

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

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

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 10:44 a.m. on Friday, February 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:

Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Margi Grein, Executive Officer, State Contractors' Board
Keith Lee, Attorney, State Contractors' Board
Marlene Lockard, Subcontractors' Legislative Coalition
Gary Milliken, Las Vegas Chapter, Associated General Contractors
Richard Simmonds, D.V.M., M.S., Vice President, Nevada State Board of
Veterinary Medical Examiners

Fred L. Hillerby, Nevada Veterinary Medical Society, State Board of Pharmacy,
Board of Dental Examiners of Nevada, State Board of Nursing.
Richard Whitley, M.S., Administrator, Health Division, Department of Health and
Human Services
Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of
the Attorney General
Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Dianna Hegeduis, Executive Director, State Board of Osteopathic Medicine
Susan Fisher, State Board of Podiatry
Julie Butler, Records Bureau Chief, Records and Technology Division,
Department of Public Safety

CHAIR SCHNEIDER:

We have two bill draft requests (BDRs) to introduce.

BILL DRAFT REQUEST 53-166: Creates a private right of action against
employers for workers who are misclassified as independent contractors.
(Later introduced as [Senate Bill 148.](#))

SENATOR BREEDEN MOVED TO INTRODUCE BDR 53-166.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SETTELMAYER WAS ABSENT FOR
THE VOTE.)

* * * * *

BILL DRAFT REQUEST 53-167: Authorizes civil penalties against anyone who
knowingly advises an employer on how to misclassify employees as
independent contractors. (Later introduced as [Senate Bill 147.](#))

SENATOR BREEDEN MOVED TO INTRODUCE BDR 53-167.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SETTELMAYER WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR SCHNEIDER:

We will open the hearing on Senate Bill (S.B.) 18.

SENATE BILL 18: Revises provisions governing the State Contractors' Board.
(BDR 54-500)

MARGI GREIN (Executive Officer, State Contractors' Board):

I have submitted written testimony in support of S.B. 18 ([Exhibit C](#)).

CHAIR SCHNEIDER:

We will close the hearing on S.B. 18 and open the hearing on S.B. 19.

SENATE BILL 19: Requires an applicant for a contractor's license or a licensed contractor to notify the State Contractors' Board if the applicant or licensee is convicted of, or pleads guilty, guilty but mentally ill or nolo contendere to, certain crimes. (BDR 54-499)

MS. GREIN:

I have submitted written testimony supporting S.B. 19, [Exhibit C](#).

SENATOR HALSETH:

Does this bill exclude the contractor automatically, or is it on a case-by-case basis?

MS. GREIN:

The bill simply requires notification. Failure to notify would be grounds for disciplinary action.

SENATOR PARKS:

Do you have the forms online for use by an applicant or a current licensee?

MS. GREIN:

Yes, we have a sample form drafted, and it is our intention to have the form available to all licensees through the Website. It will also be mailed to all licensees upon passage of the bill.

SENATOR PARKS:

My concern is the restoration of rights for convicted individuals who have served their sentence. Would this apply to someone who is an ex-felon?

MS. GREIN:

Yes, we would ask for all of that information to be disclosed to us.

SENATOR COPENING:

I have a question on section 1, subsection 2. If the applicant applies before the trial date and is granted a contractor's license, then two months later submits a notification of conviction, is there something in statute already that allows revocation of that license?

MS. GREIN:

There is a provision in statute that allows for disciplinary action for misrepresentation of a material fact, which would be failure to disclose.

KEITH LEE (Attorney, State Contractors' Board):

It would be grounds for discipline under this bill as it is being proposed. It would be grounds for discipline without the reporting requirement. This bill simply adds a reporting requirement.

Each case would be judged on its own merits, but discipline can be a revocation of a license, to a suspension, to a slap on the wrist and an oral reprimand. Timing issues are difficult to meet. If the notification is 30 or 40 days late, that would be taken into consideration as to what the discipline would be.

SENATOR BREEDEN:

Do you have a process in place to check for convictions?

MS. GREIN:

Yes, we do.

SENATOR BREEDEN:

Are you requiring the applicant to notify you after the issuance of a license?

MS. GREIN:

We are requesting the applicant, as well as the licensee, to notify us. If the felony conviction occurred while he was licensed, he would be required to report it to us within 30 days of the conviction or a guilty plea.

SENATOR BREEDEN:

If a background check has already been completed before the license has been issued, then I can see that it would be relevant for an existing contractor to notify you of a conviction. Do I have this process backwards?

MR. LEE:

The focus is on the applicant as opposed to the licensee. The contractor who is already licensed has a reporting requirement. For an applicant, we run a background check. Oftentimes that occurs early in the licensing process. It takes a period of time to process the application. The background check does not necessarily occur at the end of the licensing process. When we get to the point where we are ready to issue the license, if something occurs then, under this bill, that person is required to report that to us.

MARLENE LOCKARD (Subcontractors' Legislative Coalition):

We support both S.B. 18 and S.B. 19.

GARY MILLIKEN (Las Vegas Chapter, Associated General Contractors):

We support both S.B. 18 and S.B. 19.

CHAIR SCHNEIDER:

I have received a letter from Lisa Rasmussen, Esq., Nevada Attorneys for Criminal Justice ([Exhibit D](#)), requesting some language changes in S.B. 19.

We will close the hearing on S.B. 19.

Senator Settlemeyer, we heard testimony on S.B. 18 earlier when you were not in the room. Do you feel comfortable with S.B. 18?

SENATOR SETTELMAYER:

Yes I do. I reviewed it, and was listening in.

CHAIR SCHNEIDER:

I would like to have a vote on S.B. 18 and S.B. 19.

SENATOR COPENING MOVED TO DO PASS S.B. 18.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR COPENING MOVED TO DO PASS S.B. 19.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR SCHNEIDER:

We will open the hearing on S.B. 17.

SENATE BILL 17: Establishes provisions relating to the reissuance of certain drugs for certain animals. (BDR 54-22)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

Senate Bill 17 mirrors what is in current law concerning donating medicines. This measure would allow a human companion of an animal to return medicines to a licensed veterinarian or licensed veterinary clinic. How these medicines are distributed would be at the discretion of the veterinarian. It would be based on economic need, and it would be free.

There are strict provisions in this bill about the kinds of drugs, the regulatory process to ensure integrity and liability. The Nevada State Board of Veterinary Medical Examiners and the State Board of Pharmacy did not believe that the medicines have to be in a pristine, unopened condition. The packaging could be opened with some medication left.

There are many protections in this measure. It will address the needs of the people of this State, while offering the protections for the donors, the veterinarians, the facilities and those who would receive the medicine. I urge the Committee's support of S.B. 17.

SENATOR SETTELMAYER:

Does the bill address the donation of modified live vaccines? These are a dry substance mixed with a liquid which are only good for a week or two. I would prefer that these were not donated.

SENATOR WIENER:

There is a specific reference to medicines that are liquid and those that require refrigeration. I would have great faith that the State Board of Pharmacy and the Nevada State Board of Veterinary Medical Examiners would monitor that.

There is a section in the bill that excludes animals that are to be used for human consumption or animals consumed by other animals that are to be used for human consumption.

SENATOR COPENING:

I would feel more comfortable if there were more safeguards in section 1, subsection 8. Perhaps some identification should be required, such as a driver's license, if the donor were unknown to the veterinarian or clinic.

SENATOR WIENER:

This is not a mandate, but the veterinarian most likely would have a relationship with the person donating the animal's medicine. The veterinarian would be very conscious and concerned about the source of the medicine being returned before reissuing it.

The State Board of Pharmacy and the Nevada State Board of Veterinary Medical Examiners are very aware of the need to ensure that the medicine would have the integrity before being redistributed.

CHAIR SCHNEIDER:

Have you spoken with anyone at the Governor's Office regarding this bill? On January 3, 2011, the Governor issued an executive order establishing a freeze on proposed regulations.

SENATOR WIENER:

I have not contacted the Governor's Office. It is important to have a statute on the books with which to move forward. If the freeze on regulations is sustained throughout this Legislative Session, we will not be in session when the regulations could be processed.

RICHARD SIMMONDS, D.V.M., M.S. (Vice President, Nevada State Board of Veterinary Medical Examiners):

The Board of Veterinary Medical Examiners supports S.B. 17. Currently, it is illegal for a veterinarian to accept a returned drug and reissue it. If this bill is passed, we can look at the statute, even without a regulation in place, and take that into account if we were to get a complaint that involves reissuance of a drug. I do not think that is a major issue on passage of this bill. At the very least, passage of this bill will allow us to go forward with the regulation when the freeze is lifted.

FRED L. HILLERBY (Nevada Veterinary Medical Society):

We support S.B. 17. I would like to share an e-mail with you that I received from a veterinarian in Reno ([Exhibit E](#)).

CHAIR SCHNEIDER:

I will close the hearing on S.B. 17.

SENATOR SETTELMAYER MOVED TO DO PASS S.B. 17.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

We will open the hearing on S.B. 37.

SENATE BILL 37: Makes various changes concerning complaints received by a health care licensing board. (BDR 54-106)

SENATOR WIENER:

This bill is the outgrowth of something that happened in southern Nevada. There were some pharmacies operating as surgical centers. The Attorney General established a task force which would require different health-care licensing boards to talk to each other to ensure an open line of communication among them. That way, if a board involved with a licensee does not learn of a problem, but another board does, the information could be shared. In order to continue with this policy beyond the task force, we need a statutory presence.

Senate Bill 37 requires communication between health-care licensing boards. If a board finds out about an activity of an individual who is licensed under another board, the first board must communicate that activity to the other board. There is a five day reporting window; however, if there is an imminent danger to public health or safety, the report must be made immediately to the health authority. This measure has received a lot of support from the health-care licensing boards. The report could be filed orally, electronically or in writing.

The health-care licensing boards are immune from civil liability, for whatever reason, for a decision or action taken in good faith and without malicious intent. This will encourage the boards to talk to each other.

SENATOR SETTELMAYER:

Does the good faith provision exempt them if they do not understand under whose jurisdiction the activity falls? Are the boards going to be responsible to know all jurisdictions?

RICHARD WHITLEY M.S. (Administrator, Health Division, Department of Health and Human Services):

In relation to this bill, our role is regulating health facilities. You need a legal answer to your question, and I cannot provide that answer.

This communication among the boards means we can identify more quickly which board is most appropriate to respond. We started out with having actual conference calls. Now we are able to do this with e-mail. If there is an issue that crosses a span of clinical licensing boards and health facilities, we are able to determine quickly who owns either a piece or all of it.

Another benefit has been for health facilities. We get a lot of complaints, half of which are unsubstantiated. We are fee-based, so the costs of investigations are

charged to facilities. In the past year since we have engaged in this communication, we have seen some efficiencies. We are able to respond appropriately or place that responsibility with a different licensing board even though we initially received the complaint.

When the storefront operators doing surgeries in Las Vegas were identified, there was no coordinated effort. The Attorney General convened a task force to handle this. It has been beneficial to keep it alive. As an agency administrator, I am engaged in using the system of communication. I see its value. Other people on licensing boards may not see value in it and may not participate in it. This bill will keep that process of notification going.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):

Senator Settelmeyer, if I understand, your question is how the boards are supposed to know under whose jurisdiction an activity falls. If you read the language carefully, it states, "... if you do know" If you look at section 1, subsection 1, paragraph (a), it states, "... after making the determination" The intent is if a complaint is received by one board and a determination is made that it should be with another board, it must be referred to the other board. We want the boards to work together and prevent health-care crises.

SENATOR SETTELMEYER:

If a determination is not made that the complaint belongs to another board, then are not they responsible for it?

MR. MUNRO:

Yes, if there is no determination that the complaint belongs somewhere else, there is no knowledge.

CHAIR SCHNEIDER:

Do you represent each board?

MR. MUNRO:

The Attorney General's Office does not represent each board, but we represent almost all the boards. The boards have attorneys, executives and board members. Someone within a board should know where a particular kind of complaint belongs.

LAWRENCE P. MATHEIS (Executive Director, Nevada State Medical Association):
We support this bill. It is addressing, in a more comprehensive way, some things we introduced in the 75th Legislative Session.

Assembly Bill No.112 of the 75th Session was one of a series of bills put together to respond to the issues leading up to, or issues impairing the response to, the hepatitis outbreak in Las Vegas. That specifically addressed the concern expressed by some licensing boards and State agencies that they were prohibited by statute from sharing information with other agencies. That law directed the sharing of appropriate investigation information so each of the boards or agencies could fulfill their function. But that was in the case of a declared emergency around some event occurring within a health-care setting.

This bill builds on that and the communication about the results of investigations which are now appropriate to be picked up, in part or in whole, by other agencies or boards. This bill will protect the communication. It is another step forward in ensuring the public is protected and all the agencies and boards are able to fulfill their responsibilities.

FRED L. HILLERBY (State Board of Pharmacy, Board of Dental Examiners of Nevada, State Board of Nursing):
The State Board of Pharmacy, the State Board of Nursing and the Board of Dental Examiners of Nevada support S.B. 37.

MR. MUNRO:
The Attorney General's Office supports the passage of this bill.

MR. HILLERBY:
Going back to S.B. 17 which was passed out of this Committee today, I want you to know the Pharmacy Board has been in communication with Senator Wiener and supports that bill. They are willing to offer whatever support the Nevada State Board of Veterinary Medical Examiners might need in adopting regulations to ensure safety in this process.

DIANNA HEGEDUIS (Executive Director, Nevada State Board of Osteopathic Medicine):
The Nevada State Board of Osteopathic Medicine supports this bill. We enjoy a great working relationship with the other boards.

Senate Committee on Commerce, Labor and Energy
February 11, 2011
Page 12

CHAIR SCHNEIDER:

We have received a memorandum supporting S.B. 37 from Loretta L. Ponton, Executive Director, Board of Occupational Therapy ([Exhibit F](#)). Also, we have received a letter from Allison Tresca, Executive Director, State Board of Physical Therapy Examiners, in support of S.B. 37 ([Exhibit G](#)).

We will close the hearing on S.B. 37.

SENATOR COPENING MOVED TO DO PASS S.B. 37.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

We will open the hearing on S.B. 36.

SENATE BILL 36: Revises provisions governing the State Board of Podiatry.
(BDR 54-502)

SUSAN FISHER (State Board of Podiatry):

Senate Bill 36 does two things. It requires licensees to provide the State Board of Podiatry with a permanent address, a change of address, or if the business is closed, the licensee must notify the Board of the location and identify a custodian of the records. It also will put in statute the authority to require fingerprints for licensees.

We have been seeing a lot of movement of offices and a number of licensees closing their businesses, leaving the State or retiring early. This can be a big problem for patients, especially for ones who have podiatrists who have closed their businesses or moved out of State. Senate Bill 36 would require our licensees to notify us in writing within 30 days of an in-State relocation of a practice. If the business is closed or moved out of state, we would like to require a 14-day notice and, for a period of 5 years, keep us apprised of where their records are maintained.

We would like to request an amendment to this bill to remove the financial penalty ([Exhibit H](#)). This will remove the two-thirds majority vote. We already have, in statute, the authority to impose a fine for noncompliance with our regulations. We do not need the extra \$250 penalty. We can impose a penalty through regulations.

CHAIR SCHNEIDER:

A fine not to exceed \$250 is a light fine. Could the Board set a fine of \$500 if the incident is egregious?

MS. FISHER:

They could.

SENATOR PARKS:

Does your requested legislation mirror other legislation concerning medical service providers?

MS. FISHER:

It does. It exactly mirrors Nevada Revised Statute 630.254, for physicians, perfusionists, physician assistants and practitioners of respiratory care. We would just like to take out the penalty.

SENATOR PARKS:

The bill states podiatrists must provide a notice of change of address within 30 days of the change. Does that also mirror other regulations?

SENATOR COPENING:

Do you want to remove the entire section referencing the \$250 penalty and leave in the portion that states the Board may take disciplinary action and may impose a fine?

MS. FISHER:

Yes, that is correct. The language of the proposed amendment we will leave in is, "If a licensee fails to provide the written notice required by paragraph (b) of subsection (1), the Board shall impose any fine or disciplinary action pursuant to NRS 635.130."

We also want to have in statute a fingerprint requirement. In September 2010, we received a letter from the Department of Public Safety stating they were

closing our account. We would not be able to request any more fingerprints, which the Department gets from the FBI, because we did not have the requirement in statutory language, only in regulatory language ([Exhibit I](#)).

A number of the other boards do have the statutory language requiring fingerprints. We are mirroring language of other boards. There is no additional fee charged by the Board. The fee for the fingerprints is a direct pay to the repository.

CHAIR SCHNEIDER:

The Committee Counsel has indicated that in section 3, subsection 2 of S.B. 36, the fee for fingerprints triggers the two-thirds majority vote. I do not have a problem with that and neither does the Committee. By putting it in statute, then the regulations have to be written, and there may be a problem with the Governor's Office on that.

MS. FISHER:

We actually have required the fingerprints for a number of years. The fee is not paid to the Board. I will check with our executive director. We can probably take that language out, because we do not actually collect that fee.

MATT NICHOLS:

If subsection 2 of section 3 is removed, that would remove the two-thirds requirement on the bill. The potential imposition of the fine ... The language as proposed would be struck and Ms. Fisher's amendment She's correct, they have existing authority to impose fines, but beyond that, the imposition of a fine is generally not a provision that is going to trigger a two-thirds majority requirement on a bill. We like to presume that people are going to comply with the law and so the potential additional revenue to the State through the imposition of a fine is something that typically does not trigger two-thirds majority.

CHAIR SCHNEIDER:

Ms. Fisher, you want the fingerprint requirement in statute because you were told it was required.

MS. FISHER:

We must have statutory language.

JULIE BUTLER (Records Bureau Chief, Records and Technology Division, Department of Public Safety):

Within my bureau, we house the Nevada Criminal History Repository. It is correct that the State Board of Podiatry does not have statutory authority to request the FBI for their federal criminal history records. Absent statutory authority, the FBI will not release its criminal history records to any agency unless they approve it, regardless of what is in the *Nevada Revised Statutes*.

I have forwarded the language in this bill to the FBI for a preliminary review. They have indicated this bill, as drafted, would meet their criteria for release of records.

My concern comes within section 2. This language is not dissimilar to other statutes on the books allowing a board or licensing entity to collect a fee over and above the fees charged by the central repository. The FBI charges us for submission of the fingerprints and, in addition, we have our own State fee we collect for a state criminal history report. I would not want to see any amendments which would interfere with our collection of fees for providing the criminal history information.

CHAIR SCHNEIDER:

There are no amendments proposed which would interfere with your collection of fees.

MS. BUTLER:

I want to be sure that, if you decide to strike section 2, it is still understood we collect a fee for the criminal history record reports we provide. We do not want to jeopardize a funding source.

MR. NICHOLS:

I don't know if I can do that. But I think a revision to subsection 2 that just clarified that any fee that might be imposed for the fingerprints, has to be paid by the applicant may accomplish removing the two-thirds requirement while satisfying the Nevada repository. The records-keeping people obviously want to get their costs covered on this, but above and beyond that, the way Ms. Fisher described it, subsection 2 doesn't seem to be accurate in terms of how that fee is being assessed in any event. So the Committee may want to address it for that reason, if for no other.

CHAIR SCHNEIDER:

The \$250 does not trigger the two-thirds majority requirement; therefore, you may want to leave that in the bill.

SENATOR SETTELMAYER:

It probably makes more sense to leave it to them, since they could modify it either up or down based on the current circumstances. A lot of things like that make more sense in the *Nevada Administrative Code* than in the *Nevada Revised Statutes*.

As far as the fingerprint issue, if statute stated the direct cost charged by the FBI and the Nevada Criminal History Repository is passed on, that potentially takes off the two-thirds majority as well.

Is it correct that it is common practice for fingerprints to be gathered for anyone who has access to controlled substances?

MS. BUTLER:

The threshold is for people working in positions of trust or with vulnerable populations, such as doctors, nurses, pharmacy boards, realtors, teachers, childcare workers, etc. The language in section 3 is similar to all of those other entities within statutes allowing them to submit fingerprints.

Senate Committee on Commerce, Labor and Energy
February 11, 2011
Page 17

CHAIR SCHNEIDER:

I think we are on the right track. I would suggest Susan Fisher work with Matt Nichols to develop an amendment to bring back to the Committee. The hearing is closed on S.B. 36.

The meeting of the Senate Committee on Commerce, Labor and Energy is adjourned at 11:51 a.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce, Labor and Energy

Date: February 11, 2011

Time of Meeting: 10:44 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 18	C	Margi Grein, Executive Officer State Contractors' Board	Written testimony
S.B. 19	C	Margi Grein, Executive Officer State Contractors' Board	Written Testimony
S.B. 19	D	Lisa A. Rasmussen, Esq.	Letter from Nevada Attorneys for Criminal Justice
S.B. 17	E	Fred L. Hillerby, Nevada Veterinary Medical Society	E-mail
S.B. 37	F	Loretta L. Ponton, Executive Director, Board of Occupational Therapy	Memorandum
S.B. 37	G	Allison Tresca, Executive Director, State Board of Physical Therapy Examiners	Proposed amendment
S.B. 36	H	Susan Fisher	Amendment
S.B. 36	I	Susan Fisher	Letter from Dept of Public Safety