

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

**Seventy-Seventh Session
April 1, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:30 p.m. on Monday, April 1, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Donald G. Gustavson, Senatorial District No. 14
Senator Ben Kieckhefer, Senatorial District No. 16
Senator Tick Segerblom, Senatorial District No. 3

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wynona Majied-Martinez, Committee Secretary

OTHERS PRESENT:

Keith Lee, Board of Medical Examiners
Larry Matheis, Executive Director, Nevada State Medical Association
Mendy Elliot

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Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association
Agata Gawronski, Executive Director, Board of Examiners for Alcohol, Drug and Gambling Counselors
Helen Foley, Marriage and Family Therapist Association of Nevada; Delta Dental Insurance Co.; T-Mobile USA
Don Huggins
Liz MacMenamin, Retail Association of Nevada
Bill Welch, Nevada Hospital Association
Joan Hall, Nevada Rural Hospital Partners Foundation
Bob Ostrovsky, United Health Care Services, Inc., Cox Communications
Alfredo Alonso, Banner Health
Kendall Tenney, 10e Media
Steve Crupi
Josh Griffin, Nevada Broadcasters Association
Lisa Poe-Howfield, Vice President and General Manager, KSNV; Intermountain West Communications Company
Brandy Newman, Chair, Nevada Broadcasters Association
Bob Fisher, President and CEO, Nevada Broadcasters Association; Former President, National Alliance of State Broadcasters Associations
Chris Ferrari, Nevada Dental Association
J.B. White, DDS
Kami Dempsey, Cox Communications
Debrea Terwilliger, Assistant Staff Counsel, Office of the Staff Counsel, Public Utilities Commission of Nevada
Randy Brown, AT&T
Josh Hicks, TracFone Wireless, Inc.
Randy Robison, CenturyLink
Mike Eifert, Executive Director, Nevada Telecommunications Association

Chair Atkinson:

Senator Hardy will present Senate Bill (S.B.) 319. We will address only section 1, subsection 5, which has to do with the ability for a practitioner licensed under chapter 630 of the *Nevada Revised Statutes* (NRS) to substitute not more than 2 hours of continuing medical education (CME).

SENATE BILL 319: Revises provisions governing certain professions. (BDR 54-713)

Senator Joseph P. Hardy (Senatorial District No. 12):

I am here to present a proposed amendment to S.B. 319 ([Exhibit C](#)). Assemblywoman April Mastroluca and I were on the Legislative Committee on Health Care in the interim and decided to author a bill that would address addiction issues in Nevada.

I attended the 3-day addiction studies conference put on by the National Conference of State Legislatures in Denver in May 2012. It was attended by representatives of the Governor's staff, the Legislative Counsel Bureau Research Division, Assemblyman John Hambrick and the Department of Health and Human Services (DHHS). I also attended a CME course in St. George, Utah, on a prescription-monitoring program. A live demonstration was presented on the user-friendliness of the program. Emphasis was on managing people's pain and how to prevent them from being addicted, as well as how to get them off their addiction.

We have an opportunity to do some CME here in Nevada, which leads us to the gist of S.B. 319.

Our prisons are filled with people who have committed alcohol- and drug-related crimes. We have a problem, so we need to do something. We also need to deal with veterans coming back into the private world who need an avenue in which to use their skills. U.S. Army General David Petraeus said many returning veterans would like to launch small businesses, learning from those who have already done so. The former members of our armed forces have done their part to ensure America's national security, often sacrificing much in the process. It is our turn to do our part to help them build promising futures for themselves and their families. That is part of S.B. 319 as well.

We have many people battling addictions, so we need to have more people trained in the medical and counseling approach to addiction. While researching S.B. 319, I found that although allopathic medical people, M.D.s, are faced with ethics issues in this area and are required to do CME, osteopaths do not. That calls for a new amendment which you will receive.

Senate Bill 319 authorizes a physician to complete 2 hours of CME that could be used for pain management and addiction care, instead of 4 hours of ethics only. It includes issues related to clinical professional counselors (CPCs). Senator Gustavson has made CPCs the focus of his bill, S.B. 155, which can be

married in some way to S.B. 319. The veterans and their spouses or the surviving spouses would be allowed to have a 50 percent reduction in the initial cost for professional certification.

SENATE BILL 155: Revises provisions relating to the practice of clinical professional counseling. (BDR 54-714)

Keith Lee (Board of Medical Examiners):

I am here on behalf of the Board of Medical Examiners to support Senator Hardy's bill, S.B. 319. We are only mentioning section 1, subsection 5, which gives a practitioner licensed under NRS chapter 630 the ability to substitute not more than 2 hours of CME in pain management and addiction care in satisfaction of his or her requirement for continuing education in ethics. We think that is a wonderful idea, and we support it wholeheartedly.

Larry Matheis (Executive Director, Nevada State Medical Association):

We support S.B. 319. The continuing issue regarding keeping physicians up to date on pain management issues is real. Licensing by endorsement has been done by the two physician licensing boards for some time. It has eased the bottleneck that can be created when trying to get through all the licensing rules. That is why they are not mentioned here. Reciprocity is something that is a policy matter. The Legislature, however, should think about the issue of reciprocity in the future, looking at how to vary standards when there are dramatic workforce shortages. We think S.B. 319 is a good step forward.

Senator Hutchison:

I notice there is an amendment to section 2, subsection 5 of the bill. I want to clarify that osteopaths are not required to take ethics. Why would osteopaths not have to take any kind of CME in ethics?

Mr. Matheis:

They do need to take ethics. Both physician groups take many courses that contain ethics. It is simply that the State Board of Osteopathic Medicine never adopted the rule that osteopaths needed to have ethics in their continuing education portfolio, while the Board of Medical Examiners did have the rule.

Senator Hardy:

I worked in an osteopathic medical school that sponsors conferences on ethics and saw that their physicians do take ethics. It is just that it is not required. It

was a revelation to me when I was working to say, "I am going to require 2 of the 4 hours of ethics." We do not have that requirement, but we do it anyway. It had to be reworded to make sense.

Mendy Elliot:

I am the mother of Lt. Derrick Elliott. Derrick is a naval aviator who served several tours in the Indian Ocean and the Pacific Ocean. He flew tours into Afghanistan and served on the USS Nimitz. I am also the mother-in-law to Kara Elliott. Kara is a marriage and family therapist (MFT). While Derrick was serving overseas, Kara went to school at California State University, Fresno to receive her MFT master's. Derrick at that time was stationed at Lemoore Naval Air Station Lemoore outside of Fresno. He has since been transferred to Fallon, where he serves as an adversary pilot. He gave up his F-18 and is now flying an F-5. He is an adversary pilot at the TOPGUN school.

The problem for Kara was when she finished her degree and was doing an internship in California, Derrick was transferred to Nevada, at which time she was told she had to take additional classes. It took her an additional 10 months in Nevada. It was frustrating for her since she had completed and complied with all the requirements and laws in California.

Senator Hardy's bill will help with military spouses. Kara writes:

I know of so many military spouses who are uprooted to where their spouses serve, and it makes it very hard to continually restart a career. Some spouses I know decide not to go back to work because they find it too hard to balance kids and family with trying to pursue the necessary state requirements to regain their professional licensure. I hope ... S.B. 319 is able to go into effect, and those who are in my position are able to pursue their professional licensure in a timely manner versus the 10 months it took me.

Denise Selleck Davis (Executive Director, Nevada Osteopathic Medical Association):

We are not required to have 2 hours of medical ethics for licensure; however, it is something that we routinely add to our CME programs and encourage all our physicians to do regularly, although it is difficult to teach ethics to a grownup. We are in full support of S.B. 319.

Agata Gawronski (Executive Director, Board of Examiners for Alcohol, Drug and Gambling Counselors):

I think the first part of S.B. 319, to educate medical providers about pain management and addiction as well as reciprocity for military members and their families, is a great idea. The part that concerns me regards extending the scope of practice for CPCs.

We have a great community of educated and licensed alcohol and drug counselors in Nevada. They are trained and educated in that field specifically. According to NRS 641C.900, except as otherwise provided or authorized by regulations adopted by the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors, NRS 641A.160 would allow CPCs to practice as alcohol and drug counselors without being licensed by us.

The concern was raised because if you look at the NRS, the requirements for licensed alcohol and drug counselors include a master's degree to become licensed and 4,000 hours of clinical experience. Or we can substitute 15 college credits in addiction and reduce the internship hours to 1,500. The CPCs and MFTs are obligated to take other college courses when they obtain their degree. They must take one mandatory course in alcohol and drug counseling, worth three units.

Hopefully, my Board can be involved in that discussion and help extend the educational requirements for CPCs to be able to practice alcohol and drug counseling.

Chair Atkinson:

When you say, "be involved," are you saying you would spend some time working with Senator Hardy on some language?

Ms. Gawronski:

That would be great. We would appreciate being involved in that process.

Helen Foley (Marriage and Family Therapist Association of Nevada):

We will have another bill to bring before you in the work session and coincidentally, we think some of the language in that bill would be good in this bill, S.B. 319.

I understand where Senator Hardy is coming from in attempting to have more people who move to Nevada be qualified in terms of experience, supervision and course work so they can more quickly practice in this field. I believe there are ways to do that as long as they do have those qualifications. Many states have good, strong laws, but there are a few that do not. We want to make sure our Board can look at these people as they come in and just double-check to make sure their licenses in another state would immediately qualify them in Nevada.

The other issue has to do with granting automatic authority for CPCs to hold themselves out as having experience in drug and alcohol abuse counseling. I have represented the MFTs for probably 15 or 20 years. When we have had these new professions come on, we have said that nurses with a master's level degree, social workers, MFTs, now CPCs, can all practice in these fields. If a family comes in with serious problems and it is discovered that the mother has a drug addiction, that session does not have to be disrupted and the family sent to an alcohol and drug abuse counselor. Those professionals can treat that family and that addiction. They just cannot hold themselves out as being experts in that area and say they are licensed clinical drug and alcohol abuse counselors and advertise that way on Websites.

As an example, the qualifications for licensure as an alcohol or drug abuse counselor are stated in NRS 641C.350, subsection 1. Then, in subsection 2, a licensed clinical social worker, CPC, MFT or nurse would be qualified to be a clinical licensed alcohol and drug abuse counselor (CLADC) if he or she completes at least a six-month supervised counseling and drug and alcohol abuse protocol, pass a written and oral exam, and pay the fees. That way, they can put those letters CLADC after their name in addition to being an MFT, so they would have dual licensure.

It has worked well in this State. They certainly can practice in both of those fields. We do not believe it is necessary to have this other language giving automatic authority for MFTs or CPCs when they may not have had any drug and alcohol abuse training or education.

We would like to work with Senator Hardy in the coming week to straighten this out and see if we can get some better language.

Regarding the many people who come to Nevada, if they have the credentials to practice in mental health here, we would like to be able to streamline the process and let them serve the people of Nevada.

Don Huggins:

I am licensed in MFT and in clinical alcohol and drug abuse. I am on the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors. I am not speaking for the Board. I am speaking for myself.

I am not opposed to S.B. 319. It contains some good topics. The only additional item I would raise is on page 4 that suggests the group's board may issue a license by endorsement, but we can work this out with Senator Hardy. I am concerned that there are some states where MFT and CPC training is inadequate. We want to be able to write the regulations to be able to screen applicants quickly.

Senator Hutchison:

I have heard the point made that people want to work with Senator Hardy; they want to make sure that we control this training and licensure issue. Is it not true that the language already does that for us in section 3, subsection 1? It says, "The board may issue a license." It is not mandatory. It seems that you could craft regulations and qualifications. Are you reading that differently, or do you have concerns beyond the language only?

Mr. Huggins:

I read it that way. I wanted to be sure that is what it meant. If it does mean that the board will adopt regulations, I am in favor of that part of the bill.

Senator Hardy:

I am willing to work with everyone. As I mentioned previously, S.B. 155 addresses those issues of the CPCs. We can adopt a similar kind of language. It is permissive, as the two members of this Committee noted. These issues are easily resolved.

Chair Atkinson:

We are closing the hearing on S.B. 319 and opening the hearing on S.B. 369.

[SENATE BILL 369](#): Revises provisions relating to telemedicine. (BDR 54-972)

Senator Ben Kieckhefer (Senatorial District No. 16):

Senate Bill 369 is still a work in progress, but it is appropriate to get sound statutory construction for telehealth in our laws now so people will know what can be expected, to know how it should be provided and to dictate the governing of a new age of technology in health care.

A mock-up, Proposed Amendment 7836 to S.B. 369 ([Exhibit D](#)) prepared by the Legislative Counsel Bureau, is before you. There are two purposes to S.B. 369. First is to create the statutory infrastructure for consistency within telehealth in our State and second to recognize that telehealth is going to be a critical vehicle to improving access to quality care in our State.

Under the Affordable Care Act, with the significant upcoming increase in the number of people carrying insurance, we will need a provider network. Not all specialists are available in all parts of the State. We are underserved, especially in the rural regions. Some services available in Las Vegas, you cannot get in Reno. Utilizing technology can make services available and provide cost savings without the need to travel. There are also some ongoing issues that need to be clarified.

You heard a telehealth health bill earlier in this Committee, S.B. 327. Our intent is to see that these two bills cohabitate in the statutes without conflicting.

SENATE BILL 327: Revises provisions relating to health care professions.
(BDR 54-772)

Section 2 of the mock-up to S.B. 369 provides most of the definitions; section 3 outlines telehealth; section 3, subsection 1 states that providers of health care engaging in telehealth must have a valid license to practice. Section 3, subsection 2 refers to the relationship between the physician and the patient and defining that bona fide relationship. On the mock-up, lines 32 and 33 on page 2 propose to strike language, which meant that the basis of the relationship had to be face-to-face. That defeats the purpose of telehealth. Those are some of the issues where the language needs clarification.

On page 3 of the mock-up, there are provisions for emergencies and simple diagnostic services done through asynchronous storage of information and transfer of documents. We propose to strike all of that language in section 4. Section 7, on page 6, does not include NRS 616B, the workers' compensation

statute, which probably would be an appropriate addition. It also talks about the necessity for insurance companies to cover telehealth as they would anything else. There are certain payers who are uncomfortable with some of the language. I understand that. We will work on trying to find a comprehensive solution.

The bottom of page 6, extending through pages 7 and 8 of the mock-up, shows the text of the section in NRS 633.165, repealed by section 8 of the mock-up. This has to do with the osteopathic physician. Part of this will need to be retained instead of repealed in order to make sure that Senator Jones' S.B. 327 remains intact. It is not my intent to derail that bill.

Senator Hutchison:

We did hear the other telehealth, telemedicine bill, S.B. 327. I think we all feel as if this is the wave of the future. Did you have any concerns or thoughts about how the Boards will interact with these distant health care providers and with people who may even be practicing out of the Country?

Senator Kieckhefer:

The boards that oversee those professionals are still going to retain jurisdiction. Senate Bill 369 says that the individual provider must be licensed in the State. The State Board of Osteopathic Medicine and the Board of Medical Examiners retain jurisdiction. They can bring sanctions for inappropriate actions just as before. This does not and should not change.

Senator Hutchison:

Regarding the provision that the physical examination or consultation would have to be in person, that is a challenge for the telemedicine concept. I wonder if that language should not be modified. It seems that a physical examination would require an in-person consultation. That may be something you would want to find if there is a different way to phrase it. It seems that you could really benefit from consulting services and input by doctors from a distance who have not conducted a physical examination.

Senator Kieckhefer:

I read that to say the physical history and examination or consultation. I consider the consultation to be a separate entity from history and physical examination.

Senator Hardy:

When you get into telehealth for the rural areas, for instance, that usually is created or initiated by someone in the rurals who has already seen the person, established a working diagnosis and examined the patient. It does not necessarily have to be the same person.

Liz MacMenamin (Retail Association of Nevada):

The Retail Association of Nevada supports S.B. 369.

"Telemedicine" or "telehealth," which is the term I like better, captures what is going on with technology today. There was one piece that is handled in the amendment, but which was in the original bill that had me a little concerned. It was the bona fide relationship discussed. In telepharmacy right now, regulations state there needs to be a relationship already established to prescribe and dispense controlled substances. I just want to ensure that will remain intact. I was given that assurance, but I would be glad to work with the sponsors.

Mr. Matheis:

We were aware of the need to address certain issues in order to post a bill. We think that information is in the amendment, but we will work with Senator Kieckhefer to make sure that the concerns are addressed.

Everybody wants to go forward using telemedicine and doing everything we can to supplement our workforce to make sure that patients have access to the best medicine possible. Senate Bill 369 likely will do that.

Senator Hutchison:

Is this phenomenon on the radar screen for the boards? Are you talking about this and getting geared up for this new concept? It is not something you have regulated or dealt with in the past.

Mr. Matheis:

I am with the Nevada State Medical Association, so I will let the boards suffer their way through. We are still trying to figure out what to tell doctors about how to conform to the various new rules and laws. But yes, the way we have regulated a lot of things in health care will have to be re-evaluated as we go toward implementing the various parts of reform. It changes how things are going to be done, which means as a state we are going to have to change the way we regulate and provide oversight of those activities.

Ms. Davis:

We worked on the original regulations that were written for the State Board of Osteopathic Medicine and helped to work on the telemedicine that was done previously in the osteopathic practice act. We understand that this is the reality of where medicine is going, and we are excited about the opportunities it holds for patient treatment and for the improvement in patient care. We have looked at a couple of proposed amendments. Some of the wording was taken from our original language.

When we wrote this, we were concerned about physicians actually treating patients and not just consultations. There is a difference between being the second one on the scene as a consultation and being the original treating physician. We want to be able to keep that treating relationship intact and see to it that the patient and the physician have a relationship.

Bill Welch (Nevada Hospital Association):

The Nevada Hospital Association supports S.B. 369 as it was proposed to be amended today. This legislation complements the prior legislation you have heard. Telehealth is the way of the future to ensure we can meet the health care needs of all the citizens of Nevada. We will have the impending increase in demand on health care services, the increased Medicaid population, and the potential increases through the health insurance exchanges. We have the baby boomers who will need more services hitting the system. Finally, as we look at the health care providers who are beginning to age out, our education system is not producing quickly enough the health care provider workforce we need.

If we are going to ensure that we have the resources to meet all the health care needs of this community, we are going to have to consider all technologies. We think telehealth is that vehicle, particularly, for rural Nevada. I can say as a hospital administrator that I had many specialists years ago who would come to my community, whether they were cardiologists, urologists or psychiatrists. They would come to my community and hold periodic clinics.

Unfortunately, today's world does not provide for that to happen easily. Telemedicine is a way for those services to be provided to rural Nevada. The objective of this legislation was to ensure there is a definition for telemedicine throughout all NRS references. There are many references to telemedicine in the NRS, but there is not a specific, clear definition of telemedicine service. Senate Bill 369 attempts to get to that definition, using federal Centers for

Medicare and Medicaid Services guidelines to ensure there is a standard reference throughout the NRS, which would apply to all licensed health care professionals who would be engaged in providing telemedicine services. The best definition of telemedicine is in the osteopathic category of the NRS and that is on a limited basis. We want to be sure to have one standard definition.

Joan Hall (Nevada Rural Hospital Partners Foundation):

Nevada Rural Hospital Partners likes S.B. 369. We did not support the bill in its original form, but the amendments have made it more acceptable. The rural hospitals and the people they serve are the real benefactors of telemedicine. Some of the technology can be as simple as videoconferencing for psychological evaluations, or it could be much more complex. Cardiologists have stethoscopes, dermatologists have cameras and other scopes, so there actually can be an examination completed by the doctor at the other end. We support this legislation, as it facilitates real health care.

Mr. Lee:

We at the Board of Medical Examiners have recognized telemedicine for a number of years. That is the result of working with Senator Jones and Mr. Alonso on S.B. 327. We were opposed to the original bill. We are studying the amendment now.

Two issues concern us. It backs into the question asked by Senator Hutchison. We have always defined telemedicine as part of the practice of medicine, which is diagnosing and treating. Part of that is the patient-doctor relationship. That is done in person, physically, with an examination and taking history. We want to make sure the amendments being brought forward in S.B. 369 do not interfere with that process.

At some point there has to be an actual physical examination of a patient, not necessarily by the doctor who is consulting or providing telemedicine. We want to make sure there is initial consultation or physical examination so that everybody is on the same page in trying to diagnose and treat this patient. We are not saying the amendment does not do that, we just want to take some time to review it and make sure it does.

Secondly, we want to make sure the language, with all these definitions and ten-dollar words do not limit the way doctors, patients and health care providers can communicate with each other.

To make sure we are all on board together, we will reserve our questions for discussions with the sponsor and the people who are bringing that amendment.

Senator Hutchison:

Is it the Board of Medical Examiner's view that you can consult without practicing medicine? Do you even have that category where you have someone who is in Tel Aviv who is not going to be able to see and diagnose the patient physically, but nevertheless is still "consulting"? Is that in the Board's view still practicing medicine?

Mr. Lee:

That is practicing medicine, but what S.B. 327, Senator Jones' bill and this bill, S.B. 369, do is specify that the practitioner in Tel Aviv must be licensed in the State. There is an entirely different issue when we are dealing with different forms of licensure that in certain circumstances allow a consultation by a physician who is not licensed in Nevada.

Senator Hardy:

I saw an application on my phone that asks doctors to write responses to questions from random people throughout the world. Then people grade the doctor as to how good the answer is. I am not licensed in those places, but I can be an A-plus doctor in Missouri. I think there probably is some other doctor in Utah who is practicing by answering a question for a Nevadan. How are you going to solve that?

Mr. Lee:

That gets back to the point I tried to make that there has to be a doctor-patient relationship, which begins somewhere with a health care provider conducting a physical examination of that patient. It does no good to email a doctor just citing symptoms. We need to have a health care provider look at that person and see the symptoms. That is our position, which you bring forth, Senator Hardy. There has to be a doctor-patient relationship at a basic level where there are physical eyes on the patient and an in-person review, so we can answer all those questions. We do not diagnose based on the patient's self-diagnosis of his or her symptoms.

Senator Hardy:

That gets to my earlier point. There needs to be someone, it could be a physician's assistant or nurse practitioner, who has looked at the eyegrounds,

seen the tympanic membrane, listened to the chest, heard the heart, and do all of those related medical activities.

Bob Ostrovsky (United Health Care Services, Inc.):

We, too, support S.B. 369 in concert with Senator Jones' bill, S.B. 327. With the increase in demand, telemedicine is important to the future of medicine and delivery of medicine in a timely fashion, both in the rural and urban areas.

We had some questions about section 3, subsection 2, paragraph (a) of S.B. 369, which we discussed regarding bona fide relationships. We operate Southwest Medical which provides medical services, and we need to make sure there is language we can live with. We want to make sure we are not taking away medical decisions if a doctor thinks he or she needs a hands-on relationship with a patient before doing anything, even a patient with whom there has been a prior relationship. If it is someone contacted through telemedicine, the doctor could say, "No. You need to come in and see me."

We are working on that. We have reached some agreement on that language. The last section we have a problem with in S.B. 369 is section 7. We have worked with the parties. It gets into the payment for these services. We have worked with the sponsors of this bill. We also have language that will fix this. We did not see this amendment until this morning at your request, Chair Atkinson. We will be ready today with our amendment. We will pass it on to the sponsors of this bill.

Lastly, there is a workers' compensation issue. The Division of Industrial Relations (DIR), Department of Business and Industry, has had hearings on telemedicine, and has a regulation that has cleared everything except the Legislative Commission. Once it gets over that hurdle, they will have a regulation on telemedicine. It may be a little different because there is a definition of "treating physician" in the law, and it addresses some of those issues. I just want to look at it to make sure it complies and conforms to this. If not, it may require some changes on the part of the DIR or changes in this bill draft. We will work with the parties and hope to have our portion of that fixed today.

Alfredo Alonso (Banner Health):

I am here on behalf of Banner Health. We want to make sure that the two bills, S.B. 327 and S.B. 369, will work well together. There were some issues with the repealed section that take out some portion of Senator Jones' bill. We want to work in concert.

Chair Atkinson:

We will now close the hearing on S.B. 369. We will open the hearing on S.B. 422, sponsored by Senator Segerblom and Senator Hutchison.

SENATE BILL 422: Establishes a civil cause of action against certain employers who condition employment on a noncompete clause. (BDR 3-1110)

Senator Tick Segerblom (Senatorial District No. 3):

I represent employees. Over the years, a lot of newscast reporters or general reporters for TV stations have come to me saying they have been told their contracts would not be renewed. They have year-to-year contracts, and then the station will say, "Sorry, we're not going to renew your contract."

Those contracts all have a clause that says, "If you leave our station, you cannot go to a competitor in the Las Vegas market for one year." Essentially, these individuals have to leave Las Vegas because they cannot sit around for a year and do nothing. It also means that when the employee goes to renegotiate the contract, the person has no leverage. If someone works at Channel 3, the person cannot go to work at Channel 13. It is almost a form of slavery when a person has these kinds of clauses in the contract.

Senate Bill 422 is modeled after bills in other states. They say these clauses in broadcast contracts are illegal. It just deals with personalities we all know and respect. They go to our events. A lot of them do things on the side that are beneficial for the community. We see them on TV, and we love them. We want them to stick around. We do not want them at the mercy of TV station owners, most of whom are out-of-state owners.

Channel 13, for instance, is owned by a company in Milwaukee. Channel 8 is owned by some company in Virginia. Channel 5 is owned by Meredith out of Iowa. Channel 3, however, is local. It is a simple bill, but it would liberate those individuals who we believe are entitled to contract renewal.

Senator Mark Hutchison (Senatorial District No. 6):

Noncompete clauses date back to English Common Law. The British Courts of Equity tried to balance the employer's interest in protecting their investment in employees with making employees immobile and unable to take their skills elsewhere. The noncompete law should not just have an effective placing by bringing restriction on an industry. It should be a thoughtful attempt to aid the employers and employees and help the industry thrive. In many cases, the noncompete agreements are not negotiated. The employees have little bargaining position. That is usually mandated by employers, and the employees do not have much clout.

Several states have excluded these kinds of noncompetes in broadcasting, including Arizona, Connecticut, Illinois, Maine, Massachusetts and New York. They restrict the broadcast owners' use of noncompetes with broadcasting talent. There are some remarks here about what California does. Some states try to say that the broadcast industry is a unique area. One of the things I talked about to Senator Segerblom and others is why the broadcast market? Why is it an industry where we want to think about excluding the talent, particularly the on-air talent?

On-air personalities develop their brands and their identities here in this local market. They are not like a professional or a tradesperson who can take that skill and go to a different market. This is their market. This is their value. Several have approached me asking us to consider carrying S.B. 422, saying this is a good bill. The broadcast industry would benefit from it. There would be a continued pool of good broadcasting talent that would stay here in Las Vegas, instead of having to leave the State.

Senator Settlemeyer:

I assume this is applicable to all forms of media, TV, radio and print. Is this correct?

Senator Segerblom:

The intent was just for television. I have not seen this in the print media. Most newspapers do not have contracts.

Senator Settelmeyer:

Could we not just consider noncompete clauses for broadcasting void and unenforceable as a matter of public policy and not have all this other language about personal and actual damages, attorney fees and punitive damages?

Senator Hutchison:

If they try to enforce it, that person has to have recourse in court. The other problem with a noncompete is never knowing how enforceable it is until going to court and testing it. Then that person is out \$10,000 or \$20,000 in legal fees, trying to prove it is void. Ideally, with that kind of a hammer, no one is going to try to enforce something that is clearly illegal under State law.

Senator Jones:

I am still struggling with the idea that broadcasters are unique. In my mind, there are many professions we want to keep here, doctors, in particular. We passed a ballot initiative to keep doctors in Nevada. If we want to say that some category of noncompetes is bad, then why would we just restrict it to broadcast journalists?

Senator Segerblom:

There have been some court rulings that say a person can be prohibited from practicing in Clark County. They have a geographic region that will be 5 or 10 miles, so if that person works at one hospital, he or she could still go to another hospital. The problem with broadcast contracts is they always have the broadcast market, which basically means leaving the State. These reporters are trained in the State and then go from market to market around the Country. They come to Nevada and have no leverage, but sometimes they have families; get married, want to stay and cannot do it. One of the reporters had to leave his wife and family and move to Reno. It will be a year before he can go back to another station. It is really unfair. In every other industry I am aware of, the geographic circulation area is not countywide as it is for broadcasters.

Senator Hutchison:

Much of the issue has to do with the portability of your toolbox of skills as a professional. As a lawyer, a CPA, a doctor or a mechanic, I can easily move to a different state or location. With broadcasting, it is your very presence, image and who you are in terms of the local community that makes you marketable.

Senator Jones:

I would respectfully disagree. There is less portability as an attorney than there is as a broadcast journalist. I cannot go to Arizona and be a lawyer without going through some pretty serious legal hoops. A broadcaster can pick up and go tomorrow.

Senator Hutchison:

You are right. You would have to take the State bar exam, but once you take the bar, you are back in action and you can at least use your professional skills to earn a living, whereas with these broadcasters it is much more difficult. It is particularly difficult for them to retain the kind of on-air presence and corresponding pay as in a market where they are so well known. It is a balancing act. But going back to my first question: Why do you carve out these people?

As Senator Segerblom has said, this is a unique area in terms of presence within a locality that just is not that portable. Eventually, most professions can recover much more than they can in the television industry.

Senator Denis:

The other side is that there may be individuals who use this market as a stepping-stone to get to larger markets, California or New York, for instance.

Senator Segerblom:

A lot of them come here as part of the stepping-up process, but they get married or something happens and they love Las Vegas. Under the current system, even if you love your job, you have to leave Las Vegas, or you will be out of work for a year.

Chair Atkinson:

We are going to close the hearing on S.B. 422 and reopen it after we finish our work session.

Marji Paslov Thomas (Policy Analyst):

The first bill in the work session is S.B. 155.

This bill was sponsored by Senator Gustavson. It was heard on February 27. There is one proposed amendment from Senator Gustavson. The amendment is attached ([Exhibit E](#)).

Senator Hutchison:

My recollection is that there was a lot of back-and-forth conversation in terms of the scope of practice and writing the qualifications. It looks now as if this is going to be completely in the hands of the Board of Medical Examiners. We will leave it up to them. I think that is where it belongs. Is that right?

Chair Atkinson:

That is the way I understood it.

Senator Hardy:

Helen Foley showed me this. There was agreement with all the parties; there may have been some back-and-forth conversation and prior disagreement. I concur with what she showed me.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 155.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Ms. Paslov Thomas:

The next bill is S.B. 198. This was sponsored by Senator Hardy. It was heard on March 6, 2013. Senator Hardy proposed the attached amendment ([Exhibit F](#)).

SENATE BILL 198: Revises provisions relating to the practice of chiropractic.
(BDR 54-834)

Senator Hardy:

The parties discussed the issue of how many locations a chiropractor could manage. The board was concerned that people might not have a comfort level with chiropractic mills. The chiropractors suggested a limit of two locations and not multiple locations. The board would have the opportunity to keep that in check.

Senator Denis:

One of the things that came up in the testimony was that a chiropractic assistant doing something without the chiropractor being present. Perhaps the chiropractor might be en route. Was this the bill where we were concerned about the assistant correctly connecting a piece of electrical equipment, but if that were to occur, an assistant who is not qualified to deal with that situation would be the only individual on site. Does this deal with that?

Senator Hardy:

The board would be in charge of making the regulations regarding safety but nobody who is an assistant would be allowed to "hook up" or do anything unless it is ordered by the chiropractor.

The assistant does not do anything without permission and unless the patient had been evaluated already. The chiropractor would have seen the patient already and would already have had the assistant do something. If the chiropractor is not there, then the assistant would do the treatment as already ordered, already supervised and already put in place. As far as CPR or anything else that might occur should some accident happen, that would be the Chiropractic Physicians' Board of Nevada that would say yes. Everybody would have to be trained in whatever emergency measure would be needed. That also could happen with the chiropractor present.

Chair Atkinson:

In the proposed amendment, section 5, subsection 1, it stated "may" and now states the board "shall." There was some discussion regarding the word, "may," and what would happen. This is putting the board on notice that certain things would have to be in place, before this is allowed to happen.

Senator Hardy:

That is correct. The board "shall" do the regulations, and those regulations "may" allow.

Chair Atkinson:

In this instance, the board can choose not to, if they do not want to.

Senator Hardy:

That is correct.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS S.B. 198.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Ms. Paslov Thomas:

Senate Bill 287 revises provisions governing cosmetology. It is sponsored by Senator Hardy and was heard on March 25. There are three proposed amendments attached ([Exhibit G](#)).

SENATE BILL 287: Revises provisions governing cosmetology. (BDR 54-830)

Chair Atkinson:

If the Committee will remember when we heard this bill on March 25, there was quite a bit of discussion on section 1. I have had conversations with the sponsor, Senator Hardy, about it and I think we felt the same. We did not want to get into that battle. Also, Senator Hutchison and I have had some discussions. We want this State Board of Cosmetology to work a little more closely with the folks who belong there.

I know we essentially have a new Board coming in, but we wanted to salvage the part of the bill where there was talk about having a duplicate certificate in order to travel with it. We also settled on the issues of 2 percent of salicylic acid.

Senator Settelmeyer:

For the purpose of disclosure, my wife is a cosmetologist, but it will not affect my vote any differently from any other Senator.

Chair Atkinson:

We will entertain a motion with the three amendments.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS
S.B. 287, WITH THE THREE AMENDMENTS IN THE WORK
SESSION DOCUMENT.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Ms. Paslov Thomas:

Senate Bill 316 was sponsored by Senator Denis ([Exhibit H](#)). It was heard on March 25. There is one proposed amendment from Senator Denis to change the distance to within 30 miles.

SENATE BILL 316: Requires provisions relating to materials recovery facilities.
(BDR 54-1067)

Senator Denis:

We changed the distance to 30 miles so it would cover the valley. Otherwise, they would choose not to do it. This just increases the area.

Senator Settelmeyer:

This amended bill just expands the area so more individuals who are in proximity to a material, manufacturing or work facility will have to participate. Correct?

Senator Denis:

Yes, exactly. They could start up someplace else, but they would have to follow the procedures.

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS S.B. 316.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

Senate Bill 351 was sponsored by Senator Hutchison ([Exhibit I](#)). It was heard on March 27.

SENATE BILL 351: Prohibits certain activities relating to liens for health care services. (BDR 54-847)

SENATOR HARDY MOVED TO DO PASS S.B. 351.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Ms. Paslov Thomas:

The final bill is S.B. 354. This was sponsored by Senator Hutchison and heard on March 25 ([Exhibit J](#)).

SENATE BILL 354: Revises provisions relating to mortgage lending. (BDR 54-1058)

SENATOR HARDY MOVED TO DO PASS S.B. 354.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Atkinson:

That concludes our work session. We will go back now and reopen the hearing on S.B. 422.

Kendall Tenney (10e Media):

I support S.B. 422. I have submitted my written testimony ([Exhibit K](#)). It will benefit individual journalists and their families. It will also benefit Nevada. As Senators Segerblom and Hutchison discussed earlier, broadcasting truly is a unique industry. The longer a journalist stays in a city, the more valuable he or she becomes. That is a double-edged sword, certainly. I am grateful that during my time at Channel 3, I was able to build a brand and to establish myself.

I will tell you a story, but also say that I am speaking not just on my behalf but also on behalf of the many journalists who are still in the industry and are unable to endorse this bill openly for various reasons. Among the reasons is that they worry it might hurt their careers.

My wife and I came to Las Vegas in 1994 with visions of moving to a larger market after a short time, perhaps a few years. It did not take long, however, before we fell in love with Nevada. In addition, when I did get some offers in my hometown of Dallas, Texas, and in my wife's hometown of Sacramento, California, we learned I was not going to make nearly as much money in those places because I had no name recognition. By that time, we had children. All five of my children were born in Nevada, and we decided this is home. This is where we wanted to be.

After a tremendous run at KVBC, which now is KSNV Channel 3, the station made it clear we were going to part ways with no hard feelings. The station also made it clear it would enforce the 12-month noncompete clause, which meant I would have to sit out and not be able to work in the industry I loved in the State I had come to love. That is why I opened my own public relations media training agency, 10e Media, which I am grateful to say, is doing very well.

After a year, I had employees who were depending on me and clients with whom I had signed contracts. I did not reenter the industry and have no plan to do so, which is why I am able to sit here today and say, please support S.B. 422. Anybody who has any interest in returning to the industry would be reticent to be here.

This bill benefits not only individual families but the State as well. We need quality journalists in the State. We want people who understand this community and cherish it and represent it well. But the noncompete clauses often cause

people to leave when they do not want to. I can cite many instances where reporters or anchors who really wanted to make Nevada home had to leave because they had a 12-month noncompete clause and had to support families. One in particular was a popular individual employed in his early 50s at a local station. He had a falling-out with his station. He was not able to find employment outside the State because he had no name recognition and had to wait out 12 months. During that time, he ran into many financial problems.

One of the misconceptions is that broadcasters make a good deal of money. Certainly, if you are in a certain position, in an anchor position and have tenure, you are going to make some decent money. But every reporter, almost to a person, signs these noncompetes. Many of these reporters are making \$30,000 or less a year. They are not getting rich. Then they do not have the resources to move when it comes time to part ways with the station for whatever reason. They do not have a way to make money while living here in Las Vegas.

It is for these reasons and more that I speak on behalf of the many working journalists today in broadcasting and ask for your support and thank you for hearing us today. I believe it will benefit individual broadcasters and their families and the State.

Steve Crupi:

I support S.B. 422. I have submitted written testimony ([Exhibit L](#)). I had a similar career path as Mr. Tenney whom you just heard. I spent 2 decades as a journalist in Las Vegas and, like Mr. Tenney, I decided to leave the profession permanently. I have seen many of my colleagues, many fine journalists, forced to leave the market and leave the State entirely in large measure because of these restrictive covenants. The state of California was mentioned. They outlawed all of these restrictive covenants in 1872. The broadcasting companies that operate in California do just fine. The journalists there compete freely. The stations are wildly profitable as they are here in the State.

It is reasonable for an employer, a broadcaster, to prevent someone from jumping ship to the competition during the term of an employment contract. But restricting their freedom after that term ends is not good public policy. It is bad for the journalist. It is bad for the journalism profession and bad for the State. Also, more often than not, people whose lives have been adversely affected by these noncompete clauses are those who have been let go by the broadcaster

and told that their services are no longer wanted. In some cases, the excuse given by the station is that ratings were low, so they are no longer retaining your services. If that indeed were the case, why should they be concerned if that person with low ratings goes across the street and tries to continue with his or her career as a journalist?

The argument that they are trying to protect an economic interest no longer makes sense in the real business world. Broadcast businesses are profitable. The bulk of their profits is shipped out of State. Forcing all their broadcasters to sign these restrictive, and in some cases punitive, noncompete agreements is bad public policy. That is why I am in support of S.B. 422.

Mr. Tenney:

Stacey Escalante was going to speak, but had to leave. We have submitted several letters from former journalists ([Exhibit M](#) and [Exhibit N](#)).

Josh Griffin (Nevada Broadcasters Association):

I have a few people here with me to speak in opposition to S.B. 422.

Lisa Poe-Howfield (Vice President and General Manager, KSNV, Intermountain West Communications Company):

As the representative of the NBC affiliates in Nevada, I am here in opposition to S.B. 422. Every broadcaster in this market functions a little differently, so some of my remarks are specific to Intermountain West Communications Company (IWCC). My comments are contained in my written testimony ([Exhibit O](#)).

Senator Hardy:

How does a person get a raise?

Ms. Poe-Howfield:

For contracted employees, the raises typically are written into the contract. It might say, for example, "Year 1, \$150,000; Year 2, \$175,000" and maybe "Year 3, \$200,000."

Senator Hardy:

We heard earlier \$30,000, but that is not necessarily the case?

Ms. Poe-Howfield:

Mr. Tenney was referring to the reporter positions. Those are written in the same way, but maybe the dollar amounts do not match the amounts that I just shared with you.

Senator Denis:

You are with KSNV, but you are part of IWCC. In other states where IWCC operates, do they have the same thing?

Ms. Poe-Howfield:

Yes, they do.

Senator Denis:

You do not have any state that does not allow for these types of contract agreements?

Ms. Poe-Howfield:

I would have to double-check to make sure. As far as I understand, we write our contracts all through one legal department located in Reno. My understanding is that those are all much the same.

Mr. Griffin:

Ms. Poe-Howfield, please correct me if I am wrong. I am going by memory of what states you are in. I know your company operates in Idaho and Montana. Looking at a list I have here, neither of those states has noncompete restrictions. I hope that list is current, but I will provide that to the committee after the hearing.

Brandy Newman (Chairman, Nevada Broadcasters Association; Clear Channel Broadcasting):

I represent Nevada Broadcasters Association and Clear Channel Broadcasting, which has more than 250 radio stations across the United States. About 16 states have some form of noncompete clause provisions. Contrary to belief, many states do not have anything in place. All noncompetes take reasonable time and scope into consideration. Those are the two main things that we as broadcasters need to address.

I have some questions asked of former broadcast employees about whether they ever used our state as a benchmark to get to the next level. Speaking for

Clear Channel Broadcasting, I am the benchwarmer for the next larger market, so we can improve our talent, and our talent has the opportunity to become better known. They do not become known unless we as broadcasters spend thousands and millions of dollars to allow that to happen. I can have the best talent, and if I do not market them, if I do not allow our radio and TV stations to get the word out about them, they continue to be great talents, but nobody knows about them.

It is important for us that you to understand the investments we make not only in our talent but in our sales people and our management. It would be hard for them to avoid taking our trade secrets across the street. We spend thousands of dollars every year doing research, trying to figure out the next thing we can do with our radio and TV stations using everybody to collaborate and using that research to take us to the next level. If one of my employees were to walk across the street tomorrow, it would be hard for that person not to share that information. That is why the 6-month noncompete is standard. In 6 months, the information they have at their disposal is not going to be detrimental to us or to our companies that have invested so much money.

The other thing is the business goodwill. We allow our talent to do personal endorsements for many products you hear about on the radio and TV stations. We make money in return for advertisement. They make money in return for talent. Our sales representatives go out every day and try to promote them and allow them to build a franchise. It is true they serve our communities through our resources. We allow them to be a part of our brand. We build a brand with them. Let there be no mistake, the clients of the radio stations are property of the TV and radio stations. The products are our talent. They are what we want to promote. But at the end of the day, that is what we do. We sell people. That is our business model. In allowing these noncompetes to go away, you allow us to let that walk across the street as our trade secrets.

Senator Settlemeyer:

What employees do you require to sign a noncompete clause? Senate Bill 422 refers to "any employee." Is it just the ones who are on the radio and TV or how far out does that go?

Ms. Newman:

All stations have different levels of noncompetes. Ms. Poe-Howfield's station only requires the talent. We at Clear Channel have our sales management,

programming management, our on-air talent, any of our digital asset people, and people who touch our content under noncompetes. They are all 6-month noncompetes and only within a 50-mile radius. It would allow someone to move within the State very easily.

Ms. Poe-Howfield:

We also have producers who are under noncompete contracts.

Bob Fisher (President and CEO, Nevada Broadcasters Association; Former President, National Alliance of State Broadcasters Associations):

I am here representing the Nevada Broadcasters Association in opposition to S.B. 422. In our opposition, we believe it is a radical and dramatic departure from existing Nevada law, which has been in place for decades. For more than 45 years, the Nevada Supreme Court has recognized an employer's right to enter into post-employment noncompete arrangements to protect its business and goodwill. In NRS 613.200, the Legislature has authorized post-employment noncompete agreements that are reasonable in scope and duration. The purpose of NRS 613.200 is to allow all employers in Nevada to protect investments in their businesses and confidential information and goodwill. Most importantly, during these years of economic challenges, the Legislature has undertaken a variety of efforts to make the legal and regulatory environment favorable for companies so they will want to incorporate in Nevada or relocate to do business here.

The fact that noncompetes are specifically authorized by Nevada law and are routinely enforced by Nevada courts across a variety of industries is yet another incentive for companies to do business in this State. Multiple decisions of the Nevada Supreme Court as well as the express provisions of NRS 613.400 already provide adequate protection for employees based on a requirement that post-employment noncompetes must be supported by valuable consideration and reasonable scope and duration.

Rather than adopting a blanket prohibition on noncompetes on only one industry, post-employment competes are best left to the courts to scrutinize and to say what is reasonable under the particular circumstances of each case.

Without careful consideration, study and analysis, we believe this is not an area of the law where the Legislature should interfere on an ad hoc basis. This is particularly true since the law would be targeting a particular industry without

a defined public policy rationale for doing so. It also would be creating a privileged class of employees who are being given special treatment and rights not afforded to any other employees in Nevada.

Frankly, this legislation is in search of a problem. Each contract between an employer and an employee is unique and different. Some on-air employees of broadcast companies have sophisticated agents who negotiate contracts on their behalf. Noncompete agreements are commonly used in the broadcast industry around the Country and are common in many other industries. The legislation unfairly singles out the broadcast industry without justification and takes away from the industry a basic contract right. Broadcast companies are unfairly singled out and targeted, even though this is an industry in particular that has valid and compelling reasons for entering into post-employment noncompetes with employees.

In today's economy, the profit margins are slim in the broadcast industry. The stakes are high. Millions in revenue can ride on a single rating point in a local program. Research often identifies local talent as the most important criterion in the audience's selection of local programming. One of the legitimate purposes recognized by the Nevada Supreme Court for enforcing noncompetes is the protection of an employer's goodwill, its relationship with and loyalty of its customers as viewers and listeners.

A broadcast employer's brand and image are closely tied to the on-air talent it hires and places on air. I would be willing to bet that if I said the name Paula Francis, you would know what station she works for. If I used the name Tad Dunbar, you would remember from which station he broadcast. If you were in Elko and I mentioned the name Laurie Gilbert, you would definitely know her station. The talent becomes the face and voice of the station that has devoted significant resources to the selection, cultivation and promotion of that talent. There is so much time, effort and energy invested in developing each of these individuals. Television and radio stations have few on-air positions to parlay into a ratings differential. Awarding one of these positions involves the expenditure of a precious resource and represents a significant investment in the station's future.

Most research and development companies can secure patent trademark or copyright protections to control and protect their products. However, broadcasters are limited in their ability to control or protect their products,

because their products are people. One of the few available protections is the noncompete.

For the record: "This is the first time in 19 years I have testified against a bill."

Bob Ostrovsky (Cox Communications):

Senate Bill 422 would cover any employee of a broadcast company not just on-air talent or broadcast journalists as quoted here. If you intend to process this legislation, you should amend it to say specifically that it should not cover noncompete agreements with chief executive officers, chief financial officers, and chief sales officers who frequently do sign noncompete contracts, as they do in any other industry. It is important that you define a broadcast employee. Secondly, in section 2, subsection 3, under broadcast employers, cable television systems are listed. Cox Communications is not sure why cable systems are listed in S.B. 422, although I have spoken with the bill's sponsors. We do not have on-air talent. We have re-broadcast agreements with various national and local stations. Senate Bill 422 talks about directly or indirectly requiring a candidate to agree to a noncompete as a condition of employment. We do not know whether someone wants to reach past us to a re-broadcast person who was indirectly affected by this law. We would ask that cable television systems be removed from this legislation. We do not employ on-air talent other than for public service announcements and public service coverage of the Legislature. Lastly, section 2, subsection 3, paragraph (a) refers to a "video service network." That is not defined in the statute anywhere. We do not know what those words mean. They have never been used before by the Public Utilities Commission of Nevada or by any agency of the FCC of which we are aware that regulates on-air activities. We do not know what a video service network is. It also should be deleted. If you should choose to do that, we would ask for a better definition, and to remove cable television and video-service networks.

I have negotiated at least a couple hundred of these noncompete agreements and the key word is "negotiated." It is always a two-sided coin. I know some people think the employer has a heavy hand, but if you are dealing with skilled people and you want them, it is a give-and-take negotiation.

Mr. Griffin:

I have been doing this long enough to sense that many issues that should be addressed are not being specifically addressed. Also, sometimes our testimony

can go on, and I do not want to go into further presentation. This is a very broad bill. It takes a tool that I think Ms. Poe-Howfield, Ms. Newman, Ms. Fisher and Mr. Ostrovsky were able to articulate, and it goes 180 degrees in the opposite direction and says that those tools are no longer usable. I hope we have made a case for why those tools are good for the business operations and how we invest as an industry. Our investments run to hundreds of thousands of dollars, and maybe in the aggregate millions of dollars every year to build our brand and to build what becomes our equity as business owners.

Senator Hutchison:

It was not our intention to capture anything other than on-air talent. You can let all those arguments sink in regarding investments, goodwill, trade knowledge, recognition by law and special treatment. They are all undercut by the fact that there are many broadcast companies in other states, including Arizona and California, that are thriving without noncompetes, particularly regarding their on-air talents. The on-air talent are well known to us, maybe even by station, but I guarantee there is no one in Utah, Arizona or California who knows them. They all have to move to other states when their contracts are up and they have been told that they will not be asked to return. I would ask the Committee to continue to consider S.B. 422. I am happy to work with anyone who has expressed opposition.

Chair Atkinson:

We will close the hearing on S.B. 422 and open the hearing on S.B. 497.

SENATE BILL 497: Revises provisions relating to dental care. (BDR 57-1096).

Chris Ferrari (Nevada Dental Association):

I am testifying on behalf of Nevada Dental Association, representing more than 800 dentists statewide, in support of S.B. 497.

I have submitted two documents for your consideration, a handout ([Exhibit P](#)) and a map ([Exhibit Q](#)).

A dental insurance policy provides a list of covered services to both the doctor and the patient. This list tells the doctor and patient how much the insurance carrier will pay, how much the co-payment is for the patient and whether the service is covered under the terms of the policy. There are many major dental insurance plans that have added language in their contracts that set fees on

dental services they do not cover within that policy, limiting the dentist's ability to provide certain services. Senate Bill 497 is based upon language adopted by the National Conference of Insurance Legislators (NCOIL). [Exhibit Q](#) shows you the states that have adopted it.

Section 1 of S.B. 497 prevents dental insurance plans from capping fees on certain services not covered within that plan. Dental plans typically have a limit of \$1,000 to \$2,000 per year, depending on the plan. Senate Bill 497 also includes an important consumer benefit and protection also taken from the NCOIL model language. The cost of the covered service under S.B. 497 will not revert to the doctor's usual and customary fees once the patient's calendar year plan maximum is reached. If your dental plan only includes \$1,000 worth of coverage but you require some additional work that would exceed that amount, under this bill that insured coverage rate would be extended to you within that calendar year. You would not have to wait an additional year until your new plan kicks in to have those additional coverage amounts. Section 3 ensures this.

The Nevada Dental Association proactively reached out to interested parties during the interim, including insurance companies, the Culinary Union and the Commissioner of Insurance. All of those parties have indicated if the language reflected the NCOIL model, there would be no opposition to the legislation.

J.B. White, DDS:

Senate Bill 497 has become important to me personally because without it, my ability to explore the best options of treatment is impacted. This can take the course of treatment out of the hands of those at the center of the decision, myself and the patient.

An everyday example that I am faced with is the patient who is going to lose a tooth. Replacement of the tooth can be accomplished several ways. We can remove it after a well-explored conversation, taking many factors into consideration and determining the proper treatment plan. If the patient's missing tooth is surrounded by healthy teeth, a dental implant would be the most conservative treatment. But the hard cost and the type of the implant needed, which is not covered under the patient's insurance plan, is more than the reimbursement, it renders the dentist unable to offer the service.

In almost all cases, the patient desires the course of treatment and is happy to pay for the services, but is legally prohibited to do so. Our goal is to keep the decision between the patient and the dentist. Senate Bill 497 will help preserve this relationship.

Senator Hutchison:

I am having a hard time understanding what is legally prohibited. What are you seeking to overcome under existing law that would interfere with that patient-doctor relationship in terms of treatment?

Mr. Ferrari:

What happens in Dr. White's example is that the person may desire to have the dental implant, but the covered rate from the insurance company does not pay for the procedure. Often it does not even pay for the hard cost of the procedure. Therefore, the patient may say he or she would like that treatment, but if Dr. White is prohibited under his contract from accepting any dollars in addition to what is covered by the plan, Dr. White and the patient would be in violation of the terms.

Senator Hutchison:

Even when the doctor and the patient agree on this procedure, if it is not covered under the plan, Nevada law says you cannot accept any more money. You want to be able to say, we want to have our own contractual relationship if the patient wants to pay me for the procedure.

Mr. Ferrari:

That is correct.

Senator Hardy:

If they want to pay, they have to go to somebody outside the plan to get their dental implant.

Dr. White:

That is one option. In a lot of cases, I do the procedure at a loss, just to do the procedure for the patient. Most dentists will do that.

Helen Foley (Delta Dental Insurance Co.):

Delta Dental is one of the largest dental insurers in the State. We support S.B. 497. It closely tracks NCOIL's model legislation. It is a practical bill that makes great sense. We have submitted a letter of support ([Exhibit R](#)).

Chair Atkinson:

We will now close the hearing on S.B. 497 and try to bring it back before we close out next week. We will now open the hearing for S.B. 498.

SENATE BILL 498: Revises provisions relating to telecommunications. (BDR 58-1097)

Kami Dempsey (Cox Communications):

We support S.B. 498. It does three things. It requires the Public Utilities Commission of Nevada (PUCN) to improve and make more efficient the certification of eligibility for certain telephone services, to establish a unified program for everyone who would be given the Lifeline product and to establish a procedure for contracting with an independent administrator.

Lifeline is an inexpensive wireless or landline phone service for low-income Americans. The program would mandate the PUCN to implement a third-party administrator for the program. The existing process with the DHHS is incomplete. They poll some of the programs by which people are certified for four Lifeline programs. A third-party administrator would streamline oversight of a database containing all participants. Income verification and recertification for the program would take place once a year.

Senator Hutchison:

The DHHS currently administers the Lifeline program, is that right?

Debrea Terwilliger (Assistant Staff Counsel, Office of the Staff Counsel, Public Utilities Commission of Nevada):

The PUCN supports S.B. 498, but this is not a PUCN bill, so I am here just as a technical person. There is no administrator for the Lifeline program at this time.

The DHHS creates a list of those who are eligible for four programs: Medicaid, Supplemental Nutrition Assistance Program, Low-Income Home Energy Assistance Program and Temporary Assistance for Needy Families. There are some additional programs. Those who qualify for those programs can get

a discounted Lifeline service, but the DHHS does not have that information. Head Start, however, is one of them. The Free or Reduced School Lunch Program is another. We have some new information that came up last week. The DHHS is working with another Lifeline company, ChartPhone, to create a database that would make this process simpler. If we could repeal the section, that would get rid of this list, which is part of this bill. We could have a database for carriers to access.

We were not aware of that at first. All the stakeholders need to get back in a room and talk about what that means. It well might be repealing NRS 707.470, which is what this bill contemplates, and everybody seems to be interested in getting rid of the list. If we repeal that, there is no reason for them to continue to provide information to the new administrator of the Lifeline service who would have to work with other agencies to get access to all the programs that Lifeline covers. The DHHS will not start providing that information.

Senator Hutchison:

Does it not make sense to improve the system or the approach with DHHS? It is a governmental agency that has access to the information that you just described and probably could get the access to other things like Head Start and School Lunch programs. I would think the agency would be able to gain access to the database much more easily than someone coming in as a third-party administrator. Or is that not the case?

Ms. Terwilliger:

The DHHS could not be here today, but we had a docket with them regarding Lifeline previously. We changed the regulations after the FCC's order came out regarding the Lifeline reform. They say they do not have the appropriate statutory authority for access.

The Lifeline administrator's duties would exceed the activities of the DHHS for this program. Key for the Lifeline administrator would be to ensure there is no duplication—that a single Lifeline customer does not show up on the list of more than one Lifeline carrier. The administrator might also set up a Web portal so people could apply more easily. There are many other administrative roles that could provide valuable functions. The FCC's new rules also require certification to prove an individual is eligible under certain programs. The Lifeline

administrator would collect those forms. I do not think the DHHS has the capability to do that.

Randy Brown (AT&T):

We are here in support of S.B. 498. It makes a lot of sense for an individual, independent third-party administrator to manage this program for the company's customers. We are the beneficiaries of that program, and we do not think we should be in the business of qualifying people for it. We receive subsidies for doing that from both the State and the federal government. We support this measure.

Senator Hutchison:

One of the reasons you support this is admirable. Do you feel you have a conflict of interest?

Mr. Brown:

There are several ways you can qualify for this program. Some programs call for documentation. We do not believe that we should be in the business of reviewing these documents for authenticity. We also believe this will curb waste, fraud and abuse. If people could enroll at AT&T for Lifeline, they could enroll at Cox and could be getting three or four Lifeline subsidies. This third-party would be able to manage that.

Senator Hutchison:

From the carrier's standpoint, do you think it makes more sense to have a private third party to do this as opposed to having this done under the auspices of the DHHS?

Mr. Brown:

I agree. That is because DHHS does not have access to all the programs. Also, other states have implemented this as well. There are administrators like Solix Lifeline Solutions, which administers the Lifeline surcharge in Nevada. There are other providers, as well. This is not uncommon.

Senator Hardy:

With this public-private partnership, who pays for the third-party administrator?

Mr. Brown:

The administration is paid for through the surcharge that is applied on all phone

bills. They would administer a program today for the State, and it comes out of the support that is paid into the program.

Ms. Terwilliger:

We currently work with Solix to administer the Nevada Universal Service Fund. That is about \$40,000 to \$45,000 per year. The assessment rate is a little complicated. It is 0.115 percent of intrastate retail revenue. That is different for each carrier, depending also on the customer and how much retail revenue there is. But it results in about a 1-cent to 5-cent charge on each customer's bill per month.

We contacted Solix in anticipation of this hearing. First of all, the bill mandates that we issue a request for proposal. The PUCN will go out and make this a public bidding process within the State agency. We had Solix look into what the numbers might be for administering the program. The price does go up. It could result in as much as 50 cents per month on customers' bills. It depends on the scope of the services they provide and that is set by the PUCN and regulation. It could be far less, but it will result in a surcharge increase.

Presumably, there is also a surcharge on the bill for universal service. As the waste, fraud and abuse is reduced, we could see the surcharge for universal service start to go down.

Helen Foley (T-Mobile):

We support S.B. 498.

Josh Hicks (TracFone Wireless, Inc.):

TracFone Wireless has about 3 million customers in this program on wireless phones. We are the country's largest provider in that area. We want to get on the record as supporting S.B. 498 and to note that we are looking forward to working with the group about which the PUCN spoke. My client still uses the list to verify eligibility. It is not a complete list, as we have heard. It is much better to have a third-party administrator up and running, but in the meantime and until that happens, we check the list to make sure people are eligible. We will be working with the group to make sure it is usable until we get the third-party administrator. We think it is a good idea.

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Randy Robison (CenturyLink):

We echo the comments of Mr. Brown from AT&T. We are in full support of S.B. 498 and are happy to work with the group on a couple of issues that have cropped up.

Mike Eifert (Executive Director, Nevada Telecommunications Association):

We are in full support of S.B. 498 and look forward to working on the database issue.

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Chair Atkinson:

We will now close the hearing on S.B. 498. We are adjourned at 4:06 p.m.

RESPECTFULLY SUBMITTED:

Wynona Majied-Martinez,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	11		Attendance Roster
S.B. 319	C	1	Senator Joseph P. Hardy	Proposed Amendment
S.B. 369	D	8	Senator Ben Kieckhefer	Proposed Amendment 7836
S.B. 155	E	2	Marji Paslov Thomas	Work Session Document
S.B. 198	F	2	Marji Paslov Thomas	Work Session Document
S.B. 287	G	6	Marji Paslov Thomas	Work Session Document
S.B. 316	H	3	Marji Paslov Thomas	Work Session Document
S.B. 351	I	1	Marji Paslov Thomas	Work Session Document
S.B. 354	J	1	Marji Paslov Thomas	Work Session Document
S.B. 422	K	1	Kendall Tenney	Written Testimony
S.B. 422	L	1	Steve Crupi	Written Testimony
S.B. 422	M	2	John Overall	Letter
S.B. 422	N	2	Kim Sherwood Schofield	Letter
S.B. 422	O	1	Lisa Poe-Howfield	Written Testimony
S.B. 497	P	2	Chris Ferrari	Handout, National Conference of Insurance Legislators
S.B. 497	Q	1	Chris Ferrari	Map, U.S. NCS States
S.B. 497	R	1	Helen Foley	Letter