

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Eighth Session
May 11, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 2:23 p.m. on Monday, May 11, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

None

Chairman Kirner:

[The roll was taken, and a quorum was present.] Today's agenda is all work session. There are a number of bills on the agenda today that were passed unanimously in the Senate and when heard in this Committee had no opposition or neutral testimony. Based on that and barring any disagreement, I would like to pass those as a group. The Committee Policy Analyst will read the list for you to determine if you would rather hear these bills individually.

Kelly Richard, Committee Policy Analyst:

There are six bills to be considered.

Senate Bill 87 (1st Reprint): Authorizes the Public Utilities Commission of Nevada to modify resource plans submitted by certain public utilities. (BDR 58-349)

Senate Bill 87 (1st Reprint) was heard in Committee on May 1, 2015. This bill authorizes the Public Utilities Commission of Nevada to modify resource plans submitted by certain utilities. [Referred to work session document ([Exhibit C](#)).]

Senate Bill 246 (1st Reprint): Revises provisions governing alcoholic beverages. (BDR 52-631)

The second bill is Senate Bill 246 (1st Reprint). That bill is sponsored by Senator Settelmeyer. It was heard in Committee on May 1, 2015. This bill increases from 20,000 cases to 40,000 cases the quantity of spirits that a craft distillery may manufacture for export to another state in a calendar year

and makes other changes to distillers and laws governing distilleries. [Referred to work session document ([Exhibit D](#)).]

[Letter of support received from Stan Olsen, Henderson Chamber of Commerce ([Exhibit E](#)).]

**Senate Bill 251: Ratifies the Interstate Medical Licensure Compact.
(BDR 54-576)**

This bill was sponsored by Senator Hardy and was heard in Committee on April 29, 2015. It ratifies the Interstate Medical Licensure Compact. [Referred to work session document ([Exhibit F](#)).]

Senate Bill 256 (1st Reprint): Revises provisions relating to the civil liability of innkeepers. (BDR 54-1018)

This bill was heard in Committee on April 27, 2015, and was sponsored by Senator Farley. It limits the liability of an innkeeper for the loss of or damage to a motor vehicle brought by a patron onto the premises of the innkeeper. [Referred to work session document ([Exhibit G](#)).]

**Senate Bill 373 (1st Reprint): Makes various changes relating to insurance.
(BDR 57-689)**

This bill was sponsored by Senator Hardy and was heard in this Committee on May 4, 2015. It provides for the licensure of a producer of limited lines travel insurance to allow such a producer to solicit, negotiate, and sell policies of travel insurance, and it makes other changes to statutes regulating the sale of travel insurance. [Referred to work session document ([Exhibit H](#)).]

[Letter of support received from Eben Peck, American Society of Travel Agents ([Exhibit I](#)).]

Senate Bill 384 (1st Reprint): Revising provisions relating to family trust companies. (BDR 55-279)

This bill was sponsored by Senator Kieckhefer and was heard in Committee on May 1, 2015. It revises provisions relating to family trust companies. [Referred to work session document ([Exhibit J](#)).]

Chairman Kirner:

Unless there is an objection, I will entertain a motion to do pass. If there is an objection, we will hear each bill separately. Is there a preference?

Assemblywoman Neal:

I plan to vote no on two of the bills.

Chairman Kirner:

Then I will go through each bill separately.

Assemblyman Silberkraus:

Could we just pull those two and vote on the remainder as a group?

Chairman Kirner:

On which bills did you want to vote no, Assemblywoman Neal?

Assemblywoman Neal:

Senate Bill 384 (1st Reprint) and Senate Bill 256 (1st Reprint).

Chairman Kirner:

Do other Committee members have concerns or objections to the bills? [There were no responses.] What we have left is a do pass for Senate Bill 87 (1st Reprint), Senate Bill 246 (1st Reprint), Senate Bill 251, and Senate Bill 373 (1st Reprint).

Assemblywoman Carlton:

I have not done consent agendas on a work session before, and I am uncomfortable doing it. If Assemblywoman Neal's concerns have been addressed, I will be fine because those are the two bills about which I also had concerns. I want it on the record that this is not normal practice.

Chairman Kirner:

I will entertain a motion.

ASSEMBLYMAN SILBERKRAUS MOVED TO DO PASS
SENATE BILL 87 (1ST REPRINT), SENATE BILL 246
(1ST REPRINT), SENATE BILL 251, AND SENATE BILL 373
(1ST REPRINT).

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON AND
KIRKPATRICK WERE ABSENT FOR THE VOTE.)

We will go back to the top of the work session list and take the bills one at a time. We will start with Senate Bill 50 (1st Reprint).

Senate Bill 50 (1st Reprint): Makes various changes to the regulation of contractors by the State Contractors' Board. (BDR 54-387)

Kelly Richard, Committee Policy Analyst:

Senate Bill 50 (1st Reprint) makes various changes to the regulation of contractors by the State Contractors' Board. This bill was heard in Committee on April 27, 2015, and it was submitted by the State Contractors' Board. [Read from work session document ([Exhibit K](#)).]

It deletes the requirement of the State Contractors' Board to establish an advisory committee concerning the classification of licensure of persons who install and maintain building shell or thermal system installation. The bill authorizes the Board to use additional information to consider whether an applicant or licensee is qualified on behalf of another for more than one active license. The Board is allowed to inquire into and consider the financial responsibility and good character of such persons. The bill adds certain international building codes to the list of workmanship standards that, in the absence of a locally adopted building or construction code, a licensee must achieve or else be subject to disciplinary action. Finally, the measure clarifies that an injured person or personal representative of the licensee, who is cohabitating with the licensee, is married to the licensee, or is related to the licensee by blood within the first or second degree of consanguinity, is not eligible for recovery of damages from the Recovery Fund maintained by the Board.

The Board submitted an amendment to allow a natural person to qualify on behalf of another for more than one active license if one licensee is a corporation for public benefit. I believe the Board testified that was to assist Habitat for Humanity.

Chairman Kirner:

Is there any discussion?

ASSEMBLYMAN ELLISON MOVED TO AMEND AND DO PASS
SENATE BILL 50 (1ST REPRINT).

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON AND
KIRKPATRICK WERE ABSENT FOR THE VOTE.)

We will move to Senate Bill 84 (1st Reprint).

Senate Bill 84 (1st Reprint): Includes certain alcohol and drug abuse counselors, problem gambling counselors and social workers in the definition of "provider of health care" for purposes of various provisions relating to healing arts and certain other provisions. (BDR 54-389)

Kelly Richard, Committee Policy Analyst:

Senate Bill 84 (1st Reprint) was heard in Committee on April 27, 2015, and was brought forward by the Board of Examiners for Alcohol, Drug, and Gambling Counselors. [Referred to work session document ([Exhibit L](#)).]

The bill expands the definition of a "provider of health care" to include a person certified under the laws of this state as an alcohol and drug abuse counselor or a problem gambling counselor. The bill also expands the definition of a "provider of health care" to include a person licensed under the laws of this state as an associate in social work, a social worker, an independent social worker, a clinical social worker, an alcohol and drug abuse counselor, or a clinical alcohol and drug abuse counselor.

There was an amendment proposed during the hearing by the Nevada Association of Health Facilities. The amendment adds skilled nursing facilities or other medical facilities defined in *Nevada Revised Statutes* (NRS) 449.0151 within the definition of "provider of health care."

Chairman Kirner:

Is there any discussion? [There was none.] I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
SENATE BILL 84 (1ST REPRINT).

ASSEMBLYMAN O'NEILL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON AND
KIRKPATRICK WERE ABSENT FOR THE VOTE.)

We will move to Senate Bill 153 (1st Reprint).

Senate Bill 153 (1st Reprint): Revises provisions relating to occupational diseases. (BDR 53-635)

Kelly Richard, Committee Policy Analyst:

Senate Bill 153 (1st Reprint) was heard in Committee on May 6, 2015. It revises provisions relating to occupational diseases and it was sponsored by

the Senate Committee on Commerce, Labor and Energy. [Referred to work session document ([Exhibit M](#)).]

The bill limits the period under which heart and lung diseases are, for purposes of industrial insurance claims, conclusively presumed to be occupationally related. Specifically, a person must have been employed in a full-time continuous, uninterrupted, and salaried occupation as a police officer, firefighter, or arson investigator for two years or more before the date of disablement if the disease is diagnosed and causes the disablement during the course of that employment; during the period after separation from employment that is equal to the number of years worked, if the person ceases employment before completing 20 years of service as a police officer, firefighter, or arson investigator; or at any time during the person's life, if the person ceases employment after completing 20 years or more of service as a police officer, firefighter, or arson investigator.

There was a conceptual amendment discussed during the hearing to limit post-employment benefits to medical benefits only, in order to clarify that workers' compensation indemnity benefits do not apply to retirees or those who have separated from service.

Chairman Kirner:

Is there any discussion?

Assemblywoman Carlton:

My concerns are the dollars and cents that were brought up. I am not really sure actuarially where this is going to put us. I have concerns that this has not been thoroughly vetted with all of the entities in the state that will have to pick up the cost for this. I hate to disrupt this bill because all of the parties got together, worked together, and did a good job on it. I am proud of them, but they were working on the policy side, and I do not think they were thinking about where the dollars were going to be. I have serious concerns about how much liability this will cause for the state and all of the entities without having more information. I am opposed to this measure as it stands.

Chairman Kirner:

Is there any further discussion?

Assemblyman Ohrenschall:

I also hate to disrupt this when there has been negotiation between parties. Section 3, subsection 1, paragraphs (a) and (b) concern me. If a person works for two and a half years, and their heart or lung problem is not found in the next two and a half years, but is found in two and a half years and one day, they will

not get the coverage. They will probably end up on Medicaid or other medical assistance. The hard rule here is a little too hard and may end up hurting people. I will vote no.

Chairman Kirner:

Is there any further discussion?

Assemblywoman Neal:

I agree with Assemblyman Ohrenschall.

Chairman Kirner:

I would like to recognize that this is an agreement on which labor representatives and others worked extensively. It has been vetted fairly thoroughly in the Senate in terms of the actuarial work. While I have to agree there are no actuarial figures here, intuitively I think we would lower the long-term liability in this case. I will entertain a motion.

Assemblyman O'Neill:

I will be voting in favor of this bill. I want to complement both sides for working on this, making it palatable, and making a solution which I think will actually save money for the state. In reference to Assemblyman Ohrenschall's comment about the end of two and a half years, if I understand it correctly, it is an automatic presumption for a year for year. If they work for two and a half years and then develop a heart or lung issue two and a half years and one day later, they can still apply for the heart and lung benefits. They just have to show that it was work related and not that they are still smoking, had lost 80 pounds, or something else. That option is still available to them, and I would urge my colleagues to vote yes.

ASSEMBLYMAN O'NEILL MOVED TO AMEND AND DO PASS
SENATE BILL 153 (1ST REPRINT).

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

Is there any discussion?

Assemblyman Ohrenschall:

The way I read section 3, subsection 1, paragraph (b), if the diagnosis was not made during that period after a separation, I do not believe it would be covered.

Chairman Kirner:

I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMEN BUSTAMANTE ADAMS, CARLTON, DIAZ, KIRKPATRICK, NEAL, AND OHRENSCHALL VOTED NO. ASSEMBLYMAN PAUL ANDERSON WAS ABSENT FOR THE VOTE.)

The next bill is Senate Bill 223 (1st Reprint).

[Senate Bill 223 \(1st Reprint\)](#): Revises provisions relating to contractors.
(BDR 53-984)

Kelly Richard, Committee Policy Analyst:

Senate Bill 223 (1st Reprint) was heard in this Committee on April 27, 2015. It is sponsored by the Senate Committee on Commerce, Labor and Energy. It revises provisions relating to contractors. [Referred to work session document ([Exhibit N](#)).]

Senate Bill 223 (1st Reprint) provides that a prime contractor is not liable for the labor costs of a subcontractor to the extent those costs are interest, liquidated damages, attorney's fees, or costs resulting from a subcontractor's failure to pay contributions or other payments to, or on behalf of, an employee; or any amounts for which the prime contractor did not receive adequate notice by an administrator of a Taft-Hartley trust.

There was an amendment proposed by Senator Settlemeyer during the hearing to address an item inadvertently left out of the Senate's amendment to the bill. The amendment would change section 2, subsection 1, paragraph (b) of the bill to one year, rather than 180 days.

Chairman Kirner:

Is there any further discussion?

Assemblyman Ellison:

We have met with all of the parties since the hearing and we feel that the 45 days would create a problem by itself. All parties came to a consensus to change that 45 days to 60 days. That would give more time to report back to the general contractor.

Chairman Kirner:

Are you proposing another amendment?

Assemblyman Ellison:

Yes, I am.

Chairman Kirner:

Let us have a brief discussion on that.

Assemblyman Nelson:

We think that is a more reasonable time period. We met with the labor representatives, and they felt they could live with that also. With the amendment, I could vote for it.

Chairman Kirner:

Did the State Contractors' Board participate in that?

Assemblyman Ellison:

We did not meet with the Contractors' Board. We met with labor, contractors, and lobbyists. It seemed to be a more fair reporting system.

Chairman Kirner:

Are there additional comments? The proposal has been made to change the 45 days to 60 days. There is a second amendment to change the 180 days to one year. With those two amendments, I will entertain a motion to amend and do pass.

ASSEMBLYMAN NELSON MOVED TO AMEND AND DO PASS
SENATE BILL 223 (1ST REPRINT).

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Carlton:

For clarity, we are taking the 180 days that was originally in the bill and changing it to 365 days as proposed by Senator Settlemeyer. Additionally, Assemblyman Ellison's proposal is to increase the 45 days to 60 days.

Chairman Kirner:

Will you reference the section number, Assemblyman Ellison.

Assemblyman Ellison:

It is in section 5, subsection 2, and says, "within 15 days after the expiration of the 45-day period described in subsection 1." We want to change that to 60 days. Labor and nonlabor both agree to the change.

Chairman Kirner:

So we have had agreement across the board with the involved parties to these two changes. Is that correct?

Assemblywoman Carlton:

I will support this bill, but I would like to reserve my right to change my vote because there have been too many changes without any documentation.

Chairman Kirner:

Is there any other discussion? Seeing none, I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMAN SILBERKRAUS VOTED NO. ASSEMBLYMAN PAUL ANDERSON WAS ABSENT FOR THE VOTE.)

We will move to Senate Bill 233 (1st Reprint).

Senate Bill 233 (1st Reprint): Revises provisions relating to occupational safety. (BDR 53-990)

Kelly Richard, Committee Policy Analyst:

Senate Bill 233 (1st Reprint) revises provisions relating to occupational safety. [Referred to work session document ([Exhibit O](#)).] The bill was heard in Committee on April 22, 2015, and was sponsored by the Senate Committee on Commerce, Labor and Energy. The bill provides that a completion card indicating that a supervisory employee has completed a course in construction industry safety and health hazard recognition and prevention expires ten years, rather than five years, after it is issued. The measure also provides that a completion card issued to a construction worker does not expire or require renewal.

The attached conceptual amendment addresses Occupational Safety and Health Administration (OSHA) 30-hour courses. It repeals subsection 3 of section 1 to provide that a completion card received by a supervisory employee for completing an OSHA 30-hour course does not expire or require renewal.

Chairman Kirner:

Is there any discussion? Seeing no discussion from the Committee, I will entertain a motion to amend and do pass.

ASSEMBLYMAN ELLISON MOVED TO AMEND AND DO PASS
SENATE BILL 233 (1ST REPRINT).

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Kirkpatrick:

What happens if there are changes in the law or there are changes in the expectations of the OSHA 30-hour course? How would those people get further educated?

Assemblyman Hansen:

I think one thing that was overlooked in discussion is that those of us in the construction industry have weekly safety meetings where we are constantly updating safety measures. Even in the absence of this renewal, there is a constant effort by the construction industry to make sure that the worker's safety is paramount and that we literally cover everything on a weekly basis. We do not have to wait for five years to take a renewal course before all of these things are brought to our attention. In the absence of this renewal process, the safety of the worker will remain paramount.

Assemblywoman Kirkpatrick:

There are some groups that do not have safety meetings. Good contractors have safety meetings every week, but then there are others that are so small that they do not do that. What is the expectation for the Legislature to ensure and require that gets done? Is there a requirement somewhere with their contractor's license that they have those safety meetings? I think the Legislature changed the safety requirements, so I want to understand the protection going forward.

Assemblyman Ellison:

We are following the same laws that are in place in other parts of the U.S. We are not asking for anything different. Usually the classes are repetitive. In my business, I have bucket trucks. We have to train anyone who gets on those vehicles. We do that anyway. We are asking that the law be the same thing that is in place across the U.S. We are the only ones who have created such a repetitive requirement of classes. We do provide continuous education, and at the mine sites it is even worse.

Assemblywoman Kirkpatrick:

It was difficult to get this law into place originally in Assembly Bill No. 148 of the 75th Session. I do not want to lessen our requirements and then remove

it completely next session. In our state, we are unique because we build things faster and we have different conditions under which we work. I am willing to support this bill to vote it out of Committee, but I have a lot of questions and concerns. I would never want to not make safety a number-one priority in our state.

Chairman Kirner:

I do not think the issue is to reduce the value of safety.

Assemblywoman Carlton:

I believe the bill in the 2009 Session was in response to all of the deaths that we had in building one of the biggest megaresorts on the Las Vegas Strip where we had some horrendous accidents. We thought it was important to make sure that everyone was getting the same level of training. As a waitress on the Strip for close to 15 years, I had to renew certain cards on a timely basis. When you go to the health district, it is the same class over and over again. But it refreshes you and makes you think about things that you may not have thought about for a while, and it may help you break a bad habit you may have developed. Anytime we eliminate a training component, especially after the reasons the law was enacted in 2009, I would have concerns. I will be in opposition to this bill.

Chairman Kirner:

The testimony on this bill was generally supportive. I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMEN BUSTAMANTE ADAMS, CARLTON, DIAZ, AND OHRENSCHALL VOTED NO. ASSEMBLYMAN PAUL ANDERSON WAS ABSENT FOR THE VOTE.)

We will move to Senate Bill 256 (1st Reprint).

Senate Bill 256 (1st Reprint): Revises provisions relating to the civil liability of innkeepers. (BDR 54-1018)

Kelly Richard, Committee Policy Analyst:

This bill was heard in Committee on April 27, 2015, and was sponsored by Senator Farley. It limits the liability of an innkeeper for the loss of or damage to a motor vehicle brought by a patron onto the premises of the innkeeper. [Referred to work session document ([Exhibit G](#)).]

Chairman Kirner:

Is there any discussion?

Assemblywoman Neal:

I am a no on this bill because I do not like the gross negligence standard. It is a higher standard. I understand what they are trying to do. It is a pretty high burden of proof.

Assemblywoman Carlton:

I had that instinct in the hearing and after speaking with Assemblywoman Neal, it made me remember an incident I had where my car's upholstery was damaged. Assemblywoman Neal explained to me the gross negligence standard, and I agree with her.

Chairman Kirner:

Is there any other discussion? Seeing none, I will call for a motion.

ASSEMBLYMAN SILBERKRAUS MOVED TO DO PASS
SENATE BILL 256 (1ST REPRINT).

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

Is there any discussion?

Assemblyman Ohrenschall:

Assemblywoman Neal made some good comments. I will vote for this bill, but I reserve my right to change my vote on the floor.

Chairman Kirner:

Seeing no further discussion, I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMEN BUSTAMANTE ADAMS,
CARLTON, DIAZ, AND NEAL VOTED NO.
ASSEMBLYMAN PAUL ANDERSON WAS ABSENT FOR THE
VOTE.)

We will move to Senate Bill 273 (1st Reprint).

**Senate Bill 273 (1st Reprint): Revises provisions relating to health care records.
(BDR 54-589)**

Kelly Richard, Committee Policy Analyst:

Senate Bill 273 (1st Reprint) was sponsored by Senator Hardy, and it was heard in Committee on April 29, 2015. [Referred to work session document ([Exhibit P](#)).] The bill enacts provisions governing the retention of health care records by a custodian of health care records. The bill prohibits, under certain

circumstances, a custodian of health records who has lawful custody of any health care records of a health care provider from preventing the health care provider from physically inspecting the health care records or from receiving copies of those records upon request. The measure requires a custodian of health care records to deliver the records or copies to the health care provider and patient under certain circumstances. A custodian of health care records who violates a provision of this bill is subject to prosecution for a gross misdemeanor and punishment by imprisonment in the county jail for not more than 364 days or by a fine of not more than \$25,000, or both, for each violation and the imposition of a civil penalty for each violation.

Senator Hardy submitted the attached amendment. The amendment excludes the following facilities from the definition of "custodian of health care records" for the purposes of this bill: a facility for hospice care, a facility for intermediate care, a facility for skilled nursing, a hospital, and a psychiatric hospital.

Chairman Kirner:

Is there any discussion?

Assemblywoman Carlton:

This was the one that had a fine of \$25,000 for each violation. I was concerned about the person who is in receipt of these records. I was not sure why the fine is so high. When a health care facility closes, if it is because of the death of the health care provider, a member of the family may keep the records for the five to seven years or whatever is required and share them with whoever would request them. I am a little concerned about a fine this heavy on someone who is just the caretaker of the records. If it is a professional who is doing it, then yes, they should be fined because it is their job. But if it is the closure of a medical practice and the family holds on to the records, I have concerns about holding them to the professional standard.

Matt Mundy, Committee Counsel:

I had this discussion earlier with Assemblywoman Bustamante Adams and Assemblywoman Neal. This is intended to apply only to those people who are required to maintain records pursuant to *Nevada Revised Statutes* 629.051, which is defined as health care records and retention. It specifically applies to providers of health care and by extension to the professional practices. For example, if a doctor leaves a practice and he cannot get his old records for his patient, he would be able to use this statute to obtain those records, but it certainly would not apply to a family member who may have custody of another family member's records. As to the penalty of \$25,000 in the criminal context and \$10,000 civil penalty, it is my understanding that is intended to be a deterrent.

Assemblywoman Kirkpatrick:

This had to do with people finding health records outside of trash dumpsters. There are federal Health Insurance Portability and Accountability Act rules and other things. It says the fine is not more than \$25,000. It is meant to not take the easy way out and leave the records in a dumpster, but they have to try to do something with them.

Matt Mundy:

That is correct, and I want to note that the \$25,000 is a cap. It is a maximum, and it is not mandatory but permissive depending on the findings of the court.

Assemblywoman Carlton:

As the floor statement is drafted for this, if we could make sure that it is not just the custodian of any records and it is very tight to make sure that someone does not inherit these records and end up getting a fine like this. I want to be sure that the legislative intent on the floor is very clear.

Assemblywoman Neal:

Could legal counsel speak to the amendment that is attached to the work session document? In section 1, subsection 4, it says the term does not include any licensed hospital and then it references NRS 629.031. Then all the language in green makes it seem as if you are not a licensed hospital, but if you are the facility for hospice care, intermediate care, or skilled nursing, then you fit in. So what is the facility that maintains health care records? Is it excluded by the strike-out?

Matt Mundy:

As I understood it, section 1, subsection 4, paragraphs (a) through (e) in the new green language comprise by and large the definition of medical facility in *Nevada Revised Statutes* (NRS) 450B.620. The reason they struck out NRS 629.031 is it says the term does not include these people when, in fact, that is the very people that we were intending to include. So that is a clarification. If we had left it as written, it would have had the effect of not applying to anyone.

Chairman Kirner:

Is there any other discussion?

Assemblyman Ohrenschall:

I appreciate the clarification that the \$25,000 for the violation is a maximum. I am still troubled by it being a gross misdemeanor. In the Assembly Committee on Judiciary, we hear about the need for beds at the jails for those who commit violent crimes, property crimes, and financial crimes. While I think a custodian

needs to take their duty seriously, I am not sure why we do not start with a misdemeanor on this, which could carry up to six months in jail. I am going to vote no and reserve my right to change my vote on the floor.

Assemblywoman Fiore:

If a caretaker's office was vandalized and patient records were stolen, who would be responsible for that?

Matt Mundy:

I think there is an element of intent to this, to not actively preclude a health care provider from being able to access the records. Under those circumstances, I am not sure a court would find that a person violated this section. You would not have any records to provide physically.

Chairman Kirner:

Is there any further discussion? Seeing none, I will entertain a motion.

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS
SENATE BILL 273 (1ST REPRINT).

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN NEAL AND
OHRENSCHALL VOTED NO. ASSEMBLYMAN PAUL ANDERSON
WAS ABSENT FOR THE VOTE.)

The next bill is Senate Bill 384 (1st Reprint).

Senate Bill 384 (1st Reprint): Revising provisions relating to family trust companies. (BDR 55-279)

Kelly Richard, Committee Policy Analyst:

Senate Bill 384 (1st Reprint) revises provisions relating to family trust companies. The bill was sponsored by Senator Kieckhefer, and it was heard in Committee on May 1, 2015. [Referred to work session document ([Exhibit J](#)).] The bill provides for the appointment of guardians for minors or incompetents who are family members or beneficiaries of a trust or estate represented by a family trust company. The measure also provides for the designation of a person to represent and bind a beneficiary of a trust administered by a family trust company. The bill provides that newly enacted duties of fiduciaries in other titles of *Nevada Revised Statutes* must not apply to family trust companies, and existing provisions only apply to the extent they are not incompatible with existing law governing family trusts or any terms of the trust.

The measure provides for the confidentiality of certain trust documents in a court proceeding to protect their confidentiality. It also provides for a rebuttable presumption of good faith for the actions of certain fiduciaries. A licensed family trust is subject to the supervision of the Commissioner of Financial Institutions. Further, the bill provides that a family trust company enjoys a presumption of good faith in its transactions and dealings, and certain transactions by such a company are presumed to not be conflicts of interest. Finally, the measure revises certain reporting requirements for family trust companies.

Chairman Kirner:

Assemblywoman Neal had a reservation on this bill and will speak first.

Assemblywoman Neal:

My reservations come from section 8, where it addresses the successor fiduciary to the family trust and the attorney-client privilege. I had asked Committee Counsel Matt Mundy to read a case. It is a policy decision for everybody, but my policy decision is that I do not agree with them not having rights as a successor fiduciary to information that may have been shared under the attorney-client privilege if they are going to exercise the duties in relationship to the trust. The liberal construction that the chapter will control over any other provisions of law is too broad.

Matt Mundy, Committee Counsel:

There is a split nationwide in the common law as to whether the privilege of the attorney-client relationship, to the extent that you have a successor trustee in the context of a family trust company, flows to the successor trustee. The case to which Assemblywoman Neal was referring, *Mueller v. County of Los Angeles*, 176 Cal. App. 4th 809 (2009), says that in California the benefits, powers, and duties with respect to trustees stay with a successor trustee. So this provision in section 8, subsection 3, allows the predecessor trust company to invoke attorney-client privilege against a successor trustee.

Chairman Kirner:

Does that help?

Assemblywoman Neal:

Yes. I know we are in Nevada, but because all of the states are split and it is not clear, my policy decision is that I would not want to put that in statute. Even though this is a business relationship that comes to the state, I always look at who does it effect on the side of the consumer versus the business. I try to balance out the two. For me, I will vote no.

Chairman Kirner:

Is there any further discussion? Seeing none, I will entertain a motion.

ASSEMBLYMAN O'NEILL MOVED TO DO PASS
SENATE BILL 384 (1ST REPRINT).

ASSEMBLYMAN NELSON SECONDED THE MOTION.

Is there any further discussion?

Assemblyman Ohrenschall:

I appreciate Assemblywoman Neal's concerns. I will vote yes in Committee and reserve my right to change my vote on the floor.

Chairman Kirner:

Is there any other discussion? [There was none.] I will call for the vote.

THE MOTION PASSED. (ASSEMBLYWOMAN NEAL VOTED NO.
ASSEMBLYMAN PAUL ANDERSON WAS ABSENT FOR THE
VOTE.)

**Senate Bill 181 (1st Reprint): Provides for the licensure of certified
anesthesiology assistants. (BDR 54-240)**

Previously we skipped Senate Bill 181 (1st Reprint). My concern is that there are a number of proponents of the bill, and I have some questions. We will hear that bill in a future session. That completes our agenda for today. Is there any public comment? [There was none.] The meeting is adjourned [at 3:13 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor

Date: May 11, 2015

Time of Meeting: 2:23 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 87 (R1)	C	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 246 (R1)	D	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 246 (R1)	E	Stan Olsen, Henderson Chamber of Commerce	Letter of support
S.B. 251	F	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 256 (R1)	G	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 373 (R1)	H	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 373 (R1)	I	Eben Peck, American Society of Travel Agents	Letter of support
S.B. 384 (R1)	J	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 50 (R1)	K	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 84 (R1)	L	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 153 (R1)	M	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 223 (R1)	N	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 233 R1)	O	Kelly Richard, Committee Policy Analyst	Work session document
S.B. 273 (R1)	P	Kelly Richard, Committee Policy Analyst	Work session document