

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

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

The Senate Committee on Health and Education was called to order by Chair Valerie Wiener at 3:26 p.m. on Monday, March 16, 2009, in Room 2149 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 Valerie Wiener, Chair
Senator Joyce Woodhouse, Vice Chair
Senator Steven A. Horsford
Senator Maurice E. Washington
Senator Barbara K. Cegavske
Senator Dennis Nolan

COMMITTEE MEMBERS ABSENT:

Senator Shirley A. Breeden (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Assembly District No. 31
Assemblyman Lynn Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Mindy Martini, Committee Policy Analyst
Shauna Kirk, Committee Secretary

OTHERS PRESENT:

Tom McCoy, JD, Nevada Government Relations Director, American Cancer Society, Cancer Action Network

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Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada
Larry L. Pinson, Pharm.D., Executive Secretary, State Board of Pharmacy
Carolyn J. Cramer, General Counsel, State Board of Pharmacy
Keith M. Lyons, Jr., Nevada Justice Association
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada
Kevin Schiller, Director, Washoe County Social Services
Thomas D. Morton, Director, Clark County Department of Family Services

CHAIR WIENER:

We have had a request from the sponsor of Senate Bill (S.B.) 186 which deals with the recycling of tires to rerefer the bill to the Senate Committee on Natural Resources. It has sections in health and education as well as natural resources.

SENATE BILL 186: Provides for the issuance of permits for the operation of motor vehicle tire recycling centers. (BDR 40-739)

SENATOR CEGAVSKE MOVED TO REREFER S.B. 186 TO THE SENATE COMMITTEE ON NATURAL RESOURCES.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will open the hearing on S.B. 159.

SENATE BILL 159: Requires the establishment of the Cancer Drug Donation Program. (BDR 40-14)

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

I am here today to introduce S.B. 159 for your consideration. This bill relates to the establishment of a cancer drug donation program in Nevada. According to the National Conference of State Legislatures, 37 states have implemented laws to allow or study programs that redistribute unused prescription medications to uninsured or low-income individuals. In six of these states, Colorado, Florida, Kentucky, Minnesota, Nebraska and Wisconsin, the focus was on programs for cancer-related prescription drugs. According to David Fries, CEO, Iowa

Prescription Drug Corporation, drug-recycling programs reduce costs by working with patients and keeping them out of the hospital over the long term. It is Mr. Fries' opinion that these programs have the potential to double or triple in the near future.

Although regulations vary from state to state, there are common components of the program. All donated drugs must not be expired; they must have a verified future expiration date. Controlled substances, as defined by the Federal Drug Enforcement Administration, are usually excluded and prohibited, state licensed pharmacists and pharmacies are part of the verification and distribution process; and each patient who receives a drug has a valid prescription form in his or her own name.

This measure is very close to my heart. The idea for a cancer drug donation program came to me 27 years ago when my father died of cancer at the age of 60. At that time, I wanted to donate some of the cancer drugs my father had not used to persons in need. These drugs can be very expensive. I could not find an organization to accept the drugs even though many of the packages had never been opened.

During the 2007 session, I introduced a similar measure, S.B. No. 5 of the 74th Session, which did not pass. Through deliberations, it was apparent that trial attorneys and pharmaceutical companies were concerned about liability. The pharmaceutical companies did not want to be sued, and the trial attorneys wanted to sue. I believe S.B. 159 will dismiss the concerns expressed last session.

This bill requires the State Board of Pharmacy to establish a cancer drug donation program in Nevada. Any person may donate a cancer drug to a pharmacy, medical facility, health clinic or provider of health care that participates in the program. The donated drug must be in its original unopened, sealed and tamper-evident packaging and bear an expiration date that is later than 30 days from the date of donation. The donated drug may only be dispensed by a registered pharmacist based on a written prescription for a person eligible to receive the drug.

The measure requires the State Board of Pharmacy to adopt regulations for the drug donation program. The regulations must address the requirement for participation in the program by pharmacies, medical facilities, health clinics and

providers of health care; the criteria for determining the eligibility of persons to receive the donated cancer drugs; the categories of cancer drugs that may be accepted in the program; and the maximum fee that may be charged to distribute or dispense the drugs. Through this measure, a cancer drug donated to the program may not be resold.

Finally, this bill provides immunity from civil liability for damages caused by any act or omission of a person who donates a cancer drug to the program. It also provides immunity from civil and criminal liability to a manufacturer of a cancer drug that is donated, accepted, distributed or dispensed through the program. This measure is needed in this State.

You have been given a copy of a letter from Justine Harrison, Vice President of Legal and Government Affairs, Nevada Cancer Institute ([Exhibit C](#)). You also have a copy of a letter from Merrill R. Jacobs, Deputy Vice President, State Government Affairs, Pharmaceutical Research and Manufacturers of America ([Exhibit D](#)).

ASSEMBLYMAN BERNIE ANDERSON (Assembly District No. 31):

I was disappointed to see that we could not find a resolution to an important issue of the last Legislative session. A larger issue needs to be equally addressed. This first step is critical. This is Senator Cegavske's bill, and I wanted to cosponsor this bill. We ended up with two slightly different bills. You do not see Senator Cegavske's name on my bill, but it is the same intent. What we want is to give people who have medication for cancer the opportunity to donate their medication. I strongly urge your support for this bill.

ASSEMBLYMAN LYNN STEWART (Assembly District No. 22):

I first became interested in this issue when the father of a teacher at Glen Taylor Elementary School had a situation similar to Senator Cegavske's. She and approximately 60 of her students wrote to me promoting this issue. I visited their class and told them that I would sponsor legislation in that regard. When I saw Senator Cegavske had already sponsored this bill, I withdrew my bill draft. I am here to strongly support this bill. I have several letters from the students of that school which includes a donor form they constructed.

SENATOR WOODHOUSE:

I also have those letters from Glen Taylor Elementary School and believe that this bill should move forward.

SENATOR NOLAN:

When I was an active coroner investigator and responded to homes of people who had passed away from cancer, we would take inventory of all the medications and dispose of them. We literally opened the packages and bottles and flushed away thousands of dollars worth of medication. There are so many people who need many different types of medication, but the medication is being thrown away. I support this bill.

SENATOR CEGAVSKE:

The only amendment I would like is to amend Assemblyman Stewart's name onto the bill. I have talked with Bill Bradley in the halls about this legislation and hope we can work together. I received an e-mail this morning from the Nevada Justice Association, and they still have the same concerns.

TOM MCCOY, JD (Nevada Government Relations Director, American Cancer Society, Cancer Action Network):

I am here on behalf of the American Cancer Society to support this bill. In Tacoma, Washington 25 years ago, a doctor who was helping colorectal cancer patients decided he would walk for 24 hours. He would do so to raise the spirits and money for his patients. He walked for 24 hours, going 83 miles, and collected \$27,000. This year there will be 4,000 events just like it. He started something called "Relay for Life." It shows what one person can do to bring people together to solve a problem. Next month there will be Relays for Life throughout Nevada. These are survivors of cancer. These are families who have lost loved ones to cancer. These are individuals who just want to help. Last year when I was in Pahrump, it was 105 degrees, and still people walked to raise money and awareness. In Nevada, we do not treat oral chemotherapy the same way we do that which is injected. For that reason, if they are taking oral chemotherapy, some people with insurance have a difficult time affording those drugs.

I will conclude with a story that brings all of this together. The other day I was leaving the office to come here, and a gentleman walked in and said, "I am here to donate my wife's wig." His wife did not survive breast cancer. It was a great feeling for him to be able to donate a wig, and that can only be intensified with donations of medication that could save a life or assist a person's quality of life while they are under treatment.

LIZ MACMENAMIN (Director of Government Affairs, Retail Association of Nevada):
I am here representing the chain drugstores, and we as an industry support this bill. It is a voluntary process for the pharmacies which is appreciated. It is difficult for a chain-drugstore pharmacy to be able to take drugs back. However, the State Board of Pharmacy, being the one to implement this program, will work through questions I have, such as, "How will a donor know where to donate, and how are we going to get this information out?" I would like to help with education on this, if possible.

SENATOR CEGAVSKE:

I just wanted to clarify what I said earlier. When the State Board of Pharmacy came to my office, they offered an amendment that I approved which would make this a better bill. It also helps with the fiscal note ([Exhibit E](#)). The recommended amendment from them will make this a bill we are looking for.

LARRY L. PINSON, Pharm.D. (Executive Secretary, State Board of Pharmacy):
We met with Senator Cegavske and Assemblyman Anderson over the last few days and are willing to take off the fiscal note. We can make this work with the model we talked about and the staff that I have. There are integrity concerns. I have to make sure these drugs are safe. I do not know if a person purchased the drugs on the Internet, which could mean they are counterfeit, and I do not know how they have been stored. Through the regulatory process, we can make it as safe as we can. The original bill states that you can return drugs used for cancer or its side effects. Side effects of cancer can affect anything. Therefore, side-effect drugs are all drugs. We would like to take out the side-effect portion and just start with cancer drugs and see how that goes. We can expand it as needed.

CAROLYN J. CRAMER (General Counsel, State Board of Pharmacy):

If you look at section 3 of the proposed amendment, I amended the cancer drug to one just used to treat cancer. I took out the side-effects language, and the effects of a prescription drug that is used to treat cancer, its side effects and the medical supplies. I believe the intention of Senator Cegavske is to make sure that we encourage high-dollar cancer drugs in the program. If we utilize drugs used to treat side effects, we could end up with amoxicillin and other drugs that we do not want to burden the program with initially. If you are looking at medical supplies, it could be anything from a bedpan to a bed. In paring down the language a little, we can get the biggest bang for the buck and get the program in place.

SENATOR NOLAN:

How will family members know where to take the drugs? How will this all be managed? What procedures will you have to ensure the drugs are locked up?

MS. CRAMER:

Scheduled drugs are not included in this bill. All of these programs generally exclude that. That is the flavor and character of them, because there is a problem with getting a controlled substance to somebody who is not a Drug Enforcement Administration registrant. Most likely, we will put together a list of places willing to participate. We will make rules that will spell that out. The Board will be the one to set the parameters on who will do it. One of the conditions is to make sure the drug comes from a Nevada pharmacy. It will be one additional step we can give to the participants of the program. This will help us to cull Internet drugs. We are thinking about that and have a lot of flexibility and latitude in making rules. One of the beauties of this bill is, as we feel our way through this process, we will be able to look at other jurisdictions and get ideas from other players. I hope that we will be able to do a lot of this on our Website so patients can download forms, fill them out and meet up with the appropriate resources.

KEITH M. LYONS, JR. (Nevada Justice Association):

The betterment of the people is best served by protecting the people. We are committed to the concept behind this bill. My grandmother died of cancer, and my office manager is a survivor of breast cancer. What this bill does by granting immunity is create two different classes of people. If these drugs are issued by a physician or by a pharmacy and there is some problem with the drug, either a problem with the Food and Drug Administration certification or other certification, or if the doctor is simply issuing the wrong drug for the wrong treatment, there is liability. The individual who pays for the drugs can then sue. However, if you are poor and cannot afford to buy the drugs and receive drugs through the immunity provisions in this bill, you will not be able to sue. We do not believe this serves the betterment of the people by creating two different classes of people. This is a great bill, but delete the immunity provisions.

CHAIR WIENER:

We will close the hearing on S.B. 159 and open the hearing on S.B. 197.

SENATE BILL 197: Revises provisions relating to the reissuance of certain prescription drugs. (BDR 39-804)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

I appear before you to seek your support for S.B. 197. This legislation revises provisions relating to the reissuance of certain prescription drugs. Before I explain the bill, I would like to share a little history of my involvement with this issue. I introduced S.B. No. 327 of the 72nd Session in 2003 that became law. This measure established procedures for reusing certain prescription drugs that are dispensed to, but not used by, a patient in a mental health facility, facility for skilled nursing, facility for intermediate care or an offender incarcerated in an institution or facility operated by the State of Nevada, Department of Corrections.

In the original version of S.B. No. 327 of the 72nd Session, I provided these particular institutions another option for the second issue of these unused drugs. They could provide them, for one subsequent use only, to a nonprofit organization that would be responsible for the free distribution of the reissued drug. This portion was amended out of the bill in the Assembly. Today, in S.B. 197, I am bringing back this provision for issuance of an unused, pristine drug to a nonprofit for a free one-time distribution.

With the timeline challenges we face for introduction of bills, I did not notice one statutorily designated entity that was included in S.B. No. 327 of the 72nd Session had been omitted from S.B. 197, which is the Corrections Department. Ms. Lyons has had communications with Howard Skolnik at the Department of Corrections as well as the medical director, and believes that this can be put back into the bill. The protections would be just as safe as they are with the other institutions. In the original bill's testimony, the medical director at the time was gleeful that the measure went through, because he anticipated that there would be millions of dollars saved by the reissuance of drugs within the institution. I am offering an amendment to include the Department of Corrections in this bill for participation in the donation of unused drugs to qualifying nonprofit organizations.

An amendment offered by Jack Kim includes a "mail service pharmacy" as an additional resource for the reissue of drugs. Kansas has developed this provision, which affects a licensed pharmacy within our state that ships, mails or delivers by any lawful means, a lawfully dispensed medication in tamper-resistant packaging to residents of this state or another state. Kansas has "this state or any other state." I would be happy if it was just this State to be consistent with the rest of the bill. Medco is one of the largest mail-service

pharmacies in Nevada. Companies such as Medco have barrels of drugs they throw away every few weeks, because we cannot reissue them one time. We could recover thousands of prescription drugs every month for reuse by nonprofits that qualify to dispense these reissued drugs.

Because this legislation allows the drugs to leave the custody of the original facility, I am also providing for certain immunities for the chain of delivery. The monitoring of the distribution, including requirements for licensure of all parties engaged in the chain of delivery, is significant. To be immune from civil liability for damages sustained as a result of any act or omission in carrying out the provisions of section 3 of S.B. 197, a person, pharmacy, facility or pharmaceutical manufacturer must comply with the procedures and regulations required in subsections 4 and 5; and an act or omission cannot be gross negligence or willful misconduct. An additional provision requires that, prior to receiving a drug from a nonprofit organization, the person or his guardian will sign a form to acknowledge that he understands the provisions of this subsection. Other provisions of the bill are the same or similar to the 2003 legislation that is now law. A lot has changed in the six years since I first introduced this legislation. The times have become more challenging. Economic access to necessary medication is out of reach for thousands of people who, six years ago, would have been able to fill their prescriptions. Today, it is often the choice between a needed drug and food or the rent or the electric bill. My intent in bringing this measure back to this Committee and this Legislature is one of humanity. Please let us not destroy thousands of doses of vital medications that could be utilized by nonprofits for free distribution to people in need.

MR. PINSON:

The Board of Pharmacy is comfortable with this bill and supports it. Now that we have a clear picture as to how this will look, we can remove the fiscal note. The only thing that came up that was bothersome was the controlled substances. Originally, we were not going to deal with controlled substances. They appear in section 3. There is no provision in the controlled substances for a registered pharmacy to acquire possession of controlled substances from a non-registrant. Federally, you cannot do that.

SENATOR WIENER:

I did not know either, and that was not my intent. I would have no problem amending that out.

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MS. CRAMER:

That was my only concern as well.

MS. MACMENAMIN:

We support this bill. We had concerns with the scheduled drugs. However, if that is going to be taken out, we have no issue with this.

MR. LYONS:

In principle, we have no objection to the bill, and we are in favor of what the bill is attempting to do. Contrary to my harsher statements concerning the earlier bill, we have less concern about immunity when it is simply for someone passing through with strict regulations regarding the chain of custody. Our concern is the immunity for the manufacturer. If the immunity is simply for the passer of the drugs, such as, they picked it up, shipped it through and followed the custody controls in place, then we have little concern over this bill. If it is a blanket immunity for the manufactured drug, we would be concerned. If the manufacturer has absolute immunity for simply donating the drugs to this process, it would create two different classes of people. We do not have a lot of objection to giving immunity for passing the drugs with the safeguards in place.

SENATOR WIENER:

I am happy to align with what our conversations were in my office approximately a month ago.

CHAIR WIENER:

We will close the hearing on S.B. 197, and open the hearing on Senate Concurrent Resolution (S.C.R.) 4.

SENATE CONCURRENT RESOLUTION 4: Urges certain agencies which provide child welfare services to develop a standardized practice model and to address certain issues related to child and family services. (BDR R-476)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):

This was submitted on behalf of the interim study on the Placement of Children in Foster Care. There was testimony from representatives of its technical work group regarding the need to implement a consistent practice model to standardize practices throughout the State regarding safety decisions and subsequent foster-care placements. The work group testified that standardizing

decision points in child-welfare cases would support safely reducing the number of children placed in foster care by establishing clear and consistent parameters around when a child may be placed in foster care and what reasonable efforts are required to prevent such actions. The technical work group further testified that the recommendations to develop a consistent practice model was centered on the idea that the State must come to some agreement concerning the occurrence and impact of child maltreatment in a family and create a response approach based on this agreement. The approach the work group recommended was to provide an adequate array of services to meet the needs of families, making reasonable efforts to prevent children from being removed from their home or, if removed, to expedite their return. The work group identified the final report of a recent assessment of the existing service array in Clark County that indicated that the State faces the dilemma of whether to create an array of services to support families in crisis or, alternatively, create a system for the systematic removal of children and placement of those children in foster care. Further discussion of the recommendation to create or expand the array of services available to families was included in the recommendations.

This is essentially a resolution which states the intent of the interim subcommittee and the work group. It urges the Division of Child and Family Services, Department of Health and Human Services and the Clark County Department of Family Services and the Washoe County Department of Social Services to develop a standardized practice model and address certain issues related to child and family services. This would be in consultation with other key stakeholders connected to the safety and welfare of children in this State. The interim subcommittee adopted these recommendations.

SENATOR CEGAVSKE:

I have a bill for a couple of doctors and a person who is an advocate of foster-care children that deals with over-prescribing medication for children in foster care. I spoke with Assemblywoman Barbara E. Buckley, and we are going to have a hearing on it. It is important to bring out. There may be some fiscal ramifications since there will be a judge determining whether the child has been prescribed the correct drugs. Some of the children are on five or more drugs. Can we address that in this bill?

SENATOR HORSFORD:

We discussed that issue. It was one of the recommendations that we identified. I do not recall what we proposed to do. I have no objection to including some type of language around assessing the children in care regarding medication.

This was from the full report on the placement of children in foster care that, at some point, we will be able to present. It is a short-term strategic plan for addressing a number of the issues that came out of the interim study, and that was one of the issues. I have no objection to including that and asking them to continue to find strategies that work.

CHAIR WIENER:

Three years ago, when we were doing interim work on children, youth and families, we had a long list of issues we were addressing. We did not anticipate the heavy commitment we would be making to the child death-review issues for children in the care of the State. Was that addressed at all?

SENATOR HORSFORD:

The bigger picture is that Nevada ranks fifth in the Country for the rate of children who are removed from their homes and placed in foster care. The system is a two-part system whereby the county provides the child-welfare services and child-protection services, and the State provides the funding for foster care. The funding sources are prescribed as is where the money goes in each realm. What the Committee found was if our goal is to help families stay connected and meet the needs of families where they are, what is missing is an array of services at the front end of the system. When a child protective services worker goes into a home because of a complaint or an issue and they determine that there is no risk of serious harm to the child and no need to remove the child but a need to correct certain deficiencies, there is a lack of resources. There is a lack of community-based resources, there is a lack of government-based resources and nothing gets resolved. A majority of the children that are removed from their home are returned to their family within 72 hours. If it was so serious that you had to remove them, what was corrected within that 72-hour period whereby they are returned to their family? The reason is because, if you keep them beyond the 72 hours, they become a foster child, and we move into the State system that is funded. The discussion was that our goal should be about helping families where they are. If our ultimate goal is to reduce the number of children in foster care, we have to be able to take the resources the State provides and provide the funding in the front end

to expand the array of services for families. That is one of the recommendations in another part. To your question, it is a matter of getting the system to work as a whole and look at the whole child, the safety of the child and how to provide those services. We were not able to reach an agreement on how that will happen. What we did agree on is an approach. One of those approaches is based in this resolution, which is the standardized practice model for providing child and family services that focuses on the preservation of the family. This is a policy statement that says we want families to be preserved. When you work from that point, then as the strategies are proposed on the services, when a child should be removed, when they should be returned and what types of care should be provided for those who are removed and put into foster care, you can have a better discussion on how you do that around preservation of the family.

CHAIR WIENER:

It is a system that we need to reevaluate. People were doing what they knew best to do, and we are now at the table having conversations about how to make the shift for everybody's best interest.

REBECCA GASCA (Public Advocate, American Civil Liberties Union of Nevada):

We support the intent and the wording of this resolution. We would like to see stronger language in the future; something that would create statutes that would build a holistic system and approach that this resolution is endeavoring to do. It is clear that there are some gaps that need to be filled. These are underfunded services and programs.

SENATOR HORSFORD:

Four other bills are coming out. This is just a statement of policy intent.

KEVIN SCHILLER (Director, Washoe County Social Services):

We fully support this resolution. Washoe County is already trying to move forward with some of these practices related to the family engagement and preservation piece.

THOMAS D. MORTON (Director, Clark County Department of Family Services)

The items contained within this resolution point in a direction that is important. Data available in Nevada from the period of April 2007 through March 2008 shows that 18.5 percent of all children removed from their homes were returned home in 7 days or less, 59 percent of the children were returned home within 7 to 8 weeks. If we had an array of services that we would quickly offer to

families, we would avoid the trauma of removal in many cases. There is a physiological construct called "object permanence." That is the ability we develop in our minds to know that when an object is no longer in our sight, it still exists. Children do not have this cognitive ability. Every time a child protection worker puts a small child into a car and drives away, that child lacks the cognitive ability to realize that mom and dad still exist. Even the older children question whether they will ever see their mother or father again.

CHAIR WIENER:

We will close the hearing on S.C.R. 4, and will adjourn the Senate Committee on Health and Education at 4:33 p.m.

RESPECTFULLY SUBMITTED:

Shauna Kirk,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____