

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

**Eighty-second Session
May 17, 2023**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:03 a.m. on Wednesday, May 17, 2023, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Roberta Lange, Vice Chair
Senator Melanie Scheible
Senator Skip Daly
Senator Julie Pazina
Senator Scott Hammond
Senator Carrie A. Buck
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Assemblywoman Tracy Brown-May, Assembly District No. 42
Assemblywoman Venicia Considine, Assembly District No. 18
Assemblyman Gregory Koenig, Assembly District No. 38
Assemblyman Duy Nguyen, Assembly District No. 8

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Bryan Fernley, Counsel
Veda Wooley, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Liz MacMenamin, Retail Association of Nevada

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Chelsea Capurro, Zillow
Tom Clark, Board of Medical Examiners

CHAIR SPEARMAN:

I will open the work session on Assembly Bill (A.B.) 334.

ASSEMBLY BILL 334 (1st Reprint): Revises provisions relating to insurance for motor vehicles. (BDR 57-949)

CESAR MELGAREJO (Policy Analyst):

I have a work session document (Exhibit C) that gives the history of the bill and describes the amendments.

ASSEMBLYWOMAN TRACY BROWN-MAY (Assembly District No. 42):

Thank you for letting me give you some clarifying information on this bill. After the hearing on A.B. 334 in this Committee, I received information from a number of sources regarding this bill. A lobbyist team representing insurance providers sent a rundown of New York's laws in this area. The Division of Insurance (DOI), Nevada Department of Business and Industry, sent information regarding the number of complaints they have received. The Legislative Counsel Bureau provided a breakdown of every state's laws in this area. I will provide all three documents to the members of the Committee, but after reviewing the information, I do not know that we are comparing apples to apples here.

New York's law says every insurer shall commence an investigation of any claim filed by a claimant or claimant's authorized representative within six business days of receiving notice of the claim, or June 5, 2020, whichever is later. This is the most recent law that identifies six days as our time frame. By contrast, A.B. 334 asks for eight days—six days for initial inspection and two days more for a response. We have tried to be flexible in that, and we will submit the bill with those times.

The information from the DOI noted 449 complaints regarding timeliness of response between January 1, 2022, to January 1, 2023. There were 308 complaints about timeliness the year before that. Colorado has had a large increase in complaints, and Hawaii has had a slight increase. Many states are currently considering insurance bills of rights this year.

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SENATOR STONE:

When you presented the bill, you alluded to one egregious company that was not performing well and which accounted for a lot of the complaints. Can you tell us how many of those complaints were about that one entity or chain of entities?

ASSEMBLYWOMAN BROWN-MAY:

Unfortunately, I do not have that information. I can certainly ask the DOI to track it down, since they are the ones who collect complaints.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 334.

SENATOR SCHEIBLE SECONDED THE MOTION.

SENATOR BUCK:

I will be voting no.

THE MOTION PASSED. (SENATORS BUCK, HAMMOND AND STONE
VOTED NO.)

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CHAIR SPEARMAN:

I will now open the work session on A.B. 218.

ASSEMBLY BILL 218 (1st Reprint): Revises provisions governing landlords and tenants. (BDR 10-136)

MR. MELGAREJO:

I have a work session document ([Exhibit D](#)) that gives the history of the bill and describes the amendments.

SENATOR DALY:

I understand the need for the amendment, and we are going to refer to *Nevada Revised Statutes* (NRS) 41.600 for the fiscal notes. But when you look at NRS 41.600, there are six different things listed as consumer fraud. Would you still have a fiscal note if you just referred to section 2, paragraph (e) of NRS 41.600? That deals with the provision you are striking out, which dealt

with deceptive trade practices. I do not know if that would change the fiscal note or not, but it seems to me we should be a little more specific.

In the amendment, you added paragraph (d) regarding monetary damages and paragraph (e) regarding treble damages if the conduct was willful to section 3, subsection 2 of the bill. The last sentence of the explanation says once section 3, subsection 1 of the bill is removed, you no longer need subsection 2, and that removing this text removes the fiscal note on the bill. Do you still need subsection 2, where you added additional damages? I have issues with that.

ASSEMBLYWOMAN VENICIA CONSIDINE (Assembly District No. 18):

The changes in the amendment to section 3 of the bill were made to allow us to lose the fiscal note. I received an email from the Office of the Attorney General (OAG) saying the deceptive practice language in section 3 would require a response from them, and that is why they put a fiscal note on the bill. The language about deceptive practices should have been removed completely, and that removes the fiscal note.

In order to have monetary damages for consumer fraud, I needed to add a line listing those monetary damages. The OAG assured me they will not have to step in and do any sort of civil litigation on this. This is a private right of action only. Does that answer your question?

SENATOR DALY:

Well, it is a step closer. This might just be a matter of semantics. You say they have a private right of action under NRS 41.600. If you go to NRS 41.600, section 2, paragraph (e) has the exact same provisions there regarding deceptive trade practices. If you are doing it under NRS 41.600, I do not see why you need the other part there. If you can get the monetary damages, if that is the provision that you are going to have a private right of action to, I do not know if that gets the OAG out of it or not. I do not see how it does not if that is included under NRS 41.600. They can still take a private right of action for that, but the homeowners can take private rights of action for all of the other stuff as well. It just creates confusion.

If I understood correctly, and maybe I am wrong, the original language had monetary damages in the private right of action for deceptive trade practices. It is still there if they can sue under NRS 41.600. I do not see how the amendment gets the OAG out of it, but if they are happy with it, that is fine.

But I think you need to limit it to NRS 41.600, section 2, paragraph (e), because that is the only part that would be applicable in this chapter.

ASSEMBLYWOMAN CONSIDINE:

This might be a question for counsel. We made this change because the OAG requested it. The way it was explained to me is if we had it as a separate section under deceptive trade practices, the OAG would be bound to litigate. If it was under consumer fraud, they would not. I do not know; maybe this is semantics. We listed the monetary damages because without that, there are no monetary damages for consumer fraud. I do not know if maybe I am missing the question.

BRYAN FERNLEY (Counsel):

The provisions of NRS 598.0903 to NRS 598.0999 are the deceptive trade practice statutes, which are enforced by the OAG through civil and criminal penalties. If you added this provision into that reference, you would bring in enforcement by the OAG. Currently, those provisions can be enforced by the OAG or by a private right of action. If you bring them into NRS 598, it is the same thing. There is enforcement by the OAG and a private right of action. By bringing them into a different paragraph, you are limiting it to a private right of action and taking the OAG out. If the idea is to not have enforcement by the OAG, these do need to be in separate paragraphs.

SENATOR DALY:

If you limited this to consumer fraud pursuant to NRS 41.600, section 2, paragraph (e), does it accomplish the same thing?

MR. FERNLEY:

I think that would still bring in the OAG because by referring to paragraph (e), you are bringing in the deceptive trade practices statutes of NRS 598, which are enforced by the OAG. I would say it maintains the private right of action, but it is not something that would be enforced by the OAG.

SENATOR DALY:

I am not seeing the difference, but maybe we can follow up with the OAG.

Why do we have to add in the \$1,000 for each violation and treble damages if it was willful? Is that because when you take it out of the deceptive trade practices area, they would not be able to get a fine? If that is the case, it is still

there under paragraph (e) of NRS 41.600. If your claim of private right of action is based on that section, would you not be bringing in the OAG again?

If this amendment removes a fiscal note, I am all for that. I understand not wanting to go through that process. But this creates additional confusion.

ASSEMBLYWOMAN CONSIDINE:

I understand the confusion and the issue with the semantics. However, this bill is my way to protect consumers. I want to ensure that the consumer has a clear way of going through this, especially for individuals who do not have an attorney on their side. I was trying to make it as clear as possible for both sides.

SENATOR DALY:

Regarding the monetary damages and treble damages, is that part of NRS 598, or are those new penalties?

MR. FERNLEY:

I may need to look at NRS 598 in a little more detail, but NRS 598 has civil and criminal penalties enforced by the OAG, whereas NRS 41.600 allows a private right of action as well. I do not think NRS 598 has that private right of action. I am happy to follow up if you need more information,

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 218.

SENATOR SCHEIBLE SECONDED THE MOTION.

SENATOR DALY:

I need to get more information before I will be prepared to give the go-ahead on this. I will vote no today but get some more information.

SENATOR BUCK:

I will be a no today. Just piling on litigation rarely solves the issue.

CHAIR SPEARMAN:

Since we still have some questions, we will not vote on A.B. 218 today. We will give Assemblywoman Considine and counsel a chance to do some research, then reconsider the measure on Friday.

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I will close the work session on A.B. 218 and open the work session on A.B. 251.

ASSEMBLY BILL 251 (1st Reprint): Revises provisions governing prescriptions.
(BDR 54-1006)

MR. MELGAREJO:

I have a work session document ([Exhibit E](#)) that gives the bill's history. There are no amendments.

SENATOR STONE:

I want to applaud the sponsor for bringing this bill. It is important, especially in Nevada where we have so many different languages. We are a melting pot for the world, and transcribing and translating directions on a prescription label is important.

A pharmacist has three basic responsibilities when filling a prescription. First, accurately read the prescription, which is sometimes a challenge given how doctors write, and make sure that the label reflects the doctor's directions. Second, put the right medication in the bottle. Third, advise the patient of any important warnings as required by pharmacy law. If those warnings are not given, they can cause morbidity or even death.

My concern with this bill is that the software company driving this legislation can only translate the doctor's instructions. It cannot translate the pharmacist's verbal warnings. I told the sponsor about my concerns, and I hoped we would get together to solve the problem with an amendment of some kind. My hope was that we could add a mechanism to let the patient know that there are warnings that have to be communicated to them. Failing that, I was hoping for a clause to indemnify the pharmacist and the pharmacy for not providing those warnings.

Without one of these two clauses, I feel A.B. 251 is not in the best interest of patient safety.

ASSEMBLYMAN DUY NGUYEN (Assembly District No. 8):

I spoke with you about this, and I have spoken with the Retail Association of Nevada to look at the possibilities of addressing your concerns. The feedback that I got was that there is nothing in this bill that stops pharmacists from

giving those verbal warnings. This bill is intended to add a second language to the prescription label to translate the doctor's instructions into the patient's first language. In Nevada, it is currently the practice in pharmacies to have access to an interpretation service. When the patient is at the pharmacy window picking up a prescription, the pharmacist has the ability to call a phone number and have the entire consultation translated for the patient. This bill will not change that in any way. The process that you are talking about is completely separate, and it is not part of this bill.

SENATOR STONE:

That is part of the problem. You are raising the standard of practice. You are saying pharmacists now have the professional liability to translate a prescription label into a different language without the commensurate warnings being translated into another language at the same time. If you have the translation phone service, why do you need this bill?

CHAIR SPEARMAN:

I think the distinction Senator Stone is making is if you put the instructions in the patient's language, you need to have the warnings in that language too. Right now, when both of them are in English, the liability is universal; if you put the label in the patient's first language and leave the warnings in English, the pharmacist will have more liability. However, with all due respect, I think the indemnification issue is irrelevant. If the pharmacist has to call the interpretation service to communicate with the patient, that is fine.

SENATOR STONE:

It should be part of the legislation that you have to call a number to interpret the consultation, which I do not see.

CHAIR SPEARMAN:

I hear what you are saying, but that translation process is available right now, and that is not what this bill is about.

SENATOR BUCK:

Who would be liable if the translation was wrong, the software company or the pharmacist?

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ASSEMBLYMAN NGUYEN:

The liability has not changed. The folks that were liable before will still be liable. It is not on the pharmacist or the doctor; it is on the software.

SENATOR LANGE MOVED TO DO PASS A.B. 251.

SENATOR PAZINA SECONDED THE MOTION.

SENATOR STONE:

I am going to vote no on this legislation. I would like to point out that pharmacies are not mandated to fill any prescription if they feel they cannot appropriately fulfill their professional duties to make sure the patients are getting the information they need. What is going to happen is these chain stores are not going to fill the prescriptions, and the patients will have nowhere to get their prescriptions filled. That is going to be the end result if A.B. 251 becomes law.

CHAIR SPEARMAN:

Ms. MacMenamin, can you speak to this?

LIZ MACMENAMIN (Retail Association of Nevada):

Walgreens and other large pharmacy chains have this system set up right now and are ready to implement this going forward. In fact, we were prepared for it last Session. We also have the interpretation systems in action now so patients can hear warnings in their own languages.

CHAIR SPEARMAN:

I will reiterate that if there is a concern for patient safety, it should be focused on the existing situation, when both instructions and warnings are all in English and only English.

SENATOR STONE:

Ms. MacMenamin says she represents the chain stores and that they are in agreement with this bill. I would like to have documentation to that effect.

MS. MACMENAMIN:

I will be glad to get that for you. I spoke to the head of Government Affairs for Walgreens this morning, and I will ask her to call Senator Stone on this.

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THE MOTION PASSED. (SENATORS BUCK AND STONE VOTED NO.)

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CHAIR SPEARMAN:

I will open the work session on A.B. 284.

ASSEMBLY BILL 284: Authorizes the business of a mortgage company to be conducted from a remote location under certain circumstances. (BDR 54-941)

MR. MELGAREJO:

I have a work session document (Exhibit F) that gives the bill's history and explains the amendments.

SENATOR BUCK:

I am a little unclear as to whether the mortgage company needs a license to operate in Nevada.

CHELSEA CAPURRO (Zillow):

Yes. Mortgage companies would still have to get a license in Nevada the same as they would if they were located in Nevada.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 284.

SENATOR PAZINA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:

I will open the work session on A.B. 318.

ASSEMBLY BILL 318 (1st Reprint): Revises provisions governing certain providers of health care. (BDR 54-761)

MR. MELGAREJO:

I have a work session document ([Exhibit G](#)) that gives the bill's history. There are no amendments.

CHAIR SPEARMAN:

I had a concern about the duty to report on one of our other bills. The second paragraph of [Exhibit G](#) says, "The measure also requires a physician assistant, ... to report to the Board any actions for malpractice" Would this be the same as a duty to report?

MR. FERNLEY:

There could be a difference between a duty to report someone else engaging in malpractice versus a duty to report that you have a claim of malpractice against you. I think this bill is talking about the need to report that a claim has been filed against you as the practitioner.

CHAIR SPEARMAN:

But we still do not have the duty to report.

MR. FERNLEY:

As far as reporting on the wrongdoing of another person, no.

CHAIR SPEARMAN:

I mean in terms of practice. We had some people come forward and say they knew someone had opened a practice that was beyond the scope of their license. They testified here, but they did not say anything to their board about what that person was doing.

MR. FERNLEY:

Correct. I have not been able to find a requirement to report wrongdoing by another person. Providers of health care can be required to report things like child abuse, but I am not aware of anything that requires a practitioner or provider of health care to report malpractice or practicing outside the scope of another practitioner.

TOM CLARK (Board of Medical Examiners):

I think the bill you are referring to is [A.B. 442](#), which had the requirement to report in it.

ASSEMBLY BILL 442: Revises provisions relating to persons licensed by certain health care licensing boards. (BDR 54-1055)

The Board of Medical Examiners will write into the regulations that when a physician sees another physician doing something wrong, or if somebody is a layman sees a physician doing something wrong, there is some level of requirement to report it. By contrast, A.B. 318 says that when there has been a malpractice settlement, the amount of the damages has to be reported to the Board of Medical Examiners.

SENATOR SCHEIBLE MOVED TO DO PASS A.B. 318.

SENATOR STONE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:

I will open the work session on A.B. 432.

ASSEMBLY BILL 432 (1st Reprint): Revises provisions governing optometry. (BDR 54-929)

MR. MELGAREJO:

I have a work session document (Exhibit H) that gives the history of the bill and a description of the amendment.

CHAIR SPEARMAN:

Is this a friendly amendment?

ASSEMBLYMAN GREGORY KOENIG (Assembly District No. 38):

Yes. The majority of this amendment was done to alleviate Senator Daly's concerns.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED A.B. 432.

SENATOR DALY SECONDED THE MOTION.

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THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:

Is there any public comment? Hearing none, we are adjourned at 8:55 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 334	C	2	Cesar Melgarejo	Work Session Document
A.B. 218	D	3	Cesar Melgarejo	Work Session Document
A.B. 251	E	7	Cesar Melgarejo	Work Session Document
A.B. 284	F	10	Cesar Melgarejo	Work Session Document
A.B. 318	G	11	Cesar Melgarejo	Work Session Document
A.B. 432	H	12	Cesar Melgarejo	Work Session Document