

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

**Eighty-first Session
March 3, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:00 a.m. on Wednesday, March 3, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Dina Neal, Vice Chair
Senator Melanie Scheible
Senator Roberta Lange
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Senator Chris Brooks, Senatorial District No. 3

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Jessica Ferrato, United Food and Commercial Workers Union
Victoria Carreon, Administrator, Division of Industrial Relations, Department of
Business and Industry
Matthew Walker, Nevada Dispensary Association
Amber Baur, Executive Director, United Food and Commercial Workers Western
States Council
Jim Sullivan, Culinary Workers Union, Local 226
Rusty McAllister, Nevada State AFL-CIO

Senate Committee on Commerce and Labor
March 3, 2021
Page 2

CHAIR SPEARMAN:

I will open the hearing on Senate Bill (S.B.) 122.

SENATE BILL 122: Requires certain health and safety training for employees of cannabis establishments. (BDR 53-663)

SENATOR CHRIS BROOKS (Senatorial District No. 3):

This bill will require all cannabis businesses to have employees complete a 10-hour Occupational Safety and Health Administration (OSHA) course, known as OSHA 10, and supervisors complete a 30-hour OSHA course, known as OSHA 30, within 1 year of employment to ensure that employees and supervisors are familiar with common job-related safety and health standards. In Nevada, the cannabis industry includes retail workers who handle cannabis products, workers who work in and around heavy machinery manufacturing and cultivating cannabis products, and workers in testing laboratories who are exposed to cannabis by-products and chemicals. This bill will bring worker protections for those workers up to date with other industries in Nevada. That is why I have introduced S.B. 122.

JESSICA FERRATO (United Food and Commercial Workers Union):

The goal of S.B. 122 is to familiarize employees and supervisors with common job-related safety and health standards. Hazards within the industry include: exposure to heat, pesticides, carbon dioxide and carbon monoxide; field sanitation issues; the use of equipment that rotates, cuts and pinches; and exposure to flammable chemicals. Providing this training will increase workforce safety for the industry as a whole.

Existing law requires employees who work on construction sites, certain sites related to the entertainment industry and certain sites where exhibitions, conventions or trade shows occur to complete OSHA 10 and OSHA 30 training. This bill enacts similar requirements for employees of cannabis establishments.

I will walk you through the bill.

Sections 2 through 7 provide necessary definitions.

Section 8 allows the Division of Industrial Relations (DIR) to adopt any necessary regulations.

Senate Committee on Commerce and Labor
March 3, 2021
Page 3

Section 9 of S.B. 122 requires the DIR to approve OSHA 10 and OSHA 30 courses.

Section 10 requires OSHA trainers to display their approved card at the location of the training.

Section 11 requires non-supervisory employees of cannabis establishments to complete the OSHA 10 class and supervisory employees of cannabis establishments to complete the OSHA 30 class within one year after being hired. Section 11 also specifies that the cost of the training will be paid by the employer.

Section 12 states that employees who do not complete the class within one year shall be suspended or terminated by the employer.

Section 13 requires the DIR to report any violation of section 12 to the Executive Director of the Cannabis Compliance Board (CCB).

Section 15 requires the CCB to suspend the license of a cannabis establishment that violates the provisions of section 12.

This bill will provide a standard of safety to the cannabis industry and bring worker safety up to date with other industries in Nevada.

SENATOR HARDY:

What workers' compensation (WC) injuries have we had in this industry to date? What specific problems are we looking to prevent with the OSHA 10 and OSHA 30 training?

SENATOR BROOKS:

I do not have information on what claims have been made to date in this industry.

MS. FERRATO:

I can provide some anecdotal evidence from workers regarding the hazards they are exposed to. The OSHA classes cover a variety of hazards and basic workplace safety issues like fire prevention, exposure to chemicals, floor safety hazards and more. Workers in retail, cultivation and manufacturing are exposed

to such situations on a day-to-day basis. I can find information for you on those types of claims.

SENATOR HARDY:

You mentioned carbon dioxide exposure. Is that covered by OSHA 10 or OSHA 30? I am not sure what chemicals are used in this industry. I also do not know how big the industry is. Are we talking about four people who have made WC claims in the entire industry? How big a problem has it been in the last year or two years? What problems are we seeing in the industry? I am coming at this from a medical standpoint.

MS. FERRATO:

The carbon dioxide exposure comes from air enrichment procedures used in cultivation, using dry ice or tanks of compressed carbon dioxide to accelerate plant growth.

This is a relatively new industry that includes exposure to pesticides and other substances. This bill would provide a foundation for workers and supervisors in the State to meet a baseline safety requirement. This is common in parallel industries; we see it in construction, entertainment, stage workers and others.

Regarding which course to take, OSHA 10 is for employees and OSHA 30 is for supervisors. I can provide a list of the hazards retail workers face, which includes exposure to blood-borne pathogens and Covid-19. As you can imagine, a lot of people come in and out of retail establishments, and workers need to know how to properly protect themselves and their customers. There are also issues like basic electrical safety, material handling, fire safety, security issues and so on. These are the sort of base-level issues that would be covered in an OSHA 10 course, which would provide a baseline education to industry members.

SENATOR HARDY:

If I go to other retail settings, like Macy's or a 7-Eleven store, do those people have to have OSHA 10 training as well?

MS. FERRATO:

I cannot speak to those industries and the requirements they have in place, but I can provide you with a list of the hazards retail employees in the cannabis industry are exposed to.

You should also know that the cannabis industry is vertically integrated, so employees move between retail, manufacturing and cultivation within one company. This increases workers' exposure to chemicals and other processing products, as well as basic workplace safety matters.

SENATOR PICKARD:

My understanding of S.B. 122 is it intends to institute these training requirements across all segments of the industry, from manufacturing to distribution to the dispensaries. I went through the construction version of OSHA 10, which covers hazards specific to construction work. As I understand it, this bill requires only the general OSHA 10 class, which will not cover many of the risks just described. Will exposures and risks specific to the cannabis industry be added to this class at some point? How do we reconcile that?

MS. FERRATO:

It is the intention of the bill to require the general OSHA training courses, not courses specific to the cannabis industry. This action is a first step to provide the cannabis industry with a basic foundation in safety awareness. With regard to retail establishments, a lot of the items covered in OSHA 10 are basic workplace safety matters that these workers need.

It is not the intention to provide something specific to the cannabis industry. We will depend on employers and industry supervisors to make sure their employees are properly trained about the risks and hazards specific to this industry. The intention of S.B. 122 is to provide general OSHA training to provide some level of protection for workers and some level of standard across the industry.

VICTORIA CARREON (Administrator, Division of Industrial Relations, Department of Business and Industry):

The OSHA 10 training is general and not specific to the cannabis industry. The cannabis industry would continue to be responsible for providing specific training on the specific hazards that employees will experience, as well as providing any training and personal protective equipment (PPE) that may be necessary.

SENATOR PICKARD:

It has been a couple of years since I went through the OSHA training. My understanding of the requirements is that the OSHA training requires specific content that we are not allowed to change. We can mention other exposures,

other issues, but the curriculum is set, and the tests only cover what is in that curriculum. Is that correct?

Ms. CARREON:

Yes. The mandatory topics for the OSHA 10 class are an introduction to OSHA, walking and working surfaces, fall protection, exit routes, emergency action plans, electrical issues, PPE and hazard communication. Those topics take up eight of the ten hours of the class, and the remaining two hours are for electives like hazardous materials, materials handling, introduction to industrial hygiene, blood-borne pathogens, ergonomics, fall protection and other matters. The OSHA 30 training is similar and includes a lot of managerial issues as well.

SENATOR PICKARD:

Do you know if the CCB is considering regulations regarding industry-specific training or required protections?

Ms. FERRATO:

There is nothing in S.B. 122 that would require anything of that sort of the CCB.

SENATOR PICKARD:

I thought there was a requirement for the CCB to adopt regulations.

Ms. FERRATO:

The bill does allow OSHA to create regulations as needed to comply with the bill. That may be what you were thinking of.

SENATOR SETTELMAYER:

This issue came up a long time ago in the construction industry. At that time, most of the individuals affected were employed by the construction industry full time. I know some who work in the cannabis industry, and they are not necessarily full-time employees. Will this apply to everyone, even if they are just working 4 or 5 hours a week, or does it only apply to those working a 40-hour week? How is that determination made?

Ms. FERRATO:

The intention of the bill is to cover all employees of cannabis establishments. We did not differentiate between part-time and full-time workers. I will do some research from a statutory standpoint to see if there is a distinction. From our

perspective, if you are an employee of a cannabis establishment, it would be required.

SENATOR BROOKS:

In the construction industry, all employees get the OSHA 10 training, including part-time employees and those who just deliver materials. We are trying to create parity with industries such as that within the cannabis industry.

SENATOR NEAL:

Do workers in the cannabis industry generally have health insurance? It seems pointless to talk about exposure to hazards if they do not even have health insurance.

MS. FERRATO:

That question is better answered by someone representing the employers; I represent the employees. I can get you some information from our perspective in terms of what we see for workers industry wide.

SENATOR NEAL:

If this bill passes, we are saying there are certain safety standards that will be in place that an employer will be responsible for. How does that relate to the WC realm? How can workers get relief for injuries that have not been established through statutory provision?

SENATOR BROOKS:

This bill does not change the safety standards required in the workplace or the coverage for WC provided in the workplace. This just creates safety education for the workers. We are trying to avoid worker injuries and WC claims in this industry. The bill does not address WC or safety standards in the workplace covered in other statutes.

SENATOR NEAL:

I know this industry is growing up, but I have never seen anything in statute that said, "If you're exposed to carbon dioxide in a cannabis facility, here are the injuries we will cover and you have a viable claim," and I do not know if the individuals who are working in a dispensary know they have that right. Do they just go home sick, lie down for 12 hours and then say, "I think I'm good"? I know this is a tangent.

SENATOR BROOKS:

Your questions about health insurance, safety education and workplace hazards apply to many industries in Nevada. This is why we are trying to figure this out for an emerging industry that employs workers who may not have a lot of experience in other industrial operations. This is a first step in educating the workforce on how to have a safe work environment. It also creates a culture of safety within the organization. Once you introduce OSHA 10 and OSHA 30 into an organization, it empowers the workforce to start thinking about safety in a whole different way. That is why I think it is such an important step.

CHAIR SPEARMAN:

Do we have someone participating today representing the employers who can answer Senator Neal's question about health insurance?

MATTHEW WALKER (Nevada Dispensary Association):

We will send the Committee a more comprehensive overview of the salary and benefits that are typical for the cannabis industry in Nevada. We comply with all WC requirements. The Nevada Dispensary Association (NDA) offers a health insurance plan to its members through Coreprime, an employee benefits advisory firm used by many businesses.

SENATOR HARDY:

What is the cost to employers of providing these OSHA classes and creating individual regulations?

MR. WALKER:

We would appreciate clarity on what OSHA training requirements will be required by this bill. As the proponents of the bill explained, this would be a general industry requirement, but there are still opportunities for regulations to be adopted by either the CCB or OSHA. If the consequence of noncompliance is the immediate termination of employees, we owe it to our more than 6,000 employees to have a real understanding of what is going to be required. Certainly, general OSHA training is readily available, but as this may be customized through regulations, we are concerned about the timelines and availability associated with this training.

SENATOR HARDY:

How much does the OSHA training cost?

Senate Committee on Commerce and Labor
March 3, 2021
Page 9

SENATOR BROOKS:

The 10-hour class costs \$80 per person, and the 30-hour class costs \$180 per person.

SENATOR PICKARD:

What do the dispensaries currently do to train their employees? I believe the NDA is requesting that dispensary workers be exempted from the OSHA training. Why is this?

MR. WALKER:

We think it is appropriate for dispensary employees whose Cannabis Agent Card only allows them to work in dispensaries to be exempted from this requirement. In California, employees may move from facility to facility; in Nevada, we have a secure system in which employees' Cannabis Agent Cards specify the job location. While it may be appropriate for a production facility employee to receive OSHA training, we feel it is not appropriate for an employee who works only in a retail setting to be mandated to receive that training.

SENATOR PICKARD:

It is my understanding that some sort of training is already being given to the dispensary workers. Is there any overlap between that training and the OSHA 10 training? I would like to get some clarity on that.

MR. WALKER:

When we require workforce training, we want to make sure that it is directly applicable to employees' jobs and the most efficient use of their time. Many employers are already doing training either because it reduces insurance rates or because it is the right thing to do for their employees. The CCB has been at the forefront of making sure it is a standard part of applications and applicant behavior going forward.

We strongly feel this training could be dialed in to better account for the retail environment.

SENATOR NEAL:

Have we worked out the difficulties the industry was having with the transfer of money? In 2019, we tried to create a system with debit cards. How would that work in paying OSHA for training? Would it be an intergovernmental transfer of funds?

MS. FERRATO:

That is another question best answered by industry representatives.

With regard to training, the intention here is for workers to get the training on-site. Many employer groups do provide this training for their workers. There are also opportunities to get this training through or at OSHA for free. The bill requires the industry to pay any fees for the training.

MR. WALKER:

While we still struggle with access to banking under the current federal regulatory structure, all the businesses in this industry have figured out a way to pay vendors, though it does come at an additional cost that other industries do not incur. Whether training is provided by an internal staff member who has been trained to give the course or an external trainer, cannabis industries will be able to make this happen.

This is a good opportunity for me to mention that CCB regulations already requires safety training. Businesses are already figuring out a way to navigate that and have a process in place.

SENATOR LANGE:

Section 11 of S.B. 122 talks about employers paying for the employees to get this training. Once the current employees are all trained, could we make it a condition of employment that incoming workers have an OSHA card? Then the employer would not have to pay for it anymore.

MS. FERRATO:

It should be noted that OSHA cards do not expire. Once workers pass the OSHA test, they receive that card indefinitely.

SENATOR LANGE:

I am talking about when a new employee is hired. Could the employer make it a condition of employment that the new employee already has an OSHA card? That would mean the employer would not have to pay for training once the existing workforce is trained. Do you see?

MS. FERRATO:

I understand now. The line of questioning is an appropriate one. From our perspective, the intention was that employers should be responsible for making

sure worksites are safe, and the cost should be borne by them. There is nothing in the bill that would address that type of provision, an employment practice that would require employees to get their own training. The intention of the bill is to have the employers see that training is provided.

SENATOR LANGE:

This is something we should look at.

CHAIR SPEARMAN:

Can you tell me whether the industry is part of the movement trying to deconstruct systemic racism? As a start, what are the demographics for employees in this industry? Black, Indigenous and People of Color (BIPOC) communities are certainly underserved in terms of health care, as we have seen in the wake of the Covid-19 pandemic. What is the likelihood that the jobs with the greatest hazards are disproportionately being done by employees who are members of these BIPOC communities? Also, how would that work with WC?

MR. WALKER:

I am not a public health or WC attorney, but I can give you some information. Because of your efforts and those of Senator Dallas Harris in a previous session, we have a much better idea of the makeup of the employee pool. About half of the employees at cannabis establishments who responded to the CCB's survey are persons of color or non-white individuals. It is a diverse pool that represents Nevada's diverse makeup, and we are proud of that.

In terms of the impact on BIPOC communities for Covid-19, I recognize that there are conversations across many industries and systems to address those inequities. Again, I will have to defer to the experts and follow up with more comprehensive information on this question.

CHAIR SPEARMAN:

I was not speaking specifically about Covid-19. I know most of the owners of cannabis establishments are white, and most of the employees are not. That ties into the question of WC issues. We need to consider how best to protect workers exposed to hazards every day while the owners are only exposed to them periodically, and then consider how that would play out in terms of WC.

Another issue to consider has to do with presumptive eligibility. A couple of years ago, the Legislature passed measures to make sure firefighters and other

first responders had an opportunity to get WC after their employment ended if their health-related issues were caused by exposures that occurred on the job. Suppose someone works at a dispensary and then leaves. A year and a half later, the person develops some type of respiratory issue, and the doctor says, "This is probably connected to exposure at your former job." Have you looked for a way to make sure that if there are health complications related to their employment after employees leave, they can still be taken care of and properly compensated?

MR. WALKER:

I am not aware of any presumptive eligibility conversations specific to the cannabis industry. I would be happy to survey some of the experts associated with our membership and respond to that.

With regard to supervisor employees who do not have day-to-day exposures in the workplace, there are huge inherent differences between the dispensary retail facilities and the cultivation or production facilities. This highlights our response to this measure. We strongly feel S.B. 122 should be customized to better reflect the realities on the ground.

AMBER BAUR (Executive Director, United Food and Commercial Workers Western States Council):

I am testifying on behalf of the cannabis workers we represent in support of S.B. 122. I have submitted a letter of support from Michael Gittings, President of the United Food and Commercial Workers Union (UFCW) Local 711 ([Exhibit B](#)).

Regulating the cannabis industry is unique. Never before in the history of Nevada has an industry skilled at operating outside of the law become legal and been expected to comply with all laws, including critical workplace health and safety laws, that prevent my members and your constituents from falling ill, being injured or dying. It is critical that we ensure workers and supervisors have the training necessary to ensure preventable injuries do not occur in the workplace and keep workers and consumers safe.

JIM SULLIVAN (Culinary Workers Union, Local 226):

We support S.B. 122 because all workers deserve to work in a safe and healthy environment, and proper training is the key to making this happen. Our health and safety training program has reduced injuries and saved lives in the

hospitality industry, and we believe it will have the same positive effect in the cannabis industry. In addition, the Covid-19 pandemic has shown that health and safety training is more important than ever for all workers. We fully support this bill and urge you to vote yes.

RUSTY McALLISTER (Nevada State AFL-CIO):

We are in support of S.B. 122. We believe it is a good policy to improve worker safety. This industry has a lot of safety hazards and risks, especially in the production and growth areas. A good training program could help reduce those incidents in which people are hurt. To give you an idea of the kinds of hazards in this industry, the process of extracting hash oil requires pouring butane over cannabis. Butane is highly flammable and even explosive. There have been a number of incidents across the U.S. where they have had issues with this process. A good safety program is not a bad idea.

During the last Legislative Session, A.B. No. 290 of the 80th Legislative Session was passed to create a registry of trainers and those who have had the OSHA class in the construction industry. One of the things discovered was if there is no registry of trainers and cards, people can go down to the swap meet and buy an OSHA 10 card. That bill was created to address that issue so they had a better tracking of the cards in the industry to make sure they were not getting false cards. That might be something to add to S.B. 122.

MR. WALKER:

As stated before, the NDA is opposed to S.B. 122. To highlight the key differences between the California model and the Nevada model, California as a state has the federal OSHA plan, and Nevada has a state-administered OSHA plan. We also have a much tighter regulatory structure with Cannabis Agent Cards that are specific to license type and location.

Workplace safety is important, and the NDA is always open to discussing proposals that would create a better work environment for the more than 10,000 employees in the cannabis industry in Nevada. However, we feel this policy should be better tailored to Nevada. Cannabis Compliance Regulation 6.072 already has an extensive list of training required for employees before they begin work.

I have submitted a letter in opposition ([Exhibit C](#)) from Layke Martin, Executive Director of the NDA, that includes several suggested amendments to the bill.

Senate Committee on Commerce and Labor
March 3, 2021
Page 14

We are actively working with Senator Brooks and the UFCW on these issues. We are confident that we can reach compromises that will benefit all parties.

CHAIR SPEARMAN:

We have received a letter of opposition ([Exhibit D](#)) from Leighton Koehler of Planet 13 Holdings, Inc. This letter includes suggested amendments. Senator Brooks, have you seen this amendment?

SENATOR BROOKS:

No, I have not. I have been working with Mr. Walker and the NDA, and they have made some common-sense suggestions. I will be submitting an amendment incorporating some of those suggestions for the Committee's review.

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Senate Committee on Commerce and Labor
March 3, 2021
Page 15

CHAIR SPEARMAN:

I will close the hearing on S.B. 122. Is there any public comment? Hearing none,
we are adjourned at 9:10 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 122	B	1	Amber Baur / United Food and Commercial Workers Union Western States Council	Support Letter from Michael Gittings
S.B. 122	C	1	Matt Walker / Nevada Dispensary Association	Opposition Letter from Layke Martin
S.B. 122	D	1	Leighton Koehler / Plant 13 Holdings	Opposition Letter