

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND EDUCATION**

**Seventy-fifth Session
February 13, 2009**

The Senate Committee on Health and Education was called to order by Chair Valerie Wiener at 12:04 p.m. on Friday, February 13, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Valerie Wiener, Chair
Senator Joyce Woodhouse, Vice Chair
Senator Steven A. Horsford
Senator Shirley A. Breeden
Senator Barbara K. Cegavske

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington (Excused)
Senator Dennis Nolan (Excused)

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Mindy Martini, Committee Policy Analyst
Sara Partida, Committee Counsel
Betty Ihfe, Committee Secretary

OTHERS PRESENT:

Christina Vetterli
Ernest Figueroa, Senior Deputy Attorney General, Bureau of Consumer
Protection, Office of the Attorney General
Paula Berkley, Food Bank of Northern Nevada
Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada

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Keith G. Munro, Assistant Attorney General, Administration, Office of the Attorney General

CHAIR WIENER:

I open the meeting of the Senate Committee on Health and Education. We have three bills on the agenda. They are Senate Bill (S.B.) 21, S.B. 22 and S.B. 25.

SENATE BILL 22: Provides penalties for certain violations relating to the production, distribution and sale of certain dairy and raw milk products. (BDR 51-430)

SENATE BILL 25: Revises provisions governing civil penalties for violating restrictions on the stabilization and marketing of dairy products. (BDR 51-429)

CHAIR WIENER:

This morning, the sponsors of S.B. 22 and S.B. 25 asked to have both bills withdrawn from the process. We will not be considering those bills, but we will accept testimony pertaining to them.

CHRISTINA VETTERLI:

What does withdrawn mean? Does that mean that S.B. 22 has been postponed, or has it been thrown out?

CHAIR WIENER:

If a bill is "pulled," it could resurface during the Session; however, these bills have been "withdrawn" by the sponsoring agency. These two bills will not come back this Session.

MS. VETTERLI:

How does that happen?

CHAIR WIENER:

The people who brought the bill forward have requested that the bills be withdrawn.

MS. VETTERLI:

Does that mean for the time being, I can still purchase raw milk for my family without being criminalized?

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CHAIR WIENER:

For the time being, the law is as it has been.

MS. VETTERLI:

As my written testimony ([Exhibit C](#)) indicates, I am in favor of the law remaining as it is. I would be more in favor of it if I were able to purchase unpasteurized cow's milk in this State. Unfortunately, my family has decided to move to an area of the country where we have more access to life-giving raw milk products. It is very important to our health and well-being. When I have had some digestive problems and could not sleep, the only thing that helped me was the active probiotics in the milk. My indigestion cleared up within minutes and this has not been an isolated incident. I have been so impressed that an unadulterated milk product has helped me so quickly and so often that I want this milk for my family. I am in favor of having these raw milk products readily available in this State.

CHAIR WIENER:

Testimony on S.B. 22 has been submitted by the American Civil Liberties Union (ACLU) of Nevada, and it will be included in the record ([Exhibit D](#)).

I close the testimony on S.B. 22 and S.B. 25 and open the hearing on S.B. 21.

SENATE BILL 21: Revises provisions governing the sale or offer for sale of certain food, drugs and other commodities after the date of expiration for those products has passed. (BDR 51-260)

ERNEST FIGUEROA (Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

My prepared testimony is in support of S.B. 21 ([Exhibit E](#)). The intent of S.B. 21 is to expand Nevada law to prohibit the "knowingly and willingly" sale of any over-the-counter (OTC) drug, infant formula or baby food for which the expiration date has passed. Ironically, while it is illegal to sell adulterated and misbranded food, drugs or cosmetics, it is perfectly legal to sell baby food and OTC drugs which have expired according to information provided by the manufacturer.

Manufacturers have good reasons for posting an expiration date on consumable products. The manufacturer, through internal testing, can assure retailers and the public of the potency and safety of its products if the products are used by

the label expiration date. After those dates, products may still be safe, but there is no manufacturer guarantee. Likewise, even though a product is safe, there is no guarantee that it is pure and potent if its expiration date has passed.

Unfortunately, the Nevada Attorney General's Bureau of Consumer Protection can only enforce those laws enacted by the Nevada Legislature, and there is no affirmative provision which establishes the sale of expired baby food as a deceptive trade practice. The Attorney General's (A.G.) office has become aware that this issue has happened in this State. It is the position of the A.G. that in the case of the OTC drugs, infant formula and baby food, any risk posed by these expired products should not be borne by the public.

The A.G.'s office asks this Committee to join the states of Georgia, New Jersey and Ohio to make the knowingly and willingly sale of expired OTC drugs, infant formula and baby food in Nevada, a deceptive trade practice.

The prefiled version of S.B. 21 did not capture the full intent as we would like to have it implemented. I have prepared a proposed amendment to S.B. 21 ([Exhibit F](#)). The amendment seeks to strike sections 1 through 14, and adds new sections which will make the knowingly and willfully selling of expired OTC drugs or baby food a deceptive trade practice.

CHAIR WIENER:

Section 15 still remains in effect upon passage and approval, does it not?

MR. FIGUEROA:

Yes, section 15 still remains in effect.

CHAIR WIENER:

When you are referring to OTC drugs, you are excluding prescription drug purchases, are you not? These are items that could be purchased by the consumer without going through a pharmacist or some other prescriptive pathway, is that correct?

MR. FIGUEROA:

Yes, the intent is to limit it solely to the sale of anything that does not require the assistance of a pharmacist or medical doctor.

SENATOR CEGAVSKE:

Would passage of the amendment make this a felony, a criminal offense? For instance, if a convenience store owner or drugstore owner inadvertently left something on the shelf after the expired date, this seems to be a rather extreme measure.

MR. FIGUEROA:

The original prefiled version of S.B. 21 had some issues in it. One of those issues dealt with the criminal provisions. We felt it was better suited to place the intent of this bill in the deceptive trade practice statutes. This would be in line with what all other businesses and all current businesses have to deal with as they conduct commerce in this State. In that particular section, it provides for administrative remedies and civil remedies. Under very unique circumstances, it would be a misdemeanor. It is no longer a felony.

CHAIR WIENER:

When you have a situation where the product is knowingly and willingly sold or offered, it rises to the level of intent, am I correct? If an unaware clerk sells the outdated product, would that be a violation of the deceptive trade practice? Would there not have to be knowledge of the expired product regulation and some level of intent for the infraction to rise to the level of a deceptive trade practice?

MR. FIGUEROA:

That is correct. The purpose is to capture the "bad actors," those who actively with full intent sell the product to the public. It was not meant to capture those who make a mistake.

PAULA BERKLEY (Food Bank of Northern Nevada):

At the Food Bank of Northern Nevada, we handle a lot of food. Much of it is donated, and it has expiration dates, so we deal with expiration dates all the time. Quite often we get donated food because it is getting near that expiration date. We go to great lengths to handle the food within two weeks of expiration and get it to people before it expires. We are very interested in S.B. 21, and anything we can do to make sure that everybody stays alert on this issue, we will do. Certainly at the Food Bank, if we made one mistake concerning outdated food, we would be out of business.

LIZ MACMENAMIN (Director of Government Affairs, Retail Association of Nevada):
In my prepared testimony ([Exhibit G](#)), I will express the Retail Association of Nevada Chain Drug Council's support of the amended language presented for S.B. 21. Our members' concerns have been addressed with the language. Our concerns included a clerk not rotating a product properly and the company being liable for the oversight, the ability to implement policies and procedures that would address the above situation, and a consumer purchasing a product that was not outdated and replacing it with an outdated product he or she might have had at home and returning it to the store.

We understand that the language proposed is intended to capture an operative in Nevada who, in bad faith, is selling a product that is potentially harmful. We believe the inclusion of the terminology of "knowingly and willingly" will address the concerns of our members.

KEITH G. MUNRO (Assistant Attorney General, Administration, Office of the Attorney General):

The intent of this amendment is to make sure there is no knowingly and intentional violation of selling expired products. We encourage companies to develop policies to monitor and review the dating of their products, so they can be sold in a timely manner.

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CHAIR WIENER:

There being no other business before the Senate Committee on Health and Education, the meeting is adjourned at 12:24 p.m.

RESPECTFULLY SUBMITTED:

Betty Ihfe,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____