

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

**Eightieth Session
April 5, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:08 p.m. on Friday, April 5, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Marilyn Dondero Loop, Vice Chair
Senator Nicole J. Cannizzaro
Senator Chris Brooks
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi Seevers Gansert

GUEST LEGISLATORS PRESENT:

Senator Moises Denis, Senatorial District No. 2
Senator Ben Kieckhefer, Senatorial District No. 16

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Committee Policy Analyst
Bryan Fernley, Committee Counsel
Jennifer Richardson, Committee Secretary

OTHERS PRESENT:

Warren B. Hardy II, LaPaloma Funeral Services
Mary Lau
Susan Fisher, State Board of Professional Engineers and Land Surveyors; State Board of Osteopathic Medicine; Board of Oriental Medicine
Deonne Contine, Director, Department of Administration

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Sandy Anderson, Executive Director, Board of Massage Therapy
Margret Grein, Executive Officer, State Contractors' Board
Tim Geswein, State Contractors' Board
Jennifer Kandt, Executive Director, Nevada Funeral and Cemetery Services Board
Liz MacMenamin, Retail Association of Nevada
Sandra Miller, NARAL Pro-Choice Nevada
Joseph Casey, NARAL Pro-Choice Nevada
Nicole Cortez, Planned Parenthood
Sara Hanafi, Planned Parenthood
Samantha Zoller, Planned Parenthood
Keyana Bunting, Planned Parenthood
Elisa Cafferata, Planned Parenthood Votes Nevada
Nick Stosic, Division of Insurance

CHAIR SPEARMAN:

We will open the hearing on Senate Bill (S.B.) 323.

SENATE BILL 323: Revises provisions governing the disciplinary process for certain regulatory bodies which administer occupational licensing. (BDR 54-905)

SENATOR MOISES DENIS (Senatorial District No. 2):

During the Interim, I worked with several legislators on the Occupational Licensing Policy Learning Consortium hosted by the Council of State Governments, the National Conference of State Legislatures and the National Governors Association Center for Best Practices.

Nevada was 1 of 11 states on this Consortium. Our State introduced a goal to identify and implement best practices for removing barriers, delivering high quality services and achieving a skilled workforce through licensing.

The Consortium offered language to revise certain occupational licensing regulations. The State ranks negatively in statistics regarding occupational licensing. According to the Institute for Justice, Nevada ranks second for the most burdensome licensing requirements. We are the most expensive State for licensees of lower and moderate income occupations.

I worked with Warren B. Hardy II on these issues, in addition to related issues he confronted with his client.

WARREN B. HARDY II (LaPaloma Funeral Services):

I am presenting S.B. 323. I have a proposed amendment ([Exhibit C](#)) that limits what we attempted to change with this bill. While the changes we propose are important, we acknowledge the problematic nature of this complex issue. My client had a discipline hearing with a State board. After the hearing, we had several concerns.

One concern is regarding how State boards conduct discipline hearings. Most occupational boards are composed of market participants and members of the industry. The issue with the members is that they serve as the judge, jury and executioner of their competitors. The State Contractors' Board (SCB) does a good job navigating the issue of board members overseeing competitors.

After a disciplinary action, attorney's fees, procedural costs and investigative costs are the responsibility of the losing party. If the defendant loses their case, they are liable for the cost of their prosecution. They are charged for the attorney representing the board and for the labor costs from the board trying to revoke the defendant's license.

I asked for an example of a judicial proceeding where the defendant is charged for their own prosecution; it does not happen. These issues raise more questions. The public should be aware of this. It is un-American.

Our second concern was regarding the use of a third party to interpret statute. There are no independent third parties who can answer questions about law and statute. In the case with my client, we had a dispute about a statute. This was addressed in section 2 of the proposed amendment; however, I have withdrawn section 2 of the proposed amendment. I was unaware that section 2 is covered when a party appeals in judicial review. It is complicated.

Unless the defendant is willing to go into a lengthy and expensive process of filing for judicial review, there is no way for the defendant to get answers about interpreting statute. I wanted to bring this problem to the attention of the Committee.

Our third issue was regarding the lack of itemization on legal bills received after a disciplinary decision. My client is a family-owned business who felt they were right in their interpretation of the statute. They received a bill for \$74,000. My client agreed to pay the bill but asked for a detailed breakdown. Our request was denied. My client was required to file a case in District Court in order to determine if the charges were reasonable.

Our intent is to release the defendant from the cost of prosecution and to provide to the losing party an itemized legal bill to determine its reasonableness. We ask the Committee to consider section 1 of the proposed amendment. Section 2 is withdrawn.

SENATOR SETTELMAYER:

The intent of the bill is good. Legal fees should be paid after a decision is made. The losing party is supposed to pay the attorney's fees but instead they appeal the decision. The appeals process continues while the bills accrue. The loser should pay the legal bill before they appeal the decision.

MR. HARDY:
I agree.

SENATOR BROOKS:

Are you proceeding with section 1 in your proposed amendment? You said you withdrew section 2. Is that correct?

MR. HARDY:
That is correct.

MARY LAU:

I support S.B. 323. I have served on several boards and commissions. I agree with the intent of the bill and with Mr. Hardy. I have seen situations where people take issues to judicial review and the board refuses to honor the decision.

SUSAN FISHER (State Board of Professional Engineers and Land Surveyors; State Board of Osteopathic Medicine; Board of Oriental Medicine):
We oppose S.B. 323. We will support the bill with the removal of section 2 of the proposed amendment as presented by Mr. Hardy.

SENATOR SETTELMAYER:

Once a legal bill is determined to be reasonable, it should be paid by the losing party. After that time, the decision can be appealed. I worry that legal battles continue back and forth until one party runs out of money. Can you express my concern to your boards?

MS. FISHER:

I will share your concern with my clients.

DEONNE CONTINE (Director, Department of Administration):

We are neutral toward S.B. 323. We spent time educating Mr. Hardy about the Hearings Division and the limitations that result with an additional workload. With section 2 of the proposed amendment removed, we do not have concerns at this time.

SANDY ANDERSON (Executive Director, Board of Massage Therapy):

We are neutral toward S.B. 323. We prepared a fiscal note for this bill in regard to section 2 of the proposed amendment. We can supply the Committee with the fiscal note if needed. We were advised by our counsel that we must provide a complete itemized bill for any case that comes before us where we charge a licensee for legal costs and investigative costs.

MARGRET GREIN (Executive Officer, State Contractors' Board):

We are neutral toward S.B. 323. I will read a prepared statement ([Exhibit D](#)). With section 2 of the proposed amendment removed, we are neutral toward the bill. I agree with Senator Settelmeyer in regard to paying legal fees when discipline is imposed.

TIM GESWEIN (State Contractors' Board):

We are neutral toward S.B. 323. It is the standard for the SCB to itemize billing for investigative fees and costs for each disciplinary complaint. The licensee subjected to discipline can challenge the fees and costs through cross-examination. If the hearing officer finds for a violation at the conclusion of a hearing, the administrative fees and costs can be assessed against the licensee.

Should the licensee pursue judicial review, the licensee may seek a stay of the penalties and remedies associated with the disciplinary action in District Court. That is the process to challenge the administrative fees and costs.

MR. HARDY:

This bill is not about the concern brought up by Senator Settelmeyer. Our issues are not about paying the fines. Our issues are with paying for our prosecution and the lack of itemized legal bills after a decision is made.

SENATOR SETTELMEYER:

I want to clarify that I am not asking the defendant to pay fines. I am asking the defendant to pay legal fees before seeking an appeal.

MR. HARDY:

I understand. I will agree to add a new proposed amendment to address your concern.

BRYAN FERNLEY (Committee Counsel):

I can provide context as to why itemized bills are kept by the boards. There is nothing in statute that explicitly requires this, but the statute does state that attorney's fees have to be reasonable.

Courts examine whether attorney's fees are reasonable and require the party seeking attorney's fees to produce detailed records. Boards keep detailed records as a precaution, so they can produce that evidence in court when they are challenged as to the reasonableness of their attorney's fees.

MR. HARDY:

I bring this issue up because my clients had to file in District Court to obtain the records. We did not know what was in the bill. It was our only remedy under the law to determine whether the bill was reasonable. At the end of the process, we agreed most of it was.

JENNIFER KANDT (Executive Director, Nevada Funeral and Cemetery Services Board):

Mr. Hardy is discussing a case that was before the Nevada Funeral and Cemetery Services Board (NFCSB). The detailed billing was prepared and provided by the Office of the Attorney General (OAG). The OAG represented the NFCSB in this case. The total cost was approximately \$74,000. The OAG provided a detailed printout from ProLaw software.

What the OAG did not provide was the narrative. I was told at the time that the OAG considered the narrative to be attorney-client privileged information. The

case involved an employee of the OAG. I explained to the OAG that I was the client and I felt I held the privilege. I had no problem releasing the narrative. I am supportive of Mr. Hardy's intent. I want to clarify for the Committee why this came about.

MR. HARDY:

That is correct. The bill came from the OAG, not the NFCSB. I do not know how a defendant can determine the reasonableness of a legal bill when he or she does not have access to the narrative.

CHAIR SPEARMAN:

We will close the hearing on S.B. 323. We will open the hearing on S.B. 407.

SENATE BILL 407: Revises provisions relating to professional engineers and professional land surveyors. (BDR 54-609)

SENATOR CHRIS BROOKS (Senatorial District No. 3):

I am presenting S.B. 407. The intent of this bill is to address obsolete legal provisions relating to professional land surveyors. If you run a professional land surveying company in Nevada, law mandates a licensed surveyor engineer be present at each site where you are conducting an assignment.

This means if you are based in Las Vegas but contract with a firm in Reno, you or an employee will have to fly to that location in order to be in compliance with statute. We live in a world where business can be conducted over the phone, through e-mail and videoconferencing. The aforementioned requirement is outdated. This bill allows applicable companies to have one or more licensed professionals operating out of any location in Nevada.

The *Nevada Revised Statutes* (NRS) requires interns for land surveying and engineering professions to complete a four-year surveying engineer curriculum or to be near completion and have several years of work experience in the field. This bill eliminates the work experience requirement. An internship is the best way to facilitate this valuable engagement. The engineering curriculum is sufficient to establish the building blocks one needs when starting off his or her career.

This legislation further clarifies the ability of the State Board of Professional Engineers and Land Surveyors (BPELS) to issue cease and desist letters to

people who falsely claim qualifications to perform surveying engineering services and ensures investigated violations remain as privileged information.

Senate Bill 407 intends to bring regulations on land surveying and engineering into the twenty-first century. We have a chance to make it easier for regulators and professionals to do their jobs. The changes in the bill will advance these objectives. We submitted a proposed amendment ([Exhibit E](#)) to the Committee.

MS. FISHER:

The BPELS has spent a lot of time over the last year reading our statute to look for ways to update and streamline it. The intent is to improve efficiency for potential licensees. Offering licensure without requiring a brick and mortar location is a positive change for the State. In addition, the bill eliminates the protection on the title of "engineer." The title "engineer" is too strict.

CHAIR SPEARMAN:

With no testimony and no questions by the Committee, we will close the hearing on S.B. 407. We will open the hearing on S.B. 361.

SENATE BILL 361: Provides for the prescribing, ordering and dispensing of contraceptive supplies by pharmacists. (BDR 54-921)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I am presenting S.B. 361. This bill intends to expand access for contraceptive supplies by authorizing a pharmacist to prescribe, order and dispense contraceptive supplies.

Senator Ratti brought forward S.B. No. 233 of the 79th Session which advocated for women's health and access to birth control by requiring insurance companies to cover the cost of birth control and by allowing a 12-month supply to be dispensed.

While S.B. No. 233 of the 79th Session made great progress in making birth control more affordable and accessible, there is still work to be done to ensure women can easily access contraceptives. To receive a prescription for contraceptives, a woman has to make an appointment with her doctor or with a women's health clinic. Getting an appointment scheduled can take months. This bill does not change which contraceptives are covered by insurance. This bill expands who may prescribe contraceptives by including pharmacists.

Sections 2 and 3 permits pharmacists to prescribe contraceptives that are self-administered and approved by the U.S. Food and Drug Administration. Section 4 authorizes pharmacists to prescribe contraceptives with no previous prescription. For a pharmacist to prescribe, they must complete an accredited program related to contraceptive supplies and they must provide a self-screening risk assessment tool to patients before writing the prescription.

Under this bill, a woman will not be required to make an appointment with a pharmacist to receive a prescription for contraception. This will make birth control accessible to many Nevada women. Sections 11 through 18 ensure insurance plans continue to cover these prescriptions.

Nevada is not the first state to propose this type of legislation. As of January 2019, there are 12 states that have passed similar legislation authorizing a pharmacist to prescribe contraception including California, Hawaii, Idaho, New Mexico, Oregon, Utah and Washington.

Expanding access to birth control is important to the health and wellbeing of Nevada women. The Legislature should be proactive in looking for ways to break down barriers to access. Eliminating steps in the process to obtain prescriptions to the most commonly used drugs in our Country is common sense.

SENATOR HARDY:

Where does the bill state self-administered contraceptives?

SENATOR CANNIZZARO:

The language is in section 2. This legislation is not intended to apply to any contraceptive that is not self-administered.

SENATOR SETTELMAYER:

Will the confidentiality of minors be protected?

SENATOR CANNIZZARO:

Yes. My understanding is that under the law, minors can go to a physician to obtain birth control. Nothing in this bill would change that provision. The intent of the bill is to provide access to those who seek birth control.

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SENATOR SETTELMAYER:

Do the rules that apply to doctors also apply to pharmacists?

SENATOR CANNIZZARO:

Yes, that is correct. That is the intention of the bill.

CHAIR SPEARMAN:

Will the Health Insurance Portability and Accountability Act (HIPAA) laws cover privacy protections for minors?

SENATOR CANNIZZARO:

Correct, HIPAA laws cover privacy protections of minors.

SENATOR HARDY:

Section 4 states "a pharmacist may prescribe or order." Does this mean that a pharmacist can deny birth control when they feel it is inappropriate?

SENATOR CANNIZZARO:

Yes, this bill allows a pharmacist to deny writing a prescription for birth control. It is permissive in its language.

SENATOR HARDY:

Doctors do not perform pelvic exams before prescribing birth control anymore. This bill will make it easier for people to obtain help.

LIZ MACMENAMIN (Retail Association of Nevada):

We support S.B. 361. We agree with requiring reimbursements to the pharmacists from insurance companies.

SANDRA MILLER (NARAL Pro-Choice Nevada):

We support S.B. 361. I recently made an appointment with my obstetrician. There was a five-month wait before I could be seen.

JOSEPH CASEY (NARAL Pro-Choice Nevada):

We support S.B. 361.

NICOLE CORTEZ (Planned Parenthood):

We support S.B. 361.

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SARA HANAFI (Planned Parenthood):
We support S.B. 361.

SAMANTHA ZOLLER (Planned Parenthood):
We support S.B. 361.

KEYANA BUNTING (Planned Parenthood):
We support S.B. 361.

ELISA CAFFERATA (Planned Parenthood Votes Nevada):
We support S.B. 361. For the record, we wanted to verify that the Public Employees' Benefits Program was included in the list of insurance companies required to follow the provisions of the bill.

CHAIR SPEARMAN:
We will close the hearing on S.B. 361. We will begin the work session on S.B. 98.

SENATE BILL 98: Revises provisions governing the practice of homeopathic medicine. (BDR 54-519)

CESAR MELGAREJO (Committee Policy Analyst):
I have the work session document ([Exhibit F](#)) which explains S.B. 98.

CHAIR SPEARMAN:
We will take a vote on S.B. 98.

SENATOR BROOKS MOVED TO DO PASS S.B. 98.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:
We will close the work session on S.B. 98. We will open the work session on S.B. 385.

SENATE BILL 385: Revises provisions relating to insurance for personal property at storage facilities. (BDR 57-538)

MR. MELGAREJO:

I have the work session documents ([Exhibit G](#)) which explains S.B. 385 and the 19 proposed amendments.

SENATOR SEEVERS GANSERT:

What does section 17 in the proposed amendment mean in regard to funds held in a trust?

NICK STOSIC (Division of Insurance):

The language in the bill is similar to other limited line licenses that are handled by the Division of Insurance. Our sponsors worked closely with our licensing section. Unlike a typical agency where you have to have a separate trust account, limited line licenses do not require that. This is a common requirement within statute for policies on portable hand held electronics, car rentals or travel agencies.

CHAIR SPEARMAN:

We will take a vote on S.B. 385.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS S.B. 385 AS AMENDED.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

We will close the work session on S.B. 385. We will begin the work session on S.B. 161.

SENATE BILL 161: Provides for the establishment of the Regulatory Experimentation Program for Product Innovation. (BDR 52-875)

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MR. MELGAREJO:

I have the work session documents ([Exhibit H](#)) which explains S.B. 161 and the five proposed amendments.

SENATOR BROOKS:

I saw that NRS 604B was amended out of statute. Did you intend to amend NRS 604A out of statute as well?

SENATOR BEN KIECKHEFER (Senatorial District No. 16):

There is a conceptual amendment ([Exhibit I](#)) that was submitted to the Committee that removes NRS 604A.

MR. MELGAREJO:

I want to clarify for the Committee, the conceptual amendment submitted by Senator Kieckhefer is the fourth amendment of the work session document.

CHAIR SPEARMAN:

We will take a vote on S.B. 161.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 161 AS AMENDED.

SENATOR SEEVERS GANSERT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

We will close the hearing on S.B. 161. We will begin the work session on S.B. 470.

SENATE BILL 470: Revises provisions relating to certain professions. (BDR 54-785)

MR. MELGAREJO:

I have the work session document ([Exhibit J](#)) which explains S.B. 470 and the two proposed amendments.

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CHAIR SPEARMAN:

There is a line added by the Department of Health and Human Services (DHHS) where DHHS must approve curriculum and training. We will take a vote on S.B. 470.

SENATOR BROOKS MOVED TO AMEND AND DO PASS S.B. 470 AS AMENDED.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

We will close the work session on S.B. 470. With no public comment, the meeting is adjourned at 2:22 p.m.

RESPECTFULLY SUBMITTED:

Jennifer Richardson,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	8		Attendance Roster
S.B. 323	C	1	Warren B. Hardy II / LaPaloma Funeral Services	Proposed Amendment
S.B. 323	D	5	Margret Grein / State Contractors Board	Written Testimony
S.B. 407	E	1	Senator Chris Brooks	Proposed Amendment
S.B. 98	F	1	Cesar Melgarejo	Work Session Document
S.B. 385	G	14	Cesar Melgarejo	Work Session Documents
S.B. 161	H	6	Cesar Melgarejo	Work Session Documents
S.B. 161	I	1	Senator Ben Kieckhefer	Conceptual Amendment
S.B. 470	J	1	Cesar Melgarejo	Work Session Document