

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

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

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 2:01 p.m. on Wednesday, May 11, 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 James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblywoman Olivia Diaz, Assembly District No. 11
Assemblyman John C. Ellison, Assembly District No. 33
Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblywoman April Mastroluca, Assembly District No. 29

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Ron Cerri, Trustee, Orovada Fire Department Board
Mary Walker, City of Carson City; Douglas County; Lyon County; Storey County

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Joanna Jacob, Esq., City of Reno
Cheryl Blomstrom, Nevada Dietetic Association
B. Bottenberg, D.O., Nevada Dietetic Association
Karon Sande Felten, M.S., R.D., Nevada Dietetic Association
Pamela Wagner, R.D., C.N.S.C
Barbara Paulsen, M.S., R.D.
Christopher Roller, American Heart Association; American Stroke Association
Paula Berkley, Board of Occupational Therapy
Mendy Elliott, Chiropractic Physicians' Board of Nevada
Debbie Pawelek
Crystal Petrello, R.D.
Jim Jenks
Glenn Hausenfluke, N.D.
Mary Jane Noblehart
Lynn Chapman, Vice President, Nevada Families Association
Suzanne Nounna
Pauline Alwes
John Andre Francois
Michael Linares, M.S., C.N.S.
Sheila Z. Stirling
Jon Olson
Donald E. Jayne, Administrator, Division of Industrial Relations, Department of
Business and Industry
Steve Coffield, Occupational Safety and Health Administration, Division of
Industrial Relations, Department of Business and Industry
Gary Milliken, Association of General Contractors, Las Vegas Chapter
Jack Mallory, Director of Government Affairs, International Union of Painters
and Allied Trades, District Council 15; Southern Nevada Building and
Construction Trades Council
Paul McKenzie, Building and Construction Trades Council of Northern Nevada
Bob Ostrovsky, Nevada Resort Association
Danny Thompson, Nevada State AFL-CIO
Mark Beadleston, General Superintendent, C.C. Myers, Inc.
Jeanette Belz, Nevada Chapter, Associated General Contractors

CHAIR SCHNEIDER:
We will open the hearing on Assembly Bill (A.B.) 141.

ASSEMBLY BILL 141 (1st Reprint): Revises the frequency with which certain volunteer firefighters must submit to physical examinations to receive workers' compensation coverage for certain occupational diseases. (BDR 53-567)

ASSEMBLYMAN PETE GOICOECHEA (Assembly District No. 35):

On its face, A.B. 141 appears to relieve the heart and lung physical examination requirements for volunteer firefighters. Volunteers only qualify for coverage for heart or lung diseases under workers' compensation as a result of exposures from fighting fires. This bill relieves employers of volunteer firefighters over 50 years of age from requiring them to have an annual physical examination and would change the examination to once every two years. The annual physical examination requirement places a burden on smaller volunteer fire departments in rural Nevada where there are 15 to 20 members. Half of their budgets are spent on physical examinations because of the age of their volunteers.

Assembly Bill 141 would require a volunteer firefighter under age 50 to have a chest X ray every 3 years. When a volunteer firefighter reaches age 50, this bill would change the physical examination requirement to once every 2 years instead of annually. This would be more affordable for smaller volunteer fire departments. The bill would also require volunteer firefighters to be on an active roster to qualify for heart or lung disease coverage under workers' compensation.

In one sense, the bill appears to waive some requirements, but it would resolve some problems and help volunteer fire departments. Page 4, line 25 of the bill would require the employer to notify the volunteer firefighter of the physical examination at least 10 days before the date of the physical examination. A volunteer firefighter failing to have the physical examination would become inactive. The only way to become active and be eligible for heart or lung disease coverage is to have the physical examination.

If a person is inactive, did not have a physical examination and went to a fire, it would be the trustee's or the fire chief's responsibility to advise the person to leave the scene. This bill would allow a cost saving to small rural departments. The average cost of a physical examination is approximately \$475.

RON CERRI (Trustee, Orovada Fire Department Board):

We are supporting A.B. 141. The annual physical examination requirement has been a hardship on rural fire departments. Most of our volunteers are over 50 years of age. The Orovada volunteer fire department has a 20-member roster with 14 of those members age 50 years or older. The costs for physical examinations associated with the law as it is now are prohibitive to smaller volunteer fire departments. Last year, all 20 of our members had physicals. It cost the department \$7,000. In a two-year period, it would cost \$15,000. This bill would create a cost savings for our departments. We have to save our budgets not only for these physicals, but to allow us to replace equipment and run the department. I hope the Committee votes in favor of this bill.

CHAIR SCHNEIDER:

We will close the hearing on A.B. 141 and open the hearing on A.B. 396.

ASSEMBLY BILL 396 (1st Reprint): Revises provisions relating to industrial insurance involving certain employees who are injured during certain cooperative governmental activities. (BDR 53-1002)

ASSEMBLYWOMAN OLIVIA DIAZ (Assembly District No. 11):

Assembly Bill 396 proposes to address a problem that is not clarified in statute. Governmental entities often enter into interlocal agreements for cooperative efforts. Now more than ever, we are going to see the combining of efforts to do something with less money so each government entity has to pay less. For example, two or more municipalities combine programs to provide training at one facility. In drafting interlocal agreements, it has been increasingly difficult to agree upon liability and indemnification provisions. The bill addresses what would happen if someone is injured while carrying out these cooperative efforts.

Assembly Bill 396 addresses this problem by streamlining the interlocal agreement drafting process. This bill would require one simple thing. When an employee is injured, the sole and exclusive remedy against the participating public entities would be to recover under the workers' compensation insurance of the entity that employs the injured employee. For example, the North Las Vegas Police Department (NLVPD) and the Las Vegas Metropolitan Police Department (Metro) are conducting a training exercise together. If a Metro police officer is injured on the premises of the NLVPD where the training is occurring, the workers' compensation claim would be filed through Metro, not through NLVPD. The process would be streamlined. They would not file the

claim where the injury occurred but through the employer of the injured employee. The statute is not clear on this issue.

MARY WALKER (City of Carson City; Douglas County; Lyon County; Storey County):

The City of Carson City, Douglas County, Lyon County and Storey County often cooperate in many different things. We have many consolidated efforts and shared services. One of these is regional fire training. This bill would clarify what organization is liable if someone is injured during the regional fire training. Assembly Bill 396 would eliminate problems our fire agencies have seen when they have cooperative training efforts. We appreciate this bill coming forward, and this would make it easier for us to conduct regional fire training.

JOANNA JACOB, ESQ. (City of Reno):

We also support A.B. 396. The City of Reno (Reno) also takes part in interlocal agreements. Reno conducted a disaster-training exercise with the City of Sparks, Washoe County and the Airport Authority of Washoe County. This is something in which we regularly engage. This bill will bring clarity for the agencies and for the employees.

CHAIR SCHNEIDER:

We will close the hearing on A.B. 396 and open the hearing on A.B. 289.

In the 68th Session, there was a bill similar to A.B. 289. It made the use of words or letters to designate a person a licensed or registered dietitian unlawful. *Nevada Revised Statute* (NRS) 439.537 states,

A person shall not use in connection with his or her name the words or letters "Dietitian," "Licensed Dietitian," "Registered Dietitian," "L.D.," "R.D." or any other title, word, letter or other designation intended to designate that the person is a licensed or registered dietitian without being registered with the Commission on Dietetic Registration, a member of the National Commission on Health Certifying Agencies, or its successor organization.

ASSEMBLY BILL 289 (1st Reprint): Enacts provisions relating to the practice of dietetics. (BDR 54-871)

ASSEMBLYWOMAN APRIL MASTROLUCA (Assembly District No. 29):

Assembly Bill 289 proposes to license dietitians in Nevada. We want to give dietitians the opportunity to be licensed in Nevada to allow them to be recognized as professionals. We do not want to include people who are not dietitians or who do not call themselves dietitians based on the definition in NRS 439.537. They would not be included in this bill at all. This has nothing to do with them. It does not affect them in any way.

I have received e-mails and phone calls from people who say we are preventing them from getting or giving advice on diet or nutrition. That is not true. I can reassure you that is not true because I have celiac disease. Celiac disease requires a very specific diet. There is no cure for it. The only way you can live your life with celiac disease is by watching what you eat. As someone with celiac disease, I give advice to other people who have been newly diagnosed with celiac disease. I take them to the store. I show them what they can and cannot eat.

Based on the arguments I have heard over the last few weeks on this bill, I would be violating the law according to what everyone is telling me what this bill does. I assure you that as an upstanding citizen of this State, and as a Legislator, I have no intention of purposely writing a law that I would be forced to break. We have done everything we can to exempt as many people as possible. The list is not exclusive; it is inclusive.

CHAIR SCHNEIDER:

People who want to be licensed dietitians have to belong to an organization and go through certification. Otherwise, they are not dietitians. They cannot say they are dietitians. They cannot use any letters behind their names indicating they are dietitians. These people are not affected by this bill.

ASSEMBLYWOMAN MASTROLUCA:

That is correct. If a person does anything else, is an herbalist, sells vitamins, works in weight loss or is a personal chef, that person would still be able to do all of those things according to Nevada law as long as the person does not call himself or herself a dietitian when not being one.

CHAIR SCHNEIDER:

This bill would set up a board to give dietitians recognition. It does not set up a board to allow dietitians to bill insurance.

CHERYL BLOMSTROM (Nevada Dietetic Association):

The board would not allow that, but by legally recognizing dietitians as licensed persons in Nevada, they would be able to bill direct. It is not a mandate on insurance, but it would allow dietitians to bill insurance and insurance companies to opt to pay or not.

CHAIR SCHNEIDER:

The insurance companies may or may not opt to reimburse.

MS. BLOMSTROM:

Yes, they do that currently, but they do it through a physician's office.

ASSEMBLYWOMAN MAGGIE CARLTON (Assembly District No. 14):

All of the issues discussed in the past regarding establishing a well-functioning board with a well-defined scope of practice and the ability to implement its duty of public safety, have been accomplished in A.B. 289.

My first question of anyone who has concerns about this bill is, "Are you a registered dietitian?" This bill would not apply to 99 out of 100 people who are not registered dietitians. That would be my "litmus test" regarding what this bill addresses. There has been much misinformation out there. It is irresponsible misinformation because people have been churned up to ensure these hearing rooms are full today. We did not have this level of outcry in the Assembly. It is totally inappropriate to mislead people on a piece of legislation and have them use their valuable time to come into this building today to find out that this truly is not the terrible thing they have been told it is.

MS. BLOMSTROM:

There are two parts to the proposed amendment to A.B. 289 ([Exhibit C](#)). As we spelled out the statutory exemptions, we inadvertently missed components of Nevada licensed health-care providers. Those are occupational therapists and massage therapists. Although neither of these specifically refers to the practice of nutrition or dietetics in their scope of practice, they had some concerns there might be an ancillary conversation that might occur as they practice their own specialty. Because we had excluded other statutorily protected people, we have added them.

The second part of the proposed amendment is in the title protection. That involves the words "nutritionist" and "R.T." I have deleted these words to be clear that we do not intend to include any nutritionist at all.

I have also submitted a written statement supporting A.B. 289 ([Exhibit D](#)).

ASSEMBLYWOMAN MASTROLUCA:

There have been numerous individuals who have brought forth proposed amendments to A.B. 289 without allowing me to see the amendments. We have taken many of these proposed amendments to the Legislative Counsel Bureau (LCB), Legal Division, and have been reassured time and time again that everything that has been proposed in those amendments is unnecessary because it is already covered in the bill. People have been asking to get to the "nth degree" by basically saying "My Aunt Sadie's cocker spaniel is not covered by this bill." We are not going to go to that "nth degree."

The proposed amendment just described to you is the only proposed amendment with which I am comfortable. But obviously, any decision beyond that is up to the Committee.

B. BOTTENBERG, D.O. (Nevada Dietetic Association):

When a person is critically ill and goes to the hospital, there is a team that takes care of that person. The person's physician is licensed, the nursing staff is licensed, the pharmacists are licensed, and the physical and occupational therapists are licensed. However, the dietitian who is a critical part of the person's team is not licensed. Dietitians calculate protein and calorie requirements for critically ill patients. They adjust fluid and electrolytic balances. They determine fat and glucose requirements. Many of the bags hanging above the person's hospital bed are designed and prepared by the dietitian on staff.

There are registered dietitians who talk to dialysis patients about their problems related to phosphorus and potassium and what the patients can do with their diets to survive longer on dialysis. There are registered dietitians who talk to people about their diabetes, their kidney failures, their celiac diseases and their food allergies. These are professionals. These people are giving medical nutritional advice. These individuals have a tremendous responsibility.

I support this bill. It is an honorable and a worthy request. It is quite simple. Registered dietitians practice at a higher level. Licensure will allow dietitians to

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distinguish themselves and protect patients and communities from confusion regarding alternative practitioners and alternative advice given by those who may work in retail shops, gymnasiums and perhaps on the Internet. This bill adds no cost to the State.

KARON SANDE FELTEN, M.S., R.D. (Nevada Dietetic Association):
I have provided written testimony ([Exhibit E](#)).

PAMELA WAGNER, R.D., C.N.S.C:
I have submitted written testimony in support of A.B. 289 ([Exhibit F](#)).

BARBARA PAULSEN, M.S., R.D.:
I have submitted written testimony and a letter in support of A.B. 289 ([Exhibit G](#)).

CHRISTOPHER ROLLER (American Heart Association; American Stroke Association):
The American Heart Association supports this effort to establish high standards of dietetic practice to protect Nevadans. Registered dietitians play a very important role in the mission of my organization as employees, volunteers and community partners. They deserve to be recognized and formally treated as highly educated and trained professionals.

Preventative care, including medical nutrition therapy, is extremely important in the prevention of heart disease and stroke. We encourage you to support this bill. I have also submitted written testimony ([Exhibit H](#)).

CHAIR SCHNEIDER:
Has anyone in the Nevada Dietetic Association met with the Governor about the cost and implementation of this program?

MS. FELTON:
We have been trying to meet with him.

MS. BLOMSTROM:
I have met with the Governor's staff on two different occasions. We are having discussions.

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CHAIR SCHNEIDER:

If this board were to go forward, would the Office of the Attorney General be your attorney?

MS. BLOMSTROM:

Yes, it would.

CHAIR SCHNEIDER:

That would incur some costs. How many people do you anticipate would be licensed by the board?

MS. BLOMSTROM:

When we roughed out the budget, we anticipated about 500 people. We expect some people will opt not to become licensed. There are 577 registered dietitians in Nevada.

CHAIR SCHNEIDER:

Do you know of any registered dietitians who are opposed to A.B. 289?

MS. FELTON:

No, I do not know of any. We have had great support for this bill. We did a lot of work up front with surveys and education. We had majority support.

PAULA BERKLEY (Board of Occupational Therapy):

We submitted a proposed amendment on this bill in the Assembly, and it was inadvertently missed.

MENDY ELLIOTT (Chiropractic Physicians' Board of Nevada):

We support A.B. 289.

ASSEMBLYMAN JOHN C. ELLISON (Assembly District No. 33):

I have submitted a proposed amendment to A.B. 289 ([Exhibit I](#)). There are two issues pertaining to this bill. Section 9, subsection 1, paragraph (a) of the bill, states "The provisions of this chapter do not apply to: (a) Any person who is licensed or registered in this State as a ... ," then go to line 8 on page 4 which states, " ... a person who furnishes nutrition information or markets food, food materials or dietary supplements" This is exactly what we wanted. However, we received a call from an attorney who advised us that this could be challenged. The result of that is the proposed amendment

I submitted today. It is very minor and does not affect dietitians at all, but it will protect small businesses.

In the Assembly Committee on Commerce and Labor, we stressed again and again that this bill was intended to protect small businesses. There were two issues. In section 9, subsection 1, paragraph (d) of the proposed amendment 6830 to A.B. 289, [Exhibit I](#), we added "... provides recommendations or advice concerning nutrition ... , " and we deleted " ... is not engaged in the practice of dietetics and does not provide nutrition services " We are happy with everyone's recommendations. This proposed amendment will give a little more protection to small businesses.

CHAIR SCHNEIDER:

We will take this under recommendation. The difference of course is that businesses are selling health food, vitamins, etc. out of a store. A doctor would probably never hire one of these people to be a dietitian in a hospital. They would never fill those bags with the proper nutrients and vitamins because they do not have the training.

ASSEMBLYMAN ELLISON:

I agree with you. They are two separate issues.

DEBBIE PAWELEK:

We would support the bill if the proposed amendment is added to it. It would protect us, our business and our freedom of speech. I have submitted a written statement and proposed amendment ([Exhibit J](#)).

CHAIR SCHNEIDER:

Page 7, line 11 of A.B. 289 states, "The Board shall adopt regulations establishing reasonable: ... , " then go to line 17 which states, "The Board shall adopt regulations establishing a schedule of reasonable fees and charges " Normally, the Committee sets limits on fees and charges. Do you have any numbers for us? Did the Assembly Committee on Commerce and Labor review that?

MS. BLOMSTROM:

The Assembly Committee on Commerce and Labor did not bring up that issue. We have rough numbers for a budget, but without constraining a future board,

we did not want to limit it to certain numbers. We would be very comfortable with "not to exceed numbers" if you would prefer.

CHAIR SCHNEIDER:
Could you get us the numbers you had in mind?

MS. BLOMSTROM:
Yes, I can. I do not have them today, but I will send them to your office right away.

CRYSTAL PETRELLO, R.D.:
My experience with licensure is that it helps professionals. It helps doctors know who the professionals are in the community, and it holds dietitians to a certain standard of education and professional conduct. I have always had a positive experience with licensure, and I support A.B. 289.

JIM JENKS:
I share nutrition with my family and everyone I can. I appreciate the sponsors of this bill attempting to limit this to dietitians. If we can get our proposed amendment ([Exhibit K](#)) in, we would certainly not oppose A.B. 289.

I have studied herbs over the last 40 years, and I have attended many classes and lectures. Most of these lectures are presented by medical doctors. I oppose A.B. 289 because it goes beyond dietetics. However, the proposed amendments eliminate almost all of that.

We want to keep nutrition in the public domain, and we do not want to create a monopoly for dietitians which would put hundreds of small businesses in jeopardy. In section 9, the bill excludes,

... a person who furnishes nutrition information or markets food, food materials or dietary supplements and provides nutrition information related to that marketing, if the person is not engaged in the practice of dietetics and does not provide nutrition services.

Section 5 defines nutrition services as " ... the performance of acts designated by the Board which are within the practice of dietetics." Section 6, subsection 1, defines the practice of dietetics as,

... the performance of any act in the nutrition care process, including, without limitation, assessment, evaluation, diagnosis,

counseling, intervention, monitoring and treatment of a person which requires substantial specialized judgment and skill based on the knowledge, application and integration of the principles derived from the sciences of food, nutrition, management, communication, biology, behavior, physiology and social science to achieve and maintain proper nourishment and care of the health of the person.

The training dietitians receive is excellent. We support that. Dietetics is medical, and nutrition is natural. Nutrition must be kept in the public domain. Nutrition is prevention, home remedy and common sense. As a rancher, I know the value of alfalfa, and I would recommend it to a young nursing mother to enrich her milk.

Assembly Bill 289 makes it a crime to practice nutritional services or educate anyone about nutrition. We have had experience with dietetic boards. The dietetic board in Ohio filed 114 charges against unlicensed persons since 2005. This includes herbalists, supplement salespeople, fitness and personal trainers, clinical nutritionists, wellness centers, weight loss businesses, complementary and alternative health-care practitioners and other licensed professionals. There are about 30 states without dietetic boards. Assembly Bill 289 does not contain a comprehensive exemption for unlicensed persons. The proposed amendment does a good job, but it does not cover unlicensed persons. There needs to be an exemption for herbalists, nutritional consultants, certified nutrition consultants, nutritionists, naturopaths, retailers, cultural and religious based practitioners, nutritional practitioners, osteopaths and probably quite a few more. This is why I have proposed an amendment to A.B. 289, [Exhibit K](#).

Dietetics is medical and nutrition is natural. They seem similar, yet they are very different. I do not want to practice dietetics. I want to continue to practice herbal nutrition.

CHAIR SCHNEIDER:

I will refer your proposed amendment to the Legal Division to ensure it says what you think it says.

GLENN HAUSENFLUKE, N.D.:

I oppose A.B. 289. However, with the proposed amendments, I would be in favor of it.

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MARY JANE NOBLEHART:

I oppose A.B. 289 and specifically section 9. I have submitted a written statement ([Exhibit L](#)).

LYNN CHAPMAN (Vice President, Nevada Families Association):

We oppose A.B. 289, but we would be more inclined to support the bill with the proposed amendments.

SUZANNE NOUNNA:

I am speaking on behalf of Martin Perel, Esq., who has submitted a letter in opposition to A.B. 289 ([Exhibit M](#)).

There are various groups who have come together and have stated that if this bill is passed, they will retain Mr. Perel to take legal action against it.

CHAIR SCHNEIDER:

Thank you for bringing that to my attention. We have Mr. Perel's letter on record. If a bill is passed out of the Senate and signed by the Governor, it will pass constitutional muster, and it will be defended by the Legal Division all the way to the highest court. I hope these groups can fund Mr. Perel really well.

MS. NOUNNA:

I have had very negative experiences with dietitians. Their training did not help me or my family and almost caused a death more than once. The responsible thing is to allow people to self-govern. It is very important that people be allowed to suffer their own mistakes and self-govern. I have repeatedly had to look for someone for myself and for other people to save lives in very serious situations. I had to look at traditional medicine and alternatives. I had to educate and find out for myself. Being regulated out of that capacity is very egregious. I agree that many things are honorable, worthy and noble, but I do not think telling people what they can say and where and when they can say it is right, even with your amendments. The point is that the bill started out that way. It seems very bold that a legislative body can dictate what people are going to speak. We have a constitutional freedom of speech. That is very important. This bill is something that should never happen. I appreciate your amendment, but because you amend the bill today, does not mean it is final. For all of these concerned people to end up thinking that the amendment is a panacea and it is a perfect world is not the truth. When it is all said and done, it could end up the way it was before amendments. It could end up another way entirely.

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CHAIR SCHNEIDER:

I am sorry you had a bad experience with dietitians, but if they had been properly licensed by the State, they probably would have lost their licenses.

MS. NOUNNA:

Thank you for your comments. Licensing does not make someone qualified.

PAULINE ALWES:

I have submitted written testimony ([Exhibit N](#)).

CHAIR SCHNEIDER:

Assemblyman Ellison's amendment probably takes care of that, but we will have the Legal Division review it.

JOHN ANDRE FRANCOIS:

My concern with the bill is that there is always going to be a fiscal impact. This should be a matter of choice. I do not want my choice taken away from me. I am a cancer survivor. I am here today because I was able to choose a naturopath versus a doctor. Earlier, someone mentioned about getting people stirred up. I am glad people are here. People need a better choice. If people want to go to a licensed dietitian, they can, but I do not want somebody telling the lady who works in my health-food store that she cannot tell me something that might be a medical breakthrough that can save my life or my family's lives. There is a big difference between the letter of the law and the spirit of the law. Under the letter of the law, everybody is already guilty of everything on here.

CHAIR SCHNEIDER:

Assemblywoman Mastroluca testified that she would have been in violation of the law the way the bill was written. That is why the amendments were proposed. Hopefully, you have copies of the amendments.

MICHAEL LINARES, M.S., C.N.S.:

I oppose A.B. 289 and I have submitted written testimony ([Exhibit O](#)).

SHEILA Z. STIRLING:

If A.B. 289 spoke only to medical licensed dietitians, this room would not be full. But this bill clearly takes away my freedom of speech and Nevada citizens' freedom of speech. It takes away our right to talk about, recommend, distribute and sell herbs or supplements.

Assembly Bill 289 restricts my right to work in my chosen field. This bill is also redundant. To be a distributor for a national supplement company, one must read, agree and sign a contract regarding the ethical and legal procedures of that company. This is already regulated by federal government. It undermines our freedom of choice as citizens who want to achieve our own personal health and wellness in our own personal way. This bill will put thousands of Nevadans out of work, reducing income in a State that is already on the verge of bankruptcy. It will leave thousands of people applying for State assistance. This bill is costly in its setup, its certification board and enforcement. The highest cost of this bill is the freedom that is promised and guaranteed to every citizen in America. This is a "slippery slope," and it is time to set aside all partisanship and make the right choice for not only your constituents but all constituents who are at risk if this bill passes. You must vote no on A.B. 289. I have also submitted a letter of protest ([Exhibit P](#)).

JON OLSON:

I have submitted written testimony in opposition A.B. 289 ([Exhibit Q](#)).

CHAIR SCHNEIDER:

The Legal Division will review the amendments on A.B. 289 and bring it back next week. We also have a large number of letters of opposition to A.B. 289, ([Exhibit R](#)).

We will close the hearing on A.B. 289 and open the hearing on A.B. 253.

ASSEMBLY BILL 253 (1st Reprint): Makes various changes concerning fines and settlement agreements relating to occupational safety and health. (BDR 53-100)

ASSEMBLYWOMAN MAGGIE CARLTON (Assembly District No. 14):

This bill came from the Legislative Commission's Subcommittee to Review the U. S. Department of Labor's Report on the Nevada Occupational Safety and Health Program. This bill has been negotiated and revised. It had a bit of opposition in the Assembly. When the bill came into the Assembly Committee on Commerce and Labor, we realized that it did not say what we thought it said. We have reviewed it and realistically addressed the issues. There are probably one or two people who still have issues with the bill, but we have gone as far as we can go in addressing all of the concerns brought to us.

DONALD E. JAYNE (Administrator, Division of Industrial Relations, Department of Business and Industry):

We have proposed an amendment to A.B. 253 ([Exhibit S](#)). The amendment addresses a couple of things in the bill. It was a consensus agreement from the Assembly.

We went through a tough stretch when the construction industry was booming and there was a spike in the number of injuries and fatalities, particularly in southern Nevada. There was an effort in Las Vegas unlike anything we have ever seen in this State. Coming out of that, the federal Occupational Safety and Health Administration (OSHA), oversimplified that the Nevada OSHA plan needs to be as effective as the federal OSHA. Nevada OSHA tends to match all of the federal OSHA standards. When we do something different, we attempt to exceed the federal standards.

When I became the administrator of the Division of Industrial Relations (DIR), Department of Business and Industry (DBI), I went to meetings and met with some of the people from federal OSHA. Federal OSHA wanted to come to Nevada and do a special study to review the Nevada OSHA plan as administered by the Occupational Safety and Health Review Board, DIR, DBI. There were 57 key recommendations that came from that study. Nevada's Legislature responded by convening the Legislative Commission's Subcommittee to Review the U. S. Department of Labor's Report on the Nevada Occupational Safety and Health Program. Assembly Bill 253 is the result of that subcommittee. This bill does not necessarily address everything in the special study. There are elements here that came from the federal special study. There are some things that came from the subcommittee.

In A.B. 253, regarding enforcement of "settlement agreements," the proposed amended language would enable the DIR to write a citation if an employer had been requested to address a hazard in the workplace. A citation would enforce a settlement agreement. The original language in the bill was too broad. It was too general in its nature. The proposed amendment is designed to narrow that scope to a condition or practice in or relating to the place of employment. The original language would have required the DIR to issue a citation if someone was a couple of days late paying a penalty or a fine.

In the first section of the bill, the language in the proposed amendment is more permissive in our ability to enforce a settlement agreement, establishing that the

DIR may issue a citation if hazardous conditions in the workplace are not addressed.

Sections 2 and 4 of the bill contain the enhanced fines. This came from the subcommittee. The enhanced fines are very specific to circumstances involving willful violations that result in a fatality or in a catastrophic event. A catastrophic event is three or more people injured in a single incident that results in hospitalization. We attempted to narrow that effect, and the research we performed showed that we might have 50 of these circumstances in a year that could qualify for enhanced fines.

Once DIR reviewed section 2 of A.B. 253, we had to propose an amendment. Language was originally deleted. Section 2 stated "Any employer who willfully or repeatedly violates any requirements of this chapter" The language "... or repeatedly ..." was deleted from the bill by the proposed amendment. The conceptual amendment separates the term "willful" from "repeatedly." It was on the "willful" violation that the subcommittee recommended the enhanced fine.

The proposed amendment would split that section. The "willful" part is in section 1. The "repeatedly" part would be in the amendment on page 2, line 23 and would be subject to the existing penalty and fine structure. That information is in existing federal law adopted by Nevada OSHA. It would apply to the "repeated" violation. The "willful" violation would change the minimum fine from \$5,000 to \$8,000 and raise the maximum fine from \$70,000 to \$100,000. Both of these fines would exceed the federal standards. "Settlement agreements" are addressed in several other areas of the bill.

SENATOR SETTELMAYER:

The amendment states "... or any provision of a settlement agreement" I have seen settlement agreements with many provisions, but some are not germane. Any provision of a settlement agreement could be large. I am concerned with that issue. Is every single provision of a settlement agreement so important that all aspects must be met?

MR. JAYNE:

Our concerns were similar to yours. The original version of the bill not only used "shall," but it was so broad it could apply to anything, and it did not give the DIR discretion. Our intent is to remove hazards and to create a safe workplace,

not to harass anyone. In language this complicated and with much emotion on both sides, the concern was that Nevada OSHA might overreach and use this in some fashion that would be inappropriate.

First, I have to separate that section from the direct application of the fines. They are two different pieces. I could issue a citation in this section if an employer did not remove what is determined to be a material hazard in the workplace. We are looking for something more significant than what could be referred to as harassment. We are not looking for the smaller hazards, we are looking to create a safe workplace with that language.

I appreciate your comments. I do not think we could find a perfect way to do this. That is why we chose language that was fairly general. It removes the mandatory "shall." We want to be specific enough to require the employer to correct or modify the condition or practice. We are looking for the hazard that must be removed.

STEVE COFFIELD (Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry):

Section 2 of the proposed amendment to A.B. 253, [Exhibit S](#), is for willful violation citations. The \$100,000 citation would be a settlement agreement involving a willful violation that resulted in the death of an employee. The increased penalties are there. If it is a regular investigation and citation, the penalty would be significantly less than \$100,000. It would be in the \$7,000 or less range per violation.

SENATOR SETTELMAYER:

In section 2, you are saying that if the violation results in death, someone needs to be punished.

MR. COFFIELD:

Section 2 of the proposed amendment, [Exhibit S](#), is the criminal willful violation resulting in death. Section 3 of the proposed amendment addresses the routine, serious violation citation that has a \$7,000 penalty.

SENATOR SETTELMAYER:

Page 3, lines 22-30 of A.B. 253 " ... or any provision of a settlement agreement entered into relating to this chapter" If it is not a material hazard, why are we worried about every provision of a settlement agreement? Does every

provision of every settlement agreement involve a material hazard? I am trying to ensure we are not including things that may not be necessary.

MR. COFFIELD:

Section 2 of the bill addresses the willful violation involving a death. The LCB included the language in that section. It is actually included in all of the sections. All of the sections address the settlement agreement. In a willful violation, if we have a settlement agreement, there will be one or two provisions, and if the employer fails to carry out those provisions, the additional citation and penalty process would begin.

MR. JAYNE:

We use the proposed amendment language in our version of the bill. That section is not the willful violation, it is the serious violation. As we go through the citation process and the appeal process afterwards, the DIR would negotiate with the employer, resulting in a settlement agreement. There must be something of substance in the settlement agreement. The ability to use the settlement agreement and enforce it with the potential of a citation repeats throughout the bill.

If someone is late on a payment of a penalty, that would be a collection action. That is addressed in a different section in the Nevada OSHA law to enforce the collection of something. These sections deal with the willful, repeatedly and serious violations. We want to enforce the settlement agreement to which the employer agreed in negotiation after citations were presented.

MATT NICHOLS (Counsel):

"I think it might cause some comfort for Senator Settelmeyer that if it is a serious violation, the penalty is required. For a non-serious violation, the Division is authorized to impose the penalty. So"

GARY MILLIKEN (Association of General Contractors, Las Vegas Chapter):

We are all in favor of a safe work site. We are in agreement on this bill and we have no opposition to A.B. 253 with the proposed amendment.

JACK MALLORY (Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council):

We also support the amended version of A.B. 253 as presented by the DIR. There is one concern with section 2 of the amendment. We spoke with Mr. Jayne about it, and that issue is somewhat resolved. It involves the question of an employer who repeatedly violates any requirements of chapter 618 of NRS. In my opinion, if someone commits a violation twice after having been told once not to do it, they are willfully violating the law. To have a lesser fine for a repeated violation does not seem right, but Mr. Jayne advised me that if it is a repeat, willful violation, they can consider utilizing the higher penalty standard. The definition of willful is having knowledge and doing it anyway.

MR. COFFIELD:

A willful violation is when the employer, management, staff, etc. of a company shows indifference. They know the hazard is there. They know there is employee exposure to the hazard, and they allow the hazard to continue to exist. Another definition is intentional disregard of a hazard. This is the definition federal OSHA developed.

A repeated violation is a situation in which the employer violates the same or a similar standard. For example, there is a fall protection standard, and guardrails are missing on an unprotected edge. When Nevada OSHA does an inspection and the guardrails are still missing, that would be a repeated violation, unless indifference or intentional disregard can be proven; then it would become a willful violation.

CHAIR SCHNEIDER:

It is on the record, Mr. Mallory. Are you comfortable with that?

MR. MALLORY:

Yes, as comfortable as I can be. No one is entirely satisfied with this, and that is generally the indication of a decent piece of legislation.

MR. MILLIKEN:

We have had similar discussions with Mr. Jayne trying to determine the definitions of a willful violation and a repeat violation.

PAUL MCKENZIE (Building and Construction Trades Council of Northern Nevada):
We are in favor of A.B. 253. There are areas that are not strict enough, but we have to come to an agreement.

One of the reasons the willful and repeat offenders slip away without major penalties is we have a problem maintaining highly trained inspectors. Section 5 of the bill will help us alleviate that issue by possibly raising the pay scale of those people which would allow us to retain them. As soon as inspectors are trained, they are hired by private industry because they can make more money.

BOB OSTROVSKY (Nevada Resort Association):
This is a compromise piece of legislation. Our concerns were about the definitions of willful and repeated violations. The willful violation definition provided by the DIR reflects federal standards. If a person is accused of a willful violation, that person has appeal rights. There are various ways to challenge that both administratively and in court.

A willful violation is a significant violation of the law. Any employer who is charged with a willful violation will take steps to try to remedy that either through a settlement agreement or by challenging the willful violation charge.

Our concern with the repeated violation was that if a person were cited today, that person would be on the clock for five years. For example, if a large hotel were to be cited for some hazard in the hotel and four and one-half years later an inspector cites the hotel for the same hazard, which is a possibility, we do not want the hotel to be subject to the higher penalties that go with the willful violation. The separation of willful violation and repeated violation met the intent of the parties. It did not satisfy anyone, but it is a compromise we can support.

CHAIR SCHNEIDER:
Four and one-half years later there could be a totally different staff working in a hotel. I can understand that.

MR. OSTROVSKY:
That is correct. We understand it is our responsibility to make sure we follow all the rules and regulations. If a person is subject to a repeated violation, the person is subject to a repeated violation. To fall automatically into a willful violation and the higher penalty would have been more difficult for us.

DANNY THOMPSON (Nevada State AFL-CIO):

This is a compromise bill. Everyone is in support of A.B. 253, in particular the salary survey. As soon as inspectors have been trained, they leave for jobs in the private sector for higher pay. Once they are trained, it is difficult to keep them. It is a problem with which the DIR has to deal, and we need to find a solution.

CHAIR SCHNEIDER:
What do they get paid?

MR. THOMPSON:
There is a range, but I am not sure what it is.

MR. COFFIELD:
The range is from a pay grade 30, which pays approximately \$32,000 annually, to a top pay grade of 35, which is approximately \$65,000 annually.

MR. THOMPSON:
In the private sector, \$60,000 for this job is the norm. Once someone is trained, this is a significant pay increase. If a contractor needs an inspector, who better to hire than someone trained by Nevada OSHA?

MR. JAYNE:
When I spoke previously about the 57 recommendations from the subcommittee, we have internally resolved all but about 3 subjects relating to about 8 recommendations. We are still working on those. One of the key findings of the special study addressed the adequacy of pay scales. We incorporated that into this bill by requesting the Department of Personnel to conduct a salary survey.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 253 and open the hearing on A.B. 254.

[ASSEMBLY BILL 254 \(1st Reprint\)](#): Revises provisions relating to the issuance of a citation for certain occupational safety and health violations.
(BDR 53-101)

MR. JAYNE:

Assembly Bill 254 repeats some of the language in A.B. 253. The proposed amendment to A.B. 254 ([Exhibit T](#)) addresses the settlement agreement discussed previously in A.B. 253. We are changing the settlement agreement to a more permissive standard with the language, "may issue a citation." It also clarifies that the settlement agreement entered into needs to correct or modify a condition or practice in or relating to the place of employment rather than something inconsequential.

Section 1, subsection 2 of A.B. 254 states, "A citation issued under this section may be based upon a determination of the Administrator or the Administrator's authorized representative that any employee has access to a hazard." We are trying to bring attention to dealing with hazards that are encountered in the workplace. Section 1, subsection 5 of A.B. 254 addresses the ability of the DIR to adopt regulations to carry out provisions of this bill.

MR. COFFIELD:

There are four elements that have to be proven by Nevada OSHA before a citation can be issued: there has to be a hazardous condition; an employee must have access to the hazardous condition; the employer either has to know about it or could have known about the hazardous condition through the exercise of reasonable diligence; and, Nevada OSHA has a standard that covers the hazardous condition.

The employer knowledge is already covered in NRS 618. It was decided it was a good idea to include employee access in statute rather than in a policy manual.

SENATOR SETTELMAYER:

An employer has to have access to the solution. If someone had a faulty extension cord which belonged to an employee, this would not be covered by this bill. Is this correct?

MR. COFFIELD:

Yes, that is correct. We would first have to be able to establish that the employer knew about it or could have known about it.

MR. OSTROVSKY:

The access to the hazard language is a policy shift. It is not now in statute, but there has to be exposure. The question is what level of exposure. Does the

inspector need to see the employee standing next to an open pit that should have an appropriate barrier but does not? Or is it the fact that the open pit is there, the employee may not be standing next to it, but the employees have been working around it all day. The inspector does not actually have to see the employees exposed to the hazard but has to have some reasonable knowledge that they would be exposed to the hazard. We support it because it is already in regulations.

Occasionally, the call can be close and there can be disputes about whether or not the hazard was only temporary. The employer had the full intent to put up the barrier that was missing at the time of the inspection. Those kinds of things can be adjudicated at the Nevada OSHA appeals board. In the closing conference, a good inspector will listen to the employer about the identified hazard.

MR. COFFIELD:

Mr. Ostrovsky is correct. The terminology was "employee exposure" which implied that the employee had to be right at the point of the hazard, in the danger zone. Federal OSHA changed the terminology to "employee access." The employee does not have to be standing right next to the hazard. If the employee is working in the area or walking by the hazard, then the potential is there for an injury to occur. It is something the inspector is going to have to document. It is not always clear, but Nevada OSHA is reasonable. After an informal meeting with the employer, we will withdraw citations if they are not legally sound.

MARK BEADLESTON (General Superintendent, C.C. Myers, Inc.):

C.C. Myers, Inc. is an employee-owned company. We pride ourselves in providing a safe workplace for our employees. We support A.B. 254. However, we have concerns about the word "access" in section 1, subsection 2 of the proposed amendment, Exhibit T. The word "access" is not measurable or definable. It could create controversy on projects about the interpretation of the exposure. When it comes time to train our employees and our supervisors, the interpretation of "access" could be a problem.

CHAIR SCHNEIDER:

What kind of company is C.C. Myers, Inc.?

MR. BEADLESTON:

We are a construction company. We train our employees on the regulations. There are certain definitions in the regulations that allow people to abide by the regulations and provide a safe workplace. How do I define the word "access" as stated in this bill?

CHAIR SCHNEIDER:

Mr. Coffield testified that Nevada OSHA would be fair.

MR. BEADLESTON:

An interpretation issue in the workplace could create problems.

CHAIR SCHNEIDER:

Is your company a member of Associated General Contractors (AGC) or Associated Builders and Contractors, Inc.?

MR. BEADLESTON:

We are an AGC member.

CHAIR SCHNEIDER:

The AGC of both northern and southern Nevada have testified in favor of this bill. They should be providing training to your company to understand this bill.

MR. BEADLESTON:

We provide much of our own training.

JEANETTE BELZ (Nevada Chapter, Associated General Contractors):

When individual members have concerns, we provide safety programs. We are very concerned about safety in the workplace. We have great safety records in northern Nevada.

The overall concern expressed by C.C. Myers, Inc. was their ability to tell employees effectively what "access" means. It was vague.

CHAIR SCHNEIDER:

But, you offer training to your members. Mr. Coffield and Nevada OSHA could assist in the training.

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MS. BELZ:

We work very closely with Nevada OSHA.

MR. MALLORY:

When a visible hazard is discussed, even though an employee is not in the area, there are a number of different concerns. We are going to work with Nevada OSHA to get clarity. It involves who has responsibility for the hazard. Is it the employer whose employees are working in the proximity of the hazard? Or, is it the employer who has created the hazard itself?

We are going to work with Nevada OSHA to try to understand that, to make sure the workers are as educated as they can be about hazards, and to assist our employer partners with required training.

CHAIR SCHNEIDER:

We will close the hearing on A.B. 254, and, having no further business, the Senate Committee on Commerce, Labor and Energy is adjourned at 4:21 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 289	C	Cheryl Blomstrom	Proposed Amendment
A.B. 289	D	Cheryl Blomstrom	Written Statement
A.B. 289	E	Karon Sande Felton	Written Testimony
A.B. 289	F	Pamela Wagner	Written Testimony
A.B. 289	G	Barbara Paulsen	Written Testimony
A.B. 289	H	Christopher Roller	Written Testimony
A.B. 289	I	Assemblyman John C. Ellison	Proposed Amendment
A.B. 289	J	Debbie Pawelek	Written Statement and Proposed Amendment
A.B. 289	K	Jim Jenks	Proposed Amendment
A.B. 289	L	Mary Jane Noblehart	Written Testimony
A.B. 289	M	Martin Perel, Esq.	Correspondence
A.B. 289	N	Pauline Alwes	Written Testimony
A.B. 289	O	Michael Linares	Written Testimony
A.B. 289	P	Sheila Stirling	Correspondence
A.B. 289	Q	Jon Olson	Written Statement
A.B. 289	R	Chair Michael A. Schneider	Letters of Opposition
A.B. 253	S	Donald Jayne	Proposed Amendment
A.B. 254	T	Donald Jayne	Proposed Amendment