

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eightieth Session
March 11, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:05 a.m. on Monday, March 11, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen B. Spiegel, Assembly District No. 20



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Riana Durrett, Executive Director, Nevada Dispensary Association
Melanie Young, Executive Director, Department of Taxation
Jorge Pupo, Deputy Executive Director, Marijuana Enforcement Division,
Department of Taxation
Will Adler, representing Silver State Government Relations; and Scientists for
Consumer Safety
Krystal Saab, General Counsel, Nevada Organic Remedies LLC; and The Source
Leighton Koehler, General Counsel, MM Development Company, Inc.
Ryan Black, Legislative Liaison, Office of Administrative Services, City of Las
Vegas
Jared Busker, Associate Director, Children's Advocacy Alliance
Harris Khawaja, Pediatric Resident, Department of Pediatrics, University of Nevada,
Las Vegas School of Medicine
Catherine M. O'Mara, Executive Director, Nevada State Medical Association
Rhiannon Foreman, Parent Ambassador, Strong Start Nevada

Chairman Yeager:

[Roll was called and protocol explained.] We have two bills on the agenda today. We will take them in order and, since I will be helping to present the first bill, I am going to hand the meeting at this time to Vice Chairwoman Cohen.

[Assemblywoman Cohen assumed the Chair.]

Vice Chairwoman Cohen:

I will open the hearing on Assembly Bill 164.

Assembly Bill 164: Revises provisions relating to marijuana. (BDR 40-619)

Assemblyman Steve Yeager, Assembly District No. 9:

Assembly Bill 164 addresses advertising in the cannabis industry as well as registered agent cards, which are the state's system for vetting employees who work in the industry. I have had the fortune of closely following this industry's progress since medical marijuana sales were legalized in 2013. As many of you know, medical marijuana was actually in our *Nevada Constitution* much earlier than that, but it was not until 2013 that the state set up a dispensary system for sales of medical marijuana. I have also attended several fact-finding missions to other states that have legalized cannabis in order to keep up on how we can do

things successfully and how we can avoid some of the pitfalls and failures that other states have reached.

By way of background, I was thinking about where exactly I visited to look at the industry, and I believe we started in Phoenix in 2013 because they had a medical marijuana industry before we did. In 2014 or 2015, we went to Denver to check out their legalized adult-use industry. We also took a trip to Portland, Oregon, because they started their industry sooner than what the voters had authorized, which we wanted to do here in the state of Nevada. Then-Senator Segerblom had a bill called "early start," which would have started the program earlier, but fortunately the Department of Taxation did that on their own, so that allowed the state of Nevada to start sales about six months earlier than what was required by the ballot initiative. Many of you might remember the summer of 2017—I think that is when the sales started on July 1. You may remember the long lines that were at all of the dispensaries, so I think that was a real benefit for the state to be able to start six months early.

Most recently, prior to this legislative session, I was able to travel to San Francisco and look at their consumption lounge model. This bill does not have anything to do with consumption lounges but I wanted you to know the background of it, and we may or may not have some legislation on it at some point this session. Regardless, some of the local governments are going forward with that concept anyway. That is the background I bring to this conversation. Each year this program in Nevada continues to mature, and we as lawmakers, the industry, and other stakeholders identify improvements that can be made to the industry to both increase efficiency but make sure we have tough enough regulations that we are protecting the public.

I want to hand this over to Ms. Durrett at this time and she will take you through the bill. There is a proposed amendment to the bill that you should find on the Nevada Electronic Legislative Information System ([Exhibit C](#)).

Riana Durrett, Executive Director, Nevada Dispensary Association:

The Nevada Dispensary Association represents approximately 90 percent of currently operating dispensaries in the state. Many of those are vertically integrated, so they also own and operate cultivation and production facilities. Thank you to Chairman Yeager, who has spent a lot of time in other states examining various approaches to legalized cannabis. He has also spent a lot of time meeting with Nevada's industry representatives.

As Chairman Yeager stated, the intent of the bill is to make improvements in the efficiency and efficacy of our strict regulatory framework. In particular, we learned after implementation of new advertising rules enacted at the last legislative session that preapproval of advertising is inefficient and takes away attention from conducting enforcement against advertisements that violate the rules. The overwhelming majority of establishments are in compliance with our strict regulatory framework. If you tell them what the rules are, they follow them, not only because they want to, but also because their licenses and extensive fines hang in the balance. This bill will take the focus off those voluntarily following the rules relating to advertising and shift focus to those breaking advertising rules.

Another area that could benefit from attention and modification are how employees are vetted and approved to work in the marijuana establishment. At the last legislative session, Assembly Bill 422 of the 79th Session was enacted and allowed individuals to apply for the agent cards that Chairman Yeager mentioned. Prior to that, a marijuana establishment had to file the application on behalf of an individual. Allowing individuals to apply has greatly increased the number of agent card applications, which has created a backlog. We have agents working in the industry on a temporary approval for months. This bill seeks to give the state the ability to improve the process and the turnaround time to receive an agent card.

In its current form, the bill proposes to allow the states to revoke agent cards for certain offenses, such as stealing product as seen on camera. The bill removes the requirement for preapproval of legal marijuana advertisements. Currently, every advertisement must be preapproved by the Department of Taxation. Nevada, rightfully so, entered our legalization with caution. We have some of the strictest rules on advertising in the country, and rules that go far beyond any other industry's advertising rules. The bill does not change the restrictions on advertising in general. There are still prohibitions on advertising to children, advertising actual consumption, misleading statements, advertising in mediums that reach viewership of over 30 percent, et cetera. Those rules stay the same. The bill shifts the focus from preapproving to issuing fines for violations. Currently, a company can have an ad campaign that has been approved and implemented so it is in magazines and billboards, and if they change one font or one color, it has to go back to the state for approval again.

The process is better than what it was initially. It has gone from about 30 days to 5 days to get an approval, but marketing is something that needs to be fluid and move quickly in business. Moreover, requiring preapproval means that you have staff confirming an advertisement follows the rules rather than finding those breaking the rules. The bill incorporates already existing language regarding the requirements to obtain an agent card. That language limits who can pay for the agent cards to marijuana establishments, so the bill seeks to allow individuals to pay for their agent cards on their own.

Section 11 makes a minor modification to advertising, which is to change the prohibition on advertising at entertainment events. Currently, advertisements cannot be at any entertainment events. This would change it to a prohibition on events where youth attendance is expected to be over 30 percent. For example, if there is a beer tasting event or a music festival geared toward adults, this would allow marijuana advertisements as long as the establishment documents that the youth attendance is reasonably expected to be under 30 percent.

The proposed amendments would do the following: first, sections 6 to 8 in the bill relate to agent cards. This language already exists in regulation, so we would have to remove it. Second, we are asking to change the validity of an agent card, allowing someone to work in the industry for two years once they receive an agent card rather than just one. This is partly due to the delays, but by the time you get an agent card, sometimes you are already applying for the next year. Third, when the bill draft request was originally submitted, it had a provision to allow the state to accept what are called FBI "Channeler reports" to hopefully

speed up the process for agent card approval. That provision did not work out, so we are asking for an amendment that would allow the Department of Taxation to use any source of background checks that they deem reliable and expedient so they can continue to improve the background check process and hopefully we can speed it up and get through the backlog of applications. Fourth, please remove the \$10,000 fine for advertising violations and instead incorporate the already existing fines. They are already significant. They start at \$2,500 per violation. Fifth, please consider an amendment that would require local governments to adopt an ordinance if they are going to regulate advertisements. This would not preempt local governments from conducting their own advertisements; instead it would say, if they are going to regulate advertisements, they need to do it pursuant to an ordinance.

Assemblywoman Miller:

For the part of the bill that talks about the advertising for an activity that has up to 30 percent minors—I am thinking of 30 percent and it sounds like a large number. When I go to an R-rated movie, I look around and more than 30 percent of the people in there are minors. Even with concerts or certain sporting events, we know that parents are going to bring their children. Can you explain where that 30 percent threshold came from? Why is that the threshold?

Riana Durrett:

That number came from other advertising rules that we currently have that prohibit advertising in certain mediums if the audience is going to be over 30 percent youth. So with television and radio, you have to establish that the youth is going to be under 30 percent. I would imagine that that number would be subject to more discussion.

Assemblywoman Torres:

Would you explain whether or not we regulate other industries like we are for advertising marijuana?

Riana Durrett:

I do not believe there is any other industry that needs to get their advertisements preapproved. One example would be alcohol, which is regulated at the federal level. They have guidelines similar to what we have now, but they do not have to get their advertisements preapproved. They are subject to fines if they break the rules.

Assemblywoman Torres:

How about the tobacco industry?

Riana Durrett:

I do not know, but I can get that information for you.

Assemblyman Yeager:

I know that the returning members will remember that this Committee heard an extensive cannabis advertising bill last session by Senator Farley and Senator Segerblom [Senate Bill 344 of the 79th Session]. I think we had some robust discussions about what

should and should not be in that bill. I believe we reached a good place with that bill and Nevada has become a leader in setting the standard for packaging and advertising. I think that caution was definitely warranted as the industry got on its feet, but I also think the industry has shown that they can do this and they are responsible. So we are not changing any of the prohibitions on how things can be packaged in terms of whether a product can be attractive to children. That is going to stay on the books. This is really an alignment of—as Ms. Durrett said—not requiring preapproval for every little change in advertising. It gives some flexibility to the industry so they can spend less time doing that and more time running their businesses. That is the intent behind the bill.

Assemblyman Edwards:

Would you confirm the age of youth that makes up the 30 percent? How do you determine if the event is going to be attended by 30 percent? How does that work?

Riana Durrett:

The age of youth is 21 and under. It is determined by audience segmentation data. Whoever owns the billboards or magazines or puts on the music festivals are expected to have those kinds of projections. An establishment needs to obtain those projections on what the audience would be and, under this bill, keep that documentation for five years.

Vice Chairwoman Cohen:

Section 9, subsection 3, talks about the revocation of the agent registration cards and the video monitoring. I am a little concerned about that because while we know that video monitoring is a good tool, it does not necessarily show the whole picture. If you film from a different vantage point, you could see something different. Who is making the determination from watching the electronically recorded video monitoring? Does the employee have any right of appeal if they say, No, that is not what happened, the video is not showing the whole story?

Riana Durrett:

I believe they might be able to appeal to the Nevada Tax Commission, but I would defer to the Department of Taxation on this. They are here and available to answer questions.

Melanie Young, Executive Director, Department of Taxation:

I have staff here that can help with the question if I do not have the complete answer. The Department of Taxation regularly investigates these types of incidents and, through our enforcement division, would investigate that issue and make the determination to pull someone's agent card if that was to be found truthful.

Vice Chairwoman Cohen:

Is there a right of appeal to the courts if a card is pulled in this or any other situation?

Melanie Young:

I do not have that answer with me. May I turn it over to Jorge Pupo?

Vice Chairwoman Cohen:

Yes, of course.

Jorge Pupo, Deputy Executive Director, Marijuana Enforcement Division, Department of Taxation:

If an agent card is to be revoked, they would have their due process rights and be afforded a hearing in front of an administrative law judge.

Assemblywoman Tolles:

In section 1, subsection 5, paragraph (a), it says "Has been convicted of an excluded felony offense." Would you expand on what that may or may not entail? What would constitute excluded felony offenses?

Riana Durrett:

An excluded felony offense is mostly a previous drug trafficking conviction. I do not have the entire list; I can provide it to the Committee. This would not be a new law. These excluded felony prohibitions were enacted in 2013 when the original medical marijuana program was enacted. They were also enacted under Question 2 (2016) when the adult-use program was enacted. This is not new, but I have a list of both of those and I can provide them to the Committee.

Assemblywoman Tolles:

Perhaps to clarify for the sake of the language, would you be open to saying "Has been convicted of an excluded felony offense per" and then just relate back to wherever that statute is so it is clear in the law? That way we can track it for the benefit of future discussions.

Riana Durrett:

This is actually language that we are requesting to be removed. This is the language that already exists in regulation. If it does not end up getting removed, then I cannot imagine there would be any opposition to it.

Assemblywoman Krasner:

One of the biggest concerns with the legalization of medical marijuana and recreational marijuana are with parents just worrying that their kids might somehow get a hold of it or some person might think it is funny and put it in their trick or treat bag. Last session I know Assemblyman Yeager and I talked about—and it was included in the legislation—that "This is a marijuana product" will be boldly labeled on the packaging of the recreational marijuana products and the medical marijuana products. Looking at section 4, I see that it still says, "THIS IS A MEDICAL MARIJUANA PRODUCT." Are you still going to be including the language "THIS IS A MARIJUANA PRODUCT" on every package of recreational marijuana products?

Assemblyman Yeager:

I certainly remember those discussions, and I think we ended up at a good place where not only did we have to say that it was a marijuana product, we had to give a warning about the effects on driving. I think when it recently went into effect, the actual product itself was stamped with some kind of indication that it is a marijuana product. To answer your question, we are still in a weird space where we cannot legislatively make changes to the recreational statute because it was a ballot question. There is a three-year restriction on our doing anything until November of this year.

You may recall that last session we passed a statute that immediately impacted the medical program, but there was a delayed implementation for the recreational marijuana until November. We filled that gap, though, because what the Department of Taxation did was they came in and did an emergency regulation, adopting everything that had been done for the medical program to apply to the recreational program. That is currently happening in regulation, and that statute will formally go into effect January of 2020. It is happening and this bill does not make any changes to it whatsoever. Whether it is medical or recreational, those labeling requirements that we came up with last session are going to continue to apply.

Vice Chairwoman Cohen:

Are there any other questions? [There were none.] Is there anyone in support in Las Vegas or Carson City?

Will Adler, representing Silver State Government Relations; and Scientists for Consumer Safety:

I am in general support. While it is still on my mind, section 12 of the bill has the existing language that says it must have a marijuana product label on it. I am in full support of the bill, as long as it includes the amendment provided by the Nevada Dispensary Association. It has been a long row to hoe to get to the point where we are today in the marijuana industry. A big part of this was getting accountability on the books, making sure people operated under the right procedures, and then allowing us to go forward. Specifically, the agent card process has been a laborious process, but it did have a few blind spots that this fixes.

First of all, we have had a problem with people getting fired for operational problems with their agent card and then immediately getting hired down the street because there was a lag between firing and the removal of the agent card before. So they are preapproved; they already have an agent card. Most companies did not care; as long as you had that agent card, you were more hireable than someone without one. So people were getting fired and rehired with the same agent card even though it should have been restricted. Extending it to a two-year agent card is also a great process because in the past we got very bogged down in the marijuana industry. The Department of Taxation made a heroic effort trying to renew these agent cards every year, but it got to the point where it was going to be about a six-month delay. It has been a lot better recently. Last year it was down to about 30 days at the most for a delay, but historically it was an issue.

In addition to that, advertising was an issue. In the medical marijuana days, someone asked for an approval of a Burning Man box, or "Burner box," as an advertising gimmick. It was under the right restrictions, it had the right font, and everything looked good. They submitted it, and it was 90 days before it was approved. So Burning Man had already ended 40 days before the time the approval had come out. It is a little tongue-in-cheek, but it is an example of how we went through the process of preapproval and how restrictive it is on businesses and how they operate. That gentleman saved his boxes and used them the next year, so it is not so bad.

This is more of a cleanup bill than anything. We still have the same restrictions in place. As you alluded to, most of the language actually comes from some sort of reference to the '90s tobacco language cleanup where we cannot use cartoon characters or things that are appealing to children. That is all still in place, and if you violate it, you will get the penalty that you should get for violating it. We no longer have to preapprove it. At this point, those in the industry who have been acting for as long as we have now know what we are doing when we do the approval. I would say there is a very low rate of fees that will actually come from this.

Krystal Saab, General Counsel, Nevada Organic Remedies LLC; and The Source:

We are a vertically integrated cannabis company focused on serving the needs of local Nevadans. The Source was one of the first five dispensaries to open in Nevada in 2015. Since opening, The Source has contributed over \$8.3 million in tax revenue to Nevada. We currently employ over 220 team members statewide who all earn close to two times minimum wage or more. As you know, current regulations require we obtain preapproval on all cannabis advertising efforts before the advertising is published. To my knowledge, no other industry in Nevada faces this unique challenge to doing business. While this may not sound particularly onerous, the reality is time-consuming and ineffective for both the industry and the regulators.

In our experience, the process requires:

- (1) Upon completion of the advertising, three to five additional hours of work internally to prepare for submission to the state.
- (2) Additional work in fees from outside legal counsel.
- (3) Multiple submissions for this same advertisement if it appears in multiple publications.
- (4) Multiple submissions if we slightly tweak the advertisement over time or make small adjustments; for example, to change the background or alter a color, we are going to need to resubmit.
- (5) Multiple submissions for the exact same advertisement if that ad is being used for more than one dispensary or entity.

For The Source, this process is undertaken at least once per week, and then it sometimes takes two to three weeks to hear back on whether the ad is approved. This process causes

unnecessarily long lead times that drive up costs and inhibits our ability to remain competitive in the ever-evolving and fast-paced world we operate in.

While the industry supports reasonable regulations and restrictions on advertising, the current process requiring preapproval of ads is cumbersome, not only for the industry but also for regulators. Assembly Bill 164 seeks to streamline the advertising process for the industry by (1) eliminating the inefficient preapproval process. State regulators no longer have to waste man-hours on reviewing advertisements, which should be compliant based on published regulations. Moreover, speaking on behalf of The Source, we have become well-versed in their requirements, and I suspect that the rest of the current crop of cannabis operators in Nevada are similarly situated, and (2) allowing state regulators to focus on bad actors and more efficiently reprimanding those who choose to violate the regulations. This will save countless hours in the regulating department.

This bill does not eliminate cannabis advertising regulations or restrictions. Rather, it seeks to right-size the regulatory footprint of regulations for cannabis industry advertising. Passage of this bill will be a step toward normalizing the cannabis industry and allow us to run our businesses in the normal course to keep up with events and promotions.

In conclusion, eliminating preapprovals for advertising will result in an efficient and business-friendly process. The proposed changes will achieve efficiency from not only an industry perspective, but also a state perspective.

Vice Chairwoman Cohen:

Are there any questions? [There were none.]

Leighton Koehler, General Counsel, MM Development Company, Inc.:

I am here on behalf of MM Development Company, more commonly known as Planet 13, in support of A.B. 164 and the amendments proposed by the Nevada Dispensary Association. I would like to specifically thank Chairman Yeager for the significant time and efforts he has dedicated towards this bill, and applaud his proposals for refinement of our current laws and regulations regarding cannabis in Nevada.

In 2000, Nevada legalized the medical use of cannabis through ballot measure, the seventh state to do so. In response to a growing desire from Nevada's patients for regulated access to their medicine, the statutory framework was further refined and a system of licensing and regulations was created in 2013. In 2016, Nevada voted to legalize recreational use of marijuana by individuals 21 years of age and older. The Legislature mobilized, and in 2017 a number of bills were passed that directed the licensing, regulation, and operation of marijuana dispensaries, cultivators, production, and distribution. The Division of Public and Behavioral Health in the Department of Health and Human Services oversaw the rollout and initial licensing and then the regulation of Nevada's licensees was handed to the Department of Taxation in 2017.

I give you this brief history because, although we were the seventh state to legalize medical marijuana, and again in 2016 we were approximately the seventh state to recognize recreation marijuana, I often hear in my travels to other jurisdictions that Nevada is the gold standard in cannabis regulation. Other states look to Nevada as a frontrunner in privileged license regulation, and that is exactly where Nevada belongs. In Nevada, we do not rest on our laurels. In partnership with our regulators and Nevada citizens, the cannabis industry in Nevada is thriving. We have come a long way since the first medical dispensary opened in 2015 and the first recreational licensed operators opened their doors in 2017. Over the past few years, lessons have been learned and experience gained. Those shared lessons and experiences from the regulators in the industry are reflected in the bill and proposed amendments before you today.

From a business perspective, the current advertising preauthorization system creates a burden on the privileged license holders regarding planning and budgeting for advertising. The preapproval requirement handcuffs our ability to issue timely and relevant advertising in today's fast-paced social media age. This requirement drains resources away from the businesses and from the state. This bill resolves the problem. Planet 13 adds its support to the amendments proposed by the Nevada Dispensary Association regarding agent cards, background checks, and advertising.

Ryan Black, Legislative Liaison, Office of Administrative Services, City of Las Vegas:

We regulate marijuana and the marijuana industry very closely along with our partners at the state. This bill provides some cleanup language as well as makes some commonsense changes, and for those reasons we are in full support.

Vice Chairwoman Cohen:

Is there anyone else in Las Vegas or Carson City in support of A.B. 164? [There was no one.] Is there anyone in opposition to A.B. 164 in Las Vegas or Carson City? [There was no one.] Is there anyone in neutral in either location? [There was no one.]

Assemblyman Yeager:

Thank you for your attention this morning. I would invite anyone with any additional concerns to reach out to me. I urge your support for what I believe is a fairly commonsense bill to help our industry continue to move forward.

Riana Durrett:

Thank you for your time.

Vice Chairwoman Cohen:

I will close the hearing on A.B. 164 and give the Chair a moment to come back up.

[Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:

I will open the hearing on Assembly Bill 187.

Assembly Bill 187: Revises provisions governing the safety of children. (BDR 43-128)

Assemblywoman Ellen B. Spiegel, Assembly District No. 20:

Assembly Bill 187 relates to the safety of children and the importance of their wearing helmets when they are riding bikes and engaging in other childhood activities. When I was first approached by Mr. Busker to talk about the bill, I was reminded of a time when I was about seven years old. I was at a friend's house playing. My brother came to pick me up on his bicycle, and he was riding me home on the back of the bike. As we got close to my house, my brother was going to need to cross the street on the bicycle. I was not allowed to ride my bike across the street yet, so I said to my brother, "Stop the bike. I need to get off because I am not allowed to ride my bike across the street." My older brother said to me, "No." I said, "Steven, stop the bike. I am not allowed to go across the street. I do not want to get in trouble." He said, "No." I said for the third time, "You need to stop the bike because I do not want to get in trouble, and if you do not stop the bike, I am going to jump off." He said, "No." Of course, the logical thing for me at the time was to jump off the bicycle, which I did, and I broke two fingers. My mom then explained to me that sometimes safety is more important than the rules.

As a young child, I did not have the ability to know that. I had to be told it and learn it the hard way. As I got older, I was not always following the rules, and there were times when I would challenge my parents and say, "But why do I have to do this?" Why, why, why? Explain. Sometimes I did not like the explanation, and usually it reverted back to my mom saying, "Because I said so." I think we have all been there and done that. Sometimes parents need more than "Because I said so" to be able to get their kids to enforce the rules. That is where this law comes in. By having the requirement for kids to wear helmets, they will be protecting themselves and they will be protecting the most important part of their body, which is their head. It is a lot easier to fix broken fingers than it is to fix a cracked-open skull. It gives parents the ability to say to their kids, It is not just because I said so, it is because it is the law.

With that, I am going to turn it over to Mr. Busker, who can explain the bill and present the rest of it.

Jared Busker, Associate Director, Children's Advocacy Alliance:

Children's Advocacy Alliance conducts advocacy trainings every month with University of Nevada, Las Vegas pediatric residents where we talk with them about how to get involved in the legislative process. As a part of those trainings, we engage with each of the residents and talk with them about an issue area they believe should be changed in this state. It was through one of those trainings with Dr. Harris Khawaja, whom I met a couple of years ago, where he talked with me about the need for safety helmets for children he has seen during his time as a pediatric resident in Las Vegas. He talked to me about this issue, and we went over the process of making this a potential law. This is where we are now from that initial meeting we had almost two years ago ([Exhibit D](#)).

After that meeting, the Children's Advocacy Alliance began to research helmet safety laws throughout the United States and studies relating to these laws ([Exhibit E](#)). We found that to promote and encourage the use of safety helmets, 22 states, including the District of Columbia, have passed legislation requiring children to wear safety helmets. This legislation has positively affected helmet use among children. A recent evaluation of these laws found that of the children who lived in states with a child helmet law, 51 percent of respondents reported that their child always wears a bicycle helmet. That is compared to 40 percent of those who lived in a state without a helmet law. Conversely, 35 percent of children living in a state without a helmet law were reported to never wear a safety helmet compared with 21 percent of children in states with a law in place. In addition, there was no decrease in the amount of time children have spent riding bicycles with this law.

Section 1, subsection 1 prohibits any parent from knowingly allowing their child who is under the age of 18 from operating, using a bicycle, tricycle, electric bicycle, scooter, roller skates, or other similar devices unless the child has a safety helmet securely fastened on their head. Section 1, subsection 2 defines that a violation of the previous section is not a traffic violation and is not grounds for taking a child into custody. It also does not constitute abuse, neglect, or endangerment of a child, and does not constitute contributory negligence per se.

Section 1, subsection 3 requires that a parent or guardian who is cited for a violation of subsection 1 is guilty of a misdemeanor and shall be punished for a first violation by a verbal warning to the parent or guardian. The provision in the verbal warning shall include research and information on how to secure a helmet at a low cost or free and the resources available in the community. There is a fine of \$15 for a second or subsequent violation.

The last two subsections allow for a fine to be waived by the court if, at or before the time the fine is due, the parent or guardian of the child presents to the court proof of purchase of a safety helmet for the child or that the child has obtained a safety helmet. It also provides a definition for a safety helmet.

We have a conceptual amendment for this section to remove all criminal penalties from A.B. 187 ([Exhibit F](#)).

Harris Khawaja, Pediatric Resident, Department of Pediatrics, University of Nevada, Las Vegas School of Medicine:

This helmet bill started when I came to Nevada and began my pediatric residency in the emergency department. I see almost 50 to 60 kids per day. In a month, I see anywhere between 10 to 15 pediatric head traumas. I started noticing that clumps of these were preventable. They were due to kids not wearing helmets on their scooters and bicycles, and were all preventable injuries that could have avoided medical costs, pain, and suffering for both the family and the child. I brought this to the attention of the Children's Advocacy Alliance, and that is why we are so passionate about moving this along. I think it is very important to have this law because then parents can use it as, It is the law. Not everyone thinks it is cool to wear a helmet. They do not think it is the most fashionable thing to wear a safety helmet. But at the end of the day, it can mean life and death.

Research shows that a helmet can prevent pediatric skull fractures in 60 percent of kids who wear helmets. Instead of a kid fracturing his skull, you might get a cut or bruise on the arm, which we would much prefer than seeing kids in the intensive care unit (ICU) with brain bleeds and skull fractures and kids who did not need to be there. That is why I think it is very important Nevada has a helmet law. As pediatricians in a residency program, we hate seeing these kids in the ICU with preventable head traumas. These kids have to go through a lot in the ICU for head traumas—sometimes evacuation surgeries and physical therapy—and this can all be avoided by a simple helmet ([Exhibit G](#)).

Assemblywoman Miller:

There is an age where parents literally have complete control over everything their children do. Then there starts to be an age where parents have a struggle to control what their children eat, how they dress, what they watch on YouTube, video games, television, and what music they listen to. This comes at a much younger age than we would like. When it comes to something such as controlling them to wearing helmets, I have to take into account that with children there are still choices that they make outside of their parents' control, outside of their parents' reach at a certain time. I am looking at the age of 18, yet the state recognizes that at the age of 16, you are old enough, mature enough, and responsible enough to obtain a driver's license whereby you can drive an automobile basically wherever you would like. Would you speak to that point in that we would still be putting parental control over someone who actually has their own driver's license?

Jared Busker:

When we compared the other 22 states plus the District of Columbia ([Exhibit H](#)), there is a varied age range of children who are mandated to wear the safety helmets from as young as under 12 to up to under 18. When we were putting forth this legislation, we took the approach that every single child under the age of 18 should be protected from having a head injury and we wanted to have that as the blanket statement in this legislation. I think that follows countless statements we have made relating to safety helmets for motorcyclists, which is if you are over the age of 18, you are still required to wear the helmet in the state of Nevada. We have a broad spectrum. If the child is 16 or 17 and able to ride a motorcycle, they would be required to wear a helmet for that device as well.

Assemblywoman Miller:

We know that with legislation there is also interpretation, and sometimes there is overreach. When we are talking about the types of rides, or vehicles, or recreational device, I am starting to think of all these other things that it may include such as anytime a child is moving, whether it is for recreation or entertainment—I am thinking of skis, slides, swings, wagons, and motorized big wheels. I am even thinking of our young children in physical education in elementary school when they are on scooters. Would that require a helmet? What about a child in a stroller? We know there are accidents when parents trip while pushing a stroller. How extreme would this law go? In reality, all of these things could result in a child getting hurt and having a head injury.

Jared Busker:

It is not our intent for the bill to expand all the way to children in strollers. It is for those devices where there is the high risk of a child sustaining a head injury. We can meet and discuss more about our definition.

Assemblyman Watts:

I really appreciate your bringing the bill forward and appreciate the intent of the bill, which seems to focus on encouraging safety and not having onerous penalties or criminalization but to make sure it is clear that it is a requirement. My question is around section 1, subsection 1. As you look at that definition, it sounds like there may be some tweaks to it. Is there a reason why skateboards are not explicitly enumerated? I know that you cannot list out every single item, but if you are going to be making any tweaks to that definition, I would encourage it, as it is another commonly used recreational item.

Jared Busker:

Yes, we did not mean to leave that off the list. We will definitely look at including it.

Assemblywoman Hansen:

I appreciate the intent to keep children safe. I have eight children and eighteen grandchildren; certainly there is safety and trying to walk that line between being a paranoid parent and a responsible parent and not a helicopter parent. My kids have done a variety of things: riding horses, skiing, snowboarding, and all the other things mentioned in the proposed language. Since you did not list everything, would a parent be held accountable if their child did not wear a helmet riding a horse, snowboarding, skiing, et cetera?

These are certainly things that I have encouraged as a parent and have provided for my kids, but while the intent is admirable, I think sometimes the best way to legislate is essentially with education. In my house, it was really the fear factor. I would educate by fear of what that would look like if they rode their bike or they rode their dirt bike without their helmet. I have a son who went to the University of Nevada, Reno School of Medicine and did his trauma unit at University Medical Center of Southern Nevada. It was after a conversation with him that my children finally realized why Mom had the "No street bike as long as I am alive" rule. More so than my threatening them, his life experience helped enlighten them.

I also have three nurses. My son had served at the Mayo Clinic as his residency and worked at Phoenix Children's Hospital. We had had a trampoline for years without a net around it, and it was after he observed a traumatic situation that we then put a net around a trampoline. Sometimes I wonder where the line is between legislating and education. That is my concern. While I think it is extremely admirable, I wonder about putting our resources into more educating as to what head trauma involves more so than legislation.

Jared Busker:

I agree. Education is a major component of an increase in the number of children who are wearing safety helmets. That is really our vision for this bill. The first offense would result

in the parents being provided information on where they can obtain a safety helmet and then the education component of why their child should be wearing a helmet.

In relation to your first comment relating to all of the other devices, we will look at that and provide a better definition of those devices.

Assemblywoman Backus:

I have a follow-up question with respect to section 1, subsection 2, paragraph (c), subparagraph (2). I understand the inclusion of precluding the use of violation of the statute is "contributory negligence per se," but the second part where it includes "and is not admissible as evidence of contributory negligence in a personal injury action," I am curious where you are going with that. Is it purely the violation of the statute being included or are you intending to include this broadly as any evidence of a child not wearing a helmet who does get into a personal injury action case?

Jared Busker:

We were not looking to mirror legislation that was already included for car seats and other similar devices. If a child is not wearing a safety helmet and it results in an accident, it is not something that could be used in court to be held against the parents or against the child being able to receive compensation or receive assistance for their injuries. We want to make sure it was not something that could negatively affect those children or families.

Chairman Yeager:

In speaking with legal, should this bill move forward, I think it should probably be comparative negligence because I do not think we have had contributory negligence in our state for quite some time. We will make a note of that. I think this concept of contributory negligence may not be unique to this statute. As far as I know and unless you know otherwise, I do not think we call it contributory negligence in our state, so we can make that technical amendment moving forward. I just wanted to make sure I had it out on the record that we are not intending to change our system of comparative negligence that we operate under the state of Nevada.

Assemblywoman Krasner:

I have a question that relates to something a couple of my colleagues have mentioned in section 1, subsection 1, "The parent or legal guardian of a child who is less than 18 years of age shall not knowingly allow the child to operate, use or ride, as applicable, a bicycle, tricycle, electric bicycle, scooter, roller skates or other similar recreational device used to move about." I know that in Las Vegas a lot of high school-aged teenagers like to get pulled behind a boat on a float or raft, and that would certainly be a recreational device used to move about. Are you envisioning people, while being pulled on those rafts, to be wearing helmets?

Jared Busker:

We will look into all those different devices. I do not believe there would be as high of a risk for a head injury in that specific case. Offline, I would love to have a friendly discussion, a

broader conversation of what should be included as a mobile device. Right now, I believe this definition is too broad, as the Committee has pointed out.

Assemblywoman Peters:

I have a 4-year-old who is a tornado, and I wish I had a helmet on him when he busted his head open on our coffee table a couple of months ago right before the end of the insurance fiscal year. But he also loves his bikes and trikes, and he will go outside and pick one up without me around and ride around our back patio or our front driveway. I am wondering about those areas of my property. If a cop drove by or someone down the street saw my kid riding around without his helmet on in my front yard, would I get cited for that? Obviously, this is a case of sometimes he just gets up and goes and I would go out and say, Get your helmet.

Jared Busker:

I am not positive. I will look and get back to you after the meeting.

Assemblyman Roberts:

I had a similar question regarding the mechanics under section 1, subsection 3, paragraph (a). On the first violation, it talks about a verbal warning. Is the intent of the bill for that verbal warning to be adjudicated in court, or would officers in the field do that when they come across a violation?

Jared Busker:

We envision that it would be out in the field where they could talk to the child and the parents directly. Our main goal of this legislation is to increase the use of safety helmets and informing parents of the current legislation and the current law that is on the books and trying to drive up the use of those safety helmets.

Assemblywoman Torres:

I believe that all our students need to be safe. Working with high school-aged kids, my concern is that they are forgetful. I cannot tell you how many times I have had students leave their jackets in my room. They leave skateboards in my room, sometimes for days on end forgetting that they are there. I have no doubt that they would leave their helmets. Oftentimes, our schools do not have any place to put the helmets, which is another big deterrent. I also have concerns working with low-income communities that our students might have difficulty affording it and that this bill does not put any plan of action to address the funding of helmets for students who may not have access to one. I think it might be of interest for us to look at those. I agree that the education component is probably the most important part. I do not know that we do a lot to talk to our kids about it, and I think our school resource officers would be better spent warning kids than writing them or their parents citations.

Jared Busker:

I agree. That is why we tried to have the fine component be \$15 at a very minimum and tie it to the cost of what a helmet would be for a family to purchase. We are also working to try to

create a list of available resources where families can get low-cost or free helmets. We recognize that as an issue as well. Our intent is not to over-legislate or assess fines to those low-income families, but to address change and provide them with those safety helmets. I believe it would be a wraparound component with this legislation.

Assemblyman Edwards:

If there are violations and fines, could these be used in any kind of a child custody situation where one parent would blame the other of not being responsible, watchful, et cetera? Could that damage their abilities in family court to maintain the joint custody?

Assemblywoman Spiegel:

No.

Chairman Yeager:

I am looking at the new first sentence of the beginning of the bill where it says, "The parent or legal guardian" Do you intend that to include foster parents, or had you thought about the scenario where kids may be in the temporary custody of someone else?

Jared Busker:

We will be looking at the first section.

Chairman Yeager:

Are there any further questions from the Committee members? [There were none.] Is there anyone in support of A.B. 187 in Carson City or Las Vegas?

Catherine M. O'Mara, Executive Director, Nevada State Medical Association:

Thank you for the opportunity to speak in support of a policy on helmet use. The Nevada State Medical Association supports A.B. 187 and the goals of trying to encourage more helmet use among our youth. The University of Nevada, Las Vegas School of Medicine studies crash and trauma data, so I am going to give you some statistics that come from those studies. Helmet use among pedicyclists in Nevada is about 30 percent compared to motorcyclists, who have about an 86.5 percent use. We believe that it is in large part because there is a law requiring helmet use for motorcyclists. Only 0.5 percent of Clark County residents bicycle as their daily commute, so we have very low numbers of people who are actually commuting by bicycle in Clark County.

By contrast, 6.9 percent of all traffic fatalities in Clark County involve a pedicyclist. The average age of those not wearing helmets is 10 years younger than those who are wearing helmets, so I think some focus on the youth population is supported in the data. Pedicyclists who are not wearing helmets, particularly juveniles who are not wearing helmets at the time of a crash, experience more severe injuries to the face as compared to those who are wearing helmets. That will bear out in more severe head and face injuries, more time in the hospital, and they will receive higher hospital charges than other road users.

We understand there are probably some things to work out in terms of enforcement, parameters, and where you define the correct age. The medical community is not an expert in that, but in terms of the underlying policy of encouraging helmet use, we support it.

Chairman Yeager:

Are there any questions from the Committee? [There were none.]

Rhiannon Foreman, Parent Ambassador, Strong Start Nevada:

I believe this legislation is a great step in the right direction. I have had the opportunity to work for an agency that provided day treatment services for individuals with disabilities. Many of those had experienced traumatic brain injury. I am not sure if you are aware, but traumatic brain injury is a major cause of death and disability in the United States. It contributes to about 30 percent of all injury deaths. As a single parent, I have been so afraid of allowing my children to go out and ride their bikes. They have bikes, but they do not ride because the risk for me is too much. I do not want to look at my children and say, I dropped the ball. I did not provide them with the additional items they needed to be safe.

I think the use of safety helmets may prevent traumatic brain injury in children, and I believe it will open up the discussion for parents to help with their children. There are some parents who are not familiar with traumatic brain injury, but I have seen the effects of it and they are long term. I would much rather have this legislation than have to coordinate long-term care for children when it could be prevented.

Chairman Yeager:

Are there any questions? [There were none.] Is there anyone else in support of A.B. 187, either in Carson City or Las Vegas? [There was no one.] Is there anyone opposed to A.B. 187? [There was no one.] Is there anyone neutral to A.B. 187? [There was no one.]

Assemblywoman Spiegel:

Thank you for all of the questions that were asked. I will be working with Mr. Busker to have answers and to work on those definitions. I appreciate your consideration.

[([Exhibit I](#)) was submitted but not discussed and will become part of the record.]

Chairman Yeager:

I will close the hearing on A.B. 187. That was the final bill on our agenda today, and I will open it up for public comment. Would anyone like to give public comment either in Carson City or Las Vegas? [There was no one.] Is there anything else from the Committee members? [There was nothing.] The meeting is adjourned [at 10:21 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment, dated March 6, 2019, to [Assembly Bill 164](#) presented by Riana Durrett, Executive Director, Nevada Dispensary Association.

[Exhibit D](#) is a document titled "Helmet Law/Child Safety Hearing," submitted by Harris Khawaja, University of Nevada, Las Vegas School of Medicine.

[Exhibit E](#) is a copy of a PowerPoint presentation titled "Assembly Bill 187," submitted by Assemblywoman Ellen B. Spiegel.

[Exhibit F](#) is a proposed amendment to [Assembly Bill 187](#) presented by Jared Busker, Associate Director, Children's Advocacy Alliance.

[Exhibit G](#) is a letter in support of [Assembly Bill 187](#) submitted by Harris Khawaja, Pediatric Resident, Department of Pediatrics, University of Nevada, Las Vegas School of Medicine, to members of the Assembly Committee on Judiciary from the University of Nevada, Las Vegas School of Medicine Pediatric Center.

[Exhibit H](#) is a document titled "Policy Brief: Safety 2019," submitted by Jared Busker, Associate Director, Children's Advocacy Alliance.

[Exhibit I](#) is a letter dated February 23, 2019, in support of [Assembly Bill 187](#), to Assemblyman Hambrick and Senator Dondero Loop, authored by Pam Greenspon, Nevada Chapter of the American Academy of Pediatrics, and submitted by Harris Khawaja, Pediatric Resident, Department of Pediatrics, University of Nevada, Las Vegas School of Medicine.