MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-sixth Session
April 29, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 10:26 a.m. on Friday, April 29, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Elizabeth Halseth
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator James A. Settelmeyer (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Richard (Skip) Daly, Assembly District No. 31
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Vicki Folster, Committee Secretary

OTHERS PRESENT:

George Lyford, Director of Investigations, State Contractors' Board
Renny Ashleman, City of Henderson; Nevada Health Care Association

Peter Krueger, Subcontractors' Legislative Coalition
Jennifer J. DiMarzio, Lionel Sawyer & Collins; World Market Center Las Vegas
Jonathan Leleu, World Market Center Las Vegas
John Ramous, Chairman of Government Affairs, National Association of Industrial and Office Properties
Bart Larson, National Association of Industrial and Office Properties; Kolesar & Leatham
Carol Sala, Administrator, Aging and Disability Services Division, Department of Health and Human Services
Debra Gallo, Southwest Gas Corporation
Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection (Consumer's Advocate), Office of the Attorney General
Alaina Burtenshaw, Chair, Public Utilities Commission of Nevada
Michael J. Carano, Director, Rates and Regulatory Affairs, NV Energy
Sean Gamble, Allergan, Inc.
Jennifer Stoll, Allergan, Inc.
Amber Joiner, Director of Governmental Relations, Nevada State Medical Association
Susan Fisher, AstraZeneca Pharmaceuticals; Nevada State Society of Anesthesiologists; State Board of Podiatry
Bobbette Bond, Health Services Coalition; Nevada Health Care Policy Group

CHAIR SCHNEIDER:
We will open the meeting with Assembly Bill (A.B.) 32.

ASSEMBLY BILL 32 (1st Reprint): Revises provisions governing licensed contractors. (BDR 54-620)

GEORGE LYFORD (Director of Investigations, State Contractors' Board):
Assembly Bill 32, as amended, would require a contractor to submit a request for a single raise in monetary limit at least five days prior to the date a contractor intends to submit a bid for a project and receive an approval by the State Contractors' Board (Board) prior to submission of a bid. The increase from two days to five days for submitting a request for a single raise in monetary limit will allow the Board personnel to evaluate the financial ability of the contractor and provide a response to the contractor prior to the submittal of the bid. It is the Board's intent to ensure that any contractor who applies for a raise in limit is financially able to assume the additional responsibility associated with

the project, which would require a raise in monetary limit already established by the Board.

RENNY ASHLEMAN (City of Henderson):
I am also speaking for Steve Halloway, Associated General Contractors of America. We support A.B. 32.

PETER KRUEGER (Subcontractors' Legislative Coalition):
We support this bill and the proposed amendment to move the review to five days rather than ten.

SENATOR COPENING MOVED TO DO PASS A.B. 32.

SENATOR BREEDEN SECONDED THE MOTION.

SENATOR COPENING:
I am not certain if this is applicable, but I will put on the record that I work for a homeowners' association that is affiliated with Pulte Homes. I see no conflict and will vote on the bill.

CHAIR SCHNEIDER:
I will also disclose we are developing an apartment complex, and the chairman of the State Contractors' Board is our contractor. This does not make any difference for him, either.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
Assembly Bill 267 has been withdrawn from the agenda by request.

ASSEMBLY BILL 267 (1st Reprint): Revises provisions governing representation of injured workers in hearings or other meetings concerning industrial insurance claims. (BDR 53-611)

We will open the hearing on A.B. 398.

ASSEMBLY BILL 398 (1st Reprint): Revises provisions relating to commercial tenancies. (BDR 10-664)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
The impetus behind A.B. 398 was to craft a statute that would be in the best interest of commercial landlords and tenants. Right now, we have a landlord-tenant law which is mostly written for residential purposes, but we try to apply it to commercial tenancies. That is the drive behind this bill. It accomplishes many good things and brings us in line with 20 other states that have a commercial landlord-tenant law separate from residential landlord-tenant statutes.

JENNIFER J. DIMARZIO (Lionel Sawyer & Collins; World Market Center Las Vegas):
The bill fills a hole in Nevada's law setting up an important framework for a commercial leasing statute to address policy concerns and real needs of Nevada's commercial landlords and tenants.

Nevada has a residential leasing statute that does not address the policy concerns of commercial landlords and tenants. We spoke with each of the members of the Committee about this bill and would like to point out the important things this bill achieves.

JONATHAN LELEU (World Market Center Las Vegas):
The primary drive behind A.B. 398, as Assemblyman Ohrenschall pointed out, was that Nevada does not have a statute pertaining to commercial leasing. Accordingly, there are ambiguities in our statutes that create problems and confusion in our courts and business community, all of which can be streamlined through the enactment of a commercial leasing statute. I am the first to admit that the bill is not perfect but does many good things.

The primary difference between a commercial leasing statute and a residential leasing statute is the enforcement of leases. There are very good, strong public-policy reasons why a landlord cannot lock the door on a nonpaying residential tenant. It is obvious that you cannot exclude people from their shelter without having a judge determine everything has been reviewed properly.

The same situations using the same policy concerns do not exist in commercial tenancies because a commercial tenant is an entity. An entity does not need a roof over its head. If the entity is trying to coerce a lower lease rate through a

nonpayment or short payment of rent, under the current statutory framework, the residential leasing statute, a commercial landlord's only remedies are to go to the bargaining table to lower that tenant's rent or to evict the tenant. Under the current statute, a commercial landlord cannot lock the doors because it is illegal. That creates a dilemma on behalf of the landlord—either to lose a little by renegotiating the lease or to lose big by evicting the tenant and losing the tenant altogether.

That type of gap or ambiguity in the law is what this statute aims to fix. We understand there is some opposition and there may be some confusion by its introduction, but I submit to the Committee that I am available to explain the policy reasons behind this bill in detail. I would also entertain any suggestions to improve the language.

MS. DIMARZIO:
I would like to discuss three points to address some of the concerns. First, the bill does not circumvent the eviction process which is already in place in Nevada law. Second, it does not create new tenant rights in a vacuum. Many people look at section 15 and believe it is creating new rights for tenants when it simply provides tenants with redress in case their landlords misuse the new tool of being able to lock out tenants. The third point involves rights created for landlords will not create litigation for unlawful detainer, because the right for landlords to impose a lockout created in this bill is in a separate statute from the residential statute.

CHAIR SCHNEIDER:
I have been approached by several groups about A.B. 398 with concerns that we should hear. Once we hear from these groups, I would like to refer the bill back out so that interested parties can work on it.

JOHN RAMOUS (Chairman of Government Affairs, National Association of Industrial and Office Properties):
I will turn it over to Bart Larson who has previously testified to this bill in the Assembly.

BART LARSON (National Association of Industrial and Office Properties; Kolesar & Leatham):
In reviewing this bill, from a legal perspective, we think there are a few ambiguities and a few areas where this bill conflicts with *Nevada Revised*

Statute (NRS) 40. This is not just a residential real estate chapter; it relates to all real estate, both residential and commercial. It makes very little distinction between the two. There are laws in NRS 40 that clearly prohibit landlords from locking out tenants involuntarily, regardless of whether or not they are delinquent in the payment of rent.

The implied statements in A.B. 398 indicate it is not illegal, but do not go far enough to assure landlords they are not going to be held liable for doing that. Also, the bill provides for tenants who terminate a lease and walk away from its liability because the landlord improperly locks out a tenant, relying on the false assurance offered in the bill. There are conflicts between the bill and the unlawful detainer under NRS 40. This bill does not take into account the various notice requirements under NRS 40 to which landlords have to adhere before terminating a tenancy.

We understand the current problems existing in NRS 40, and there are many areas we would like to see streamlined. We are not opposed to discussing those issues with Mr. Leleu from World Market Center. We think there are some good things that will come out of this bill.

Another issue we see with A.B. 398 is it only addresses matters dealing with the nonpayment of rents. Most of the disputed evictions I have litigated, that were hard fought, did not relate to payment of rent. They are usually due to a use clause or an unlawful assignment. For those types of breaches of a lease, we still have to go back to NRS 40. We cannot simply say that it does not apply in a commercial setting. For this bill to be workable and useful, amendments should be made to NRS 40 to resolve those legal ambiguities and conflicts that exist.

Some practical issues arise in this bill. It imposes burdensome requirements on landlords, accounting for security deposits, refunding those deposits and justifying how they might be able to retain part of that deposit to pay for property damages. The penalties for noncompliance are very harsh. As Mr. Leleu knows, in a commercial setting, the parties enjoy relatively equal bargaining power. I do not think there is a need for these overreaching protections for tenants as to how security deposits are handled and how other issues are resolved when they arise.

The bottom line is that A.B. 398 gives lawyers plenty to argue about and does not offer concrete benefits to landlords. It is not to say that it could not be amended to accomplish that, but in the current form it does not accomplish the intent as represented.

SENATOR ROBERSON:
I would like to disclose certain relationships with some of the testifiers today. Mr. Larson is a colleague at the law firm of Kolesar & Leatham. I am a member of the National Association of Industrial and Office Parks (NAIOP) and I have advised NAIOP in the past. John Ramous of Harsh Investment Properties is a client of mine and the firm. I will discuss this with the Legislative Counsel Bureau in more detail to ensure I have no conflict.

CHAIR SCHNEIDER:
Mr. Ramous and Mr. Larson, I want you to meet with representatives of NAIOP and Realtors to discuss working out the ambiguities of the bill that were mentioned. I also suggest Assemblyman Ohrenschall follow up with these groups.

ASSEMBLYMAN OHRENSCHALL:
I appreciate that, Mr. Chair. I hope we can get all the parties together and resolve the issues and come back with a bill that will actually address everyone's concerns.

CHAIR SCHNEIDER:
Mr. Leleu and the folks from Lionel Sawyer & Collins in Las Vegas will want to be involved as well. We will close the hearing on A.B. 398 and open discussion on A.B. 296.

ASSEMBLY BILL 296: Revises provisions relating to long-term care administrators. (BDR 54-1087)

ASSEMBLYMAN RICHARD (SKIP) DALY (Assembly District No. 31):
This is a government-efficiency bill. It allows for administrative notice of the opportunity for a hearing instead of requiring a hearing for every potential case. The comparison I made in the Assembly was if you get a traffic citation, under current rules you would have to go to court every single time. If this bill is passed, an individual who was cited for the same thing would get a notice to take corrective action, such as a fine, and move forward. It still allows both

parties the option to be called in by the Board of Examiners for Long-Term Care Administrators (BELTCA) or by the court. An individual wanting to contest the citation would still have the option of a hearing.

CAROL SALA (Administrator, Aging and Disability Services Division, Department of Health and Human Services):
Nevada Revised Statutes Chapter 654 creates the BELTCA. By virtue of my position as Administrator of Aging and Disability Services Division, Department of Health and Human Services, I am a member of the BELTCA and represent them today. I have provided my written testimony for your review and consideration (Exhibit C).

This bill proposes to make BELTCA's disciplinary process timelier and more cost-effective for the licensee, and would allow BELTCA to take action sooner to protect residents in long-term care facilities.

RENNY ASHLEMAN (Nevada Health Care Association):
We support this bill. The previous speakers were accurate in describing what it does.

SENATOR BREEDEN MOVED TO DO PASS A.B. 296.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will now open the hearing on A.B. 215.

ASSEMBLY BILL 215 (1st Reprint): Revises provisions governing utilities. (BDR 58-593)

DEBRA GALLO (Southwest Gas Corporation):
I want to present A.B. 215. It is a consensus document worked on during the interim with Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection (Consumer's Advocate), Office of the

Attorney General; Chair Alaina Burtenshaw, Public Utilities Commission of Nevada (PUCN); and NV Energy.

Overall, this bill will allow natural gas and electric utilities to make quarterly adjustments to the rate charged to clear what is called a deferred-energy account. A deferred-energy account is an interest-bearing balancing account where each month the difference in what the utility pays to acquire the natural gas supply and what the customers are billed for that natural gas are recorded. A rate is set annually to clear that deferred-energy account by making smaller, more frequent quarterly adjustments which the bill would allow. The goal is to reduce the overall amounts that are held in the deferred energy account.

Natural gas utilities may make quarterly rate adjustments to the gas cost component of customer bills. The Southwest Gas Corporation (SW Gas) does. This rate is the cost associated with the acquisition of the natural gas supply. The second component of the overall gas cost is in the amount set to clear the deferred-energy account. Every month, the deferred-energy account establishes under- or over-collection gas costs. Interest is applied to the balance. The difference between the costs SW Gas pays for the gas and what the customer pays, debit or credit, is applied back to the deferred-energy account.

The current process of putting in a rate once per year can be problematic. For SW Gas, we file our annual filing using a balance on March 31 to calculate a rate to clear the account. That rate does not go into effect until the following January. What often happens is that it does not reflect the actual balance in the account when you have to apply the rate. The rate is effective until the next year when it is reset. This could lead to situations of very large credit or debit balances actually having a rate that is opposite, which leads to large fluctuations in the rate—something customers do not like.

Modifying the deferred-energy adjustment process to allow quarterly adjustment will result in rates that more accurately reflect the cost of procuring the supply. It will not affect the regulatory review of the utility costs and practices for purchasing our natural gas supply. We would still make an annual filing. The only difference is there would not be a rate change at that time. This will benefit customers by helping prevent large balances in the deferred-energy account.

We have an amendment (Exhibit D) to A.B. 215 that will make some changes to the language to reflect more accurately how the process would work and affect the annual filing.

ERIC WITKOSKI (Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection (Consumer's Advocate), Office of the Attorney General):
Ms. Gallo laid out a good overview of the bill and the reason to change it to be timelier. What happens is there is about a ten-month delay before the balance and the new rate are processed. It could be out of date at that time and leads to large balances accumulating one way or another. This will help smooth that out. It has a band approach to reduce the volatility of the balance escalating too much.

With these rate changes, each year there is an annual filing, and the purchases that are processed during the test year are reviewed for prudency. My office and the staff at the PUCN review those purchases. This will help manage the balances in energy carrying costs that can accumulate. We support the bill.

ALAINA BURTENSHAW (Chair, Public Utilities Commission of Nevada):
I cannot improve on Mr. Witkoski's testimony. We support this bill as well. It will smooth out customer rates and reduce interest charges, which will also reduce the rate.

MICHAEL J. CARANO (Executive, Rates and Regulatory Affairs, NV Energy):
We support the bill as presented by Ms. Gallo with the proposed amendment.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 215.

SENATOR HALSETH SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the hearing on A.B. 537.

ASSEMBLY BILL 537 (1st Reprint): Revises provisions governing prohibited acts for certain health care practitioners. (BDR 54-1115)

SEAN GAMBLE (Allergan, Inc.):
We do have a bill, A.B. 537, coming from the Assembly. There was a drafting error in the bill's Legislative Counsel's Digest portion starting on line 7 which states, "This bill prohibits those health care practitioners from knowingly procuring and administering ... ." This is the wording that we wanted in the actual legislation. However, in the various sections of the bill, it is written as, "... knowingly procuring or administering ... ." We need to change all the sections using the word "or" to the word "and." Those sections of A.B. 537 include section 1, subsection 17; section 2, subsection 6; section 3, subsection 1, paragraph (l); section 4, subsection 12; section 5, subsection 1, paragraph (o); and section 6, subsection 11, all of which are noted in our proposed amendment (Exhibit E).

JENNIFER STOLL (Allergan, Inc.):
Allergan, Inc. is a global multi-specialty health-care company based in Irvine, California. I will be testifying on behalf of Damon Burrows, Vice President, Allergan, Inc., who has provided his written testimony (Exhibit F). We believe A.B. 537 is a great start for Nevada to address illegally imported and non-U.S. Food and Drug Administration (FDA), U.S. Department of Health and Human Services, drugs being used in Nevada. Allergan believes the best way to start ensuring the safety of the health-care practitioner drug supply is by passing A.B. 537.

CHAIR SCHNEIDER:
In the proposed amendment, you suggest changing the wording, "... knowingly procuring or administering a controlled substance ... ." You crossed out "or" and inserted "and." Now would someone have to do both?

MS. GAMBLE:
Yes.

CHAIR SCHNEIDER:
Why is that? It seems if they are doing just one thing, that should be enough to revoke their license or at least get them in front of a board to take action.

MS. GAMBLE:
We wanted to do both because once they administer, they have done wrong. There could be patient injury at the administration of the drug. If they buy the drug and do not use it, that was the thought process.

CHAIR SCHNEIDER:
Why are they buying it?

MS. STOLL:
Purchasing and administering, we felt was the correct combination of language, especially due to the fact that many products are used off-label in this Country under the discretion of health-care practitioners' licenses. We felt the best combination to avoid an unintended consequence would be to combine the two—knowingly purchasing and knowingly administering.

SENATOR ROBERSON:
I noticed you received only 41 votes on A.B. 537 in the Assembly. Do you know what Assemblyman Kite's concerns were with the bill? Did he state that for the record?

MS. GAMBLE:
We do not know what his concerns were. He voted against it, and I did not speak to him afterwards regarding his concerns.

CHAIR SCHNEIDER:
It appears that bill is stronger using "or" than using "and." Did you have your legal staff review this?

MS. STOLL:
Mr. Burrows could not be here today, but did attend the Assembly hearing and his testimony has been provided, Exhibit F. The bill has been scrutinized from our legal perspective.

AMBER JOINER (Director of Governmental Relations, Nevada State Medical Association):
We support A.B. 537. I should disclose that we were in opposition to it in the Assembly, because the first version was too broad. We had many concerns with it affecting off-label use. We also had concerns about the procedures hospitals were using, because of the way the labeling language would require a

label to be there up until the very last second it was administered to the patient. We are in support of this version of the bill. Once we found out they are trying to stop fake drugs from being administered, obviously, we are on board with that. We think physicians should only be administering FDA-approved drugs for the two categories that are affected by the bill, which are controlled substances and dangerous drugs. We worked with them to come up with the best language to make sure our physicians know that not only is it a federal violation to administer non-FDA drugs, but, in this case, if the bill passes, it would also be a State violation.

SENATOR BREEDEN:
I do not see anything in the bill addressing how physicians deal with the problem of administering something and there is an infection. There is nothing in this bill for control of this type of situation. It is an important issue as far as physicians telling patients if they have acquired an infection. I would like to see the bill amended to do that.

SENATOR ROBERSON:
I do not believe that is relevant. I would hate to see this bill held up because of something not germane to the bill.

SENATOR BREEDEN:
We are trying to work through this Session and identify all types of sentinel events, and I believe it is germane. I have been working on health care during the last Session and this Session as far as reporting of sentinel events. I would be happy to discuss this with Ms. Gamble and the people from Allergan, Inc., and anyone else.

SUSAN FISHER (AstraZeneca Pharmaceuticals; State Society of Anesthesiologists; State Board of Podiatry):
On behalf of the clients I represent, we support A.B. 537. It is a good safety measure. As you may recall, several sessions ago when the Canadian pharmacy legislation went through, we were very concerned because of the possibility of drugs coming in from other areas without the controls of Canada and the United States.

BOBBETTE BOND (Health Services Coalition; Nevada Health Care Policy Group):
I want to bring the issue of patient safety to the Committee. I know both Senator Copening and Senator Breeden have spent a great amount of time on

health and safety issues. We would like to use the point A.B. 537 made about the patient injury issue as a way to pin down State statute about who is responsible to notify a patient when there is an event or health-care problem of which the patient is not aware.

This issue has arisen in Senate Bill (S.B.) 338, S.B. 339 and S.B. 340 negotiations. We learned there is nothing in statute requiring a physician to inform a patient when that person has been exposed to hospital-acquired or facility-acquired infection. When we got to negotiations about that in S.B. 338 and S.B. 339, we could not address the patient health and safety issue there because it addresses NRS 439. So A.B. 537 gives us an opportunity to address the event issue because it relates to NRS 630 and NRS 633.

SENATE BILL 338 (1st Reprint): Revises provisions relating to reports of certain medical and related facilities. (BDR 40-261)

SENATE BILL 339 (1st Reprint): Establishes provisions relating to the safety of patients in certain medical facilities. (BDR 40-662)

SENATE BILL 340 (1st Reprint): Revises provisions relating to programs to increase public awareness of health care information. (BDR 40-663)

Assembly Bill 537 is a patient-safety bill that partially addresses NRS 630 and 633. It is an opportunity to address the issue that patient notification should be done by physicians. There is precedent in legislation, but it is incomplete. In the 2002 Special Session, a requirement was added to the sentinel events registry in NRS 439.855, subsection 2:

> A representative designated pursuant to subsection 1 shall, not later than 7 days after discovering or becoming aware of a sentinel event that occurred at the medical facility, provide notice of that fact to each patient who was involved in that sentinel event.

Unfortunately, many of the events we have been talking about in the Senate Committee on Health and Human Services are not sentinel events but adverse events. This issue has not been addressed. When we tried to address the issue, the hospitals thought they should notify patients because they did not believe the physicians were supposed to notify the patients. We would like this addressed, and we would like this bill to do that.

We did speak to the sponsor, his advocate in Las Vegas, the Nevada Medical Association and the State Board of Medical Examiners about this issue, and we are happy to work with them on the language for statute.

CHAIR SCHNEIDER:
Ms. Bond, is this a "back-door" way to get trial lawyers more money?

MS. BOND:
No. There was testimony in the Senate Committee on Health and Human Services that this would open up a liability channel, and we are opposed to that. In statute, there is a provision that notice to patients pursuant to this information must not, in any action or proceeding, be considered acknowledgement of an admission of liability. In S.B. 339, we added new language to ensure that nothing in the statute and nothing in the action by the provider can be used in discovery or be used toward litigation. We would definitely want to include that.

SENATOR ROBERSON:
Before this Committee hijacks this bill, can we hear from the proponents of the bill as to how they feel about this proposed amendment that I did not believe to be germane to the bill?

CHAIR SCHNEIDER:
We will.

SENATOR COPENING:
Ms. Bond, because we have been dealing with sentinel events, are you saying that in all of our sentinel event bills there is no provision to address a reporting mechanism? I am trying to figure out what you want to change in all five bills we have dealing with sentinel events and what you want to accomplish by putting an amendment on this bill.

MS. BOND:
While we were meeting with the hospitals in negotiations about how to address Senator Breeden's bill, S.B. 339, on infection control, we reframed the bill with several new provisions to get sentinel events on the books. Much work has been done in this Committee on those bills for new infections to be publically reported and for new infection measures in the hospitals to ensure that patients

have more infection protection. The hospitals have been active participants in the discussions, and they have gone well.

On this issue, the hospitals were unable, in S.B. 339, to accept our language that the hospital would inform patients when they were exposed and acquired a hospital infection or some other infection that could arise. If patients are not notified by the physician, they are often not notified at all. Through S.B. 339, we wanted to put language into the hospital statutes in NRS 439 that patients would be notified by the hospitals. The hospitals came back saying they are never able to notify a patient of any infection or any health condition. It is always the provider; it is always the physician who has to do it. While they will put in statute that they will develop protocols for that, there is no mechanism in statute actually to require the physician to do it. While I am sure most physicians do, clearly there are some who do not. In the press, in this Committee and in other areas we have heard there are many people who were never notified they had an infection. This is an opportunity to put in statute the requirement that the physician is the person responsible for diagnosis and notifying the patient when there is a health condition the patient is not aware of but the physician is, without liability.

SENATOR COPENING:
Are you saying there are no chapters in all of the sentinel event bills allowing you to include that type of language?

MS. BOND:
That was my understanding when we were in negotiations; that we specifically needed to address physician statutes.

CHAIR SCHNEIDER:
I understand the concern. The patient leaves the hospital with an infection. The doctor cannot say anything, and the hospital does not say anything. Now the patient's blood count is off and the patient is not feeling well. Does that really happen?

MS. BOND:
Physicians agree they should be telling the patients, but there is nothing in statute to mandate it. The hospitals also agree the physicians should be informing the patients, but there is a gap in statute. This bill is an opportunity for improvement, because this issue of infection is about patient safety and

physician behavior. We did not present a formal amendment, because when we talked to the sponsor of the bill's advocates, they were concerned that adding this would jeopardize their bill, which is not our intention. We would like to work with the parties on an acceptable amendment to clarify this issue.

SENATOR COPENING:
When speaking with these groups, what was the feedback?

MS. BOND:
Keith Lee, representing the Board of Medical Examiners, said he thought the issue was something with which physicians are complying. He had no objection to requiring physicians to report events being put into statute. I e-mailed Lawrence Matheis, Nevada State Medical Association. I spoke with Amber Joiner and Michael Hacket who are open to having a conversation, but they are not clear as to why informing patients of infection is not already addressed in statute. We need to work on language to protect clients, physicians and patients that is acceptable to all.

SENATOR COPENING:
Mr. Chair, would it be all right to ask a representative to come forward to speak to that issue?

MS. JOINER:
I received an e-mail today from Ms. Bond with proposed language. We have not had a chance to take that language to our members. I voiced my concerns with the language. My main concern is that a facility-acquired infection needs to be addressed in the NRS chapters relating to facilities. Addressing the issue in the physician chapters relating to physicians affects physicians in every location, which does not achieve the goal Ms. Bond wants. I do not think this bill is the appropriate place, but I am open to discussion on how to improve event reporting.

Another concern is that we have sentinel event reporting. It sounds like Ms. Bond wants to include reporting about other events that are not definable, making it unclear as to where that line would be. So there are several unclear areas relating to liability and other issues to be clarified first.

CHAIR SCHNEIDER:
It sounds like the first thing is for Ms. Bond to check with legal counsel to find out if this fits at all. I think everyone on the Committee is concerned about infections being reported. I would like you to check with your members on how they feel about this. Then, perhaps, we can find a bill, if not this one, to include this information so they are covered. We do not want to extend liability. We are all for protecting the patient. Another thing is the "and" or the "or." I still have a problem with that because Senator Halseth and I could be in an office together, she could buy the drugs, I could administer them and neither one of us is in trouble. It seems that is a problem, and I want legal counsel to also look at that issue.

MS. GAMBLE:
We are willing to withdraw the proposed amendment if it will make A.B. 537 go through faster and cleaner.

SENATOR ROBERSON:
I am not joking. If we are going to entertain amendments that are not about the same chapter, I would like to propose an amendment to include collective bargaining reform under this bill.

CHAIR SCHNEIDER:
I suggested Ms. Bond check to see if the amendment fits with the bill. If it does not fit, then there is nothing we can do. This is about patient safety and nothing else.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 537. There being no further business for the Senate Committee on Commerce, Labor and Energy, the meeting is adjourned at 11:28 a.m.

RESPECTFULLY SUBMITTED:

Laura Adler,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 296	C	Carol Sala	Written Testimony
A.B. 215	D	Debra Gallo	Proposed Amendment
A.B. 537	E	Sean Gamble	Proposed Amendment
A.B. 537	F	Jennifer Stoll	Written Testimony of Damon Burrows