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

Seventy-Sixth Session
March 4, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 12:06 p.m. on Friday, March 4, 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 Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Oceguera
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman Ed A. Goedhart (excused)
Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Sheila E. Walther, Supervisory Examiner, Division of Mortgage Lending, Department of Business and Industry
Nancy Corbin, Acting Commissioner, Division of Mortgage Lending, Department of Business and Industry
Louis Ling, Board Counsel, Nevada State Board of Optometry
Fred Hillerby, representing Nevada Optometric Association and State Board of Pharmacy
Alaina Cowley, representing Luxottica Retail North America Inc.
Barbara Morrow, representing Astellas Pharma US, Inc.
Samuel McMullen, representing Astellas Pharma US, Inc.
Elizabeth MacMenamin, representing Retail Association of Nevada
David Chan, Pharmacy Director, Scolari's Food and Drug Company, Sparks, Nevada
Ed Smith, District Director, CVS/pharmacy, Reno, Nevada
John Pappageorge, representing Health Services Coalition
Kam Gandhi, Pharmacy District Manger, SuperValu, Las Vegas, Nevada
Bonnie Brandt, Regional Pharmacy Supervisor, Smith's Food and Drug Centers, Las Vegas, Nevada
Jay Parmer, representing Generic Pharmaceutical Association
John Sande IV, representing Medco Health Solutions

Chair Atkinson:
[Roll was called, and a quorum was present.] We are going to open in work session, and we have one bill. Ms. Paslov Thomas will go over Assembly Bill 77.

Assembly Bill 77: Makes various changes relating to mortgage lending and related professionals. (BDR 54-481)

Marji Paslov Thomas, Committee Policy Analyst:
[Introduced Exhibit C.] Assembly Bill 77 was heard on February 23. It makes various changes relating to mortgage lending and related professionals. It was sponsored on behalf of the Division of Mortgage Lending of the Department of Business and Industry.

The bill revises provisions relating to the licensing of escrow agents and escrow agencies. It establishes penalties for a person who offers services as an escrow agent or escrow agency but is not licensed. It also establishes provisions governing the arranging or servicing of loans by a mortgage broker in which an investor has an interest. It expands the exemptions for persons and organizations that are not regulated under the provisions of Chapter 645B of *Nevada Revised Statutes* (NRS). The bill revises provisions relating to mortgage agents and mortgage brokers, including requiring a mortgage broker to review an impound trust account annually. It requires the Commissioner to adopt regulations regarding construction control. The bill also enacts and revises provisions to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act).

Nancy Corbin, the Acting Commissioner of the Mortgage Lending Division, has submitted a proposed amendment. There is also a statement of intent for the amendment. Some of the highlights of the proposed amendments are to allow for licensure of construction controls under NRS Chapter 645A, to allow for the immediate licensure and protection of persons who place monies in these entities, and to require applicants to provide requested information within specified time frames to facilitate effective licensing processes. The amendment also affords protections to private investors and promotes accountability by mortgage brokers while mitigating restrictions on businesses and promoting the availability of private capital. It deletes several sections in the bill which may deter business or the availability of private capital. It also removes the provision of an increased renewal fee for mortgage agents, which was an issue brought up during Committee.

Chair Atkinson:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
I understood the Division had wanted to delete sections 13 through 40. I do not think we spent much time discussing those sections, and now they want them back in the bill. I would like some clarification.

Sheila E. Walther, Supervisory Examiner, Division of Mortgage Lending, Department of Business and Industry:
Subsequent to the Committee meeting, our office was contacted by people with concerns about the deletion of those sections. Over the last year the Division has received about 65 complaints from private capital investors, relating to various acts that were happening to them with these types of transactions. The Division spent a lot of time reviewing the comments made by both consumers and the industry from the workshops we had. We revisited the issue based on those comments. We felt that we found a good compromise for everyone. We took out the sections that were more burdensome and left in the ones that were directly addressing the types of problems we were getting complaints about. We did leave out several of the sections, but we put a couple back in, as well as adding two additional sections. We had a kind of work session this week. The Chair was kind enough to bring all parties together. We went over all the proposed amendments, and it was my understanding at the meeting that everyone was in agreement with what we were taking out and what we were leaving in as a reasonable compromise to protect consumers and private capital. I felt that some of the proposed changes would deter private capital, because there was not the protection, and we are trying to provide that with the addition of some of these items.

Assemblywoman Carlton:
I have a question on subsection 7 of section 4, where it says "with conditional approval." I am assuming that is an application for licensure that you are giving conditional approval to? Am I correct?

Sheila Walther:
We did that because it is consistent with what we have in our other chapters of NRS. Unfortunately, for the license process to be efficient when we first give application and we do background investigations, sometimes we will ask for additional information, and we end up waiting weeks, months, and sometimes up to a year for the completion of the process. We have to have time frames to ensure applicants are providing information promptly so we can finish the licensing process efficiently and have current information on their credit and their background. We currently have had a couple of escrow applications for a year, and we are still waiting for items.

Assemblywoman Carlton:
Are people allowed to work under this condition? Will they be out there doing jobs, or are they in a holding pattern?

Sheila Walther:
No, they are in a holding pattern. It is a term we use in other sections of our law. It means that we have determined that they have met the prescribed standards, but now we need additional items like the first-year licensing fee or a copy of their lease to show they are a set-up business. It is a two-step process. They submit the application. We ensure they meet the standards and then go forward and ask for additional items.

Assemblywoman Carlton:
Is there anything in writing that says they are not going to practice while they are waiting for their licensure to be completed? In other cases we do allow provisional licensure and we allow people to submit the final documents on the final test. I want to make sure they are not out there practicing if we do not have the necessary information about them.

Sheila Walther:
I believe in NRS Chapter 645A it requires a license be issued, not just a conditional approval prior to conducting business.

Assemblywoman Kirkpatrick:
What were some of the key problems with the previously deleted sections that are now being put back into the bill?

Sheila Walther:
The brokers that service loans did not have a servicing agreement, or there would be really bad conditions in there; for instance, if the loan defaulted and the party was forced to go into a limited liability company (LLC), they could take any fees they wanted related to the loan. We believe fees have to be earned and be legitimate before they can take them. Nancy Corbin, the Acting Commissioner, can shed some more light as to the other problems.

Nancy Corbin, Acting Commissioner, Division of Mortgage Lending, Department of Business and Industry:
The complaints we typically see on these types of loans are what Sheila has already described. There is the problem of loan servicing agreements that allow people, without any sort of say, to get moved immediately into an LLC once the loan goes into default, so when the loan is foreclosed upon and it is in the LLC, we have no jurisdiction. It has been difficult for investors to receive information, get documents, or obtain a true accounting of the fees that the LLC management is taking. We are trying to put in ample language to provide more protection for the borrowers. One of the biggest complaints is the loss of funds, but a lot of that is attributed to market values and the crash of the industry statewide. There is also the fact that they cannot get the information

they need out of the brokers or the LLC entity once the loan transfers in. I think this amendment, in addition to my office strengthening the disclosure and requiring certain information in those loan servicing agreements, will give protection to the investors.

Assemblyman Conklin:
There are some provisions in the amendment dealing with commercial lending, and I have a bill in to deal specifically with the commercial side of the S.A.F.E. Act. So I am curious. What are those provisions intended to do?

Sheila Walther:
Regarding the provisions that were changed in the exemption language, we changed the natural person making loans to just commercial loans, so that we were consistent with S.A.F.E. One of the people we spoke to this week lends his own money on commercial deals, and he did not want to be precluded from doing that, because the S.A.F.E. Act pertains to residential transactions. In our laws the broker or banker can do either commercial or residential. We have been advised by the U.S. Department of Housing and Urban Development (HUD) that because the license allows for residential loans, they would have to comply and go on to the Nationwide Mortgage Licensing System. It was not intended to incorporate institutional investors. It is my understanding that there have been discussions with many of our licensees who do strictly commercial institutionally funded transactions. Hopefully they can be regulated under a separate chapter, so they will not have to do the testing and the education that is geared towards residential transactions. Right now, under the S.A.F.E. Act and our law, they have to pass a national test, which is the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), and other federal laws that pertain to residential transactions.

Assemblyman Conklin:
So does the bill as amended solve that issue? Or have you left that for another bill?

Sheila Walther:
It would have to be addressed by another bill. There would have to be another chapter to separately regulate commercial and residential transactions.

Chair Atkinson:
Are there any questions from the Committee? I see none. I will entertain a motion on the bill.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 77 WITH THE DIVISION OF MORTGAGE LENDING'S AMENDMENT.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GOEDHART AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

We will now open the hearing on Assembly Bill 20.

Assembly Bill 20: Revises provisions governing the practice of optometry. (BDR 54-501)

Louis Ling, Board Counsel, Nevada State Board of Optometry:
A large portion of A.B. 20 has to do with endorsement. The Board is seeking a way to create licensure by endorsement and encourage optometrists from other states to come to Nevada without having to go through the full licensing procedure. Section 2 of the bill is the heart of the licensure by endorsement language, but there are a number of other sections of the bill that also address licensure by endorsement. Section 3 talks about the examination that will be required of the applicant who is applying by endorsement. Sections 5 to 12 are technical amendments to harmonize various sections of the practice act to accommodate the licensure by endorsement, having to do with fees and various other elements. That is one major component of the bill.

There are also four sections of the bill that deal with some changes to either the scope of practice or limitations on the scope of practice. They have to do with disciplinary hearings and/or litigation that has occurred in the interim. We wanted to be able to address those areas as those issues arose. Section 4 talks about the scope of practice. Essentially, the intent of the language is to say it should be a disciplinary offense for an optometrist to engage in practice beyond the scope of his practice as an optometrist. That has been an issue of late. We have had optometrists who are attempting to practice outside their scope of practice. We want to make it abundantly clear that this is a cause for disciplinary action by this Board.

Section 13 is the next section that deals with limitations on practice or scope of practice issues. In section 13 we have set out the actual causes for discipline. There are a few technical changes that were made by the Legislative Counsel Bureau (LCB) as they were working on the language. There is new language added in subsection 6 of section 13. Instead of "gross incompetency" being a basis for discipline, the Board wanted to clarify what that meant, so they have

given a definition for incompetency: "Incompetency in the practice of optometry or conduct which demonstrates a significant lack of ability, knowledge or fitness to discharge a professional obligation in the practice of optometry." The rest of the language is technical corrections.

Section 14 addresses the definition of what is considered "unethical or unprofessional conduct," which now includes some changes that came out of the recent discipline and litigation I mentioned earlier. In subsection 2 of section 14, we are changing the language to make the intent of the language clearer, so it would be unprofessional for an optometrist to accept employment "as an optometrist or in the practice of optometry, directly or indirectly, from a person not licensed to practice optometry in this State." Subsection 3 of section 14 is broadening the coverage of that, because it has become an issue. In the interim we had an optometrist who was signing prescription blanks for a physician, and that was not covered by the present language. So now we are expanding that language to make sure it is very clear that it will be a disciplinary offense for an optometrist to sign or use prescription blanks of an ophthalmologist, or any other medical professional, or allow another optometrist, ophthalmologist, or medical professional to use an optometrist's prescription blanks.

Section 15 is the last place where we are changing scope of practice or limitation of practice issues. In section 15 we are simply adding the phrase "contact lenses" to part of the house-to-house canvassing section, and we are eliminating the advertising restriction having to do with advertising free optometric examinations or services.

Finally, there are two other sections that affect very specific items. Section 10 features a change for the testing methodology. So instead of having to get a 75 on each area of the examination, the applicant has to get an overall score of 75 or higher to pass the licensing examination. Section 16 repeals two sections, one having to do with the Board distributing a roster of licensees, and the other regarding the scope of reexamination.

There is also a proposed amendment to the bill (Exhibit D). This amendment does two things. It will completely remove section 4, because we have moved that language into section 13. So section 4 is removed and NRS 636.025 will remain as it presently exists. In section 13 we took this concept of practicing outside the scope of optometry, removed it from the scope of practice section, and put it in the disciplinary prohibition section. It is now in new language in subsection 12 of section 13.

Chair Atkinson:
Are there any questions from the Committee?

Assemblywoman Carlton:
In section 2 you are working on a credentialing process and calling it "licensure by endorsement." Can you explain why you are requiring ten years of experience instead of five years?

Louis Ling:
That was a point that the Board members themselves considered. They selected licensure by endorsement rather than reciprocity because that is the trend among boards of optometry in the nation. The ten-year requirement seemed to be the most prevalent requirement. Obviously some states require fewer years than that, but we are trying to stay in line with the rest of the boards of optometry.

Assemblywoman Carlton:
I am not a fan of reciprocity, but I do like licensure by endorsement. I understand what you are trying to do. I have some problems with a ten-year requirement. If we truly are trying to get folks into the state and you add all these other components, I am not sure how many more optometrists you are going to get.

In subsection 2 of section 2, you are giving yourself the permission to license by endorsement at "a meeting of the Board or between its meetings by the President and Executive Director." How would public input happen on that? How would people be involved in that decision if it is just between those two people?

Louis Ling:
In design, licensure by endorsement is intended to set up a simple structure by which if a person meets all the criteria and passes the Nevada Law Exam, he is qualified. So in situations where we are hoping that person will want to get working right away, this allows endorsement to happen between meetings. This Board meets quarterly, so this would prevent people from having to wait when technically they have satisfied all the requirements.

Assemblywoman Carlton:
I have some concern about narrowing it down to one appointed board member and the paid staff making that decision without it being reviewed by the full Board. It is the state that stands behind this license. Sometimes having multiple sets of eyes on it, I think, works a little bit better. How many optometrists do we have in the state right now?

Louis Ling:
We currently have 420 optometrists.

Assemblywoman Carlton:
Is access to optometrists an area of concern in Nevada? Have you received any complaints from people not being able to get appointments with optometrists? [Mr. Ling indicated no.]

You had mentioned some litigation; did you win or lose?

Louis Ling:
We lost that litigation.

Assemblywoman Carlton:
And some of the provisions in the bill will address some of the legalese that happened within that litigation?

Louis Ling:
Yes. Unfortunately, I think you all are aware that occasionally we learn about holes in our practice acts the hard way. That is what happened in this case.

Assemblywoman Carlton:
I understand we try to fix them as we go, but I am having a hard time understanding your practice act and your scope of practice and what you are trying to do here.

Assemblywoman Kirkpatrick:
I am wondering about the changes to fees. Did you just add the endorsement process application to have the exact same fees? What is the theory behind that?

Louis Ling:
This was one of those technical amendments I had referred to; it was added by the LCB. We submitted the licensure by endorsement language, and then they went through and harmonized all the other sections. That is where that language came from.

Assemblyman Ellison:
If I owned a place that sold and made glasses, I could not write a prescription, is that correct? And I still would not be able to if I had a doctor who worked for me? How does that work? For example, say you go to a LensCrafters. They can make glasses but they cannot write a prescription, so a doctor in there would have to?

Louis Ling:
Yes. LensCrafters are opticians. They make glasses. The optometrist or ophthalmologist has to test the eyes and write the prescription. Then the glasses could be made by a place like LensCrafters.

Assemblyman Ellison:
But they cannot write any kind of prescription whatsoever? [Mr. Ling indicated no.] I agree with my colleague regarding ten years of experience and five years of experience. It seems if you want to encourage people to come here, you might want to take a look at that.

Fred Hillerby, representing Nevada Optometric Association and State Board of Pharmacy:
The Nevada Optometric Association is in support of the bill as amended. We have worked with the Nevada State Board of Optometry to come up with what we agree is appropriate language. We certainly agree that any optometrist who practices outside the scope should be subject to disciplinary action.

Alaina Cowley, representing Luxottica Retail North America Inc.:
We are in support of A.B. 20 with clarification. We support licensure by endorsement. However, we are seeking clarification of the exam portion, as outlined in section 3 of the bill. If you look at the Legislative Counsel's Digest it is clear the intent of the bill is to limit the exam to only the criteria listed. However, as currently written, the bill language is not as equally limiting in scope. Our concern would be that an exhaustive examination would limit and take away the benefit of licensure by endorsement. Therefore we are proposing an amendment (Exhibit E) today to clarify that the exam be limited to only the criteria listed and strengthen the language for licensure by endorsement.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else in favor wishing to testify? [There was no response.] Is there anyone in opposition to the bill? [There was no response.] Is there anyone neutral wishing to testify? [There was no response.] We will close the hearing on A.B. 20. We will open the hearing on Assembly Bill 221.

Assembly Bill 221: Establishes provisions governing certain acts of pharmacists. (BDR 54-1015)

Barbara Morrow, representing Astellas Pharma US, Inc.:
Astellas Pharma is a Japanese pharmaceutical company with U.S. headquarters in Chicago. We make drugs in six therapeutic areas, including transplant, oncology, and dermatology. I would like to state for the record that A.B. 221

does not impact the ability of a pharmacist to do generic substitution. The law regarding generic substitution would not be changed at all. Assembly Bill 221 does not, in any way, impact market share of Astellas or any other drug company. This bill is about patients and preserving the doctor-patient relationship. The reason we are bringing this bill to you is my company became aware that some physicians believe therapeutic interchange was happening. You can have a brand-name drug, and when the patent on that drug expires, a generic or many generic forms of that drug come on the market. Those generic forms are the same chemical ingredients as the brand-name drug, as opposed to therapeutic interchange, in which you may have a number of different drugs. As an example, Ambien and Lunesta are both sleep aid medications. They both help someone fall asleep, but they use different mechanisms of action or different chemical ingredients to do that. So we are proposing to clarify what we believe is already existing pharmacy practice law to say that if a pharmacist is going to switch from one drug to another in a therapeutic class, the pharmacist needs to get the prescribing physician's authority to do that. We believe that is already existing law, but based on some of the comments we were getting back from some physicians, we thought we could affirmatively state that in Nevada law. Currently it is more passively written in the pharmacy practice act, so the purpose of the bill is to clarify that. I am going to let Mr. McMullen continue and go over a proposed amendment.

Samuel McMullen, representing Astellas Pharma US, Inc.:
I wanted to walk you through the amendment (Exhibit F) and explain it so that we can make sure you all understand that we are in support of the bill as amended, not as originally written. The most important parts of the amendment are subsections 1 and 6. We have worked with the bill drafter to make sure there is a very simple and clear statement, or I guess you could say restatement, of the provisions all throughout the pharmacy code that affect this.

As everyone knows, the pharmacy code is written for pharmacists and other people who are practitioners, but it is also written for the public and for patients. This is trying to make sure that, without having to look up all of the Federal Drug Administration (FDA) materials and all of the other volumes of publications on this, one can understand exactly what generic substitution is and, by definition, what generic substitution is not. We think the bill drafter did a good job in subsection 6 of creating two definitions. The widely used phrase for this is "therapeutic substitution"; in Nevada we use the term "therapeutic interchange." We do not want this to be confused with a substitution, because that generally refers to a generic substitution, which is not an issue in this bill. Basically, what the bill drafter did is say that a therapeutic interchange is the dispensing of a therapeutically equivalent drug in place of a drug that is prescribed by the practitioner. They did another great job in

defining exactly what a therapeutic equivalent drug is and, most importantly, what it is not.

We worked with the Executive Director of the State Board of Pharmacy to make sure there was no inappropriate language in the bill. Generic and brand-name drugs have the same chemical structure; this is very important to note. This bill says any drug with the same chemical structure is not involved in this legislation. Subsection 1 states what everybody understands to be the current practice, that whenever a therapeutic interchange of drugs is to occur, the pharmacist has to obtain the consent of the prescribing physician. This bill is about patients and their health. The doctor knows the circumstances best and would understand if this different drug was medically appropriate. There are very valid reasons for wanting to choose a different therapy for people, due to monetary reasons or previous experiences with the drug. We want a clear statement that if this is going to occur, you have to go back to the prescribing physician and have them say that is an appropriate therapy for the patient. We would like everything that is in subsections 2 through 5 deleted, in addition to part of line 7 in subsection 1. These changes came out of our discussions with the State Board of Pharmacy's representative, and others, who clarified that this would make them comfortable and that we were not saying something inconsistent with current law. In those deletions there were issues with potential confusion and other problems. We want to create clarity in this area, so we are deleting those subsections. In every section after section 1 of the bill there are other things put in by the bill drafter to make sure there was absolutely no change in health insurance, and this bill did not affect that. We wanted to make sure there was no change to the economics or the understandings of anything relating to health care plans or anything of the like. It is not to change the law, just to make it clear.

Assemblyman Grady:
In subsection 1, on line 8, where it says the doctor can accept any oral, written, or electronic means to agree to the therapeutic interchange. Do you feel that oral consent is a good way to handle this? In the future, for liability purposes, do you think it would be better to obtain consent in writing or some way that we could keep a record of?

Sam McMullen:
That language is taken out of the pharmacy code as it relates to other, similar types of activities. Today a lot of these things are done efficiently by phone. What is clear is the pharmacist has an affirmative duty to make sure he has the doctor's approval. I believe this language is considered adequate by the State Board of Pharmacy.

Chair Atkinson:
I would like to state that this has happened to me personally, where they have called and talked to my doctor because the pharmacy was out of a particular drug. So it does happen.

Assemblyman Daly:
What would motivate a pharmacist to do a therapeutic interchange?

Sam McMullen:
I can give you two scenarios, but there are multiple. There are instances where patients are prescribed a drug that they know causes them complications, but they do not realize it until they are at the pharmacy. Another is if the prescribed drug is too expensive and the patient asks the pharmacy if there is a therapeutic alternative. There are many ways this can come up.

Assemblywoman Carlton:
From what I understand, one of the reasons this bill was brought was because the State Board of Pharmacy did not think it had language clear and concise enough to address therapeutic interchange. Is that correct?

Sam McMullen:
No, I would like to clear that up. The only involvement the State Board of Pharmacy has had was to make sure that we were not using incorrect language. It was not prompted by the State Board of Pharmacy. There is no *one* statement about this subject. There are a number of provisions that can be put together. So we wanted there to be one clear statement.

Assemblywoman Carlton:
The crux of this bill, to me, is asking the State Board of Pharmacy its opinion on it.

Chair Atkinson:
I am not sure how often this happens or when it happens, but I strongly believe in the bill. I take Ambien from time to time, and if a pharmacist is going to switch me from Ambien to Lunesta for any reason, I want them to talk to my physician.

Assemblywoman Carlton:
I agree wholeheartedly.

Chair Atkinson:
Is there anyone else wishing to testify in favor of the bill? [There was no response.] Is there anyone wishing to testify in opposition to the bill?

Elizabeth MacMenamin, representing Retail Association of Nevada:
I did some research to try to understand what exactly the crux of this bill is. First, I would like to state that there already are regulations in place in *Nevada Revised Statutes* (NRS) 639.2583, subsection 5, paragraphs (a), (b), and (c) that clearly set up the law in Nevada. Also, NRS 639.2803 clearly defines how a pharmacist can behave in Nevada. In my research I went on to the National Conference of State Legislators (NCSL) website to see what other states have done in regards to drug substitution. Unfortunately, this issue has been going on for a while. It clearly appears to be an attempt to protect the large brand-name products from substitution with generics or less expensive alternatives that may be available to the patient. I am not saying this is something that is being done recklessly; it never has been, and I do not think it has been practiced in any state.

I believe this is a good way to weaken our generic laws. Generic drugs represent 71 percent of the drugs being dispensed; this is on the NCSL website. The brand-name drugs are dispensed 28 percent of the time. Of the total dollars spent for pharmaceuticals in the United States, generic drugs make up 21 percent and brand names, 78 percent. There is such a disparity there, and I believe this bill is a vehicle to help weaken the generics' position.

Chair Atkinson:
I want to clear something up because I think your statements are misleading. I am reading the sections you have referenced in NRS, but they do not address what this bill is doing. If I felt this was going to weaken the ability for someone to get a generic substitution, we would not be hearing this bill. That is not what we are trying to do, and certainly not what this Committee should be trying to do during times like this. I do not want anyone to be misled, because I think you are mixing the two where they do not exist.

Elizabeth MacMenamin:
Perhaps I was not clear, and I apologize for that. I am saying this is already there in statute, and A.B. 221 is redundant because it is restating something that we clearly are already following.

Chair Atkinson:
I am trying to understand how the sections you referenced in NRS 639.2583 correspond with this bill. As I read subsection 1, it addresses generic substitution, referring to lower cost, biologically equivalent drugs, and drugs with the same active ingredients and dosage. Those three things address generic drug substitutions, which is not what we are talking about. I fully believe everyone should have access to generic substitutions, because they are often much less expensive. I do not want anyone to be confused on that.

David Chan, Pharmacy Director, Scolari's Food and Drug Company, Sparks, Nevada:
I have my pharmacist license in Nevada, Oregon, and Texas. This bill seems to be a redundancy of what we are doing today. Currently, I have a number of pharmacists working for me. If any of them do something wrong, he will be disciplined and his license will be in jeopardy, especially if he were to do therapeutic interchange without conferring first with both doctor and patient. So it is already standard practice by all the pharmacists I know of, including myself.

Chair Atkinson:
If it already exists, and it is standard practice, why are you opposed to the bill? I believe it clarifies the issue. What is the harm?

David Chan:
My personal view of the bill is it is redundant and unnecessary.

Ed Smith, District Director, CVS/pharmacy, Reno, Nevada:
There is not a pharmacist who has ever worked under my watch who would think we have the authority, even with the didactic and experiential education we have, to make that decision on our own. To give you an example, CVS/pharmacy has a cost savings program, and we look for opportunities to save patients money. We know that even after talking to the patient, we have to get the doctor's authorization. So this is already common practice. It is known by every pharmacist who has worked under my watch, and over the years I have had 300 to 400 pharmacists work under me.

Chair Atkinson:
I am going to ask you the same question. Why are you opposed if it is clarification for something that is already common practice?

Ed Smith:
I do not believe the bill is necessary. It is common practice. Pharmacists know that they cannot change the chemical ingredient without consulting with the prescribing doctor.

Assemblywoman Carlton:
Common practice does not protect patients if someone breaks the rules. Unless a prescription has "dispense as written" on it, there is some wiggle room. We do not make these rules for the good guys. We make them for the folks who have cut a deal on certain drugs and want to dispense certain drugs. If we had "dispense as written" on every prescription in this state and did not mandate that it be hand written, I think we could really address the problem,

but without that option I believe this protects the public and makes sure that their doctor is consulted. It would also give the State Board of Pharmacy grounds to discipline offenders. Otherwise, after looking at the NRS section that was cited, I would see a fuzzy disciplinary process.

Assemblyman Horne:
If we pass this and it becomes a part of statute, does it increase the severity of disciplinary actions because people would be breaking the law, not just a policy set by the State Board of Pharmacy?

Ed Smith:
Obviously, when there is a statute involved, dictated by where the State Board of Pharmacy is enforcing it, there are more disciplinary actions possible. I manage 47 pharmacists in the northern Nevada market, and if knowledge of that improper activity came to me, I would handle that pharmacist as breaking the law already. I would view him as making a decision that he is not capable of making on his own. I know how I would address it if that situation presented itself today.

Assemblyman Horne:
So that was a yes? [Mr. Smith concurred.]

Assemblyman Ohrenschall:
So right now, if a pharmacist thinks there is a therapeutically equivalent alternative, he would get the consent of the prescribing practitioner. Do you also get the consent of the customer?

Ed Smith:
The majority of therapeutic interchange opportunities come during a consultation with a patient. Typically we get the consent of the patient to contact the physician to recommend a therapeutic interchange in order to lessen the cost burden on that patient.

John Pappageorge, representing Health Services Coalition:
The bottom line is that I do not understand why we have to put this into law since this is common practice. I am sure we have all experienced times when we go to the pharmacy and the pharmacist convinces us to go to a generic or otherwise, but before they do that they call the doctor. If indeed this law is clarifying what I just said, then it may be fine. The Health Services Coalition is concerned that perhaps it is not. The amendment that has been offered has taken care of some concerns.

Assemblyman Ellison:
Have you had a chance to read the proposed amendment (Exhibit F)? It seems to me it has clarified the issue down to a short piece. It looks like this bill is not only protecting the pharmacist, but also the doctor. I do not have a problem with the way this is written.

John Pappageorge:
The organization I represent has not had a chance to read the amendment. So I cannot firmly say where it stands on the bill as amended.

Elizabeth MacMenamin:
In reading the language we think it is so innocuous. In going back and looking at the history of some of the larger manufacturers, my feeling is that this is part of a process they have started in other states to come into the doctor-patient relationship and mandate that a brand-name drug is provided. That is just a perception I have from where this was started. Tennessee and Missouri have both had similar bills. I have to ask why this is needed. Typically statute directs us regarding what we cannot do. This is redundant. There has been no disciplinary action brought. There is a mechanism in place to deal with this issue already. If we do need this written into statute, then what is the purpose of the State Board of Pharmacy? Why do we need this when the State Board of Pharmacy already handles this? My conversation with Larry Pinson, the Executive Secretary of the State Board of Pharmacy, indicated that he believes there is already a mechanism in place to deal with this issue.

Chair Atkinson:
There must be a difference of opinion. I have never heard so much opposition to a bill that is simply clarifying language. Mr. Chan and Mr. Smith, do either of you believe a pharmacist should call a doctor for a therapeutic interchange?

David Chan:
Yes, I believe the pharmacist should and must call your doctor.

Ed Smith:
Yes, I agree they must, and they currently do.

John Pappageorge:
I would like to state that my client also agrees pharmacists should call the prescribing doctor if there is a change or any confusion.

Chair Atkinson:
And would you all agree that is what this bill is doing?

Ed Smith:
It is restating what is already common practice.

Kam Gandhi, Pharmacy District Manger, SuperValu, Las Vegas, Nevada:
I have practiced throughout the country: Texas, California, Illinois, and Nevada. The term "therapeutic equivalent interchange" is not something I have ever heard or practiced. I think we need to go back to the definition of a pharmacist and what his job function is. It is defined in NRS Chapter 639, the pharmacy practice act, that a pharmacist is a dispenser, whereas a physician is a prescriber. Chair Atkinson, if a pharmacist were to change your prescription from Ambien to Lunesta, that would be considered prescribing. That is described in the pharmacy practice act as something we cannot do, because it is out of our scope of practice. As the others who oppose this bill have described it, this is redundant language. Everything is defined in detail in the pharmacy practice act.

Bonnie Brandt, Regional Pharmacy Supervisor, Smith's Food and Drug Centers, Las Vegas, Nevada:
I have been a pharmacist for 30 years, and I have four pharmacist licenses. I do appreciate the parts of the bill that have been deleted by the amendment (Exhibit F). I feel insulted by this bill because it seems to imply that I, as a pharmacist, am overriding a doctor's decision by trying to prescribe a drug in order to obtain some benefit for myself. That is absolutely not the case. Pharmacists are dispensers and educators. We try to complete the process in a health care system to educate the patients so they know what their therapeutic outcome should be and what to do if that does not happen, or if it takes a negative turn. When we talk with patients and they let us know they cannot afford a certain drug, we try to give them options. At no time do we turn around and change the prescription. Our next step is always to apologize and say that we will have to contact the prescriber and discuss with him the issues that have come up. Whatever the prescribing doctor decides is what we will do, and we will follow through with that with a patient. We do give them a voice, and we tend to spend more time with them. Patients are in and out of their doctor's offices rapidly, and they go to the pharmacist for information as to how the prescribed drug will work. I understand this is just meant to clarify, but it is already the law. If pharmacists were stepping outside that procedure and making therapeutic changes to prescriptions, why were they not reported to the State Board of Pharmacy? Why would that physician not go to the Board to address this? The reason we have a Board is to help protect public health and help us practice to the best of our abilities.

Chair Atkinson:
How often is the patient still at the pharmacy when you are filling their prescriptions? Most people I know do not sit and wait there. How often do you have a conversation with them?

Bonnie Brandt:
First of all, counseling is mandatory in our state. It is one of the few states in the country where it is mandatory for new prescriptions.

Chair Atkinson:
Is it mandatory that you do it? Or is it mandatory that you offer it?

Bonnie Brandt:
It is actually mandatory that we do it. We have to counsel on new prescriptions. The patient has the right to refuse and walk away, but our job is to counsel him on the drug.

Chair Atkinson:
I am glad you brought that up, because maybe we need a bill on that. That does not happen. I know from personal experience that counseling does not always take place.

Are there any other questions from the Committee? I see none.

Jay Parmer, representing Generic Pharmaceutical Association:
We have submitted a proposed amendment (Exhibit G). I have not had a chance to extensively review Mr. McMullen's amendment (Exhibit F), so I am not sure if all of our concerns have been addressed. I suspect when it comes to the definition of some of these terms, we are still apart in terms of how the generic industry views interchange and substitution versus how Mr. McMullen's client views them. I will be happy to work with Mr. McMullen and see if we could work out our differences.

There is some narrative included in the amendment we sent you. The generic pharmaceutical industry is concerned that the bill, as currently written, blurs an important distinction between therapeutic substitution of prescription drugs and generic substitution of prescription drugs. You have heard that a generic drug provides exactly the same medicine as a brand-name drug with the same results. You have also heard, in general, that generic substitution means replacing a more costly brand-name drug with a chemically identical and more affordable generic version of that same drug. Therapeutic substitution refers to the substitution of one drug with a chemically different drug approved to treat the same condition. In such an instance the two drugs are in the same

therapeutic class, and are both approved by the FDA, but are chemically different. They are not considered interchangeable by the FDA, and they may not have the identical clinical effect or safety profile. Confusing therapeutic substitution with generic substitution could add confusion to the abundance of information that patients must consider in the course of their treatment. So we have provided the Committee a proposed amendment (Exhibit G), it has three components and defines "therapeutically equivalent drug" and "therapeutic alternative drug" as indicated by the FDA. We believe that in the context of the bill in front of you, putting in those definitions would help clarify the point that you would like to make, Chair Atkinson, what we are doing here does not interfere with generic substitution as allowed by law in Nevada.

Chair Atkinson:
Do you believe the bill as amended by Mr. McMullen interferes with generic drug substitution?

Jay Parmer:
This is my first opportunity to view Mr. McMullen's amendment (Exhibit F). I have not had a chance to do that with a staff attorney or a pharmacologist. Our concern with the bill as written was that while the stated goal is to not interfere with generic substitution of drugs, when you add A.B. 221 to the existing law, which is NRS 639.2583, it may create a situation where a pharmacist could become confused and default to dispensing the drug as written to avoid problems. That could have the effect of limiting patients' in getting a generic substituted drug.

Chair Atkinson:
I would hope pharmacists are not that narrow-minded. I agree that if this is interfering with the pharmacists' ability to switch from a brand-name drug to a generic drug, that should not happen.

John Sande IV, representing Medco Health Solutions:
I am opposed to the bill as written. However, I have reviewed Mr. McMullen's amendment (Exhibit F) and it has addressed the issues that my client has. So we now lean more neutral. The reason we would be opposed is because we feel the current law is sufficient to protect the patient and does not allow interference with the doctor-patient relationship. However, pending review by my client's legal division, we would be neutral to the bill.

Jay Parmer:
If my client's amendment (Exhibit G) was to be accepted, and the definitions of therapeutically equivalent drugs and therapeutic alternative drugs were put in line with the FDA, for the purposes of the bill, my client would be neutral.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else in opposition wishing to testify? [There was no response.] Is there anyone neutral on the bill wishing to testify?

Fred Hillerby, representing Nevada Optometric Association and State Board of Pharmacy:
We are neutral on this bill. I need to clarify a few things that have been said. We do have the authority and we would discipline any pharmacist who changed from one drug to another, other than the generic, which we agree is not a part of this bill. According to our legal counsel, we have not had one complaint about this type of therapeutic interchange occurring without the consent of the prescribing doctor.

Chair Atkinson:
So, from your reading of this bill with the proposed amendment (Exhibit F), you do not believe that this bill will interfere with pharmacists' ability to substitute generic for brand-name drugs?

Fred Hillerby:
No, I do not. Early on we were concerned about that, but I believe now it does not have anything to do with the generic substitution.

Assemblywoman Carlton:
If we did pass this bill, would there be any problems with it? Do you foresee any harm in this language for the pharmacy practice act?

Fred Hillerby:
No.

Assemblyman Conklin:
Do you think this would create any unfair advantage for any one company?

Fred Hillerby:
I do not see it helping any one particular company. I think the only concern we have had all along is that perhaps it is creating some additional hoops for a pharmacist to get permission to make changes. I do not see it discriminating among those therapeutic classes.

Chair Atkinson:
You said you were concerned this would create additional hoops for a pharmacist?

Fred Hillerby:
This bill is more prescriptive language, and they have said that was their intent. There was some concern expressed to us that it might slow down the process, and therefore the therapeutic interchange might not occur. That is a "might"; I cannot say whether it would or would not.

Chair Atkinson:
I do not see it as an unnecessary hoop. All the pharmacists who testified said this is what they should be doing. So to me that is a necessary hoop. Is there anyone else neutral wishing to testify?

Sam McMullen:
I was notified that our text does not match what we have said about our amendment (Exhibit F). We are absolutely deleting section 3 as it relates to the state's insurance code. That should have been stricken. I will probably resubmit another one to make that clear. It is language that would make sure that we retain the status quo if it is otherwise necessary.

Chair Atkinson:
Have you looked at the amendment submitted by Mr. Parmer (Exhibit G)?

Sam McMullen:
I am entirely familiar with the definition that he showed me. That is part of an FDA volume of bioequivalency that is utilized by pharmacies and pharmacists. The trouble with the definitions is they are very difficult to understand. I think the bill drafter did a great job of explaining therapeutic equivalence while, at the same time, carving out what a generic is and making it clear how this draws the line. I do not think we feel there is any need for that FDA definition. We wanted to make sure there was a clear statement in the law that took away any kind of confusion.

Chair Atkinson:
Would you like to make any comment to the opposition's assertion that this bill is redundant language?

Sam McMullen:
I think this law would make it clear and understandable for the public.

Chair Atkinson:
Are there any questions from the Committee? I see none. We will close the hearing on A.B. 221. Is there any public comment? [There was no response.] The meeting is adjourned [at 1:54 p.m.].

RESPECTFULLY SUBMITTED:

_____
Jordan Grow
Committee Secretary

APPROVED BY:

_____
Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 4, 2011 **Time of Meeting: 12:06 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 77	C	Marji Paslov Thomas	Work Session Document
A.B. 20	D	Louis Ling	Proposed Amendment
A.B. 20	E	Alaina Cowley	Proposed Amendment
A.B. 221	F	Sam McMullen	Proposed Amendment
A.B. 221	G	Jay Parmer	Proposed Amendment