

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

**Seventy-ninth Session
May 3, 2017**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:05 a.m. on Wednesday, May 3, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Pat Spearman, Vice Chair
Senator Nicole J. Cannizzaro
Senator Yvanna D. Cancela
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblyman Richard Carrillo, Assembly District No. 18
Assemblyman James Oscarson, Assembly District No. 36
Assemblywoman Ellen B. Spiegel, Assembly District No. 20

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Bryan Fernley, Counsel
Christine Miner, Committee Secretary

OTHERS PRESENT:

Jon Sasser, Legal Aid Center of Southern Nevada; Washoe Legal Services
Sophia A. Romero, Legal Aid Center of Southern Nevada
George O. West III, Consumer Attorneys Against Auto Fraud
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association

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Kevin Burns, United Veterans Legislative Council
Lea Tauchen, Retail Association of Nevada
Tray Abney, Reno-Sparks Chamber of Commerce
Jennifer J. Gaynor, 18 Fremont Street Acquisition, LLC
Misty Grimmer, Nevada Resort Association
Tom McCoy, American Cancer Society Cancer Action Network
Erik Jimenez, Express Scripts
Paul Young, Pharmaceutical Care Management Association
Cindy M. Laubacher, Express Scripts
Morgan Alldredge, Executive Director, Board of Psychological Examiners
Sarah Collins, Nevada Psychological Association

CHAIR ATKINSON:

We will open the hearing on Assembly Bill (A.B.) 262.

ASSEMBLY BILL 262 (1st Reprint): Revises provisions relating to contracts for the sale of vehicles. (BDR 52-937)

ASSEMBLYMAN RICHARD CARRILLO (Assembly District No. 18):

Assembly Bill 262 looks to revise provisions for vehicle sales contracts. It specifically defines the term “knowingly” for the purpose of provisions governing deceptive trade practices.

JON SASSER (Legal Aid Center of Southern Nevada; Washoe Legal Services):

The term “knowingly” was stricken from A.B. 262 by the amendment. The bill defines a new deceptive trade practice for the wrongful repossession of a motor vehicle being bought on an installment sales contract. Earlier in this Committee, we heard a bill having to do with vehicle interrupt devices being used to repossess vehicles. Assembly Bill 262 deals with traditional repossessions of motor vehicles.

When a repossession occurs in violation of the law, A.B. 262 defines the occurrence as a deceptive trade practice. The most common violation is repossession of a vehicle before the late payment 30-day grace period has expired. The bill also clarifies what the required posted bond covers if there is a judgement against the entity. There was controversy when the bill was first introduced in the Assembly Committee on Commerce and Labor. The issues and concerns have been worked through with the Nevada Franchised Auto Dealers

Association and other interested parties. The bill passed unanimously on the Assembly Floor.

SOPHIA A. ROMERO (Legal Aid Center of Southern Nevada):

The Legal Aid Center of Southern Nevada supports A.B. 262. I will highlight some of my written testimony ([Exhibit C](#)). The bill is necessary because the attorneys at the Legal Aid Center are inundated with illegal repossession cases. The bill defines repossession of a vehicle, before the 30-day late payment grace period, as a deceptive trade practice. The bill helps to promote private attorneys to take these cases. Private attorneys tend not to take repossession cases because there are no provisions for attorney's fees and people whose cars are repossessed obviously cannot afford to pay attorney's fees. Another provision of the bill is requiring car dealers to post bonds. Private attorneys will be incentivized to take these cases with the assurance of recovering their fees and costs.

The examples of car contracts in [Exhibit C](#) show clear violations by some dealers of Nevada's one document rule. Some dealers are adding addendums to the contracts changing the provisions in the contracts. The default provision in the contracts state vehicle repossession can take place after 30 days for payment delinquency and, in the collecting charges provision, collect a \$15 late fee for defaults of 10 days. [Exhibit C](#) shows examples of addendums added by dealers requiring buyers' signatures. These addendums often change the 30-day requirement to 1 day, and the default fee requirement to 1 day. These allow for repossessions of vehicles after just a 1-day late period for installment payments and charge late fees for 1-day late payments. These are violations of Nevada law. Many people sign these addendums not knowing the law gives them 30-day grace periods. These practices illustrate the importance for A.B. 262.

GEORGE O. WEST III (Consumer Attorneys Against Auto Fraud):

I am an attorney in Las Vegas with an emphasis on consumer rights involving automobile purchases. The person who crystalizes the need for A.B. 262 is John Oliver, who recently hosted a show about subprime loans in the auto industry.

A study was commissioned by the U.S. Census Bureau titled "Who Drives to Work? Commuting by Automobile in the United States: 2013." The study reveals 86 percent of all American workers commute by private vehicle. Automobiles are the keystone for workers to provide for their families, to pay

rent, buy food and take kids to schools and doctors. How can a person without a car provide for his or her family? When the economy had a downturn in 2008, a proliferation of “buy here pay here” used car dealers opened in Las Vegas and Reno. These types of dealers provide a service to people who are unable to qualify for traditional loans. The primary culprits perpetrating the violations are the buy here pay here lenders. They repossess cars prior to the 30-day grace periods. When this happens, they are taking peoples’ livelihoods.

With the high percentage of gaming and hospitality companies in Nevada and the associated jobs in those industries, there are many workers having irregular work hours. Public transportation in Nevada’s two major cities is not adequate, and individuals working odd hours cannot rely on it. It is dangerous for a cocktail server to be on Boulder Highway waiting to take a bus home at 2:00 a.m. because her car has been repossessed. This is one problem being addressed in A.B. 262. I cannot help a client unless there is an additional deceptive trade practice occurring within the transaction itself. I receive many calls relating to this. There are few economic abilities for some individuals to hire attorneys. Assistance is needed from private lawyers to enforce peoples’ rights.

SENATOR HARDY:

The bill requires car dealers to obtain surety bonds. Can the injured parties get compensation from the bonds? What happens to dealers and how do injured parties get automobiles back?

MR. SASSER:

The bill creates a cause of action for wrongful repossession and makes it a deceptive trade practice. This enables a lawsuit for money damages if a person’s car is wrongfully repossessed. Under proper circumstances, the person can ask the court for an order to return the car in a case like this. If a consumer wins a judgement against a dealer, and the dealer goes out of business, the bond allows the judgement to be collected. This expands the types of actions the bonds can be used for.

SENATOR HARDY:

What you are saying is the same thing the bill is trying to prevent. A person who cannot afford an attorney will have to get an attorney to be able to go to court to get his or her car back.

MR. SASSER:

That is correct. There is no regulatory body doing this work. The only remedy is civil court.

SENATOR GANSERT:

Is the reason to go court because a person can recover the attorney's fees?

MR. SASSER:

Yes, a private attorney might be able to take a case like this, where in the past it would not be worth it for him or her to do so. There are a limited number of legal aid lawyers who can help in these kinds of cases.

SENATOR GANSERT:

In looking up the fees for an attorney in these cases, I am finding a fee of \$500. Is this the fee, and is there a cap? Or, is it a reasonable attorneys' fee in these types of cases?

MR. SASSER:

By law, all deceptive trade practices carry the provision that they are considered consumer fraud. In a consumer fraud case like the ones we have been discussing, a person is entitled to reasonable attorney's fees.

ANDY MACKAY (Executive Director, Nevada Franchised Auto Dealers Association):

The Nevada Franchised Auto Dealers Association worked extensively with Mr. Sasser and the Legal Aid Center of Southern Nevada on A.B. 262. They were wonderful to work with and addressed many of our concerns. The Association is in the neutral position, but very much supports the bill.

CHAIR ATKINSON:

We will close the hearing on A.B. 262 and open the hearing on A.B. 282.

ASSEMBLY BILL 282 (1st Reprint): Revises provisions governing benefits and protections for service members and the spouses of service members.
(BDR 52-625)

ASSEMBLYMAN ELLIOT T. ANDERSON (Assembly District No. 15):

I will present A.B. 282. This act is based upon federal law, the Servicemembers Civil Relief Act (SCRA), codified at Title 50 U.S.C. section 3901. The Act has

evolved through the modern era of warfare. The U.S. Congress enacted the first iteration of the Act to provide for, strengthen and expedite national defense by protecting service members, thereby enabling them to devote their entire energies to the defense needs of the Nation.

The SCRA operates by temporarily suspending judicial administrative proceedings and transactions that may adversely affect the civil rights of service members during military service. Starting in World War I, Congress began to provide service member protections from civil proceedings. Congress reauthorized and amended these protections at various times including, but not limited to, during World War II and shortly after the start of the Afghanistan and Iraq wars. The SCRA applies across the U.S. in federal and state courts. It generally protects active duty service members and reserve component or national guard service members called up for active military service under federal orders. The Act generally protects applicable service members beginning when they enter military service and ending on the date they are released from military service. Some substantive provisions provide for extra periods of coverage under this Act.

The latest version Congress enacted in 2010 added explicit enforcement remedies for violation of substantive provisions of the Act. The Veterans Benefits Act of 2010 provided the U.S. Attorney General explicit enforcement power and afforded aggrieved service members of private causes of action for violations of the Act.

The SCRA has many layers of protections including relief from default judgements, evictions, foreclosures, tax collection, and auto and cell phone contracts.

I will review the provisions of A.B. 282. Sections 2 through 4 are definitional. Section 5 is the heart of the bill. It gives the service member the right to give a written notice to a service provider to terminate or suspend a contract for services described later in the bill, when a service member receives orders for a permanent change of station or for a shorter deployment for a period of at least 30 days.

If the service member receives a military service order for a permanent change of station, the spouse of the service member may, upon written notice to the

service provider, terminate or suspend a contract for a service described in subsection 3.

The types of services that can be suspended are Internet service, membership in a health club and video service. In order to take advantage of this, a service member or his or her spouse has to provide written proof to the service provider showing the service member is being relocated or deployed. Notice needs to be given right away, or if that is difficult because of a quick deployment, within 90 days of the deployment, and it is retroactive. Termination is effective on the day the written notice is given. It does not eliminate any liability the service member has for any services incurred up to that date.

Subsection 6 clarifies that federal law controls apply to cell phones. Subsection 7 is definitional for services covered and clarifies services that apply.

Section 6 deals with the ability of service members to reinstate their contracts if they are able to get back within 90 days. Some deployments are 90 days and some are shorter, for example, training overseas with our allies. This allows suspension of contracts for two months and then reinstatement. If the service member is deployed for not more than 12 months, he or she can reinstate a contract on the same terms as prior to suspension. For deployment of more than a year, this does not apply.

Section 7 speaks to the ability of the service member or his or her spouse to not be charged a penalty, fee or loss of deposit for any termination or suspension and protects him or her for any security deposit. It makes it clear he or she is not liable for payment after suspension.

Sections 8 and 9 deal with the remedies for a service member who is aggrieved by the provisions of the act being violated. Section 8 creates private right of action for declaratory or equitable relief for recovery of any damages. Section 9, recognizing that all service members may not be able to prosecute a cause of action in Nevada because they are deploying and have other things to worry about, allows the State Attorney General to bring a civil penalty on their behalf.

KEVIN BURNS (United Veterans Legislative Council):

I am chairman of the United Veterans Legislative Council representing the major veterans organizations in Nevada. There are 250,000 veterans residing in the State. The Council supports A.B. 282. Many of us have deployed and have

received orders which caught us by surprise. The composition of the U.S. military has changed. It was unheard of for National Guard and reserve units to be called up at the rate they are being called today. Many military bases are equipped to help service members with this. We have individuals who do not live near any bases and do not have the advantage of walking into a Judge Advocate General's Corps office on a military base. The bill will help alleviate a lot of the problems.

Chair Atkinson:

I will entertain a motion on A.B. 282.

SENATOR GANSERT MOVED TO DO PASS A.B. 282.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR ATKINSON:

We will close the hearing on A.B. 282 and open the hearing on A.B. 361.

ASSEMBLY BILL 361 (1st Reprint): Revises provisions governing business practices. (BDR 52-320)

ASSEMBLYMAN RICHARD CARRILLO (Assembly District No. 18):

Assembly Bill 361 is a consumer protections bill. There are some issues which we have addressed in Proposed Amendment 4350 (Exhibit D).

LEA TAUCHEN (Retail Association of Nevada):

The members of the Retail Association of Nevada support the concept that the conditions of promotional or incentive offers need to be clearly communicated to customers. The Retail Association was concerned with the provisions in section 1. Proposed Amendment 4350, Exhibit D, shows the changes made in section 1. Originally the bill would have required every promotional or incentive offer to run for at least 90 days. In the retail setting, most promotions or incentives run for a week. It is something typically seen in weekly circulars.

The amendment has narrowed the scope. It limits the deceptive trade practice specifically to offers providing a free gift card or gift certificate as part of a promotion or incentive redeemable only by mail, unless the expiration date of the offer is printed plainly and conspicuously in 12-point bold font on any materials provided to the customer. The customer will have all of the information and conditions concerning the offer. The amendment excludes offers upon which a gift certificate or gift card is provided directly to the customer. This type of offer is something seen in retailers' weekly circulars. The retailer may offer a free gift card upon purchase of something. For example, the offer may be for a \$20 gift certificate if \$100 was spent in a specific department. These types of offers are not included in the bill. The amendment will eliminate situations similar to the experiences the bill sponsor had in his personal life. This will not hinder businesses from offering free gift cards or certificates as part of their promotions or incentives.

ASSEMBLYMAN CARRILLO:

A personal experience inspired the change in A.B. 361. I was offered a \$200 gift certificate for changing a service to another provider. I was unaware the offer had an expiration date. I did not send the required information prior to the expiration date. This section of the bill will hopefully enable consumers to take advantage of these offers without needing magnifying glasses to read the fine print.

Section 1.7, subsection 13, adds a provision prohibiting a company from charging a consumer for changing or updating personal information by calling or speaking to a live person instead of using an automated telephone system. This section was inspired by a personal experience. In attempting to update billing information for an account, I was unable to utilize the Website and decided to call customer service. After spending time pressing various options of the automated phone system, and still unable to complete my transaction, I finally pressed 0 to speak to a live representative. During my conversation with the representative, I was told I would be charged a fee of \$5 for not using the Website or the company's automated phone system.

Both of my personal circumstances could be serious issues for elderly people or people with limited incomes. The bill addresses unfair and unreasonable practices. There are times it becomes necessary to speak to a live representative and no one should be penalized for preferring to speak to a live person to ensure his or her business is completed to his or her satisfaction.

The remainder of the bill makes conforming changes. Assembly Bill 361 is about protecting consumers and enabling them to do business in ways that work for them, without monetary penalties.

TRAY ABNEY (Reno-Sparks Chamber of Commerce):

The Chamber is neutral on A.B. 361. We appreciate the work Assemblyman Carrillo, Ms. Tauchen and the legal department of the Legislative Counsel Bureau did to work out the issues on the bill.

MR. MACKAY:

The Nevada Franchised Auto Dealers Association is neutral on A.B. 361 because of the amendment. We appreciate Assemblyman Carrillo addressing our concerns relative to the 90-day promotion provision.

JENNIFER J. GAYNOR (18 Fremont Street Acquisition, LLC):

The 18 Fremont Street Acquisition company owns the D Casino Hotel and the Golden Gate Hotel and Casino in Las Vegas. Prior to the amendment, 18 Fremont Street Acquisition opposed the bill. Casinos offer promotions consistently and A.B. 361 would have inhibited flexibility of marketing and promotions. The amendment makes it clear promotions apply to only redeemable promotions by mail. This has alleviated the concerns of the company.

MISTY GRIMMER (Nevada Resort Association):

The Nevada Resort Association appreciates the changes the sponsor made to the bill which puts the Association in the neutral position on A.B. 361.

ASSEMBLYMAN CARRILLO:

I appreciate the stakeholders who worked hard to make the bill happen.

CHAIR ATKINSON:

We will close the hearing on A.B. 361 and open the hearing on A.B. 381.

ASSEMBLY BILL 381 (1st Reprint): Revises provisions governing prescription drugs covered by certain policies of health insurance. (BDR 57-698)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 20):

Assembly Bill 381 has to do with prescription drugs. A formulary is a list of prescription drugs available to enrollees of a health care company. The drugs are

placed in financial tiers. Generic drugs might be placed on \$5 or \$10 tiers, and other drugs placed on other tiers of \$25 or \$50 and up. The medications are grouped into these tiers by the insurance companies to provide a method for people to choose their prescriptions and their co-payments.

Individuals shopping for insurance plans know what their medical conditions are, and are looking for plans which best meet their needs and minimize their out-of-pocket costs. The formularies show the costs of maintenance drugs. Often, medications which started out on \$10 tiers are moved up to \$50 or \$100 tiers. Individuals lock into yearly policies and if medication tiers are changed during that time, individuals must pay the differences until open enrollment periods.

Last December, this issue was addressed through regulations for people in the individual consumer market. It has not been addressed for people in other groups.

Assembly Bill 381 includes what is in regulations for the consumer market. This states the formulary can only change once per year. New drugs can be added, and medications can be dropped from higher tiers to lower tiers. Formularies cannot raise medications from lower tiers to higher tiers except on January 1.

Provisions for small employers with 100 or fewer employees are added in A.B. 381. Currently, the tiers are allowed to be changed four times per year. This bill allows changes only two times per year.

Earlier this week, I met with a group of 15 small business owners. They were grateful for the bill because in small businesses, when formulary changes are made throughout the year, the employees feel betrayed by their employers. This leads to dissatisfaction on the job. The small employers do not have leverage with the insurance companies. The bill will solidify consumer protections for all individuals and affect an additional 90,000 people.

TOM MCCOY (American Cancer Society Cancer Action Network):

American Cancer Society Cancer Action Network does the advocacy work for the American Cancer Society. Assembly Bill 381 will help open up some new doors for consumers regarding formularies. If a health plan changes a tier, it is a change in a person's budget. With cancer patients and cancer drugs, tier changes can increase burdens on patients.

The American Cancer Society Cancer Action Network conducted annual studies of cancer drugs in the health insurance marketplace. The 2016 silver health plans in Nevada were analyzed. The formularies, on the plus side, are searchable, and Nevada has been recognized across the Country as having searchable health plans. The silver plans study found that most cancer drugs are placed on the highest cost-sharing tiers. Two generic cancer drugs have been placed on the highest cost tier. This bill is a good start to bringing more cost certainty and transparency for the consumers of Nevada's health insurance prescription plans.

ERIK JIMENEZ (Express Scripts):

Express Scripts opposes A.B. 381. It restricts the company's ability to manage formularies and make changes if generic less-expensive alternatives become available. The bill is counterproductive to some of the legislation being considered to reduce prescription drug costs.

PAUL YOUNG (Pharmaceutical Care Management Association):

The Pharmaceutical Care Management Association opposes A.B. 381. This bill will ultimately raise costs for patients by restricting the pharmacy benefit management's (PBM) ability to manage formularies. It will allow brand manufacturers to raise prices, and the plans will not be able to replace drugs with alternate brands. The bill restricts changes to January 1 and July 1. Some contracts start and stop throughout the year and brand drugs lose patents throughout the year.

SENATOR SPEARMAN:

Is the opposing view because it would be incongruent with patent expirations or changes in prices for formularies?

MR. YOUNG:

Yes. During the year, if a patent runs out on a brand drug, an alternative brand can be used. If the frozen formulary is in place, the drug cannot be replaced with the alternative brand. The health plan would be liable for paying for the original patented brand for as long as six months.

SENATOR SPEARMAN:

How far in advance do the drug manufacturers know if patents are going to expire?

MR. YOUNG:
I do not know.

MR. JIMENEZ:
I do not have the answer. I will get the information for you.

SENATOR SPEARMAN:
It seems some administrative changes or concessions might fix your objections. An increase in the cost of a drug could financially cripple an individual.

MR. JIMENEZ:
I agree with you. The PBM does not want to reduce its members access to care. If someone has a specific condition, he or she should be able to get the best drug for the treatment. If that drug becomes available in a generic version, the PBM should be able to switch to the generic brand for a patients' greater level of care and to reduce costs for the entire system.

SENATOR SPEARMAN:
I am familiar with Express Scripts, but it seems the opposition is because of changes in dates, the formulary can be changed and, it would be incongruent with either a patent expiration or in finding a comparable drug. How willing are your companies to come up with administrative compromises to take care of the objections?

MR. YOUNG:
We will get that information for you.

SENATOR GANSERT:
The way I read the bill, I do not see the formulary as frozen. Pricing cannot move from a lower tier to a higher tier, except on the dates stated in the bill.

CINDY M. LAUBACHER (Express Scripts):
I will outline the objections Express Scripts has to A.B. 381 in my written testimony ([Exhibit E](#)). I will read two examples from [Exhibit E](#) of making formulary changes during the plan year. One is related to Vioxx and the other to Sovaldi.

Brand to brand drugs are not provided for in the bill. When a brand drug is on a formulary and a less-expensive drug in the same therapeutic class comes to

market, there are occasions a plan will trade out the brand for a less-expensive brand. It is a determination made by the pharmacy and therapeutics committee comprised of physicians and pharmacists.

The bill restricts changes for the individual market on January 1 and in the small employer market on January 1 and July 1. Our plans operate year-round and start and stop at various times of the year. Not all plans operate on a January to December timeframe. A number of our clients will be subject to paying higher costs when lower-cost alternatives come to market.

SENATOR GANSERT:

I would like the legal interpretation on the provisions of the bill. I am reading it differently than the testimony I am hearing against the bill.

SENATOR SETTELMAYER:

In section 1, subsection 3, the provisions will not prevent an insurer, at any time, from removing a prescription drug from a formulary, which is different than what you are saying. Express Scripts is a PBM, not an insurer, so the bill does not apply to you. I am confused by your objections.

MS. LAUBACHER:

Express Scripts works on behalf of insurers through contracts. It helps manage the prescription drug benefits and formularies for the insurance companies. The insurers make the determinations for the formularies, decide what drugs are put on the formularies and what the copays are and so forth. The provisions in the proposed bill flow through to Express Scripts. As a function of its contracts with insurers, it is subject to be in compliance with the law.

SENATOR SETTELMAYER:

The bill states the insurer can remove a prescription from the formulary. In your testimony, are you saying you cannot do this?

BRYAN FERNLEY (Counsel):

The language of subsection 3 indicates it does not prevent removing a drug from a formulary or adding a drug to a formulary.

MS. LAUBACHER:

The bill states changes can be made on January 1 and July 1. If a generic drug comes to market, the change can be made, and a brand can be moved to a

higher tier. This is only if a generic replacement comes to market for that brand. Atorvastatin is the generic version of Lipitor, the brand dealing with cholesterol. Its patent expired in November. This bill would allow atorvastatin to come onto the formulary and allow the plan to move Lipitor to a higher tier. In the case of Sovaldi, it is a brand change. If a less expensive brand, in brand to brand competition, comes to market, A.B. 381 will prohibit the plan from making any change to the lower-cost brand alternative except on January 1 and July 1.

SENATOR HARDY:

Can this be fixed by changing the verbiage in the bill? Do you have a contract with brand-named drugs that goes to the formulary? If you break that contract by going to a cheaper drug, is that one of the issues?

MS. LAUBACHER:

What do you mean by breaking the contract?

SENATOR HARDY:

If Express Scripts has a contract with an insurer, it is going to use the brand-named drug for a number of months and for a certain cost. If a less expensive alternative drug comes to market, is Express Scripts bound by a contract saying it still has to continue using the more expensive drug? Is that one of the issues?

MS. LAUBACHER:

Not necessarily. The bill gives formulary protections to brand companies to raise their prices because they are guaranteed the cost for a particular amount of time. The drug will be on the formulary no matter how the prices change. When a brand pharmaceutical manufacturer increases prices by 100 percent to 1,000 percent, Express Scripts pulls the drug from the formulary. EpiPen is a good example. Express Scripts removed it from its formulary. When the drug Daraprim was increased from \$13 to \$750, Express Scripts pulled it from its formulary and chose a different manufacturer to provide a less expensive alternative. That alternative drug costs \$1. Assembly Bill 381 will prohibit Express Scripts from making similar changes. It has provisions in its contracts allowing removal of a drug from a formulary if the price increases too much.

SENATOR HARDY:

I look at this as fixable by making sure the words say what you want to do. You are not opposed to the concept of allowing a person to pay less for drugs and

manipulate the formulary. With the two times a year provision, it seems it can be fixed.

MS. LAUBACHER:

Express Scripts does not see the bill as fixable. Our clients have few tools left in their quivers to manage their costs. Prescription drug costs are the hottest topics right now for plans and payers. The bill impedes the use of one of the few tools insurance plans have left available to manage costs. It is limiting their ability to manage their formularies to meet the needs and the costs they are trying to work toward.

SENATOR GANSERT:

You identified a problem. If there is a substantial increase in the price of a certain drug, you cannot move it and cannot respond to that in your tier system. It seems the issue is if there is a substantial change in a drug price on a formulary, it cannot be moved on the tier. Maybe there is a way to work with the sponsor on that.

SENATOR SPEARMAN:

In the Senate Committee on Health and Human Services, there was testimony about how prices for insulin have spiked. You mentioned a drug that was \$700, and you were able to find an alternative for \$1. If this bill would limit the tools you have, it seems the issue is with your contractual arrangements with pharmaceutical companies. The bill says it is important for people to have their health care needs taken care of but there should be protocols in place for consumer protection. It comes back to what Senator Hardy and Senator Gansert suggested. During your negotiations, why not put in some provisions that will accommodate the intent of the bill?

MS. LAUBACHER:

Even if a brand manufacturer does not increase its price, and a lower cost drug comes to market, this bill will prohibit Express Scripts from moving the higher priced drug to a higher tier or off the formulary. Regardless of what its contracts are with drug manufacturers, inflation factors are built into its contracts. The bill will still prohibit a formulary change outside the date parameters in the bill.

SENATOR SPEARMAN:

One brand was \$84,000 for how long?

MS. LAUBACHER:

Sovaldi costs \$84,000 for the 3-month therapy at \$1,000 per pill.

SENATOR SPEARMAN:

I find it difficult to justify those costs. The reality of the cost is preposterous.

ASSEMBLYWOMAN SPIEGEL:

The legislative intent of this bill is exactly as Senator Gansert and Senator Settelmeyer expressed. There is nothing in the bill prohibiting a prescription drug from being moved from a higher cost tier to a lower cost tier at any time. There is nothing in the bill to prohibit a drug being removed from a formulary at any time. Drug manufacturers want their drugs to be included on formularies. That is how they market, reach their consumers and sell their products. Sales will plummet if drugs are not on formularies. A drug manufacturer needs to take seriously any threat of a drug being removed from a formulary. There is nothing in the bill that does not allow new medications to be added to a formulary at any time. I am happy to work with any interested parties to make the language amenable and more clearly express the legislative intent, but neither Ms. Laubacher nor Mr. Young have ever met with me to discuss any possible changes they would want to this bill.

SENATOR SETTELMAYER:

The interpretations of the bill are clear regarding a drug being removed or added to a formulary at any time. This bill will only affect about 30 percent of policies sold in Nevada.

ASSEMBLYWOMAN SPIEGEL:

When A.B. 381 was originally introduced, it attempted to cover everyone in the State, but there are numerous challenges in doing that. This bill is a good first step to solidifying the protections in place for individuals and adding about 90,000 Nevadans in small group plans.

CHAIR ATKINSON:

We will close the hearing on A.B. 381 and open the hearing on A.B. 429.

ASSEMBLY BILL 429 (1st Reprint): Enacts provisions governing the interstate practice of psychology. (BDR 54-351)

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ASSEMBLYMAN JAMES OSCARSON (Assembly District No. 36):
I am here to present A.B. 429. I will read from my written testimony ([Exhibit F](#)).

MORGAN ALLDREDGE (Executive Director, Board of Psychological Examiners):
I am here to speak on behalf of the Board of Psychological Examiners in support of the Psychology Interjurisdictional Compact (PSYPACT). I will read from my written testimony ([Exhibit G](#)).

SENATOR GANSERT:
Were the edits in the amendment to update the base documents because the compact changed?

Ms. ALLDREDGE:
Yes, that is correct.

SENATOR GANSERT:
The bill states on page 22, "The Commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities... ." How will that work in Nevada?

Ms. ALLDREDGE:
It will come from the Board funds and the national organization has promised it will be a reasonable fee.

SENATOR GANSERT:
Will each state in the compact have a representative on the commission formed for the PSYPACT?

Ms. ALLDREDGE:
Yes, I included questions and answers from the hearing of the Assembly Committee on Health and Human Services as well as additional information about PSYPACT on a handout ([Exhibit H](#)). The PSYPACT commission is the governing body of the PSYPACT and is responsible for its oversight and the creation of its rules and bylaws. It will be formed once seven states enact PSYPACT legislation and will be comprised of one voting representative appointed by each compact state. Each state psychology regulatory authority will appoint its delegate and is limited to the executive director, executive secretary or executive within the state psychology regulatory authority, a current member of the board or a designee with the appropriate authority.

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SARAH COLLINS (Nevada Psychological Association):
The Nevada Psychological Association supports A.B. 429. It has submitted a letter of support ([Exhibit I](#)).

ASSEMBLYMAN OSCARSON:

Thank you for listening and hearing some of the challenges we face as a State. This is a good step toward helping resolve some of those issues we have identified with our constituents.

CHAIR ATKINSON:

We will close the hearing on A.B. 429

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CHAIR ATKINSON:

With no further business before us, I will adjourn at 9:27 a.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 262	C	10	Sophia A. Romero / Legal Aid Center of Southern Nevada	Written Testimony
A.B. 361	D	9	Assemblyman Richard Carrillo	Proposed Amendment 4350
A.B. 381	E	2	Cindy Laubacher / Express Scripts	Written Testimony
A.B. 429	F	2	Assemblyman James Oscarson	Written Testimony
A.B. 429	G	2	Morgan Alldredge / Board of Psychological Examiners	Written Testimony
A.B. 429	H	8	Morgan Alldredge / Board of Psychological Examiners	PSYPACT Handout
A.B. 429	I	1	Lisa M. Linning / Nevada Psychological Association	Letter of Support