

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

**Seventy-third Session  
May 10, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:01 a.m. on Tuesday, May 10, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chair  
Senator Warren B. Hardy II, Vice Chair  
Senator Sandra J. Tiffany  
Senator Joe Heck  
Senator Michael Schneider  
Senator Maggie Carlton  
Senator John Lee

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Sheila Leslie, Assembly District No. 27  
Assemblywoman Valerie E. Weber, Assembly District No. 5

**STAFF MEMBERS PRESENT:**

Kevin Powers, Committee Counsel  
Jeanine Wittenberg, Committee Secretary  
Scott Young, Committee Policy Analyst  
Jane Tetherton, Committee Secretary

**OTHERS PRESENT:**

Lisa Black, Nevada Nurses Association  
Robert Dean, Service Employees International Union  
Tracy L. Singh, Nevada Nurses Association  
Lawrence P. Matheis, Nevada State Medical Association

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James Wadhams, Nevada Hospital Association  
Fred L. Hillerby, State Board of Nursing  
John A. Ellerton, M.D.  
Mary Arnold-Ronish, Certified Permanent Cosmetic Professional  
Rebecca Bryant  
Glen Savage, Environmental Health Director, Clark County Health District  
Kevin Tourek, Vice President/Associate General Counsel, Wynn Las Vegas  
Annie Curtis, Field Inspector, State Board of Cosmetology  
John M. Vergiels, Euphoria Salons and Day Spas  
Billie J. Shea, American Massage Therapy Association  
Stan Olsen, Las Vegas Metro Police Department  
Mark Kaplinsky, President, Lookahead West, Incorporated  
Allan Smith, Manager, Information Systems, Legislative Counsel Bureau  
John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades  
Council  
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual  
Company

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 183.

**ASSEMBLY BILL 183 (2nd Reprint)**: Prohibits employers and certain other persons from retaliating or discriminating unfairly against certain nurses and nursing assistants for refusing to provide nursing services under certain circumstances. (BDR 54-927)

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

I bring this bill to you on behalf of the Nevada Nurses Association. Nevada's nurses are statutorily mandated to decline an assignment for which they do not possess the knowledge, skills and/or ability to provide safe care. If they violate this code, they may be disciplined by the State Board of Nursing up to and including revocation of their licenses. However, Nevada employment law does not provide any protection for nurses who act in accordance with the Nevada nurse practice act. A nurse can be terminated for refusing a patient assignment that he or she deems unsafe. Nurses who act on behalf of their patients' safety can face discipline by employers for insubordination or patient abandonment. This is a serious problem for the practicing nurse, and it creates an enormous threat to the safety of patients cared for in Nevada's health-care facilities. This

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bill protects nurses' employment and also guards the safety of patients. I have an editorial from the Las Vegas *Sun* on this issue ([Exhibit C](#)).

LISA BLACK (Nevada Nurses Association):

I have written testimony that includes reports from several nurses who have lost their jobs for refusing unsafe assignments ([Exhibit D](#)). We ask your support of this important legislation.

SENATOR LEE:

Is this more a matter of doctors giving unsafe orders or of administrators making unsafe assignments?

Ms. BLACK:

The issue is in both of those situations, both in acute-care facilities and in community situations. The issue lies in the system. This is not to imply any health-care worker is reckless or has a lack of regard for patient safety. However, a nurse is the best judge of her own knowledge, skills and abilities. A nurse is legally bound to know his or her scope of practice and know what he or she is able to do.

SENATOR LEE:

If a patient is assigned to a nurse and a physician gives an order, he is in essence her boss. If she does not follow the order, how does he discriminate or retaliate against her?

Ms. BLACK:

If a physician or administrator gives an order to a nurse and the nurse knows he or she does not have the ability, knowledge, training or skill to comply with that order safely, the nurse is legally bound by *Nevada Administrative Code* (NAC) 632.890 not to accept that assignment. If the physician employs a nurse who represents herself as having specific skills she does not in fact possess, that is a separate issue.

SENATOR LEE:

This bill seems to be focusing on health care in a hospital setting rather than a doctor's office. Is that correct?

MS. BLACK:

The research refers mostly to the acute-care setting. There is a body of literature speaking to that issue extensively, and the citations are included in [Exhibit D](#). It is also an issue in other settings, however. The same issues apply wherever a nurse works.

SENATOR TIFFANY:

The situation you described sounds like a problem of employee relations or staffing ratios. What actions could be taken by a labor organization representing nurses in a situation like this?

ROBERT DEAN (Service Employees International Union):

Nurses have been fired in the hospital where I work for refusing to take unsafe assignments. Through the grievance procedure, the Service Employees International Union (SEIU) was able to get those nurses reinstated. However, the significant amount of time they were unemployed was a hardship on them, their families and their units, which were understaffed while the grievance process was under way.

SENATOR TIFFANY:

We do not want to change the law based on anecdotal evidence alone. It is important for us to get some data on how often this occurs and how often it comes down to staffing ratios. Out of Nevada's 15,000 nurses, what percentage have been in this situation?

MS. BLACK:

I do not have specific numbers. I will get that information for you.

SENATOR TIFFANY:

Do any other states provide such relief for nurses and nursing assistants?

MS. BLACK:

I am not aware of any states that have successfully passed legislation like this, though several states are moving in this direction. The answer to this problem in some states has been to legislate specific numeric nurse-to-patient ratios. That may not be the answer, in that it does not address the fluidity needed in patient care. This bill provides a voice for the nurse to say, "This is a level of care I cannot safely provide."

SENATOR HECK:

I will disclose that I am married to a nurse. No one would argue the fact that we want to be sure we provide safe patient care. My concern with the bill is the term "assignment" in section 2, subsection 1, paragraph (a). Based on the points you raised, all of those are encompassed in paragraph (b). Whether a nurse possesses adequate knowledge, skill and experience is an objective determination. If a physician gives an order and a nurse says, "I am not trained to do that," the nurse should not be required to carry out that order for fear of repercussion. The section of the NAC you refer to has to do with the nurse's skill, knowledge and ability. There is nothing about an "assignment," which is a rather nebulous term. Duties beyond the scope of practice, responsibilities without adequate training and responsibilities without competency are all encompassed in section 2, subsection 1, paragraph (b) of the bill.

If the goal of paragraph (a) is to prevent the nurse from having to carry out an order she believes will harm the patient, that is another issue. The nurse should be able to tell the physician when a mistake is being made without fear of repercussion. But the word "assignment" seems to be referring to nurse staffing ratios. All of us in the health-care field have been in situations where you cannot take one more patient, but you do, because the patients do not stop coming. While that might not be the best situation to care for those patients, you cannot close the doors. Perhaps we can work on the language to better reflect the idea of not having to carry out an order that would harm a patient. As it is currently written, I can imagine a situation in which a nurse with four patients on a unit refuses to take a fifth, and nothing can be done. I agree with 99 percent of the bill.

ASSEMBLYWOMAN LESLIE:

The fundamental issue is this: The State Board of Nursing requires nurses to reject an unsafe assignment, and my understanding is that "assignment" is the terminology the Board uses. If a nurse takes one patient more than she can handle and the patient has an adverse outcome because the nurse could not provide safe care, the nurse can lose her license. That has happened. We are putting nurses in the position of choosing between patient safety and their jobs or their licenses.

CHAIR TOWNSEND:

Section 3 of the bill is troubling. The phrase "such relief as may be appropriate under the law" is vague. I would rather see you specify the remedy as payment

for lost work and have the judge determine only whether there was discrimination and/or retaliation. The existing language leaves the potential for class-action suits, whereas I think your intention was to make sure nurses have a job and get paid for the hours they would have worked. We want to change people's behavior without removing their rights.

MS. BLACK:

Section 3 was originally more specific. The current language was developed in our work with the State Board of Nursing and the Nevada Hospital Association. The intent was to provide an avenue for nurses who have lost employment under these conditions to seek recourse. Nurses in this situation currently have been told that there was nothing in Nevada employment law to seek that sort of recourse.

CHAIR TOWNSEND:

I am not against section 3. However, a phrase like "any other amount deemed appropriate by the court" leaves the way clear for the court to order huge punitive damages. I do not think that was your intent.

SENATOR HECK:

The bill appears to be targeting interfacility situations in which the order is coming from a physician as a third-party intermediary rather than an employer. I can see the potential, however, for it to spill over into doctors' offices, where the nurse is the direct employee of the physician. In a right-to-work state like Nevada, the physician can terminate an employee at any time for any reason. If a physician gives a nurse he employs an order in the office and she refuses to carry it out, this bill would not allow the physician to fire the nurse.

ASSEMBLYWOMAN LESLIE:

The bill was originally directed at facility-based nurses. My understanding is the Board feels this should apply to nurses in any situation. We do not want to interfere with the employer-employee relationship; that is not what this bill is about.

SENATOR HECK:

I agree that even in a doctor's office, a nurse should not carry out an order for which she does not have the knowledge, skill or ability. But I can imagine a situation in which a nurse refuses an assignment because she does not have the skill, knowledge or ability to complete it, and is then fired because the physician

wants to hire a nurse who does have the requisite skill, knowledge or ability to do the assignment.

TRACY L. SINGH (Nevada Nurses Association):

I am an attorney and a registered nurse. This bill is extremely important, especially given the nursing shortage and the medical malpractice crisis we face in Nevada. Safety is, and should be, our top priority. What this bill is addressing is an unsafe assignment.

Nurses are professionals with pride in what they do. Just as with any professional, it takes courage for a nurse to step up and admit he or she does not have the skill or ability to handle an assignment. I would expect this situation to be underreported. Many nurses take assignments they know to be unsafe for fear of repercussions, whether formal discipline or peer pressure. A nurse may get by for a long time in unsafe assignments, but when someone gets hurt, they are asked why they took the assignment. Many people do not realize there are many specialties of nursing. Putting a nurse in a situation he or she is not qualified to handle leads to poor outcomes, near misses and avoidable deaths. This is aggravated by the nursing shortage, when nurses are floated (temporarily reassigned) to units with which they are unfamiliar and untrained.

This bill is not directed at nurse-patient staffing ratio problems. We do not want to protect nurses who do not feel like taking another patient because they are busy or tired. The only consideration covered by this bill is whether the nurse knows he or she cannot care for patients safely. Nurses should be able to come forward and admit an assignment is outside their scope of practice, and I would recommend they be disciplined if they fail to do so.

Unsafe assignments may include orders from physicians to give a medication that requires a specific delivery technique, or to perform a procedure that requires training to do correctly. This can happen in a doctor's office as well as in a hospital.

The bill would not prevent physicians from finding nurses who are qualified to perform the procedures they need. I have fired nurses when I found they were not qualified to handle the patients we were seeing. It is the nurse's responsibility to speak up and tell you if she is not qualified to handle a specific situation. I do not know of any physicians who would want a nurse to take an assignment he or she was not qualified to do.

Ms SINGH (continuing):

As an attorney, I advocate for physicians and nurses in Nevada, but it is far more critical to advocate for patients. Patient safety needs to be the number-one concern. All nurses should be able to admit when they cannot handle an assignment safely.

Every winter, we are faced with patients lined up on gurneys in the emergency room. But at least they have an emergency medical technician (EMT) with them until the facility can handle the patient. It is much better to have a nurse say, "I can't handle this assignment," than to have someone crash and burn and only find out an hour later.

Nurses need to speak up, and they need to feel free to speak up. I do not know of any physician who would want a nurse to take on an assignment they are not qualified to complete.

SENATOR HECK:

I agree that a nurse should not take an assignment for which he or she lacks the necessary skill, knowledge or ability. The question is, what constitutes an "unsafe assignment"? If an assignment is unsafe because the nurse is being asked to do something they are not qualified to do, there should be no discussion about that. But if we are talking about a subjective determination of what an "unsafe assignment" is, that is a problem.

Ms. SINGH:

The term is necessarily vague; something may be safe in one instance and unsafe in another, depending on the patient, the nurse and a myriad of other factors. One example would be if a nurse received an order to give a patient 40 milligrams of morphine intravenously. That patient could be at risk and would certainly have a poor outcome from that order. The nurse should feel free to verify the order with the physician and refuse to follow the order if warranted. There are also medications that must be given in specific conditions, and if the nurse is not aware of those conditions, the drug may not be given safely.

SENATOR LEE:

Nursing by nature is a life-and-death profession. If this bill is enacted into law, what is to prevent firefighters, police officers and prison guards from using it as a precedent to refuse to go into dangerous situations?



MS. SINGH:

There are many different fields and skill levels within nursing, and not all of them are critical care. You do not want a nurse who has never handled medications for heart patients to be given responsibility for a patient who has just had heart surgery. Firefighters and police officers are in dangerous positions, but they know their limitations. Firefighters who come across a bomb will call in a specialist in bomb disposal. We are not seeking to excuse all nurses from dealing with life-and-death situations. We are speaking of specific nurses in specific situations.

MR. DEAN:

My specialty as a registered nurse is in neonatal intensive care. I was recently floated to a unit where I was given the care of an adolescent on a respirator. That patient was in an unsafe situation. If a firefighter goes into an unsafe situation, he or she may die. If I go into an unsafe situation, you or your family member may die. I should be allowed to stop an unsafe situation before it occurs.

LAWRENCE P. MATHEIS (Nevada State Medical Association):

We agree with the rationale behind this bill. However, the inconsistency addressed by this bill results from a regulation adopted by the State Board of Nursing, NAC 632.890. This bill attempts to put into statute protections required because the regulation is out of line with some upsetting realities.

We were in favor of the bill before it was amended. The bill should be restricted to medical facilities as defined in chapter 449 of the *Nevada Revised Statutes* (NRS). The amendment makes it much more sweeping, applying it to any employer who hires, retains or contracts with a nurse. This brings into doctors' offices procedures and requirements that were clearly intended for the hospital setting and that are impractical and unnecessary in a small practice.

Section 2, subsection 1, paragraph (b), the provision regarding a nurse's knowledge, skill or experience, is a reasonable standard. These are criteria that can be substantiated by the nurse's personnel file, as noted in subparagraph (2). By contrast, in section 2, subsection 1, paragraph (a), there is no objective criteria to judge whether an assignment is safe or unsafe. It is based solely on the nurse's judgment, with no other criteria applied.

The amendment also moves the bill from chapter 449 to chapter 632 of the NRS. Chapter 449 contains other protections for nurses, specifying that a nurse should not face punishment for reporting a question about a physician's behavior to a physician licensing board. In that situation, the boards will oversee the process to make sure there is no abuse of the protection. The bill would give that same protection without the oversight.

We have two amendments to suggest. In section 2, subsection 1, we would return it to the original language specifying it applies to "A medical facility or any agent or employee thereof," rather than to anyone who employs a licensee.

We would also recommend that section 2, subsection 1, paragraph (a) be deleted. This provision is unnecessary, as well as being too vague to be enforceable. It can be proved whether a nurse has the training to complete a specific task; however, "professional judgment" is an unverifiable concept that cannot be proved one way or the other.

SENATOR HECK:

Are you recommending this legislation be put in chapter 449 of the NRS?

MR. MATHEIS:

I merely observed that it was a major change in the bill. I am not proposing that as an amendment.

CHAIR TOWNSEND:

I have a concern with the requirement that a nurse put his or her concern about an assignment in writing. There is not always time in a medical situation to stop and write something.

JAMES WADHAMS (Nevada Hospital Association):

We support A.B. 183 in the second reprint. We believe the policy question, while perhaps not perfectly articulated in this bill, is the specialization of nurses. Page 2, line 23 of the bill begins to establish some objective criteria on this.

Under NRS 632.018, a nurse can only take orders or assignments from other medical professionals. They cannot take orders from laypeople and they cannot diagnose. The control of nurses is at the instance of another medical professional. For this reason, we support the provision in the second reprint that if this policy is valid of honoring the documented qualification of a registered

nurse, it ought to be a broad-based policy. Senator Heck's question about right-to-work is applicable. If that policy change is to be made, it ought to be considered carefully on that broad basis.

There was one other comment that was made that I want to make sure is on the record. I think there was a reference in prior testimony that outcomes cause people to lose licenses. I believe the representation from the State Board of Nursing ... is that engaging in activities outside of your competence is the basis, not the outcome. That really is the policy that underlies the second reprint of A.B. 183. If a person is indeed outside of their competence, that is an area to which valid concern should be given. In the facility setting, where we are controlled and our medical operations by our medical staff – and again, doctors control the health-care activities even within facilities, just as they do within their own offices – we think the policy should be broader. In that regard, I think perhaps the reference to [chapter] 632 is inappropriate. Perhaps it ought to be in chapter 613 as a special section on employment practices.

I have a final comment. Recently, the Senate Committee on Human Resources and Education processed Senate Bill (S.B.) 458, which is now in the Assembly.

**SENATE BILL 458 (1st Reprint)**: Makes various changes concerning time within which person who is transported to hospital is transferred to place in hospital where he can receive services. (BDR 40-1321)

Under the Emergency Medical Transportation and Active Labor Act, hospitals are now required to accept patients within 30 minutes. With this in mind, it will no longer be either practical or appropriate for EMT personnel or vehicles to be used as an extension of the emergency room. We suggest care be taken not to create counter currents in this Legislative Session that undermine efforts to make sure the public has access to care, as opposed to the convenience of accepting or rejecting assignments.

FRED L. HILLERBY (State Board of Nursing):

We support this bill. However, we feel chapter 632 of the NRS is probably not the best place for this legislation, inasmuch as the State Board of Nursing has

no jurisdiction over employers of nurses. It should probably be in chapter 613, which has to do with general employment issues.

MS. BLACK:

We would agree that the bill's current position in chapter 632 of the NRS does not provide the ability to enforce it. We would agree chapter 613 is probably a better place for it.

The State Board of Nursing feels strongly that if nurses are to be required to meet the standards of practice in NAC 632.890, they should not be required to take assignments that compel them to violate those standards of practice. These same standards apply wherever a nurse works; therefore, the same protections should be offered. Yes, Nevada is a right-to-work state, but that does not allow you to unfairly discriminate against your employees. If a nurse is fired because she is not performing her duties to her employer's satisfaction, that is one matter. If she is fired because she turned down an unsafe assignment she felt would harm a patient, the protections ought to be extended regardless of who her employer is.

SENATOR HECK:

The concept is certainly valid. No one expects a nurse to do something she is not trained to do, and a nurse should not be discriminated against for declining to carry out an order they do not feel they are trained to do. But a physician may decide to terminate a nurse because the refusal to carry out an order revealed to him a deficit in the nurse's training, and he wants to have a nurse who has the requisite training. My concern is that physician will be caught by this bill. The matter will wind up in court for someone to interpret, and it should not go to the court to begin with.

CHAIR TOWNSEND:

What is the penalty for a physician who orders someone under their supervision to perform a procedure beyond their competence?

MR. MATHEIS:

If a physician orders someone to do something they are not qualified to do, he can be brought up before the board that licensed him for disciplinary action on the basis of poor judgment. In almost every setting, the physician is assuming full responsibility for any activity they delegate. That does not mean others will not also be held accountable by their own boards or the courts.

SENATOR HECK:

There is nothing in statute that would require a physician to be brought before his board because he gave an order to a nurse who did not have the skill or ability to carry it out. The physician might not know the particular nurse's skill set. However, the manner in which he gave that order and the interplay that occurred after the order was declined may result in him being brought before the board for unprofessional conduct.

JOHN A. ELLERTON, M.D.:

I cannot overstate the fundamental change this bill will make in the way a small office practice is run. Senator Heck is correct that my ability to employ people who can accomplish the care of my patients will be subjected to judicial review without an objective standard and without any responsibility on the nurse's side. If I fire someone because they cannot do the job they were hired to do, I will end up in court if they decide it was a safety issue. I wish you would take this fight out of my office.

In the hospital where I am chief of staff, we have a commitment to nurses not being asked to do things they are not qualified to do or that they feel are unsafe. We are trying to create a culture of communication and cooperation between care providers. If a doctor is abusive to a nurse who refuses an order that is not within her scope, he will be called into my office along with his chief to explain his behavior.

CHAIR TOWNSEND:

We will send this bill to subcommittee for further discussion. If we change the bill to the chapter in the NRS having to do with employment practices, that will make it Title 53.

I will close the hearing on A.B. 183 and open the hearing on A.B. 360.

[ASSEMBLY BILL 360 \(1st Reprint\)](#): Provides for regulation of persons who practice permanent cosmetics. (BDR 43-925)

ASSEMBLYWOMAN VALERIE E. WEBER (Assembly District No. 5):

I have written testimony ([Exhibit E](#)). Permanent cosmetics are a specialized form of tattooing. Currently, there are no provisions in Nevada statute regarding tattooing. This is an area gaining recognition in many states; the state of

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Missouri, for example, has an Office of Tattooing, Body Piercing and Branding, under its Division of Professional Registration.

This bill is a first attempt to recognize the industry and establish some oversight by way of certification, as well as to protect consumers. The bill defines the term "permanent cosmetics," gives the scope of practice and provides a grandfathering clause for those who are not currently certified. The bill also gives local health authorities power to adopt regulations or ordinances regarding permanent cosmetics.

SENATOR CARLTON:

Section 2 mentions the Society of Permanent Cosmetic Professionals and the American Academy of Micropigmentation. What is involved in getting certified by these organizations?

ASSEMBLYWOMAN WEBER:

Both organizations hold examinations for certification in the field. Neither requires membership to sit for the exam, but they both charge a fee.

SENATOR CARLTON:

Will we be requiring current practitioners to become certified?

ASSEMBLYWOMAN WEBER:

Section 3 of the bill is a grandfathering clause that gives current practitioners until July 1, 2006, to obtain certification. Some of the current practitioners are self-taught, and their knowledge and skills need to be brought up to the same standard as new practitioners.

SENATOR CARLTON:

Is that enough time to allow them to comply? Are classes offered in Nevada?

ASSEMBLYWOMAN WEBER:

Those I have spoken to felt the time limit was more than adequate. The certification exam can be taken online.

SENATOR TIFFANY:

This is a relatively new field. How long have these organizations been in existence?

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ASSEMBLYWOMAN WEBER:

I believe they have both been around since the early 1990s.

SENATOR TIFFANY:

How many practitioners are there currently in Nevada? How many of them are certified?

ASSEMBLYWOMAN WEBER:

I have a magazine article ([Exhibit F](#)) that estimates the number of technicians nationally at 10,000. The health authorities may be able to give you an estimate of the number of practitioners who are certified, since they grant local health licenses.

MARY ARNOLD-RONISH, CERTIFIED PERMANENT COSMETIC PROFESSIONAL:

I have written testimony ([Exhibit G](#)). There are perhaps 100 people doing permanent cosmetics in southern Nevada at the moment. I do not know the number certified.

SENATOR HARDY:

[Exhibit E](#) indicates there are no Nevada statutes regulating tattoo artists. Was there any consideration of including tattooing in this bill?

Ms. ARNOLD-RONISH:

We would be happy to include traditional tattoo artists in this bill. However, they are a distinct field with separate training and a longer apprenticeship. The bill was intended to make sure the growing number of people doing permanent cosmetics are regulated and the public is protected.

SENATOR HARDY:

In that case, the definition of "permanent cosmetics" in section 2, subsection 4, needs to be more specific. The current definition would also cover Mike Tyson's new tattoo.

REBECCA BRYANT:

Mr. Tyson's tattoo is decorative only. Permanent cosmetics are tattoos intended to simulate makeup: brows, eyeliner and lip color.

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SENATOR HARDY:

Perhaps the definition should specify that it does not include decorative tattooing.

GLEN SAVAGE (Environmental Health Director, Clark County Health District):

We are in support of this bill. We believe the two organizations can provide the education and training for this field in our community. This bill is needed to give the local health authority the ability to regulate this field. Regarding testing, the community college can host the exam so it can be proctored and monitored. This has been done in the past in Clark County.

ASSEMBLYWOMAN WEBER:

I have an amendment to offer ([Exhibit H](#)). In section 2, subsection 2, we will substitute the phrase "remove cosmetic tattoos" for the phrase "perform permanent cosmetics," which was an error. In section 2, subsection 4, the phrase should be "applications of pigments to or in the skin," which is technically more correct than "under the skin." There is also an amendment from Senator Heck ([Exhibit I](#)).

KEVIN POWERS (Committee Counsel):

In the first part of this amendment, where we're replacing "perform permanent cosmetics" with the phrase "remove cosmetic tattoos," I think this raises the issue that Senator Hardy brought up about the definition. It seems to me that removal of the tattoos would apply to any type of tattoo, not just cosmetic tattoos. I think that would be the intent, as I understand it. ... That raises the issue of should someone who performs permanent cosmetics ever be allowed to remove anything other than cosmetic tattoos? Subsection 2 creates a prohibition on the removal of cosmetic tattoos unless the equipment is used under the direction of a physician or, based on the amendment from Senator Heck, an osteopathic physician. The issue is should this be limited strictly to cosmetic tattoos.

MR. SAVAGE:

I would recommend the prohibition extend to any tattooing. We had an individual in Clark County with no medical training who acquired a laser and performed tattoo removals, leaving several patients with permanent cheloid



scarring. Some of those involved gang tattoos, which are not decorative tattoos, permanent cosmetics or surgical scars.

SENATOR HECK:

I would agree. Neither a tattoo artist nor a permanent cosmetics technician are authorized to buy and use a laser for this purpose. If someone wants a tattoo removed, they need to see a physician who is licensed to use a laser in their facility. If that physician chooses to hire a permanent cosmetic technician to operate the laser to remove a traditional tattoo, it would be considered a physician's employee doing what they are trained to do.

MR. POWERS:

Just so the record is clear, subsection 2 applies only to someone who already has the certification for permanent cosmetics. We would then be saying they would be prohibited from removing any type of tattoo unless done under the direction of a licensed physician. Just so it's clear for the record, if someone who wasn't certified as a permanent cosmetic individual [used a laser for tattoo removal], this part wouldn't apply. If they were involved in that activity, that may fall under a different criminal prohibition; it wouldn't fall under this one.

SENATOR HARDY:

Is it germane to expand this bill to prohibit all individuals from using a laser to remove a tattoo unless under a physician's direction?

MR. POWERS:

"Because we're involved in the world of permanent cosmetics and that does involve a tattooing process, I believe it would be germane to the essence of the bill and would be appropriate for an amendment."

SENATOR HARDY:

I would suggest we expand the language in that fashion.

SENATOR HECK:

I agree. This procedure should only be done in a physician's office.

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MR. SAVAGE:

In the case I mentioned, the gentleman purchased a laser device from a physician who was leaving the area. He had not had one day of training in the medical field. I would like to see the bill expanded to cover all tattooing and body piercing in addition to permanent cosmetics.

ASSEMBLYWOMAN WEBER:

I am not sure if we need to include a definition of tattoos in section 2, subsection 4.

CHAIR TOWNSEND:

I will close the hearing on A.B. 360 and open the hearing on A.B. 496.

[ASSEMBLY BILL 496 \(1st Reprint\)](#): Revises certain provisions governing licensing and regulation of cosmetology. (BDR 54-1182)

KEVIN TOUREK (Vice President/Associate General Counsel, Wynn Las Vegas):

I have written testimony ([Exhibit J](#)). At Wynn Las Vegas, we would like to offer two new services to patrons. One is a facial treatment that includes some aspects of massage. It has proved difficult to find someone in Nevada who is licensed for both cosmetology and massage therapy. Currently, cosmetology is licensed at the state level and massage therapy at the local level. Section 2 of the bill would streamline the licensing process for both licenses. For example, the background check for one license would be held to be valid for the other license.

Secondly, we would like to bring in guest celebrity hair stylists for short periods. Section 3 of the bill would establish a temporary license for cosmetologists licensed in other states. They would be permitted to apply for such licenses up to five times a year to perform services at resort hotels.

SENATOR HECK:

It is already in statute that cosmetologists licensed in other states can be licensed in Nevada without examination.

MR. TOUREK:

This only applies if the person has passed a national test. Some of the states require a state test instead of the national one.

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SENATOR CARLTON:  
Why are you restricting it to resort hotels?

MR. TOUREK:  
We have no objection to opening it to include other spas.

SENATOR CARLTON:  
We usually set license fees in statute, and I do not see them here. Also, will the State Board of Cosmetology have jurisdiction over these temporary licensees? If there is a problem with someone under this program, what is the mechanism to revoke or refuse a license?

CHAIR TOWNSEND:  
The bills states that the Board will have jurisdiction over the period covered by the temporary license. Does the Board currently issue temporary licenses?

ANNIE CURTIS (Field Inspector, State Board of Cosmetology):  
No, we do not. We are statutorily precluded from accepting licenses from other states if they do not require the national test. Since the state licensing tests have essentially the same information as the national test, we would be able to accept these guest cosmetologists without further licensure if the requirement for the national test were taken out of the statute.

SENATOR CARLTON:  
In general, this Committee has not been in favor of blanket reciprocity because of the differences in standards from state to state.

JOHN M. VERGIELS (Euphoria Salons and Day Spas):  
I believe the spas intend to bring in stylists from other countries. Reciprocity becomes much more complicated across international lines.

MR. TOUREK:  
The bill is limited to cosmetologists licensed in another state or territory of the United States.

CHAIR TOWNSEND:  
Regarding section 2, please describe the service you wish to offer.

MR. TOUREK:

It is a treatment currently only offered in London involving a facial and some aspects of foot massage, or reflexology. In order to offer this service, we must either use two people or have one person with two licenses. Section 2 of the bill would require the two licensing bodies to cooperate in such a circumstance. For example, if both boards require a background check, the person could use the same background check for both rather than having to undergo two background checks.

SENATOR CARLTON:

There needs to be a time limit on the time lapse between one board's background check and the next. A lot can happen in two years. It was my impression we were talking about simultaneous filing for licensure under two professions.

MR. TOUREK:

That is correct.

CHAIR TOWNSEND:

Nevada does not currently have a state board to license massage therapists.

MR. TOUREK:

The intention was that the State Board of Cosmetology and the Clark County Business License Department would work together.

SENATOR HECK:

Regarding the temporary license, it would be less onerous on the Board to issue a full license to these visiting stylists than to reissue a temporary one five times a year. Perhaps we could change the wording to allow the national exam or a state exam as approved by the Board.

MS. CURTIS:

That would be acceptable to the Board.

MR. TOUREK:

The visiting stylists are not interested in being permanently licensed in Nevada.

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CHAIR TOWNSEND:

If the visiting stylists wish to practice in Nevada five times in one year, would they need to submit five applications and pay the fee each time?

MR. TOUREK:

I believe the answer is yes.

CHAIR TOWNSEND:

How long do you think it will take the Board to process these temporary license applications?

MS. CURTIS:

Our turnaround time is at least three weeks. This process might take a little longer for these temporary licenses, depending on how long it takes to get verification of the original license from the other state.

MR. TOUREK:

The bill could include a provision that the visiting stylist must provide a certified copy of their license, if this would save time.

CHAIR TOWNSEND:

It is generally not considered acceptable for an applicant to provide his or her own records.

MR. POWERS:

There could be a possible resolution of this – not a temporary license or full licensure, but a limited license. They would come and apply once. The limited license would be good for a year, but they would be limited to practicing in these specific locations. That would take away the administrative burden on the Board, but limit what these out-of-state individuals could do in this State.

CHAIR TOWNSEND:

Does that solve your problem?

MR. TOUREK:

As long as there is no testing and the Board accepts the certification of another state, that is acceptable.

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CHAIR TOWNSEND:

Regarding section 2 of the bill, massage therapists who practice in southern Nevada must get a business license from the Clark County Business License Department. How long does it take to get a background check for a massage therapist?

BILLIE SHEA (American Massage Therapy Association):  
It takes about 90 days.

STAN OLSEN (Las Vegas Metro Police Department):  
Most of that is because of the time it takes to get the information back from the Federal Bureau of Investigation.

CHAIR TOWNSEND:

Mr. Powers, please do a mock-up of the bill incorporating the limited license and eliminating the restriction to resort hotels.

MR. POWERS:

"We would probably bring this back to the Committee early next week."

MS. CURTIS:

We concur with those changes.

CHAIR TOWNSEND:

I will close the hearing on A.B. 496. We will move to the presentation by Mark Kaplinsky.

SENATOR SCHNEIDER:

This presentation arose out of our discussions on common-interest communities. Mr. Kaplinsky's ideas represent the private sector stepping forward with new technology to help the process.

MARK KAPLINSKY (President, Lookahead West, Incorporated):

I have a PowerPoint slide show ([Exhibit K](#)) describing four software packages we have developed and will make available to common-interest communities.

The ombudsman's educational package incorporates material originally presented by the ombudsman to educate homeowners. This package has been given to the Real Estate Division for their use.

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The single-page secret election ballot is a simplified format of a secret ballot. It replaces three envelopes, instructions and the actual ballot.

The Webcasting package enables a common-interest community to broadcast board meetings on the Internet with a budget of almost zero. It is designed to be simple to use. Meetings can be broadcast for about \$1 for 300 hours.

The self-authenticating violations capture and management system is a package that combines a global positioning system (GPS) and a digital camera for registering violations of a community's conditions, covenants and restrictions (CC&Rs). It requires the user to review every house in the community and to apply the same rules to every house.

ALLAN SMITH (Manager, Information Systems, Legislative Counsel Bureau):  
I have reviewed these packages with Mr. Kaplinsky. I am considering the Webcasting package for use in the Legislature, to be used in archiving meetings.

CHAIR TOWNSEND:  
Thank you for your presentation.

I will open the hearing on A.B. 254.

**ASSEMBLY BILL 254 (1st Reprint)**: Revises provisions governing industrial insurance. (BDR 53-1080)

SENATOR HARDY:  
We have a revised mock-up of the bill ([Exhibit L](#)). After discussion, we felt the phrase "Engaged in a pattern and practice of willfully failing" in section 2, subsection 1, paragraph (h) of the mock-up was too broad. We have substituted the phrase "Intentionally and willfully failed" instead. The concern was that such failure might be caused by a disgruntled employee trying to sabotage the company.

MR. POWERS:  
My concern here about "intentionally and willfully" is that "willfully" and "intentionally" are essentially synonyms in the law. *Black's Law Dictionary* defines "willfully" as "voluntary and intentional." I'm not so sure that saying "intentionally and willfully" will change things. I'd like to point out that this bill actually has

two components. Although it amends one section, that section has two components. Subsection 1 of section 2, amending 616D.120 [of the NRS], deals with the fines. Subsection 3 deals with the benefit penalties. I think we can leave paragraph (h) as it is in the bill with the increase in the fines, because it is still going after intentional conduct, and then adjust subsection 3 with regard to the benefit penalties and require a pattern or practice with regard to intentional violations just for the benefit penalties.

CHAIR TOWNSEND:

Are you suggesting we leave the wording in section 2, subsection 1, paragraph (h) as "Intentionally failed," and then make other changes in subsection 3 of section 2?

MR. POWERS:

Yes. [In subsection 3,] instead of just referencing paragraph (h), we can set up a different standard with regard to the benefit penalties. ... We could use the language that is in the mock-up, "engaged in a pattern and practice of willfully failing to comply ... " We just take the language from paragraph (h) ... or ... since it goes to each individual employee, we may want to focus in the benefit penalties on malicious conduct. That's higher than intentional; it's culpability. In degrees of culpability, there is negligence, simple negligence, intentional or willful, and malicious conduct. Because benefit penalties go towards the individual employee, if we put a standard of maliciousness with regard to the benefit penalties, that would take away – that would address Senator Hardy's concerns.

JOHN (JACK) E. JEFFREY (Southern Nevada Building and Construction Trades Council):

I would object to that. The benefit penalty was intended to replace the bad-faith lawsuit provisions in the NRS. To allow the parties to have several violations before anything is done will cause more problems than we already have.

MR. POWERS:

I agree. I moved away from that because the benefit penalty does turn on individual employees. Again, this would not change paragraphs (a), (b), (c), (d) and (e) that are already in the benefit penalty. But instead of just simply adding (h), we could add a



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violation of (h) that is found to be malicious. Usually, "maliciously" is the standard used for that higher level of culpability.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):

I had asked for "willful and intentional" because I was trying to impose a higher standard. I was thinking that you can do something willfully without intending to do harm.

MR. JEFFREY:

What is the definition of "malicious"?

MR. POWERS:

"*Black's Law Dictionary* defines 'malice' in the case of 'maliciousness' as 'reckless disregard of the law or of a person's legal rights; ill will or wickedness of heart.' It's a higher degree of culpability above simple intentional conduct."

SENATOR HARDY:

That would satisfy my concerns.

MR. JEFFREY:

I do not have a problem with that.

MR. POWERS:

What I'm suggesting is that for the fines, we keep it at "intentional." The fine amounts would increase with regard to this bill, but not that much with regard to the intentional conduct. That still falls within realm of the Division and the administrator. But with regard to the benefit penalty, there has to be that additional showing that it's not only intentional, but also malicious. You could have intentional conduct and still get the fine, but if you can't show maliciousness, you wouldn't get the benefit penalty.

MR. JEFFREY:

Since that is only with regard to paragraph (h), I do not have a problem with it.

CHAIR TOWNSEND:

I will close the hearing on A.B. 254.

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SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 254 WITH LANGUAGE SUGGESTED BY KEVIN POWERS.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

Is there any further comment? Hearing none, I will adjourn this meeting at 10:17 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_