

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

**Seventy-Sixth Session
May 11, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:50 p.m. on Wednesday, May 11, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Sheila Leslie, Washoe County Senatorial District No. 1
Senator David Parks, Clark County Senatorial District No. 7
Senator Allison Copening, Clark County Senatorial District No. 6
Senator Shirley Breeden, Clark County Senatorial District No. 5

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Earlene Miller, Committee Secretary
Diane O'Flynn, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Lauren Scott, representing Equality Nevada
Marlene Lockard, representing the Nevada Women's Lobby
Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada
Dane Claussen, Executive Director, American Civil Liberties Union of Nevada
Morgan Baumgartner, representing the Nevada Resort Association
Susan Fisher, representing the Coalition of Housing Providers, Nevada State Apartment Association; and the State Board of Podiatry
Howard Watts III, Field Director, Progressive Leadership Alliance of Nevada
Michael Brown, representing Cover Up Nevada; and Executive Director, Nevada Chapter, The Melanoma Education Foundation
Alisa Nave, representing the Nevada Justice Association
Barry Gold, Director of Government Relations, AARP Nevada
Amber Joiner, Director of Government Relations, Nevada State Medical Association
Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association
Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates
Liz MacMenamin, representing the Retail Association of Nevada
Renny Ashleman, Acting Chairman, Nevada Health Care Association
Daniel Mathis, representing the Nevada Health Care Association
Charles Perry, representing the Nevada Health Care Association
Fred Hillerby, representing the State Board of Nursing

Chair Atkinson:

[The roll was called, and a quorum was present.] The meeting is called to order. I will open the hearing on Senate Bill 331 (1st Reprint).

Senate Bill 331 (1st Reprint): Revises provisions relating to unlawful discrimination in places of public accommodation. (BDR 54-799)

Senator Sheila Leslie, Washoe County Senatorial District No. 1:

I am here today to present Senate Bill 331 (R1), and Senator Parks has joined me. He is a cosponsor of the bill, along with Assemblyman Paul Aizley. This bill is about everyone in our society who deserves to live, work, and go about their daily business with equality and dignity. Currently, there are no legal protections in Nevada law to prohibit an individual from being denied access to public accommodations, which include hotels, restaurants, stores, clinics, and hospitals, solely based on his or her gender identity or expression or sex. Public accommodation applies to any place that offers goods or services of any kind, including places that offer facilities, privileges, or advantages to the public. Churches, synagogues, mosques, and other religious places are exempt from the definition of public accommodation. Because discrimination based on gender identity and expression and sex are not currently prohibited by state law, individuals in these classes could be legally denied access to services that others take for granted. Unequal treatment is not only wrong; it hurts tourism and our state's economy. A number of states, including Colorado, New Mexico, Illinois, and Hawaii, and many local governments have passed statutes that include these protections in public accommodations. Most states have had protections against sex discrimination for 50 years or more. The amendment that we put on this bill in the Senate addressed what we call the ladies' night exception, which is differential pricing, where the casinos were concerned and wanted to make sure that we put in the bill some specific language that allows for differential pricing, and so we did add that, and we do have the support of the Nevada Resort Association for this bill.

Mr. Chairman, if you agree, I would like to ask Senator Parks to put a few remarks on the record, and then we have a few people in Las Vegas and a few people here in Carson City to add their testimony.

Senator David Parks, Clark County Senatorial District No. 7:

As you are quite aware, I have been actively involved in issues dealing with nondiscrimination over the years. I am very much in support of this long overdue piece of legislation in the interest that less is better. I would be happy to answer any questions.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Grady:

Can you tell me what "expression" means in this legislation? You have in a number of places the phrase "gender identity or expression." Could that be verbal expression, if someone is standing in the room, disrupting everyone? Does that give him the freedom to do that?

Senator Leslie:

Gender expression is defined as external characteristics and behaviors associated with gender. There are socially defined masculine and feminine characteristics, and these terms refer to all the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns, and social interactions. Social or cultural norms can vary widely, and some characteristics that may be accepted as masculine, feminine, or neutral in one culture may not be assessed similarly in another. So that is the definition that we are working from, and there may be some people coming after us today who can give you more real-life examples of this.

Chair Atkinson:

Are there any additional questions?

Assemblywoman Carlton:

I just leaned over and spoke to our Legal Counsel regarding the new language in section 5 about the discounted pricing or special offers. In southern Nevada a few years ago we had a couple of court cases about how women can go to the gym and some of the special events at the pools for free, but guys have to pay. I was just wondering if this language changes those court cases.

Senator Leslie:

I do not believe it does. This does not address health clubs; it addresses the bars and the other public places. But again, the Nevada Resort Association is here and their representatives are the ones who worked on the amendment, so they can probably address this in more detail.

Assemblywoman Carlton:

Because we had the problem with the happy hour, and women drink free but men have to pay, it seems to me as though this might give them an opening to go back and start doing that again. I just want to make sure that we do not allow that to happen.

Chair Atkinson:

Are there any additional questions from the Committee? [There were none.]
Anyone else in the audience wishing to testify in favor of Senate Bill 331 (R1)?

Lauren Scott, representing Equality Nevada:

We support this bill. I did want to clarify Mrs. Carlton's point that this particular amendment is especially focused on people and individuals who have actually changed their gender identification. This is not an amendment that suggests that someone who is just dressing or acting a particular way will gain the favor of nondiscrimination issues, so we certainly do not suggest that anyone who is simply acting in a particular way will take advantage of this bill. This bill basically allows people who have properly changed their gender identity not to be discriminated against.

Chair Atkinson:

Any other comments?

Lauren Scott:

That is it.

Chair Atkinson:

Are there any questions for this witness? [There were none.] Any one else in Carson City who wants to testify in favor of Senate Bill 331 (R1)? [There was no one.]

Marlene Lockard, representing the Nevada Women's Lobby:

We strongly support this measure. Our organization is dedicated to equity and fairness, and we believe that this is one of the final steps we need to ensure equity in Nevada.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] We will now take the testimony of those in favor of S.B. 331 (R1) in Las Vegas.

Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada:

We are also here in support of this bill. Over a three-month period, the Progressive Leadership Alliance of Nevada (PLAN) conducted a comprehensive study of discrimination experienced by our transgender people in Nevada's eight most populous counties. This study revealed that discrimination based on gender identity expression was experienced nearly universally among our transgender citizens, with discrimination in employment and public accommodations posing the greatest barriers and challenges for the

respondents. Two-thirds of our respondents had experienced discrimination in public accommodations in the last year, and half of the respondents had experienced discrimination when seeking out medical care. Hospitals and other health care clinics and settings are considered places of public accommodation. These extraordinary disparities also fuel severe economic insecurity, food insecurity, homelessness, personal safety risks, and inadequate access to health care. With these alarming rates of homelessness, transgender discrimination in shelters and other programs designed to alleviate this suffering is still legal in our state.

I am also here to tell you that Nevadans do support this legislation. As part of our selective engagement work, we surveyed thousands of voters and every legislative district, across all demographics and party lines, and the results indicated that more than three-quarters of the people surveyed support protecting people from discrimination in public accommodations based on gender identity and expression, so I would ask the Committee to please pass this bill as soon as possible.

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Dane Claussen, Executive Director, American Civil Liberties Union of Nevada:

We are also here today to support this bill. We were, as you probably know, also involved in discussions with the Nevada Resort Association about this bill and possible amendments to it. We are in support of this bill with or without the amendment that we agreed to from the Nevada Resort Association. We are confident that this is a workable bill and that it is a necessary change in our state law to protect the rights of our transgender citizens.

Let me also say that we endorse all the remarks made by the previous witnesses up until this time in this Committee meeting today. We always say that this kind of bill is not only necessary to protect a segment of our population, and will have tangible benefits for them, but also that it will entail negligible costs for our government and society. Laws like this are of tremendous symbolic importance because they are about who we are today as Americans trying to work on, as the old saying goes, "a more perfect Union." Thank you for your time, and as Michael Ginsburg just said, please pass this bill as quickly as possible.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] Anyone else wishing to get on record in favor of Senate Bill 331 (R1) here or in Las Vegas?

Morgan Baumgartner, representing the Nevada Resort Association:

As has been our past practice, we are proudly in support of this legislation, and we appreciate the inclusion of our amendment protecting the ladies' night type of activities. All of our properties practice nondiscrimination and have what we hope is sufficient training programs for this kind of discrimination. We would encourage your support of this bill.

[Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates, submitted a memo in support of Senate Bill 331 (R1) and Senate Bill 368 (Exhibit C).]

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Is there anyone else in favor of Senate Bill 331 (R1) wishing to testify? [There was no one.] Is there anyone in opposition to Senate Bill 331 (R1) wishing to testify here or in Las Vegas? Is there anyone neutral to Senate Bill 331 (R1)? We will close the hearing on Senate Bill 331 (R1) and open the hearing for Senate Bill 368, sponsored by Senators Parks and Leslie.

Senate Bill 368: Prohibits discrimination in housing and certain other transactions involving real property on the basis of sexual orientation or gender identity or expression. (BDR 10-416)

Senator David Parks, Clark County Senatorial District No. 7:

Thank you for hearing Senate Bill 368, which relates to discrimination in housing. Senate Bill 368 prohibits various forms of discrimination based on sexual orientation and gender identity or expression in certain housing and real estate transactions. The bill declares it to be the public policy of the State of Nevada that all people shall, without discrimination, distinction, or restriction because of sexual orientation or gender identity or expression, have equal opportunities to purchase, inherit, lease, rent, sell, hold, and convey real property and to equally seek and obtain housing accommodations. Senate Bill 368 prohibits specific acts based on such discrimination involving the sale or rental of a dwelling, access to a multiple listing service or other services or facilities relating to the sale or rental of a dwelling, and the denial of commercial real estate loans by a financial institution and refusal by a certified or licensed appraiser to prepare or communicate an appraisal. The bill authorizes the Nevada Equal Rights Commission to order its administrator to investigate and hold hearings in respect to housing regarding tensions, practices, and discrimination and acts of prejudice against any person or group because of race, color, creed, sex, age, disability, and sexual orientation and gender identity and expression, as well as national origin and ancestry.

I would like to add also that this does not apply to somebody who wants to rent a room, or to a landlord who has three or fewer rentals. That is not covered under this bill. I would be happy to answer any questions.

Chair Atkinson:

Thank you, Senator Parks. Are there any questions from the Committee members for Senator Parks?

Assemblyman Daly:

I want to add a point of clarification, if I could. On page 3 at the end of section 8, you are deleting the reference to the Fair Housing Act of 1968. The way I read that is as a double negative statement. I wanted to make sure we are reading it right, that because it is not covered in federal law, if we did not delete that, the additions in this bill would have no effect, because it is a not, not. Is that the way you read it?

Senator Parks:

This is one of those cases where we have had in statute what is now an outdated citation, so it was felt that it would be better to remove that citation, as there apparently have been several changes since that time. I might also add that on the first of this year, the U.S. Department of Housing and Urban Development (HUD) proposed, and has since adopted, a new regulation intending to ensure that its core housing programs are open and eligible to persons regardless of sexual orientation or gender identity, so that confirms that point.

Chair Atkinson:

Thank you. Are there any additional questions from the Committee members for Senator Parks? Is there anyone else wishing to testify in favor of Senate Bill 368?

Lauren Scott, representing Equality Nevada:

As it was covered in great detail in the Senate hearings, I believe I was discriminated against by a property management company in Gardnerville when I first moved to Nevada in 2005. I have since rented a different house from a different company, and that particular management company has an "F" rating with the Better Business Bureau. As far as I am concerned, there was discrimination going on at that time, and probably still is. I certainly urge the Committee to support S.B. 368.

Chair Atkinson:

Thank you. A quick question, so that everyone is clear on this. As you stated, you are in an apartment complex, and could be under lease, and the property

owner finds out that you are transgender and he asks you to leave. Is that where we are going with this? So the point you are making is that this bill would prevent or rather discourage this type of discrimination?

Lauren Scott:

Certainly. When I first moved here, I went to a property management company in Gardnerville. We had applied for the particular house we were renting, and she went through a lot of acrobatics legally and financially with nationwide background checks, which made it virtually impossible for me to pass her requirements to rent this particular house. We went to craigslist and found another house from a different company, and the company was more than happy to rent to us by doing emails and faxes. But, in person with the first management company, apparently, through checking my credit or just my own presentation, she felt it very difficult to rent a house to me in Gardnerville. Later on, we were able to find housing, but that particular management company went to great lengths to make sure that we could not rent a house from her.

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Susan Fisher, representing the Coalition of Housing Providers, Nevada State Apartment Association:

I represent the Coalition of Housing Providers, which is a subset of the Nevada State Apartment Association representing over 250,000 individual units, along with the property managers who manage these apartments. We are in support of this bill and certainly would discourage any of our members from doing this sort of discrimination. We will be adding this to our continuing education list as well.

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Marlene Lockard, representing the Nevada Women's Lobby:

Again, for the reasons previously stated, we support this measure.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] Is there anyone down in Las Vegas wishing to give testimony in support of S.B. 368?

Howard Watts III, Field Director, Progressive Leadership Alliance of Nevada:

For the reasons previously stated, we also support the passage of S.B. 368. We believe that it is time to make sure that everyone is protected equally under the law.

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Dane Claussen, Executive Director, American Civil Liberties Union of Nevada:

For the reasons previously stated with regard to Senate Bill 331 (R1), we also support this bill in full. I want to add that I was at the Nevada Equal Rights Commission meeting a couple of weeks ago. It was the first time that the Commission had met in more than a year. The administrator and Commission members are aware of S.B. 368 being in the legislative session, of course, along with several other bills that they are monitoring to a greater or lesser degree, as far as I could tell as an observer in the audience. They do not seem to me concerned that they will be getting a huge influx of complaints filed with them as a result of this bill or any of the other bills in this session that would protect persons on the basis of sexual orientation or transgender status. Again, we support this bill. We think it has important, tangible benefits for a historically unrecognized and unprotected group in our society, and we believe that the costs of this to the government and to society as a whole will be negligible.

Chair Atkinson:

Thank you for your testimony. Are there any questions from the Committee members?

Assemblyman Hickey:

Mr. Claussen, had you been advising or representing the previous witness who testified to housing discrimination up here in the north at that time, how would you have advised that person to deal with this type of discrimination at that time? In other words, given that sexual orientation is already grounds for not being discriminating against, would not that person have had legal recourse at that time?

Dane Claussen:

I am afraid that I cannot answer that question for a couple of reasons. One reason is that I am not an attorney and I do not pretend to be one, so I will not give a legal opinion or advice either currently or retroactively. Secondly, as a newer resident to Nevada, I would not be in a position to advise someone what she could have done say five or ten years ago. I am sorry.

[Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates, submitted a memo in support of Senate Bills 331 (R1) and Senate Bill 368 ([Exhibit C](#)).]

Chair Atkinson:

Are there any other questions from the Committee? [There were none.] Is there anyone else here or in Las Vegas wishing to testify in favor of Senate Bill 368? [There was none.] Is there anyone opposed to S.B. 368? [There was none.] Is there anyone in the neutral position wishing to testify? [There was none.] We will close the hearing on Senate Bill 368.

We will now open the hearing on Senate Bill 291 (1st Reprint).

[Senate Bill 291 \(1st Reprint\)](#): Revises provisions governing operators of tanning establishments. (BDR 52-957)

Senator Allison Copening, Clark County Senatorial District No. 6:

Senate Bill 291 (R1) prohibits an operator of a tanning establishment from allowing a person who is less than 18 years of age to use the tanning equipment unless the operator first obtains written consent from a parent or guardian. [Read from written statement ([Exhibit D](#)).]

It is not in my written testimony, but I will go on the record to say that, since that time, the Indoor Tanning Association has come forward to ask if the penalties could be lessened from a fine to a misdemeanor. I will leave that up to the Legislature to decide to approach that. [Continued reading from written statement.]

Chair Atkinson:

Are there any questions from the Committee members for Senator Copening?

Assemblyman Hickey:

I am assuming parental permission has been given to minors in the case of the scenario I am posing, but are the owners of the tanning facilities in any way more liable if a child is overexposed? I see where they are supposed to be present. Are they also liable for adults who may stay in too long and harm themselves, or are they in any way more liable with minors being exposed for over the recommended maximum length of time?

Senator Copening:

I do not know the answer to that. I am not an expert on the tanning bed industry and what its regulations say. I will tell you that as a person who used one many years ago, I was not sufficiently informed of the dangers. They tell

you that if you have not used one before, or if you happen to be of pale pigmentation, that you should start with ten-minute increments and build up to longer periods. I do recall having been given some guidance many years ago on that, but I do not think that there were any liabilities. As I recall, you sign a type of waiver that essentially says that you are entering at your own risk.

Assemblywoman Kirkpatrick:

Concerning the fines on page 3, section 2, who do they apply to and how were they established, being that it is a cash flow enforcement issue?

Senator Copening:

The idea would be that if a parent suspected a tanning facility of allowing his minor child to use it, and the facility did not take the precaution of getting the driver's license and the written consent of the parent, the parent could bring an action in court against that tanning facility. Then it would be up to the court system to determine the validity of that claim as it went through the judicial process.

Assemblywoman Kirkpatrick:

This bill says that the first occurrence is \$2,000, and the second \$4,000, which would probably be at a different facility. It just seems a little nerve-wracking that a 16-year-old could accuse somebody of doing something illegal. I have been on both sides, and I do not tend to side with my children as much as they think I should. But there are many parents who feel that their child can do no wrong. I could see a business being put in a situation of having to defend itself, and the attorney fees could be pricey. I understand making the parents more responsible for their children, but I am wondering why the bill was written with this particular language. If I remember correctly there are not too many tanning establishments that allow kids under 18 years of age to take advantage of their services. They already have to be 18 to do this, correct?

Senator Copening:

I do not think that is a correct statement. One of the reasons behind the bill is that minors are oftentimes allowed to go into these tanning salons. Let me address a couple of things. The fee structure for that second or subsequent occurrence is at the same facility, so it would not be the child, but the facility that has the onus of making sure that it is run properly. The reason behind the fines is to avoid trying to bring forward a bill that puts regulations in place, which would mean that extra inspectors would have to be hired—again it comes back to our budget deficit. I did not think it would be a responsible way to go about trying to combat this problem. If you look at the graph ([Exhibit E](#)) there are several other states that impose a fine. Everyone does it a little bit differently. As I have said, I was asked by the Indoor Tanning Association to

consider bringing the penalty down to a misdemeanor. The whole idea behind this is to send a clear message to the indoor tanning industry that we have to protect these minors, that when this law is in place you will be held accountable. As far as most penalties go, the whole idea is to scare them a little bit and let them know that we are taking this seriously.

Chair Atkinson:

Are there any additional questions from the Committee?

Assemblyman Goedhart:

As a follow-up to my colleague's questions on penalties, what would happen in a hypothetical situation where a 17-year-old would enter a tanning salon, and due to the error of the tanning salon operator, this minor was able to use the facilities on six different occasions. The way the language reads in the bill, that tanning facility would be liable for \$2,000 for the first tanning session and \$4,000 for every subsequent tanning session. If the minor did six different tanning sessions, the tanning salon would be on the hook for probably \$22,000 in total, is that correct?

Senator Copening:

That is a very good question. I had not thought about subsequent visits beyond the two because, in our minds, the deterrent of the fine after even one violation of the law should be effective in preventing subsequent violations. If one did not have that immediate effect, two would certainly persuade the tanning salon of the error of its ways. But I understand what you are saying. Sometimes people purchase packages, and if the person's age is not checked at the time of his first visit, and then on his second visit the operator does not question whether or not he should be allowed to use the facility, probably feeling that the client has already been cleared to use it. That is a good question. I have to honestly say that I had not considered this possibility, and that is something I would need to put some thought into.

Assemblyman Goedhart:

True. The person comes in with the package, and the tanning salon operator assumes that the client was checked the first time around. Now the individual uses up a package of six visits and the parents say, "Hey, why are you getting a tan?" All of a sudden the tanning salon owner is on the hook for \$22,000. It is a big fine, probably even a higher fine than if you had a liquor store and you were selling booze to underage kids. I am trying to make sure that we put some controls in there, but we do not want to come up with something so draconian, with such a heavy fine schedule, that it amounts to having a de facto prohibition on tanning salons as far as minors are concerned.

Senator Copening:

Duly noted. I absolutely agree that this could be one of the unintended consequences of this. We may want to have some sort of provision that in the situation where the customer has purchased a series of visits as a package, any one visit on the package would count as that one offense, so that the operator or clerk who is checking in that person could just look in the computer and see if he is legally permitted to use the facilities. That is probably one of those kinks that we would have to work out.

Assemblyman Goedhart:

As far as written documentation is concerned, because the bill's penalties are so significant, what will be required to show that the operator has made every effort in obtaining legal consent from the legal guardian with all due diligence? Will a consent form be required to be notarized, for example?

Senator Copening:

That would be the responsibility of the tanning facilities. Probably they would have their legal counsel draft a type of permission slip so that they know they were protected under the law. Of course, some form of legal identification would also be required, such as a driver's license or some other form of ID that is accepted by the state as legal identification. But, as we were drafting this bill, the idea would be that the onus would be upon that tanning establishment to make sure that it has the right kind of form in place that protects it legally.

Chair Atkinson:

Are there any additional questions? [There were none.] Is there anyone else in the audience wishing to testify in favor of Senate Bill 291 (R1)?

Michael Brown, representing Cover Up Nevada; and Executive Director, Nevada Chapter, The Melanoma Education Foundation:

I teach high school and middle school kids about skin cancer. I teach them that skin cancer—and it is a proven fact—mostly comes from the sun and tanning beds. I testified last time, and some business owners spoke after me. I was angry at what they were saying because I did not have a chance to refute it. I am thankful to be here now to tell you that there is no such thing as a safe tan other than spray tans or lotions. They were talking about safe tan this and safe tan that. I wanted to scream, "Hey, this is wrong!" The reason I know so much about skin cancer is that my wife died in my arms at the age of 31, and one of the last things she said to me was, "Tell people about skin cancer because it can happen. It kills." Since then, I founded my foundation, and I have discovered that teaching our students is the front line of this whole battle. When I teach the kids, I give them the "scared straight" approach, because I do not care what anyone thinks. What matters to me is that they hear and

understand. If you use a tanning bed ten or more times in one year, you are eight times more likely to get melanoma. Now that is scary enough, but the disgusting thing about this statistic is that every hour an American dies from melanoma. The saddest thing about this statistic is that most of these victims were in their 20s, and the clincher is that almost every one of these deaths could have been prevented. If you think about those statistics, it makes you think. We already know that tanning beds cause melanoma. The kids' skin turns brown. Some of these kids tell me, "Oh, it is natural." It is the most unnatural thing, because your skin is putting out a dye. It is trying to protect itself from the ultraviolet light rays. These kids do not understand that. They want to look "hot" for their boyfriend or girlfriend. I understand that. And I understand that some of these tanning bed facilities have to make a dollar. They are in business to make money and they are legitimate businesses. They are probably very nice people. But they are involved in a business that, when it comes to tanning beds and the lamps, kills people. And we know that; it is a proven fact. Tanning causes melanoma. If melanoma gets into your body and it turns to stage four, you have a 1 in 10 chance of living past five years.

And this is so preventable. Do tanning facilities use tanning sprays and lotions? They said, yes, they do have facilities that also use spray tanning and lotions, and that is what we want. We encourage that. But the issue is money. We all know it. It is about money—or saving a life. You have to weigh the two. Skin cancer and melanoma are so preventable, and we can do something about it. We could be one of the first states in this Union to curb melanoma cases so completely that it makes heads spin. We can do that with a decision right now on this bill, S.B. 291 (R1). To me, it is not about the money. It is about saving lives, period. There are too many kids dying from this, and it does not have to happen.

I am a professional saxophone player. I play for the musical group, Sha Na Na. I am passionate about what I know. I am passionate about this bill because I know it is going to save lives. It may cost somebody some money, but when Johnny or Suzie Nevada is going to live to be a great-grandparent because of this, pay the money. That is my opinion.

Chair Atkinson:

We will take questions now.

Assemblyman Hardy:

I appreciate your passion, but you are talking about tanning booths, in the way you are putting it, as the sole cause of melanoma. I have known two individuals who passed away from melanoma. One was just over 16 years of age. I have known since I was a youth that the sun is our worst enemy.

Are we going to ban the sun? It is a tough challenge. But back to what you said, education is the key. The youth are going to spend more hours in the sun. Some are susceptible to melanoma. This bill does not solve that situation, with children deciding that they want to look better for their boyfriend or girlfriend. The sun has always caused melanoma. People have always died from melanoma and will continue to do so. With the individual I speak of, it started out as a spot smaller than a nickel when it hit him, and he was gone that quick. So the sun causes melanoma, too, not just tanning booths.

Michael Brown:

I understand what you are saying. Yes, the sun is the main cause of melanoma—as much as 75 to 80 percent of cases, they say. But, with the tanning beds, UVA rays are damaging your skin. It is a proven fact that it does cause melanoma.

Chair Atkinson:

Are there any additional questions from the Committee?

Assemblywoman Carlton:

I have had numerous little cancers removed from me. I am very pale and I live in the desert. I am a piece of bacon. I am doomed. I know that. So I wear sunscreen protection number 50 and do the best I can. I understand what you are trying to accomplish. Someone under 18 will have to have permission. We do not sell cigarettes to kids; we do not let them have their parents' permission to smoke. I think this is fairly lenient in allowing parents to have some say about what they want their children to be exposed to.

I am curious about going to court and the fees for court and the fines. Usually, if we find someone breaking the rules, we fine them. It goes to the General Fund. We do something along that line.

Senator Copening:

Because we have such a huge budget deficit, I did not want to have a fiscal note attached to this. Generally, when we put regulations in place with these types of prohibitions, it comes with a fiscal note, because it requires more inspectors to make more regular visits to these tanning bed facilities. I realized that solution was not going to be feasible in our current economic situation. The next best thing, in my opinion, was to give the parents the power to take legal recourse. Primarily, though, we want the tanning bed facilities to be accountable so that they know there is a penalty that comes with not following the rules should this law pass. That is the hammer that would make sure they proceed with due diligence and get permission and know it is the parents who are escorting their child.

Assemblywoman Carlton:

Are these establishments inspected by any of the health departments in this state, in addition to their typical business licenses? Are there any sanitation inspections or other things along that line?

Senator Copenig:

Thank you for that question. I do not know the answer to that. The lobbyist for the Indoor Tanning Association with us may be able to answer that question for you.

Chair Atkinson:

Are there any additional questions? [There were none.] Anyone else in the audience wishing to testify in favor of Senate Bill 291 (R1) here or in Las Vegas? [There was no one.] Is there any opposition to Senate Bill 291 (R1) here or in Las Vegas?

Alisa Nave, representing the Nevada Justice Association:

We have a friendly amendment to S.B. 291 (R1), which we submitted late this morning. It would amend section 6, subsection 4 of the legislation to replace the standard of good faith with one of reasonable care. We thought that is a more appropriate standard in this context. We have spoken with Senator Copenig and we want to work with her for the work session next week.

Chair Atkinson:

Are there any additional questions from the Committee? [There were none.] Anyone else wishing to go on record in opposition to S.B. 291 (R1)? Is there anyone wishing to give neutral testimony on Senate Bill 291 (1st Reprint)? We will close the hearing on S.B. Bill 291 (R1) and open the hearing on Senate Bill 329 (1st Reprint).

[Senate Bill 329 \(1st Reprint\)](#): Revises provisions governing prescriptions.
(BDR 54-904)

Senator Shirley Breeden, Clark County Senatorial District No. 5:

This bill makes several important changes to Nevada's laws concerning prescriptions. Before we go into it I would like to let you know about the stakeholders involved in the original bill and this reprint. They include the Nevada State Medical Association, AARP, the State Board of Osteopathic Medicine, the Retail Association of Nevada, Sierra Health and Life, and Planned Parenthood and its affiliates. We met and worked to bring this bill into existence.

Existing law authorizes a doctor to ask a patient if he or she wishes to have the symptom, or purpose, for which the drug is prescribed included on the label of a prescription container. At the patient's request the doctor must include that information on the written prescription as well. Passage of this bill will require medical practitioners to post an 8 1/2 by 11-inch sign, entitled "Notice to Patients" in each examination room, which would notify the patients of their right to have a medication's purpose or symptom printed on a prescription label. Each sign will be written in English and Spanish, and if requested by the patient, the practitioner must instruct the pharmacy to include on the written prescription the symptom or the purpose for which the drug is prescribed. I believe giving the patient the option of having this specific information included on the container's label will help minimize errors in prescribing medications and filling prescriptions and administering the medications.

As a former caregiver to my aunt, who took 14 different types of medications, I remember it was really difficult to determine which prescription was for what purpose. So this is a safety issue, and if any of you have ever been a caregiver, I am sure that you would understand the difficulty in trying to determine what the prescriptions are for and when you should administer them. This bill also requires the Board of Medical Examiners and the Board of Osteopathic Medicine to encourage physicians to obtain continuing education to help patients manage their medications.

Finally, S.B. 329 (R1) provides that the state or the pharmacy or the Department of Public Safety may educate physicians and the public on patients' right to have the medication's purpose printed on the prescription label. These provisions will make it easier for children to properly care for their aging parents, make it easier for caregivers in general to ensure that they are administering the proper medications, and make it easier for emergency medical technicians and emergency room physicians to determine what a patient might have ingested. When the stakeholders and I met, we talked about all the different circumstances which may arise, and ideas came out of the testimony on the Senate side. So we thought of providing notice to a patient in doctors' offices. Right now people are not aware that they can ask the doctor for this, so this is one way to start to educate folks about their rights. We also decided, and the agencies agreed, that they would work at educating their doctors; since this is a new law they recognized that they have an opportunity to educate their patients about requesting this type of information on their prescription bottles.

Chair Atkinson:

Are there any questions from Committee members?

Assemblyman Segerblom:

I know this bill originally made it mandatory that they had to provide the purpose of the drug on the label. Have you thought about phasing it in and giving them two years to provide the notice, and then, after two years, making it mandatory?

Senator Breeden:

That was not discussed. This was what we worked out in the deal. I would be amenable to include that, but right now that is not what they wanted.

Chair Atkinson:

Are there any other questions from the Committee? [There were none.] We will now call up the folks who are in favor of Senate Bill 329 (R1).

Barry Gold, Director of Government Relations, AARP Nevada:

I am going first because AARP Nevada had some history with this bill and was one of the stakeholders that brought it into the building a couple of sessions ago with Assemblyman Bobzien, who initially sponsored this bill. I thought I would talk about the bill's background and address Mr. Segerblom's question as well, since I had that history with the bill and had talked to some of you about the prescription drug issue before, when AARP did a lot of prescription drug legislation.

This is a simple yet necessary piece of legislation. Consumer information and patient compliance are essential to quality health care outcomes. Understanding what your medicine is for is one of the most basic consumer needs. The American Association of Retired Persons has talked about this legislation before. We were involved in helping pass the legislation where patients could ask their doctor whether they wanted this information to be included on the label, because it was so important. To address Mr. Segerblom's question about making this mandatory, there may be some people who do not want the symptom or the reason why they are taking the drug on the label, and we wanted to protect their privacy. We thought that was very important. There are certain medications for which you might not want the symptom or purpose to be listed on the label of the prescription, so that was a consideration. In terms of having the bill passed, AARP did a lot of patient education. We reached out to our members. We put information in our newsletter and in our bulletin. We created a special flyer on prescription drug legislation in Nevada that told people this was available and we spread this all over the state. Unfortunately, we ran out of those flyers a couple of years ago, and that was only going to be for the 305,000 AARP members across the state. However, there are many more people who are affected by this and could really benefit from having this information available.

Looking forward, the question is how many of you would go to a restaurant and order something to eat knowing only what shape or color it was? That is the case when many people take their medications: this is a small, round, yellow pill I take twice a day. Many people take multiple medicines daily, and they usually do not remember what they are taking them for. Older adults take more medicine than any other age group, and many go to multiple physicians as well. When a patient is given more than one prescription during a doctor's visit, it is very easy to forget what each one is for. Family members, as we have heard so often, are faced with the task of helping their sick parents or other relatives encounter a kitchen table or a medicine cabinet full of medications and have no idea what any of them are for. How can they help their family members without this information? And you may find one bottle on the kitchen table that is completely full, which indicates that someone is not taking it; is that the heart medicine that they really need, or is it for that rash that they do not have anymore and maybe do not need to take?

So, prescription labels need to be easy to understand and to contain information that people can have immediate access to, and which will help them to have positive health outcomes. Voluntarily listing the symptoms or purpose related to the medication will help Nevadans and their families, as will letting people know they can request that information while they are at the doctor's office. How often do you sit in the doctor's office and stare at what is on the wall? A flyer on the wall could inform you of your options. "Oh! I can have the purpose of my medication specified on my prescription bottle. What a cool idea." So having that information available at the doctor's office will give people the opportunity to do this right at the time their medicine is prescribed. That is a really innovative solution. There are many complicated, intricately intertwined facets for improving the health care system. However, this one is simple and easy to do. This will help people.

People can also decline to have this done; they do not have to do it if the need for privacy is a concern. Members of AARP have said they want to stay healthy, so on behalf of our 305,000 members across the state, AARP Nevada supports S.B. 329 (R1), and urges this Committee to pass it, to help Nevada families participate more effectively in their health care.

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

Acting Chair Carlton:

Thank you, Mr. Gold. Mr. Horne has a question.

Assemblyman Horne:

Mr. Gold, would not it be easier to have that information posted at the pharmacy rather than in each examining room at the doctor's office? I do not know where they would put it. When I go to the doctor or take my kids, I know that at the front desk it is very busy. I would not necessarily see the notification to patients if it were posted there, and they would have a lot of different notices in all of the rooms. Since there are a smaller number of pharmacies, it seems that you would be more likely to see the notice and take advantage of it as you are about to have the prescription filled. Even if you go through a drive-thru, like I oftentimes do, having the notice right there on the window would seem to be more effective.

Barry Gold:

That is an excellent question. The difficulty with that is that the pharmacies are not equipped to do that and really should not be the ones the responsibility falls on, because there are a lot of medicines that are prescribed for multiple reasons. A medicine may be prescribed for many things. The drug monoxidil is for growing hair. It is actually a heart drug too. So, a lot of medicines are prescribed for multiple reasons, and we really do not want pharmacists to be involved in this, because they may not know why your physician prescribed a certain medication. That would be an issue. If the notice is put in one place outside the physician's office, with people going in and out, they may not see it there. The doctor's actual examining room is where he is going to be saying what your conditions are, and that also is usually where he gives you your prescription. That is a great time to say, "You know, I would love to have the reason why this is prescribed on my prescription, so that I can remember and my family members will know. If something happens to me and the paramedics have to come, they will know as well."

When this bill was heard in the Senate, Rusty McAllister of the Professional Firefighters of Nevada, mentioned that emergency personnel sometimes find a patient has a shoebox full of medications, but because drugs can be prescribed for multiple reasons, it is difficult to figure out what they are being prescribed for. The more we can empower consumers and patients to get this information, and have the notice available in that exam room, the more it would really benefit a lot of people.

[Chair Atkinson reassumed the Chair.]

Chair Atkinson:

Are there any additional questions from the Committee? [There were none.]

Amber Joiner, Director of Government Relations, Nevada State Medical Association:

The Nevada State Medical Association was involved a great deal in the passage of the original law

in 2007, so it makes sense that we have some educating to do. We were involved in it because we really believed that the patients need all the information they can get about their treatments and their prescriptions. We think that this is a good way for people of all ages to be able to keep track of their own medications. Many of us end up with bottles in our cabinets that we cannot identify and have to go to the Internet to look them up. I think this is helpful for all age groups, including the AARP's, as Mr. Gold mentioned.

To answer Mr. Segerblom's question of why in the Senate we had concerns about it being mandatory, there are a lot of situations where we could not find the adequate language to anticipate all the different scenarios and situations that might arise. To require that a physician ask this question of every patient, with every prescription, would entail situations where in our state, for example, physicians can call in prescriptions; they may not even get to talk to the patient. That would be a problem. We have situations where people are being discharged from hospitals and do not have the opportunity to speak to the physician. We also have situations where they may not be mentally capable of saying yes or no to something like that, and then we also have liability issues. We worked very hard to try to come up with language that would include all situations, and it just was not possible. When we talked to the sponsor, we realized the real problem was a matter of education. We pledged to do a better job of educating our members about this new law.

There are three really good educational components in this bill. First, it would provide as an option that one of a doctor's continuing medical education credits could be in this topic of medication management and informing his patients about this labeling option. Second is to post the signs in the exam rooms. We think that this is a good place for people to become aware of this option. Third is to authorize it to be part of the educational programs that are already happening under the Uniform Controlled Substances Act through the Health Division and other entities in our state. We fully support this bill. We think that it is an issue of education, and we pledge to continue educating our doctors. All the physicians we have spoken to about this program think that it is a good idea for their patients to know about it, and they have pledged to start asking the question more often.

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association:

I represent the physicians, not the State Board of Osteopathic Medicine. We were part of the state coalition group and are very interested in participating in this. Our Association has a longtime dedication to patient safety and patient education. We have done programs for the public. We have done programs for physicians on helping patients become partners in their own health care. Very often patients come in, they see a physician, and they want to leave with their magic piece of paper that is going to make them well, hopefully, within a couple of hours. And with any luck it will be cheap.

This is not reality for many patients. Pharmaceuticals are becoming more and more complicated, and more and more difficult to deal with. Some patients need the privacy of being able to keep their condition to themselves, regardless of whether or not it is a condition that others would consider as needing to be kept secret. If any of you have ever dealt with elderly patients, you know they tend to keep that information to themselves, and they should have the right to do so; we have privacy laws that allow them to have that. So we felt that one of the best compromises was an option for patients to see a placard, a very large sign, in an exam room and ask the physician to give them that information if they would like it, remembering that the retailers do provide information in writing on the prescriptions when patients pick them up. Whether or not they read them is a conversation for another day, but the information is available to them. We appreciate that this information is given to us by law in Spanish already, so that we do not have interpretation problems; that was one of our other concerns. We appreciate being part of this and we feel that this will help, through education of the physicians and then the patients, in completing the health care partnership.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Segerblom:

Is the physician required to tell the patient why he is prescribing something?

Denise Selleck Davis:

To be honest with you, Mr. Segerblom, I am not certain that I have ever seen it written that they are required to tell a patient. Again, we have a lot of scenarios that we might look at. We have patients who are incapable of understanding what they are being treated for, whether due to age or mental incapacity or, in some cases, whether or not they are conscious in hospital settings. I have never seen anything written to that effect, so I cannot tell you

definitively that there is a particular law; there is no such law in the osteopathic statute.

Assemblyman Segerblom:

I did not mean that it is in the law, but ethically, or as part of being a physician, are you supposed to tell the patient why you are doing something?

Denise Selleck Davis:

There is a tenet within the osteopathic teachings that the patient is a partner in his own health care and that he is to be educated in his own healthcare, including how to maintain and improve it. I do not know if that answers your question.

Assemblyman Segerblom:

Yes, it does.

Chair Atkinson:

Are there any other questions for this witness? [There were none.]

Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates:

We, too, have a philosophy of educating our clients, and women in general to become partners in managing their health care. We support S.B. 329 (R1) as amended. We did have some concerns that we hope can be clarified in the legislative intent and through the discussions in both houses of the Legislature. Some of the concerns originally involved ensuring that this bill did not interfere with the Health Insurance Portability and Accountability Act (HIPAA) regulations concerning patient privacy. In particular, we needed to be sure we protected legal rights to access confidential care as outlined currently in the law. Because we specialize in women's reproductive health care, oftentimes we have clients who have prescriptions where they do not want the reason that they are being treated to be listed on the label, and we think that this should be protected. We also have concerns about making sure that our clients can get their legitimate prescriptions filled without question and without delay. We think that this educational approach addresses those concerns. We appreciate all the work that has been done on this bill and urge you to support this bill as amended.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] Anyone else wishing to testify in favor of S. B. 329 (R1)?

Liz MacMenamin, representing the Retail Association of Nevada:

We worked with the Senator on this bill. I have heard a lot of questions answered about retail pharmacies, so I am coming to say, "Ditto." We continue to support this bill and hope to see it passed.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] Anyone else wishing to testify in favor of S. B. 329 (R1)? Is there anyone wishing to testify in opposition to S. B. 329 (R1)? Is there anyone neutral? Senator Breeden, did you want to make a closing statement?

Senator Breeden:

Thank you for hearing this bill this afternoon. I also thank the stakeholders and urge the bill's passage.

Chair Atkinson:

We will close the hearing on Senate Bill 329 (R1) and bring it back in one of our work sessions. We will now open the hearing for Senate Bill 411 (1st Reprint). We will have Mrs. Carlton take over as Acting Chair.

Senate Bill 411 (1st Reprint): Provides for the regulation of medication aides.
(BDR 54-1104)

Acting Chair Carlton:

Good afternoon, gentlemen; please identify yourself for the record and proceed.

Renny Ashleman, Acting Chairman, Nevada Health Care Association:

With me today is Mr. Perry, who is also with the Nevada Health Care Association (NHCA). Senate Bill 411 (1st Reprint) does a number of valuable things. Number 1, it offers a method of offering an upgrade to the employment for the people who are currently employed as nurse's aides. That is an entry-level, dead-end job, and this gives them something that they could aspire to and which perhaps could lead to a career in nursing, or a more interesting career in the medical field and a better paying job. Number 2, this bill has been adopted in, I think, 22 states, and it has been the subject of a number of academic studies and pilot programs, all which show that either it holds even or, in general, reduces the number of medical errors that are committed in the dispensing of drugs. Number 3, it frees nurses to spend time evaluating and working with patients instead of just pushing the med carts around.

The first couple of pages utilize the term "medication aide – certified" and place it in various coordinating chapters. The first four pages extend whistleblower protection for not being required to do something that you do not believe is safe

for the patient, or for the practitioner, and it puts the medication aide that is certified in those sections. The next sections identify the powers of the State Board of Nursing, which was drafted in conjunction with the Board. They are in agreement with the writing of this and support the bill. Their personnel are present here today.

Moving to section 8 on page 6, we have the requirements to retain one of these certificates. You would have to have a year of continuous employment as a nursing assistant; have a high school diploma; have completed a literacy and reading comprehension process; take a training course of 100 hours or more; and pass an examination as required by the Board. People who transfer from out of the State of Nevada and who have had this certification elsewhere have to have continuous full-time employment and the various other requirements, including taking an examination. The Board can further designate the type of medical facilities that may employ medication aides who are certified. I think that the general intention of the Board—I do not mean to speak for them—is that they would pick some of our facilities that it thought would be ideal for this process to try it out originally and then see how the program grew. Section 10 tells the kinds of things that the certified aides can do. They are under the supervision of an advanced nursing practitioner or a registered nurse. According to protocols developed by the Board, and under the description of what they can and cannot do, and they cannot deal with controlled substances and various other substances. They cannot do any of the medical thinking that would be involved, such as calculating drugs dosages, destroying medications, receiving orders, transcribing orders, et cetera. That is all to be done by the nurse. Those kinds of things take advanced training. The Board can adopt regulations prohibiting any additional activities they need to.

Section 11 makes various abuses unlawful. You cannot sell a certificate, you cannot practice through an illegal or fraudulently obtained certificate, and you cannot conduct a training course unless the training course has been approved by the Board. The next set of changes, again, primarily place this “medication aide – certified” within the various categories of regulations and controls that would be imposed on other nurses and other persons of this type throughout the State of Nevada. On page 14, we have the schedule of fees and charges established that we are in agreement with. I believe the remainder of the bill is technical or conforming. I will be happy to answer any questions or go on to Mr. Mathis, who wants to put a little more detail into my quick summary.

Daniel Mathis, representing the Nevada Health Care Association:

We have a report that we passed out titled the “Medication Aide Fact Sheet” ([Exhibit F](#)). I am not going to read it to you, but I am going to point out a few

things. On the first page, according to an article for the National Conference of Gerontological Nurse Practitioners (NCGNP), there are several different ways of making errors with medications, and the ones that we are trying to address with the medication aide bill involve the administration of the medication. Ordering or prescribing the wrong drug, dosage or route accounts for 48 percent of the medication errors. Transcription errors account for 11 percent and dispensing errors 14 percent of all medication errors. The medication errors that we are addressing here are in the skilled nursing facilities, that is the medications dispensed on-site.

On page 2, the study talks about the percentage of medication errors made by each personnel group. Licensed practical nurses (LPNs) had 54 percent, and registered nurses (RNs) were involved in 29 percent of medication errors, followed by pharmacists at 6.9 percent, physicians at 4.3 percent, patients themselves at 2.3 percent, and the certified medication aides at 2.1 percent. We really feel that the medication aides will reduce the amount of medication errors in the state's skilled nursing facilities.

Before I joined the NHCA, my role for the last ten years, while working for private groups, was to go in and fix broken facilities. Although I am not a clinician, it has very often been my role to go into a building that has had problems that include medication errors, and we fix that. One method is to isolate the personnel that are distributing or dispensing the medication and work with them to reduce their interruptions and make them focused on the whole continuum of the medication administration, from the order that the physician writes to the dispensing performed by the nurse or medication aide. I have worked in four states, two of which had medication aides and two of which did not, and from my own personal experience, I can tell you that the states that have medication aides have lower medication error rates.

Acting Chair Carlton:

Mr. Perry, did you have anything that you wanted to add?

Charles Perry, representing the Nevada Health Care Association:

Some of you know that we have had similar bills in the past, but this is the first time that we have enjoyed the current level of support. Our bill made it through the Senate with no opposition whatsoever. This time around for the very time we do have a letter of support from the Nevada Nurses Association ([Exhibit G](#)). We have worked very closely and collaboratively with Bobbette Bond, the Director of Public Policy for the Culinary Health Care Fund and the representative for the Health Services Coalition. I will not say, on their behalf, that they support it, but I will point out that they have not been here in opposition. We think this is a very good bill that has a little bit of economic

development involved in it, because it does give us a career ladder to offer to folks who are working in our profession. In these types of economic times, the health care community is about the only sector that is doing a lot of hiring, so we are asking for your consideration on that aspect, too.

Acting Chair Carlton:

Are there any questions from the Committee? Seeing none, I have a couple of questions. Does this apply to nursing assistants who would want to become a medication aide and be certified? Can you gain that certification here in the state? Are there classes for this?

Renny Ashleman:

The Board proposes to set up these training programs, which we will pay for, and we have a fairly elaborate description of what that will require in the bill.

Acting Chair Carlton:

Since this person is starting as a nursing assistant and then moving up, what qualifications does it take to become a nursing assistant, and is a background check part of it?

Renny Ashleman:

All of our employees have background checks, but these are otherwise basically entry-level positions. Some of these requirements exceed what they would have just to be an assistant, so not all of them would be qualified for this; we do not envision them all applying anyway.

Acting Chair Carlton:

Is that background check through the employer or through the regulatory board?

Charles Perry:

It is through the regulatory board. To be a certified nursing aide, there is a definite qualification and education process that you have to go through in the State of Nevada. It is a minimum of 75 hours of training before you can take the test for certification, and during that period of time you are involved in a lot of education.

Acting Chair Carlton:

On page 6, in section 8, subsection 2, there is a set of qualifications for applications to be "certified in this State by endorsement." Will the Board review the substantial equivalency to make sure that background checks are appropriate? We know that there are some states that do not fingerprint, and that has always been the tough part for me, because you really do not know

who you are dealing with unless you check that. I wanted to make sure that that would be incorporated into those standards.

Renny Ashleman:

All of the people they license and certify have background checks, so these people would as well.

Acting Chair Carlton:

And that includes fingerprints?

Renny Ashleman:

Correct.

Acting Chair Carlton:

I have no other questions. Does the Committee have any additional questions?

Assemblyman Hardy:

Have you spoken with the Executive Branch on the fiscal note that is on this bill to see where it stands on it?

Renny Ashleman:

Testimony given by the Board in the other house is that this is already in their budget. This is a stand-alone Board that is financed by fees. We would pay the fees to them, but they have already put it in this year's budget, so it is already taken care of with the Executive Branch.

Acting Chair Carlton:

There no General Fund dollars in the boards, so that we are clear on that. It would still take a two-thirds vote because of the fee, but it is an approved fee. Are there any other questions? [There were none.] Is there anyone else in support of Senate Bill 411 (R1)?

Fred Hillerby, representing the State Board of Nursing:

As the other speakers and Mr. Ashleman have said, we have worked very closely with this group, being sure that we are convinced that the patients' well-being and the public safety are protected, and we think that has been accomplished. Like Mr. Ashleman, we are prepared to implement our responsibility to the Board, so that in a response to Assemblyman Hardy's question, you will notice that there is not an increase of fee for the separate license category, so it would not come under the concerns that the administration has about increasing fees. We do not anticipate any issues with that.

We think this is very important to allow. In cases where patients have chronic conditions and receive the same medications over and over again, using medication assistants is a safe way to administer those medications. In fact, it is safer than when a nurse who does it is continually interrupted, because she is asked about a patient's condition or has to go and see that patient. We think this is a good step to protect those patients in the long-term care setting, and we do support the bill.

Acting Chair Carlton:

Are there any questions from the Committee? I do have one quick one. In another bill's licensing schemes, sometimes one professional works with another, either under direct supervision or in collaboration. When it comes to the malpractice issues, who takes care of that? If something were to happen with a medication aide working under the supervision of a nurse or doctor, who is carrying the insurance for that aide?

Fred Hillerby:

I believe that the employer of the aide carries the overall

Acting Chair Carlton:

The employer would carry the responsibility of those actions, whether it is a doctor, nurse, or facility?

Fred Hillerby:

Correct.

Acting Chair Carlton:

Thank you. Is there anyone else wishing to testify in support of Senate Bill 411 (R1)? I see no one. Is there anyone in opposition to Senate Bill 411 (R1)? I see no one. Anyone in neutral? [There was no one.] I will close the hearing on Senate Bill 411 (R1) and open the hearing on Senate Bill 36 (1st Reprint), a podiatry bill.

Senate Bill 36 (1st Reprint): Revises provisions governing the State Board of Podiatry. (BDR 54-502)

Susan Fisher, representing the State Board of Podiatry:

This bill corrects two little issues that we discovered within the State Board of Podiatry and with our current statutes.

Problem No. 1 that we discovered is that while *Nevada Revised Statutes* (NRS) 629.051 requires all health care professionals to retain medical records and patients' records for a period of five years, there is no requirement in our

statute to require the licensee to let us know where those records are stored or located. So it does not do a lot of good if they are retaining them and we do not know where to find them, especially these days with so many physicians going out of practice, closing their businesses, looking for lower-priced office space, or moving out of the state. Their patients call us, looking for their records, assuming that the Board stores all the records, which of course we do not. So we are adding into the statute a requirement that they notify us as to the location of the records for a period of five years, whether they are in state or out of state. We are not requiring anything different on how they are maintained. Under NRS 629.051, they can be hard copies, on microfiche, or in a number of other forms, and that still stands. There are a number of other licensing boards that already have this requirement in place, and we want to join with them. The language that we have proposed in the bill is taken directly from the Board of Medical Examiners statutes. There are no amendments to this bill.

Problem No. 2 that we seek to fix is that we were notified last September by the Department of Public Safety that we can no longer require fingerprints for our prospective licensees. For the last ten years, we have required fingerprints, as most health care professional groups do, but we did not have that language in the statute. We had it in the regulation, but not in the statute. [Ms. Fisher submitted a handout that listed the NRS and the *Nevada Administrative Code* (NAC) sections relating to fingerprint requirements for health care workers ([Exhibit H](#)).] I think you have on the Nevada Electronic Legislative Information System (NELIS) and in front of you a letter dated September 14, 2010, that we received from the Nevada Department of Public Safety saying that if you have this in the statute, you are in compliance ([Exhibit I](#)). We are simply putting that language into the statute so that we can require fingerprints. There is no fee involved in this, so there is no fiscal note required. When the licensees give their fingerprints, they submit the payment directly to the Department of Public Safety.

[Assemblyman Horne assumed the Chair.]

Acting Chair Horne:

Are there any questions for Ms. Fisher?

Assemblyman Daly:

Is this unique to podiatry, or are there other statutes for other licensing boards? Do you have the same issues with other disciplines?

Susan Fisher:

A lot of the other licensing boards already have in statute the requirement to submit fingerprints. There are a couple of others that had it required through regulation rather than statute, and I am assuming that if they have not already been notified by the Department of Public Safety, they probably will be at some point.

Assemblyman Daly:

I meant the part about the records.

Susan Fisher:

Same thing there. There are a number of professions that require the location of records, such as physicians, perfusionists, physician assistants, and practitioners of respiratory care—all those professions that are regulated by the Board of Medical Examiners. There are several that do not, including chiropractic, optometry, and homeopathic; it is not in statute that they have to notify regarding the location of the records of former patients.

Acting Chair Horne:

Are there any other questions for Ms. Fisher? I see none. Is there anyone else here in Carson City or in Las Vegas wishing to testify in favor of Senate Bill 36 (1st Reprint). [There was no one.] Anyone wishing to testify in opposition to S.B. 36 (R1)? [There was no one.] Anyone in the neutral position wishing to testify? I see no one. We will close the hearing on

Senate Bill 36 (1st Reprint). If there is no other business to come before the Committee, we are adjourned [at 3:40 p.m.].

RESPECTFULLY SUBMITTED:

Diane O'Flynn
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 11, 2011

Time of Meeting: 1:50 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Roll Call
S.B. 331 (R1) & S.B. 368	C	Dane Claussen for Elisa Cafferata (NAPPA)/American Civil Liberties Union of Nevada	Nevada Advocates for Planned Parenthood Affiliates – Memo
S.B. 291 (R1)	D	Senator Allison Copening	Written Statement
S.B. 291 (R1)	E	Senator Allison Copening	Graph–Tanning Fines in Other States
S.B. 411 (R1)	F	Daniel Mathis/Nevada Health Care Association	Medication Aide Fact Sheet
S.B. 411 (R1)	G	Charles Perry/Nevada Health Care Association	Letter of Support from the Nevada Nurses
S.B. 36 (R1)	H	Susan Fisher/Nevada State Board of Podiatry	Fingerprinting in NRS and NAC
S.B. 36 (R1)	I	Susan Fisher/Nevada State Board of Podiatry	Letter, from Nevada Department of Public Safety