new Congress, that the legislation last Session did provide for various specific enumerated limitations. This legislation does as well, but I cannot state that with certainty.

CHAIR CARLTON:
If I may, I would request a side-by-side meeting with you to discuss what U.S. Senator Grassley is trying to do in comparison to what Senator Woodhouse has.

MR. NATEN:
Senator Carlton, I would be happy to.

JESSICA FERRATO (Griffin Crowley Group; Pfizer, Inc.):
I have provided you with a press release from Pfizer, Inc. stating their policy on payments to U.S. physicians, health-care professionals and clinical investigators, implemented in February 2009 (Exhibit H). We participate as well in the code of conduct that PhRMA has discussed, and we are in support of their testimony.

CHAIR CARLTON:
I have the same request from Pfizer, Inc. to discuss what they are doing now as far as disclosure goes to compare it to this bill?

MS. FERRATO:
I will get that to you as soon as possible.

CHAIR CARLTON:
We will close the hearing on S.B. 211. We will open the hearing on S.B. 228.

In the interest of full disclosure, this bill has my name on it. In the interest of full disclosure, Ms. Durbin is my employer when I am not inside this building.

SENATE BILL 228: Revises provisions governing the ownership or operation of a dental office or clinic. (BDR 54-651)

PATRICIA DURBIN (Executive Director, Great Basin Primary Care Association):
The mission of our primary-care association is to promote and facilitate access to affordable, comprehensive and quality health care for Nevada's underserved populations. Former United States Surgeon General, C. Everett Koop, who introduced a comprehensive oral-health program for children, said, "You are not healthy without good oral health." Our mission is to promote comprehensive, "quality" affordable access to health care for all our State's children and families.

Maintaining dental services for all, regardless of their ability to pay, is provided in this cost-effective environment that many times only a nonprofit can deliver. One of the major nonprofit dental health centers in Reno saw 15,596 dental patients last year. There are other nonprofits such as Miles of Smiles dental van, the Ronald McDonald Charities van and the list is long. Poor oral health and access to health care are significant problems for Nevada. For every one person who does not have health insurance, three do not have dental insurance. Several years ago studies showed that nearly 75 percent of children who qualify for Medicaid or Nevada Check Up were in need of dental care. One fourth of those children were suffering with tooth pain while trying to succeed in school. We believe through efforts of our safety-net dental clinics and other nonprofit providers those numbers have significantly improved over the years.

Now is not the time to recede from the progress we have made in recent years offering more access to care. We feel it will serve our citizens to clarify or change chapter 631 of NRS to ensure that nonprofit oral-health services continue to thrive in our State.

MR. HILLERBY:
We are pleased to offer our support of the bill. It is very important that we expand access to the high-quality dental care available in this State to some of the rural, underserved and indigent populations that are described in the legislation.

JOEL F. GLOVER, D.D.S (Glover Dentistry; Nevada Dental Association):
The Nevada Dental Association is proud to support this bill. It meets our goal of providing care and qualified good care to the underserved areas in our State.

CHAIR CARLTON:
Is there anyone wishing to offer additional testimony on S.B. 228? We will close the meeting on S.B. 228. Staff, someone had a concern about a drafting error on this bill. Will someone be sure to look into this?

DANIEL PEINADO (Committee Counsel):
We will take care of that, Madam Chair.

CHAIR CARLTON:
We will open the hearing on S.B. 355.

SENATE BILL 355: Enacts the Uniform Debt-Management Services Act. (BDR 52-1279)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):
Testifying before you today, I present the Uniform Debt-Management Services Act (UDMSA), S.B. 355. In recent Sessions, we have had the Revised Anatomical Gift Act, the Revised Uniform Unclaimed Property Act and the Uniform Commercial Code Act which has been around since the turn of the century. There is an organization called the Uniform Law Commission (ULC) that has been around for about 117 years. There are about 300 active members of the ULC. They are all attorneys and include state, federal, trial and appellate court judges, law-school professors, some legislators, some representatives of states' attorneys general, practitioners and others. That group convenes once per year for an eight-day annual conference to adopt uniform acts.

Usually, there has to be approval for a study committee and a drafting committee that will normally take about two years before it completes its final product and brings it to the annual conference to be adopted. The idea behind a

uniform act is, absent federal legislation, that we try to get legislation adopted, ideally by all 50 dates, so that no matter what jurisdiction you are in, you know the law is going to be the same. Sometimes they will deviate somewhat between states that have adopted the uniform acts, but by and large, they do not. It is beneficial to everyone to know the rules and it is not just for commerce; it strays into other matters as well.

Specific to S.B. 355, for 50 years or more, there have been businesses such as consulting services and debt-management services to assist individuals who find themselves in debt for whatever reasons. The idea is that when someone finds themselves in growing debt and does not want to go through bankruptcy, one of these services attempts to consolidate or retire the debt in an amount less than what is actually owed.

In 2004/2005, Congress amended the bankruptcy code such that, for example, if you are seeking to file a petition under Chapter 7 bankruptcy, you might now have to demonstrate to the court that you have sought the assistance of one of these debt-management or debt-counseling services. Now that we are in a recession, and we have changes in the bankruptcy codes, as you can imagine, there are no shortages of those who are willing to offer their services to people who are in debt. Sometimes they engage in questionable tactics. With that thought in mind, the ULC came up with the product before you: the UDMSA (Exhibit I, original is on file in the Research Library) or S.B. 355.

With me is Mike Kerr from the ULC who can walk the Committee through the bill in greater detail than I have. Also with me is Mark Guimond from the American Association of Debt-Management Organizations (AADMO) who will also testify with the permission of the Chair. We have offered an amendment before you (Exhibit J) and a legislative handout that I always like to pass out on these uniform acts (Exhibit K).

I am aware that Jon Sasser, on behalf of his client, has been discussing the possibility of an additional amendment with Mr. Kerr. I am not sure at this point the stage of those discussions.

MICHAEL R. KERR (Legislative Director and General Counsel, Uniform Law Commission):
I would like to talk about the debt-management services industry to give you some background about it and the components that make up that industry. I will

also talk about the UDMSA and how it would change your existing law for the better and the value of a national uniform approach with regard to these issues.

With regard to this industry, there are three components to consider. The first component is consumer credit-counseling agencies that have been around for some time. These folks historically started off as nonprofit businesses, and there are now some for-profit credit-counseling agencies. These agencies help consumers with budget, credit education and provide options to do a debt management plan.

The second component to consider is the debt-management companies whose plan is an option for the consumer to consolidate their debts and make one low monthly payment to the debt-management provider. That provider then uses that money and pays the creditors, oftentimes with reduced interest rates or longer repayment periods. Many states, including Nevada, have some regulation of these types of businesses. In Nevada it is regulated in two different statutes.

Since the turn of this century, a third entrant has entered the marketplace and is called debt-settlement companies. They are almost exclusively for-profit businesses and most state statutes do not regulate them. They tend to operate across state lines. Debt-settlement companies vary widely in business practice and models. As reported by the Federal Trade Commission and the National Consumer Loss Center, a typical practice is the consumer, as part of the debt settlement plan, will put funds into a side account. These funds are saved until it becomes a certain level suitable for debt-settlement; the debt-settlement company negotiates a settlement with the unsecured creditor.

All three types of businesses have had problems. Credit-counseling agencies, which are typically nonprofit, especially to the extent that they offer debt-management plans, have lost their nonprofit status with the Internal Revenue Service (IRS). There is always a problem when a third party holds funds for a consumer, creating fiduciary responsibilities as a holder of trust funds. Sometimes these trustees are not as trustworthy as we would have liked. Frequently, companies have operated in states where they were not licensed to do so, and there have been a number of adverse administrative actions against them. On the debt-settlement side, it has been largely an unregulated environment; several states have prohibitions on debt adjustment or debt negotiation. Many of the problems of debt-settlement have to do with a

lack of understanding on the part of the consumer when they get involved with one of those programs.

Our project, the UDMSA takes all three types of debt-management companies and puts them into a common, comprehensive regulatory framework. This framework consists of common disclosures to the regulator with an insurance requirement, a surety-bond requirement, required disclosures to consumers and a fairly long and robust list of prohibitive actions. The UDMSA also includes workable fee caps to protect the consumer from extensive fees, with the right of rescission for the consumer. If the program is not right for them they can get out of it. If there is money deposited or fees that have accrued the consumer will have some refund rights, private cause of action and more. I am happy to go through the details of these.

One of the things about uniform acts, Senator Care can attest to this, is that they tend to be pretty big. I will not apologize for that because it is a comprehensive act meant to deal with many things that can come up in a regulatory environment. It was carefully drafted over a period of three years and then we did a set of amendments in 2008. The UDMSA has been adopted in four states. The amendments before you have been adopted in Utah as of last week when the governor signed a bill that matches the bill with these amendments. It is pending in several other states such as Washington, New Mexico, Texas, Missouri, Minnesota and Tennessee. It is likely to be introduced in Michigan and a version of it is pending in Indiana. It was just introduced in New York, about to be introduced in New Jersey and was adopted in Delaware, Rhode Island, Colorado and Utah.

We believe that having a comprehensive uniform mechanism for this industry makes a lot of sense. Most of the larger companies operate on an interstate basis. Having a common set of regulatory mechanisms benefits both consumers and companies. It benefits consumers because their regulator is going to be able to share information with fellow regulators across state lines with regards to problems with particular companies. It will benefit companies that want to participate as their application in one state is going to work in another uniform state, and they are going to understand the rules that control the game with regard to those states. It reduces their compliance costs from state to state. We believe it is a significant advance over the existing law in Nevada. It does incorporate a lot of the protections that have been built into the Nevada statutes, but it extends them. There are several more prohibitive actions,

disclosures and warnings given to the consumers, strengthened bond and insurance requirements, and there are significant fee caps that will benefit consumers.

CHAIR CARLTON:
Senator Care, are you aware of the amendment proposed by the Consumer Credit Counseling Services (CCCS)? There is another amendment here in the package, and I want to make sure you are made aware of it.

SENATOR CARE:
That is probably the same amendment that I mentioned with regard to Mr. Sasser. Yes, we are talking about the same amendment, and I am aware of it. I know that Mr. Kerr had discussions this morning with Mr. Sasser representing the same entity.

MR. KERR:
I can speak to that. The CCCS of Nevada's amendment would essentially carve out a single agency within Nevada from regulation of this comprehensive statute. The ULC is opposed to those types of carved outs. We believe, and I imagine some of the fellow proponents to the bill will speak to this. Nonprofits need to be regulated just as much as for-profit companies. Historically there have been a number of issues with nonprofit companies and agencies. A number of state consumer credit-counseling services have lost their tax-exempt status, not necessarily because of any misdeeds, but because of the increasing proportion of debt-management plans as part of their income. Those are considered collection services by the IRS, and if a certain threshold is met, they can lose their nonprofit status.

Speaking to the amendment specifically, we would disagree with any sort of carve up that is based upon an agency's membership in a trade association. The National Foundation for Credit Counseling (NFCC) is a very good representational group for nonprofit credit counselors, and we have no problem with them or their standards. However, they are a voluntary trade association and we do not think it is appropriate for an exemption in statutory regulation requirements based on voluntary membership in a trade association.

We think that nonprofit and for-profit debt-settlement and debt-management companies are all basically seeking to serve the same pool of consumers. These are consumers who are over their heads in unsecured debt. All the debt industry

should be regulated by a common regulator, have common disclosures about their business practices, common insurance requirements and common cause of action when things go wrong; they should all have ownership responsibility as far as being bonded and be regulated under the same regulatory supervisor. In fact, the national debt-management companies are offering more than one type of service. Some offer credit-counseling education; some offer debt-management plans, debt-settlement attributes to the management plans, and there is some blending between the categories. They are not as clear as one might have expected several years ago.

We disagree with the idea of doing a carve out, especially one this narrowly drawn, for a particular company. Based on our conversation with those folks this morning, there may be a couple of changes that we could contemplate that would address their most significant concerns. However, I will let them speak to that and say that we are willing to work with them on those three or four particular implementation issues.

CHAIR CARLTON:
You are relocating this from the Division of Financial Institutions over to the commissioner of the Consumer Affairs Division? The logic behind that is what?

MR. KERR:
That is correct. One existing statute, NRS 598, is where the credit counseling services are currently regulated. The other statute, NRS 658, is where the debt-adjustment statute is located, and it is a limited statute compared to what the UDMSA would provide. One of the points of the UDMSA is to have all of the regulation under one roof. These companies are marketing to the same consumers and have much of the same program details. I think, unless Senator Care wants to speak to that, we are not picking one particular regulatory agency over another with regard to any sort of past results or performances; we just think it all needs to be under one roof.

SENATOR PARKS:
I have observed some individuals have gotten less than good advice, and I want to applaud this as being one of the better pieces of legislation for this Session.

SENATOR SCHNEIDER:
Senator Care, since you are retiring from this body, who do you have lined up to do these uniform-act pieces of legislation.

SENATOR CARE:
Frank Daykin on occasion comes in. He is our lifetime commissioner and well known in the ULC.

MARK GUIMOND (American Association of Debt Management Organizations):
We are the largest trade association for the credit-counseling industry. Our members are licensed under both the debt adjusters' statute and the credit service organization law in this State. We represent about 70 percent of your total licensees in Nevada.

Our members do credit counseling and work with the consumer to develop a debt-management plan. Financially distressed consumers come into or call into an office, they are counseled about their situation and they receive a budget analysis. The agency determines the consumer's suitability and ability to fund a debt-management plan.

The UDMSA is a process that we have been involved with for several years. The AADMO has been involved from day-one, and we are a participant of the entire drafting process. The drafting committee for this particular UDMSA had state regulators, sitting federal judges, law professors and many other esteemed members. This bill does not come to the Committee lightly. It has been thought out and has been through a carefully vetted process. As Mr. Kerr described, it has been passed in several states and is working. This version of the law as proposed here has solved some of the problems we have seen in other states. This is the best corrective version that is available to the Legislature.

There is a proposed amendment by the CCCS that is essentially a carving out for a single agency in the State. It would not have to be licensed or registered under this particular UDMSA. They are a local agency and undoubtedly do good work serving the residents of the State. They were not a part of the crafting process whatsoever in development of this UDMSA. I am sure they do a great job, but in this case it is not a popularity contest. They are an agency that handles tens of millions of dollars of consumer funds every single year; they receive those funds, hold them and disperse them. This little credit-counseling agency may hold more money than some credit unions or even a small bank. The idea that they want to be exempted out is not appropriate, particularly for a UDMSA, where it would kill the uniformity of the UDMSA.

There are three elements or qualifiers for exemption that they want to have in their particular amendment. The first is that they have to be incorporated as a Title 26 Internal Revenue Code (IRS) section 501(c)(3) (501(c)(3)) nonprofit aside from the fact that this is technically deficient provision language. There is no such thing as an agency being incorporated as a 501(c)(3). A 501(c)(3) status is granted to an organization by the IRS after application and review. Having an agency incorporated is fully meaningless in terms of what the law states. The second issue is the qualifier that the agency would have to be domiciled in Nevada. Aside from the great constitutional issues this would raise, you may have an instance where suddenly a flood of scam agencies is coming to Nevada to make sure they can become exempted under this particular provision. The third exemption would require that they provide housing counseling and be approved by the U.S. Department of Housing and Urban Development (HUD) as one of the requirements. This is a voluntary program that HUD does, and it is not required of any credit-counseling agency. I do not think that it is a determinant of suitability of service one way or another. I might even add that given the current housing crisis, particularly in this State, the HUD counseling has not done what it was supposed to do. That is a very questionable aspect of any proposed amendment.

The fourth qualifier of exemption is that they be a member of the NFCC. Recent history serves me well to remember that in the states of Utah and Hawaii, there were CCCS offices that were members of the NFCC that had extreme problems with money being stolen and the agencies actually going out of business after state intervention. I do not believe the qualification for membership in a particular trade association does anything other than for the trade association to say at the end of the day, “We are going to kick you out of our club.” That is not overview by the State and is not enforced by the State; it is just a trade association like any other.

I stand behind my members, and they are all good companies that work their best to be compliant. Membership in this particular organization is not a guarantee of suitability for service to consumers; our belief is that licensing is. A statute with criminal and civil penalties, and enforcement by the State, is where enforcement needs to be.

Finally, the last provision is that it provides in-service counseling for 40 hours per week. I took the liberty of calling some CCCS offices throughout the country to ask how quickly I could get an in-person counseling appointment if

I needed to, because I was in financial distress. I was told that the earliest I could be seen was about three weeks. If I am in financial distress, I do not need to wait three weeks to see an agency in-person counselor. There are many agencies out there that offer fine counseling, do a great job and offer counseling by telephone. I am not sure that the in-person requirement is suitable for exemption.

The issue we need to raise, in my opinion, is what would this particular amendment exempt an agency from? It would exempt them from background investigations including fingerprinting. It would exempt them from a trust account, insurance for dishonesty or theft, a bond, fee caps, having audited financial statements, review by a government administer, audits by state, having written contracts and from a long list of prohibited practices under the UDMSA. This does not sound like good lawmaking to me. Therefore, we oppose, vehemently, the proposed amendment by CCCS.

We applaud the efforts of the ULC to bring the UDMSA. We believe it is a good law as it moves forward throughout the states. Speaking on behalf of the folks that could not make the long trip out here, in opposition of this amendment:

> The end beneficiary of this amendment is clearly not the consumer. It is one agency. An amendment providing a private exemption to a single organization is unseemly at best. Frankly it smells. We support the adoption of the Uniform Act with Senator Care's amendment, and we oppose the proposed amendment from CCCS.

CHAIR CARLTON:
Since we understand how you feel about this amendment, in any way does this bill prohibit CCCS from doing business in this State as long as they comply with this bill?

MR. GUIMOND:
No. As a matter of fact, this bill creates a level playing field for CCCS and everyone else in this industry. What you will find is the licensing, or actually the registration requirement in the UDMSA, is attainable by CCCS and everyone else. There has not been a barrier to entry in any of the states that have enacted the UDMSA by virtue of its requirements for registration. It may be a larger burden to comply with this act than the current law, but the UDMSA has the protections that are important. The most critical things we looked at were the trust accounts, bonds and background investigations. Exempting an agency

from those requirements, where they are handling large amounts of consumer money, is not good law-making. They would be under the same confines as everyone else in terms of registration, and they could easily meet the requirements.

CHAIR CARLTON:
I know that in order to maintain nonprofit status, there are a number of reporting mechanisms in audits that are necessary. Are those not sufficient enough to keep an "eye" on a nonprofit? We do have to look at the practicality of the world. The cost of a for-profit entity doing some of these things and the cost of a nonprofit entity doing them means that in the nonprofit world that is money they will be spending on this rather than money they could spend on service. How do we weigh that?

MR. GUIMOND:
It is kind of a red herring. The letters I read to you were all from tax-exempt nonprofit organizations. Our organization represents the entire industry–for profits and nonprofits. The nonprofit tax-exempt agencies that we have in our membership have no problem complying with the UDMSA. They are registered in the states that they need to be. The only requirement, at this time, is that a tax-exempt organization files Form 990 with the IRS. That is a general summary of accounting and does not delve into practices or involve an auditing of the trust account, for example. The public disclosures or public filings that are out there do not rise to the level of trust that we need. A direct oversight by a State enforcement authority that can monitor them through the original application, annual audits or subsequent renewal applications, provides the protection that the consumers need. We are talking about tens of millions if not hundreds of millions of dollars of consumer money at risk in these trust accounts.

MR. HILLERBY:
We are here to support the bill and the amendments. We brought with us Robert Linderman from The Association of Settlement Companies who came over from San Francisco.

ROBERT LINDERMAN (The Association of Settlement Companies):
We are the industry association for the for-profit sector of debt-settlement organizations representing approximately 175 of the leading debt-settlement companies in the country. We are pleased to support the bill as amended with Senator Care's changes. While you may find it ironic to see before you an

industry representative looking for regulation, that is in fact the case. This bill offers great protection and great comfort for the citizens of Nevada. We are looking forward to serving them on a continuous basis working with regulators to bring a much needed service to your citizenry. I am delighted to answer any questions you may have.

MICHELE JOHNSON (President/CEO, Consumer Credit Counseling Services):
Thank you for the opportunity to testify on S.B. 355 and to submit an amendment (Exhibit L). I would like to discuss the difference between CCCS and those industries referred to in the bill and correct some misstatements that were made by Mr. Guimond and Mr. Kerr.

The CCCS was established in 1972, and we have been providing services to residents throughout the State for 37 years. We have eight brick-and-mortar locations in rural, urban and suburban Nevada. We are HUD approved as a local housing-counseling agency and the only agency designated as such throughout Nevada. We have an on-site audit by HUD every two years. We are a United Way member agency, and we have an on-site review from them every three years.

We are a member of the NFCC and meet their standards. One of the misstatements made earlier was that they are a trade association and in actuality they are also a private 501(c)(3), not a trade association. We are accredited by the Council on Accreditation for Family and Children Services, Inc.; we have an intensive white-gloved investigation on-site review, and we undergo that scrutiny every four years. We are also approved by the executive office of the United States Trustee program to provide both the required prefiling bankruptcy counseling and pre-discharged debtor education. We go through an intensive process each year to renew that. As part of that, there are criminal background checks, a requirement of our audit, not just the IRS Form 990, but a full audit as well as other in-depth bonds and requirements.

The Better Business Bureau has given us an "A+" rating. The most important aspect in serving the consumers of Nevada is that we have a community-based board of directors with community leaders such as Nevada Supreme Court Justice Michael L. Douglas and Eighth Judicial District Court Judge Valerie Vega. That provides the direct oversight to ensure that the funds we have do go to serving the consumers of Nevada.

In 2008, some of the services we provided at no cost to the consumer whatsoever included financial counseling, and in-depth financial counseling to over 6,200 families. We provided reverse-mortgage counseling to seniors who are investigating that product in 1,076 counseling sessions as well as default delinquency and loss-mitigation mortgage counseling in 5,543 counseling sessions. Due to the fact that there was some federal funding has caused even more oversight of our organization and will require an even more in-depth financial audit.

We provide oversight and free tax preparation. Last year we did tax filings for 3,174 households, bringing over $3 million back into our communities. The adjusted gross income of those families receiving the benefit of that service was $21,851 and indicates we are reaching low- to moderate-income family. We also provided pre-purchase financial literacy–a 6-hour class free of charge to 1,527 individuals, and 327 financial-literacy classes that reached an additional 8,400 consumers. We have an IRS advocacy program and provide down-payment assistance and administer the programs for the cities of Las Vegas and North Las Vegas. All of those are provided at no cost to the consumer.

We do have a minimal fee of $20 per month on our debt-management program. We dispersed about $14 million last year to creditors on behalf of our debt-management clients. The reporting of the administrative requirements in this proposed legislation will cause us to evaluate whether we will continue to provide that service, and if we do continue to provide it, at what cost to the consumer because we certainly cannot bear the additional cost without passing it on somewhere. All that information demonstrates debt management is just one of the resources provided by CCCS to residents of Nevada.

Our State debt-management company serving residents by telephone or e-mail do minimally more than establish the debt-management plan. There is no financial literacy and they often assess exorbitant fees regardless of the fact that they may or may not be nonprofit. Additional consumer oversight for these organizations is relevant and necessary. The CCCS is currently, and has been since the inception of the requirement, registered with Consumer Affairs Division through the State, and we have maintained a $100,000 bond as required by NRS 598. In the Yellow Pages of any Nevada phone book, you will find dozens of organizations listed, none of whom are local and none of whom are registered. Debt-settlement companies on the other hand absolutely require

oversight. Our organization talks with consumers who have been adversely affected on a daily basis.

It also appears throughout the legislation that there should be some distinction made to clarify what debt management is versus debt settlement, as the terms are used interchangeably throughout in the definitions in sections 8 and 9. The services differ greatly between debt settlement and management.

I have previously submitted an amendment, Exhibit L, and I welcome the opportunity to meet with the sponsor and others to differentiate between debt settlement, debt management and credit counseling and to further differentiate between CCCS, out-of-state debt-management companies and debt-settlement companies.

As an aside, the reference to the two agencies that were part of the NFCC in Utah and Hawaii, as I chair our NFCC, I am well aware that both organizations were removed from membership prior to and because of the oversight of the NFCC. They were removed before the actions of each state.

CHAIR CARLTON:
Explain to me why the NFCC is not a trade association. Is it an accrediting body?

MS. JOHNSON:
It is a 501(c)(3) IRS-designated nonprofit organization. For credit-counseling organizations that choose to meet their standards, they are a central accrediting organization. They have some very strict standards with one being the accreditation through the Council on Accreditation, an independent third-party, as well as others. You must have an audit, a local board of directors, and you must meet all bonding requirements of any state that you do business in. Though we are all independent nonprofits, it is sort of an oversight body.

CHAIR CARLTON:
As far as the federal funding that you have received, what types of audits and reporting are required along with that funding? What performance do you use for the federal funding?

MS. JOHNSON:
With the federal funding, it is the National Foreclosure Mitigation Counseling Program which was first established in March 2008 when it became available. For any organization that receives more than $500,000 in federal funding, you must have an audit, which we have always had. However, you also must have an A-133 which is an extended audit in which the independent certified public accountant will ensure that all aspects of the federal funding requirements were met. As part of our ongoing protocol, we do have a trust account that all client funds go into. The executive office of the U.S. Trustee verifies that, as does the independent auditor and the Council on Accreditation.

STEFANIE EBBENS (Legal Aid Center of Southern Nevada, Inc.):
I have provided written testimony in opposition to S.B. 355 (Exhibit M). We would like to offer our support to the amendment proposed by CCCS.

JON L. SASSER (Washoe Legal Services; Washoe County Senior Law Project):
We want to thank Senator Care for bringing this important legislation forward. The debt settlement you heard discussed today is a real problem in our community. Regulating them and getting them under control is extremely important. We also appreciate the opportunity to meet with other individuals to explain the purpose of the bill and believe it was a very productive conversation. I hope something can be worked out, either in terms of excluding the CCCS on the bill or at least excluding them from those parts of the bill that might harm their organization, because the organization is hugely vital and important to our clients at the Washoe County Senior Law Project and Washoe Legal Services.

In conclusion, I urge your support, with some accommodation for CCCS either as a carve out or an exemption to the provisions that are most onerous to them.

CHAIR CARLTON:
Ms. Johnson, earlier I spoke to one of the gentlemen who proposed the bill about this particular exemption that this would not prohibit, but would be a burden to CCCS. Can you give me a dollar amount to that burden; if not today, perhaps in the future?

MS. JOHNSON:
Absolutely, I can give it to you once I summarize the cost of all of the reporting, the additional oversight, the cost of oversight, all of the reporting that would be necessary and the additional bonding costs.

CHAIR CARLTON:
At this time we will close the hearing on S.B. 355, and we will open the hearing on S.B. 388.

SENATE BILL 388: Revises provisions relating to insurance. (BDR 57-1131)

SCOTT J. KIPPER (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
We have basically two functions at the Division of Insurance; first and foremost is consumer protection and consumer affairs, and the other is to make sure we facilitate a positive business climate. As we worked within the Division over the last several months, we have highlighted a number of issues that merit your consideration as far as creating changes to the Insurance Code, and we have provided you with a color copy of this presentation (Exhibit N).

Highlighted are five major areas in Exhibit N for discussion: "Make-Whole Doctrine, Federal Mandates, Discretionary Groups, Viatical Regulation and Clean-up and Clarification."

The make-whole doctrine is a great consumer protection, and we have added language to the health statutes to codify the doctrine. The make-whole doctrine prohibits carriers from enforcing their subrogation rights before the insured has been fully reimbursed for his covered loss.

We have included language from three federal mandates: the Genetic Information Nondiscrimination Act, the Mental Health Parity/Addiction and Michelle's Law. If these mandates are not included, we may stand to lose our ability to regulate Health Insurance Portability and Accountability Act policy. The downside is that the federal government would become the regulator of small employer group-insurance policies.

The ability to have oversight discretionary group filings is an issue that relates to consumer protections. In the past, there may be group policies situs from another state, Alabama being a popular one because of their less than robust trust oversight. An insurance company would create a trust, situs in Alabama and then sell policies across the country. This provision would allow us to have oversight and ensure that those trust policies are filed and approved by the Nevada Division of Insurance before they can market those products to our citizens. If we do not do this, these products may not include all the provisions

that the Legislature has included in stating what these types of products must have in order to be sold in Nevada. This would provide excellent consumer oversight.

The largest piece of our bill has to do with viatical/life settlements. We are simply enhancing and updating the life-settlement oversight procedure that is already in place in Nevada. The added enhancements will advance consumer protections and accommodate them in a more orderly way to conduct business. The National Association of Insurance Commissioners (NAIC) created a model law in 1999, and it was adopted by Nevada in 2001. There have been some changes to this model since then, and we feel it is important to update those changes in Nevada law.

A primary component of this issue is called the insurable interest. This concept comes out of eighteenth-century England that prevents investors from pooling funds with the agreement that the last surviving member of that group would receive the payout. These types of entities are not in the best public policy. More importantly, in the 1990s during the acquired immunodeficiency syndrome (AIDS) epidemic, terminally-ill individuals who had life insurance policies desperately needed cash to pay for their living expenses and treatment. Some enterprising individuals offered to buy those policies from terminally-ill individuals for pennies on the dollar. When the individual passed away, the person who bought the policies became the beneficiary. This type of abuse generated a great deal of national discussion and hence the NAIC model developed.

What grew out of this type of activity was stranger-originated insurance and is basically a situation where an individual contacts someone they do not know and pays for them to purchase a life insurance policy. The stranger will make the premium payment and after a certain period of time, they become the owner of that policy. The stranger may also offer to purchase a policy that was already in place from the consumer. The benefit to the consumer generates additional income. The problem with this type of setup includes selling the policy to another broker at a discount, where the discount is paid to the insured and the purchaser of the policy becomes the beneficiary. It could also limit the future insurability of the consumer by carrying too many insurance policies. It also costs the consumer in higher rates of life insurance.

Senate Bill 388 enhances the Nevada laws that were passed in 2001. We are asking for four basic enhancements: 1) establish a five-year waiting period from the time the insurance policy is purchased to the time it can be sold, except in certain cases such as terminal illness; 2) improve accountability and transparency by requiring additional notices and disclosures; 3) enhance advertising and marketing guidelines for these products so that consumers are even more aware of what they are purchasing and the consequences of those actions; and 4) oversight from the Office of the Secretary of State on the security side of this bill.

The cleanup and clarification part of the bill is self-explanatory as written, simply clarifying language that is already in existence.

MR. HILLERBY:
With me today is John Mangan from the American Council of Life Insurers (ACLI), and we are here to support the Insurance Commissioner's bill as it is written. It has very important protections for people in the viatical-settlement sections.

JOHN MANGAN (Regional Vice President, American Council of Life Insurers):
I represent the ACLI which has about 295 members doing business in the State. We have approximately 7,000 individuals in the industry, and in our last track we had nearly 700,000 individual life insurance contracts enforced in the State. We pay out about $2.5 billion to the residents of Nevada. We also have approximately $40 billion invested in Nevada's economy. It is clear that our industry has a large stake in Nevada and we care about the residents; many are our senior customers. With that background, we support very strongly, the Insurance Commissioner's bill to include the sections on viatical settlements which are very important to protect Nevada seniors from growing financial abuse.

Current law allows the sale of an existing life insurance policy if a person is terminally ill. This bill will broaden the ability to sell a policy to those who are not terminally ill. Anyone could settle policy. In exchange for broadening that right, the bill contains some "guardrails" and protections to ensure those who enter into transactions are doing so with their eyes open, and they are protected from abuses that have been noted in the marketplace and around the Country.

Please take note of the stranger-originated life insurance. You may have read about this or have seen programs on "60 Minutes" or *The Wall Street Journal*. By law, strangers cannot buy life insurance on others; however, there are clever people who have found a way to mask the true intent of these deals and have found ways to get around that law. Some of those people are funded by very clever folks on Wall Street who are the capital behind these deals. According to public reports, some of the largest investors in these deals include firms that have now gone bankrupt or are now currently owned by the federal government because of risky investments. These deals are risky and put Nevadans at risk.

There are other investors such as off-shore investors and hedge funds. In one case, Florida regulators determined that a Columbian drug cartel had gotten ownership of some of these life insurance policies that had been securitized. With this background, how can this happen, and how can we stop it? First, a broker or someone with a large financial incentive will entice a senior to purchase life insurance that they do not need for the purpose of transferring it to these investors for a cash payment. In that process, seniors are often coached to lie or deceive the insurer about the true nature of the deal. They know that if the company knew that they did not need the insurance and were just going to transfer it without insurable interest, the policy would not be issued.

There are ways to mask the true nature of these types of transactions. One is to have a senior engage in a fraud. The other is to set up a loan arrangement where the investor will pay the premiums for the insured and call it a loan. The terms are so exorbitant that after a couple of years when the loan is due, it cannot possibly be paid back. In exchange for the loan, the senior will simply transfers ownership over to a third party and the policy is sold into the secondary market as a security. These transactions violate the intent and the spirit of Nevada's insurable-interest law and the law of any other state. The securities piece has that extra list attached to it.

How do we deal with this? Senate Bill 388 has protections in it that will help stop these deals and then regulate the legitimate deals that would benefit a senior. It will stop one key risk which is moral hazard. A red flag is raised with third-party investors who have a financial incentive in the rapid demise of Nevada seniors. The quicker the senior dies the more profit these investors make. Even in cases of legitimacy, the investment can potentially be pooled into a security. Individuals who invest in those securities should know that if seniors

are living longer than expected, they are going to be at risk. If the policy was based on fraud and is later rescinded, then those securities are worthless. Transparency and disclosure are very important. The senior who sells these legitimately needs to know that the broker may be getting two to three times the amount of cash that the senior is getting. They need to know that the policy could be sold several times down the line. As Commissioner Kipper said, they need to know there are tax consequences at each point of the transaction. They need to know their privacy is going to be protected, as they will be turning over medical and financial records that are not currently regulated under Nevada law. Finally, the price impact is going to affect all legitimate senior purchases of life insurance, and that is something we care about in the general market.

The key provision that stops the "stoley" deals, the ones that are the really heinous deals, is the five-year waiting period. We know the Wall Street investors do not want to tie up assets for more than a couple of years. If they have to wait five years to take possession of the asset, then they simply will not enter into the deal. This bill is like a big hand that says to stop and take care, and if you are one of those speculators, we do not want you in Nevada.

It is also critical to point out that on page 21 of the bill, as Commissioner Kipper mentioned, there are eight very broad exceptions to that five-year waiting period. Those include terminal illness, chronic illness, death of a spouse or the insured, divorce, retirement, disability, bankruptcy or financial problems or should the owner experience a significant decrease in income. The only thing left after these exemptions are the suspicious deals. We urge your support of S.B. 388.

SENATOR SCHNEIDER:
You mentioned there are drug cartels that have bought these securities on the market. The policies are pooled together, sold as securities and possibly one of those Mexican drug cartels can purchase those. Now they have the name of all of these senior citizens. They are the same drug dealers that are killing everyone on the border, coming into San Diego, El Paso and Tucson, and kidnapping people. That does not sound real comfortable, Mr. Hillerby.

MR. HILLERBY:
That is scary and what sealed the deal for me is something that Mr. Mangan shared with me yesterday. He said the other bigger investor in this was American International Group (AIG).

CHAIR CARLTON:
Wall Street has always amazed me, but to invest in death goes beyond comprehension. I have a hard time understanding how anyone could think this is an investment. What happens when AIG goes bankrupt and the premiums do not get paid? Does it go back to the person who originally purchased the policy? Who gets the notice that the premium is not getting paid?

MR. MANGAN:
Once the policy has been transferred away from the senior, they no longer own it. You are right; the new owner is responsible for paying the premium. Of course they have a huge incentive to keep paying it and that is an inheritance of the $2 million-$3 million that they now own. In most cases, the investor is going to want that premium paid under all circumstances. However, there are issues in the beginning when the senior has agreed to sell the policy but it has yet to be transferred. They may either change their mind or maybe they do not make the payment, or something else goes wrong. They could end up in litigation in addition to other problems. If they are not paying their premium and the policy lapses, the investor may actually enter the deal and force them to pay the premium or take the insured to court to make sure they live up to the deal.

MARY PIERCZYNSKI (Foster Consulting; Allstate Insurance):
We are in support of S.B. 388, and thank Commissioner Kipper for his efforts to clean up some of the insurance issues in the State.

JESSE A. WADHAMS (Jones Vargas; Nevada Independent Insurance Agents; Nevada Association of Insurance and Financial Advisors):
We are in support of S.B. 388 and I have brought with me two proposed amendments: the first amendment deals with resident Nevada producers (Exhibit O) and the second amendment gives protection to life insurance and annuities from creditors (Exhibit P).

The first amendment, Exhibit O, will lift the requirement for a storefront business. The age of cell phones, Internet connections and laptops allows for a person doing business where it is being done. It would put them on the same page as nonresident producers who do not have the storefront requirement.

CHAIR CARLTON:
In 1999 or 2001, we had a discussion about resident agents having a storefront in the State so that folks would have someone and know where they could at

least find a person they were doing business with. Your proposal allows for someone who has a Nevada cell-phone number and address to do business from any state every day of the week, and the consumer would never know that. What protections are built in to make sure that the person I am doing business with is really a Nevada person?

MR. WADHAMS:
Not having that experience, the question may be good for Jim Wadhams.

JAMES (JIM) WADHAMS (Nevada Independent Insurance Agents):
There was a discussion previously that may have been when we were discussing mortgage brokers, not insurance agents. The reason this change is coming now is because we have gone through about two sessions plus a federal court case that clears up the issue of what has been called "a discrimination between residents and nonresidents." While I am comfortable with the question in terms of knowing who you are dealing with unless they have an office, the problem is we are putting the burden on local people and we have given equivalent marketing rights to the nonresident agents without that burden. Ironically, because of the change in our court cases, we have ended up putting a disadvantage to the gentleman or lady who wants to do business locally rather than on the one who comes across the border from time to time to "cherry-pick" the business. I do not believe we have had this particular issue in regard to insurance.

MR. JESSE WADHAMS:
The second amendment, Exhibit P, would give protection to life insurance and annuities from creditors. Basically, with more and more workers moving to an employer-sponsored retirement plan, 401(k), they are supplementing their retirement and their family's protection with annuities and life insurance, and this would extend the credit protection to those assets.

COMMISSIONER KIPPER:
You do have my stamp of neutrality on these two amendments.

MATTHEW (MATT) SHARP (Nevada Justice Association):
We are in support of S.B. 388. There are two amendments I have not had the opportunity to provide to the Committee. I have gone over the amendments briefly with Commissioner Kipper and understand that he is okay with them.

These amendments pertain to the subrogation and the discretionary groups, and I can submit them now or at a work session.

CHAIR CARLTON:
If you would like to go over them now, we can get the written document later, which is fine.

MR. SHARP:
The first amendment deals with subrogation in section 6. The commissioner has gone over the make-whole doctrine. The purpose of our amendment is to specify that section 6 does, in fact, incorporate the make-whole doctrine. Many times when people are catastrophically injured there are two problems they face. Oftentimes their insurance company will not pay the bills at all. Section 6 stops that practice which is very helpful to people. The other issue is that there are many things health-insurance policies do not cover, particularly extended rehabilitation. An example would be a brain injury where there is typically a 60-day period of rehabilitation and oftentimes these people need much more than 60 days. This is simply to confirm that if you are actually out-of-pocket for something like rehabilitation for a brain injury, you would get that recovered first. Then your insurance company would get recovered for the medical bills that you pay. That would be the first amendment.

The second amendment is simpler in section 11, subsection 2, on page 6. Currently the language reads: "As to group insurance policies to be issued to a group which was formed for the purpose of purchasing one or more policies of group insurance pursuant to NRS 688B.030 or NRS 689B.026, ..."

At this point, we would insert the phrase: "and in addition to the requirements of NRS 688B.030 or NRS 689B.026 and the regulations adopted by the Commissioner, ..." The purpose is continued compliance of two separate statutes that regulate these kinds of products.

COMMISSIONER KIPPER:
Noting the time frames, I will pledge to you that we will work with Mr. Sharp to address this.

CHAIR CARLTON:
Please report back to me and let me know how that goes.

CAROLYN ELLSWORTH (Securities Administrator, Securities Division, Office of the Secretary of State):
I am here for the portion of the bill which the Insurance Commissioner so gratefully allowed us to piggyback onto his bill; the provisions dealing with securities. Specifically, the provision that is found on page 8, subsection 2, of section 18, indicates that nothing within the insurance NRS 686A preempts or otherwise limits the provisions of chapter 90 of NRS or any of our rules or regulations concerning securities.

There has been quite a bit of discussion during testimony as to viatical investments or viatical-settlement investments being "securities." The portions of the bill that would amend chapter 90 of NRS codify the fact that a viatical settlement investment will be defined as a security. Currently many states do interpret that type of investment as a security under the definition of an investment contract. However, there is federal case law in place that is disputed. In an effort to alleviate litigation in this area, we want to make clear that it is the State's position that viatical-settlement investments are, indeed, securities and should be regulated as securities, including the antifraud provisions of the Uniform Securities Act in Nevada. For that purpose, we have defined viatical-settlement investments and then included them into the definition of securities for that purpose.

In addition to consumer protections that the insurance provisions of the bill offer, there are potential victims on the security side and those are the seniors who are often investors in these types of now securitized products. We have had instances where unsuspecting seniors have invested into something they have been told has a great investment return for them, and they have found, in fact, that this investment they thought was going to pay them these spectacular guaranteed returns did not happen that way. They are called upon many times in these investment products to pay the premiums on the life insurance, or it may be a senior who is asked to invest in a security that is not going to render any returns until after the life expectancy of the investor.

These are types of things that the antifraud provisions present in the Uniform Securities Act will guard against because they are already present for all securities. That is the purpose of adding that and making sure that viatical-settlement investments are defined in the law as securities.

HELEN FOLEY (Faiss Foley Warren; Employee Leasing Companies):
I spoke with Commissioner Kipper earlier today and in section 78 where he tries to achieve what Senator Carlton was looking to do in S.B. 112, we believe the language has been poorly drafted by the bill drafter and want to make sure that if the intent of S.B. 112 is placed in this bill, we would like to have it be the same language and not what is currently here. We pledge to work with the commissioner to make sure that it does not have unintended consequences.

SENATE BILL 112: Revises provisions relating to the provision of health benefits by employee leasing companies. (BDR 53-622)

KAREN CATERINO (Risk Manager, Risk Management Division, Department of Administration):
I am here to testify on the cleanup and clarification provisions of S.B. 388, particularly with respect to the countersignature-compliance requirements as it relates to the Ninth Circuit Court of Appeals decision. I want to bring your attention to NRS 331.184 as it defines my current duties as state risk manager as outlined in my proposed amendment (Exhibit Q). In section 3, the language indicates that we are to "Negotiate for, procure, purchase and have placed, through a licensed insurance agent or broker residing or domiciled in Nevada." We would propose that language be stricken in accordance with the other provisions of S.B. 388.

CHAIR CARLTON:
Can you describe exactly ...

MS. CATERINO:
It really has to do with the compliance with the Ninth Circuit Court of Appeals decision. If S.B. 388 moves forward as proposed, what is being recommended is that the provisions as it relates to a countersignature in the State be stricken. The statute, under NRS 331.184, would not be in the same compliance with the language in S.B. 388 because it would require that I negotiate and procure on behalf of the State insurance with an agent or broker residing or domiciled in Nevada. We would ask that that language be taken out as well.

CHAIR CARLTON:
I think I understand. Could you possibly get us something in writing?

MS. CATERINO:
I did discuss this with Deputy Attorney General, Jeff Menicucci, and he was the one who came up with this proposal, Exhibit Q.

CHAIR CARLTON:
Did you have an opportunity to discuss this with Commissioner Kipper?

MS. CATERINO:
Yes, I did.

CHAIR CARLTON:
Commissioner Kipper, did you need to put anything on the record? Committee secretary please note that Commissioner Kipper is shaking his head no.

KAY LOCKHART (Nevada Independent Insurance Agents):
The new risk manager confused me to some degree. If I read this correctly, it says that, "policy and placements must be done through appointed and licensed agents." I would feel very uncomfortable if the State were purchasing insurance through any kind of an agent, broker or company that was not appointed or licensed.

COMMISSIONER KIPPER:
If you would allow us to discuss this issue with the State's risk manager, we could come to some clarification. I think the confusion is between the countersignature requirement and the residency issue. We could come back to the Committee after we unwind this.

CHAIR CARLTON:
We will close the Committee hearing on S.B. 388.

We will now go into work session and begin with S.B. 119. Mr. Noriega missed the original hearing on S.B. 119 and has spoken with a couple of Committee members in regard to some issues he has with the bill. Normally during work sessions we do not take more testimony, but with the Committee's indulgence, we will allow Mr. Noriega to express some of his concerns on the record. He has an amendment to propose.

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

JIM NORIEGA:
I am a resident of Las Vegas, Nevada. Thank you for the opportunity to have this issue heard. Although I am here on my own, my situation is representative of a real problem that affects others and will continue to cause some difficulties if they are not addressed. The booklet before you is a condensed version of the same information in my testimony today (Exhibit R, original is on file in the Research Library). Reference numbers within my written testimony correspond to the numbered attachments in the booklet.

CHAIR CARLTON:
The part that concerns me the most is the business-licensing entity was making the determination on your profession as far as to where it should be regulated just on the simple question of whether or not you "touch someone." Could you expand on that more? In the Trager Method, what percentage of this session would touch actually be involved?

MR. NORIEGA:
If someone is with me for about an hour to an hour and a half, the percentage of touch involved is at least half of the time. It is done on a padded table and moving that person in rhythmic motions being very gentle. It is done so the individual can experience a feeling of movement that is difficult to do for one's self. It is about moving them in certain ways.

SENATOR HARDY:
Where would this be properly licensed and regulated? One of the important distinctions should be that they do not disrobe. If they do not disrobe, it should not go up to the standard of a full massage. However, where would this be more appropriately regulated?

MR. NORIEGA:
At this time I am not aware of any agency at the state level that would have authority over this or who could regulate it. I know that in Clark County it is known that they are comfortable with licensing my service as a drugless practitioner or perhaps a physical trainer if I could get a letter of exemption from the Board of Massage Therapists, which they did not give me. I went to them, wrote a letter asking for an exemption as a Trager practitioner, but I did not fall under their requirements.

SENATOR HARDY:
There are folks who are willing to take this on if we remove you from the massage category?

MR. NORIEGA:
Yes. They said I had to get my health card, maybe a background check, all the business license things and that is no problem for me.

SENATOR HARDY:
Is that included in the amendment?

MR. NORIEGA:
The amendment does not spell out who would have regulatory oversight. It just frees it up.

SENATOR HARDY:
I think we need to do that.

MR. NORIEGA:
They said if the Board of Massage Therapists said I was not a massage therapist, then they could handle it at their end.

SENATOR HARDY:
We can leave it to the jurisdiction as well. Thank you.

CHAIR CARLTON:
Senator Hardy, I did not mean to lead you in the wrong direction, but some of those issues are within the packet, Exhibit R. The basic exemption would allow him to get the appropriate business licenses that he would need under the county jurisdictions. The catch at this time is if he is falling between these two entities and cannot get the exemption so he is unable to get the license.

MR. NORIEGA:
Yes, that is basically my situation. The interpretation of the statute that defines massage therapy is incorrect. Nowhere in the description does it mention "touch." To say that any form of touch constitutes massage therapy is unjustified. What it does say is that massage therapy is an "application of a system of pressure." These are clearly movement-based systems of movement. The statute is specific. It does not say application of pressure and/or movement,

stimulation, or stretching, touching, holding, energy, or anything else; just pressure.

In Exhibit R, in regard to NRS 640C.060 subsection, paragraph (a), it says, "… mobilization or manipulation of any articulations of the body …" and in plain English that means moving the joints, and that is what we do. We move bodies. It is all ready, and it is clearly not within the definition or at the very least open to interpretation and needs some clarification.

SENATOR HARDY:
Would it be okay to have staff do a mock-up and bring this back? I would like to get the comment of the Board of Massage Therapists and the Las Vegas Metropolitan Police Department (Metro) who has showed interest in this, unless there are other comments from the Committee.

CHAIR CARLTON:
Senator Hardy, I have received a note from Brian O'Callaghan, Metro, who had to leave, stating he had spoken to Mr. Noriega and expressed some concerns about exempting the discipline.

SENATOR HARDY:
I am sure he is under the assumption of the same problem I had, that they would not have anybody to oversee them. I like the idea of a mock-up and get them to comment on it.

CHAIR CARLTON:
Alright, we will bring it back.

MR. NORIEGA:
I have had two or three conversations with Mr. O'Callaghan about this, and his concern, as you said, was how to regulate it. I made clear to him that I had no problem with background checks. He said he would be neutral on this.

ERNIE E. ADLER (Board of Massage Therapists):
Our problem happened basically in 2005. Some of you will remember, we opted out reflexology from the definition of massage therapy. Now Metro will confirm that reflexology has become the code word for prostitution in Las Vegas, because they do not have to do the background checks, and they do not have to take the tests through the State. If you look at the arrests of people engaged

in illegal activity, the licensed massage therapists started here and now have virtually no arrests. The unlicensed exempt groups have skyrocketed on the Metro chart. That is my problem with creating another exemption. If you do this, some counties that do not have a formal business licensing bureau such as Clark County's would essentially be turning those individuals loose to do whatever. Those counties do not have the same exam requirements like those in Clark County.

CHAIR CARLTON:
Mr. Adler, in a number of those counties prostitution is legal. I do not believe they would have that same problem.

MR. ADLER:
That is a good point. If you are going to do something like this, perhaps you could do it by having someone like Mr. Noriega do a background check through the Board of Massage Therapists. The Board could check that he went to some sort of school and grant the exemption based upon the fact that he is not a criminal and that we know he is on the up and up. But to turn everybody loose, I would have a problem with that.

SENATOR HARDY:
I appreciate where the Board of Massage Therapists (Board) is coming from and understand the whole reflexology thing. I understand what Mr. Noriega does, and it is not even close to massage. I am very sympathetic to what Mr. Noriega has stated here. He is trying to do the right thing and follow the law. I would like to work with him and make sure all the bases are covered.

CHAIR CARLTON:
Not everyone has to be regulated by a board. There are some businesses out there that do not necessarily need that level of oversight. We have a number of businesses that come here every year and want to be regulated. Then we have folks that just want to figure out how to do business in the State. We need to start figuring out who needs to go in that direction without receiving a lot of complaints about this particular modality. I do not have a lot of concerns and, with all due respect to the Board, to have someone who is not a massage therapist have to be licensed through the board, I think, is somewhat overreaching. If this Committee decides this modality is not within the purview of a system of pressures as defined by massage therapy, it is simply a matter of touch, then it is up to us to delineate that, decide who should be included and

who should not be included. I also understand the Board's concerns, but we do not have to be that overreaching on some of these.

MR. ADLER:
We support what the Committee wants to do.

CHAIR CARLTON:
There was an amendment proposed by Mr. O'Callaghan and I believe that was in regard to fines (Exhibit S). If the staff would do a mock-up for us using Mr. Noriega's proposed amendment and, if possible, can we bring it back to process on Monday?

MR. ADLER:
We also had an amendment having to do with comments made in previous hearings reducing the fine level (Exhibit T). It is important to include that as well.

CHAIR CARLTON:
It would be best for the Committee to look at this with all the different amendments included in a mock-up.

MR. ADLER:
For clarification of Mr. Noriega's amendment; is it the Trager?

MR. NORIEGA:
It might help to look at tab number 8 in Exhibit R.

MR. ADLER:
That might be a little bit too much. Perhaps it could be narrowed down.

MR. NORIEGA:
This language is the exact language recommended by the American Massage Therapy Association. This is massage people indicating that these should be excluded from massage regulation located in their recommended legislative pack. The Associated Bodywork Massage and Professionals (ABMP) endorse the same language. There is another federation of all kinds of practices including Trager, Feldenkrais and the ones involved here. They approve the same language. It was worked out in conjunction with all these professional groups to address this issue as it has come up before.

MR. ADLER:
I would rather address what Mr. Noriega does, because with some of these things I am not sure how far afield we are getting.

CHAIR CARLTON:
With all due respect, Mr. Adler, this is model language from the American Massage Therapy Association?

MR. NORIEGA:
That is correct. The ABMP has provided the model language that has been developed in dealing with this. It describes certain practices and indicates that they are excluded. It indicates they may not call themselves or imply in any way that they are doing massage. It then gives specific examples, one of which is the work I do, Trager Approach, Feldenkrais, Body-Mind Centering and Rolf Movement Integration. It also says that they must be certified or qualified and meet the professional standards of those organizations. It is important to have specific named modalities in there; anytime legislation can be clear and direct, that is better. If it is not stated who is included in this, with at least some examples, who will decide that? I can tell you from my experience, the local agencies, Clark County, the City of Las Vegas, etc., will inquire about the service by asking the Board of Massage Therapists because traditionally that is where they get all their authority. If the service is not listed as exempt, we would be back at square-one.

SENATOR HARDY:
I am comfortable with this language, but we should add something along the lines that the subject does not "disrobe." Given our particular circumstances here in Nevada, it would be helpful to include that.

MR. ADLER:
That is a good topic because a recent incident in Clark County had to do with a topless reflexologist, which I do not think is appropriate. The person delivering the service or the person receiving it should not be disrobed.

SENATOR HARDY:
I do like the language, but I would like to add something about the fact the subject does not disrobe.

CHAIR CARLTON:
Just let staff know what would make you comfortable and we just want to make sure that language wouldn't impact any of these others. I'm assuming it's not because they are of that level.

MR. NORIEGA:
Yes. I have no problem with language addressing that issue.

MR. ADLER:
I would also request that some language be included that requires a criminal background check. There are counties that do not issue business licenses.

CHAIR CARLTON:
Mr. Adler, you are then, in essence, trying to create a regulatory scene at the state level to regulate someone who we do not have a board to regulate. We will be putting them into another "catch-22" situation. That is where the counties and the cities need to make the determinations. If I had to get a background check to serve coffee, eggs and club sandwiches, I am sure the county can handle doing a background check for one of these modalities. We cannot expect them to be regulated without a board.

SENATOR SCHNEIDER:
Mr. Noriega, will you be able to be here on Monday?

MR. NORIEGA:
I had not planned on it. If I need to be, I suppose I could be here through the Grant Sawyer State Office Building.

SENATOR SCHNEIDER:
You can look at the amendment that comes out, review it and comment.

CHAIR CARLTON:
Staff, please make sure that Mr. Noriega and Senator Hardy get a copy of that mock-up. When we do work session on Monday, we will review the mock-up to be sure everyone is comfortable with it. We will hold S.B. 119 until we receive the mock-up to deal with these particular issues.

For the record in regard to S.B. 119, the following will be submitted: "Questions Raise by Persons Opposed to SB 119; and Answers," submitted by the Board of

Massage Therapists (Exhibit U); proposed amendments from Rebecca S. Gasca, ACLU (Exhibit V); and a letter from Sheriff Douglas C. Gillespie of Metro (Exhibit W).

At this time, we will continue the work session with S.B. 17. Senator Wiener provided the enclosed mock-up (Exhibit X).

SENATE BILL 17: Revises provisions governing health care records. (BDR 54-607)

MR. PEINADO:
I worked with Senator Wiener on the mock-up, and we have made sure that the various boards would include on their respective Websites language which would describe the retention periods that are enacted by the rest of this provision as set forth in section 1. Section 2 maintains the seven-year retention period that Senator Wiener proposed in the original bill, except to the extent that a longer period may be required by federal law. Medicare records, for example, may require a period longer than seven years. One section that was discussed as being problematic had to do with subsection 2 of section 2, indicating a written notice being mailed out and because of the concern, it has been stricken. Other than that, I believe all the rest has to do with providing the seven-year retention periods, providing alternate means of providing that information to patients and authorizing the State Board of Health to adopt regulations for the wording content and size of the various disclosures.

SENATOR HARDY:
There was no opposition beyond the mailing of the notices?

SENATOR CARLTON:
I think you are correct. The biggest part was the actual mailing of it and I believe those concerns were addressed.

SENATOR PARKS:
In subsection 2, it says to "post in a conspicuous place" but it does not have any duration. Should there be something as far as a requirement of duration? We struck "not less than 30 days" in the first line.

SENATOR CARLTON:
It is my understanding that this would be like any other posting in a health-care facility; it would be ongoing. What is the Committee's choice?

SENATOR COPENING MOVED TO AMEND AND DO PASS S.B. 17.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARLTON:
We will discuss S.B. 168. From earlier discussions, concerns were placed on trying to solve the problem with drugs that are being distributed with black-box warnings. We want to indicate on the bottle a warning notifying anyone in the household that the particular member of the household is taking a drug with a black-box warning. Other than the pamphlet warning, this acts as a second warning if other members of the household do not see the pamphlet or leaflet warning. They will know by looking at the bottle that there is something about the drug they need to be careful of and watch.

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

SENATOR HARDY:
Will this put a label on the prescription that will indicate a black-box warning? Is this just to point them to the warning?

SENATOR CARLTON:
Yes. They may need to look up the drug on the Internet or contact the pharmacy. My concern was that if you have a patient picking up a drug from the pharmacy, they may not be in a full mental state of understanding everything. If they do, they understand that there may be dangers with this drug; however, if others in the household do not have that understanding, they will not know to watch the patient for any particular side effects. This is to make sure everyone around that person who has contact with that bottle will understand this drug has serious side effects noted by the required black-box warning.

SENATOR COPENING:
I do not see anywhere in the amendment that it identifies the type of drug, such as those that could cause suicidal thoughts. Again, I brought up the drug tamoxifen for breast cancer; the way it is right now it could go on that warning. Unless I am missing something, does it talk about the type of drug that would get this warning?

SENATOR CARLTON:
On page 2, lines 19-22, of the mock-up, it says, "If the prescription filled by any practitioner requires a boxed warning pursuant to 21 [Code of Federal Regulations] CFR 201.57(c)(1), the label described in subsection 1 must contain the following warning: ... " and that is the citation for the black-box drugs (Exhibit Y).

SENATOR COPENING:
The 21 CFR 201.57(c)(1) would specify those particular drugs?

CHAIR CARLTON:
It would not be for every drug, but only those that have been deemed to be dangerous or have serious effects to warrant a black-box warning.

SENATOR COPENING:
As a matter of housekeeping, the word "prescription" on page 2, line 20 is misspelled in the amendment.

SENATOR HARDY:
I am always very sensitive to these kinds of additional burdens on business, but I learned about black-box warnings at our hearing. I did not know there was such a thing as a black-box warning and it is a good opportunity to inform the public about these things. Although I generally do not like these types of additional requirements, they are already required to put the black-box warning in the bag, but there needs to be something that will point them to the bag. I will support this bill.

SENATOR CARLTON:
Would that be a motion?

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 168 WITH PROPOSED AMENDMENT.

SENATOR RHOADS SECONDED THE MOTION.

SENATOR PARKS:
I know that most of the conversation dealt with persons for whom the drug was prescribed who are less than 25 years of age, and I see that has been removed. Are we to understand that it would be any drug regardless of for whom it was prescribed?

SENATOR HARDY:
I would think the process of trying to determine whether the person is 25 years old or under creates a huge regulatory burden. This ought to be on everybody. If this black-box warning is in there, it ought to be for everyone.

CHAIR CARLTON:
Senator Parks, the seriousness of these drugs would go to anyone. In addition to what Senator Hardy said about not being able to discern the age of the person, the crux of the problem goes to the seriousness of these drugs and the warnings associated with them.

SENATOR HARDY:
How does it work? I thought it would be fairly simple if a black-box warning was necessary that it would be put in the bag and you have to print the label.

CHAIR CARLTON:
I did not want to get into another hearing, but if you could explain, Ms. MacMenamin, the procedure to Senator Hardy.

ELIZABETH (LIZ) MACMENAMIN (Retail Association of Nevada):
To address Senator Hardy's questions, in actuality, this is going to be a new manufactured label. Nowhere else in the United States is this done. This is a very broad spectrum of drugs we are looking at. Previously, it was very specific to antidepressants that were going to create suicidal thoughts. There is already something in the bag, but now you are asking for different criteria for the State to manufacture a specific label that will have to be utilized within a computer system. In some of the smaller member pharmacies, it will possibly be handled a bit differently. Now you are asking them to print a new label to go along with the many other different labels. It is a little more involved than what is in place now. A different criterion will have to be met through the regulatory process.

SENATOR HARDY:
I do not want to stop this from going forward because it is important. I would be open to other alternatives that would make it easier on the pharmacies. Recently a friend of mine committed suicide and the only explanation was that it was the medication. His wife did not realize that was a side effect until after the fact. We need to take extraordinary measures to these types of cases.

MS. MACMENAMIN:
In response to Senator Hardy, this is something that pharmacists have dealt with for a long time now. They do realize the emphasis that needs to be placed on it. The burden needs to be placed on the prescriber right now to get family members in, especially on the antidepressants. One of the things is that the burden is on the prescriber to make sure they are letting the family members know, and they are letting their patient know the possibility of suicidal tendencies. Statistics show that the suicidal tendencies using a placebo are 2 percent, and it actually goes up to 4 percent on these antidepressants. There is a regulatory process that we have thrown out there and hope the Committee would consider; however, I will not stand in the way of the Chair on this bill. If it is this Committee's desire to move it forward, we would still oppose this type of process.

CHAIR CARLTON:
Committee, we have a motion, a second and a discussion. I call for the vote.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARLTON:
Next we have S.B. 266, the special-events license with proposed amendment 3894 (Exhibit Z). We talked about having the practitioners come into the State under a special-event license for teaching or education purposes.

SENATE BILL 266: Makes various changes concerning the practice of medicine. (BDR 54-707)

CHAIR CARLTON:
On page 2, lines 6-10, of Exhibit Z states:

> For the purposes of this section, "special event" means a scheduled activity or event at which a physician appears as a clinician for teaching or demonstrating certain methods of technical procedures before a medical society or organization, convention or medical college or an accredited school of medicine.

Would this eliminate them if they were to do a procedure in a hospital? By not listing hospital in this definition, are we limiting the doctor from being able to teach at one of the hospitals?

MR. PEINADO:
This language was borrowed from an exemption that applies to the practice of dentistry. This type of activity is defined as not being part of the practice of dentistry from a standpoint. Ordinarily, it appears that it included only the context of being at a school or convention or some other type of event. Certainly, if the hospital is part of the school of medicine, then I believe it would be applicable. If we need to designate a hospital that is not part of the school but at which the demonstration or the teaching is being conducted, we could certainly add something along those lines.

CHAIR CARLTON:
Committee, I would be more comfortable with not limiting the opportunity for these events to be only at certain hospitals.

SENATOR HARDY:
Are there provisions elsewhere to allow doctors or specialists from out of state to perform surgeries at hospitals?

CHAIR CARLTON:
They have to be fully licensed.

SENATOR HARDY:
We are specifically talking about a demonstration here. Do they have to become fully licensed? Is there not a guest or specialist to come in with the State?

CHAIR CARLTON:
The doctor who asked me for this legislation is an oncologist. He tried to bring in someone and was informed that he had to get the full license for that person. It would take six to eight months to complete. This is not an ongoing thing; this

is to bring in someone with a special technique and knowledge to teach the doctors or students in our State. A doctor could come in, go to St. Rose Dominican Hospital; a bunch of doctors or surgeons associated with the hospital could go into the operatory or viewing room ...

SENATOR HARDY:
Do you want to leave it specific to the teaching?

CHAIR CARLTON:
Yes.

SENATOR HARDY:
Then I imagine that would take place in an accredited school of medicine. That is where they would conduct that sort of thing.

CHAIR CARLTON:
Not necessarily. If it was just a new technique and these doctors have already graduated, it ...

SENATOR HARDY:
Then we should just add "hospital." I was not clear whether you wanted to go beyond the teaching part to allow someone from out of state to perform a surgery. We just need to add ... "or a licensed hospital." It is still restricted to teaching by other portions of the bill.

CHAIR CARLTON:
Do we just add the correct language, "or hospital?"

SENATOR HARDY:
Would it not be licensed hospital?

CHAIR CARLTON:
The indication I get from the Committee is that we all agree to the change, but we need to know which term to use.

> SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 266 WITH THE AMENDMENT.

MR. PEINADO:
My only concern is that if we broaden it in terms of surgical facility or something, we could end up with basically a local doctor's office where they do outpatient surgery. Now you are not just demonstrating or teaching, but you have an out-of-state doctor coming in and doing it in one doctor's office.

CHAIR CARLTON:
Mr. Lee, do you have a suggested term that we could use?

KEITH L. LEE (Nevada Board of Medical Examiners):
Yes, I would suggest "licensed health care facility." That term, I believe, is defined in chapter 449 of NRS.

SENATOR HARDY:
Does that gets us to hospitals and not just outpatient services?

MR. LEE:
Yes, that gets us to licensed facilities.

SENATOR HARDY:
Is that not a licensed facility?

MR. LEE:
That is correct, because those are not licensed facilities.

CHAIR CARLTON:
Is outpatient not licensed?

SENATOR HARDY:
They are, but not under that chapter.

MR. LEE:
Yes, they are. That is my recollection. I am sure that Mr. Peinado and Ms. Gregory can figure out where that is. It seems to me that would be the term we want.

SENATOR RHOADS SECONDED THE MOTION.

MR. PEINADO:
I would be happy to see if we can get "licensed health care facility" and if there is a definition there that will satisfy the needs and interests of Committee.

CHAIR CARLTON:
Senator Hardy has moved to amend and do pass. Senator Rhoads seconded the motion. Is there any further discussion?

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CARLTON:
Senate Bill 297 still has a couple of things that need to be worked on and worked out. With the Committee's indulgence, I need to do more homework on that. We will try to bring it back early next week.

SENATE BILL 297: Revises provisions relating to the credentialing of mental health professionals from other states. (BDR 54-1076)

We will go to S.B. 254, Senator Nolan's bill for real estate brokers.

SENATE BILL 254: Makes various changes relating to ethical standards in real estate transactions. (BDR 1-31)

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 254.

SENATOR COPENING SECONDED THE MOTION.

SENATOR AMODEI:
I plan to vote for this bill, but it would be nice before we impose something on a profession that is usually governed by the Nevada Supreme Court if Committee Counsel could put on the record, before it ends up on the Senate Floor, that it is constitutional. I am not saying we should hold it up; I just think it is something that can catch up with the bill if there is no problem. If there is a problem, then we can put it on the desk. I am prepared to support the bill; however, I would just like not to vote for a bill that may turn out to be an unconstitutional impingement on the Nevada Supreme Court's powers to regulate the profession of the practice of law in the State.

CHAIR CARLTON:
With that discussion and the Committee's indulgence, we should have that investigated and then bring it back to the Committee before we go any further.

SENATOR HARDY:
I withdraw my motion.

SENATOR COPENING:
I withdraw my second.

CHAIR CARLTON:
Mr. Peinado, if you would get an explanation or information Senator Amodei needs to clarify this, we will work on the bill at the beginning of next week. Committee, we are adjourned at 4:13 p.m.

RESPECTFULLY SUBMITTED:

_____
Vicki Folster,
Committee Secretary

APPROVED BY:

_____
Senator Maggie Carlton, Chair

DATE:_____