

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

**Seventy-ninth Session  
March 20, 2017**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:12 a.m. on Monday, March 20, 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:**

Senator Tick Segerblom, Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Cherie Mancini, Service Employees International Union  
Maria Salinas  
Lydia Edwards, National Domestic Workers Alliance; State Coordinator,  
Massachusetts Coalition for Domestic Workers  
Stacey Shinn, Progressive Leadership Alliance of Nevada  
Priscilla Maloney, American Federation of State, County and Municipal  
Employees

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Melanie Meehan Crossley  
Wendy Stolyarov, Libertarian Party of Nevada  
Helen Foley, Nevada Assisted Living Association  
Weldon Havins, MD, President, Nevada State Medical Association  
Chris Ferrari, Ciox Health, LLC  
Liz MacMenamin, Retail Association of Nevada  
Kathleen Conaboy, Nevada Orthopedics Society  
Catherine O'Mara, Nevada State Medical Association

CHAIR ATKINSON:

Senate Bill (S.B.) 290 has been pulled from the agenda at the request of the sponsor.

**SENATE BILL 290**: Prohibits certain persons from representing themselves as licensed or certified genetic counselors. (BDR 54-933)

I will open the hearing on S.B. 232.

**SENATE BILL 232**: Enacts the Domestic Workers' Bill of Rights. (BDR 53-887)

SENATOR TICK SEGERBLOM (Senatorial District No. 3):

Senate Bill 232 is the Domestic Workers' Bill of Rights, which I sponsored on behalf of Service Employees International Union (SEIU). I have a short presentation ([Exhibit C](#)) illustrating some of my points.

This is a simple bill that gives domestic workers, people who work in others' houses, some basic rights, such as having contracts, knowing what their hours are going to be, getting time off, being allowed to make contact with others and so on. It is an area of employment law that has never been regulated. There are lots of people who hire domestic workers and have no issues, but there are also people who take advantage of this class of workers.

The language in the bill is patterned after a statute in Massachusetts. Legislation like this is a nationwide trend that is worth your consideration.

CHERIE MANCINI (Service Employees International Union):

We are in strong support of S.B. 232 with the amendment that allows employees of a service or agency to be included in the bill.

This bill provides many helpful protections that would apply to our members who work in the home health industry. We represent home care workers employed at Addus Health Care and collectively bargain with management to achieve higher standards of living. However, there are other agencies who are not yet unionized. Home care workers often suffer from deplorable, flagrant violations of federal laws and industry standards, and this shows no signs of letting up.

Senate Bill 232 would require employers to enter into a contract with workers stipulating wages, benefits and working conditions. This is a good first step toward bringing more home care workers to the collective bargaining table, where they can negotiate on an equal playing field with the solidarity of their union to support them.

The bill ties meal allowances and other allowances to the statutory minimum wage, which is a major improvement over the meager \$1.50 currently allowed. This bill will put more money in the pockets of those who take care of the disabled, the elderly and the infirm.

Some health care workers live in the home of the person they care for, and others make regular visits. This bill seeks to accommodate both scenarios by contemplating overtime pay, lodging, meals and break periods. In addition, if a live-in domestic worker is terminated, this bill ensures the worker is not suddenly cast out on the street but is given adequate notice of 30 days to relocate.

Make no mistake. This kind of work is difficult, thankless labor that not many would be willing to do. Even so, home care workers put up with low wages, no benefits and a lack of stable employment. It is time for that to change, and S.B. 232 would put Nevada on the path to treating these workers with the dignity they have earned.

California, New York and Hawaii have all passed versions of this legislation. I hope Nevada will join them.

MARIA SALINAS:

I support S.B. 232. I am a home health care worker and a member of SEIU Nevada. I have written testimony ([Exhibit D](#)) expressing the need for this bill.

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Thank you for bringing this bill. I urge you to pass S.B. 232 for the home health care workers in our State.

LYDIA EDWARDS (National Domestic Workers Alliance; State Coordinator, Massachusetts Coalition for Domestic Workers):  
We support S.B. 232 with its amendment.

I do not need to belabor the many wonderful things S.B. 232 will do. It is modeled on the Massachusetts Domestic Workers' Bill of Rights. One reason domestic workers have so few rights goes back to the 1930s. In order to get the Southern states to sign on to the massive workers' rights changes in the New Deal legislation, lawmakers agreed to exclude domestic workers and farm workers from those changes. Today, we are still dealing with what many people would consider the vestiges of slavery.

Today, we are part of a national movement for respect and dignity. Adding to the list of states that have passed a domestic workers' bill of rights are New York in 2010, California, Hawaii in 2013, Massachusetts in 2014, Oregon in 2015, Connecticut in a limited version in 2015, and Illinois in 2016. There is definitely a movement toward inclusion, respect and dignity.

In 2012, there was a nationwide survey that showed domestic workers face rampant wage theft and get paid less than \$6 an hour on average. Many in-home, live-in workers work 15 hours a day without breaks and get an average of 5 hours of sleep. Domestic work is often not regulated because the work happens in private homes. Many people who hire domestic workers do not see themselves as employers or their workers as employees. They see them as members of their family or close confidants.

The Massachusetts Domestic Worker Bill of Rights also included discrimination protections for domestic workers. I encourage the Committee to consider adding them to this bill.

The most exciting part of S.B. 232 is the written agreement provision. This provision is a catch-all. It allows workers and employers to negotiate and communicate. If there are things workers do not get through this bill, they can negotiate them for themselves. They need to have a right to a written contract in order for those things to happen.

Let me bring up some of the concerns that were voiced by employers in Massachusetts when this act was being considered. Many of those concerns have not actually come to pass. Many folks were concerned about having to deal with legal issues. They feared that those employers who cannot afford lawyers would be left without any support. Massachusetts responded by providing a sample, fill-in-the-blank employment contract online. This allows people to create contracts by just filling in the blanks, and they are able to comply with the law on their own time without an attorney.

There was also some concern that this act would cause massive increases in costs. In reality, what happened is people began to negotiate fairly and understand what they could and could not afford. When domestic workers came to the negotiating table, they were not unreasonable in what they asked for.

Finally, many people were concerned that the discrimination protections we added would cause a lot of false claims or would cause employers and workers to be uncomfortable around each other. We have not found that to be true.

SENATOR HARDY:

How does this relate to a person with a live-in caregiver, such as someone with Alzheimer's?

MS. EDWARDS:

By definition, those workers would be considered domestic workers even though they are providing additional services with a medical component. The written contract would be the key here. For example, one thing that is important for live-in workers is when they can sleep, and that would be defined in their contracts. The contract ensures there are clear boundaries and mutual understanding about what the job entails.

SENATOR CANNIZZARO:

My research into the Massachusetts bill of rights shows that it includes regulations exempting casual babysitters and anyone else who works 16 hours a week or less. That is not in S.B. 232, but it does include authority for the Labor Commissioner to adopt those regulations. I do not know if that is something that would be contemplated on the regulatory side or if it should be included in the bill.

MS. EDWARDS:

In Massachusetts, all domestic workers are covered by workers' compensation (WC) if they work 16 hours a week or more. We used that number to define who was a domestic worker and who was a casual worker. I would suggest that you consider having WC cover domestic workers in Nevada, if it is possible.

SENATOR CANNIZZARO:

That makes sense. Whether we use the cutoff of 16 hours, the intent of this bill, if I understand it correctly, is to cover individuals who work in the home, but not necessarily someone like a casual babysitter who watches a child for a few hours a week.

SENATOR HARDY:

Does that mean if you hire a domestic worker to live with someone with dementia, you would have to pay WC and other employment taxes and not consider the worker an independent contractor? Can you help me through that?

MS. EDWARDS:

In Massachusetts, a live-in domestic worker needs to have WC protection. That is for the protection of both the home owner and the worker. If the worker is injured in the home while working, the worker could sue the homeowner for any injuries. The average cost for a year of WC in Massachusetts for one person is \$200 a year, but it might be higher in Nevada. You are correct that employers would have to pay employment taxes and other fees as well.

If the worker is considered an independent contractor, you would be excluding from protection an entire worker class based on where they choose to work. They would not be entitled to minimum wage or protected from sexual harassment, and they would not be entitled to have the clarification about their duties afforded by this bill. We could end up isolating them further and causing more exploitation.

STACEY SHINN (Progressive Leadership Alliance of Nevada):

We support S.B. 232. A year and a half ago, eight different organizations across Nevada got together to plan for this Legislative Session with regard to gender equity. We voted on five top priorities, and this issue came out as a top priority for helping women achieve gender equity in the workplace.

Historically, domestic workers, including nannies, child care providers, caregivers, house cleaners and housekeepers, have been excluded from basic state and federal labor rights. I taught a class titled "Introduction to Social Welfare Policy" at the University of Nevada, Reno, last year and had my students do a case study on this. Domestic workers were not left out of the Fair Labor Standards Act by accident. They were intentionally excluded as a favor to Southern politicians. It is a profession dominated by women, people of color and immigrants.

Bad public policy continues to oppress domestic workers. This problem has been compounded by isolation from the workforce, exposure to discrimination, unsafe working conditions and harassment. Many domestic workers have been forced to work long hours below minimum wage and denied overtime pay and benefits. According to a study by Dr. Lauren Applebaum at the University of California, Los Angeles, Institute for Research on Labor and Employment, 93 percent of domestic workers are women. The vast majority of these women are the primary breadwinners for their families. This is part of the entrenched undervaluing of women's work. We need to combat this discrimination by improving working conditions for women in Nevada, including domestic workers, by implementing basic labor protections that are afforded to other workers.

PRISCILLA MALONEY (American Federation of State, County and Municipal Employees):

I am here today representing American Federation of State, County and Municipal Employees (AFSCME) retirees, who are very much in support of S.B. 232. This is a subject the retirees in Nevada feel strongly about. It is also a subject of national interest to AFSCME as a national organization.

In America right now, we have a growing aging population who need home care by domestic workers. We are using an ad hoc system for dealing with these issues, including the dispensing of medications. It may not sound appealing to have more regulation, but if there was ever an area in American society that needed some regulation, some order out of the chaos, it is this one.

Years ago, long before the model legislation was enacted in California, I had a relative living in low-income housing in Orange County. There was a whole underground of domestic workers being paid \$5 an hour to handle the needs of my relatives and others in the same situation, including dispensing medications.

It was a situation that caused me and my family a great deal of concern. At that time, the only alternative we had was to go through a temporary employment agency.

On the topic of WC, I have not looked at WC law since I stopped working for the Nevada Attorney for Injured Workers in 2010. It is my understanding, however, that if live-in domestic workers get injured on the premises, they are then left to try to chase down the homeowner's insurance company to get coverage for their injuries. They are not covered by WC.

Regulation of industry is a hot topic right now, both here and nationally, but this is an area where we are putting our most vulnerable citizens at risk. We must consider the vulnerabilities of the shadow underground workforce that is trying to deal with some of these things.

MELANIE MEEHAN CROSSLEY:

I am in support of this bill. If I have a need to have a domestic worker come and help in my home, I would want to provide WC for that worker because it protects the employer as well as the employee. If the worker were injured in my home, there would be medical care for that injury. I do not want that to be a stumbling block for this Committee.

WENDY STOLYAROV (Libertarian Party of Nevada):  
We are opposed to S.B. 232.

While the Libertarian Party of Nevada recognizes the ongoing abuse of domestic workers and strongly sympathizes with the intentions of the Domestic Workers' Bill of Rights, we are very concerned about the bill's potential unintended consequences.

First, we are categorically opposed to price floors on labor, which disproportionately hurt the low-wage workers they are designed to help by reducing or eliminating those low-wage jobs. The employees disproportionately affected by such increases are those who were previously working at or below that wage level, most particularly immigrants, minorities and young workers. An increase on the employer's price floor for labor acts as a barrier to entry for these workers, who will then find it harder to access any type of employment. For people struggling to make ends meet, even low income is better than no income.



Second, while we approve of the contractual transparency offered by S.B. 232, we worry that requiring such detailed contracts will drive employers to look for domestic workers on the black market, where their conditions will be substantially worse than the status quo. They may hire vulnerable undocumented immigrants instead, who will, especially under the current federal government, have no recourse for justice should they be abused. They will face the specter of deportation should they complain. Human trafficking is a serious problem, and increasing the barriers to legitimate commerce may drive some to seek this illegitimate, inhumane practice rather than complying with the letter of the law.

I would like to repeat that the Libertarian Party of Nevada strongly sympathizes with the intentions of this bill and its sponsors. Protecting the most vulnerable members of our society is a praiseworthy goal, and it is one we share. However, we worry that certain provisions in S.B. 232 will, in practice, worsen the lives of those individuals. We therefore oppose S.B. 232.

SENATOR SPEARMAN:

Perhaps we should amend the bill so there are legal and criminal penalties for seeking workers on the black market.

Ms. STOLYAROV:

Our preferred solution would be making all immigrants legal.

SENATOR SPEARMAN:

You said one of the primary reasons you would not support this bill is because it would cause employers to seek workers on the black market. I am saying we might want to amend the bill to provide severe criminal penalties for those who do such an act.

Ms. STOLYAROV:

That may well dissuade people from doing that, yes.

HELEN FOLEY (Nevada Assisted Living Association):

We are neutral on S.B. 232.

Our employers who manage large assisted living facilities do not have a concern with this bill. The residential facilities for groups that employ three to ten people do have a problem with some of these labor issues.

On page 1 of the bill, lines 8 through 11, the Legislative Counsel's Digest, states that the bill " ... requires the domestic worker be compensated for all hours during which he or she is required to be on duty and is required to remain in the employer's household, except under certain circumstances in which the domestic worker is employed at a residential facility for a group ... " This refers to Section 6, subsection 1, paragraph (d) of the bill. However, as I look through the bill, I do not see any reference to residential facilities for groups.

Each residential facility for groups licensed in Nevada pays WC and also pays more than minimum wage. Our issue with this provision of the bill is that the workers at these small facilities live on the grounds. They work for eight hours, and then they are not on duty again until the next day. Every once in a while, an emergency will arise, and they will need to assist whomever is on duty.

The federal government has allowed for that under Title 29 of the Code of Federal Regulations, section 552.102, which has to do with live-in domestic service employees. It covers contracts, meal times, sleeping time and making sure workers get paid for times they work during their off-duty time. Nevada's labor laws do not have those provisions. Under the strictest interpretation of the current law, live-in workers would have to be paid as if they worked a full 24 hours because they live on the premises. The resulting increase in the cost of residential group homes would make it almost impossible for people who are living on their savings and Social Security to live in these group homes.

We are currently waiting to see if a bill we requested on this topic is introduced. If it is not, I would like to work with the sponsor and supporters of the bill to make sure our needs are addressed in S.B. 232.

SENATOR HARDY:

The bill you speak of will come from the Assembly, probably next week.

CHAIR ATKINSON:

Ms. Mancini, you mentioned an amendment to this bill, but we do not have that amendment. Please get it to us as soon as you can.

I will close the hearing on S.B. 232 and open the hearing on S.B. 291.

**SENATE BILL 291**: Revises provisions relating to health care records. (BDR 54-350)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

Recently, there was an incident in Las Vegas in which a landlord who was leasing medical office space to a group of physicians locked the tenants out. Neither the physicians nor the patients could get access to the offices to retrieve medical records. This caused problems on many levels. The purpose of S.B. 291 is to define the person who has primary custody of those records as a custodian of medical records, and then to require that custodian to make those medical records available for inspection as required by law. If the custodian does not make the records available, there is a fine.

Section 5 of the bill refers to a fee of \$5 for making digital copies of records. Last year, the federal government basically said there are different ways to account for the cost of the reproduction of medical records. That can be based on actual cost, average cost, or a flat fee if it is an electronic copy, not to exceed \$6.50, and then there are variations on that. I have heard from some of the people who copy medical records for a fee about this part of the bill, and I believe their concerns are valid. I have therefore submitted a proposed amendment ([Exhibit E](#)) that looks at that particular fee. This amendment is a work in progress.

WELDON HAVINS, M.D. (President, Nevada State Medical Association):

I am a physician and practicing attorney. The Nevada State Medical Association is strongly in favor of S.B. 291.

This bill simplifies the process of getting medical records for Nevada patients. As the law now stands, if a patient is being seen by a group of four doctors and one of those doctors leaves, the patient must contact the doctor who left to request records. That physician then has to contact the custodian of the records to get them. The custodian sends the records to the physician, who then sends the records to the patient, and all this must happen within ten days. This bill allows the patient to obtain all the medical records directly from the custodian of records. This is much more simple and efficient for both patients and physicians.

Increasingly, records are maintained on computers. This bill clarifies that digital records can be produced as long as they are compliant with the Health Insurance Portability and Accountability Act (HIPAA).

We feel S.B. 291 is a positive step in simplifying for Nevada patients their ability to obtain their medical records in a timely manner.

CHRIS FERRARI (Ciox Health, LLC):

Ciox Health, LLC, is one of the custodians of medical records mentioned by Senator Hardy. We work with a number of health care providers and facilities in Nevada. I am here in support of S.B. 291.

Exhibit E proposes to eliminate the reference to the \$5 fee for copying records. That is in respect to a ruling from the federal Office for Civil Rights, which provides guidance to HIPAA rulings.

There is HIPAA, which governs these records, and its companion measure is HITECH, the Health Information Technology for Economic and Clinical Health Act, which is specific to the transfer of electronic records. The Office for Civil Rights specifically states as it pertains to records that a covered entity may charge individuals a flat fee for all requests for electronic copies of personal health information maintained electronically provided the fee does not exceed \$6.50 inclusive of all labor, supplies and any applicable postage. For that reason, we are requesting the proposed amendment.

LIZ MACMENAMIN (Retail Association of Nevada):

We are in support of this bill. About a year and a half ago, some 800 patients were unable to access their health care records because a physicians' office closed suddenly. It was many weeks before some of these patients were able to get their medical records. Our hope is that this bill will address this type of situation.

CHAIR ATKINSON:

I will close the hearing on S.B. 291 and open the hearing on S.B. 292.

**SENATE BILL 292**: Exempts physicians who are licensed in another jurisdiction from provisions governing the practice of medicine for certain purposes relating to athletics. (BDR 54-319)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

This bill allows physicians from other states who are team physicians to practice on a temporary and limited basis in Nevada while their teams are in the State. There may be a professional sports team coming to Nevada in the near future.

This bill would allow team physicians to come to the State with their teams and practice on team and staff members while they are here to compete. This would allow visiting teams to be treated by the physicians who are familiar with them. Many states have similar statutes.

SENATOR GANSERT:

The period in the bill is 10 days, and they potentially can get an extension of a further 20 days. Do the health care providers stay with the team all season? Is that a long enough period, or will they constantly have to renew?

SENATOR HARDY:

This is intended to accommodate the team physician of teams that come here to compete rather than the team physician of a team based in Nevada. Visiting teams do not usually stay more than a day or two. The team physician of a team based in Nevada would be licensed by Nevada.

KATHLEEN CONABOY (Nevada Orthopedics Society):

We are fully in support of this bill. The language was crafted by our parent academy, the American Academy of Orthopedic Surgeons. It has passed in 31 states and is pending in 8 other states, as well as Nevada. When sports medicine physicians are out of town with their teams, they have to choose between treating injured athletes at great professional risk or handing over their care to another medical professional who is not familiar with the athletes' medical history.

There are some specific safeguards in the bill. First, there is the requirement that any visiting team physician must be licensed in the team's home state and must have an agreement with the sports team to provide care for that team while traveling. Second, the visiting physician is banned from practicing at a health care facility in Nevada. This has nothing to do with credentialing an out-of-state physician to practice in a local hospital. The visiting team physicians can administer sideline evaluations, triage and diagnostic services. However, they must defer to State-licensed physicians if an athlete or staff member needs to be transported to a hospital.

Finally, the Federation of State Medical Boards has a model policy for both allopathic and osteopathic licensing boards. That model policy encourages states to adopt policy that allows visiting sports team physicians to practice on their teams. Their recommendation is, "A physician licensed in another state,

territory or jurisdiction would be exempted from the licensure requirements in [Nevada] if the physician is employed or formally designated as the team physician by an athletic team for a specific sporting event."

DR. HAVINS:

This bill just makes sense. Teams often bring their physicians with them. Legally, if they treat their own team members in Nevada without a Nevada license, they are guilty of a felony for practicing medicine without a license. In fact, this happens all the time. This bill would legalize what seems to be occurring.

CATHERINE O'MARA (Nevada State Medical Association):  
We are in support of this bill.

Remainder of page intentionally left blank; signature page to follow.

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CHAIR ATKINSON:

I have received a letter of support ([Exhibit F](#)) from R. Jeff Grondel, M.D., regarding S.B. 292.

I will close the hearing on S.B. 292. Is there any further public comment?  
Hearing none, I will adjourn the meeting at 9:06 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Kelvin Atkinson, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	6		Attendance Roster
S.B. 232	C	8	Senator Tick Segerblom	Presentation
S.B. 232	D	1	Maria Salinas	Written Testimony
S.B. 291	E	1	Senator Joseph P. Hardy	Proposed Amendment
S.B. 292	F	2	R. Jeff Grondel	Letter of Support