

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

**Eighty-first Session
April 2, 2021**

The Senate Committee on Commerce and Labor was called to order by Vice Chair Dina Neal at 8:03 a.m. on Friday, April 2, 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 Nicole Cannizzaro, Senatorial District No. 6
Senator Fabian Donate, Senatorial District No. 10
Senator Dallas Harris, Senatorial District No. 11
Senator Ben Kieckhefer, Senatorial District No. 16
Senator Heidi Seevers Gansert, Senatorial District No. 15

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Wil Keane, Counsel
Barbara Williams, Committee Secretary

OTHERS PRESENT:

Molly Halligan, Nevada Association for Behavior Analysis
Brigid Fronapfel, Ph.D., President, Nevada Board of Applied Behavior Analysis
Wade Brown, Ph.D., President, Nevada Association for Behavior Analysis
Gina Green, Ph.D., Association of Professional Behavior Analysts
Steven Cohen

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Ken MacAleese, Ph.D., Advanced Child Behavior Solutions
Jason Mills
Erica Tosh
Dalton Hooks, Nevada Self Insurers Association
Rusty McAllister, Nevada State AFL-CIO
Todd Ingalsbee, Professional Firefighters of Nevada
Robert Balkenbush, General Counsel, Public Agency Compensation Trust
Alexis Motarex, Nevada Associated General Contractors
Paul Klein, Nevada Dental Association
David White, DDS
Richard Dragon, DDS, Nevada Dental Association
Erin Anderson, DDS
Jeff Album, Delta Dental Insurance Company
Bill Gardner, North Las Vegas Firefighters Association
Ryan Whitlock, Truckee Meadows Firefighters Association
Steven Thompson, Clark County Firefighters Association
Richard McCann, Nevada Association of Public Safety Officers
Justin Snow, Pahrump Valley Professional Firefighters
Tom Dunn, Professional Firefighters of Nevada; Reno Firefighters Association
Cory Whitlock, Las Vegas Firefighters Association
Wesley Harper, Nevada League of Cities and Municipalities
Justin Harrison, Clark County
Valerie Haskin, Rural Regional Behavioral Health Policy Board

VICE CHAIR NEAL:

I will open the hearing on Senate Bill (S.B.) 217.

SENATE BILL 217: Revises provisions related to applied behavior analysis.
(BDR 54-533)

SENATOR HEIDI SEEVERS GANSERT (Senatorial District No. 15):

I am offering a conceptual amendment ([Exhibit B](#)) along with the bill. Nevada first funded insurance coverage for autism in 2009. The industry grew while trying to meet the demands of children with autism across the spectrum. Initially, there was no board. The Board of Psychological Examiners was tasked with registering and licensing professionals between 2011 and 2017. I was approached with the idea of creating a specific board to address the lack of providers. At the time, there were only 40 registered behavioral technologists (RBT), the professionals who do much of the work with children.

The new Board of Applied Behavior Analysis was started under the Department of Health and Human Services, Aging and Disability Services Division (ADSD).

After four years, the Board is ready to be on its own. It has established regulations and is confident it can continue doing its job independently. The bill before you moves it out of ADSD to function on its own.

MOLLY HALLIGAN (Nevada Association for Behavior Analysis):

The intent of S.B. 217 is to bring the Governor's Board of Applied Behavior Analysis to function in a fully independent capacity. Over the last few years, ADSD has generously provided the Board with free employees. It has allowed the Board to create regulation and build procedures and policies. The Board has been able to license and register many individuals throughout the State, which has increased access to services for children and young adults with autism and other individuals served by behavioral analysts.

The Board is now able to function independently. We have consulted with our national Behavior Analyst Certification Board (BACB), the Association of Professional Behavior Analysts and other boards within the State. We have the financial means and the readiness to do this.

BRIGHID FRONAPFEL, PH.D. (President, Nevada Board of Applied Behavior Analysis):

We are ready. We have the necessary regulations and organization to function on our own.

SENATOR SEEVERS GANSERT:

I am presenting a memo ([Exhibit C](#)) that summarizes S.B. 217. As I said, in 2017 there were only 40 RBTs. There are now over 1,100. Access to care has been greatly improved as a result of the work of the Board.

Chapter 437 of *Nevada Revised Statutes* (NRS) governs these licensees. Sections 1 through 10 of S.B. 217 make conforming changes to ensure the Board operates and adjudicates contested cases in the same manner as other occupational and professional licensing boards. Sections 12 through 18 include RBTs within the definition of "provider of health care" and subjects licensees to the same requirements as those regulated by other boards. Although the bill is thick, it essentially just removes the ADSD references as they apply to RBTs and behavioral analysis.

In section 27, licensees were added to the list of persons required to report abuse or neglect. Section 31 makes conforming change to definitions for licensees. Much of the bill is conforming language.

Section 44 requires orientation for the new Board members. The amendment, [Exhibit B](#), removes the phrase "an equivalent credential" from the bill in a number of places, because there is no equivalent credential recognized in Nevada. Section 53 changed the Board makeup from four to three voting members who are licensees and added one voting member who is a licensed assistant. The amendment changes that further to allow for either a behavior analyst or an assistant behavior analyst to fill the new position.

The last conceptual amendment change is to section 67, subsection 1, paragraph (g) to clarify that a licensee or registrant is subject to discipline if they violate a regulation of the Board, including, without limitation, the ethical requirements described in section 52, subsection 4.

SENATOR LANGE:

There has been discussion around consolidating some boards in the State. Would that affect this Board?

SENATOR SEEVERS GANSERT:

The Board of Applied Behavior Analysis would not be affected.

SENATOR PICKARD:

Are we giving the Board the authority to do what the ADSD has been doing for them, or are we adding additional responsibilities to the Board that were not required previously?

SENATOR SEEVERS GANSERT:

We are making them independent and treating them like other healthcare licensing boards.

SENATOR PICKARD:

Section 52 seems to be defining licensed behavior analysts, licensed assistant behavior analysts and registered behavioral technicians. I resist the idea that we have to license every employee if it is not necessary. Can you explain the difference between the two licensed positions?

SENATOR SEEVERS GANSERT:

An RBT is a national certification. They are registered with the State and work under behavior analysts or assistant behavior analysts. This is not a change. We wanted to recognize the designation of RBT. The RBTs work on the ground with children, and they were the ones having a hard time getting recognized.

SENATOR PICKARD:

Is the assistant behavior analyst licensed?

SENATOR SEEVERS GANSERT:

Yes, both the behavior analysts and assistant behavior analysts are licensed and fall under the national umbrella of the BACB.

MS. HALLIGAN:

The two licensed positions have been licensed since we began. The assistant behavior analyst is a pass-through certification and licensing process. There are approximately 20 in the State, and the number has remained stable. The individuals in that role are generally on their way to becoming behavior analysts. They have a high level of responsibility, while still being under the supervision of a behavior analyst.

SENATOR PICKARD:

I wanted to be sure we were not adding unnecessary barriers. If the licensure is in compliance with the national standards, I am comfortable.

VICE CHAIR NEAL:

What are the licensing fees?

SENATOR SEEVERS GANSERT:

The Board has been established for some years, with the same fees. The bill makes it independent of ADSD.

DR. FRONAPFEL:

Our fee structure has not changed since we carried over from the Board of Psychological Examiners. Fees are set in *Nevada Administrative Code* and renew biennially, in line with all other regulatory providers. Did you want the exact numbers?

VICE CHAIR NEAL:

I wanted to know if your fees will sustain you as an independent board. You were supported by ADSD.

DR. FRONAPFEL:

Yes, ADSD provided administrative staffing support. We compared our Board with other regulatory boards such as the Board of Occupational Therapy. It is able to be an independent board. Our fee structure is similar, so we are confident we can operate independently as well.

VICE CHAIR NEAL:

What is the purpose of section 50, subsection 11, which appears to exempt employees of a school district from being subject to the provisions of the bill?

SENATOR SEEVERS GANSERT:

The school districts and charter schools have their own providers who do not necessarily have to be licensed through the Board. They meet requirements set up by the individual school board.

VICE CHAIR NEAL:

We have behavior analysts in schools. Was there a conversation about grandfathering them?

SENATOR SEEVERS GANSERT:

The providers employed by the school districts may not be RBTs or certified by the BACB.

MS. HALLIGAN:

We did not want to restrict access to services. The school districts do not require providers to be RBTs.

WADE BROWN, PH.D. (President, Nevada Association for Behavior Analysis):

I am a board certified behavior analyst with doctoral designation and licensed behavior analyst in the State of Nevada, and I support S.B. 217.

The Nevada Association for Behavior Analysis is a professional organization committed to the advancement and advocacy of behavior analysis in Nevada. Our organization creates continuing education opportunities and focuses on several domains of our science, including applied, basic, and theoretical

applications. Our membership base is comprised of behavior analysts across the State. Our board fully supports the testimony Ms. Halligan provided.

The bill calls for the Board of Applied Behavior Analysis to separate from the ADSD and stand as an independent entity in the State. In viewing the events of the last few years and the growth of our profession, this initiative will further allow the Board to adapt to the complex needs of our consumers and create additional opportunity for more streamlined growth. This bill would also free up the resources the Board has used during its incubation period. As our profession and the number of individuals who benefit from behavior analysis continue to grow, this bill will allow for additional consumer protections that are vital to the continued success of our field.

GINA GREEN, PH.D. (Association of Professional Behavior Analysts):

I am a board certified behavior analyst and CEO of the Association of Professional Behavior Analysts, the professional organization for practitioners of applied behavior analysis. The Association publishes the model licensure act for behavior analysts, and for the past ten years we have worked on behavior analyst licensure bills, laws and regulations around the country in collaboration with our State affiliate organizations, including the Nevada Association for Behavior Analysis.

I support S.B. 217. The changes proposed in the bill comprise an important next step in the progression of the Board of Applied Behavior Analysis to a fully functioning independent licensing board on par with the licensing boards of other professions.

If adopted, the bill will enable the Board of Applied Behavior Analysis to protect consumers by ensuring everyone who is licensed to practice applied behavior analysis professionally meets standards established by the profession over the past 23 years. They include requirements for completing degrees, coursework, experiential training in behavior analysis and passing a professional examination in the subject matter. Those standards are incorporated in the requirements for obtaining and maintaining the certifications issued by the independent, nonprofit BACB.

STEVEN COHEN:

I support S.B. 217.

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KEN MACALEESE, PH.D. (Advanced Child Behavior Solutions):

I have submitted my letter of support ([Exhibit D](#)) for S.B. 217. The profession is ready and anticipates this legislation will help us establish a stronger, faster Board that can be responsive to our local consumers, constituents and professionals.

MS. HALLIGAN:

The language in section 58, dealing with background checks was supposed to be cleaned up but was missed. The Board does not conduct background checks.

VICE CHAIR NEAL:

I will close the hearing on S.B. 217 and open the hearing on S.B. 289.

SENATE BILL 289: Revises provisions relating to workers' compensation.
(BDR 53-713)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

I am here as the sponsor of S.B. 289.

JASON MILLS:

I sit on the Nevada Justice Association (NJA) Board of Certification for expertise in the legal specialization of workers' compensation.

The bill contains 11 substantive sections. I am working from the amendment ([Exhibit E](#)) requested by the NJA. This draft was negotiated and deals with concerns from the Nevada Resort Association, Nevada Self Insurers Association and Employers' Insurance Company of Nevada (EICN). The Nevada Resort Association and EICN support the amended version of S.B. 289.

Section 1 deals with the concept of apportionment in workers' compensation. Prior injuries are typically subtracted from an award. If you had a prior shoulder injury with an award, your award for a new injury on the job should be reduced. The language drafted in the apportionment part of the bill conforms to this concept and clarifies exactly how apportionment should take place. This aligns Nevada law with most other states and removes confusion.

Sections 2, 4, 6 and 10 deal with a concept of electronic facsimile transmission of determinations. When insurers issue a determination, the claimant has only 70 days to appeal. These sections modernize the delivery to claimants and allow

for proof of transmission for the determination. The workers' compensation system does not have an electronic filing system yet.

Section 3 of S.B. 289 is cleanup language that provides that such compensation may be subject to an attorney's lien. Section 5 provides for the claimant's recovery of certain costs such as expert witness, deposition and filing fee costs. Employers and insurers are able to recover these costs, claimants are not.

Section 7 requires an insurer to commence making installment payments to an injured employee. Approximately 80 percent of the insurers already do this. When there is no disagreement between parties on the award, the insurer typically sends out installment payments. However, about 20 percent of insurers do not interpret the statutes to require this. Section 7 clarifies that undisputed portions should be paid out.

ERICA TOSH:

I am a practicing attorney specializing in the field of workers' compensation law.

Section 8 of S.B. 289 deals with closure of workers' compensation claim and appeal rights. It is designed to allow for resolution of issues that are not being contested while allowing claimants to continue to pursue those issues that are contested. In Nevada claimants are awarded permanent partial disability (PPD) at the end of a case. This award can be offered as installment payments or lump sum. When an individual accepts a lump sum award, this resolves all issues of fact and law and prevents them from pursuing any other issues from that point forward, with a few exceptions. The bill allows any contested matter pending at the time of acceptance of the lump sum to continue to be litigated.

We see a lot of retroactive temporary total disability and travel issues. These are generally smaller. The actual PPD award is usually not contested, but if it is accepted, we are prohibited from pursuing other outstanding matters. This can delay the final resolution of a case.

Section 9 deals with vocational rehabilitation counselors (VRC) and clarifies language consistent with the intent of A.B. No. 128 of the 80th Session. That legislation required insurers to provide a list of three VRC names for a claimant to select from. What has happened is they often provide three names from the same firm. Senate Bill 289 requires the three VRCs be from three separate entities.

Claimants have to file claims promptly. An injured worker has 7 days to report an injury to the employer and 90 days to obtain an Initial Report of Injury (C-4). The C-4 is usually completed at a medical facility. Medical doctors and chiropractors are permitted to complete these documents. Section 11 of S.B. 289 adds physician assistants (PA) and advanced nurse practitioners (ANP) to the list of medical professionals who are permitted to issue the C-4. They are not treating providers but may simply document the injury. Use of PA and ANP is becoming increasingly common in rural areas lacking easy access to doctors. Large corporations often have in-house clinics and keep a PA or ANP on staff to address the immediate concern of a work-related injury.

Section 11 allows for electronic signatures on the C-4. This helps meet the short deadlines we have been discussing.

VICE CHAIR NEAL:

Physician assistants and ANPs typically have a supervising medical doctor. What happens if the medical doctor disagrees with their report?

MS. TOSH:

The PA or ANP would be completing the C-4. They are documenting whether an industrial injury occurred. The C-4 informs the insurance company and any other party involved of the injury. A provider has a three-day window to give notice that they treated someone for a work-related injury. The insurance company has a 30-day window in which it can deny a claim, which would result in litigation. At that point, physicians are generally involved to render opinions.

VICE CHAIR NEAL:

What is the appeal process if there is a lack of medical documentation or confusion regarding previous injuries?

MR. MILLS:

It is often easy to discern a surgery has taken place—scars exist or x-rays reveal hardware. If there is no medical documentation of surgery, as originally drafted, the bill excluded that from being apportionable. The amended version stipulates that, if there is evidence of a surgery, the rating physician would be able to use his or her medical expertise to indicate that the surgery he or she sees would be apportionable.

With regard to proving a prior injury occurred and its impact on a new industrial injury, NRS 616C.175 indicates any pre-existing, non-industrial condition that is aggravated, accelerated or precipitated by an industrial event is compensable.

DALTON HOOKS (Nevada Self Insurers Association):

I am a Board certified specialist in workers' compensation. I represent employers, insurers and others in workers' compensation litigation throughout the State. We support S.B. 289 in its amended form.

RUSTY McALLISTER (Nevada State AFL-CIO):

On behalf of our more than 150,000 members throughout Nevada, we support this legislation.

TODD INGALSBEE (Professional Firefighters of Nevada):

We support S.B. 289. We support any measures that help get our members back to work.

ROBERT BALKENBUSH (General Counsel, Public Agency Compensation Trust):

The Public Agency Compensation Trust is an association of public employers who pool monetary resources to provide workers' compensation coverage.

We oppose S.B. 289 as drafted. Section 3 presents a change in existing policy and presents a conflict in policy. The intent of this amendment to NRS 616C.205 is to make compensation subject to a lien for attorney's fees under NRS 18.015. Previously, compensation under the Nevada Industrial Insurance Act (NIIA) and Nevada Occupational Disease Act (NODA) has not been expressly subject to a lien for attorney's fees. In this regard, the NIIA and NODA represent a policy compromise of common law rights and responsibilities between an employee and an employer, which the Nevada Supreme Court has referenced as a "delicate balance." The change in policy represented by section 3 is to protect lawyers, who are not the reason for the enactment of the NIIA and NODA. Furthermore, on its face, NRS 18.015 expressly applies to suits or actions outside the NIIA and NODA. Therefore, incorporation of NRS 18.015 into NRS 616C.205 also presents a conflict in policy.

I have submitted a memorandum ([Exhibit F](#)) with all our concerns. We want the Committee to consider the conflicts in policy represented by many provisions of S.B. 289.

ALEXIS MOTAREX (Nevada Associated General Contractors):

The Nevada Associated General Contractors is neutral on S.B. 289 as presented with the amendment. We do have some concerns with the addition of the language in section 8, subsection 2, paragraph (d).

When a PPD lump sum award is accepted, the claimant has to drop all legal and factual issues. This means all appeals are done and the claimant can only seek claim reopening, vocational rehabilitation or a benefit penalty. The addition of the language in the amendment would allow a claimant to take the PPD award and still pursue contested matters. The point of offering a PPD award is to resolve all litigation. Removal of the widely used NRS 616C.495(2) would significantly impact employers and the ability to resolve claims.

VICE CHAIR NEAL:

Please address the conflicts referred to by Mr. Balkenbush.

MR. MILLS:

Senate Bill No. 33 of the 80th Session allows for the recovery of child support liens from workers' compensation and personal injury recoveries. That legislation indicated the attorneys working on those cases had a claim to those recoveries. That right has existed in personal injury cases for a long time but not in workers' compensation recoveries. This meant an attorney on a workers' compensation case could not collect a fee if the funds were taken for child support. The language in S.B. 289 conforms to the changes made by S.B. No. 33 of the 80th Session. I disagree with the statement that this presents a conflict.

With regard to the acceptance of a PPD award settling all issues of law in fact, the original draft would strike the signing of the PPD award settling all issues of law in fact. These claims do not close for life. They are able to be reopened throughout a claimant's life. The signing of a PPD does not equate to a release or a compromise.

For example, if an employer awarded a 5 percent claim on a shoulder and the claimant agreed but there were outstanding medical bills hung up in litigation, a claimant could not recover those out-of-pocket expenses if they sign an election of payment. The language in the amendment addresses that issue. It does not undermine the spirit of the law. On page 28 of [Exhibit E](#) it details that the

claimant may not contest the scope of the claim, stable and ratable status or average monthly wage.

VICE CHAIR NEAL:

Mr. Mills, once you have had a chance to review Mr. Balkenbush's written memorandum, I would like you to write up your comments and rebuttals for the Committee.

SENATOR PICKARD:

Absent the language in this bill, workers' compensation awards are not subject to the child support lien. I recognize the Public Agency Compensation Trust would resist this since it puts them on the hook, but this is about making sure children get their support. The point of the Committee to Review Child Support Guidelines, set up by A.B. No. 278 of the 79th Session, was to capture as many different sources of child support from the obligor as possible. Workers' compensation was not expressly used. This is an important addition to increase child support remittances.

VICE CHAIR NEAL:

I will close the hearing on S.B. 289.

CHAIR SPEARMAN:

I will open the hearing on S.B. 269.

SENATE BILL 269: Revises provisions relating to dental insurance.
(BDR 57-817)

SENATOR BEN KIECKHEFER (Senatorial District No. 16):

Senate Bill 269 relates to the recovery of overpayments made from dental insurance plans to doctors and to coverage of benefits after a prior authorization. Language would be inserted into NRS 687B, Contracts of Insurance, and NRS 695D, Plans for Dental Care.

PAUL KLEIN (Nevada Dental Association):

Senate Bill 269 creates sensible policy that protects patients from surprise billings. The bill cleans up insurance claim denials, a process that has likely confused and frustrated many of us at some point.

Sections 4 and 10 require a dental insurer or an administrator who recovers overpayments under a dental insurance plan to provide written notice to a dentist of their attempt to recover an overpayment and establish written procedures by which a dentist may appeal such an attempt. The bill also prohibits an insurer or plan administrator from attempting to recover an overpayment more than 12 months after the date of the original payment.

Sections 5 and 11 prohibit an insurer or plan administrator from denying a claim which was already preauthorized. The remaining sections in the bill are for maintenance in defining the relevant terms and conforming changes to NRS.

In summary, this sensible policy cleans up the insurance claim denial process.

DAVID WHITE, DDS:

In addition to being a practicing dentist, I am the Chairperson of the American Dental Association Council on Government Affairs.

Senate Bill 269 establishes fairness for dental patients. Dental insurers can deny a claim well after the date of the procedure. Sometimes, claims are denied years after the procedure was done. When a dental patient learns he or she owes money for a procedure they had years ago, their reaction is surprise and confusion. Sometimes a dentist may receive denial of claims for patients who have since passed away. As the provider, it falls to the dentist to inform the patient of the balance due.

There is no sensible process for dental practices or patients to challenge the insurance companies demand for overpayment once the denial has been made. There are 24 states with provisions limiting this practice, providing fairness to the patient.

An insurer can deny coverage for procedures it already preapproved, putting the dentist in the position of informing the patient after the procedure that the insurance company changed its mind and denied coverage for the procedure. Patients rely heavily on these predeterminations to prepare for the financial cost. These predeterminations are often requested on expensive procedures, and the patient and dentist are attempting to be fiscally responsible. There are ten states that protect the patient from denied predetermination.

Dentists throughout Nevada have such stories, and that is why legislation that creates a fair claim denial process will protect dental practices and patients from surprise billing.

We specifically experienced the inequities of this process during the Covid-19 pandemic. Patients continued to pay monthly premiums on services they could not access because dental offices were shut down. However, insurers continued to deny claims during the pandemic.

You will hear the argument that these provisions will be costly, yet other states have similar provisions to protect patients. No one understands the repercussions of rising costs better than dentists and medical providers who had their offices shut down for two months and still continue to be gouged for excessive personal protective equipment (PPE) costs. A box of gloves is now five to six times the prepandemic cost. We are told this is just the cost of doing business. This legislation, similar to other states, simply acknowledges that this is the cost of being fair to the patient.

We hope you agree this logical and sensible policy is good for patients.

SENATOR KIECKHEFER:

There is a brief conceptual amendment ([Exhibit G](#)) from Paul Klein. The Nevada Dental Association has had conversations with Delta Dental, one of the largest dental insurers in the State. If there is still work to do, we will be happy to do so.

CHAIR SPEARMAN:

Do I understand that PPE is remaining expensive?

DR. WHITE:

Yes, PPE is still a problem. At the beginning of the pandemic, price increases were blamed on lack of supply. There is no shortage of supply now, but the costs have not returned to prepandemic levels. During the Covid-19 surge, hospitals needed dentists to see as many emergency dental cases as possible, to prevent emergency room visits. We needed PPE to protect ourselves, staff and patients.

We have been trying to negotiate on a national level for PPE pricing fairness. We have also had conflicts with insurers on being able to charge for the PPE. Some

insurers allowed dentists to code and be reimbursed for PPE for a short while. Once insurers stopped reimbursing for PPE, they put the burden back on dentists as the cost of doing business.

SENATOR PICKARD:

Several sections of the bill address overpayments. How do insurers collect on overpayments?

DR. WHITE:

The most common way an insurer collects on a claimed overpayment is by withholding from another claim. There is no discussion or notification. Insurers can also bill dentists for overpayments.

SENATOR PICKARD:

Deducting the amount from another claim would normally be a violation of the federal Fair Debt Collection Practices Act. I suspect because the payments are part of a contractual arrangement between the insurer and the dentist, the insurer can skirt the Act.

Can you provide more detail on the issue of subsequent denials of a preapproved procedure? Does this happen because the preapproval was made for a different procedure than was actually performed?

DR. WHITE:

The issue especially highlights the difference between medical and dental procedures. In medical claims we can get a greater level of commitment from the insurer. If the request for preapproval is coded wrong, the tooth affected is wrong or the procedure is different, the carrier can legitimately deny the claim.

Patients need and want predetermination for expensive procedures. They are willing to wait until they receive assurance the procedure will be covered. The issue is diagnosis. It takes a qualified individual to look at the data received from the provider. Insurers should be taking the time to review the data before making a predetermination, rather than after. Some insurers make the argument that doing so would raise costs, but that argument does not make sense. It takes the same time to review the diagnosis and treatment, whether it is done on the front end or the back end.

SENATOR NEAL:

Section 5, subsection 1, paragraph (c), subparagraph (1) describes a situation in which a previously authorized procedure is no longer medically necessary. Can you explain such a situation?

DR. WHITE:

Some states require a claim reviewer be a licensed dentist in that state. The individual should be qualified to make a "medically necessary" determination. One result can be the insurance reviewer deciding an alternative procedure could be done. Another example is an insurance company not authorizing a fixed bridge to replace a missing tooth, but instead opting for a device the patient has to remove daily.

Hairline fractures in teeth can cause a patient significant pain but may not show in x-rays. Proper documentation and a narrative from the provider is essential in enabling the insurer to make preauthorization determinations.

SENATOR NEAL:

Perhaps the insurers can shed more light on the instances that may qualify as no longer medically necessary.

DR. WHITE:

If the predetermination was made by an individual who is as qualified as the one who reviews the claim after the procedure, this would not be an issue. In that case, the procedure would not be performed unless the patient agreed to pay for it. At the very least, the patient would understand the out-of-pocket cost beforehand.

SENATOR NEAL:

Speaking to section 5, subsection 1, paragraph (g), subparagraph (2), under what scenario could a health carrier not have discovered the eligibility status of the insured through reasonable care?

MR. KLEIN:

We will get back to you with an answer.

SENATOR NEAL:

In section 5, subsection 3, paragraph (a), subparagraph (3), the bill adds "not primarily provided for the convenience of the patient or dentist" to the

explanation of medically necessary. What is this meant to capture? It sounds like an exclusion.

DR. WHITE:

That subparagraph excludes cosmetic procedures like whitening, veneers and implants. Insurance companies generally do not cover these services.

SENATOR SPEARMAN:

What happens to the patients whose claims are denied and find themselves with unexpected bills? If they do not pay, does it go to collections?

DR. WHITE:

It ultimately affects the doctor-patient relationship. Each dentist may have different policies, but it boils down to a case-by-case decision. In some cases, the doctor has a proactive discussion with the patient so the patient can be aware the final bill may be larger than initially discussed. Dental offices can try to collect, work out a payment plan or go to more aggressive collection techniques.

The intent of S.B. 269 is to help avoid these issues. The doctor-patient relationship is damaged when the patient is faced with an unexpected bill. The intent of the bill is to require insurers to deny coverage proactively if necessary, not after the fact.

SENATOR SPEARMAN:

Does this problem exist in Medicaid or Medicare patients?

DR. WHITE:

My knowledge of the federal plans is limited, but I know Medicaid has many provisions requiring preauthorization prior to treatment. A pediatric dentist likely sees many more Medicaid patients.

RICHARD DRAGON, DDS (Nevada Dental Association):

We support S.B. 269. I am a practicing dentist in Gardnerville. The bill supports and ensures fair practices regarding dental insurance claims as understood by the consumer of their product.

The bill addresses retroactive claim denials for procedures performed that exceed a 12-month period. Claims are required to be filed by the consumer or those dental offices who provide this service on behalf of the patient within a

12-month period following treatment. We have examples of retroactive denials that exceed a 12-month period by months and even years. There is considerable frustration when approved predeterminations of treatment are denied after the procedure.

These practices create trust issues and unwarranted suspicion between patients and providers when patients are asked to make up any financial differences they previously understood to be covered by insurance.

Insurance only allowed for a fraction of what was spent on PPE for a short period of time during the pandemic, a time when claim submissions were greatly reduced and full premiums were still collected by insurance. Subsequently, PPE coverage became a non-covered service, meaning the insurer can control the providers' billing all the way down to zero. Who covers these costs? Providers do, who are already accepting reduced fees through contracted services between providers and networks they belong to.

Dentistry is not included in Medicare except in Part C Advantage Programs. Pediatric dentists express frustration with the extensive workload associated with the specificity of treatment plans required for preauthorizations.

ERIN ANDERSON, DDS:

I support S.B. 269. I am a general dentist practicing in Reno. My family's dental practice has served the community for 33 years.

Our office has contracted with many insurance companies. This bill will greatly improve the patient-doctor relationship. Prior to major treatment, our office will request a preauthorization and notify the patient of the cost that will fall to him or her. Treatment is completed based on this preauthorization. You can imagine how disheartening it is after this process to have the insurance company not uphold its authorization.

JEFF ALBUM (Delta Dental Insurance Company):

We are opposed to S.B. 269 unless amended. If the provisions of this bill pass, it will lead to higher premiums for our customers.

Delta Dental does not capriciously deny a claim after approval as part of a treatment estimate. Our approvals and denials are based on the contracts with our dentists and the policies we have sold to our customers. We try to keep premiums down so more people can afford coverage.

Prior authorization is not the same as predetermination. Prior authorization is the highest level of review for a proposed service. It takes between 7 and 15 days to complete. It is an expensive process and drives up cost. We try to not require prior authorization in as many instances as possible.

Reference was made to other states with similar legislation. In most other states, prior authorization is defined differently than predetermination. Predetermination is an informal review to determine a patient's eligibility and coverage. It does not determine medical necessity and is not a complete review of compliance.

There are processes that are not done until a claim is submitted. An in-network dentist agrees to a set of policies that delineate what procedures can be performed on the same day. This protects the patient because there are certain procedures that should not be done at the same time. Another provision is called bundling. Contracts often stipulate that when two procedures are done at the same time, the dentist agrees to charge only for the costlier one and the lesser procedure is considered to be a continuation of the treatment. We do not have a problem with the 12-month limitation on overpayment recovery.

Delta Dental provided over \$500 million to providers to help them pay for PPE. We returned over \$500 million to our customers in the form of discounts, rate holds and policy accommodations. We did not profit on the pandemic, and we act as custodians for our customers. We should not be driving up premiums at a time when we want people to return to the dentist.

SENATOR PICKARD:

The bill prohibits changes after a prior authorization. Is Delta Dental on board with that? Your problem with the bill is the caveats that it puts in place for denials following predeterminations, correct?

MR. ALBUM:

If we have to treat every predetermination the same as prior authorization, dental premiums are going to rise considerably.

SENATOR PICKARD:

As I read the bill, the provisions are for pre-authorization. Predetermination does not seem to be mentioned.

MR. ALBUM:

We would appreciate definitional improvements to the language of the bill.

SENATOR SETTELMAYER:

I am wondering what Mr. Album's reaction is to the language in the proposed amendment regarding overpayments.

MR. ALBUM:

We support this provision. Overpayments may be a result of previously paying the dentist for a service he or she did not provide or payment at a level higher than the contractual amount. The money we try to collect is our customer's money. Overpayments and the recovery of them is rare.

The ability to collect overpayments from future payments to the dentist is specified in the contract and is something they agree to. This is a private business transaction. In return for following the policies in our handbook, the network dentist receives a high volume of patients from us. They agree to our conditions and we agree to send patients to their office. If we bill the dentist and they have to write us a check, that requires time and effort on their part. Deducting prior overpayments from future payments is a convenience to the dentist.

Dentists are provided a notice of the overpayment collection and have the right to appeal it. I agree with S.B. 269 in that regard.

SENATOR KIECKHEFER:

I have no intention of disparaging Delta Dental as a bad actor. I see this bill as an effort to create some of the definitional guardrails we can all agree to. We want to smooth out the process for providers, patients and insurance companies.

CHAIR SPEARMAN:

I will close the hearing on S.B. 269 and open the hearing on S.B. 295.

SENATE BILL 295: Revises provisions relating to industrial insurance.
(BDR 53-996)

SENATOR NICOLE CANNIZZARO (Senatorial District No. 6):

I am pleased to present S.B. 295, which aims to keep a workers' compensation insurer from interrupting the payment of compensation for a permanent total disability because the injured employee simply earns additional income.

Permanent total disability (PTD) is caused by a work-related injury or occupational disease that completely removes an injured employee from his or her employment. It also recognizes actual loss or loss of use of a designated body part, such as the injured employee's eyes or legs. It is also commonly referred to as a pension. Permanent total disability benefits are outlined in NRS 616C.435 through NRS 616C.473.

The law provides PTD benefits for persons who can no longer work as a result of industrial accidents or occupational diseases. These benefits are cash payments, based on wages at the time of the industrial injury, and paid for the life of the injured worker. These lifetime payments recognize the fact that people who can no longer work because of an industrial injury not only lose the ability to earn the income they had, but they also can no longer contribute to a pension fund or accumulate savings from their earnings for use upon retirement.

Senate Bill 295 proposes to prohibit the termination of compensation for PTD if the injured employee earns income. We have met with various stakeholders and intend to provide an amendment that will be agreeable to all. The amendment intends to limit this application to apply to police and firefighters only. Section 2, subsection 4, provides that an insurer may not terminate, suspend, withhold, offset, reduce, or otherwise halt, restrict or limit the payment of compensation for PTD to an injured employee or his or her dependents on the basis that the injured employee earns income.

What is not changed in this bill is the requirement under NRS 616C.445 that each injured employee receiving PTD benefits must annually report to the insurer any employment for the prior 12-month period and the insurer's ability to suspend payments in the event the report is not filed. Additionally, an insurer retains the right under NRS 616C.140 to require an injured employee receiving PTD compensation to submit to an annual medical examination if the insurer has reasonable cause to believe the injured employee is no longer disabled.

MR. INGALSBEE:

Every day firefighters put their lives on the line, and the Nevada legislature has consistently recognized the sacrifice associated with our profession. Part of that sacrifice is the chance of suffering a career-ending disability due to a work-related injury or disease. We have recently had an issue where third-party providers of workers' compensation have been ignoring existing law by denying permanent total disability payments even though the firefighter can no longer work in the profession. This bill provides language to help clarify existing statute and prevent these third parties from trying to get out of paying disability.

In working with stakeholders on this bill, we have agreed to accept an amendment to help alleviate concerns and narrow the scope of the protections. We consider this to be a friendly amendment to the bill. The amendment will narrow down the provisions to include NRS 617.455, NRS 617.457, NRS 617.485 and NRS 617.487. We expect to be able to offer the amendment shortly.

SENATOR PICKARD:

Could there be an Equal Protection Clause challenge if we narrow the scope of the bill? Does a PTD rating preclude an individual from earning income? If a person is totally disabled, how do they earn an income? Are those two not mutually exclusive?

MR. MILLS:

That is not correct. In NRS 616C.435, there are enumerated catastrophic injuries that result in PTD. For example, if you lose both your legs beneath your knees, you are deemed PTD and entitled to those benefits. It is incorrect to state that one cannot earn income while receiving PTD compensation. It is a correct statement for Social Security Disability, but in workers' compensation, the partial or total disability rating is an award scale between 0 percent and 100 percent.

The issue that has arisen is particularly important for police and firefighters and is the subject of the amendment being discussed. The intent is to limit the application of the bill only to compensation paid to certain professionals, primarily firefighters, police officers and arson investigators for disability claims related to lung disease, heart disease and hepatitis. These diseases result in the individuals being disabled and precluded from continued employment in their chosen profession.

If a police officer were on the force for a few years and got one of these diseases, he or she would not receive full retirement pay due to not having enough years of service. Workers' compensation payouts might be approximately \$4,000 per month. Together these payments would not be near the income someone was earning as an officer. There is nothing in existing law that precludes earning income.

Senate Bill 295 clarifies that the workers' compensation award cannot be interrupted on the mere basis of the individual earning income. Existing law under NRS 616C.440 is unchanged and stipulates that the PTD award continues for as long as the individual has the condition for which he or she received the PTD award.

The question is not whether people are earning income, the question is whether the disability for which they are entitled to PTD benefits still exists. If that condition is not gone, the benefits should not be lost. The bill with the proposed amendment simply codifies existing law. The clarification is specifically on heart disease, lung disease and hepatitis. Those conditions are the most likely to keep individuals from performing the jobs at which they became disabled but still allow the individuals to seek meaningful employment.

SENATOR NEAL:

What is the rule regarding dependents and earned income? Is that being struck out of the amendment?

MR. MILLS:

The amendment specifically clarifies that benefits may not be suspended based on claims brought for the three conditions mentioned. Dependents are not entitled to a PTD benefit unless the claimant died as a result of his disability. At that point the dependent spouse or minor children are entitled to a death benefit, which is a separate and distinct statute.

If an employee is killed on the job, minor children are entitled to a death benefit until age 18, or age 22 if they are enrolled in full-time school. That does not preclude the dependent from earning income.

SENATOR HARDY:

Does this bill extend to the police and firefighters benefits that already exist in law for everyone else?

MR. MILLS:

The bill needs to make this unique clarification because of the unique difference in police, firefighter and arson investigators' heart disease, lung disease and hepatitis claims. Those claims involve a PTD benefit to be accrued if the person has a partial disability that precludes them from performing the job. In all other circumstances, to receive a PTD benefit, a person must be permanently and totally disabled under the statute. In either case, there is no preclusion from earning income.

The amendment to Senate Bill 295 does not alter existing law, but clarifies that a police officer, firefighter or arson investigator who had lost his or her position due to the named diseases is still able to collect a PTD benefit for as long as he or she has the particular disease. It does not preclude him or her from earning income elsewhere. The need for the bill is due to some insurers attempting to offset or cut off a PTD benefit in cases where a claimant chooses to work.

SENATOR HARDY:

Does this amendment do anything not already in existing law?

MR. MILLS:

No. The litigation surrounding the issue typically involves police officers and firefighters who develop heart or lung disease and lose their jobs. The statute still says if the condition no longer exists, the insurer can lift that particular benefit.

SENATOR HARDY:

If we pass this bill, will all the suits involving police officers and firefighters with heart or lung disease go away in favor of the police officer or firefighter?

MR. MILLS:

Yes, that would be the outcome.

CHAIR SPEARMAN:

This is not unique. It is similar to the circumstances that cover wounded military personnel. I know quadriplegic veterans who can no longer serve in the military but work at the U.S. Department of Veterans Affairs.

MR. McALLISTER:

I was a representative for the Professional Firefighters of Nevada and have had experience working with heart and lung disease issues for over 20 years. We support this commonsense legislation that allows for a police officer or firefighter who can no longer perform the duties of his or her position to elect a PTD benefit and still continue to serve the community in other employment.

BILL GARDNER (North Las Vegas Firefighters Association);

We support this legislation. It is important our disabled members can be productive members of society without having to choose between disability benefits and employment.

RYAN WHITLOCK (Truckee Meadows Firefighters Association):

We support S.B. 295 as a needed clarification for our disabled members.

STEVEN THOMPSON (Clark County Firefighters Association):

We support S.B. 295 as amended and described by Mr. Mills and Mr. Ingalsbee. Allowing our disabled firefighters the ability to earn income is the right thing to do.

RICHARD McCANN (Nevada Association of Public Safety Officers):

We support S.B. 295 with the intended amendment.

JUSTIN SNOW (Pahrump Valley Professional Firefighters):

We support S.B. 295.

TOM DUNN (Professional Firefighters of Nevada; Reno Firefighters Association):

We support S.B.295 and the proposed amendment.

Over my 21 years in the fire service, several of my coworkers have had to retire with a permanent total disability because their bodies can no longer perform the hazardous and strenuous duties of being a firefighter. When a public safety employee is forced to retire, the employee and a family should not need to worry about whether income, retirement benefit or workers' compensation benefit will stretch far enough to provide for the family as the cost of living and medical costs go higher and higher each year.

One unintended consequence of unplanned medical retirement is whether or not the employees have enough quarters to qualify for Medicare when they reach

eligibility age. A significant number of people in the fire service enter right out of high school or college and Medicare eligibility after retirement is a concern today. Senate Bill 295 may have the added benefit of ensuring our retirees and their families do not have to apply for or rely on public assistance in the future.

The bill will clarify existing statute, and no retiree or their family should be under the threat of having their benefit delayed or diminished due to a misguided administrative decision for the simple reason they want to provide for themselves or their families. As a matter of principle, allow dignity in retirement for our medical retirees and their families. Enable them to continue to be vibrant members of our communities.

CORY WHITLOCK (Las Vegas Firefighters Association):

We support S.B. 295 as amended. It is important to support those in our communities who have sacrificed so much.

MR. BALKENBUSH:

We oppose S.B. 295 and request the Committee resolve the conflict in policy presented by the amendment to NRS 616C.440. The amendment does not place any limitation on the income an employee may earn and still be entitled to PTD income.

The terms "total disability," "disablement" and "total disablement" are tied to the inability to work. There is a conflict between these definitions that trigger a PTD benefit and the amendment, which allows work. The amendment also appears to discriminate against people who are only temporarily disabled or temporarily partially disabled.

The proposed amendment involves the policy limitation underlying the payment of a PTD benefit. A PTD benefit is paid at the rate of 66.67 percent of the average monthly wage. A PTD benefit is an election. A worker can elect a PPD benefit and continue working.

I have submitted a memorandum ([Exhibit H](#)) with all our concerns. We want the Committee to consider the problems posed by S.B. 295.

CHAIR SPEARMAN:

What is the consequence of workers choosing a PPD benefit? What happens if their injuries become more severe?

MR. BALKENBUSH:

The decision of PTD or PPD benefit is the employee's choice to make. The policy conflicts outlined in [Exhibit H](#) should be resolved before this legislation passes out of Committee.

WESLEY HARPER (Nevada League of Cities and Municipalities):

We are opposed to S.B. 295 as originally proposed. We will take time to thoroughly review the amendment and its implications.

MR. HOOKS:

The Nevada Self Insurers Association has concerns with S.B. 295 as drafted. I have not seen the amendment. A PTD diagnosis does not mean an individual is an invalid or completely unable to do anything. However, the diagnosis means a person is unable to work in any material earning capacity.

The bill does not address what happens if an individual receiving a PTD benefit works a second job and sustains another injury? There are issues within NRS 616C.405 and other wage replacement benefits, such as temporary total disability, temporary partial disability and vocational rehabilitation. You cannot have those benefits and receive a PTD benefit.

What happens if, on the second job, the worker is deemed PTD again? It could be in one of the enumerated injuries under NRS 616C.435. Can PTD be aggravated? How can it be made worse? If it cannot be made worse, where is the burden in terms of a subsequent injury?

JUSTIN HARRISON (Clark County):

We oppose S.B. 295 and echo the remarks of the previous callers in opposition. Washoe County representatives were unable to call in this morning and asked me to express their opposition as well.

MS. MOTAREX:

The Nevada Associated General Contractors were opposed to S.B. 295 as written. We look forward to reading the proposed amendment and anticipate being neutral on the bill.

SENATOR NEAL:

Can Mr. Mills comment on Mr. Hook's concerns regarding wage replacement?

MR. MILLS:

Existing law says a person in Nevada cannot receive more than 100 percent disability on any case or on all cases. For example, I know a firefighter who is receiving a PTD benefit due to a lung condition. He also has a tuberculosis claim. He will receive no monetary award for his tuberculosis claim nor is he eligible for a temporary or permanent partial disability. Nothing in S.B. 295 changes that. There is no way under existing law to recover both temporary total disability and PTD.

Under NRS 616C.435, there is no conflict on a person having a PTD benefit and earning an income. It does not exist in Nevada law. If you lose both of your legs you are deemed to be PTD. Nowhere in that law does it say you cannot work at Walmart one day per week. It does not exist. There is no conflict.

CHAIR SPEARMAN:

Can you comment on the conflict a caller said existed between the amendment and the law?

MR. MILLS:

He questioned what would happen if a PTD beneficiary was injured again on a second job. The "last injurious exposure rule" exists in Nevada. It is delineated by the Supreme Court of Nevada and states the most recent employer for the disabling condition or injury is the responsible party.

SENATOR CANNIZZARO:

Senate Bill 295 is an important step to recognize the sacrifices made by our first responders. I will make sure the Committee gets the amendment as soon as it is available.

CHAIR SPEARMAN:

I will close the hearing on S.B. 295 and open the work session on S.B. 248.

SENATE BILL 248: Revises provisions relating to the collection of medical debt.
(BDR 54-576)

CESAR MELGAREJO (Policy Analyst):

Senate Bill 248 was heard by the Committee on March 29 and is summarized in the work session document ([Exhibit I](#)).

SENATOR SETTELMAYER MOVED TO DO PASS S.B. 248.

SENATOR NEAL SECONDED THE MOTION.

SENATOR PICKARD:

I will be voting no, but reserve the right to change my vote on the Senate floor.

THE MOTION CARRIED. (SENATOR PICKARD VOTED NO.)

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CHAIR SPEARMAN:

I will open the work session on S.B. 56.

SENATE BILL 56: Revises provisions governing insurance coverage of behavioral health services. (BDR 57-124)

MR. MELGAREJO:

Senate Bill 56 was heard by the Committee on February 15 and is summarized in the work session document ([Exhibit J](#)).

Amendments were submitted by Char Frost, the Chair of the Clark Regional Behavioral Health Policy Board and Lindsey Knox of Nevada Self Insurers Association.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 56.

SENATOR SCHEIBLE SECONDED THE MOTION.

SENATOR PICKARD:

I have reservations about the bill but will be voting yes.

THE MOTION CARRIED. (SENATOR SETTELMAYER VOTED NO.)

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CHAIR SPEARMAN:

I will open the work session on S.B. 139.

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SENATE BILL 139: Requires certain health insurance to cover treatment of certain conditions relating to gender dysphoria. (BDR 57-54)

MR. MELGAREJO:

Senate Bill 139 was heard by the Committee on March 12. Senator Scheible proposes several amendments as detailed in the work session document ([Exhibit K](#)).

SENATOR PICKARD:

The amendments moved in the right direction, but did not go far enough. We are combining Diagnostic and Statistical Manual of Mental Disorders diagnoses with medical diagnoses without providing a coherent standard for insurance companies to follow. Those standards should be measurable and repeatable to an objective finding of fact. I will be a no.

SENATOR SCHEIBLE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 139.

SENATOR LANGE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, PICKARD AND SETTELMAYER VOTED NO.)

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CHAIR SPEARMAN:

I will open the work session on S.B. 190

SENATE BILL 190: Provides for the dispensing of self-administered hormonal contraceptives. (BDR 54-3)

MR. MELGAREJO:

Senate Bill 190 was heard by the Committee on March 24 and is summarized in the work session document ([Exhibit L](#)).

SENATOR SETTELMAYER:

The bill calls for the State Chief Medical Officer (CMO) to issue a standing prescription. Does the CMO hold a Nevada medical license? If not, would he or she be precluded from writing a prescription?

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WIL KEANE (Counsel):

The CMO does not have to have a current license as a physician. Section 8 of the bill provides that if the CMO is not a licensed physician, he or she can designate someone to issue the standing order for a prescription.

SENATOR HARDY:

We already have Plan B, an over-the-counter hormonal drug. In as much as we do not have an age limit or parental consent requirements, I will be supporting this bill.

SENATOR NEAL:

I have concerns about the requirements and duties this bill imposes on pharmacists, but I will support the measure. I reserve my right to change my vote on the Senate Floor.

SENATOR PICKARD:

I have similar reservations.

SENATOR SCHEIBLE MOVED TO DO PASS S.B. 190.

SENATOR LANGE SECONDED THE MOTION.

SENATOR SETTELMAYER:

I have reservations about the bill, but will support it.

THE MOTION CARRIED. (SENATOR PICKARD VOTED NO.)

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CHAIR SPEARMAN:

I will open the work session on S.B. 209.

SENATE BILL 209: Revises provisions relating to employment. (BDR 53-953)

MR. MELGAREJO:

Senate Bill 209 was heard by the Committee on March 22. Senator Donate proposes several amendments as detailed in the work session document ([Exhibit M](#)).

SENATOR PICKARD:

Section 1, subsection 2, paragraph (b), subparagraph (6) states an employer shall allow an employee to use paid leave for any use, including, without limitation addressing other personal needs related to the health of the employee. Does the employee need to substantiate the request? Can the employee take off for any reason?

SENATOR FABIAN DONATE (Senatorial District No. 10):

My interpretation is this bill follows the guidelines passed in the Eightieth Session. Reasonable timeline guidance is still in effect.

MR. KEANE:

The operative language is "an employer shall allow an employee to use paid leave for any use, including, without limitation..." and then lists subparagraphs (1) through (6). The subparagraphs are specific examples, but they are not the controlling language.

SENATOR SETTELMAYER:

Does this bill apply retroactively?

SENATOR DONATE:

After consulting with representatives from the business community, the decision was made that it would be a logistical nightmare to go backwards with the recordkeeping.

MR. KEANE:

The proposed amendment states the effective date is upon passage and approval, so it is not retroactive.

SENATOR SETTELMAYER:

Why is this bill limited to the private sector? Government should lead by example and take care of State and local government employees.

SENATOR DONATE:

I addressed this question with the Chair of the Senate Committee on Finance, Senator Brooks. If we expand this bill to State and county employees it accrues a big fiscal note and will delay passage. State employees typically have adequate accrued leave and many have been afforded the opportunity to be vaccinated.

MR. KEANE:

As written, the bill and amendment do not apply to government workers. Amending the bill to include county and State workers is a policy decision for the Committee.

SENATOR SETTELMAYER:

I am troubled that we are not more concerned with our government employees. Covid-19 is a horrible disease and we should be concerned for the health of everyone.

CHAIR SPEARMAN:

That is a refreshing attitude. Past attempts to give State and local government employees pay raises or increased benefits have met with stiff opposition.

Senator Donate, you may wish to consider amending this bill at a later time. There may also be another bill coming to deal with this issue.

SENATOR LANGE:

Could we put an amendment on the bill to include State and local government employees if funds are available? That would keep the discussion alive moving forward.

SENATOR DONATE:

I am open to a floor amendment, but I am anxious to get this bill passed as vaccine availability is increasing every day. The longer this takes, the fewer people will benefit from it.

SENATOR LANGE:

Does this bill apply to all businesses or businesses of a certain size?

SENATOR DONATE:

The bill applies to businesses with 50 or more employees.

MR. KEANE:

That is correct. The applicable language is on page 5, lines 6 and 7 of the bill.

SENATOR LANGE MOVED TO AMEND WITH THE AMENDMENTS IN THE
WORK SESSION DOCUMENT AND DO PASS AS AMENDED S.B. 209.

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

I will open the work session on S.B. 231.

SENATE BILL 231: Revises provisions related to financial services. (BDR 55-86)

MR. MELGAREJO:

Senate Bill 231 was heard by the Committee on March 22 and is summarized in the work session document ([Exhibit N](#)). An amendment was proposed by Scott Astrada, Director of Government Relations of Affirm, Inc.

SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 231.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SPEARMAN:

I will open the work session on S.B. 247.

SENATE BILL 247: Revises provisions relating to apprenticeships. (BDR 53-575)

MR. MELGAREJO:

Senate Bill 247 was heard by the Committee on March 29 and is summarized on the work session document ([Exhibit O](#)). An amendment was proposed by William H. Stanley, representing the Southern Nevada Building Trades Unions.

SENATOR PICKARD:

The bill calls for setting the wages employers pay in apprenticeship programs. The government does not have authority to set wages other than creating a floor. Could this run afoul of the federal law on wage fixing?

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SENATOR HARDY:

I have the same concerns and will be voting no.

MR. KEANE:

Mr. Stanley's amendment adds one more floor to what the apprentices must be paid. Right now the apprentices must be paid not less than federal minimum wage, not less than State minimum wage and not less than the collective bargaining agreement will provide. The amendment adds one more floor—that they cannot be paid less than the minimum wage established by the Nevada State Apprenticeship Council. These minimums have been established for years.

SENATOR PICKARD:

Just because we do it does not mean it is constitutional.

SENATOR SETTELMAYER:

I have a problem with forcing new programs to pay the same wages as existing programs. I am opposed to the bill today, but hope the concerned parties will follow with a floor amendment I can support.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 247.

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, PICKARD AND
SETTELMAYER VOTED NO.)

* * * * *

CHAIR SPEARMAN:

I will open the work session on S.B. 44.

SENATE BILL 44: Revises provisions governing behavioral health professionals.
(BDR 54-428)

MR. MELGAREJO:

Senate Bill 44 was heard by the Committee on March 8 and is summarized in the work session document ([Exhibit P](#)). Several amendments are proposed by the Rural Regional Behavioral Health Policy Board.

SENATOR PICKARD:

I am supportive of licensure by endorsement. I am concerned about the amendment mandating the Board issue a temporary provisional license in all instances. There may be instances where that would not be appropriate.

I know the Chair has been vocal about protecting military veterans and Black, Indigenous and People of Color (BIPOC) communities. I share that concern. The amendments, however, are race conscious and will probably violate Supreme Court rulings requiring race neutrality. I will be voting no and hoping this bill can be amended to make it constitutionally permissible.

MR. KEANE:

The proponents of the bill phrased the issue a bit differently than it appears on the work session document. The provision to lower the application fees is not based on the race of the applicant but on the community the applicant proposes serving. I interpret the language to refer to underserved communities, which would address Senator Pickard's concerns. Underserved communities can be given special services and treated differently.

The Committee could choose to clarify that in a motion.

SENATOR PICKARD:

I would be more comfortable with language phrased in that way. Since it is now in the Legislative record that the intent is to serve certain racial populations, the door may already be opened to litigation.

CHAIR SPEARMAN:

There is equality and there is equity. When people start 50 yards behind someone, advancing everyone 25 yards means the person in the back never catches up. You may be right—there may be someone who will challenge the license fee discount, as there are people who have challenged equity in the past.

SENATOR HARDY:

Is the use of the phrase "applicant who specializes" confusing? It puts the focus on the applicant rather than the people he or she serves. The amendment says the applicant must specialize in the provision of services for BIPOC and LGBTQ communities, youth and the elderly. You have not left anybody out. There is a

better way to phrase this. What are the qualifications of this specialization? I will be voting no because this particular paragraph is problematic.

VALERIE HASKIN (Rural Regional Behavioral Health Policy Board):

The intent of this piece of the amendment was to focus on an area of specialization. We have recently received feedback from professionals in the field that it is particularly difficult to verify these specializations. It opens the door for anyone to self-identify as a specialist in a particular area and halve their licensing fee without necessarily improving access to high-quality services to underserved groups.

We would like to omit that paragraph for now and move forward with a different amendment later.

MR. KEANE:

I had been working with the language in a prior conceptual amendment that did not focus on areas of specialization but rather on serving particular populations. As I said before, the language can refer to underserved populations. If it truly refers to specializations, we already treat different specializations differently for licensing purposes.

The language is just not clear. I would appreciate having some time to work with the proponents on the phrasing.

CHAIR SPEARMAN:

I will ask the proponents of the bill to work on it more and see if we can get it to a place where people are comfortable. There are states that give a bonus to teachers who agree to work in underserved areas. Is this a similar proposition?

MS. HASKIN:

That was the intent of this particular piece of the amendment. We are happy to work on this with all stakeholders.

CHAIR SPEARMAN:

We will come back to this bill early next week. If there is a better way to wordsmith the intent, I would appreciate it.

I spoke to mental and behavioral health professionals regarding Covid-19. In underserved communities you have to build trust and trust takes time.

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MR. MELGAREJO:

Senate Bill 280 was scheduled to be included in the work session, but there was a last minute amendment and the work session will have to be postponed.

SENATE BILL 280: Revises provisions relating to the Real Estate Commission.
(BDR 54-247)

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CHAIR SPEARMAN:

Seeing no public comment, this meeting is adjourned at 12:07 p.m.

RESPECTFULLY SUBMITTED:

Barbara Williams,
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. 217	B	1	Senator Heidi Seevers Gansert	Conceptual Amendment
S.B. 217	C	1	Senator Heidi Seevers Gansert	Summary Memo
S.B. 217	D	1	Ken MacAleese / Advanced Child Behavior Solutions	Letter of Support
S.B. 289	E	1	Jason Mills / Nevada Justice Association	Proposed Amendment
S.B. 289	F	1	Robert Balkenbush / Public Agency Compensation Trust	Memorandum
S.B. 269	G	1	Senator Ben Kieckhefer	Conceptual Amendment / Paul Klein
S.B. 295	H	1	Robert Balkenbush / Public Agency Compensation Trust	Memorandum
S.B. 248	I	1	Cesar Melgarejo	Work Session Document
S.B. 56	J	1	Cesar Melgarejo	Work Session Document
S.B. 139	K	1	Cesar Melgarejo	Work Session Document
S.B. 190	L	1	Cesar Melgarejo	Work Session Document
S.B. 209	M	1	Cesar Melgarejo	Work Session Document
S.B. 231	N	1	Cesar Melgarejo	Work Session Document
S.B. 247	O	1	Cesar Melgarejo	Work Session Document
S.B. 44	P	1	Cesar Melgarejo	Work Session Document