

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Sixth Session
May 9, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:49 p.m. on Monday, May 9, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Ocegüera (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Capital Senatorial District
Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Senator Steven A. Horsford, Clark County Senatorial District No. 4
Senator Moises (Mo) Denis, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Sharon McCallen, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Janet Geary, Publisher, Nevada Magazine
Helen Foley, representing National Association of Professional Employer Organizations; and Marriage and Family Therapists Association of Nevada
Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry,
Amber Joiner, Director, Governmental Relations, Nevada State Medical Association
Jeanette Belz, representing Nevada Academy of Ophthalmology
Jack Mallory, Director, Government Affairs, Painters and Allied Trades District Council 15
Judith Pinkerton, representing Music Therapy Task Force
Mary Liveratti, Deputy Director, Programs, Department of Health and Human Services
Sable Shaw, Private Citizen, Carson City, Nevada
Steve Shaw, Private Citizen, Carson City, Nevada
Bryan Gresh, representing Nevada Psychological Association

Chair Atkinson:

[Roll was called. Committee protocol and rules were explained.] We have five bills this afternoon. We will take a couple out of order. We will open with Senate Bill 106.

Senate Bill 106: Expands the purposes for which Nevada Magazine is authorized to trade its advertising services. (BDR 18-375)

Senator James A. Settelmeyer, Capital Senatorial District:

This bill came about when, in August, I was contacted by a constituent of mine, Janet Geary, who is publisher of *Nevada Magazine*. She was looking for creative ways to help *Nevada Magazine* in its advertising scheme. To do that we are looking to amend *Nevada Revised Statutes* (NRS) to give the magazine the ability to barter, that is, to trade advertising for possibly an airplane ticket, or premier space in a magazine rack at the local supermarket or other services and products that would benefit the magazine. That is the gist of this bill.

Senate Bill 106 seeks to allow *Nevada Magazine* to find other creative ways to help in the funding of its magazine by allowing the concept of bartering to occur—the concept of trading premier space in a magazine rack at the local super market, and us giving that market the ability to advertise in the magazine in trade for that spot on the rack.

Assemblywoman Kirkpatrick:

I think that is a great idea. In Girl Scouts, we often barter different things because we end up getting way more than we would simply by advertisement.

My question is who is going to make that determination? Who would determine the cost of that advertising versus, for instance, a plane ticket?

Janet Geary, Publisher, Nevada Magazine:

We have published rates for all our magazine advertising. We would use the rates for the tickets or for advertising in other publications, or the rack charges from the market wherever we put our magazines in newsstands. We would use their published rates as well to make sure that our rates compare so that we are trading dollar for dollar.

Assemblywoman Kirkpatrick:

Instances like entry into trade shows sometimes gain a lot more just from the connections you make. Would there be an opportunity where you might go for a little bit less, knowing that in the bigger picture you would get a lot more?

Janet Geary:

No, we would not do it that way because we really want to make sure we are trading dollar for dollar. Even though we might gather more information or some contacts, we would pay what their published booth rate is as opposed to our advertising rate, to make sure they match.

Assemblywoman Kirkpatrick:

It is a great idea.

Assemblywoman Carlton:

On page 2, in subsection 3, I see that we are taking out "services" and just putting in "trade." Also, we are adding "service or product." Is the rack space a product or a service?

Janet Geary:

The products that we are speaking of in the bill include awards for our photo contest, the Great Nevada Picture Hunt; we make plaques for our award winners. We made them last year for "Tour Around Nevada" for our counties that we gave awards to. Those would be the products we are talking about. Regarding the newsstand, it is simply a service where we can pay for rack location. If you are displayed in the checkout lanes, you pay for that location. We would consider that a service. The only products we are talking about are for someone to give us an award. For instance, for our Great Nevada Picture Hunt, we gave away a camera to the winner. A photo shop in Las Vegas gave us the camera. They would have had an ad in the magazine, as opposed to us paying for it, but at the time we were not allowed to do that under statute.

Assemblywoman Carlton:

This bartering system would apply only to your magazine and we would not allow any other magazines or newspapers in the state to operate this way? This would be an exemption for this one magazine?

Janet Geary:

Yes, that is correct. We are currently under statute now, and the regulations state that we are able to trade out, but it is only for advertising in other publications and also for travel tickets. Now we also want to trade out for websites, and we need the language changed so it includes not only publications but also online, et cetera. It is only for our magazine.

Assemblywoman Carlton:

This would decrease the side of the ledger that brings in cash, so what will not get paid for because you are not bringing in that money?

Janet Geary:

Right now, we are paying for those things.

Assemblywoman Carlton:

I see a cash-flow problem.

Janet Geary:

I am not sure why.

Assemblywoman Carlton:

Because you have less cash coming in.

Janet Geary:

We are paying for those expenses right now, on the other side. We are paying to have the rack locations, and we are paying for the awards. It is really no different; we are just paying for those things right now. The money would not come in as much, but we would not pay out as much either.

Assemblywoman Carlton:

This would all be within the accounting system so we could see it dollar for dollar?

Janet Geary:

Absolutely.

Assemblywoman Carlton:

I have a problem that it is for only one entity.

Senator Settlemeyer:

Unfortunately, with the current economy we are seeing, many individuals are not willing to spend the money on advertising, whereas this allows them another opportunity to continue to advertise.

Assemblywoman Bustamante Adams:

I also think this is a creative way to be able to handle your cash flow. What percentage of your budget do you propose this would be if you are allowed to barter?

Janet Geary:

It would be a very small percentage. I would say probably less than 2 percent.

Chair Atkinson:

Is there anyone else wishing to testify on S.B. 106? [There was no one.] Opposition? [There was none.] Neutral? [There was no one.] Mr. Settlemeyer, when we get ready to work session this bill, we will call you. We will close the hearing on S.B. 106. We will open the hearing on Senate Bill 213 (2nd Reprint).

Senate Bill 213 (2nd Reprint): Revises provisions governing the registration requirements for employee leasing companies. (BDR 53-1018)

Helen Foley, representing National Association of Professional Employer Organizations:

This organization manages employee leasing companies. During the last session of the Legislature, employee leasing companies brought forward a major piece of legislation that would strengthen their industry. Because employee leasing companies do a lot of the payroll services for their member clients—they obtain monies for taxes, insurance, workers' compensation, as well as other types of services—they hold that money and pay it for the employers. There was nothing on our books that would require them to put forward a bond or to prove any type of financial viability. In working very closely with Senator Carlton last session, we put forward the whole concept of them having to prove that they have working capital. In addition to that, if they did not have a certain amount, the Division of Industrial Relations (DIR) would require them to bond for \$100,000 plus the maximum amount that they were short.

Unfortunately, the way the law was written, it was unclear and ambiguous. It talked about maintaining working capital throughout the period. What that meant to very strict constructionists was that an accountant had to prove that every single day of the period audited, there would have to be that amount of money. According to generally accepted accounting principles, that was impossible without almost doing a daily audit.

We worked with Administrator Don Jayne and his DIR staff to come up with some language. Recognizing that it was impractical, the DIR put forward a very simple bill, the original Senate Bill 213. We kept trying to find ways to satisfy the Division of Insurance as well as the Division of Industrial Relations, and in working with Mr. Jayne, we have come up with S.B. 213 (R2).

On the third page of the bill, they do not have to "maintain" capital, but they have to have positive working capital for the period covered by the financial statements. We understand the Division is happy with that language, but we want Mr. Jayne to speak to that himself. We are very satisfied with this. It passed unanimously in committee as well as on the floor of the Senate.

[Chair Atkinson turned the gavel over to Assemblywoman Kirkpatrick.]

Acting Chair Kirkpatrick:

Are there any questions for Ms. Foley? [There were none.]

Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:

Ms. Foley has done such an adequate job of explaining the bill, I would say, "Me too." Her term "strict constructionists" is where we had occasional

problems along the way, which is not all that infrequent when we put something new into play, as we did two years ago. During the first couple of years of actually regulating and administering a new law, you find things that are problematic that you did not see before. In the earlier language they talked about maintaining the cash flow, which was interpreted by some as problematic, so the language we have here directs us to the most recent 13 months. We know what period of time we are looking back to see and it also talks about maintaining the positive cash flow for that period. Then, if there are deficiencies, I can look for the maximum deficiencies and attach that to the bond. The agency is fine with the language before you.

Assemblywoman Carlton:

I remember the legislation's intent was to make sure that these folks are handling people's paychecks, their insurance, and their workers' compensation, and that we do not have a problem. There were problems previously where money was coming in but not going out in the appropriate directions. They were prioritizing their profits over making sure their bills were paid.

I disagree a bit on the \$100,000 portion of this. These folks are managing these monies and insurances. Will a retrospective financial statement provide security for the current employees moving forward? I see this as retrospective.

Can we protect the employees within this framework to ensure that if the management company receives the money and issues the paychecks, the money is accounted for and the employees get their paychecks?

Donald E. Jayne:

The prior language, as well as this language, leans heavily on a certified public accountant to make an adequacy statement about the cash flow. That remains in the bill. The \$100,000 bond comes into play when someone is relatively new or has negative cash flow. The \$100,000 bond still sits there at a minimum to attach to.

As an agency administrator, I can look to section 1, subsection 5, paragraph (b), where it talks about the bond and the irrevocable letter of credit and I can still attach to a maximum value if I see someone with trouble. It eliminates the concern that a temporary movement of stock, a spike, would cause them to attach to that maximum deficiency. That could be unreasonable if it was unusual, but under paragraph (b), if there is a deficiency I still will be able to come in and have a bond and an amount above it.

Assemblyman Daly:

I have had experience in dealing with those that are not as reputable as others. If there is a verified misclassification or other fraud that is happening, would you be able to go to this bond to remedy those types of issues as well? It may not be enough. Some of these companies are big and have hundreds or thousands of people leased out to various places and are getting that money in, so \$100,000 may be a little thin.

Donald E. Jayne:

I am not certain that the bond would respond if it was a result of an employee misclassification. The bond is designed to respond if there were claims to be paid and I had problems with the individual Professional Employers Organization (PEO) company paying those claims. It is an interesting question, and I will research it and get back to you with a specific answer. I do not believe the bond as written would respond to a misclassification. It is an important but different subject. Here we are looking at the financial adequacies for the payment of claims and other benefits owed.

Acting Chair Kirkpatrick:

Are there any other questions? [There were none.] Are there any others in support of S.B. 213 (R2)? [There was no one.] Are there any in opposition? [There were none.] Is there anyone neutral? [There was no one.] Are there any final words?

Helen Foley:

As I began the conversation today, before the last session of the Legislature there was no responsibility at all to post a bond or to show positive working capital. The national association felt that it was extremely important that we have this type of standardized protocol. About 38 states follow something very similar to what we see here in Nevada. We believe it is very good public policy.

Acting Chair Kirkpatrick:

Are there any final comments? [There were none.] We will close the hearing on S.B. 213 (R2) and open the hearing on Senate Bill 367 (1st Reprint).

[Senate Bill 367 \(1st Reprint\)](#): Requires certain health care practitioners to communicate certain information to the public. (BDR 54-625)

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8:

We are here today to look at a health care practitioner's piece of legislation. Senate Bill 367 (1st Reprint) is about truth in advertising and is designed to provide greater transparency to the public concerning the qualifications of their health care practitioners. It is a consumer protection bill that requires a health

care professional to disclose information to help patients understand who will be treating them.

Dr. Michael Edwards of Las Vegas came to me and asked for this legislation. He could not be here today.

In summarizing, S.B. 367 (R1) has the effective date of January 1, 2012. An advertisement that names a health care practitioner must identify the type of license held by the practitioner and must not contain any deceptive or misleading information. The advertisement must disclose the name of the board that licenses or certifies the practitioner and must not state that the practitioner is board-certified unless certain conditions are satisfied. A health care practitioner must post and communicate the practitioner's specific license to all current and prospective patients. The practitioner must display in his or her office a writing that clearly identifies the type of license held by the practitioner. The writing must be of significant size to be visible and apparent to all current and prospective patients. A practitioner who practices in more than one office must comply with these notice requirements in each office.

Lastly, this bill exempts certain health care practitioners from these disclosure requirements. The purpose of these exemptions is to limit the disclosure requirements to practitioners working in what most of us would refer to as our doctor's offices, as opposed to hospitals, urgent care facilities, or medical laboratories. The bill also exempts practitioners of respiratory care, hearing aid specialists, veterinarians, marriage and family therapists, and social workers.

Acting Chair Kirkpatrick:

I am sure that if Dr. Edwards wanted to send something in support, the Chairman would distribute that to the Committee. Are there any questions?

Assemblywoman Carlton:

Could you tell me what problem this is trying to solve, so that I understand it better? When you are reading it upon first glance, it looks like an advertising bill.

Senator Cegavske:

Dr. Edwards explained to me that there are doctors in certain offices that are licensed to do some procedures, but not all procedures, yet they advertise that they can do them all. He is a plastic surgeon. There are offices that are practicing and advertising treatments, such as Botox, that they should not be doing.

Assemblywoman Carlton:

He did not contact the regulatory boards to have them go after these people? That would be the avenue to pursue.

Senator Cegavske:

Yes, that has been done. His main purpose was to get to the advertisement piece, because they are actually advertising that they can perform these procedures. That is one of the major issues.

Assemblywoman Carlton:

When you talk about advertisements, are you talking about newspapers, magazines, websites, and television?

Senator Cegavske:

It is to support the idea that you cannot, and should not, put out information saying you can do something that you are not authorized to do. That is his purpose.

Assemblywoman Carlton:

It seems to me that we already have that in law. I am concerned about the posting in the office. In my particular doctor's office there are at least 20 doctors who come and go, and they would have to build a wall to put up all of these notices. I am curious how you envision putting all of those advertisements up. We have heard many times from pharmacists and others that the more items you have on the wall, the less people pay attention to them.

Senator Cegavske:

In Dr. Edwards' office, it states clearly what he is licensed to practice, and that is what he is looking for in other offices. He is trying to make sure that it does take place so that you understand that the doctor's office you are going into is actually licensed to practice what you are there for.

Assemblywoman Carlton:

A lot of this ends up falling to insurance companies. Most insurance companies will not pay or preauthorize for something if that doctor is not qualified. It seems that is another stopgap measure that is already there to protect people.

Senator Cegavske:

Part of the issue we are seeing is that these are not necessarily the people who are going after the insurance, or they are not getting their insurance company to be reimbursed for procedures for which they might not be covered. They are paid cash.

Acting Chair Kirkpatrick:

I read an article in the newspaper this weekend where somebody was paying cash to someone who said they were licensed to do different procedures, and it turned out they were injecting floor wax.

Is there anyone else in support of S.B. 367 (R1)?

Amber Joiner, Director, Governmental Relations, Nevada State Medical Association:

We are in full support of this measure. This bill is a very good example of a national movement on transparency that the American Medical Association has begun promoting. They have an entire campaign called the Truth in Advertising campaign. We think it is important that patients understand who is treating them. There are a lot of patients who do not understand, for example, that podiatrists are not medical doctors, or that psychiatrists do not have the same training as a psychologist. We think the more we can post this information, the more that conversations can begin between patients and whoever is treating them.

Jeanette Belz, representing Nevada Academy of Ophthalmology:

Many years ago, one of our ophthalmologists mentioned that there are times when people are led to believe, by advertising, that a certain kind of procedure—like Lasik—could help anyone. In fact, if you are doing thorough examinations and deciding whether the patients meet certain criteria, there may be folks who will not benefit from that surgery. He thought there should be more truth in advertising and to be clear that everyone's vision will not get better. Before the week is over, I will provide an example of an ad that he brought to my attention.

Acting Chair Kirkpatrick:

Is there anyone else who would like to testify in support of S.B. 367 (R1)? [There was no one.] Is there anyone in opposition? [There was no one.] Neutral? [There was no one.] We will close the hearing on S.B. 367 (R1).

[Chair Atkinson reassumed the chair.]

Assemblywoman Kirkpatrick:

Chair Atkinson, while you were out, Senator Cegavske spoke about Dr. Edwards. He did submit letters of support ([Exhibit C](#)).

Chair Atkinson:

We will open the hearing on Senate Bill 328 (1st Reprint).

Senate Bill 328 (1st Reprint): Revises provisions governing the payment and collection of wages and other benefits. (BDR 53-108)

Senator Steven A. Horsford, Clark County Senatorial District No. 4:

Thank you for allowing me to testify on a bill that provides another tool for badly needed economic development in the state. On its face, S.B. 328 (R1) simply adds, to state law, another category of professionals who can be exempted from overtime requirements just like other salaried professionals. Senate Bill 328 (R1) includes in this category creative professionals as defined in the *Code of Federal Regulations* (CFR). The federal code defines creative professionals as individuals whose primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of creative endeavor.

As we have pursued economic development and diversification in this state, we have heard that there are companies involved in creative work, such as stage production and the film industry, that are interested in setting up shop in Nevada, which often serves as a site for creative professionals. These companies are interested in hiring locally rather than employing independent contractors from outside the state, but the overtime requirement is a deterrent. Creative professionals often work odd hours at different stretches, sometimes technically qualifying them for overtime. The legislation would give companies involved in creative productions the option of allowing employees to work flexible schedules without incurring overtime.

Senate Bill 328 (R1) was amended in the Senate to clarify that the exemption does not apply to employees of building contractors as could be construed under the federal code. This was requested by a representative from labor.

As it stands now, this legislation can be an inducement for job creation in Nevada and an opportunity for creative professionals in our state to gain more work.

Assemblyman Segerblom:

Does this exemption currently exist in the federal overtime law?

Senator Horsford:

It is my understanding that it does and that is the reference to the federal code as defined.

Chair Atkinson:

What does this do for those employees who are in collective bargaining? Is this just for a certain sector of employees who currently are prohibited from overtime? How far does this expand?

Senator Horsford:

As I understand it, too many of these jobs are not being offered to our people because it is easier for companies to outsource to an independent contractor rather than to comply with our requirements on overtime. What we have heard is that there is the opportunity to bring literally hundreds of jobs within this creative professional category and employ Nevadans rather than outsourcing to independent contractors. We know with the misclassification bills, this is a problem in and of itself.

As far as the category for collective bargaining, I am not qualified to answer that specific question. If this law was passed and a collective bargaining agreement was in place, nothing would interfere with that agreement. This would allow the flexibility of the overtime provision based on the unique nature and schedule that many of these creative professionals have to keep. For example, when you have a show that is taking place, there are creative professionals involved in that work. Whether it is video, et cetera, they are involved in helping to support that event. How many of those would be independent contractors who would come in from southern California, rather than people who could have been hired here, in our own state, who have the skill set and the training, but because of the current exemption on overtime, it is a disincentive to a company?

Thinking of ways to diversify our economy and bring in new industry, this is an ancillary industry to our main industry—the gaming industry—that we should be capitalizing on. Unfortunately, far too much of this work is being done by people as independent contractors.

Assemblyman Goedhart:

It sounds like a great bill. This emulates the way California's law has worked as it relates to the creative professional. Is that correct?

Senator Horsford:

It is my understanding that this legislation is modeled after the carve-out for this particular sector in California.

Assemblyman Daly:

I am not opposed to it, but in the *Nevada Administrative Code* (NAC) the Labor Commissioner already has what he refers to as the federal regulations for

executive professionals that can be exempted from overtime. Is someone claiming that our law is going to override the federal law or that they could not use the federal definition and standards? Is that why we have to have this bill?

Senator Horsford:

Because of your background, you know these issues very well. I think the issue is that we need to set the policy. Yes, the Labor Commissioner has the discretion to permit this, but someone has to initiate it, and it has to be requested. In this particular instance, for this special sector of creative professionals, I think the policy should be set by us. The policy is that we want this work to be for Nevadans, not for out-of-state independent contractors. I recognize that there is probably some authority with the Labor Commissioner, but I felt the policy should be set by the Legislature.

Assemblywoman Carlton:

In going through the citation, I understand the creative and the theater part, but then it gets into newspaper reporting, television reporting, and other things that are cited in the CFR. Is there anything you would like to put on the record as far as that goes? We know the day-to-day workers would not be included, because they have an exemption or they delineate the day-to-day manual work that is done. As far as the graphic arts portion, and the newspaper and television reporting, had that been discussed?

Senator Horsford:

The only area we specifically wanted to clarify in the Senate was that the exemption does not apply to employees of building contractors as could be construed. There may be other areas under that federal code that also could be added, but I would leave that to the discretion of this Committee. The intent is not to be overly broad but to refer to the federal code as necessary.

Chair Atkinson:

Are there additional questions from the Committee? [There were none.] Does anyone else wish to testify in favor of S.B. 328 (R1)?

Jack Mallory, Director, Government Affairs, Painters and Allied Trades District Council 15:

I am before you in support of this bill. This is probably the first and only time that I will be in support of a bill exempting individuals from the provisions of overtime.

I would like to thank Senator Horsford for allowing us the exemption for individuals working in the building trades. Las Vegas is an example of a place where some of the most creative individuals in the world have plied their craft

and talent. Many of those individuals are people that I represent. To create an exemption for their competition under this statute is unfair. That is why we asked for the exemption.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] Is there anyone else wishing to get on record in support of S.B. 328 (R1)? [There was no one.] Is there opposition? [There was none.] Neutral? [There was no one.] We will close the hearing on S.B. 328 (R1). We will open the hearing on Senate Bill 190 (1st Reprint).

[Senate Bill 190 \(1st Reprint\)](#): Provides for the licensure of music therapists.
(BDR 54-377)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2:

I am going to do something a bit unorthodox as I begin, because one of the biggest questions I get is, what is music therapy and why do we need it? The Legislature hosted a group of students who sang in our chambers; they were the All State Choir. I am going to play a 30-second clip of that performance, and I would like you to think about the thoughts you had as they sang.

[Played taped recording of All State Choir.]

As I thought about my presentation today, I thought about how, if I had a hectic day, I could listen to this song. It would calm me down and change my thought process.

[Chair Atkinson turned over the gavel to Vice Chair Conklin.]

Senate Bill 190 (1st Reprint) provides licensure for board-certified music therapists by the State Health Division. What is music therapy? Music therapists have a process, and it is the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program. [Read from prepared text ([Exhibit D](#)).]

Section 2 discusses the practice of music therapy. One cannot just put oneself out there as a music therapist without a license. Section 17 sets forth the things that music therapists can do. Section 18 talks about granting or suspending the license to practice for the listed reasons.

This particular licensure is different from anything we have ever tried before in Nevada. In the past, if you had some kind of licensure that you wanted, you would create a board or commission and they would do the licensure. This is the third session that we have tried to figure out a way to license music therapists. We first thought about piggybacking onto another licensing board, but that became a territorial issue between the different boards. Currently, there are approximately 12 individuals in the State of Nevada that are qualified and are requesting licensure. It is not a large group.

In the interim, we went to Mike Willden, Director of the Department of Health and Human Services, and asked what kind of things we could do. One of the suggestions was that through the State Board of Health they would accept the national certification and create any additional regulations that we required here in the State of Nevada, which could include the background check as well as ethical training or standards. They could also set up a voluntary advisory group to bring information or advise them on new developments in music therapy.

If someone was not practicing appropriately and there was a complaint, the complaint would go to the Board of Health, and it would communicate with the national association to do an investigation and send those findings back to the Board of Health. The Board of Health would look at that information, plus any additional information gathering needed at the state level, and then make a determination on the licensure issue regarding that complaint.

Basically, that is a summary of the bill.

Assemblywoman Kirkpatrick:

I have an example and would like you to help me understand what makes this different. When my daughter was five years old, she had surgery for acid reflux, and one of the things she had to do was learn to eat again. It was very painful. Through our regular insurance, we went to a child psychologist, and one of the techniques that was used was music therapy. I thought there already were instances where they could use music therapy, so I do not understand what makes this different, unless they do not have the same level of education. Within this bill it says a person only has to be 18 years old, but with a lot of our other licenses we require a person to be 21. That gives me a little more comfort, knowing they have had some schooling. I worry that everybody could be a music therapist, and from our insurance perspective, there are only a couple of those people in Clark County. I am wondering how many more of those people exist.

Senator Denis:

I will attempt to answer, and I also have a music therapist in Las Vegas who can help.

Music therapists currently can practice without the licensure, but in some instances they really need to have that state recognition to do so. As I mentioned, there are only about 12 music therapists in the whole state. Whatever their age, they would still be required to have bachelors at minimum or master's and have 1200-plus hours of clinical training and a six-month clinical training internship. If a person could do that by the time he was 18 years old, he would be a pretty smart person. In addition, there are others such as a harpist who has training and works in a hospital but is not a music therapist.

Assemblywoman Kirkpatrick:

In my daughter's case, I thought, "Are you kidding me? I'm paying \$65 to turn on the radio." But the therapist explained what the process was and why for a 5-year-old it was a key part. I do not see anywhere in the bill where there is a specific kind of curriculum and when different types of music would work.

Senator Denis:

I can have Judith Pinkerton in Las Vegas speak to that concisely.

Judith Pinkerton, representing Music Therapy Task Force:

I have been a music therapist in southern Nevada for more than a decade. The education requirements are through a four-year degree program. You have to be admitted as a musician into the music department. You then major in music therapy. There is very specific coursework that is not included within this bill as far as delineating what the education requirements are. The American Music Therapy Association accredits universities to provide these degree programs at the bachelor's, masters, and doctoral level. We did not put all of that language in here. We refer to it as the program requirements, as required by the American Music Therapy Association; likewise, the scope of practice is defined by the Certification Board for Music Therapists. It is very specific. I would be happy to send you more information that is not detailed in the bill.

Assemblywoman Kirkpatrick:

I would be interested. I have been through that, but it was a longer list of criteria, so I would like to see the difference.

Vice Chair Conklin:

Are there any other questions from the Committee? Since we are about to lose our feed, we will go to Las Vegas.

Senator Denis:

For the record, Mary Liveratti from the Health Division is here if you have any questions.

Judith Pinkerton:

We have only amendments to offer. We do have a music therapy student who graduated from Las Vegas Academy and who is currently in Indiana completing her studies, but she was here to experience the whole process.

Vice Chair Conklin:

Are you in support of the bill?

Judith Pinkerton:

Yes.

Vice Chair Conklin:

Please bring forth that amendment now, so if we lose the feed, you do not lose the opportunity. Mr. Denis, it is my understanding from your nods that this has been run by you in advance and you are good with it?

Senator Denis:

Yes. We have been trying to get the psychologists association and some music therapists together, and that is what she will be talking about.

Vice Chair Conklin:

We will allow this in testimony in support of the bill.

Judith Pinkerton:

We have had a healthy dialogue with mental health professionals and created several amendments approved in the Senate Committee on Commerce and Labor and Energy. Just this morning, the Regulatory Affairs Advisor for the Certification Board for Music Therapists, Dr. Dena Register, was in dialogue with Dr. Judy Phoenix, a psychologist in Reno, who agreed with Dr. Register about two amendments we bring forth ([Exhibit E](#)). The statement of intent of both amendment recommendations is that they address concerns from Nevada psychologists.

Section 17.4 is adding one extra sentence. The first sentence says, "If applicable, carry out an individualized treatment plan that is consistent with any other health or education services being provided to the client." This next sentence is the addition: "Licensed music therapists will adhere to the Scope of Practice of the national Certification Board for Music Therapists."

The second amendment regards section 17.9, and we have agreed that it can be deleted entirely.

That concludes the two amendments we are recommending.
[Chair Atkinson reentered the room.]

Vice Chair Conklin:

Are there questions from the Committee on the amendments? [There were none.] Is there anyone wishing to testify in support of the bill from Las Vegas? [There was no one.] Is there anyone in Carson City in support? [There was no one.]

Assemblywoman Carlton:

One of my questions may have been answered with the scope of practice. Will section 7, where you define music therapy, be changed with the national definition of music therapy as a scope of practice?

Judith Pinkerton:

It would stay the same.

Assemblywoman Carlton:

Do we define what the national scope is? In any professional licensure the scope of practice and the turf battles that ensue are always the toughest part of the bill to be defined before you can get into other things. What happens is you end up with a lot of overlap with other professions.

Judith Pinkerton:

Yes, it is listed on Nevada Electronic Legislative Information System (NELIS). You will see a lot of supportive documents, and it is within that.

Senator Denis:

I have a copy of it here also.

Assemblywoman Carlton:

I will sift through those. The biggest concern I have is that you are proposing to put this with the Board of Health. It is not a regulatory body when it comes to professional licensure. There are the fees, the five-year term that is involved, investigations that may have to happen. Do they have access to a deputy attorney general (DAG) to do the investigations, to have hearings, and the actual regulatory process that would ensue? Those are a number of the questions that I have as far as setting this up. Have you talked to the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors or any of the other groups to look at partnering with them? We

grouped licensed professional counselors with them not long ago; it took two sessions, but we got it worked out and it has worked really well.

Senator Denis:

As far as the issue of Marriage and Family Therapists, they are here and they will speak. We did talk with them. This is definitely a different way than we have ever done, but it does not mean it is the wrong way to do it. We were looking for something that would not create an additional burden on the state, but at the same time still provide protection for Nevada citizens.

Assemblywoman Carlton:

I am more concerned about the \$200 fee. I do not think it is adequate for the amount of time and effort that is going to be put in, and having a five-year license, to me, is a long time. We usually do things by the year or every two years and double up. You have to keep track of the continuing education and so many other things. Five years is a bit expansive.

Mary Liveratti, Deputy Director, Programs, Department of Health and Human Services:

We did work with the music therapists in the last session. Their bill did not pass. We look at this as similar to other licensures that we do. For example, we license laboratory technicians, who are such a small group that there are not enough to have a stand-alone board for. We did not set the standards, because the standards will be based on the national board certification; then we will follow the national guidelines. Because the number of people is so small—maybe 20 to be licensed statewide—we do not think this is going to create an administrative burden for us.

As far as the DAGs, we do have a DAG attend all of the State Board of Health meetings, and we work with them very closely. We have other disciplinary actions that we do against other groups that are either licensed or certified under our Health Division.

I cannot speak to the five years because that was something that was not set by us. I do not know who could answer that.

Assemblywoman Carlton:

On your lab techs, how much do they pay and how often do they recertify with you?

Mary Liveratti:

I do not have that information with me, but I would be happy to provide that to you.

Assemblywoman Carlton:

It might be a good comparison, to find out how you handle it if there is a complaint filed against them or if there is trouble.

Mary Liveratti:

I should state that the agreement is that the national board would conduct an investigation if we received a complaint. We would turn it over to them; they would do the investigation and submit a report to us. Then the Board of Health would decide what kind of action they wanted to take—do a reprimand, suspend a license, or revoke a license. The Board of Health is not going to do the investigation; the National Certification Board for Music Therapists would be doing that and then reporting back to the state.

Assemblywoman Carlton:

Senator Denis, would someone from the national board come out here and do an actual investigation, and who would bear the cost of that?

Senator Denis:

I think we have had them and they said they would do that, but I think Ms. Pinkerton should go on the record.

Judith Pinkerton:

The Certification Board will investigate any problems. It has been stated in a letter that they will pay what is required. They will not be charging the state for any costs.

[Chair Atkinson reassumed the chair.]

Senator Denis:

We do have that letter from the Certification Board for Music Therapists about the complaint process ([Exhibit F](#)).

Chair Atkinson:

[The Chair noted that the video feed in Las Vegas was about to be lost.].

Assemblywoman Carlton:

Going back to the fee and the five-year term, if the fee is \$200 and there are 12 applicants, that is \$2,400 for five years worth of work that the Board will have to monitor, which I do not believe is adequate. As a member of the Assembly Committee on Ways and Means, I know we have had bills referred where there was an impact of only \$1,000 or \$2,000 to a state agency because we are cutting things so close. I would hate to institute something that would cause a deficit and come back to the Interim Finance Committee

(IFC) and have to be put into the General Fund to support this endeavor. As this moves forward, this fee needs to be looked at seriously and increased and made annually.

Assemblywoman Kirkpatrick:

Section 22 talks about what happens if a person's license is suspended. Pursuant to *Nevada Revised Statutes* (NRS) 425.550, it says that to reinstate your license you need a letter of confirmation from the district attorney. Why would they have to go through the same process as everyone else? What happens if the Board of Health expands the scope of practice; we have seen legislation through the regulation process. Would that allow music therapists to expand their scope? I think it will be helpful when we see the national standards, because we want to be sure that we are ahead instead of at the bottom.

Mary Liveratti:

One of the sections deals with all licenses, subject to the individual being up to date with their child support payments. I think that is what the section you referred to is about. I am a licensed social worker, and every time I renew my license, I must certify that I am not behind in my child support payments.

Senator Denis:

I missed the first part of your question.

Assemblywoman Kirkpatrick:

If the Board of Health was trying to expand the scope of practice for different entities, and we rejected it, saying it was a policy issue, how would that work? Would the national standards requirements override the State Board of Health? Maybe I can get the answer later from Legal.

Senator Denis:

Yes. We would have to ask Legal.

Chair Atkinson:

Are there additional questions? [There were none.] Is there anyone else wishing to testify in favor of S.B. 190 (R1)? Is there anyone wishing to testify in opposition to S.B. 190 (R1)?

Sable Shaw, Private Citizen, Carson City, Nevada:

I am a registered nurse and have been a practicing nurse for 40 years. I retired after 25 years of teaching nursing as a nursing professor. [Continued to read from prepared text ([Exhibit G](#)).]

My concern is what can I call myself? I am a therapeutic harp practitioner and will be credentialed and certified.

Chair Atkinson:

Does anyone have questions?

Assemblyman Hickey:

Could you tell us if you have been performing or providing your service in hospitals and in medical settings? Has it been a problem for you in arranging situations where you provide your therapy or your services? One of the premises of this bill is that there are certain things that are not currently in place that might preclude persons, like you, from being able to serve. I am wondering if you see a need for this bill.

Sable Shaw:

I have not had trouble participating or playing for people who are ill. I understand that the bill's purpose is to help guarantee safety for clients. As a nurse, I certainly think it is a good idea to ensure that a patient is not harmed or abused in some way.

Steve Shaw, Private Citizen, Carson City, Nevada:

The fundamental issue is Mrs. Shaw's job title. It is not a therapeutic musician. It is close, but not that. Her scope of practice is not identical, but they do overlap. It is a violation of this bill, if it becomes law, if either of those standards is not followed—the clarification on what you can call yourself, what you can advertise. She is certified by the National Standards Board of Therapeutic Musicians. The bill says you cannot use any terminology that implies, hints, or may be misconstrued, but it is very close between a therapeutic musician and a music therapist.

We are getting ready to advertise and have business cards made, but we are holding off to be sure what we can do.

Assemblywoman Carlton:

Were you playing here in Room 3100 last week? [Mrs. Shaw replied yes.] It was very pleasant to hear. I understand your concerns, because as I said earlier, scope of practice is always the first hurdle to pass. In looking at the scope we have, I do see some of the overlaps. How long does it take you to be certified? What are the main points of your practices?

Sable Shaw:

I am in a two-year program and my clinical hours are approximately 100 hours. It is not a bachelor's program, and it is not 1,000 hours of clinical either.

The specific overlap is whether I can perform for a patient in a hospital setting or in a clinical setting.

Chair Atkinson:

Are there additional questions from the Committee? [There were none.] Is there anyone else wishing to speak in opposition to S.B. 190 (R1)? Is there anyone wishing to speak in neutral?

Bryan Gresh, representing Nevada Psychological Association:

I appreciate the continued efforts of the sponsor to work with the Nevada Psychological Association. There was a comment earlier by Ms. Pinkerton regarding a conversation that had taken place today that is correct. Dr. Judy Phoenix did, in fact, have a positive conversation with Dr. Dena Register, who the sponsor put us in touch with to see if we could help move some of these concerns and formulate an acceptable amendment that the Committee could consider. That is ongoing. It is not done yet. We continue to submit that we are working diligently and as quickly as we can with the sponsor and will continue to do that with the national association as well.

Helen Foley, representing Marriage and Family Therapists Association of Nevada:

We share several of the concerns that have been expressed by Assemblywoman Carlton regarding some of the issues, and we brought these up at the Senate hearing as well. I appreciate Senator Denis and his group making strides in trying to work with these issues.

Over the years, we have worked with many organizations and, most recently, the counselors who now come under the Board of Examiners of Marriage and Family Therapists and Clinical Professional Counselors. We found a way to have these boards work very cooperatively with the organizations.

All of the organizations we have worked with in the past, however, have involved mental health therapists in some capacity—ranging from psychiatrists to psychologists, as well as placing marriage and family therapists and social workers on a level plane. Alcohol and drug abuse counselors are below, although they now have some master's level alcohol and drug abuse counselors. We have all tried to find a way to integrate what we do and work for the best interest of mental health therapy in the State of Nevada, because we are woefully negligent in that area—even in providing all the necessary services we need.

One of the greatest concerns we have is the placement of this licensing within the State Board of Health. Not that it cannot work—and I have great respect

for Ms. Liveratti as well as Mike Willden and his whole team. It is not just \$200 per year, but it would be \$200 for the entire five-year period. That would be \$40 a year, and if there are 12 applicants, that would be a grand total of \$480 to run this part of their board actions.

Another concern is that when there is a problem or difficulty with a licensed music therapist, that investigation would be handled out of state. A report would be filed with the Board, but that is not how we do things with other boards in Nevada. It needs a local and statewide look. These problems could have nothing to do with music therapy; it might be someone who would abuse a child, or other situations. We take that very seriously.

For marriage and family therapists, along with the majority of the other mental health professions, we have two years postgraduate work after the master's degree and 3,000 hours of supervised experience, with 1,500 of those hours in direct contact with patients. We want to make sure that when we have a new type of therapy, that it is handled properly, and they do not hold themselves out to be something more than they are licensed for. We would feel a lot more comfortable knowing what that scope of service, their professional code, would be. We pledge to work with Senator Denis and others and look forward to continuing this dialogue.

Assemblywoman Carlton:

Mr. Gresh, regarding their scope of practice, the National Certification Board for Music Therapists' website lists different activities under "Assessment." Subsection 7 is, "Identify the effects of medical and psychotropic drugs." I plan on reaching out to people in the health care associations about that. I would appreciate it if you would bring me back material from the psychologists on this level of education and identifying drug interactions and behaviors. I would want to make sure this is not overstepping the bounds. This could be very serious.

Chair Atkinson:

Are there questions from the Committee? [There were none.] Is there anyone else wishing to get on record in favor, against, or neutral regarding S.B. 190 (R1)? Senator Denis, did you have any closing remarks?

Senator Denis:

There are a few issues that we obviously need to look at. One of the reasons we need this is to protect the public. We have an individual here who has training and who came forward, but we have other individuals who are advertising in newspapers in Las Vegas as music therapists that are basically musicians who have no training whatsoever. We definitely need to have

training there. If we can clarify the issues brought forward, through legal or other means, it would be good.

I appreciate the opportunity. Music therapy has been around for 60 years, and music therapists are looking to be able to be recognized in the State of Nevada. We will work to get these issues resolved.

Chair Atkinson:

We will ask you to work with the parties, and we will get a good feel of who is for and against. We will close the hearing on S.B. 190 (R1).

Meeting is adjourned [at 3:55 p.m.].

RESPECTFULLY SUBMITTED:

Sharon McCallen
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 9, 2011

Time of Meeting: 1:49 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 367 (R1)	C	Michael C. Edwards, M.D.	Letters of Support
S.B. 190 (R1)	D	Senator Mo Denis	Prepared Testimony
S.B. 190 (R1)	E	Judith Pinkerton	Proposed Amendments
S.B. 190 (R1)	F	Senator Mo Denis	Letter of Support
S.B. 190 (R1)	G	Sable Shaw	Prepared Testimony