

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

**Seventy-sixth Session
March 23, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:13 p.m. on Wednesday, March 23, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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:

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2
Senator Joseph (Joe) Hardy, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Brian Gresh, The Gresh Group
Dianna Hegeduis, Esq., Executive Director/Board Counsel, State Board of
Osteopathic Medicine
Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical
Association

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Cheryl Blomstrom, Nevada Nurses Association
Larry Ashley, Ed.S., Vice Chair, Governor's Committee on Co-Occurring Disorders
Keith L. Lee, Board of Medical Examiners; Sutton Place Ltd
Fred Hillerby, Nevada Veterinary Medical Association
Robert Armstrong, McDonald Carano Wilson LLP
Jeffrey P. Resnik, President & Senior Trust Officer, Beacon Trust Company

CHAIR SCHNEIDER:

We will open the meeting on Senate Bill (S.B.) 293. This bill is sponsored by Senator Cegavske and referred to this Committee. After closer review, I suggest it be rereferred to the Senate Committee on Judiciary.

SENATE BILL 293: Makes various changes relating to certain nonprofit organizations. (BDR 3-1011)

SENATOR BREEDEN MOVED TO REREFER S.B. 293 TO THE SENATE COMMITTEE ON JUDICIARY.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

We will now open the hearing on S.B. 273. This bill is sponsored by Senator Copenig.

SENATE BILL 273: Revises various provisions governing the practice of osteopathic medicine. (BDR 54-959)

SENATOR COPENING (Clark County Senatorial District No. 2):

I bring S.B. 273 for your consideration at the request of the State Board of Osteopathic Medicine (Board). Since 2009, the Board has taken an active role in encouraging the recruitment of osteopathic physicians for this area, as well as ensuring the discipline of osteopathic physicians when necessary. The Board has been successful in their efforts. I have provided charts showing the increase

in the number of osteopathic physicians and the discipline by the Board from 2000 through 2011 ([Exhibit C](#)).

Recently, Jane Ann Morrison of the *Las Vegas Review-Journal* has written about the Board and its formal disciplinary complaints against physicians for overprescribing opiates. In keeping with its recent season of success, we bring before this Committee a bill designed to accomplish six goals. The goals are: the long overdue updating of statutes to include physicians' assistants; the removal of a sunset date for certain statutes; tightening deadlines and license restrictions; changing the annual fee for July graduates who wish to remain in Nevada as fully licensed osteopathic physicians; and the creation of a telemedicine statute.

With the Chair's permission, I would like to turn discussion over to Dianna Hegeduis, Executive Director/Board Counsel, State Board of Osteopathic Medicine; and Bryan Gresh, Government and Media Affairs, The Gresh Group.

BRIAN GRESH (The Gresh Group):

The National Practitioner Data Bank, Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (HHS) currently has two state boards of osteopathic medicine enrolled in a proactive disclosure service to identify problems with physicians more expeditiously. The Board is one of those two state boards enrolled nationwide. I bring that up to point out things have changed for the Board, and there is a season of success as Senator Copening alluded. This is due, in part, to Dan Curtis, Chair, and Ms. Hegeduis and her staff.

DIANNA HEGEDUIS, ESQ. (Executive Director/Board Counsel, State Board of Osteopathic Medicine):

In my testimony ([Exhibit D](#)), I review the different sections of the bill and explain why we need these statutory changes.

Senate Bill 273 adds two new sections to chapter 633 of the *Nevada Revised Statutes* (NRS). One is the telemedicine statute in section 2. The other is the new section 3, allowing the Board to place restrictions on licenses for physicians coming in from other states. The rest of the language contains updates to current statutory language. In many parts of the existing statute, osteopathic physicians are covered but physician assistants are not, and the

Board regulates both. We wanted to update our statutes to include physician assistants as well, as we did to our regulations this last summer.

This will also update our unprofessional conduct definition and clarify language pertaining to temporary licenses. In section 12, we suggest shortening our deadlines for licensing renewals to less than the current 60 days. This was addressed because the current license-renewal deadline is December 31 of each year. The 60-day grace period allows the physician to continue practicing without a valid license for two additional months after the license expires. We also want to change the word "revoked" to "expired."

In section 14, we are requesting a proration of the \$800 licensing fee, which will allow June graduates to obtain their licenses for the 6 months prior to the December 31 licensure renewal date.

My prepared testimony, [Exhibit D](#), proposes that sections 16 through 33, 35 to 36, and other statutes add physician assistants. We believe these changes will help us to serve the citizens of Nevada better.

SENATOR COPENING:

Ms. Hegeduis, would you discuss in more detail sections 2 and 3?

MS. HEGEDUIS:

Section 2 is the telemedicine statute, and section 3 is proposed language regarding restrictions on a license. Telemedicine would address an issue of a potential shortage of doctors, especially in rural areas where medical needs are underserved. A telemedicine statute is one way to rectify this shortage. The Federation of State Medical Boards (FSMB) is currently working on proposed language for the various boards to utilize when drafting statutes and regulations for telemedicine. An overview by state is available for review ([Exhibit E](#)). There are 10 to 12 states that have definitions of telemedicine and regulations set forth.

In Nevada, we understand a bona fide physician-patient relationship exists. We want doctors to practice medicine but to be ahead of the game. Telemedicine allows physicians to serve an unfulfilled patient need for access to medical care through technology. Section 2 will define telemedicine and identify the requirements for using telemedicine. Much of the proposed language came from

statutes in other states, which are also set forth in the FSMB guidelines, [Exhibit E](#).

Section 3 addresses physicians who come from other states but who have had problems with their licensing boards there. We want to put a restriction on licensing them. The restriction might include participating in a diversion program or being monitored for a period of time to ensure they provide quality work for the citizens of Nevada.

SENATOR SETTELMAYER:

In section 12, you want to change procedural time frames from 30 days to 10 business days. Can you tell me why that change is necessary? I can appreciate making it a quicker process, but will this create a shorter time frame for you?

MS. HEGEDUIS:

We do not have a problem with this. If a physician's license expires on December 31, there is a 60-day grace period in which the license can be reinstated. We do not feel they should be practicing for two months without a license. With our manpower of four individuals, we can reach this goal. This legislation would benefit Nevada citizens.

SENATOR SETTELMAYER:

What are your turnaround times for renewing licenses?

MS. HEGEDUIS:

At the end of January, we are required to send out notices to physicians who did not renew their licenses. In statute, we have to give them an additional 30 days from January 31 to renew them. Presently, they have a grace period of 60 days from December 31 to renew their licenses.

SENATOR SETTELMAYER:

How long does it take for the Board to notify physicians of a failure to renew the license and the revocation of the license? You are going to shorten your time frame from 30 to 15 days, is that correct?

MS. HEGEDUIS:

Yes.

SENATOR SETTELMAYER:
How long is it taking you now?

MS. HEGEDUIS:
We have to comply with the statute and wait until the end of January to send the notice. It actually gets mailed on February 1. We also do formal orders indicating the license has expired. We have it calendared to create those notices on January 31. It will not present a problem for us, because we have the manpower to accomplish that.

CHAIR SCHNEIDER:
Section 12, subsection 1, lines 36 to 38, states, "If the license is not renewed within 15 days after receiving notice," How do you know when the notice was received? Should the language read, "... within 15 business days from the date of the mailing," instead? Perhaps it should indicate a specific date.

MS. HEGEDUIS:
We mail the notices by United States Certified Mail, and we receive the signed return receipt. As an attorney, I am cautious about due process. I do not want anyone to sue the Board because we did not give them proper notice.

CHAIR SCHNEIDER:
In section 2, subsection 2, paragraph (a), "A bona fide relationship between the osteopathic physician and the patient must exist which must include, without limitation, a history and physical examination or consultation which occurred in person" Does that language refer to a face-to-face meeting between the patient and the osteopathic physician, or can the language be read to refer to some other physician who performs the history and physical consultation?

MS. HEGEDUIS:
What we envisioned about this statute was that a true doctor-patient relationship existed with a personal one-on-one meeting originally. An example, some patients in Elko who are underserved by physicians might find it more convenient to travel to Salt Lake City, Utah, for medical care. Perhaps a doctor could set up a clinic in Elko to see a patient, complete a physical, determine the medical condition or illness, and subsequently perform treatment via telemedicine from the doctor's office in Salt Lake City, Utah. We want to be able to have the quality of care accomplished with a one-on-one physical examination with the follow-up care being done in a videoconferenced setting.

CHAIR SCHNEIDER:

Section 14, subsection 3, reads:

The cost of any special meeting called at the request of a licensee, an institution, an organization, a state agency or an applicant for licensure must be paid by the person or entity requesting the special meeting. Such a special meeting must not be called until the person or entity requesting the meeting has paid a cash deposit with the Board sufficient to defray all expenses of the meeting.

There is only one other provision in all of Title 54, NRS 630.268, done in 1987. If the Governor steps in, for instance with the endoscopy problem in Las Vegas, and calls for a meeting, does the Governor have to put up money to call this meeting? Perhaps the Legislative Commission decides to order a meeting for the Board; would the Legislature have to put up the money if they are stepping in to protect the health, safety and welfare of the public?

MS. HEGEDUIS:

I do not know if the Office of the Governor would be considered a state agency, as it is an executive department. I would have to do some research on that. Valley Hospital Medical Center and University Medical Center Hospital in Clark County arrange payments for their residents to obtain their resident licenses. At the present time, this Board has instituted monthly meetings. The Board of Medical Examiners meets quarterly; we meet monthly. Our statutes do not indicate we need to meet this often, but our Board sees the need to meet on a monthly basis and license the physicians who come before us. This allows us to meet in between if we need to do so. It would have to be at the cost of a licensee or an institution, such as a hospital residency program. An applicant for a license may not be able to meet with the Board, for instance, on the second Tuesday of every month but could meet on a Wednesday or a Friday. Our hearings can be held on the weekends to accommodate the physicians. I will have to do some research to answer your question.

CHAIR SCHNEIDER:

These kinds of provisions, if they are good public policy, should be contained in NRS 622 which would cover all of Title 54 occupational and licensing bodies so it would not be done piecemeal.

MR. GRESH:

In consultation with the sponsor, we discovered there were a couple of items left off in the process of inception to bill draft. We put together an amendment to address those issues ([Exhibit F](#)). We would like to brief the Committee on this proposed amendment.

MS. HEGEDUIS:

One of the statutes inadvertently omitted pertained to licensing an osteopathic physician under different scenarios. We are interested in NRS 633.311, subsection 4, paragraph (b). If an applicant has completed a residency program, the Board would accept the application. The applicant has to complete medical school, a one-year internship and a residency program. That paragraph reads: "Has completed 3 years ..." and we would like to add: "..., or such other length of time as required by the specific program," because different specialties have different residency programs. Psychiatry, for example, has a four-year residency program. Before an individual receives an osteopathic medical license, the individual should have completed a residency program. Paragraph (c) pertains to individuals still in the residency program. The different options would address the true nature of the residency program.

Nevada Revised Statute 633.400 is a license-by-endorsement statute which allows the Board to license doctors without going through the regular licensing process. Licensing can take 45 days to several months to complete. Subsection 1, paragraph (b), subparagraph (1) indicates the applicant has to be "currently certified... and was certified or recertified within the past 10 years." There are some physicians who were "grandfathered in." Individuals who were Board certified prior to 1998 would have lifetime Board certification and not have to be recertified. Any osteopathic physician licensed after that time must be recertified every ten years. The Board would like to remove the word "and" and replace it with "or" because there are very few individuals who fall into this category. The Board would also like the sunset provision, set to expire December 31, 2011, to be removed. That is in another bill.

As indicated in my prepared testimony, [Exhibit D](#), many of our statutes need to be updated to include physician assistants. When sections 12 and 13, NRS 633.481 and NRS 633.491 respectively, were rewritten, the term "licensee" was removed. We could interpret licensee as a physician or a physician assistant. Amending it to "person licensed to practice osteopathic medicine ..." reduced this section to only applying to the physicians. The board

wants to broaden the requirement to include both physicians and physician assistants.

SENATOR COPENING:

We will work with the Board to address these issues.

CHAIR SCHNEIDER:

We will close the hearing on S.B. 273. Senator Denis is here to introduce S.B. 270.

SENATE BILL 270: Revises provisions governing qualifications for licensure for certain health care practitioners. (BDR 54-379)

SENATOR MOISES (Mo) DENIS (Clark County Senatorial District No. 2):

Four years ago, I started working on an issue of grave importance in Nevada; prescription narcotic abuse. This was brought to my attention when a constituent contacted me regarding her daughter's addictive use of prescriptions. The abuse was the result of an accident that left her with a back injury and in pain. She eventually recovered from the addiction only to be involved in another accident a few years later. This time, she was prescribed narcotics for pain. The doctor prescribed 200 pills, and within 2 days, she died of an overdose. After reviewing the statistics, I found more individuals die in Nevada from prescription narcotic abuse than from car accidents. You may already know that more prescription narcotic drugs are prescribed in Nevada than any other state in the Country.

Senate Bill 270 requires anyone prescribing controlled substances to take a course of instruction relating to prescription-drug use and addiction as a condition of licensure. Many people can prescribe prescription narcotics: physicians, physician assistants, dentists, advanced practitioners of nursing, osteopathic physicians, osteopathic physician assistants, podiatrists, optometrists and veterinarians.

The State Board of Pharmacy (SBP) has a database system which allows them to review whether or not individuals are abusing prescription medicine. The database will indicate when someone receives the same medicine from various sources, the number of pills prescribed, the dates they were issued, etc. The SBP will send a letter to the prescribers indicating a patient may be abusing based on these findings. They can also determine how much an individual is

prescribing. This bill tries to ensure physicians and others who prescribe narcotics understand prescription abuse and addiction.

Senator Hardy has worked on this issue with me. He has submitted a conceptual amendment ([Exhibit G](#)) to address continuing education and issuing credit to those who have completed courses within the past two to four years. Once the course has been taken, there is no need to take it again, as it is not considered to be an ongoing requirement.

SENATOR COPENING:

To clarify, there are already instructions or courses that address prescription-drug abuse. Who teaches these courses?

SENATOR DENIS:

It depends on the specialty. Different organizations provide instruction. Most courses require completion of a certain number of hours over a period of two to three years. They may already have courses available that may not be specific but are related to the subject.

SENATOR COPENING:

We understand there are a certain number of hours of ongoing education that practitioners need to complete. Would this be one of the choices they would make for these hours?

SENATOR DENIS:

Yes. This is not in addition to those required hours. This course would be included as one of the courses they could take. In all of the specialties, these individuals are required to take an ethics course.

CHAIR SCHNEIDER:

Do the database systems provide information statewide to determine what types of drugs are being prescribed? Is it possible to target certain types of problem drugs?

SENATOR DENIS:

Anytime a prescription narcotic is prescribed, the SBP receives that information, and the database is updated often. A doctor can also request the information on certain patients. For instance, an emergency room doctor may request information using the database system to review a patient coming in and

requesting pain medicine. The system may indicate that this individual is going to other hospitals with the same request. The database system may indicate what that patient has received in the past or for any period of time.

DENISE SELLECK DAVIS (Executive Director, Nevada Osteopathic Medical Association):

The Nevada Osteopathic Medical Association (Association) is accredited by the American Osteopathic Association to provide continuing medical education credits and hours. Last year, we provided more than 8,000 hours of continuing medical education. The Association has offered a variety of course hours on pain management and on working with patients who are addicted to pain-killing drugs. We continue to do this without mandate. One item discussed with Senator Hardy was providing an end date for this particular bill. Continuing-education hours should be responsive to the current issues that contribute to problems in the public, such as diabetes, obesity, drug addiction or any other problem over the next 30 years. We do not want to see the hours locked in and physicians looking at doing hours on an issue that may have been addressed within the public or within the licensee. The Association wishes to be invited to work on the amendment.

CHERYL BLOMSTROM (Nevada Nurses Association):
We support S.B. 270 and the proposed amendment.

LARRY ASHLEY ED.S. (Vice Chair, Governor's Committee on Co-Occurring Disorders):

As the vice chair of the Governor's Committee on Co-Occurring Disorders, (COD), I represent higher education, and I teach at the University of Nevada, Las Vegas (UNLV) as the addiction specialist, mental health coordinator and counselor. I am also appointed with the UNLV Department of Internal Medicine as the addiction-medicine specialist. With my extensive background on this subject, I train all types of professionals.

Our concern is that prescribers need to have training in addictions. Through my work around the country, especially with physicians and other behaviorists, I know in medical school you do not get that as a rule. In the United States, out of four years of medical school the average amount of training about addiction to medicines is about 40 minutes. There may be training about how to prescribe medicine, but there is no training about addictions.

We are also concerned with off-label prescribing—medications prescribed that are not used for their intended uses. The major cause of fatal overdoses around the country is methadone. I am not referring to the methadone in the clinics but to what is prescribed out of a doctor's office.

The Committee believes the prescribers do not have enough education or are not familiar with addictions, and how medications are intertwined and get used.

The COD is a strong supporter of this bill. We want all prescribers to have training about addiction because of prescribed medicines.

We are in support of S.B. 270. Provided for the Committee's review is written testimony from Lesley R. Dickson, M.D., Chair, Governor's Committee on Co-Occurring Disorders ([Exhibit H](#)).

KEITH L. LEE (Board of Medical Examiners):

Clearly, Senator Denis indicated abuse and over-prescribing prescription drugs is a terrible health epidemic in our Country, and we want to be part of trying to solve the problem. We have concerns with regard to some of the wording in S.B. 270 and support the proposed amendment, [Exhibit G](#). Senator Denis has answered some of our concerns, and we are happy to work with him.

One issue we want to make the Committee aware of is the Board of Medical Examiners (BME) does not create these courses. We are assuming there are courses that would meet the criteria. We will be speaking with the sponsors about the requirement that the BME must approve these courses while there are no criteria set forth for that approval.

Page 4 of S.B. 270, lines 21 through 28, requires the BME to adopt regulations. There may be a way to accomplish the needed language without adopting new regulations. Adopting regulations is a time- and resource-consuming project for the SBP in a time when we are experiencing financial difficulties. We want to work through this with the least cost possible, and we have some ideas we want to share with the sponsors about how to achieve that.

SENATOR JOSEPH (JOE) HARDY (Clark County Senatorial District No. 12):

I spoke with Senator Denis before the bill was introduced, and we discussed some of the things we could do. There is a conceptual proposed amendment provided, [Exhibit G](#), with a suggestion to delete "optometrists" because we are not sure if they do anything along those lines.

Referencing the definition of the "course," it is equal to at least two hours of continuing medical education or its equivalent. This would not only include instruction about abuse or the substance abuse, but would include pain management. In this proposed amendment, I suggest credit be given to the professional who has already completed a course of this type within the last two to four years. For instance, I just completed 12 hours of education on pain management which includes addiction. If we allow credit for the professional who has already completed this type of course within a given period of time, the course could qualify without extra bureaucracy. It could do this by meeting the standards and approval of the professional organization to which the professional belongs.

In Nevada, the requirement to renew a medical license includes a number of hours of continuing medical education. The American Academy of Family Physicians has determined the number of hours of continuing education needed and what subjects are needed. When I renew my license, I have to check the box that I have completed those required hours. It is a simple process to audit and find out whether I have completed those hours. The hours we would request professionals to obtain in this bill would obviously be part of the hours that are required anyway to renew their licenses.

FRED HILLERBY (Nevada Veterinary Medical Association):

We are neutral on S.B. 270. We are curious why veterinarians would be required to take this course. It seems the protections these courses provide are for people. It is to monitor the various medical professionals who treat patients so they do not become addicted or get into a situation leading to abuse.

SENATOR DENIS:

The bill covers anyone who can prescribe a narcotic. We need to clean up some of the language.

MR. ASHLEY:

Veterinarians work with animals, but there are some cases where pet owners have abused medications prescribed to the pets. I do believe that veterinarians should be included for this training.

CHAIR SCHNEIDER:

We will close the hearing on S.B. 270. We will now open the hearing on S.B. 259 regarding trusts. Senator Care requested I address trusts for families with great wealth. We do have another trust bill submitted by Senator Roberson.

SENATE BILL 259: Revises provisions governing licensed family trust companies. (BDR 55-629)

ROBERT ARMSTRONG (McDonald Carano Wilson LLP):

I would like to explain what the family trust companies are about. These are specialized fiduciaries that primarily administer family businesses and concentrated assets for a single family. They are not public businesses. The legislation prohibits family trust companies from serving the public. There are a number of states that have adopted family trust company legislation, and although it relates to trust, it is really dealing with the entity and the regulation of the entity. About ten states, including Wyoming, South Dakota, New Hampshire, Delaware and Alaska are identified as the leading jurisdictions in this area.

The Legislature passed and the Governor signed S.B. No. 365 of the 75th Session. That bill created NRS chapter 669A—family trust companies. It has been very well-received legislation for the financial services industry. The goals of S.B. 259 are to enhance the provisions of NRS 669A and allow families to manage the administrative specialized assets better. I am informed that both Texas and Florida are now actively considering adopting similar legislation in their jurisdictions. This bill generally enhances the ability of trust companies to administer the assets and enforce the settlers' intent regarding the trusts they administer.

Section 3 confirms a liability exposure of a family trust company administering the trust. Section 7 identifies a number of transactions which can avoid court approval if certain minimum standards and relationships are met in order to avoid conflicts of interest and timely allow trustees to enter into transactions

and communicate those transactions to their beneficiaries. Sections 8, 9 and 10 allow trust administrative matters to be resolved through a nonjudicial settlement process between interested persons of a trust and the trustees. This includes required notice provisions and statute of limitation periods. Section 11 imposes certain accounting requirements on trust companies to account to interested parties and persons. Section 13 enlarges the definition of family affiliate to include material ownership or control. Section 14 affirms the current statutory law in place with regard to licensed family trust companies. Section 15 permits the trustee to limit its liability arising under a duty to diversify.

We have submitted a proposed amendment to certain sections ([Exhibit I](#)). The amendment to section 3 makes that statute the primary statute to determine fiduciary liability and its limits and avoids conflicting laws. The amendment to section 4 will help the family trust companies benefit from the existing excellent statutory in common law and the requirements set forth in Nevada, which is viewed as one of the top jurisdictions in this area. The way the bill is currently written could restrict the family trust company's ability to benefit from those general trust and estate laws. We request its deletion.

We have several amendments to section 6. Current law adequately addresses jurisdiction and the language that is in the bill would construe to prevent the family trust company from administering trust in other jurisdictions which they are authorized to do now. We suggest deleting subsections 1 and 2 entirely, which will remove that ambiguity.

The second amendment recognizes that we have already adopted NRS 669A and the new sections are not designed to replace current law.

The third amendment is a technical amendment to section 6, subsection 1, removing paragraph (k); it is unnecessary.

Regarding section 12, we recommend the concept of material ownership be introduced as an alternative to the provided control requirement. There are occasions where families have material ownership but do not have control, and that should be covered.

JEFFREY P. RESNIK (President & Senior Trust Officer, Beacon Trust Company): Often vacationing to Nevada, I recently became a resident and purchased a home. One year ago, and based on work previously done creating NRS 669A, our group, Crosby Group—one of the largest family offices in the Country with more than 50 professionals and an additional 30 professionals involved in philanthropic activities—completed a two-year study. We made a decision to adopt an operating structure for the future and to establish a private trust company. When the private trust company was created, we conducted a study of the applicable laws in states throughout the Country. Highlighted in a 2010 article in *The Wall Street Journal*, Nevada is one of a handful of states that provide favorable business climates for private trust companies, particularly those where the main focus of the trust is to support a large and significant operating business. Our family group and our private trust company have a significant equity stake in a company that employs 40,000 people. By holding stock in trust, the company is able to remain in private hands and would not have to be sold based on a succession event and the incurrence of significant inheritance taxes.

Although we represent a prominent family, our focus is on the operating company remaining vibrant and continuing to be a significant, substantial employer. For us to operate, we are different, as Mr. Armstrong indicated, than a retail trust company and need a different set of rules. Our trusts are here to provide capital to the operating business, if needed. We must have the ability to do transactions with the operating company. We are trusts, since they hold concentrated positions in the operating company. If we were subject to a duty to diversify, that would be an event where we may be forced to liquidate the company, where our mission as stated in our trusts, is to preserve the company and allow it to grow and prosper.

Much was completed in terms of the creation of NRS 669A, and with the current bill, there are enhancements and clarifications that could be made such that Nevada remains a leading destination for family offices and significant employers to consider establishing private trust companies.

Being one of the leading family office organizations in the Country, we are active participants in a number of forums and discussion groups where we talk about current events and planning. Clearly, this is an item we will be talking about in terms of our case study and our decision to locate in Nevada.

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SENATOR ROBERSON:

Welcome to Nevada, Mr. Resnik. We are happy to have you as one of our own.

MR. RESNIK:

As Mr. Armstrong indicated, we have hired approximately 10 people. We are working on a plan to double our employment in Nevada.

CHAIR SCHNEIDER:

Mr. Nichols, are these trusts regulated by the Division of Financial Institutions (FID), Department of Business and Industry or banking industry?

MATT NICHOLS (Counsel):

"Essentially, no. There are some regulations relating to finances for these trust companies, but generally they are not regulated. They are subject to NRS but beyond that, no."

CHAIR SCHNEIDER:

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry, was here on Senator Roberson's trust bill, a bill substantially different than S.B. 259 because of issues like that.

MR. NICHOLS:

"The retail trust companies manage trusts in a retail environment for the public, and these family trust companies do not. At least when they are operating as family trust companies, they do not."

MR. ARMSTRONG:

For clarification, I provided George E. Burns, Commissioner, FID, with copies of the legislation and our proposed amendment, and I have been keeping him up to date. We are regulated by the state and are subject to audit. We have annual filing and disclosure requirements and are subject to penalties. In NRS 669A, it provides the ability to audit any of these licensed family trust companies.

CHAIR SCHNEIDER:

Can Mr. Resnik's company be audited at any time by the State?

MR. ARMSTRONG:

That is correct.

MR. RESNIK:

We have capital and insurance requirements.

MR. ARMSTRONG:

They file audited financial statements through the Division of Financial Institutions, Department of Business and Industry. There are confirmation requirements for both capital and insurance as well.

CHAIR SCHNEIDER:

Would you explain? Would a family be a client of yours if they had a net worth in excess of \$1 billion or \$2 billion?

MR. RESNIK:

The trusts have significant net worth. The net worth is our interest in this large privately held company. This is why the structure that supports that company and its 40,000 employees is significant.

CHAIR SCHNEIDER:

So the language in this bill is worded differently than normal for these family trusts and how they operate. Do these trusts operate as fiduciaries? Do they not have to act in the best interest of the trust? Can I put investments wherever I want? Can I put them back into the company?

MR. ARMSTRONG:

There are two concepts. We always have to administer in the best interest of the beneficiaries. That is an obligation and duty we do not avoid. In carrying out that duty, we are going to hold family assets that, if you had a typical trust, would be turned over to a retail fiduciary. They are required to diversify among a very broad menu of 18 asset-classes with fixed income, equities and alternative assets. The problem with family trust companies is they are getting a couple of assets that are not easily sold and diversified into that broad base. We are asking, in furthering this legislation, to have the ability to continue to own those assets and in the ownership percentages and concentrations that exist as opposed to having to sell them all off and then go to fixed income, cash and marketable securities and a little real estate.

KEITH L. LEE (Sutton Place Ltd):

Sutton Place Ltd. is a manager of a family trust company. Much like Mr. Resnik's situation, it is a closely held family trust with a number of

beneficiaries. Sutton Place Ltd. has been in existence for many years and has substantial assets. It is located in Reno, employing 35 to 40 individuals. We have been instrumental in working with the Committee and Mr. Armstrong to have NRS 669A adopted during the 75th Session. My client is an unlicensed family trust company. The way the law was developed does not require licensure of family trust companies. It specifies that family trust companies cannot hold themselves out to do business with or for the general public, or to solicit business from the general public. Because of the nature of family trusts, the number of beneficiaries, the complexity of the assets, etc., we have consulting agreements and retainer agreements with the best investment counselors and lawyers in the Country to assist us in administering the assets of the beneficiaries.

As indicated in the rationale of my proposed amendment ([Exhibit J](#)), based on the business model, a family trust company is not required to be licensed by the Division of Financial Institutions to do business in Nevada. My client, because of its business model, has chosen not to be licensed as a family trust company.

We support S.B. 259 and Mr. Armstrong's proposed amendments to the bill. As indicated in his and Mr. Resnik's testimony, the provisions in the bill assist with the administration of assets for all trust companies. The bill also clarifies accountability and dispute resolutions. In our judgment, there is no reason why unlicensed family trust companies should not have the benefits of this bill. The problem of not letting family trust companies take advantage of these provisions could be a negative implication that they cannot do some of those things. They are already regulated by the Uniform Prudent Investor Act. If the suggestion to make this applicable to unlicensed family trust companies does not go forward, we will have to consider whether we would want to remain in Nevada.

I have provided provisions, [Exhibit J](#), to be more consistent with NRS 163, 164, and 165, which apply to us in a general way. We agree with Mr. Armstrong's proposed amendment, [Exhibit I](#), to remove section 4, subsection 2 and all of section 6. Our proposed amendment suggests adding new subsections 6, 7 and 8.

CHAIR SCHNEIDER:

Mr. Lee, is it true your trust company, Sutton Place Ltd., is never audited by the State?

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MR. LEE:

That is correct. We are, however, substantially regulated with requirements and are audited every year as part of our fiduciary responsibility to the beneficiaries.

CHAIR SCHNEIDER:

We will close the hearing on S.B. 259. There being no further business of the Senate Committee on Commerce, Labor and Energy, we are adjourned at 2:30 p.m.

RESPECTFULLY SUBMITTED:

Vicki Folster,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Senator Copening	Charts
S.B. 273	D	Dianna Hegeduis	Testimony
S.B. 273	E	Dianna Hegeduis	Telemedicine Overview by State
S.B. 273	F	Dianna Hegeduis	Proposed Amendment to <u>S.B. 273</u>
S.B. 270	G	Senator Hardy	Amendment to <u>S.B. 270</u>
S.B. 270	H	Larry Ashley	Letter from Lesley R. Dickson, MD, Nevada Psychiatric Association
S.B. 259	I	Robert Armstrong	Proposed Amendment to <u>S.B. 259</u>
S.B. 259	J	Keith L. Lee	Proposed Amendment to <u>S.B. 259</u>