

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

**Seventy-Seventh Session
March 18, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:30 p.m. on Monday, March 18, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settlemeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wayne Archer, Committee Secretary

OTHERS PRESENT:

Bruce Arkell, Personal Care Association of Nevada
Peter Morris, BrightStar Care of Reno
Barbara Deavers
Tammy Sisson, Lend-A-Hand Senior Services
Laura Cogger, Consumer Direct of Nevada

Tray Abney, The Chamber, Reno-Sparks-Northern Nevada; National Federation
of Independent Business
Michael DiAsio, Visiting Angels
Sue Cook, Homewatch Caregivers
Al Martinez, Service Employees International Union Local 1107
Paul McKenzie, Building and Construction Trades Council of Northern Nevada
Danny Thompson, Nevada State AFL-CIO
Aldo Vennettilli, American Federation of State, County and Municipal Employees
Jack Mallory, Southern Nevada Building and Construction Trades Council
A.J. Delap, Las Vegas Metropolitan Police Department
Terry Graves, Western Metals Recycling; A&A Midwest Recycling; BB Recycling
Warren Hardy, SA Recycling
Scott Stolberg, A&A Midwest Recycling
Kristin Erickson, Nevada District Attorneys Association
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Randy Brown, AT&T
Craig Madole, Associated General Contractors of America, Inc., Nevada Chapter

Chair Atkinson:

I will open the hearing on Senate Bill (S.B.) 249.

SENATE BILL 249: Makes various changes relating to employment. (BDR 53-836)

Senator Hardy:

Senate Bill 249 addresses employment practices and overtime exemptions for home health care workers. Patients need stability and security as they are cared for. Dementia patients can become disoriented very easily and often do not recognize family members. A large rotation of caregivers presents challenges for these patients. Patients requiring constant care need to recognize their caregivers, which can be very difficult when they have many caregivers. This is especially important for Nevada, which has a large elder population.

Due to the high cost of this level of care, caregivers are often hired through gray markets. This exposes an already vulnerable demographic to even greater harm.

Bruce Arkell (Personal Care Association of Nevada):

Caregivers hired through gray markets earn wages far below minimum wage and generally are not paid overtime. Unlike the gray market, the personal care

industry has controls to keep the programs honest. Caregivers' backgrounds are checked. It is more expensive because professional caregivers are paid more. Market forces drive the cost of care up, which makes paying overtime difficult.

The rolling 24-hour clock limits the number of days caregivers can work in a single week. For patients requiring 24-hour care, caregivers are scheduled in 12-hour shifts to reduce the number of caregivers interacting with patients. While caregivers may work overtime, they cannot work more than 40 hours in a single week. This means caregivers can only work 3 days in a single week. The cost of operating in this manner is so high, one provider reported scheduling three caregivers per day. This means nine caregivers interact with one patient during a single week. This is not fair to the caregivers or the patients.

Peter Morris (BrightStar Care of Reno):

I am the owner of BrightStar, a licensed personal care agency in Reno. I support S.B. 249. Personal caregivers provide individualized care 24 hours a day, 7 days a week. Personal care allows seniors to remain in their homes.

Limitations on overtime protect employees from exploitation but have unintended consequences. In addition to caring for their clients, most of my employees provide care for their own small children or elderly parents. Caring for their own family members limits the time they can work as professional caregivers. Restrictions on overtime limit them to 3 days of work in a single week. They are willing and able to work more than 40 hours during this period but are restricted from doing so because of restrictions on overtime.

The personal caregivers I employ are professionally trained and certified. This produces wages that are much higher than the wages paid for caregivers hired through gray markets. By reducing the cost of personal caregivers, Senate Bill 249 will help reduce the number of unregulated caregivers in the gray market.

Most seniors cannot afford to pay overtime for their caregivers. In some instances, it is not the client's fault the caregiver must work overtime. The caregiver may have worked 8 hours for another client and then begun working for a second client.

The law gets in the way and increases the cost of care. Persuading a client to allow eight or nine caregivers to enter his or her home on a weekly basis is

a challenge. It does not facilitate good care, it does not provide peace of mind for clients and their families and it does not provide good income for caregivers.

Barbara Deavers:

The continuity of care is extremely important for clients, especially for those suffering from dementia. Although the relationships between caregivers and their patients are of a professional nature, they are highly personal. These relationships are not formed overnight. Caregivers earn the trust and strengthen their patients' confidence over a period of time.

I am sure you are aware of the shortage of health care providers in Nevada. The shortage of professional, compassionate caregivers will be especially hard on the State's aging population. Anyone can place a classified advertisement in the newspaper for a caregiver, but it does not mean that person will have all the training personal care agencies are required to provide.

Senator Jones:

I do not see a nexus between the serious problems supporters have described and the proposed changes in S.B. 249.

Mr. Arkell:

Caregivers' wages range from \$10 to \$12 per hour. The State's reimbursement rate for Medicaid is \$17.50 per hour. Wages in the private market are as high as \$20 per hour. At those levels, there is no margin to pay overtime. No agency is in a position to spread the extra hours over more than one client.

There are two solutions to this problem. One solution would be to follow the federal law which, among other things, recognizes sleep time. Another solution would be to eliminate the 24-hour rolling clock. Nevada is one of the only States that does not follow the federal rules. Smaller agencies cannot spread the additional hours over more workers even if they wanted to do so, because their pool of workers is small. Senate Bill 249 will not eliminate the gray market, but it will provide professional agencies with more customers and more employees.

Senator Hutchison:

If a caregiver works 84 hours in 12-hour shifts, how would overtime be calculated under federal law? Would they be paid overtime for the 44 extra hours? That would allow a client to be served by two caregivers.

Mr. Morris:

You have raised a typical dilemma. Our clients would love to have as few caregivers as possible. Under the scenario you described, a caregiver works 12 hours, 4 of which are overtime. The caregiver cannot start the next day because of the 24-hour clock. For instance, suppose a caregiver begins a 12-hour shift at 8 a.m. If that caregiver begins work at 8 a.m. the next day, all of the next shift is overtime because 24 hours still have not elapsed. Overtime keeps building. When 40 hours are reached, the caregiver cannot continue to work.

We have clients who would prefer to have live-in caregivers, but the State does not recognize live-in caregivers. As a result, caregivers must be paid for all hours they are present, even if they are sleeping and not providing services during that time. A live-in caregiver would have more flexibility.

This makes scheduling a nightmare. The proposed changes would eliminate some of this confusion. A caregiver could work 40 hours at regular rate and any additional hours worked would be overtime. This would vastly simplify the process.

Senator Hutchison:

How would overtime be calculated if a caregiver works 12-hour shifts for 7 consecutive days if S.B. 249 passes?

Tammy Sisson (Lend-A-Hand Senior Services):

In 1996, the U.S. Department of Labor granted live-in caregivers 8 hours of sleep time. Clients were not charged, and caregivers were not paid for this time. Live-in caregivers are provided room and board. At this level of care, the homes are nice. This is not hospice care. We have to charge the client \$464 for one 24-hour period. The caregivers are not on their feet the whole shift. There is downtime. Personal care workers are considered domestic workers under federal law. Therefore, they are exempt, like a nanny or a live-in housekeeper. We want to seek exemption and adopt the federal rules of overtime.

Senator Hutchison:

Under the scenario I described earlier, a caregiver working 84 hours would be paid the regular rate and would not be paid overtime because he or she would be exempt. Is that correct?

Ms. Sisson:

Correct. The typical day for caregivers involves getting the clients up and ready for the day. Caregivers take them to the doctor. They bring the clients home, and the clients take a nap. The clients are not running around all day. There is a lot of downtime. We have caregivers who quit because they say the job is so boring.

Senator Hutchison:

Are you saying caregivers would be paid straight time regardless of how many hours they work?

Ms. Sisson:

Yes. Employers could increase caregivers' pay to \$12 to \$15 per hour. Caregivers will not be paid minimum wage.

Senator Hardy:

How does the training and qualifications of professional caregivers differ from those hired in the gray market?

Mr. Morris:

The difference is significant. The caregivers we hire go through mandatory training, receiving a minimum of 8 hours of training before they can work in the field. Caregivers must be trained in first aid and CPR. A background check is conducted. We verify their competency, because the level of care for clients with dementia is quite different from the level of care for stroke victims. The caregivers are then introduced to the family as personal care assistants. There is no such process for caregivers hired from the gray market. There is no oversight by the State. They do not maintain liability or workers' compensation insurance.

Laura Coger (Consumer Direct Nevada):

Consumer Direct Nevada personal care is the only statewide personal care provider. We serve every zip code in Nevada. It is much more difficult for clients to receive personal care in rural Nevada. Rural Nevadans do not have the luxury of having nine caregivers. It is difficult to even find two or three people to care for one client. Clients in rural Nevada are more likely to enter a long-term care facility when overtime is an issue.

Tray Abney (The Chamber, Reno-Sparks-Northern Nevada; National Federation of Independent Business):

The Chamber supports S.B. 249. There have been several attempts to exempt certain industries from the daily overtime law. While the Chamber supports S.B. 249, it believes the State should review the State's overtime law comprehensively. Nevada is one of only three states with overtime regulations that go beyond the federal rules. The U.S. Chamber of Commerce released a report 2 years ago called "The Impact of State Employment Policies on Job Growth." The U.S. Chamber ranked all 50 states into three tiers based on job growth policies. Nevada ranked "poor" in this study because the State's overtime requirements go beyond federal law.

Senator Hutchison:

Are you saying 47 states follow the federal standards with regard to overtime exemptions?

Mr. Abney:

We could only find two states besides Nevada which do not follow the federal labor standards.

Michael DiAsio (Visiting Angels):

We support S.B. 249.

Sue Cook (Homewatch Caregivers):

I support S.B. 249 because it would allow Homewatch Caregivers to hire more caregivers. We would be able pay a higher wage if we did not have to comply with the overtime restrictions.

Al Martinez (Service Employees International Union Local 1107):

The Service Employees International Union (SEIU) and its 1,000 members oppose S.B. 249 because it takes away overtime for personal care workers. Personal care workers serve the most vulnerable individuals in the community. For most seniors, home care is the difference between living in the comfort of their own homes or living in a nursing home. Personal care workers are not glorified babysitters; they are needed health caregivers. I do not understand why the State would penalize these hard workers by eliminating overtime. The average home care worker makes less than \$10 per hour. The Legislature should look for opportunities to support workers. Senate Bill 249 takes the State in the wrong direction.

Paul McKenzie (Building and Construction Trades Council of Northern Nevada):

While construction workers do not ordinarily provide home health care, they often need it. Senate Bill 249 is another attempt to erode State overtime regulations. There is a simple solution to the 8-hour limit. Employers who pay workers time and a half of minimum wage are exempted from the 8-hour workday limit. Doing so would allow employers to establish 12-hour rotations. Senate Bill 249 will make it so home health care providers do not have to pay overtime. That is an objectionable policy.

Senator Hardy:

If a worker's base rate of pay is \$10 per hour, would the overtime rate be \$15 per hour, or would it be calculated as time and a half of minimum wage?

Mr. McKenzie:

The exemption applies to workers whose base rate of pay is greater than one and one-half of minimum wage. The minimum hourly wage for employers providing health insurance is \$7.25. It is \$8.25 for employers who do not provide health insurance. To qualify for the exemption, an employer not providing health insurance would have to pay \$12.37 per hour. Employees whose base rate of pay was greater than \$12.37 per hour would not receive overtime.

Senator Hardy:

Under that scenario, would overtime be calculated as time and a half of the base pay or minimum wage?

Mr. McKenzie:

Overtime is calculated using an employee's base pay, not minimum wage.

Senator Hardy:

What would the overtime rate be for an employee making \$10 per hour?

Mr. McKenzie:

At \$10 per hour, the employer would not meet the exemption from the 8-hour workday. The overtime rate would be \$15 per hour.

Senator Denis:

What if the base rate of pay was greater than \$12.37?

Mr. McKenzie:

If the base rate of pay was greater than one and one-half times minimum wage, the employer would not have to pay overtime after 8 hours. The employer would only have to pay overtime after 40 hours worked in a single week. At \$12.37, the overtime would be \$18.55 per hour.

Danny Thompson (Nevada State AFL-CIO):

The AFL-CIO represents thousands of personal care workers who earn low wages. I would like the opportunity to inform them more about the consequences of S.B. 249 before it moves forward. Mr. McKenzie stated quite clearly that employers already qualify for the exemption if they pay one and one-half times minimum wage—with or without insurance. I am not aware of any of these workers receiving health care. The AFL-CIO opposes this bill as another erosion of the 8-hour workday.

Senator Hutchison:

Do you have any insights as to why Nevada has not adopted the federal overtime standards?

Mr. Thompson:

The issue goes back to the Comstock era. All of the members of the territorial militia were members of the miners' union. All of the members of the miners' union were members of the volunteer fire department. When the Governor called out the militia to bust the strike over the 8-hour workday, the militia refused to break the strike. The Governor established the Nevada State Police to break the strike. The State Police eventually became the Highway Patrol. This issue goes back that far. People died over this issue, and that is why Nevada has not adopted the federal standards.

Aldo Vennettilli (American Federation of State, County and Municipal Employees):

I rise against S.B. 249 because it would eliminate overtime for caregivers.

Senator Settlemeyer:

Is the rate of exemption calculated based on the State minimum wage or the federal minimum wage?

Jack Mallory (Southern Nevada Building and Construction Trades Council):

That is based on the State minimum wage. Currently, the rate is \$12.375 per hour. If the employer is providing health insurance, the rate is \$10.875 per hour. We are not talking about a significant amount of money. If employers pay \$12 per hour, they would only have to pay their employees an extra 40 cents per hour to make the 8-hour workday problem go away. To fully exempt low-wage workers from provisions of overtime is unconscionable. This is not a new argument. This goes back to 1868 when the 8-hour workday provision was passed.

Senator Hutchison:

Can you explain how you calculated the 40 cents?

Mr. Mallory:

Under State law, employers who pay more than time and half of minimum wage are exempt from the 8-hour workday rule. Employers who do not provide health insurance pay the minimum wage of \$7.25. The exemption rate is then \$12.37 per hour.

Senator Hardy:

The Committee recognizes that there is collusion in the marketplace. It would behoove the Committee to find a solution that would allow patients to receive quality care and caregivers receive equitable pay.

Senator Denis:

I will close the hearing on S.B. 249 and open the hearing on S.B. 235.

SENATE BILL 235: Authorizes a local law enforcement agency to establish or utilize an electronic reporting system to receive information relating to purchases of scrap metal. (BDR 54-869)

Senator David R. Parks, Senatorial District No. 7:

Senate Bill 235 authorizes a local law enforcement agency to establish or utilize an electronic reporting system to receive information relating to purchases of scrap metal. Scrap metal theft has long been a problem, but it has become even worse as scrap metal prices increased during the recession. As a result, the Legislature passed A.B. No. 233 of the 75th Session. Senate Bill 235 is a continuation of the efforts to mitigate the metal theft problem. The intent of

S.B. 235 is that it is enabling legislation. It does not require law enforcement agencies to participate in the program.

Senator Denis:

The identification requirements are addressed in section 2, subsection 1, paragraph (c). Why does S.B. 235 limit the identification to state-issued identification? Why are other forms of identification such as consular identification cards not included?

A.J. Delap (Las Vegas Metropolitan Police Department):

Scrap yards may only accept the forms of identification described in *Nevada Revised Statute* (NRS) 647.094. The identification requirements in Senate Bill 235 are identical to NRS 647.094.

Senator Denis:

It is my understanding scrap yards accept forms of identification other than those identified in NRS 647.094.

Mr. Delap:

Scrap yards are not in compliance if they deviate from the identification requirements in NRS 647.094. They may only accept state – or military-issued identification.

Senator Denis:

Has the Las Vegas Metropolitan Police Department prosecuted scrap yards for violating NRS 647.094?

Mr. Delap:

Yes. Construction theft detectives perform inspections and cite or arrest scrap metal processors who violate the law.

Senator Hutchison:

The intent of S.B. 235 is to catch thieves through creating a paper trail. Does the notification requirement in section 1, subsection 2 encourage thieves to sell their pilferage through another means where we cannot catch them?

Mr. Delap:

In addition to helping apprehend thieves, the notification is intended to help prevent scrap metal thefts. Hopefully, we can prevent the thefts by eliminating scrap yards as markets for stolen goods.

Senator Hutchison:

I raised the issue because criminals are good at finding other ways of selling their pilferage, and the notification is counterproductive. It sounds like you have considered this challenge.

Mr. Delap:

Correct. We want to be sure the public is aware this information will be collected and provided to the police department.

Senator Denis:

I have the same concern as Senator Hutchison. Thieves will find a way to sell their pilferage. I cannot imagine a thief trying to sell a sign for Sunset Park. They will likely cut it up. Are there other places thieves can sell the material?

Mr. Delap:

That is true, but we are going to do our best to delay that or identify the other markets for scrap material. We can identify trends and use other characteristics to identify stolen material.

Terry Graves (Western Metals Recycling; A&A Midwest Recycling; BB Recycling):

We have proposed an amendment with three technical changes to S.B. 235 ([Exhibit C](#)). The first two changes would amend provisions in section 1 related to the reporting period. As written, the reporting period is noon "each day." We have proposed changing this to each "business day." It was our intent for this to indicate business day, and we discussed this with Senator Parks. The third change would exempt business-to-business transactions from the reporting requirements in subsection 2 of section 1.

Warren Hardy (SA Recycling):

Under NRS 647.094, scrap yards may accept valid personal identification cards. For many years, scrap yards were authorized to accept other forms of identification than those included in S.B. 235. Recently, the Las Vegas Metropolitan Police Department informed scrap yards they could no longer

accept other forms of identification. Scrap yards have ceased accepting those other forms of identification. I do not want Mr. Delap's testimony to be construed to imply scrap yards have been violating the law. Scrap yards accepted the other forms of identification for years, and they ceased when asked to do so.

The information we collect from our customers is available for inspection by police departments at any time. The police departments would like to participate in a third-party process to give them broader ability to share this information available to other law enforcement agencies. The SA Recycling supports this concept and it supports S.B. 235.

I have proposed an amendment to S.B. 235, which would make it clear the information provided to law enforcement agencies is proprietary and confidential ([Exhibit D](#)). I used the statutes governing the confidentiality of Department of Motor Vehicle records as a model for the purposes of my amendment. We want customers to know this information is not public information and that the information will be kept confidential.

My amendment also seeks broad-form indemnification for scrap yards from misuse of the information. When we sign a contract with a third party, scrap yards are required to provide broad-form indemnification for the third party. We are requesting a similar indemnification because we lose complete control over the data.

Senator Hutchison:

Is it typical for the State to indemnify private parties when those private parties are required to provide information to law enforcement agencies? Is this an unusual situation?

Mr. Hardy:

Generally, there is no liability if information is required to be provided to law enforcement by statute.

Senator Hutchison:

Is the indemnity implied or expressed?

Mr. Hardy:

I do not know if the indemnification is provided for anywhere else in statute. I am told by the third-party collector that indemnification is based on case law. We would prefer to see expressed indemnification.

Scott Stolberg (A&A Midwest Recycling):

I support S.B. 235, and I will read from my written testimony ([Exhibit E](#)).

Kristin Erickson (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports S.B. 235.

D. Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

The Washoe County Sheriff's Office supports S.B. 235.

Mr. Mallory:

I support S.B. 235.

Randy Brown (AT&T):

I offer support from AT&T for S.B. 235. From February 2012 to February 2013, AT&T suffered 26 metal thefts totaling \$134,000 in damages.

Craig Madole (Associated General Contractors of America, Inc., Nevada Chapter):

The Associated General Contractors of America, Inc. (AGC) is concerned about the costs of hiring third-party vendors and the administration costs of implementing this program. Scrap steel sells for approximately \$60 per ton, which barely covers the cost of diesel to transport the material to the processor. If the cost of implementing S.B. 235 is \$20 per ton, the AGC fears legitimate contractors will be selling their metal for less than what it costs to transport the metal to processors.

Senator Hutchison:

Is it your understanding the cost of this online system will be passed on to the scrap metal processors?

Mr. Madole:

That is exactly our concern. There will be a cost to compile, collect and report this data daily.

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Senator Parks:

I am not certain how other law enforcement agencies might handle this, but the Las Vegas Metropolitan Police Department will not seek to charge participants for this reporting system. We can work with the AGC and identify a solution.

Chair Atkinson:

I will adjourn the meeting at 3:31 p.m.

RESPECTFULLY SUBMITTED:

Wayne Archer,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	5		Attendance Roster
S.B. 235	C	1	Terry Graves	Proposed Amendment
S.B. 235	D	2	Warren Hardy	Proposed Amendment
S.B. 235	E	3	Scott Stolberg	Written Testimony