

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON HUMAN RESOURCES AND FACILITIES

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 9, 1981

The Senate Committee on Human Resources and Facilities was called to order by Chairman Joe Neal at 9:06 a.m., Thursday, April 9, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Joe Neal, Chairman
Senator James N. Kosinski, Vice Chairman
Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator Virgil M. Getto
Senator James H. Bilbray

GUEST LEGISLATORS:

Assemblyman James J. Banner
Assemblyman Janson Stewart
Assemblyman John M. Vergiels

STAFF MEMBERS PRESENT:

Connie S. Richards, Committee Secretary

ASSEMBLY BILL NUMBER 148

Mr. Bryn Armstrong, Chairman, Nevada Board of Parole Commissioners spoke in support of Assembly Bill No. 148. He said it is an incongruity of the law to prohibit the use of controlled substances and allow businesses to operate for the promotion of the use of narcotics. He said in interviewing parole applicants he found that many convicts had begun using marijuana at an early age, some as young as nine years old. Mr. Armstrong said statistics have been kept for one year regarding the use of narcotics by people who have been imprisoned. He said during the calendar year of 1980, 130 applicants were interviewed; 63 percent of those had a history of drug abuse. Almost 100 percent of those people began the use of marijuana at an early age.

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Assemblyman Banner spoke in support of Assembly Bill Number 148. He told the committee of a personal experience with drugs.

Mr. Bill Baker, Archaeologist, Author, Lecturer, and Founder and Executive Director of the Christian Coalition spoke in favor of Assebly Bill No. 148. He said he worked with young people in St. Louis Missouri as a weekend counselor and now counsels young people in Nevada in a program that helps young people with drug problems in which citizens are trained to counsel and work with the young people. He showed a number of articles of paraphernalia manufactured for use with narcotics. He said they were given to him by children, all under the age of 16 years.

Mr. Fred Davis, Representative, Reno-Sparks Chamber of Commerce spoke in support of Assembly Bill No. 148. He spoke of a personal experience with drug abuse. He urged the committee to give the bill a "do pass" recommendation on behalf of the chamber of commerce as well as himself as a private citizen.

Mr. Cliff Young, Pharmacy Board spoke in support of Assembly Bill No. 148. He said 14 states have passed bills with similar types of language. He said the board felt that the language of the bill could be improved. He suggested an interim subcommittee be appointed to study the legislation and perfect the language. He distributed to the committee a copy of a legal brief authored by John F. Atkinson (see Exhibit C) who is the National Association of the Boards of Pharmacy's counselor. The brief refers to a case that was decided in a circuit court of appeals in 1980 in which language similar to that of Assembly Bill No. 148 was found to be constitutionally vague and overbroad.

Mr. George R. Tucker, Executive Secretary, State Board of Pharmacy spoke in support of Assembly Bill No. 148. He said the board would like to be able to regulate head shops. He said the division of investigation feels the same.

Senator Kosinski asked whether Mr. Tucker believes the bill puts the enforcement of the law (if passed) under the board.

Mr. Tucker said it would.

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Senator Kosinski said he was not aware that the board had been involved in the "chasing of dopers".

Mr. Tucker said the drugs have to come from somewhere, and often the place they come from were legitimate sources and somehow get into the hands of the drug pushers and users. He said in this way the board becomes involved with the illegitimate use of those drugs.

Assemblyman Janson Stewart spoke in support of the bill. He asked the committee to make the bill effective upon passage and approval. He said to restrict the bill to minors is a double standard; if the use of narcotics is illegal to adults and minors so should be the possession of paraphernalia designed for use with narcotics.

Senator Kosinski asked Assemblyman Stewart whether there is any case in the 9th circuit court of appeals at this time.

Assemblyman Stewart said that there are currently none that he knows of.

SENATE BILL NUMBER 475 (EXHIBIT D)

Dr. Don W. Driggs, Western Interstate Commission for Higher Education said the bill would provide additional discretion for the commissioners as to placement of students within the WICHE program. He said it is felt that the bill would not affect the compact itself.

Assemblyman John Vergiels spoke in support of the bill. He said the bill provides simply that if in the judgment of the commission, it becomes necessary to place students outside of the contract, outside the region, the commissioners are free to make that decision.

Senator Getto moved to "Amend and Do Pass" Senate Bill Number 475 by removing the words, "or the quality of education provided by a school within the region is inferior to that available at comparable institutions outside the region," on lines 6 through 8, Section 1.

Senator Blakemore seconded the motion.

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The motion carried unanimously.

ASSEMBLY BILL NUMBER 148

Senator Blakemore moved to "Do Pass" Assembly Bill Number 148 making it effective upon passage and approval.

Seantor Bilbray seconded the motion.

Senator Kosinski said he felt it might be productive to find out where the appeal in the sixty circuit court of appeals stands before making a decision. He also suggested Frank Daykin be given a chance to review the bill to determine its constitutionality.

Senator Blakemore withdrew his motion from the floor and the Chairman said he would speak with Mr. Daykin to determine whether the bill is constitutional or not.

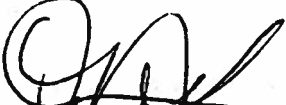
There being no further business, the meeting adjourned at 10:40 a.m.

Respectfully submitted:



Connie S. Richards, Committee Secretary

APPROVED BY:



Senator Joe Neal, Chairman

DATE: 4-13-81

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Human Resources and Facilities , Room 323

Day Thursday , Date April 9 , Time 9:00 a.m.

A. B. No. 148--Prohibits manufacture, sale, delivery or advertisement of drug paraphernalia.

S. B. No. 475--Broadens authority of Western Interstate Commission for Higher Education to contract with schools outside region.

Legal Brief

DRUG PARAPHERNALIA ORDINANCES FALL

By John F. Atkinson
NABP Counsel

Some time ago, the Federal Drug Enforcement Administration prepared and distributed a Model Drug Paraphernalia Act that was adopted by many municipalities as an ordinance. It was aimed at controlling drug paraphernalia "used, intended for use, or designed for use" in introducing controlled substances into the body. The act lists a number of items that could be classified as drug paraphernalia and also sets forth various factors to be considered in determining what should be classified as drug paraphernalia.



ATKINSON

The purpose of the ordinance is to ban the manufacture, sale and deliver of paraphernalia where the purchaser intends to use the item for the unlawful use of controlled substances. It makes these activities and the advertising of such paraphernalia criminal offenses. The constitutionality of the ordinance was attacked on the grounds that the prosecution of an individual manufacturing or selling such a product was based on the state of mind of the purchaser and thus violated due process of law.

The Federal Court of Appeals for the Sixth Circuit found the constitutional attack on the ordinance to be warranted concluding that the language "used, intended for use, or designed for use" was unconstitutionally vague and overbroad. The court stated that an ingenious person could alter such items as paper clips, tie bars, mirrors, spoons and even aluminum foil for use with controlled substances, thus placing these common items within the purview of the ordinance.

The ordinance also prohibited the manufacture, possession or delivery of such paraphernalia where one knew, or under the circumstances, reasonably should have known that the items would be used with controlled substances. The court found that the standard "reasonably, under the circumstances, should have known" was so susceptible to misapplication that it violated the fundamental concepts of due process.

Finally, the court struck down the advertising prohibitions as being an unconstitutional infringement on the First Amendment guarantee of freedom of speech. It reasoned that a prohibition would have the effect of eliminating lawful advertising of paraphernalia in municipalities which did not prohibit such activities and might even curtail the effort of a publication to seek drug reform. Since the severability clause in the ordinance was limited to the sections describing the substan-

EXHIBIT C

tive offenses only, those parts which offended the constitution could not be eliminated thus causing the entire ordinance to fall.

Back to the drawing board!

Record Revolution No. 6, Inc. v. City of Parma, 49 LW 2405 (CA 6, 1980)

March Turnaround Dates

MARCH TURNAROUND DATES ANNOUNCED

The final NABPLEX-FDLE uniform testing date for the 1980-81 testing year is approaching, and proctors are reminded of the following dates to be used in the answer sheet turnaround format, which, since its inauguration in 1978, has speeded score reports to the states within a prescribed time schedule. Please alert all test proctors for your March 24-25 administration to these dates:

Wednesday, February 11: All test orders to be received by ETS in Princeton. Blank participation rosters will be mailed to state boards by ETS as orders are received.

Monday, March 2: Test materials will be shipped to participating state boards by ETS including: 1) test books, 2) NABPLEX Supervisor's Manuals, 3) two sharpened No. 2 pencils for each expected candidate, 4) materials for return shipment of all test materials to ETS.

Monday, March 16: Any state board not receiving expected test materials by this date or with any important discrepancy in the materials received, inform ETS by telephone: (609) 921-9000, NABPLEX Program.

Tuesday-Wednesday, March 24-25: NABPLEX Uniform Testing Dates (per instructions contained in the NABPLEX Supervisor's Manual).

Thursday, March 26: State boards must return to ETS all completed answer sheets, attendance rosters and related items in conformance with the Supervisor's Manual (page 21). Return test books and related materials promptly thereafter in conformance with page 22.

Tuesday, March 31: ETS will process all answer sheets received by 9:30 a.m. All answer sheets received thereafter will be collected and processed together at a later date for separate and later score reporting. In this manner, the states which follow the March 26 mailing deadline will not be penalized by late states.

Wednesday, April 22: ETS will transmit score reports to state boards for all answer sheets received by 9:30 a.m., March 31. Scores for answer sheets at ETS thereafter will be mailed by about May 6.

Those states using NABPLEX and FDLE are reminded that FDLE answer sheets are to be returned to NABP headquarters in Chicago, not to ETS in Princeton.

For shipping NABPLEX answer sheets to Princeton, proctors are advised to carefully follow instructions on page 21 of the NABPLEX Supervisor's Manual.

EXHIBIT C

Fluor - DMSO Law SB 1024 Chap. 346, Laws 1980
places - in prescription only - labeling
requirements.

Drug Paraphernalia -

- Alabama SB 377, Art 579 Laws 1980 ^{effective} 5-27-80
- California AB 2442 Chap 542, 1980 ^{effective} 1-1-81
- Colorado HB 1190 P. 335, 1980 eff: 7-1-80
- Florida HB 6 Chap. 30, 1980 eff: 10-1-80
- Georgia HB 845 Art 1307, 1980 eff: 3-31-80
- Idaho HB 451, 1980 eff: 3-25-80
- Indiana HB 1468, 1980 eff: 4-30-80
- Kansas HB 2889, 1980 eff: 4-16-80
- Louisiana SB 680, Art 669, 1980 eff: 9-14-80
- Maryland SB 63, Chap 87, 1980 eff: 5-27-80
- Mississippi LB 991 Sec 22104 and 431. ^{NPS} eff: 4-23-80
- New York SB 1265-B Chap 211, 1980 eff: 7-30-80
- " " SB 10142 Chap 812, 1980 eff: 6-30-80
- Virginia SB 523, Chap 461, 1980 eff: 7-1-80

S. B. 475

SENATE BILL NO. 475—SENATOR GETTO

MARCH 27, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Broadens authority of Western Interstate Commission for Higher Education to contract with schools outside region. (BDR 34-1593)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to higher education provided outside this state; broadening the power of the commissioners to contract with educational institutions outside the region of the Western Regional Higher Education Compact; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 397.055 is hereby amended to read as follows:
2 397.055 1. Whenever the commissioners appointed pursuant to NRS
3 397.030 are unable to provide contract places for Nevada residents in
4 graduate or professional schools pursuant to contractual agreements
5 authorized by Article 8 of the compact, *or the cost of attending a school*
6 *within the region is excessive, or the quality of education provided by a*
7 *school within the region is inferior to that available at comparable institu-*
8 *tions outside the region, they may enter into [such] contractual agree-*
9 *ments with the governing authority of any educational institution offering*
10 *accredited graduate and professional education outside the region of the*
11 *compact or with any state outside the region.*
12 2. The terms and conditions of any such agreements [shall] *must*
13 *adhere to the same standards which are observed in the selection of con-*
14 *tract places for Nevada residents in graduate or professional schools*
15 *within the region.*
16 SEC. 2. This act shall become effective upon passage and approval.