

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

**Seventy-fifth Session  
March 31, 2009**

The Senate Committee on Health and Education was called to order by Chair Valerie Wiener at 5:16 p.m. on Tuesday, March 31, 2009, in Room 2149 of the Legislative Building, Carson City, 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 Maurice E. Washington  
Senator Barbara K. Cegavske  
Senator Dennis Nolan

**STAFF MEMBERS PRESENT:**

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

**GUEST LEGISLATORS PRESENT:**

Senator Allison Copening, Clark County Senatorial District No. 6  
Senator David R. Parks, Clark County Senatorial District No. 7

**OTHERS PRESENT:**

Ernest Figueroa, Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General  
Keith G. Munro, Assistant Attorney General, Administration, Office of the Attorney General  
Joseph L. Pollock, Public Health Engineer, Health Division, Department of Health and Human Services

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Robin Keith, President, Nevada Rural Hospital Partners  
Julia Spaulding, MHA, Health Program Specialist I, Prevention and Control  
Program Coordinator, Health Division, Department of Health and Human  
Services

CHAIR WIENER:

We will open the meeting with Senate Bill (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)

MARSHEILAH D. LYONS (Committee Policy Analyst):

There is a new amendment from the Attorney General's (A.G.) Office on page 4 of the work session document ([Exhibit C](#), original on file in the Research Library). There is also an amendment proposed and presented by Senator Cegavske found on page 7 of [Exhibit C](#). The Committee cannot adopt both of these amendments in their entirety. It has to be one or the other.

SENATOR WOODHOUSE:

Could we have a short description of each of those amendments?

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

The A.G.'s amendment is the result of discussions we had with the Nevada Retailers Association. The purpose is to codify the provision in *Nevada Revised Statutes* (NRS) chapter 597, the Miscellaneous Trade Regulations and Prohibited Acts against the knowingly and willfully selling of over-the-counter drugs (OTC), expired OTC, expired baby food, expired infant formula and the alteration, mutilation of the expiration date of those same items. As a result, persons would be entitled to a notice of violation to warn them that subsequent conduct may be actionable under the statute. After that, the first offense of knowingly and willfully violating the statute includes a fine of up to \$500. The second and all subsequent offenses are a misdemeanor. The amendment also includes a defense that the statute does not cover conduct that results from a bona fide error, notwithstanding maintenance of procedures originally adopted to avoid the error.

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CHAIR WIENER:

In section 2, is the first violation a cease and desist notice? Are you relating to three incidents here?

MR. FIGUEROA:

The moment we become aware of a potential violation, we send out the cease and desist notice of violation. We cannot prosecute under this statute until that notice has gone out. Then, after that notice, it would be for subsequent conduct.

CHAIR WIENER:

Are we talking about three different acts?

MR. FIGUEROA:

Yes.

CHAIR WIENER:

Would the first be a fine of up to \$500, and the second punishable violation a misdemeanor upon conviction?

MR. FIGUEROA:

Yes.

SENATOR HORSFORD:

Can you explain the knowingly and willfully sell standard?

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

It is the higher standard. It would be someone who knows the baby formula was expired and made the conscious decision to sell it.

SENATOR HORSFORD:

Who has the burden of proof to impose the penalty as proposed?

MR. MUNRO:

The State will have the burden of proof beyond a reasonable doubt for a criminal conviction.

CHAIR WIENER:

How high is that standard?

MR. MUNRO:

It is the highest standard.

SENATOR CEGAVSKE:

The issue the small business community has with this bill is that we have not set precedence in our State for any violations. The convenience stores and small businesses are already regulated by the health district to look for code violations in dairy products. My amendment has the health district also look at baby formula and OTC drugs. It makes no sense to create another entity to do it. If this is an issue with the pharmacy, we should look at doing a square footage for the bigger arena. The A.G.'s Office did not say this had to do with a particular store. If the bigger stores are the issue, then that is where this needs to go. The A.G. has said that 99.9 percent of them are doing it right. This should have gone to Senate Committee on Judiciary. Several of the stores did not think this would be in this Committee. The stores are not in support of this amendment. We already have something created within the health district to allow them to look at codes for baby formula and for OTC drugs. We never heard there is an issue. In the 13 years I was a business owner, we never had issues. It is too heavy of a law.

SENATOR NOLAN:

What is the standard that exists right now?

SENATOR CEGAVSKE:

The health district grades you. If you have demerits against you, you lose your grading. There is no business that wants to be under an A grading. They can come and take your business license. Someone who is violating codes and has demerits can lose their license.

SENATOR NOLAN:

What levels of authority do you have to deal with this issue?

JOSEPH L. POLLOCK (Public Health Engineer, Health Division, Department of Health and Human Services):

The State Health Division does not have the ability to fine. We do have a merit system. We do not use the A through F grading system. We have the 0 to

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100 scale. Outdated food on the shelves would be considered a critical violation. It would be a 5-point demerit on the 100-point scale. In several jurisdictions, they are printed in the newspaper, and it has an effect on the business. Repeat violations are not counted against in the demerits system. It is noted as a repeat violation. That is something we look for in return visits.

SENATOR NOLAN:

We are talking about the State health authority and not the county authority. Are you familiar with how the counties handle it?

MR. POLLOCK:

I believe they are similar; however, their grading scales are different from ours. We use the point system; they use the demerit system. A certain number of demerit points will lower them from an A standing to a B standing. The C standing is when they take away their permit to operate.

SENATOR NOLAN:

The A.G. would probably respond more to a complaint based on an illness. If you have people already in place and issuing a notice of violation, what is the need for the A.G.'s amendment?

MR. POLLOCK:

We are mandated to enter a food establishment at least once a year for inspection. We also respond to customer complaints and follow up on our problem areas.

SENATOR CEGAVSKE MOVED TO AMEND AND DO PASS S.B. 21 WITH PROPOSED AMENDMENT 3463.

THE MOTION FAILED FOR LACK OF A SECOND.

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SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS S.B. 21 WITH THE ATTORNEY GENERAL'S AMENDMENT.

SENATOR HORSFORD SECONDED THE MOTION.

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SENATOR HORSFORD:

I would like to ask that this be referred to the Senate Committee on Judiciary if this is approved. The chair of that committee has asked to be able to review a new crime of a category E felony.

CHAIR WIENER:

The felony was taken out of this. It is just a misdemeanor.

SENATOR HORSFORD:

Then you might want to confer with the chair of that committee. If there is no other issue, it can go to the Senate Floor.

SENATOR NOLAN:

I am going to vote against the motion, reluctantly. I support the concept, but the health authorities already have inspectors who are out looking at this. I do not think Senator Cegavske's amendment got us where we needed to be, so I do not support that amendment. I do not support this amendment either.

SENATOR WASHINGTON:

I am not going to support the amendment either. I agree with the concept, but I thought they would have at least spoken to Senator Cegavske about it.

SENATOR BREEDEN:

I was told that this was complaint driven. How often is this investigated?

MR. POLLOCK:

We are mandated to inspect every permanent food establishment once a year at the minimum and do follow-ups as needed.

SENATOR BREEDEN:

How are those complaints handled?

MR. POLLOCK:

We respond to complaints as they come in. If we get a complaint, we would send an investigator out at that time.

SENATOR HORSFORD:

The problem is the A.G.'s Office and the point of contact to issue a complaint; and, the A.G.'s role is following through based on complaints that show a

pattern of practice. Their office is then charged with investigating and determining whether it rises to a level of criminal behavior. That is prevention. I would rather the A.G. have the enforcement mechanism, because they are our chief enforcement officer for the State. That is why I am going to support the motion.

SENATOR WASHINGTON:

I am not comfortable with the health department. It was the A.G. that found the loophole in the statute and came up with language for the change in statute. I just thought they would have discussed it with Senator Cegavske. Other than that, their amendment is a good one.

CHAIR WIENER:

We will have to take a roll call for the vote.

THE MOTION CARRIED. (SENATORS WASHINGTON, CEGAVSKE AND NOLAN VOTED NO.)

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CHAIR WIENER:

We will now open the hearing on S.B. 185.

[SENATE BILL 185](#): Requires school districts to use environmentally sensitive cleaning and maintenance products. (BDR 34-742)

MRS. LYONS:

There are four amendments proposed for this bill. There is a table on page 15 of [Exhibit C](#).

MINDY MARTINI (Committee Policy Analyst):

This table takes you section by section and shows you each of the amendments that were provided, [Exhibit C](#).

CHAIR WIENER:

This is like a whole new hearing.

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):

The first two areas were amendments from the Nevada Department of Education (NDE) Washoe County School District (WCSD) and Clark County School District (CCSD). The NDE added a new section with the definition of environmentally sensitive cleaning and maintenance products. I added this language to mine. My amendment incorporates some of all three other amendments. Environmentally sensitive cleaning and maintenance product language already exists, so the NDE should be fine with it. It did remove the State Board of Education to make the lead entity of the State Department of Conservation and Natural Resources, and I am fine with that. I have not had a conversation with the State Department of Conservation and Natural Resources. The NDE suggested deleting subsection 2 of section 3 which states that the Department shall provide a list of approved products. The Department is opposed to this because of staff and expertise when compiling a list. A list is necessary as a starting point; otherwise, each individual school district would have this responsibility of creating a list. There are lists that are out there. I provided some information from the U.S. Green Building Council ([Exhibit D](#)) that shows information is out there. A lot of the research is done. If we do not have a list of suitable material, it leaves everything open. To address their concerns, I included new language under section 3, subsection 2 stating the list may be provided by one or more third-party organizations. It does not have to be the responsibility of the NDE to compile this list.

The CCSD and WCSD have proposed language that would allow a school to refrain from using environmentally sensitive cleaning products if they were proven to not clean and disinfect properly. I thought the language used was too restrictive. It mentioned, if the cleaning product cannot eliminate viruses, it would not have to be used. I am not certain that any cleaning material actually eliminates viruses. I proposed the language that can be found in section 3, subsection 2, stating the list shall include those products that have been deemed to effectively clean and disinfect surfaces. If the Department determines that a particular surface cannot be properly cleaned or disinfected with an environmentally sensitive cleaning product, the school district may continue to use the product or products currently being used by that school. This language needs to be cleaned up by the Legal Division, but it is saying the same thing.



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CHAIR WIENER:

We have four different entities here. Have you had the opportunity to meet with everybody to work through some of this?

SENATOR COPENING:

The Consumer Specialty Products Association is out of state. We have not had communications.

CHAIR WIENER:

I would like to get a meeting together and discuss this issue.

SENATOR COPENING:

Absolutely.

CHAIR WIENER:

We will close the hearing on S.B. 185 and will open S.B. 209.

[SENATE BILL 209](#): Revises provisions governing the Governor Guinn Millennium Scholarship Program. (BDR 34-1097)

MRS. LYONS:

This bill can be found on page 30 of [Exhibit C](#). Senator Lee has proposed an amendment.

MS. MARTINI:

The amendment describes it, "to the extent that money is available."

CHAIR WIENER:

Senator Lee talked about extending it another year, which would extend it to seven years. It is my understanding that anytime in the six years, they can initiate the prerogative to use it, and then the clock starts ticking.

SARA PARTIDA (Committee Counsel):

That is correct. People who graduate high school have up to six years to apply for receipt of the Millennium Scholarship and not necessarily to use it.

SENATOR HORSFORD MOVED TO AMEND AND DO PASS S.B. 209.

SENATOR WOODHOUSE SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR WIENER:  
We will open the meeting on S.B. 220.

SENATE BILL 220: Provides for the establishment of the Chronic Obstructive Pulmonary Disease Program. (BDR 40-1135)

MRS. LYONS:  
This bill can be found on page 33 of Exhibit C. There were no amendments proposed for this measure.

SENATOR CEGAVSKE MOVED TO DO PASS S.B. 220.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR WIENER:  
We will open the hearing on S.B. 244.

SENATE BILL 244: Revises provisions governing automated external defibrillators. (BDR 40-277)

MRS. LYONS:  
Senate Bill 244 can be found on page 34 of Exhibit C. There are two amendments proposed for the bill.

SENATOR CEGAVSKE MOVED TO AMEND AND DO PASS S.B. 244 WITH BOTH AMENDMENTS.

SENATOR WOODHOUSE SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR WIENER:  
We will now open the hearing on S.B. 290.

SENATE BILL 290: Authorizes patients of certain facilities to install electronic surveillance devices in the room of the patient. (BDR 40-852)

MRS. LYONS:  
There are two amendments proposed for this measure.

CHAIR WIENER:  
What does subsection 2, paragraph (g), subparagraph (1), sub-subparagraph (c) mean on page 38 of Exhibit C of Mr. Ashleman's amendment.

SENATOR CEGAVSKE:  
I talked to Brenda Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau. Legal representatives encompass everybody.

CHAIR WIENER:  
I do not know what that says.

ROBIN KEITH (President, Nevada Rural Hospital Partners):  
In terms of who could give consent, Mr. Ashleman told me he is trying to cover three eventualities. The first one is by the other resident in the room; the second one is the guardian or legal representative of that person; the third one is intended to cover a situation where the person in the other bed is not able to give consent and does not have a legal capacity to do it. For example, my mother would not have been able to deal with this, and she had not been judged incompetent. She had appointed me to make the decisions for her.

SENATOR CEGAVSKE:  
Ms. Erdoes said the Legal Division could write the amendment in better terminology.

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MRS. PARTIDA:

I do not know the intent of that, nor do I completely understand what he meant by those words used. I can work with him to figure this out.

SENATOR CEGAVSKE:

That is fine with me. I need more clarity.

MS. KEITH:

On page 37, you will see three amendments I submitted. On page 38, there is a revision of one of my amendments. It is the legalese related to the hold-harmless issue. I would suggest we delete the last amendment on page 37 and use the one at the bottom of Mr. Ashleman's.

CHAIR WIENER:

We will close the hearing on S.B. 290 and open the hearing on S.B. 302.

**SENATE BILL 302**: Authorizes certain agreements for the provision of medical care in certain hospitals. (BDR 40-982)

MRS. LYONS:

There are no amendments proposed for this measure.

SENATOR WOODHOUSE MOVED TO DO PASS S.B. 302.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR WIENER:

We will now open the meeting on S.B. 304.

**SENATE BILL 304**: Revises provisions relating to tests for certain communicable diseases. (BDR 40-844)

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MRS. LYONS:

There is an amendment presented by Jennifer Stoll-Hadayia on behalf of the Nevada Statewide AIDS Task Force. The Health Division states there is no fiscal impact.

SENATOR HORSFORD MOVED TO AMEND AND DO PASS S.B. 304.

SENATOR WOODHOUSE SECONDED THE MOTION.

SENATOR CEGAVSKE:

Could someone tell me what the amendment does?

MRS. LYONS:

They are seeking to expand that all entities provide a waived test for the detection of the human immunodeficiency virus (HIV) and adhere to the *Quality Assurance Guidelines for Testing and Using Rapid HIV Antibody Tests*. They want provisions that are the national standards put into the bill.

SENATOR CEGAVSKE:

Is it mandated to conduct an additional test by any physician who attends to a pregnant woman for syphilis, without their permission?

MRS. LYONS:

Currently, they are required to conduct a test in the third trimester. This would require them to conduct the test in the first trimester in addition to the third trimester.

SENATOR HORSFORD:

This is similar to provisions we passed last session. It is based on the battery of tests that are done as part of the pregnancy. It does not create a stigma for one particular test being conducted, and it is consistent with the Centers for Disease Control and Prevention (CDC) standards and protocols.

SENATOR CEGAVSKE:

Is it an additional cost to the patient, and can they opt out of it?

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JULIA SPAULDING, MHA (Health Program Specialist I, Prevention and Control Program Coordinator, Health Division, Department of Health and Human Services):

They cannot opt out of the syphilis test. The reason we want to include the first test is because the sooner we can catch the infection, the less likely it will spread to the baby.

SENATOR CEGAVSKE:

Does it increase the cost? The pregnancy blood work is about \$900.

SENATOR HORSFORD:

Section 1, subsection 5 allows an opt-out provision.

Ms. SPAULDING:

The cost is less than \$5, and it is reimbursed by Medicaid.

SENATOR CEGAVSKE:

Would there be an additional \$5 added to the testing?

Ms. SPAULDING:

I do not know.

SENATOR CEGAVSKE:

I would like to know that additional cost.

Ms. SPAULDING:

We can follow up and get that additional information for you in the morning.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE. SENATOR CEGAVSKE ABSTAINED FROM THE VOTE.)

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CHAIR WIENER:

We will now open the hearing on S.B. 305.

**SENATE BILL 305**: Makes various changes concerning a prescription for the sexual partner of a person diagnosed with a sexually transmitted disease. (BDR 40-845)

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MRS. LYONS:

On page 42 of [Exhibit C](#) is S.B. 305. There is an amendment from Jennifer Stoll-Hadayia on page 43. The new section states the protocol does not supersede adopted ethical or practice guidelines for the providers of health care. If it conflicts with their ethical practices, they can opt out.

SENATOR CEGAVSKE:

A physician who examines someone and finds out they have a sexually transmitted disease can give medication to the patient's partner. That concerns me.

MRS. LYONS:

It states "may provide." This is optional for physicians who care to do this.

SENATOR CEGAVSKE:

I thought there were ethical laws that would prohibit someone from getting prescriptions without being seen by a doctor.

CHAIR WIENER:

During the hearing, we had an opposition from the medical association. The osteopathic communities worked on the amendment and are giving physicians that decision. The medical community did not go on record in support or in opposition.

MS. SPAULDING:

We are neutral on this bill. This is supported by the CDC as well as the Regional Infertility Prevention Project. One reason for having an option for partner treatment is because there is a lot of reinfection.

SENATOR CEGAVSKE:

It concerns me that a doctor would be giving medication to someone who they have not seen. I agree they need the treatment, but it puts doctors in a bad situation.

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

This is permissive language for a doctor who routinely treats individuals whose partner resists coming in for treatment. They are not required to do it.

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SENATOR HORSFORD MOVED TO AMEND AND DO PASS S.B. 305.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS WASHINGTON AND CEGAVSKE  
VOTED NO. SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR WIENER:

We will now adjourn the Senate Committee on Health and Education at  
6:30 p.m.

RESPECTFULLY SUBMITTED:

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Shauna Kirk,  
Committee Secretary

APPROVED BY:

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Senator Valerie Wiener, Chair

DATE: \_\_\_\_\_