MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fifth Session
April 6, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 8:45 a.m. on Monday, April 6, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
John Duncan
Keith Lee, Sutton Place Ltd.
Chris Ferrari, Public Affairs, Ferrari Smith
Mike Janko, President, American Estate and Trust

Lancette VanGuilder, R.D.H., Nevada Dental Hygienists' Association
Caryn Solie, R.D.H., Vice President, American Dental Hygienists' Association; Nevada Dental Hygienists' Association
Vickie Kimbrough-Walls, R.D.H., Director of Dental Hygiene, Truckee Meadows Community College
Belle Baldwin, R.D.H., President-elect, Nevada Dental Hygienists' Association
Annette Lincicome, B.S., R.D.H., Huntridge Teen Clinic
Joyce A. Herceg, R.D.H.
Fred Hillerby, Board of Dental Examiners of Nevada
Donna Hellwinkel, D.D.S., Board of Dental Examiners of Nevada
Joel F. Glover, D.D.S., Nevada Dental Association
Bart Mowry, Sutton Place Ltd.
Robert Armstrong
Linda Powers, Managing Director, Toucan Capital Corp.
Maria Grote
Jim Noriega
Jim Jenks
Beth Francis
Hans Frischeisen
Bridgette Dolgoff
Glenn A. Hausenfluke, N.D.
Don Nelson, President, Nevada Life
Melissa Clement, Nevada Right to Life
Lori H. Quinn
Michael McAuliffe
Michael Gerber, M.D., President, Nevada Homeopathic and Integrative Medical Association
Pierre Werner
Elizabeth Aiello, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Lisa Foster, Nevada Association of Health Plans
Ernie Adler, Board of Massage Therapists
Billie Shea, L.M.T., Chair, Board of Massage Therapists
Robin Graber, International Association of Structural Integrators
Debbie Pawelek
Brooke Lawrence
Dené Chabot-Fence, N.D.
Dennis Grover, Nevada Freedom Alliance
Nancy Eklof, Executive Director, Board of Homeopathic Medical Examiners

Juanita Cox, Citizens in Action

CHAIR CARLTON:
I will open the hearing on Senate Bill (S.B.) 310.

SENATE BILL 310: Revises provisions governing the regulation of trust companies. (BDR 55-788)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):
Senate Bill 310 makes further distinctions between family trusts and retail trusts. It further defines family trusts with limited regulatory requirements and retail trusts with increased regulatory requirement. There is no fiscal note on the bill. There is a two-thirds majority vote requirement, but that is because of the fees. There is nothing in this bill that increases taxes.

GEORGE E. BURNS (Commissioner, Division of Financial Institutions, Department of Business and Industry):
The intent of S.B. 310 is to revise provisions governing the regulation of trust companies under chapter 669 of *Nevada Revised Statutes* (NRS). The current trust statutes are antiquated and inadequate to protect the public interest and provide a conducive trust business environment, while safely and soundly serving the public.

The additions and revisions in S.B. 310 are intended to distinguish retail trusts from family trusts, and further define retail trusts with increased regulatory requirements, because the inherent risk is very high and directly affects the public interest. It also further defines family trust with limited regulatory requirements because the inherent risk is low and does not directly affect the public. The bill defers family trust regulation, in detail, to a sub-statute, chapter 669A of NRS which is addressed in S. B. 365 to be heard later today. The bill also removes the statutory ambiguity in the current trust statute, chapter 669 of NRS that makes licensing, examining and regulating retail trusts to protect the public interest, very difficult, if not impossible.

SENATE BILL 365: Establishes provisions relating to family trust companies. (BDR 55-395)

This is proactive legislation intended to address the inadequate regulation of the financial industry sector of trust companies. In the Division of Financial

Institutions' (DFI) assessment, this sector of trust companies has risk to the public equal to or greater than the risk of investment banking, commercial banking and other financial institution sectors that have severely affected the citizens of this State and the Country.

The proposed statutory revisions include the licensing of trust companies which are substantially similar in form and content to those for banks and other Title 55 of NRS financial institutions. The risks to the public interest associated with retail trust companies are no less and may be greater than those of banks, credit unions and thrifts. The requirements for licensing operations of a retail trust company should be no less than these other institutions. The proposed additions for licensing requirements in S.B. 310 detail that management of trust companies display the competence and integrity to transact the business of the trust company in a manner which safeguards the interest of the general public and have the financial status consistent with their responsibilities to the public.

The regulation of trust company activities that are addressed are substantially similar to other Title 55 of NRS institutions as well. They are intended to prevent and remedy violations of knowing or willful neglect of duties imposed by chapter 669 of NRS, and other applicable law, through disciplinary action, remedial action and the imposition of penalties on trust companies and their managements.

Capital requirements are intended to provide institutions, including retail trust companies, with the financial resources to protect the institution from insolvency and failure, thereby protecting the public that it serves. Currently, Nevada has one of the lowest capital requirements for trust companies in the Country at $300,000. Capital requirements for trust companies range from $100,000 to $10 million. Depending on size, the receivership cost for a failed trust company will be no less than $500,000 and averages approximately $1 million.

Establishment of the proposed $1 million capital requirement for a Nevada trust company, its composition and time frames for existing retail trust companies to meet those requirements, resulted from the DFI's risk assessment of the industry, input from participants in public, regulatory workshops and the precept that all institutions such as trust companies have the financial status consistent with their responsibilities to the public.

Fees are also addressed in S.B. 310. The fee revisions proposed in this bill are intended to only establish maximums. The actual amounts, which are currently stipulated by regulation, would require public-workshop hearings and Legislative Counsel Bureau (LCB) approval to increase. The revisions are also intended to simplify the rate structure as flat maximums that could be tiered by regulation based upon size, assets under management, etc.

Confidentiality is also addressed in S.B. 310. It is essential to the private nature of the trust business and is intended to statutorily protect the public interest.

Also addressed is a signatory approval for DFI to participate in the nationwide cooperative agreement for supervision and examination of multistate trust institutions. This is sponsored by the Conference of State Banking Supervisors and is intended to establish consistent standards for regulation of trust companies by State authorities such as DFI. As a states' rights agreement, this interstate trust agreement reinforces the sovereignty of state regulators regarding the operations of trust companies within their borders and mutual respect for other states' authority. The DFI fully supports and endorses the agreement and has requested that this participation in the agreement be codified in statute.

The family-trust exemption is addressed in S.B. 310. In distinguishing family trusts from retail trusts, the proposed exemption for family trusts from chapter 669 of NRS is based on certification that the family trust will not conduct business with the general public. It facilitates family trusts being regulated in detail under the provisions of sub-statute chapter 669A of NRS proposed in S.B. 365.

The proposed revisions and additions to chapter 669 of NRS for trust companies are considered essential to DFI in fulfilling its primary mission of protecting the public interest and providing a conducive framework for the trust industry to operate safely and soundly in Nevada.

SENATOR SCHNEIDER:
Would you explain the part on family trusts? I want to make sure we do not overregulate family trusts.

MR. BURNS:
Family trusts can be established from very simple ones to protect homes and other assets, to rather complicated ones for high net-worth families which have a long legacy of wealth. Currently, depending on how they want to operate, a family trust may need to be licensed under chapter 669 of NRS. This is overkill for most family-trust arrangements because they do not have exposure to the public. Anything that a family trust does is only going to affect the members of that family.

SENATOR SCHNEIDER:
Does this bill keep family trusts as they are now when you are addressing high-wealth families?

MR. BURNS:
We are identifying them as an entity that needs less regulation. We are moving them out of those onerous requirements needed to protect the general public. The family trusts will be addressed, in detail, in a sub-statute proposed in S.B. 365.

CHAIR CARLTON:
Last summer, there was an issue about regulating trusts, and there were some proposed regulations. Is that component part of S.B. 310?

MR. BURNS:
Yes, it is. In our normal operations at DFI, one of the first things we identified, along with the financial crisis and the mortgage crisis, was a growing crisis among trust companies and the types of investments and activities in which they deal.

For example, Enterprise Trust Company failed which resulted in a $48 million loss to its investors. The State had to engage with the U.S. Securities and Exchange Commission (SEC) in order to close it and take into receivership under the SEC. As a result, we began promulgating the regulations to which you are referring. We held a public workshop which was very helpful, but because of the timing in getting everything finalized by the LCB, we ran into the 75th Legislative Session. The decision was made that we should go ahead and address this by introducing it as a bill.

CHAIR CARLTON:
Did you get a legal opinion from LCB on whether you had the statutory authority on those regulations?

MR. BURNS:
We did have a review by the LCB of the regulations. They were ready for a finalized public workshop on them.

CHAIR CARLTON:
Did you have the statutory authority to do the regulations? Did you cite the statute giving you authority?

MR. BURNS:
Yes, that is my understanding.

CHAIR CARLTON:
Do you know what the authority was? Can you get that cite for me?

MR. BURNS:
Yes, I can get that for you.

CHAIR CARLTON:
If we do not need the statute to do this, why are we doing this? If you do not have the statute, then we should review it to ensure we are doing this correctly. What section is that in this bill?

MR. BURNS:
There are multiple sections we were addressing in those regulations, most of which are incorporated in this bill.

CHAIR CARLTON:
Is there a specific section?

MR. BURNS:
No, there are multiple sections.

JOHN DUNCAN:
A copy of my biography is attached to my written testimony (Exhibit C). My law firm has formed seven of the current licensed Nevada trust companies and has

applications to form four more. These are for wealthy, affluent families with over $1 billion of assets.

We strongly support S.B. 310 with two minor changes. For the clients we represent, and the industry as a whole, it is extremely important not only that there be the flexibility that exists in Nevada, but also that there be safe and secure supervision of trust companies. This bill provides the necessary tools to the DFI to assure a safe and sound industry. Failure in this industry would be adverse to all the other Nevada trust companies as well as trust companies across the Country.

I will focus on a single question. Can Nevada not only remain, but become an even more attractive state for trust companies and family trusts, and the good jobs associated with them, while at the same time providing superior protection to the assets and financial health of their clients and trusts? In my opinion the answer is yes.

Through this bill, Nevada will remain hospitable to providers of fiduciary services to families through legitimate, well-managed and sound trust institutions. At the same time the DFI will be equipped with all the tools necessary to effectively supervise existing Nevada trust companies and deny licenses to companies that do not meet traditional trust-company standards. Those standards, which are in this bill, are adequate capital, experienced and skilled management, management integrity and business plans that both protect client assets and are likely to succeed financially.

This bill brings the supervision of trust companies in line with the best banking regulations in the Country. At the same time, it will maintain flexibility in sorting out the differences between retail trust companies, and even among retail trust companies, giving the commissioner substantial flexibility to determine the levels of risk, and set their capital based on the level of risk posed by a business plan. The bill will also allow family trust companies the option of being licensed or not being licensed.

I had the honor of assisting in the drafting of both S.B. 310 and S.B. 365. One of my goals was to make these two bills work together and meet all of the needs of quality Nevada trust companies. These bills would bring Nevada to the forefront in one of the two areas of State law that are critical to attract trust business. That is trust-company laws. This is not accomplished through lax

regulation; it is accomplished through smart, focused, efficient and flexible regulation.

There are a couple of provisions of S.B. 310 that need amending. Section 2 has language regarding family trust companies that is inconsistent with S.B. 365. I have submitted a proposed amendment to section 2 (Exhibit D). Also, section 8 has language in it that would make it very difficult for some of these very fine, legitimate trust companies to operate in another state. I have submitted language to amend this section as well, Exhibit D.

If Nevada adopts S.B. 310 with the proposed amendments, it will have one of the best statutes in the Nation governing trust companies, from both vantage points of flexibility and efficiency, and the protection of trust companies and the trusts and clients they serve.

Nevada would send a clear signal and a strong invitation to large and small companies in this industry, that they must seriously consider Nevada when deciding where to locate their facilities, their services and their good jobs.

Because of the enhanced regulatory tools provided by S.B. 310, it will also send a clear and important signal that companies without adequate capital, without experienced, skilled management, integrity and business plans that protect client assets and are likely to succeed financially, "need not apply."

All of this will occur, if the proposed amendments are adopted, without shuttering or driving away current, well-run, capable and honest Nevada trust companies or preventing new, quality institutions that meet all of the foregoing high standards from being licensed.

There are some smaller trust companies in Nevada that are well run, but do not meet the capital requirements in the bill. To assure they are soundly managed, there should be some flexibility introduced into this bill, possibly a lower capital requirement, but only for existing trust companies that the DFI has some positive experience with already.

SENATOR PARKS:
Is the bill a model act?

MR. DUNCAN:
No, but many of the provisions are similar to those of model trust company acts adopted in other states.

SENATOR PARKS:
Is your recommendation just to make it much better?

MR. DUNCAN:
The model acts, of course, mean everyone meets a certain standard. There are provisions in this bill that are superior to the model acts.

CHAIR CARLTON:
We usually hear that if we have too much regulation, and the standards are too high, we will drive business away from this State.

What is in this legislation that makes Nevada such a good place to establish these family trusts?

MR. DUNCAN:
Right now in Nevada, family trust companies can choose to be licensed or unlicensed. Family trust companies serve single families and act as trustee of their trust. A family trust company can be formed that is not licensed and cannot use the words "trust company." There is no clarification on how the family would be defined and whether it would qualify. It would be advantageous to have clarification and to have the clear option, as S.B. 310 and S.B. 365 together do, to choose to be a retail trust company. If you are a family trust company but choose to admit friends or a second family group as customers, then this should be a retail trust company. Most family trust companies choose to be licensed as a family trust company under new S.B. 365 which exempts them from being regulated by the SEC and allows them to operate on an interstate basis which an unlicensed family trust company cannot. The third option is to be unlicensed. Good regulations mean strong institutions.

SENATOR RHOADS:
What will I have to do if these two bills are passed? I have a family trust for ranching operations.

MR. DUNCAN:
This has no impact on the actual trust. It gives a family the option to form their own trust company to act as a trustee. That trust company could be an unlicensed or a licensed family trust company.

CHAIR CARLTON:
Does Nevada's tax structure have anything to do with these trust companies and the favorability of locating them here?

MR. DUNCAN:
Absolutely, Nevada's tax structure is a key to being one of the states chosen. But there are other options and it is important that Nevada have both flexible and good regulation of these institutions.

KEITH LEE (Sutton Place Ltd.):
Most of the family trust companies in Nevada use Nevada banks as depository banks. There is a fair amount of money put into the banks.

I have proposed an amendment to S.B. 310 (Exhibit E) that renames chapter 669 of NRS as the "Retail Trust Company" chapter. If we go forward with S.B. 365 and adopt a new chapter, we are suggesting chapter 669A of NRS will relate to family trust companies. All family trust company matters would be regulated pursuant to chapter 669A of NRS. We are asking that sections 2 and 5 of S.B. 310 be deleted in their entirety.

In section 5 of S.B. 310, if a family trust were to create a separate limited liability company (LLC), a separate corporation or any separate legal entity that would be the trustee, it would be responsible for the administrative discharge of the trustee's responsibilities. The trust would have to apply for an exemption from licensure. This is in conflict with what we are trying to do in S.B. 365. All matters in respect to family trust companies should be dealt with in S.B. 365.

There are those "hybrid" trust companies that do family trust company business for a single family and also have decided for their business plan to branch out and offer their services to other families or other people in need of trust companies. These are clearly retail trust companies and come under the provisions of S.B. 310.

A true family trust company that does not hold itself out to do business with the public will come under the regulatory scheme of S.B. 365.

SENATOR SCHNEIDER:
How do tax increases or new taxes affect these trusts?

MR. LEE:
It depends on what the increases are. If there are employees and there was a payroll tax increase, they would pay the additional tax. They would pay any additional tax that would affect them as a company or any increase in current taxes they pay now.

SENATOR SCHNEIDER:
How would a corporate tax increase affect them?

MR. LEE:
Because these entities have formed a corporation through the Office of the Secretary of State, if there were to be a corporate tax levied on them, they would be responsible for it. We are trying to position the State as one of the best and friendliest states in order to appeal to these family trust companies. They bring a lot of money into this State through depository banks, payroll and a number of other things that make Nevada very attractive. If we were to impose a burden on these companies, particularly based on the value of the family trust, it would have a deleterious effect on those companies coming here. Some of those companies that are here now would consider leaving this State.

MR. DUNCAN:
One of the things we have supported is an increase in fees in both S.B. 310 and S.B. 365. These trust companies should bear their burdens.

CHRIS FERRARI (Public Affairs, Ferrari Smith):
We have many concerns with S.B. 310. The merits outlined by both Commissioner Burns and Mr. Duncan will be hard to achieve with this bill as it is written.

Currently, there are only 25 licensed trust companies in this State. The industry's goal is to provide a clear, consistent and effective regulatory framework that protects Nevada's consumers, weeds out the "bad actors" and

fosters healthy marketplace competition. While we support the Commissioner's intent to properly regulate this industry, S.B. 310 as written, does not do this.

I was able to speak with Commissioner Burns last Friday, April 3, 2009, and again this morning about several provisions with which we have major concerns. He indicated a sincere willingness to work with us to address those concerns.

Section 26 of this bill, which increases a trust company's capital requirement or cash on hand, from $300,000 to $1 million, would force some of Nevada's 25 licensed trust companies to either close or move to another state. This would put people out of work and decrease the tax and fee revenues.

Senate Bill 310, as written, violates the legislative intent of NRS 669.010 which states, ... "The Legislature finds as facts and determines that: 2. Such trust companies should be licensed and regulated in such manner as to promote the public advantage and convenience. 3. It is the purpose of this chapter ... to insure that there is established in this State an adequate, efficient and competitive trust company service." Section 26 of this bill would harm competition by effectively forcing small trust companies out of business with the increased capital requirement.

These companies fill an essential space in the competitive market and provide some of those public conveniences as outlined in the legislative intent. We are under the premise that small business is good and these companies are filling a market demand. The consumer should decide who stays in business, not a proposed statute that incorporates an arbitrary capital requirement.

We are also concerned how this bill could affect some economic-development efforts. Trust law is very complicated and Nevada is competing with several other states across the Country to attract these types of financial businesses. The handout I provided to the Committee outlines 19 states and their capital requirements for trust companies (Exhibit F). It is important to look at what is going on in the rest of our Country.

The bill you are going to hear next, S.B. 365 relating to family trust companies, was carefully crafted by many people. This bill could literally increase Nevada's financial "IQ" in the eyes of the outside world, attracting some of those businesses we desire.

Senate Bill 310 should be amended to avoid the many unintended consequences we have outlined in our proposed amendment (Exhibit G).

It is important for the Committee to understand how S.B. 310 came about. On November 21, 2008, Commissioner Burns held a regulation hearing on his office's proposed amendments to chapter 669 of the *Nevada Administrative Code* (NAC). Those amendments were a skeletal version of what is in S.B. 310. Many stakeholders attended and provided input to the Commissioner and his staff, some of which is included in S.B. 310. Much of that hearing was focused on the NAC proposed changes to family trusts. While concerns were expressed by retail-trust stakeholders, there was little dialogue pertaining to retail trust companies. Unlike the legislative process, at a regulation hearing attendees are not allowed to ask questions. Stakeholders who attended the hearing were told their input would be considered, they could submit concerns in writing and they may be contacted for a follow-up hearing or an update on the new regulations. These stakeholders heard nothing further until the introduction here of S.B. 310.

This is a very complicated area of statute and changes made will affect the industry and Nevada's ability to compete with other states to attract new companies. We must tread carefully.

The amendment of section 3 relates to the definition of depository and non-depository trust companies. This essentially defines two different business models, custodial and noncustodial, or depository and non-depository. That means when there is a trustee of a company, the investments are still under the individual's name, and therefore, if that trust company closes, the assets of the individual are still protected. You would only need a new trustee to manage the assets.

Section 4, subsection 2, paragraph (b), references a key employee within the State for a retail trust company. The language, which is not clear, states, "… satisfactory to the Commissioner in accepting and administering trusts." These changes are not related to Commissioner Burns, but to the office of the DFI Commissioner and how it could operate from a regulatory versus a statutory perspective.

We spoke with Commissioner Burns on that section. He indicated we could adopt those qualifications through regulation, which would be satisfactory to my clients.

Section 4, subsection 2, paragraph (f), is one of the areas that reads, “Such other conditions that the Commissioner may require to protect the public interest.” Lines like that are open and unclear and subject to interpretation depending on who the Commissioner might be.

Section 6 addresses the assessment of a trust company applying for licensure. The way that it is written is open-ended enough that it could retroactively apply to existing companies and we would like clarification.

In section 6, subsection 1, paragraph (d), we are opposed to the requirement that a small, privately held trust company have a board of directors. This does not offer the intended consumer protections. Also in this section, we would request that “ ... sufficient experience, ability, standing and competence ... “be further defined so these companies will know statutorily what they are expected to identify in coming into Nevada to open business.

Section 6, subsection 1, paragraph (h), currently reads, “Any other factors that the Commissioner may require.” We request that this be deleted or further defined.

Section 6, subsection 2, would allow the Commissioner to determine what a company’s capital requirement should be and gives him the ability to increase or decrease that requirement. That ability already exists in NRS 669.100. We request that these either be combined or the current statute be deleted and everything be moved to section 26 of this bill which will further define the capital requirement.

In section 6, subsection 2, paragraph (m), there is another open-ended statement, “Any other factor that the Commissioner may require.” We request further clarification or deletion of this section.

In section 7, subsection 1, we are requesting clarification on what the conditions are for the transfer or reassignment of a trust license.

Section 7, subsection 3, currently reads, “A retail trust company shall, within 3 business days after there is a change in the chief executive ... ,“ notify the Commissioner’s office. We request a change to five business days.

Section 7, subsection 4, lines 15, 16 and 17, states, “The Commissioner shall conduct an investigation to determine whether the person has a good reputation for honesty ... “ We are pointing out this section because it is already covered in existing statute, NRS 669.160, which is investigation of an applicant.

Section 8, subsection 1, states that no retail trust company may engage in trust company business “ ... at any office outside of this State ... “ The intent is good but the concern is that this may have some unintended consequence. A board member who lives outside of this State potentially could not speak with someone within this State without having prior approval from the Commissioner. We know that is not the intent, but we would like clarification.

Section 8, subsection 2, suggests that subsection 1 of section 8 would be applicable to formal branches. However, subsection 1 clearly states to “any office.”

On section 12, we are just offering a suggestion. Many of these companies are small, and rather than require a five-member board and multiple meetings per year, there could be quarterly-income and balance-sheet statement reports, and an annual audit done by an independent certified public accountant.

Section 13 addresses the creation of a board of directors for a trust company of not less than five people. The Commissioner indicated that we could work on this number. This would probably fall into what we are proposing for section 3, in further defining what kind of trust company we are dealing with.

From a legal perspective, you would be treating one type of LLC or corporation, because it is a trust company, differently than you would be treating other LLCs or corporations in the State. This may have some unintended legal consequences.

We are proposing the removal of section 14, which outlines the qualifications of someone serving as a director or manager, and replacing it with what is already in existing statute. That new line would be, “A person may serve as a director or manager of any retail trust company if they meet the requirements outlined in NRS 669.160.”

Section 15 provides authority to the Commissioner to identify violations. This is already in statute under NRS 669.250. We request Committee Counsel review what is already in statute and determine if it needs to be expanded.

In section 16, we propose the addition of a new paragraph with the language, "In conjunction with the removal of an officer, director, manager or employee under the provisions of this section, the Commissioner shall deliver to the affected retail trust company, and/or the person to be removed, a written bill of particulars stating the cause of removal of such person." The point of this is to let the person know what the violation was, but from a State perspective, it also provides some level of legal recourse for the State, by documenting their actions, therefore making them less subject to lawsuits.

We propose striking or further defining section 17. This section currently reads, "In addition to the express powers, duties and functions given to the Commissioner by this chapter, the Commissioner has such other powers and rights as may be necessary or incident to the proper discharge of his duties." As written, this section is very open-ended, and requires further definition. These powers are already identified in current statute.

In section 18, we would add that a process be incorporated with time frames, notice of violation, etc., and that this agree with section 21, subsection 1 of this bill. If something is going wrong, there is a timeline by which action must take place for both the trust company and the Commissioner's office.

We are requesting an addition to section 20 which would read, "If a receiver is appointed as provided for in subsection 3 above, such receiver shall remit to the owners, members or shareholders of the retail trust company any remainder amounts of equity and capital of the retail trust company after bearing normal, prudent and reasonable expenses of the activities of the receivership." This is technical language which would allow any of the capital remaining in a company to go back to the shareholders of the company and not remain with the DFI office.

Section 21 should be amended to further define "reason to believe." It is unclear if this is based on findings pursuant to section 18 of this bill. We would also request to limit or cap the amount of fines which may be imposed by this section, and this should be coordinated with section 35 which also related to fines.

Section 26 increases the capital requirement for trust companies from $300,000 to $1 million over a staggered period of time. There are different types of trust-company models, most of which are called non-depository. It is important to identify the different models in order to effectively regulate them and to not push out some of the smaller companies with the increased capital requirement.

In section 29, subsection 1, we ask that the language remain as it is, which currently reads, " ... Within 60 days after the application for a license is filed, the Commissioner shall investigate the facts of the ... " new trust company potential licensee. That provides for companies wishing to do business in this State, a timeline within which they can expect to hear from the State. This makes Nevada a friendly place to do business.

In section 33, subsection 1, paragraphs (c) and (d), we propose adding the language "real or personal property, including" and the words "or titled." Many of these trusts include real property and that is more of a technical amendment and can provide some additional consumer protection and clarity in the statute.

Section 34, subsection 3, lines 12 and 13, is another area in which there might be an unintended consequence. This would require the trust company to put up an amount of collateral greater than or equal to what the Federal Deposit Insurance Corporation (FDIC) would require.

Section 35 should coordinate with section 21, which also imposes fines, with regard to capping the maximum amount which a company may be fined.

CHAIR CARLTON:
The issue of depository versus non-depository was where the problems arose in the previous discussions on the regulations. These really are two distinct business models, and to regulate them in the same manner may not be our best course of action. I thought we were going to define depository and non-depository in the bill.

MR. FERRARI:
I was able to discuss this with Commissioner Burns and he has indicated a sincere willingness to work with us on that. His challenge is how to define those companies and ensure the regulation is fair for both types.

MIKE JANKO (President, American Estate and Trust):
Were you asking me to comment further on the differences between depository and non-depository?

CHAIR CARLTON:
Yes, please.

MR. JANKO:
The existing statute, chapter 669 of NRS, and this proposed bill, appear to deal with trust companies that are depository. This means the trust company holds the clients assets in the name of the trust company. The trust company has complete signature control over the assets. The trust company gives the client a statement of the activities of the assets, how much income has been earned, etc. The trust company stands between the client and the client's assets. This is the depository model which creates the greatest risk for the client. It would be fairly easy for a fraudulent trustee to generate fake statements as was done by Bernie Madoff and the Stanford Group.

The non-depository model is one in which the trust company is primarily an administrator of assets which remain under the control of the client, and in many cases, under the name of the client. In the noncustodial model, if an individual retirement account (IRA) client brought his money to the trust company and wanted the money to be invested in Vanguard Mutual Funds, the trust company would assist the client in opening a Vanguard account that would be in the client's name. Vanguard would send statements directly to the client. The trust company would not be able to generate false statements.

There is a low risk of fraud with a noncustodial trust company. Even in the case of failure of the trust company, it would be easy for another company to step in and take over those accounts, which would be facilitated by DFI.

I strongly urge that S.B. 310 be redesigned to accommodate the two different modes of operation, one which presents great risk to the client and one which presents very little risk.

CHAIR CARLTON:
Are the terms noncustodial and non-depository interchangeable?

MR. JANKO:
Yes, they mean the same thing. Noncustodial may be a little more definitive than non-depository.

CHAIR CARLTON:
A custodial trust company would manage the actual money and it would be in the trust company's name. A non-depository/noncustodial trust company would be more of a service model with the company servicing the client and not administering the money.

MR. JANKO:
That is basically correct. In the depository/custodial model, the client's money is under the total control of the trust company. In the non-depository/noncustodial model, the client's money is either under the control of the client, or a third party.

MR. DUNCAN:
Non-depository and depository trust companies have different meanings throughout the country. A depository trust company is a bank with a trust department. A non-depository trust company is one that is not a bank and does not take customer deposits and does not have FDIC insurance. Chapter 669 of NRS only deals with non-depository trust companies; those which are not banks and cannot qualify as banks.

The normal trustee, because they are a trustee, owns in its name and has custody over all of its assets. That is a central aspect of a trustee. But in dealing with IRAs, and in some other areas, a trustee of an IRA or an advisor IRA might not have authority to make trades in or make decisions.

The question is what is the company is actually doing. Are they acting as a custodian, do they have the authority to move assets around and the risk of doing wrongful things or not? And even if they have that authority, do they have a business plan that makes it very clear they put everything with some other institution and they are not exercising or able to exercise that authority. The risks are very different depending partly on the legal role but also partly on the actual business plan. Just because someone has a business plan does not mean that the client is fully protected if they have legal authority to take the client's assets and put them someplace away from the client.

CHAIR CARLTON:
For clarification, there is depository and non-depository and the section of law we are talking about does not deal with depository, only non-depository. A subsection of that would be either custodial or noncustodial.

MR. DUNCAN:
That is right.

CHAIR CARLTON:
Custodial would be when you get into managing larger accounts. In the noncustodial, the client sits down with an advisor who advises where the client can deposit his money.

MR. DUNCAN:
Often, the defined contribution plan 401(k)s and the IRAs are referred to as self-directed accounts, where the client actually directs how they are invested. A company holds the asset, but the client is making the decisions.

CHAIR CARLTON:
We will have some people working together to try to straighten this out and get it addressed.

Having no other questions, I will close the hearing on S.B. 310 and open the hearing on S.B. 320.

SENATE BILL 320: Revises provisions relating to dental hygiene. (BDR 54-367)

LANCETTE VANGUILDER, R.D.H. (Nevada Dental Hygienists' Association):
I have submitted written testimony in support of S.B. 320 in a packet provided by the Nevada Dental Hygienists' Association (NDHA) (Exhibit H, original is on file in the Research Library).

CHAIR CARLTON:
Did you take the dental hygiene component that was in statute and place it somewhere else? There have been no significant changes.

MS. VANGUILDER:
Yes, that is correct. The scope of practice and how and where we practice, have remained the same.

CHAIR CARLTON:
In 2001, the dental hygienists had asked for their own board, but they were not ready for it. They were put into the Board of Dental Examiners of Nevada as an advisory committee.

MS. VANGUILDER:
For over ten years, on the national and state level, our profession has been seeking more autonomy and self-regulation. The dental hygiene committee within the Board has not been functioning as we would like it to do.

CARYN SOLIE, R.D.H. (Vice President, American Dental Hygienists' Association; Nevada Dental Hygienists' Association):
I have submitted written testimony in support of S.B. 320 and a proposed amendment to the bill in the packet provided by the NDHA, Exhibit H.

SENATOR RHOADS:
How many other states, particularly in the West, do not have a board?

MS. SOLIE:
There are 17 states that have different versions of dental hygiene committees, dental hygiene boards or dental hygiene recommendation committees. Some are run through the public health department or through health and human services, and some through dental boards.

VICKIE KIMBROUGH-WALLS, R.D.H. (Director of Dental Hygiene, Truckee Meadows Community College):
I have submitted written testimony in support of S.B. 320 in the packet provided by the NDHA, Exhibit H.

BELLE BALDWIN, R.D.H. (President-elect, Nevada Dental Hygienists' Association):
I have submitted written testimony in support of S.B. 320 in a packet provided by the NDHA, Exhibit H.

ANNETTE LINCICOME, R.D.H. (Huntridge Teen Clinic):
I support S.B. 320. Establishing a governing and regulating board for hygienists, separate from dentists, will create an improved atmosphere for the proliferation of alternative practice settings similar to the Huntridge Teen Clinic.

The proposed "Nevada State Board of Dental Hygienists" will focus exclusively on dental hygiene issues and will create an atmosphere nurturing of the establishment of more alternative practice settings.

Self-regulated dental hygienists will be better equipped to effectively address the issues of access to preventive oral health care in Nevada than any other dental health-care professionals.

SENATOR SCHNEIDER:
Can you explain an alternative clinic?

MS. LINCICOME:
Alternative means not in a private practice. We are in a public-health facility. I am a public-health dental hygienist.

JOYCE A. HERCEG, R.D.H.:
I oppose this bill in its present form, but I do support the concept of self-regulation. However, my concern with S.B. 320 is that the provisions of the bill are not fiscally feasible. There are 1,128 active, 254 non-active and 41 retired dental hygienists in this State. Of these, 25 percent are active in the NDHA. Our collective fees total approximately $188,000 per year. Can we properly staff a professional board within the constraints of these revenues? Staffing alone would use the majority of the available funds. Facility costs, travel costs, examination costs and investigatory costs will easily exceed this budget. Does the State pick up the difference? This probably would not happen given the current financial conditions in the State.

What this could mean is that cases and issues go unresolved. The hygiene community suffers. The general public's concerns are put aside or ignored until funding is available. This is not the image we want to present as a profession. We could go to the hygienists and increase the license renewal fees, but in the economic downturn this could create a hardship for many hygienists.

Another concern I have is that there has been minimal communication with our professional members, the other 75 percent that are not active in the NDHA. At some point in the future, a board of dental hygienists would be a worthwhile endeavor, but this step cannot be taken lightly. I have spoken to a number of my colleagues who are not members of NDHA and were not aware of this bill.

Even if everyone in the association is in favor of this bill, 25 percent of the population should not speak for the entire dental-hygiene community.

This bill has the potential of destroying relationships between hygienists and dentists. The dentists, the hygienists and the Board have worked hard to build relationships and trust. This has not been an easy task and it has taken many years to achieve. Now that we have that rapport we do not want to take a step backwards. We have created the committee on dental hygiene on the Board, but members of NDHA feel they do not have enough representation. We have come from the hygienists not having any voting power to full voting power on dental-hygiene issues. The Board is there for the public's protection, not to push an agenda of a profession.

The answer is not to create another underfunded, understaffed bureaucracy, especially without the consensus of the professional dental-hygiene population in this State. I would like to see postponement of the bill until all parties can come together and research all the ramifications of this proposed board of dental hygienists.

SENATOR COPENING:
You mentioned that this bill has a potential of ruining relationships between dentists and hygienists. Why would that happen?

MS. HERCEG:
This is just my opinion, from what I have seen in a short period of time. There has not been enough information disseminated to the dental and hygiene communities to enable them to understand what this would mean. There has not been enough dialogue between these parties to make sure there are no misunderstandings of what the hygienists want in this board.

I have been in this situation before when we brought authorized practice. I was the president of the NDHA when we brought this to legislation, and I had confrontations with the dental community. It took ten years to bring that legislation forward. We did it with a lot of communication and negotiation with committee members appointed by each party.

SENATOR COPENING:
You said this has been going on for about ten years. It would appear that the dentists would probably know what the hygienists have wanted in the past

ten years. Why do you think the dentists would be opposed to the hygienists having their own independent board?

MS. HERCEG:
I do not know. This is what I am hearing from the people I have talked to. They do not understand why we want this board. My reason for opposing this bill is that the rest of the hygiene community has not been informed about this bill. I am not really sure how the dentists feel.

SENATOR COPENING:
Of the hygienists who you have spoken with, have any of them been opposed to an independent board, and if they have been opposed, what were their reasons?

MS. HERCEG:
Their opposition is mostly from the financial aspect. Because it is a State agency, people must apply for the board positions. These positions would take up a major portion of the funding.

SENATOR COPENING:
Of those hygienists who you have spoken with that did not know about this bill, did any of them see a benefit to an independent board?

MS. HERCEG:
None of them stated that to me.

CHAIR CARLTON:
The provisions of this bill are the same as the ones dental hygienists are working under now, only it is under the umbrella of the Board. This bill would create an independent board for hygienists.

When it comes to these two professions, they have been very conscious of not comingling funds and making sure it was fair and equitable to both sides. In the cursory review of the budget sheets that were included in the NDHA packet, if they are doing it now with these dollars, they should be able to do it in the future with the same amount.

MS. HERCEG:
I am not aware of that.

FRED HILLERBY (Board of Dental Examiners of Nevada):
Our understanding is that there is no other independent board of dental hygienists anywhere in the Country. There are all kinds of variations but no independent boards. We have a number of concerns with the bill.

CHAIR CARLTON:
Would you please give us your concerns in writing? I would like to compare yours with others I have received.

DONNA HELLWINKEL, D.D.S. (Board of Dental Examiners of Nevada):
I have submitted documents containing my testimony and statements from two hygienists from the Board in opposition to S.B. 320, and suggested changes to the bill (Exhibit I).

CHAIR CARLTON:
I will merge the documents you have submitted with the information I have already received.

MR. HILLERBY:
When the proposed hygiene board gives itself authority to adopt regulations, there must be language that ensures it is not inconsistent with current Board regulations.

There are issues about who owns the patient records and where the hygienist practices. A hygienist does not have an office, they have a practice. It needs to be clear that nothing in S.B. 320 prohibits dentists from delegating duties to their assistants and others who work in their offices.

Dentists do participate in the clinical examinations and this bill allows for a clinical examination without the presence of a dentist.

SENATOR COPENING:
Nevada has a State Board of Nursing which is not governed by the Board of Medical Examiners. What is the difference between the State Board of Nursing and what the hygienists are requesting?

DR. HELLWINKEL:
I am not familiar with the State Board of Nursing, but dental hygiene is an allied profession. It is so intertwined with the practice of dentistry that a separate board would just create more confusion and would not be necessary.

MR. HILLERBY:
Nurses work in a variety of settings, hospitals, doctor's offices, clinics, etc. The majority of hygienists work in a dentist's office under a dentist's supervision. That is part of the distinction. A nurse is not as dependent on a doctor, particularly in a hospital setting. They follow doctor's orders, but they are responsible to the hospital, not to the doctor.

JOEL F. GLOVER, D.D.S. (Nevada Dental Association):
The Nevada Dental Association (NDA) opposes this bill. Our opposition is based upon the fact that this legislation would duplicate what is being well done by the Board of Dental Examiners of Nevada.

To create a second board, hire an executive director and ancillary staff would put undue financial constraints on the dental hygienists of this community. Only about 25 percent of the dental hygienists in Nevada belong to the NDHA, and 75 percent do not.

Ninety-five percent of the dental-hygiene services are provided in a dental office. The person who is ultimately responsible for what occurs is the dentist. That is why, according to the NDA, it is important that the dental hygienist is an ancillary person in the dentist's office. The dentist should have a hygienist who is approved by the Board.

This bill will not, in any way, enhance the services we provide to our patients. That is the bottom line for the NDA. I encourage you not to pass this bill. The Board is strong and is doing a good job.

The American Dental Association, Council on Government Affairs, stated on June 19, 2008, no state has an independent board of dental hygiene with full regulatory powers.

SENATOR HARDY:
Do dental hygienists have malpractice insurance separate from the dentists?

DR. GLOVER:
Yes, that is their choice.

SENATOR HARDY:
The liability for an error or an omission on the hygienist's part is with the individual hygienist and not necessarily with the dentist.

DR. GLOVER:
Most dental hygienists work in the office of the dentist.

SENATOR HARDY:
There is liability for the dentist independent of the malpractice insurance that the dental hygienist possesses.

DR. GLOVER:
That is correct.

CHAIR CARLTON:
Having no further testimony, I will close the hearing on S.B. 320. I will recess the Committee at 11:03 a.m. and take up the other agenda items when we return.

I will reconvene the Committee at 1:42 p.m. and open the hearing on S.B. 365.

SENATE BILL 365: Establishes provisions relating to family trust companies. (BDR 55-395)

MR. LEE:
I would ask that the remarks given by John Duncan and me this morning on S.B. 310 be incorporated in this record as many of our comments reflect on S.B. 365 as well.

Mr. Duncan cannot be with us this afternoon, but he has prepared testimony that I would ask be made part of the record (Exhibit J).

CHAIR CARLTON:
We will take care of that, Mr. Lee.

MR. LEE:
The concept of S.B. 365 is to make sure everyone understands there is a substantial difference between a retail trust company, which is the substance of S.B. 310, and a family trust company which we are addressing now.

It is also important to note there is a difference between a family trust and a family trust company. This bill, S.B. 365, addresses family trust companies. A family trust company provides administrative services to the trustee of a single family which has accumulated great sums of wealth. The employees of the family trust company are sophisticated and among the experts in the Country. Many of the family trusts do not want to share that expertise they have acquired and are paying for with other families.

There are some family trust companies which have chosen, as part of their business plan, to offer their services to other family trusts or to the general public. Those people would not be licensed or subject to our new proposed chapter 669A of NRS. They would be a retail trust company because they are holding themselves out to the general public or someone other than a particular family.

BART MOWRY (Sutton Place Ltd.):
There is some confusion as to the term family trust versus family trust company. A family trust company is an entity that is qualified to do business under Nevada law and that will serve as a fiduciary or trustee on behalf of one or more family trusts. As defined in the proposed chapter 669A of NRS, a family trust is that in which a single family is either the creator or beneficiary of the trust. They all share a common ancestor. They are multigenerational. A number of wealthy families have elected to attempt to institutionalize the management of the family wealth for successive generations. Under Nevada law, that is 365 years. The easiest way to ensure continuity and superior management in all aspects of trusts and estates is to create a family-owned entity. It may be a corporation or an LLC which will function as the fiduciary.

These types of family trust companies do not offer their services to the public. They do not advertise and seek privacy for their own reasons. There is no compelling need for any type of State regulation. This bill provides for an "opt in" for licensure because certain family trust companies may desire to seek licensure from the DFI and there is that type of framework set forth in S.B. 365.

ROBERT ARMSTRONG:
I endorse and urge the Committee to support S.B. 365 which involves family trust companies. One of the important features of the family trust company is the ability to transfer the family business to multiple generations. Outside of the estate-tax and transfer-tax system, the biggest single problem for family businesses which pass from generation to generation is management. Family trust companies afford an institutionalization of the management process which is absolutely critical for their well-being and succession.

Over 80 percent of family businesses in this Country do not survive through the second generation. This is a very useful tool, as part of a comprehensive plan, for families to be able to transfer the family business and have it succeed and grow in future generations. That is extraordinarily important for Nevada.

Family trust companies are like any other business. They pay taxes, rent office space, hire professionals and buy products in Nevada. They are the type of industry this State would like to promote.

CHAIR CARLTON:
Section 9, subsection 1, paragraph (a), reads, "Any person within the tenth degree of lineal kinship ...", and section 9, subsection 1, paragraph (b), reads, " ... ninth degree of collateral kinship ... ." What does that mean?

MR. MOWRY:
I will attempt to answer that. Degrees have to do with looking at first cousin, second cousin, third cousin, fourth cousin, etc. Because of the situation where, not only in Nevada but other states as well, there are no rules against perpetuities in trusts, this used to shorten the length of time trusts could operate in Nevada, which is now 365 years. I cannot tell you how many generations would be born within the 365-year time frame. But, if each new generation would arrive every 30 years, then at 365 years you would have 12 generations. At that point it would likely fall out from these definitions of the tenth degree or ninth degree of lineal kinship or collateral kinship.

Lineal kinship would be in a straight line of succession from grandfather to son to grandson, etc. In collateral kinship, if a grandfather and two sons, son number one's children would have collateral kinship to son number two's children as first cousins. The next generation would be second-degree cousins.

SENATOR SCHNEIDER:
How does Nevada compete with other states going forward?

MR. MOWRY:
Nevada has always been viewed as a tax haven in that we do not have a State income tax on individuals. For that reason a number of wealthy individuals, historically as well as in the present, have moved from other states to Nevada and established family trust companies. If the climate were to change in Nevada, we might see some of that wealth leave. It is relatively easy to manage money from locations around the world.

MR. ARMSTRONG:
We are in a competitive environment, not only in family trust companies but in our trust laws and company laws. There was a collaborative effort, in the preparation of this bill, from industry, government and professionals to put together the best set of laws we could, to allow Nevada to be competitive with other jurisdictions. We will make sure this law remains comprehensive and addresses the needs and concerns of this State and also of its citizens.

CHAIR CARLTON:
How does a family trust company impact philanthropy in the State?

MR. MOWRY:
Family trust companies bring their private family foundations to the State, and as a result, there has been an increase in local philanthropy.

MR. ARMSTRONG:
Family trust companies manage a lot of charitable foundations and charitable trusts. Typically, they are all housed in the same kind of management structure, and by being prominent players in this area, Nevada will benefit philanthropically.

CHAIR CARLTON:
Having no further testimony, I will close the hearing on S.B. 365 and open the hearing on S.B. 273.

SENATE BILL 273: Provides for various activities related to nonembryonic cells. (BDR 54-874)

SENATOR SCHNEIDER:
This bill builds upon the other three bills I have today. This lays the groundwork for the scientific, medical community of Nevada as we grow and expand. This bill addresses nonembryonic stem cells.

LINDA POWERS (Managing Director, Toucan Capital Corp.):
I support S.B. 273. This bill is an exciting piece of legislation that could have great importance for Nevada and for the advancement of science and medical treatments for patients, as well as a major, new biomanufacturing industry of the future.

Senate Bill 273 authorizes cell and tissue banks to be set up in the State. It authorizes stem cells to be administered to patients. It only authorizes nonembryonic cells. It allows stem cells to be included as an ingredient in compounding pharmacies. It allows cellular products obtained outside of this Country to be brought legally into the United States.

The approach in this bill is conservative and incremental. It only addresses the cell types that have a well established scientific body of support and do not have any ethical issues. These are adult stem cells. It builds on State legislation which allows drug imports from outside the Country. It also addresses, at the State level, important issues in the stem-cell world.

There are nearly a dozen states that have adopted other states' stem-cell legislation. Additionally, it also increasingly fits within an expanding scope of state-level initiatives in the world of medical products.

This bill is important because of the subject matter it addresses. Regenerative medicine is not 20 years in the future; it is happening right now. Products such as skin, cartilage and bone are already on the market generating over $1 billion of revenue. An analysis by the federal government has found that the worldwide market of organ repair and replacement was already $350 billion a couple of years ago, and is projected to reach $500 billion by next year. Stem-cell treatments are projected to be $100 billion a year, in the U.S. market alone, within ten years from now. This is a whole new era of medicine. It is a hugely important subject to be addressed.

There are 182 adult stem-cell products in clinical trials, in human patients today, only a few years away from market. All of this has been obscured in the shadows by the focus and controversy on embryonic stem cells.

This needs to be addressed now because the area of regenerative medicine is ready and is already being done in clinics in many places in the world. Many governments have adopted national programs, both funding and development programs that are moving very fast.

Other states in the United States have been focused entirely on research. They are experiencing both taxpayer and patient pressure to turn their attention to clinical applications.

Senate Bill 273 provides clarification for medical personnel and consumers of medical services. It provides a foundation for Nevada to become a center of excellence in regenerative medicine. Neither medical personnel nor patients have a clear understanding of the "rules of the road." Medical personnel will not go forward if they do not know whether they will be subject to disciplinary sanctions or malpractice for using cell products. Patients are increasingly going outside of the Country to get stem-cell treatment, because they do not know what they have access to in the United States.

This bill clarifies some basic points about the ability of cells and tissues to be banked, administered to patients and brought into this State. This is a window of opportunity for Nevada to become a center of excellence. No other state has turned its focus to building itself as a center of excellence in regenerative medicine. By providing very basic and limited, conservative authorization, it allows Nevada to get started in this new field and to be the leader in centers of excellence.

Nevada will benefit by attracting medical tourists. Medical tourism has exploded. Those patients are going out of the Country, partly for cost, partly for a better experience and increasingly for treatments they cannot get in the United States. With S.B. 273, Nevada will become the first place in the United States where patients can come. If the patients come to Nevada, the manufacturing will come also. The manufacturing of these living-cell products is a brand-new manufacturing industry of the future. There will be high wage, high knowledge-based jobs that do not require a college degree.

The early regenerative medicine treatments will be personalized. When they are personalized, you need the manufacturing to be on the same site or close by.

SENATOR HARDY:
In section 6 of the bill, except presumably for licensing or regulating the doctors, we are removing from the State or local entity any ability to regulate activities related to this. Why is that necessary?

MS. POWERS:
Fundamentally, what is involved is returning to the professional practice of medicine with the professional judgment of physicians. In quite a few states, the whole process has gotten very political because of the confusion between embryonic and nonembryonic. In terms of any safety or effectiveness concerns, the Food and Drug Administration (FDA) deals with that very rigorously. The issue would be whether there will be another layer of state regulation on top of that, which has tended to be all in the vein of roadblock.

SENATOR HARDY:
I understand that. We have spent a lot of time in this Committee on this issue. In Nevada, we have overcome that. This Committee understands the difference between embryonic and nonembryonic. I do not know of anyplace else where we have given up the ability to regulate. I understand the issue of overcoming political barriers, but I am not sure that, at least in this body, those barriers exist.

MS. POWERS:
But to be clear, this only addresses the limited things listed in the subsequent sections of this bill, which are the cell and tissue banking and the administration of the cells using a mode of administration which the medical professional is already authorized to do. The bill is not open-ended.

SENATOR HARDY:
Are those political roadblocks occurring in Nevada as far as legislative bodies are concerned?

MS. POWERS:
This is about paving the way, not solving an existing problem. We do not have an existing problem to solve. This is about putting down the foundation so you will attract people and you will have the activity begin.

The cycle time is extremely long. Just to set up a small operation takes 12 to 18 months.

SENATOR HARDY:
I understand it is a difficult issue. It does not give me any comfort to say there might be concerns or opposition in the future therefore we are going eliminate the ability to regulate in these areas.

If we do not provide some level of assurance, this industry will not come to Nevada and make the investment. I am reluctant to give up that type of regulation. Asking for it brings up the question of why you want it.

MS. POWERS:
Could you speak about the activities and whether they are the ones you have concerns about? There are only a couple. It is a limited bill. It is just for cell and tissue banks and for administering the cells.

SENATOR HARDY:
I would have to do more research on that. It seems, from a legislative perspective, to be a little reckless to say we are going to trust in the federal regulations and we are not going to have any say in going forward.

I am not sure we can even do this. We cannot "bind the hands" of any future Legislature.

SENATOR SCHNEIDER:
Would you expand on the tissue banks?

MS. POWERS:
One of the most urgent unmet needs is for bone-marrow banking to be done. There are only 17 bone-marrow banks in the United States authorized under the National Marrow Donor Program. There are none in Nevada and the existing ones are very small. This matters because bone-marrow transplants are increasingly used as a key component of cancer treatments as well as other kinds of treatment. Bone-marrow availability for bone-marrow transplants is very limited. Patients have to do global searches of registries. If the patient is a minority, the chances of finding any bone marrow for a transplant are less than 20 percent.

One of the key things to be done first with the cell and tissue banks is the bone-marrow bank. Other types of cell banks are umbilical-blood storage, adipose tissue and even skin stem cells.

SENATOR SCHNEIDER:
Ms. Powers and I would like to be excused to testify at another hearing that is going on right now, and suspend the hearing on S.B. 273 and continue it when we return.

CHAIR CARLTON:
We will suspend the hearing on S.B. 273 and finish when you return. We will work on Senator Washington's bill, S.B. 296.

SENATE BILL 296: Enacts provisions relating to complementary and alternative health care practices. (BDR 54-671)

MARIA GROTE:
Natural herbs and vitamins are good for people. I have been using them for 25 years. I am not a doctor. I do not have a medical degree, but I have been helping myself and other people. I grew up taking herbs. I ask you to support S.B. 296.

JIM NORIEGA:
I support S.B. 296. I am a "Trager" practitioner. The bill provides good protection for me and others in my profession.

JIM JENKS:
I have submitted written testimony (Exhibit K) and a packet of letters from individuals (Exhibit L, original is on file in the Research Library) in support of S.B. 296.

BETH FRANCIS:
I have volunteered to testify in support of S.B. 296 and have submitted written testimony (Exhibit M).

HANS FRISCHEISEN:
I am 68 years old and I own a health food store called Everlasting Health. I have not been sick since 1972. I have biked through disease-infested areas of South America, Africa and Indochina. I have done my "homework." I should

have the right and the freedom to share this "homework" I have done in order to have this proverbial health. Would this kind of heath not be of interest to any society?

I wrote this "homework" in a letter to our U.S. President. Should I be licensed to send a letter to the President? Should I need a license to write books about my experience? Should I be licensed to write articles as I have been doing or share information with my friends?

We all respect the laws that stop us from diagnosing and prescribing. We send people to health professionals who address health concerns. Please allow the freedom of speech and health choice and endorse S.B. 296.

SENATOR RHOADS:
What takes place if this bill passes? What can you do after it passes that you cannot do now?

MR. JENKS:
We will continue the way we are now. We brought this bill forward because in the past other groups have come out and said they are the only ones who can talk about herbs or lifestyle. Preventive supplements, health style and diet are so important that we would like to create a grassroots movement that would drive people, not away from medicine, but towards something that would keep them healthy.

SENATOR HARDY:
You do not have a problem calling yourselves health-care professionals or practitioners. However, that language is used in statute to describe a medical doctor. I do not have any concern with what you are trying to accomplish. I am concerned that the language is more far-reaching than you are anticipating. People should have access to alternative health care. I am willing to work on some language that would make better sense.

CHAIR CARLTON:
My concern is with the language in section 2, subsection 5, "As this State finds that the unlicensed practice of health care services is desirable under certain circumstances and in order to maximize and protect consumer options in health care and for the public's health and welfare, the Legislature intends to remove barriers to the public's access to unlicensed practitioners providing health care

services with appropriate consumer protections." This language sends the wrong message.

MR. JENKS:
We are not trying to play doctor. We want to stay away from that altogether. I am not an attorney, and I do not know another way to address this.

CHAIR CARLTON:
In section 3, you cite the "Consumer Access to Health Care Services Act." This may not be giving the consumer you are trying to reach the true picture of what you are trying to accomplish.

I see huge problems with people trying to hide behind this and practicing medicine without a license. I understand what you are trying to do, but with this language you may do more harm than good.

How would you like to proceed?

MR. JENKS:
Should we amend S.B. 296? Can we set it aside and amend it and then go forward?

CHAIR CARLTON:
There needs to be additional discussion of these issues. We understand the intent, now we need to get the language that expresses the intent.

MR. JENKS:
That is why we need your input.

BRIDGETTE DOLGOFF:
There is language in S.B. 296 that is similar to the California health freedom law (Exhibit N).

GLENN A. HAUSENFLUKE, N.D.:
Last month the Centers for Disease Control and Prevention published statistics that showed that 50 percent of all disease is diet related. As of 2009, medical doctors are not required to study nutrition. This creates a huge hole in the system. There should be a way to look at the efficacy of what alternative medicine does. It has been around a long time and it works.

CHAIR CARLTON:
Having no more testimony, the hearing on S.B. 296 is closed. We will reopen the hearing on S.B. 273.

SENATE BILL 273: Provides for various activities related to nonembryonic cells. (BDR 54-874)

MS. POWERS:
To summarize, I support S.B. 273 because it will not allow the administrative side of the State to override, block, limit or restrict what the Legislature passes in the bill.

CHAIR CARLTON:
Will the professionals working within this bill still be under the jurisdiction of their regulatory boards if they are licensed in this State?

SENATOR SCHNEIDER:
There are other bills following in which they might be able to get in under something more progressive if they choose.

CHAIR CARLTON:
I need to understand how those will be integrated.

MS. POWERS:
The reason why this bill is conservative, incremental and sensible is it provides for any medical personnel to be under their regular regime and they are allowed to do only the same things they are allowed to do with other medical procedures.

SENATOR HARDY:
I would still prefer a less precedent-setting way to send a message to those who might be interested in coming to Nevada.

MS. POWERS:
One aspect is the list of very limited activities that are being authorized.

SENATOR HARDY:
It is the precedent setting that I am concerned with. There is nowhere else that we give up jurisdiction.

MS. POWERS:
The other aspect is the mechanical provision that says the administrative side of the State cannot override statute.

SENATOR HARDY:
If that is what it says, then I have no difficulty, but that was not my understanding when I read this the first time.

SENATOR SCHNEIDER:
We can have the Legal Division look at that. They can make the language match what Ms. Powers said.

SENATOR HARDY:
I have some difficulty if we have to put in statute that we do not want regulators to undo what the Legislature says. That is another precedent.

CHAIR CARLTON:
Whenever we get a regulation, we ask what the statutory authority for the regulation is. If the regulation contradicts the statute, LCB will reject it and return it to the authority to rewrite it.

We already have a procedure and process to make sure that the entities do not do what they are asking them not to do.

SENATOR HARDY:
I just read it again and it does go beyond the scope of what the witness is talking about. Section 6 of S.B. 273 says, "Notwithstanding any other provision of law, any department, commission, board or agency of a state or local government, including, without limitation ... ." We are a state government. It needs to be specific to regulatory bodies. I have some discomfort putting that in statute because that should go without saying. We should not have to tell regulatory agencies they cannot do things contrary to what the Legislature has found.

CHAIR CARLTON:
What is the number you need to exceed in order to make a cell or tissue bank a viable bank?

MS. POWERS:
For a bone-marrow bank for transplants, it is around 150,000 units and could be as low as 125,000 units. It is based on immune types. There are more immune types than there are blood types.

CHAIR CARLTON:
What are the other types of banks?

MS. POWERS:
The most common banks are the umbilical cord-blood banks. But, it makes sense medically to store other types of adult stem cells such as cells from adipose tissue. The number, quality and capability of stem cells decline with age. When people have their stem cells stored at different age points, they can go back and use them for therapeutics, diagnostics, neurological diseases and a whole range of other things.

A big bank for bone-marrow does not yet exist anywhere in the world. There is an opportunity to be a worldwide resource and patients will come to that resource for bone-marrow transplants. A bone-marrow transplant in the United States costs from $350,000 to $550,000. Nevada has an opportunity to draw people from all across the United States and the world because the bone-marrow matches are not available today.

CHAIR CARLTON:
What size facility would this be?

MS. POWERS:
We had initially proposed a 100,000-square-foot facility. This would create hundreds of jobs. Storage of stem cells involves some manufacturing and processing steps first so they can be frozen. The facilities are modern, manufacturing facilities for cell products which are fundamentally different than the manufacturing facilities for chemical drugs or biologics.

MS. DOLGOFF:
There are so many unanswered questions in relation to S.B. 273. What kind of stem-cell standards will there be? Who will apply the standards? Where is the board that regulates and licenses them?

DON NELSON (President, Nevada Life):
We are neutral on S.B. 273 because we do not understand all of the regulatory provisions. However, we think adult stem-cell research is the way to go. We see great potential in this.

SENATOR SCHNEIDER:
It is very important for us to promote this. We are a decade behind the rest of the world. All of our stem-cell researchers have gone overseas. They will come if we open our markets with bills like this. They are U.S. citizens and when they come back they will bring their regulations with them. This business can mean tens of billions of dollars for Nevada.

MELISSA CLEMENT (Nevada Right to Life):
Nevada Right to Life is always in favor of efficacious research using stem cells that are ethical.

LORI H. QUINN:
It is quite successful if a person's own stem cells are injected back into them. I would be concerned about using someone else's stem cells in a product for me. I would like for the State to take a closer look at the technology involved before any decisions are made that we might regret later.

MICHAEL MCAULIFFE:
Nevada ranks very low in many health areas. The opportunity to take a new technology and a new business like this far outweighs the risks. I am confident that the Legislature will be able to put in place a commonsense set of guidelines that will prevent this from being abused and will allow us to move forward in twenty-first century medicine.

CHAIR CARLTON:
We have a packet of letters from individuals in opposition to S.B. 273 (Exhibit O, original is on file in the Research Library).

I will close the hearing on S.B. 273 and open the hearing on S.B. 272.

SENATE BILL 272: Creates the Institutional Review Board of Nevada. (BDR 54-873)

SENATOR SCHNEIDER:
Senate Bill 272, Institutional Review Board of Nevada (IRB), provides for safety, efficacy, reimbursement and availability of therapy used in complementary integrative medicine (CIM) and bioregenerative medicine. It evaluates modalities to find the best, safest and cost-effective means to treat disease. It determines equivalence to allow health practitioners to choose between various patient therapies.

This bill creates a new board, the IRB, and allows for the Governor, the Speaker of the Assembly and the Majority Leader of the Senate to appoint members to the Board. The IRB shall adopt regulations and carry out provisions pertaining to alternative medicine and CIM, diagnostic techniques, treatments and other health-care practices. The IRB will interface with the new stem-cell industry we hope to have in this State.

We had problems with our IRB in the past and this is a step in the right direction to get a new IRB established. The IRB will interface with the stem-cell industry.

MS. POWERS:
An IRB plays a crucial role in allowing clinical trials to go forward and monitoring those clinical trials. The two key characteristics of IRBs are the speed with which they act and the expertise they have.

In recruiting clinical trials it can take six months to bring on each clinical site because of the IRB cycle. If an IRB in Nevada functions in one or two months, that would make an enormous difference in the speed of clinical trials. These are FDA approved, well designed, scientifically based clinical trials that are held up due to IRB bureaucracy.

The second thing that would be a major beneficial interaction with establishing a Nevada IRB is the expertise. When a given institution becomes a center of excellence in a particular area of medicine, their IRB sees those technologies over and over in multiple, different clinical trials. The IRB becomes knowledgeable about what is reasonable, what is not reasonable, what is scientifically based and what is not scientifically based. This will enable the IRB to act much more efficiently and more effectively.

If there is a Nevada IRB and Nevada becomes a center of regenerative medicine, the IRB, by going through the clinical-trials cycles, will develop a lot of expertise in stem cells and regenerative medicine.

CHAIR CARLTON:
Where will this board be located?

SENATOR SCHNEIDER:
It should be a freestanding board which reports to the Legislature.

CHAIR CARLTON:
How would they be financed?

SENATOR SCHNEIDER:
Hopefully, under S.B. 69, we would be able to generate some money for the IRB. We talk about homeopathic medicine in S.B. 69. We have had some problems with the Board of Homeopathic Medical Examiners (BHME) in the past, hopefully they are getting better. Homeopathic medicine is alternative medicine. Most of the homeopaths are licensed Medical Doctors (M.D.) or Doctors of Osteopathy (D.O.) right now so they cross over between the two.

MICHAEL GERBER, M.D. (President, Nevada Homeopathic and Integrative Medical Association):
The Nevada IRB has a lot of great ideas. The oversight from the BHME is a good idea. In years past there has not been the transparency of financial interactions and disclosures. Bank accounts were obscured when requests were made for clarification of funds that were brought into the Nevada IRB.

Having the Nevada IRB remain under the BHME would be a good place to start. Creating a brand-new board without the BHME oversight would have some fiscal problems.

A close regulation of the stem-cell business activities needs to be done or it could be fraught with dangers for the citizens of Nevada. I have a packet of letters from individuals opposing S.B. 272, Exhibit O.

CHAIR CARLTON:
Is the IRB that was previously under the BHME no longer functioning and is it set to expire in June 2009?

DR. GERBER:
I am not sure that is correct. That is the language in the bill and I am not aware of the regulations of the body that set it.

CHAIR CARLTON:
My concern is if it did not work last time under the BHME, why put it back under the BHME?

DR. GERBER:
There was a study requested by the Senate Committee on Commerce and Labor at the end of the 74th Legislative Session. I do not know if the study was completed. There was some internal dissension within the BHME about who would run it and who would be in charge of the records. Much of that has been resolved through changes of BHME members.

SENATOR SCHNEIDER:
I had requested, through a Legislative Commission, an audit of the BHME which was done some time ago. There have been substantial changes to the BHME and the infighting that was occurring, hopefully, has been put aside.

CHAIR CARLTON:
Having no more testimony, I will close the hearing on S.B. 272 and open the hearing on S.B. 271.

SENATE BILL 271: Provides for the practice of alternative medicine in this State. (BDR 54-876)

SENATOR SCHNEIDER:
Senate Bill 271 pertains to alternative medicine. The Nation is heading more and more in that direction. The question is how we pay for it. There is a mechanism now under ABC coding. Alternative and preventative medicine could be used by different providers and would be paid for by insurance companies using ABC coding.

CHAIR CARLTON:
With ABC coding, if the benefit is not part of your plan, then the coding would not affect you.

SENATOR SCHNEIDER:
ABC coding would overlay the current coding.

CHAIR CARLTON:
Would your health insurance not have to cover that benefit before the coding would apply?

SENATOR SCHNEIDER:
That is right. This is where we will get into negotiating with the health-care companies. It will cost less for them to do this.

MS. DOLGOFF:
The bill is a good idea. I do not know how difficult it will be to get insurance companies to comply. One of my concerns is that the ABC coding should be extended to anyone who is licensed in Nevada, including massage therapists.

PIERRE WERNER:
I submitted some amendments on S.B. 271 that I would like to propose (Exhibit P).

CHAIR CARLTON:
We have the information and Senator Schneider is aware of what you are asking for.

MR. MCAULIFFE:
This bill goes part of the way in making a better and more efficient health-care system. I support S.B. 271.

ELIZABETH AIELLO (Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
We are neutral on S.B. 271. I have submitted written testimony (Exhibit Q) and a draft amendment (Exhibit R) which would exempt both the State Plan for Medicaid and Nevada Check Up from the provisions of section 10 of S.B. 271.

DR. GERBER:
We would like to review S.B. 271, especially section 2 and section 4 which seem to be creating a separate board of alternative medicine. Fiscally, the timing of this may be unfortunate in this Session. We are very happy with the functioning of the BHME as it is right now. The BHME has complied with all of

the LCB regulations and the audit, and is in good standing with the Office of the Attorney General.

In the BHME's semiannual report to LCB, they have submitted a complete revision of chapter 630A of NRS, the homeopathic statute. The revision does contain many of Senator Schneider's suggestions.

We continue to support the current BHME. In creating a new board for alternative medicine, there will have to be all new board members appointed and all of the founding information for the board will have to be created again. We are also concerned that everyone would have to be relicensed, especially the advanced practitioners of homeopathy and the homeopathic assistants, after one year at great expense to them.

I have a packet of letters from individuals opposing this bill, Exhibit O.

LISA FOSTER (Nevada Association of Health Plans):
The association has some concerns with this bill as well as S.B. 69 for similar reasons. This bill requires insurers to use the ABC coding. It would appear that insurers would have to operate two separate coding systems.

The bill seems to say that there may be some incidences where coverage of some of these services could be mandated. Insurers pay for care that they determine to be medically necessary because the physician determines that. A number of the services provided for in these two bills may fall in line with that, but there is concern that some may not.

The Nevada Association of Health Plans typically opposes anything that looks like a mandate because of increased costs to the health-care system.

CHAIR CARLTON:
Since there is no further testimony, I will close the hearing on S.B. 271.

In the meeting last Friday, April 3, 2009, we had discussed working on a "mock up" of S.B. 119 regarding the Board of Massage Therapists (BMT) and Mr. Noriega's issues. In this "mock-up" are only the amendments proposed by the BMT and the Las Vegas Metropolitan Police Department. We did not include the exemption because we are not sure about the language. That is still being investigated.

Clark County had asked Mr. Noriega to get an exemption from the BMT. The BMT cannot give an exemption without statutory authority. If a letter had been written back to the county saying this is not person that this BMT would license because he does not fall within our jurisdiction, it would not have been an exemption letter, but it would have been notifying the county that he did not fit the classification of massage therapist.

Do we want to allow exemptions which could be a large problem? How do we allow these people, who do not fall under the jurisdiction of the BMT, to get a business license from the county without getting a license from the BMT?

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

SENATOR HARDY:
Total blanket exemptions are probably a bad idea. I do understand Mr. Noriega's point that he does not want to be a massage therapist and he does not want to go to school for that. The BMT should be able to somehow license him, within his specialty, with a designation for the Trager Approach.

CHAIR CARLTON:
I am not comfortable with adding more scopes of practice to the BMT and have them license more people than they already do. That could be moved to a registration scheme. He would present his documents, his certifications and education and just register with the BMT.

But if he is truly not a massage therapist, why would he have to be registered or be licensed by a board? The problem was that Clark County thought he was a massage therapist, but he is not.

SENATOR HARDY:
It could be called a certification rather than a license.

CHAIR CARLTON:
Why would they even need to register or license with the BMT? Could the BMT just give them a letter to the county saying you are mistaken, this is not someone we license therefore you can give him a business license?

ERNIE ADLER (Board of Massage Therapists):
Most Trager practitioners are licensed massage therapists. There is an interaction between those two types of practice. Currently under the BMT's licensing statute, they have a specific test you must pass in order to receive a license. If we added the language "or pass a written examination administered by any group or board representing the modality in which the applicant is trained" would help. We would still be licensing people who are doing massage therapy, but they would not necessarily have to pass that specific test in the statute.

If that language had been there when Mr. Noriega went to the BMT, they could have said he passed a test which was more detailed than the one we require, therefore he can be licensed as a Trager specialist. In fact, Mr. Noriega had passed a test that would have qualified him if we had not had the current restrictive language in the statute.

MR.NORIEGA:
I have some concerns about Mr. Adler's suggestions. I am not a massage therapist and I prefer not to call myself that. It is not good for my profession. Practitioners like me, listing themselves as massage therapists and displaying a license as such, create confusion in the minds of the public. They get the impression that this is just a specialty of massage or that any competent massage therapist could provide this, which is not the case. Unfortunately, there is an association between massage and prostitution that does not exist with the Trager approach. I would prefer to be exempted or excluded from direct regulation under the BMT.

BILLIE SHEA, L.M.T. (Chair, Board of Massage Therapists):
We did spend some time on this during the weekend. As you know, Mr. Noriega came in with some language from the American Massage Therapy Association (AMTA) suggesting that there were three or four modalities that would fit into the guideline that he was offering as exemption language.

Robin Graber, who is a Rolfer, has contacted the International Association of Structural Integrators. She has some information that they have provided as well.

ROBIN GRABER (International Association of Structural Integrators):
I support what Mr. Adler has suggested. We have our own national examination. It is psychometrically valid and it is ready to be in place on a state board somewhere. We are fine with being on the BMT, but having a structural integration license. That would denote that we have taken a more detailed exam which pertains to our field. It does not mean that we are massage therapists. There are not enough of us in this State to have our own board.

CHAIR CARLTON:
How would the Committee like to approach this issue? Adding another classification to a board which would impact a whole group of people in their profession, without the education and start-up time to let them know they are now going to be part of a regulatory process, would not be fair to all of the other people out there who are doing this right now.

SENATOR COPENING:
Mr. Noriega was telling us there was an entity that was willing to license him. What was standing in the way was the exemption letter from the BMT. I do not know if we are going to be able to solve this right now. One thing we wanted to address was just to get Mr. Noriega, as one practitioner, on his way and then decide what to do with all these other modalities in the meantime. It is a large undertaking to decide what to do right now. Clearly, Mr. Noriega does not want his profession combined with massage therapy and he gave those reasons. I am not certain that we should go forward with any kind of amendment to this bill.

CHAIR CARLTON:
Right now, does the BMT have the authority to write a letter to Clark County saying that currently the BMT does not regulate Mr. Noriega's profession?

MR. ADLER:
The Attorney General told the BMT they did not have that authority.

CHAIR CARLTON:
They do not have the authority to write an exemption letter. I am not asking for an exemption letter.

MR. ADLER:
Yes. The BMT was willing to do that up to the time they were stopped by their attorney general.

CHAIR CARLTON:
We are not talking about an exemption letter. We are talking about a letter of non-jurisdiction.

MR. ADLER:
You are saying to write a letter saying we do not regulate this person.

CHAIR CARLTON:
Correct. Is there anything that would prohibit that?

MR. ADLER:
I do not see anything.

CHAIR CARLTON:
This would be a simple fix right now. Then as we adjust and look forward we can start dealing with it.

MR. NORIEGA:
Yes, in the letter I wrote to the BMT, I did not ask for an exemption. I wrote that Clark County said I should get a letter from the BMT confirming, that as a Trager practitioner, I am in fact not practicing massage and do not require a State massage license. I was asking to be excluded. The letter I received back cited the provisions for exemptions. Maybe we miscommunicated and went right past each other. They were talking exemptions and I was talking exclusions.

MR. ADLER:
We could write a letter saying we do not regulate. I do not want to get into all of the items Mr. Noriega stated and sent to Clark County. Then we do not get into all of these interpretive things. We should just do it as a statement of fact and send him a letter.

CHAIR CARLTON:
If you could do that fairly quickly, we can get the response back from Clark County. The Committee could help to make sure that Clark County understands what we are trying to do. If that does not work and there is still a problem when we get to the Assembly, then that would give us time to formulate the correct language. We have to make sure that not everyone tries to

use this exemption to circumvent what we have been trying to fix with massage therapy for the last two to three years.

MR. ADLER:
There are very, very few people who are in Mr. Noriega's category who are Trager specialists and who are not also massage therapists. There is probably less than a handful in the whole State.

MR. NORIEGA:
When I go to a licensing board, they say it is all the same thing, if you touch somebody it is massage. The statute does not say that and the local regulating authorities have no leeway to actually look at the statute for what it says and act accordingly.

CHAIR CARLTON:
Mr. Noriega, this has been an evolution process for the last three years. We have been having these types of discussions and debates with the different municipalities on this profession. Usually, the State can convince them that what we say goes. We have had to convince Clark County that the State now has jurisdiction over massage and if we say it is not massage, it is not massage.

MR. NORIEGA:
Is this amendment not going forward right now?

CHAIR CARLTON:
We are going to ask the BMT to write a letter to Clark County. When we are finished here, I would like you and Mr. Adler and the executive director to get together and determine what you need to do. We are asking them to do it very quickly. We want to have time to deal with this problem if it raises its head again before we leave the Legislature.

MR. NORIEGA:
Where does that leave other practitioners?

CHAIR CARLTON:
Hopefully, once we teach Clark County and the other municipalities, this may not happen to some of the others. If they send people to the BMT again, we will have set the precedent, and they will be able to initiate the same type of letter for those professionals also.

MS. SHEA:
We are happy to do that letter, and we will have it out by tomorrow.

CHAIR CARLTON:
Committee you have the proposed amendment before you (Exhibit T, original is on file in the Research Library). What is the Committee's pleasure on S.B. 119?

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 119.

SENATOR HARDY SECONDED THE MOTION.

SENATOR PARKS:
I am going to support this motion; however, there were some legal concerns that I had and I want to make sure that they were satisfactorily addressed.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARLTON:
I will be back in a few moments. I will turn the meeting over to Vice Chair Schneider.

VICE CHAIR SCHNEIDER:
On S.B. 271, in answer to the question regarding ABC coding and Medicaid, I have learned that the ABC codes are not required under the Health Information Portability and Accountability Act, but they are allowed.

I will open the hearing on S.B. 69.

SENATE BILL 69: Enacts provisions governing complementary integrative medicine. (BDR 54-623)

DEBBIE PAWELEK:
I have submitted written testimony expressing my concerns with S.B. 69 (Exhibit S).

VICE CHAIR SCHNEIDER:
The intent of S.B. 69 is to prevent unlicensed people from engaging in the activities of a complementary integrative medical physician.

MS. PAWELEK:
Will you review this bill?

VICE CHAIR SCHNEIDER:
Yes, I will.

BROOKE LAWRENCE:
I work at Whole Foods Market in the supplement section. There is actually a law which prohibits us from giving medical advice. We cannot state that something cures cancer. We are not medical doctors and the company could be sued. We are trained not to recommend anything.

MR. FRISCHEISEN:
I am concerned with the language in S.B. 69 and I am happy that an amendment has been suggested. My understanding was that I might be required to have a naturopath on our staff. That is not the intent, is it?

VICE CHAIR SCHNEIDER:
No, it is not.

MR. FRISCHEISEN:
I did some research on the history and Nevada does not recognize naturopathy.

MS. DOLGOFF:
I have submitted a document from the Lotus Apothecary and the Vitamin Connection containing their opposition to S.B. 69 (Exhibit U). They would like to see an amendment on this bill.

DENÉ CHABOT-FENCE, N.D.:
I own the Vitamin Villa, and I am a naturopathic doctor. As the owner of the store, I do not need to be in that store at all. My clerks are given training in order for them to be able to identify with the Dietary Supplement Health and Education Act and know their restrictions.

I appreciate what you said about not needing a naturopath on staff in a health-food store. The cost would be prohibitive for the store to make a profit.

DENNIS GROVER (Nevada Freedom Alliance):
We disapprove of S.B. 69. Homeopathic medicine has been around for 2,000 years. We object to the name "alternative" for something that has been around for so long.

There is a need for homeopathic medicine. The choices of who administers what service should be left strictly to the patient rather than the Legislature. I hate to see the BHME attacked or changed in any way. It is functioning very well as it is.

NANCY ECKLOF (Executive Director, Board of Homeopathic Medical Examiners):
I would like to read into the record a statement by our secretary treasurer Dr. Bruce Fong on behalf of the entire BHME.

We have officially stated our opposition to the BHME and officially voted on that in January 2009. Obviously, we all know the bill seeks to dissolve the current BHME and seeks to replace it with a new board which the bill claims to better represent alternative medicine. The arguments for these changes are both erroneous and shortsighted.

There is an implication that the current BHME is inept and unable to function. This is absolutely untrue. We advise this Committee that this BHME has satisfied the LCB audit that was recently completed. The BHME has a strong history of satisfying its legislative mandates to oversee homeopathic, alternative and complimentary medicine, as well as protecting the public since its inception.

The bill seeks to replace the current BHME with a board that is composed of fewer physicians. This, in our opinion, is only going to weaken the ability of any board to effectively oversee the practice of any form of medicine. This will likely diminish the ability to protect the public interest and create potential dangers for the same.

The dissolution of the current BHME and its replacement with a new board, in and of itself, is very imprudent at this time. The changeover would require a large monetary commitment to begin with, but also would require the need for extensive administrative turnover of documents as well as other nuances to

allow for a new board to come close to operating at the current BHME's level. There would be an unacceptable level of confusion for both practitioner and patient alike, thereby increasing the potential for harm. This bill flies squarely in the face of the vast majority of the licensees and certificate holders who are certified by the current BHME who indicated support of their board by attending BHME meetings over the last few weeks or otherwise indicating their support from both written and verbal statements.

This bill attempts to reestablish the Nevada IRB and to remove the oversight of the BHME. As noted, historically there has been much contention in regard to that oversight. Much of this contention arose from the apparent lack of transparency of the IRB's financial affairs. Although the idea of an institutional board is a good one, the lack of oversight could pose serious challenges for the legitimacy of such a body.

Finally, this bill seeks to force a uniform system of insurance reimbursement of services as provided for under alternative, integrative and complementary medicine. Although attractive on the surface, this is a potential administrative disaster. Currently, there is little or no consensus as to how procedures should be coded or how they should be reimbursed.

For this type of sweeping change to occur it would require extensive study and interaction from both insurers as well as practitioners. This cannot occur overnight and will take several years at the minimum.

On behalf of Dr. Fong, he thanks you for your consideration of the statement from the BHME. I need to qualify that I am not a spokesperson. Only officers of the BHME can speak on behalf of the BHME. I am just simply an educated messenger in this respect.

Speaking as the executive director, the BHME's mandate is to make certain we work very hard to achieve everything we encounter as far as our responsibilities are concerned. We also pride ourselves on our low operating budget. We do telephone board meetings. Our board members do not charge per diem. We are running on a shoestring, but it is also a very effective and productive board.

As far as our operating expenses, I looked at the fiscal note and the new board would be considerably higher. Currently, on a conservative level we operate at about $40,000 a year; however, if there are extenuating costs incurred through

primarily the Attorney General's Office, that can increase. We are currently working with the Attorney General's Office to try to dissolve most of our debt with them.

VICE CHAIR SCHNEIDER:
The way the bill is written, would all the issues with the current homeopathic board bill not be included in there?

MS. EKLOF:
What we have provided to the Legislature in our annual report, the additions and deletions, are very close to your bill. The only difference is we do not want to abolish the current board.

VICE CHAIR SCHNEIDER:
Would all the homeopathic practitioners be grandfathered in under this bill?

MS. EKLOF:
I believe so. Would they not?

VICE CHAIR SCHNEIDER:
No, they are not. I will have to read this bill again.

DR. GERBER:
The homeopathic medical doctors (HMDs) would be grandfathered; however, the advanced practitioners of homeopathy and homeopathic assistants would have a one-year grace period and then they would have to be relicensed and retested at quite some expense to them. That is the bulk of the licensees in this State. This is one of our issues to be reviewed.

In the fiscal note for S.B. 69, in the first year, 2009 to 2010, the expense would be $189,429, and for each biennium after that it would be $227,862. The BHME is currently running on $40,000 a year now.

The other issue in abolishing this board and creating a new one would be in getting new board members appointed. Sometimes it can be very difficult.

The fiscal issues with the BHME had to do with the bill from the Attorney General's Office, which involved defending the BHME in a court case.

VICE CHAIR SCHNEIDER:
In theory, would you agree with a complementary integrative medicine board?

DR. GERBER:
It has a great deal of merit. It really is a more accurate picture of what we do. The panoply of therapies that are nicely laid out is quite representative of the average practice of homeopathy in this State.

One of our concerns is the addition of a three-year post-doctoral training program at additional cost to new licensees for the homeopathic medical license. There are no homeopathic post-doctoral programs in which to get the training.

VICE CHAIR SCHNEIDER:
Dr. Gerber, are you a licensed M.D.?

DR. GERBER:
Correct, in California.

Senate Bill 69 would also reduce the number of HMDs on the board from four to two and adds nurses, pharmacists and other non-licensed people who do not know what homeopaths do.

VICE CHAIR SCHNEIDER:
Do you have an amendment for this bill?

DR. GERBER:
What we have is the BHME's rewriting of chapter 630A of NRS in its entirety, which has much of the same language that you have in S.B. 69. This was done at the annual request of the LCB to evaluate the BHMEs' efficiency and how they could create a better board. It has been approved by the BHME.

VICE CHAIR SCHNEIDER:
Would you get that amendment to us?

JUANITA COX (Citizens in Action):
We are very concerned with the name change and the structure of the proposed board in S.B. 69. Complementary integrative medicine is not exactly what we

like. BHME is working and we should leave it the way it is. The public health may be harmed because of the changes in S.B. 69.

DR. GERBER:
In the packet I have submitted are letters opposing S.B. 69, Exhibit O and (Exhibit V, original is on file in the Research Library).

MR. NORIEGA:
There are sections in this bill that do not make sense to me. Section 9 and sections 35-39 contradict each other.

There are 15 modalities listed in the bill which fall under complementary integrative medicine. One of those is "lifestyle modification." Section 9, subsection 3, paragraph (f), states, "'Lifestyle modification' means counseling to achieve homeostasis ... ," which is giving advice that is good for you, " ... through the use of lifestyle factors, including, without limitation, faith, fresh air, sunlight, water, rest, good nutrition, exercise, temperance, discipline, positive attitude, humor, touch and fulfilling relationships." I am wondering why this is in this bill. I am a Trager practitioner and if I am not licensed under this, am I committing a felony?

VICE CHAIR SCHNEIDER:
I will be working with the BHME to get an amendment. We are attempting to be progressive in alternative medicine.

MR. NORIEGA:
Do you know what form that amendment might take?

VICE CHAIR SCHNEIDER:
Not at this time. We will keep you apprised.

CHAIR CARLTON:
We have received a letter from an individual expressing concern about S.B. 69 (Exhibit W).

Seeing no other discussion, I will close the hearing on S.B. 69 and adjourn the meeting of the Senate Committee on Commerce and Labor at 5:11 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: