

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

**Eighty-second Session
March 6, 2023**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 9:06 a.m. on Monday, March 6, 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

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Kelly K. Clark, Committee Secretary

OTHERS PRESENT:

Susan Nguyen, PharmD, Roseman University of Health Sciences;
Volunteers in Medicine of Southern Nevada
Elizabeth MacMenamin, Retail Association of Nevada
Will Adler, Stericycle
Paul Moradkhan, Vegas Chamber
Paul Young, Pharmaceutical Care Management Association
Barry Cole
Kristin Aldred, Ph.D., Director of Governmental Affairs, Stericycle
Randy Soltero
Fran Almaraz, Teamsters

Senate Committee on Commerce and Labor
March 6, 2023
Page 2

Greg Esposito, Nevada State Pipe Trades
Susie Martinez, Nevada State AFL-CIO
Sarah Collins, National Electrical Contractors Association
Rick McCann, Nevada Association of Public Safety Officers
Connie McMullen, Personal Care Association of Nevada
Marlene Lockard, Service Employees International Union, Local 1107
Tray Abney, National Federation of Independent Businesses
Paul Enos, Nevada Trucking Association
Brett Harris, Office of the Labor Commissioner, Nevada Department of
Business and Industry
Paul Bodine

CHAIR SPEARMAN:

We will open the hearing on Senate Bill (S.B.) 183.

SENATE BILL 183: Establishes provisions relating to the collection and destruction of unused drugs. (BDR 54-576)

SENATOR JEFF STONE (Senatorial District No. 20):

I am proud to present S.B. 183. The appropriate and legal disposal of expired or unused prescription drugs is important to prevent drug diversion and protect our landfills and water supplies.

I would like to discuss diversion. Many citizens often store their unused or expired pharmaceuticals in their medicine cabinets at home. This leaves unused prescription drugs vulnerable to abuse. Children, grandchildren—even strangers visiting the home—may access and take these drugs. If it is a type of controlled substance, it may be stolen and sold on the street.

For example, in the real estate profession, many sales agents instruct property owners to remove all prescription drugs from the home to prevent them from being stolen during home showings and open houses. In a rapidly aging population, there is a higher chance of being prescribed controlled substances for pain, like hydrocodone, Vicodin, OxyContin, Dilaudid, morphine, and controlled antianxiety drugs. These drugs can be sold illegally on the street for a lot of money. Data from federal law enforcement agencies has shown that OxyContin can be sold for \$50 to \$80 a tablet, and hydrocodone or Vicodin, can sell for \$5 to \$20 a tablet.

When they cannot find a drug disposal box, many people throw their pills in the garbage or flush them down the toilet, polluting our landfills and tainting our water. Many drugs are water soluble and cannot be filtered by water treatment plants. They accumulate in our water supplies, especially in southern Nevada where a robust toilet-to-tap program is essential to confront the drought and low water levels at Lake Mead.

We also see an increasing trace presence, which may present health issues in the future. For example, studies have shown traces of drugs in Lake Mead that were either excreted by the body or improperly disposed. Since Lake Mead is a major water source, this is concerning. Some of the drugs found in our water supply have been implicated in causing severe health care issues, including cancer.

The solution is installing more drug disposal bins at retail pharmacies across Nevada. The U.S. Drug Enforcement Administration (DEA) has promulgated the Code of Federal Regulations, Title 21, that allows for the installation of drug disposal bins. This bill, S.B. 183, allows participating pharmacies to place bins where they can be observed while the pharmacy is open, and locked shut, when the pharmacy is closed.

In accordance with Title 21, this regulation allows DEA licensed and registered companies to pick up discarded pharmaceuticals and destroy them, mostly by incineration. These activities are fully traceable and accountable. One national disposal company reports over 1 billion pounds of pharmaceuticals were destroyed last year alone.

The issue is that there are just not enough drug disposal bins in Nevada to appropriately discard pharmaceuticals. The State Board of Pharmacy has identified 42 disposal bins Statewide for 3.2 million people. That is one bin for every 76,190 people. There are also drug disposal bins at police or sheriff's department offices not counted here.

For comparison, California has a similar program. In Sacramento, California, with a population of 520,000, there are 96 pharmacy locations, or one bin for every 5,426 people.

What will this bill do? It will encourage, not mandate, that pharmacies, especially chain stores, consider adding more drug disposal bins Statewide,

making the service better advertised and available. The goal is to expand to more convenient locations for our Nevada citizens to utilize. You may ask why a pharmacy would consider becoming a collector site and placing these bins throughout the State?

For the pharmacy, providing this eco-friendly and public safety service can help promote the store as a wonderful community partner. These bins might help increase customer traffic in stores, both to discard unused drugs and to buy prescriptions and sundries.

Pharmacies that install these bins cannot, by this legislation, charge a fee for patron usage. It is a free service offered by participating pharmacies. To participate, pharmacies need to get regulatory approval from the DEA, the lead agency overseeing this program.

The Pharmacy Board does not require, nor does it mandate or desire to mandate, permission to participate in the program, via an application or permit for the same. In some states, like California, they do require an application, which adds costs for participating pharmacies.

There is no legal requirement for participating pharmacies to notify local law enforcement agencies or the municipality where the bins are located. That is not necessary, as the DEA is the chief law enforcement agency for the program.

Section 1 in S.B. 183 amends the *Nevada Revised Statutes* (NRS) 639 to add a new section for a collector to maintain a secure drug take-back bin for the collection and destruction of home-generated pharmaceutical waste that shall comply with all applicable State and federal laws relating to the same.

Section 1, subsection 1, paragraph (b) will be stricken by amendment. Section 1, paragraph (b), subparagraph (2) shows that the collector is registered with the DEA.

Section 1, subsection 1, paragraph (c) ensures the take-back bin is placed in a location that is regularly monitored by employees of the pharmacy.

Section 1, subsection 1, paragraph (d) ensures that conspicuous signage is posted on the take-back bin that clearly notifies customers of the substances

that are, and are not, acceptable in the bin. Schedule 1 drugs are not acceptable. The signage must also note the hours when bin deposits are permitted.

Section 1, subsection 1, paragraph (e) ensures public access to the secure drug take-back bin is limited to the hours in which pharmacy employees are present and able to monitor the operation of the bin.

Section 1, subsection 1, paragraph (f) requires regular inspections of the bin and its surrounding area. If tampering or diversion occurs, it must be reported to local law enforcement. Participating pharmacies must maintain a record of the inspections for two years. In the event a collector discontinues a bin, the collector must inform the DEA of that event.

In section 1, subsection 2, it states that a collector cannot receive compensation from a customer to maintain the bin. Any collector that maintains a secure drug take-back bin is not subject to any civil or criminal liability or disciplinary action by a professional licensing board for any injury or harm resulting from the collector maintaining the bin on his premises, unless the injury or harm results from the gross negligence or willful misconduct of the collector.

In section 1, subsection 4, the bill notes there is no mandate for any pharmacy to install and maintain such a bin. The Pharmacy Board may adopt regulations for take-back bins, if prudent.

Section 1, subsection 6 defines a "collector" as authorized by and registered with the DEA to receive controlled substances for the purposes of destruction. The pharmacy must be in good standing with any licensing authority.

We will be removing subsection 6, paragraph (b) on "health authority." It is not necessary to require that a health agency be informed that a bin exists.

Subsection 6, paragraphs (c), (d), (e), (f), and (g) cover the definitions for "waste," "local law enforcement," the word "maintain," "pharmaceutical," and "secure drug take-back bin."

Section 2 states the regulation becomes effective upon passage and approval for the purposes of adopting any regulations and performing any administrative tasks that are necessary by October 1, 2023.

We are working with stakeholders and considering amendments. One amendment is in front of you, ([Exhibit C](#)). We want to be clear that we will exempt counties, cities or other governing authorities, to the effect that the collection, transportation, treatment or disposal of the waste, pursuant to the section, does not conflict with their waste-hauling franchise agreements.

The word "board" will be amended throughout the document to read "State Board of Pharmacy."

On line 24, page 3, after "controlled substances" we will add, as noted in the amendment, "while under control of the collector" and delete the reference to "seeking or reporting to the Nevada Board of Pharmacy," which is not required. We will also delete the section on the Nevada Department of Health agency licensing or notification, which is not required.

Nevada has a shortage of drug disposal bins. This is a voluntary program. It is not mandated. The service is free for any citizen to safely discard prescription drugs. This bill will reduce illicit drug diversion and will also reduce deposits of potentially toxic drugs into our landfills and water supplies. I am honored to have with me here today, Dr. Susan Nguyen, an Assistant Professor of Pharmacy at Roseman University of Health Sciences in Henderson.

SUSAN NGUYEN, PHARM.D (Roseman University of Health Sciences; Volunteers in Medicine of Southern Nevada):

I want to supplement Senator Stone's presentation with information from my own experience as a pharmacist. I often review patient medications. I go through each one to make sure the patient understands what they are taking and why. It is alarming that many patients do not know what to do with old medications when they get a new prescription.

During my visit with patients, I often recognize the duplications and ask questions: How are they taking the medications? Are they doubling up? Or is there a disconnect?

Many times, patients say they do not know how to dispose of medications. Some use mail-order pharmacies to save money. In many cases, patients receive prescriptions by mail after a prescription has changed, creating a surplus for disposal.

Senator Stone mentioned the types of medications that get into our water and trash. We know from the Nevada Prescription Monitoring Program, there are between 500 and 700 opioid prescriptions per 1,000 patients here in the State. That is a lot of opioid prescriptions. There are also stimulant medications, anxiety medications, and muscle relaxants. If they are not utilized, they can get out onto the street and be bought by others.

As an educator, I try to see things through my patient's eyes. If they want to dispose of their medications, what would they do? Most people would Google it. The first two listed are the Southern Nevada Health District and Clark County Water Reclamation District websites. They provide information on 16 police substations where patients can dispose of excess medications.

They also describe how to dispose of a small amount of medication in your trash. Patients are focused on a convenient way to get rid of their medications. I do not know if patients will go out of their way to a police station to dispose of medications.

The DEA sponsors two National Prescription Drug Take Back Days, usually in October and April. Sites around the State take in medications and dispose of them properly.

Data from the October 2021 Prescription Drug Take Back Day showed 25 Nevada sites collected more than 3,000 prescriptions. One and a half tons of medication was collected in that one day.

We know that 89 percent of people live within five miles of a pharmacy. If these bins were in pharmacies, it would increase access for proper disposal. It would be convenient to dispose of unused medications. I support this bill, S.B. 183, because it is a patient safety and community safety project.

SENATOR SCHEIBEL:

This bill would not allow people to dispose of illicit substances in these bins, is that correct? I also want to ask, could a doctor's office be a collector site?

Senate Committee on Commerce and Labor
March 6, 2023
Page 8

SENATOR STONE:

That is correct, DEA Schedule 1 drugs are not allowed. And yes, a doctor's office would be eligible. They would have to file with the DEA for the appropriate licensure and comply with the same rules and regulations as far as monitoring. I do not believe that is common.

SENATOR DALY:

I know people must register with the U.S. Drug Enforcement Administration. How much of what they require is duplicated? Is a lot of this new? Is it going to create any unnecessary barriers?

SENATOR STONE:

The primary agency is the DEA. State regulations pretty much mimic what the DEA requires. The reason I took out the references to notifying the Pharmacy Board, the Nevada Department of Health and Human Safety and the Nevada Department of Public Safety, is to reduce those onerous requirements on the pharmacy that is doing this as a public service. The DEA is the primary public safety agency overseeing the program.

SENATOR BUCK:

Who are the collectors? What background checks or restrictions are required of them? Is there a chain of custody to destruction?

SENATOR STONE:

The collectors are, in fact, the pharmacies. They are already licensed, not only by the Pharmacy Board, but also by the DEA. Then you have the companies that pick up the paraphernalia and unused prescription drugs. They are bonded and have a license through the DEA.

There is a major national company building a new facility here in Storey County, to collect and incinerate these pharmaceutical drugs. The company, Stericycle, incinerated over 1 billion pounds of drugs in the last 12 months.

SENATOR HAMMOND:

I am unclear on something. The pharmacy registers with the DEA, but the DEA does not inform any of the local entities? Is there a disconnect there?

SENATOR STONE:

We do not have to report the existence of the bins to local law enforcement or to the Pharmacy Board. The DEA is the master licensing entity. They are the chief law enforcement agency that is going to be overseeing the bins, so reports would go to them. The Pharmacy Board knows because they share a database with the DEA.

SENATOR HAMMOND:

Thank you. You speak of "regular inspections." What does that mean?

SENATOR STONE:

That is specifically written in the regulations by the DEA and the State as a part of this bill. Collectors must regularly monitor the bin throughout the day and initial records every few hours to show that the bin is there and has not been tampered with. If it has been tampered with, that must be reported to local law enforcement within 24 hours. There is constant monitoring. It must be open when the pharmacy is open, and closed with no accessibility from the public, when the pharmacy is closed.

SENATOR HAMMOND:

I was wondering if "regular inspections" meant somebody coming by and checking the bin, but it is the workers in the store who are monitoring it.

SENATOR PAZINA:

You mentioned contamination to the water supply. Are there any treatments that can be done to the water after it has been contaminated by these drugs? Or is it just taken out of the water supply entirely?

SENATOR STONE:

There are newer technologies now using ozone treatment, but it is difficult to get rid of some of these water-soluble drugs. They are not filterable with today's water treatment plant technology. This is especially true of drugs excreted by the body that end up in the toilet and the water supply. Expired drugs that are flushed or put into landfills leach into our water supplies. Traces of those drugs are found for years.

Because Lake Mead is such a large body of water, we still have good water quality here. Looking 20 or 30 years down the road, with more population and more drugs going into the Lake, it could become a problem. It would be

especially troublesome if technology does not figure out a way to get these drugs out of our water supplies.

SENATOR LANGE:

My question is about the collection sites. Have you talked to different pharmacy chains about being collectors? How do you recruit them?

SENATOR STONE:

If the bill becomes law, there will be publicity about it. It will be readily communicated through the Pharmacy Board. I am sure that there will be notices to chain stores about the program. There will be requests for the bins to be installed. Hopefully, pharmacies will see the need and participate because it benefits everyone. This bill makes it convenient for people to appropriately dispose of their medications.

SENATOR SCHEIBLE:

I like this bill; I signed onto it. Would you help us understand the process when somebody inevitably drops a Schedule 1 drug into this container?

SENATOR STONE:

When the drugs are picked up from the collectors, they are in a sealed bag that will be incinerated. There is no way to know what is in it. That is one reason it is safer. Someone can go into a pharmacy and drop off, with no questions asked. Otherwise, they would be taking that Schedule 1 drug into a police station to say, "I would like to use your drug disposal bin to get rid of my methamphetamine." Schedule 1 drugs may be dropped off, even though you are not legally supposed to do that. But no one will be apprehended for doing so.

SENATOR SCHEIBLE:

I am pleased to hear that. You are telling me; "we are not guaranteeing you safe harbor if you drop off your Schedule 1 drugs in this bin. But if you do, they will be disposed of properly." We do not run the risk of children, pets, or other people accessing them. That is the perfect compromise.

SENATOR STONE:

There is no interrogation of anyone. The bin is like a mail receptacle. You pull the lid down; you dump what you have in there. Nobody is asking you what you put in there. It will be safely incinerated.

CHAIR SPEARMAN:

In 2017, we heard a presentation on these little bags used to safely dispose of medications. You put water in the bag and the drugs disintegrated. That helps with drug abuse, but not the landfill issue. When people put drugs in these take-back bins, is it the whole bottle, or just the medicine?

SENATOR STONE:

Just the medicine. You take it out of the bottle and pour it into the bin. I recommend that people take the bottles away with them as they have personal information.

CHAIR SPEARMAN:

I have a question about the ozonated water. Is that what we would use as gray water?

SENATOR STONE:

I do not know the answer to that question. It is a treatment to get rid of some contaminants that could not otherwise be filtered. But, yes, that water would go down the drain.

ELIZABETH MACMENAMIN (Retail Association of Nevada):

I appreciate Senator Stone working with the Association. We represent the chain drug stores, the ones that you all are discussing, that currently have these kiosks in them. I am passionate about this subject.

Since 2009, I have been participating in what initially started as the Prescription Drug Roundup program. We started taking drugs back even before the DEA program. We worked with Join Together Northern Nevada and law enforcement. We knew there was an issue with substance abuse that needed to be addressed, and that was how we started.

Since then, there have been kiosks in Walgreens. In fact, Walgreens, one of our members, rolled out the first kiosk in Nevada. It costs them a lot of money to dispose of those drugs. I hope this bill gives the opportunities to some of these smaller independent pharmacists, so they can install these bins as well.

California reimburses pharmacies for this program. There is no expense for pharmacies, chain drug stores, or independent stores to participate. The state, or some other entity, pays for it. That allows pharmacies to keep drug costs

down, which is in the public interest. We support this bill, and we will be working with Senator Stone on the amendments.

In response to your question about registering with the Pharmacy Board, that is not done presently, because it would add more expense. All the registration is on the DEA's website.

The Retail Association of Nevada has gone out of its way to make sure people understand and know these take-back bins are available. We put information in our newsletter. We write editorials to get the message out, so the public knows that these drug return kiosks are available.

When you go to your local Walgreens or Walmart, you can ask your pharmacist where to dispose of prescription drugs. You cannot bring them into the pharmacy. That is against the law. The pharmacist cannot, and will not, take your drugs.

WILL ADLER (Stericycle):

Stericycle is the world's leader in prescription drug removal and disposal. They have announced that they are moving to Nevada and will soon open their flagship store in Storey County. They have submitted an amendment, [Exhibit C](#).

They have one of the few facilities in the Nation that is approved by the DEA for drug disposal. This is a regulated process. There is a scannable barcode on the collection bin and on the inside liner to ensure it is disposed of correctly.

There are multiple benefits of this program for proper disposal: it keeps our land and water clean, it keeps Nevadans safe, it raises awareness, and it takes these drugs out of the system.

Nevada has been participating in these drug take-back programs for a while. Many good community partners conduct drug take-back programs in coordination with the DEA program, but those are only held one day every six months.

We hear from community partners that more is needed. We applaud Senator Stone for this bill. As Stericycle has seen in multiple states, there are three key factors here: The ease of accessing the bin at the participating pharmacy, the availability of these products, and public awareness of a visible

program. Promoting the program and having State support will really help increase the number of drugs removed from the system.

The One Nevada Agreement on Allocation of Opioid Recoveries, a federal opioid settlement, can be used by the Counties for drug take-back programs. That might help promote this program, too. There also may be other resources available.

PAUL MORADKHAN (Vegas Chamber):

The Chamber supports S.B. 183. We appreciate that the sponsor is working with industry and collaborating to address a community public health and safety need. The Chamber appreciates the safeguards that are included, not just in the legal remedy, but also regarding access, bin hours, and pharmacist oversight. We appreciate that this is a partnership and not a mandate.

PAUL YOUNG (Pharmaceutical Care Management Association):

We are in support of S.B. 183.

BARRY COLE:

How many of us have gotten a prescription that we did not complete? What did you do with the bottle? They usually go in your medicine cabinet and stay there for years. I have a role with the American Academy of Pain Management, the American Society of Pain Educators, and what became the American Academy of Hospice and Palliative Medicine. I have found that patients think the physician who wrote the prescription will take the medicine back.

When I was the medical director at Saint Mary's Medical Center, someone brought in a garbage bag filled with controlled substances. It was supposed to be destroyed when the individual died. Instead, it was delivered to me. Now I am stuck with thousands of dollars of drugs, with nowhere for them to go. The DEA's Drug Take Back Day is only twice a year; that is the dilemma.

Patients and families do not know what to do with this stuff. Most of the take-back programs, I hate to tell you this, will not accept controlled substances. They take everything else. We do not want to do what the Food and Drug Administration says, which is to put it down our commodes. That is not good for the water supply. Do you really want to eat fish out of a river that has opioid or benzodiazepine contamination?

Senate Committee on Commerce and Labor
March 6, 2023
Page 14

These take-back bins are quite helpful. Locating them strategically in a pharmacy, where they are always monitored by people aware of the rules and regulations, will make this much safer. Please support this bill.

KRISTIN ALDRED, PH.D. (Director of Government Affairs, Stericycle):

Stericycle's mission is to provide compliance-based solutions for regulated waste to protect people, promote health and well-being and safeguard the environment. We support healthcare providers with the management of infectious and pharmaceutical waste across the globe. We are currently building a medical waste treatment facility in Storey County. We also offer services to support consumer drug take-back activities, which is why I joined the company. Stericycle has submitted an amendment, [Exhibit C](#), to offer further input on this bill.

I hold a doctorate in human behavior and design. I have conducted research on people's drug disposal behavior and have helped develop drug take-back policies. Drug take-back programs provide a way for consumers to easily remove unneeded pain medications and leftover and expired pharmaceuticals from their homes. This helps prevent diversion and accidents and protects water quality.

The misuse of prescription medication remains a critical public health issue. Many addictions begin with the misuse of prescription medications—often obtained from friends and family members.

Many people know it is essential to safely dispose of unused medications, but education is not enough. Even with awareness and good intentions, people still need convenient options. Unfortunately, flushing and trashing are the most common forms of disposal. Many people simply hold onto leftover and expired medications.

Convenience is about more than distance. We are more likely to do something that fits into our normal routine and is in a familiar location, like a pharmacy. Convenience is so very important for participating pharmacies. Well-established rules and guidelines benefit drug take-back programs. Pharmacies that want to participate as collectors need support and minimal barriers to participation. I applaud you for working on this important issue. I would be happy to be a resource.

Senate Committee on Commerce and Labor
March 6, 2023
Page 15

CHAIR SPEARMAN:

A few years back, there was a program called Rx Abuse Leadership Initiative. It provided free drug disposal bags. I would not want to amend this bill, but it was an effective way to promote safe disposal at home. Also, I understand the California program, but we just do not have the budget.

SENATOR STONE:

Thank you for your comments. I appreciate your consideration of [S.B. 183](#).

CHAIR SPEARMAN:

We will close the hearing on [S.B. 183](#). We will now hear [S.B. 145](#) which deals with employee misclassification.

[SENATE BILL 145](#): Revises provisions related to employee misclassification.
(BDR 53-159)

SENATOR ROBERTA LANGE (Senatorial District No. 7):

I am presenting [S.B. 145](#), which continues the work of addressing employee misclassification in Nevada. I am joined by Fran Almaraz and Randy Soltero, representing organized labor.

Employee misclassification is a practice of classifying workers as independent contractors rather than employees. This misclassification can occur intentionally or unintentionally. Either way, it can have serious legal and financial consequences for both workers and employers. Misclassification can result in workers being denied important protections and benefits that are only available to employees. These include overtime pay, workers' compensation, unemployment insurance, and certain job protections. This can lead to financial hardship, worker job insecurity and unfair competition for employers who are following the rules. The information in the handouts ([Exhibit D](#) and [Exhibit E](#)) covers the impacts of misclassification on communities and employees.

I would like to provide a short history of this issue. The Nevada Legislature approved S.C.R. No. 26 of the 75th Session creating an Interim Subcommittee to Study Employee Misclassifications.

The Subcommittee was directed to determine the scope of the problem of employee misclassification in Nevada including: the implications and scope of economic losses for employees and lost revenues for the State and local

governments; proposals for State processes to identify employee misclassification; potential penalties for employers engaging in employee misclassification; and legal recourse for affected employees.

As a result of its work, the Subcommittee adopted several recommendations including, among others, creating a Task Force to coordinate State efforts to reduce employee misclassification, providing a private right of action for misclassified workers; and implementing a graduated penalty against employers who misclassify their workers.

These Subcommittee recommendations were enacted with the passage of S.B. No. 493 of the 80th Session. It included the creation of a Task Force on Employee Misclassification. Their 2022 annual report ([Exhibit F](#)) is attached.

The measure before you today, S.B. 145, incorporates several recommendations from the Task Force, such as: Revising statutes that prohibit State agencies from sharing investigative information related to misclassification; sunsetting the Task Force on Employee Misclassification, increasing penalties and administrative fines for misclassification under the Office of the Labor Commissioner, Nevada Department of Business and Industry, to \$5,000 or more per violation; and allowing the Office of the Labor Commissioner to retain these administrative penalties, for the investigative cost to fund additional positions.

RANDY SOLTERO:

Section 1 requires all monies from the administrative penalties collected by the Office of the Labor Commissioner to be deposited in a separate account in the General Fund, which may be used to pay for additional staff at the Office of the Labor Commissioner.

Section 2 requires the sharing of information among State agencies: the Offices of the Labor Commissioner; the Division of Industrial Relations of the Employment Security Division of the Nevada Department of Employment, Training and Rehabilitation; the Nevada Department of Taxation; and the Attorney General.

They must share information relating to suspected or actual employee misclassification, regardless of whether the information is declared by law to be confidential. Confidential information must be maintained under the terms and conditions required by law that is found in section 2.

In addition, section 2, subsection 2, includes the definition of employee misclassification. This is necessary because section 5 eliminates the Task Force on Employee Misclassification and repeals statutes associated with its duties.

FRAN ALMARAZ (Teamsters):

Section 3 deletes provisions authorizing the Labor Commissioner to impose a tiered system of penalties for the misclassification of employees. Instead, section 3 provides that an administrative penalty imposed by the Labor Commissioner must be a fine of \$5,000 for each employee who is misclassified by an employer. You should all have Senator Lange's proposed amendment ([Exhibit G](#)) in your packet.

SENATOR LANGE:

We have submitted the proposed conceptual amendment, [Exhibit G](#), which Mr. Soltero will review with the Committee.

MR. SOLTERO:

The penalty part in the original bill was stricken in its entirety. After working with stakeholders, we agreed on this result. Under Section 3, subsection 2, paragraph (a), for the first offense committed by an employer who misclassifies a person as an independent contractor or otherwise fails to properly classify a person as an employee of the employer, the Labor Commissioner will issue a warning to the employer.

Subsection 2, paragraph (b) would become for a second or subsequent offense, a fine of \$5,000 for each employee who was "willfully" misclassified will be imposed by the Labor Commissioner. The word "willfully" is important, not only to stakeholders but to ensure this bill does address only bad actors who intentionally break the law.

SENATOR DALY:

I have a question on section 2 regarding confidentiality. It says confidentiality must be maintained, but it does not say who must maintain it. We might need to clarify that whoever receives the information will maintain it in the same way as the person who gave it.

Regarding the definition in section 2, I support dealing with misclassification, but I want to ensure that this deals with that issue. Other people try to use some of these terms to expand into other areas. That is not the intent,

especially when it comes to jurisdictional issues under construction provisions. Is this definition limited to the misclassification section?

MS. ALMARAZ:

Yes, that is the intent.

SENATOR DALY:

One final question on section 1, subsection 5 on the investigative costs. I know it was the recommendation of the Task Force, but I still have issues with the agency funding itself through penalties. I did some checking. No other agency funds their agency through the collection of fees and fines.

Many other boards do recover investigative costs and attorney fees. In NRS 622, a regulatory body is able to retain investigative costs and attorney fees. The penalties are problematic. Nobody else is funded that way. Regulatory boards give it to an industry fund, like the State Contractors' Board. I just hate to see any other State agencies try to be funded through penalties.

As you might understand, it creates problems. As an agency nears the end of the quarter or fiscal year, it must get a bigger penalty to be able to continue to fund that position. It is just bad policy to fund through penalties.

I had a short conversation with the Legislative Counsel Bureau to find out if anybody else is funded that way. They said no, to their knowledge, there are no other agencies funded that way.

I hope we can address the investigative costs and attorney's fees by putting that into the originating Statute, NRS 607, for the Labor Commissioner. That will allow them to do the same as other boards. The penalties are a problem. If we cannot fix it, that would cause me not to support the bill.

MS. ALMARAZ:

The Task Force decided to put the money into a separate account so that the Labor Commissioner would be able to fund activities to investigate these bad actors.

SENATOR DALY:

I saw the Task Force recommendation. They did not decide; that will happen here. I understand the idea, but it creates other problems, like the perception that the Office of the Labor Commissioner is going to prosecute to fund their Office. There are other things to be done. I would be happy to go with you to the Finance Committee to get more money for the Labor Commissioner. I would support that 100 percent.

MS. ALMARAZ:

I did speak to the Labor Commissioner. She did not feel there would be that perception. However, we will go back and review it.

CHAIR SPEARMAN:

How does it hurt a community when a private employer "willfully" misclassifies an employee?

MS. ALMARAZ:

The communities lose out when tax revenue is not collected for them. It impacts the misclassified workers if they are hurt on the job, because there is no workers' compensation if you are an independent contractor. By classifying a person as an independent contractor instead of an employee, the worker misses benefits. The employer does not pay unemployment insurance or workers' compensation tax. The employer has an edge when someone is bidding on a contract; they do not have to figure those costs into their bid.

CHAIR SPEARMAN:

One of the things I have heard is that this is not cost neutral. When people are misclassified and treated as contractors, then our social services are further strained. A few years back, we had employers working people 39 hours a week so they would not have to cover health insurance. The social services had to cover costs when something happened.

MS. ALMARAZ:

That is highly possible. When someone is hurt on the job and they have no recourse, they often go to social services for help with hospitalization, the doctors, food and rent. All those costs would fall to social services because the misclassified person does not have any recourse as an employee.

SENATOR STONE:

In other states, like California, they have what is called the "ABC Test" to determine whether somebody is an independent contractor or an employee. There was a bill in California that was critical of driver platforms, like Lyft or Uber. Some claimed the drivers were employees. Others said they were independent contractors. What is the test here in Nevada? How would those drivers be classified?

MS. ALMARAZ:

Section 2, subsection 2, describes misclassification. As used in this section, unless the context otherwise requires, "employee misclassification" means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under State labor, employment and tax laws. This includes, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers' compensation insurance, temporary disability insurance, the payment of wages and payroll taxes.

SENATOR STONE:

Would those drivers be considered independent contractors or employees in Nevada?

CHAIR SPEARMAN:

In 2015, those types of drivers were classified as independent contractor workers. That is now delineated in NRS 608.0155. The ABC test would probably not be applicable.

GREG ESPOSITO (Nevada State Pipe Trades):

We are in full support of this bill. Nevada portrays itself as a business-friendly State. This helps improve that image. If businesses plan to come here, and they know they must compete against other businesses that cheat, and cheat their workers, they may be less inclined to come.

Legitimate businesses, those that do not engage in bad practices, are at a financial disadvantage because they pay unemployment insurance. They are paying into the Medicaid system and paying taxes.

You asked a question about how misclassification impacts the community. I employ workers. I am often asked to make them independent contractors. I tell them no. I want to pay unemployment insurance for them, because I am going

Senate Committee on Commerce and Labor
March 6, 2023
Page 21

to lay them off, at a specific time. I want them to have income after they get laid off. They would not have that income if I had classified them as independent contractors.

As far as funding from penalties goes, I would argue that every police department in this State and across the Country writes tickets. That money goes to their department for vehicles, equipment, and training. Using money collected from a penalty to fund investigations is not uncommon. We support this bill.

SUSIE MARTINEZ (Nevada State AFL-CIO):

On behalf of our 150,000 members and 120 unions, the Nevada State AFL-CIO wholeheartedly supports S.B. 145. It is critical that we hold malicious employers accountable for misclassifying employees so every single Nevada worker can receive the rights and benefits they deserve.

This bill would make the Office of the Labor Commissioner more efficient by providing them the ability to hire more staff and communicate more effectively with every office involved in employee misclassification.

Furthermore, it would impose greater penalties on employers. It will guarantee that no employer gets away with defrauding its employees. This legislation strengthens workforce protections and creates a better future for all Nevada workers. Please support S.B. 145.

SARAH COLLINS (National Electrical Contractors Association):

We echo the statements from previous supporters. Ditto.

RICK McCANN (Nevada Association of Public Safety Officers):

In the interest of time, I say ditto. We support this bill.

CONNIE McMULLEN (Personal Care Association of Nevada):

We support S.B. 145, particularly section 2, on employee misclassification. I have submitted support testimony ([Exhibit H](#)). It applies to 1099 independent contractors and personal care. Personal care agencies that use independent contractors to provide services, leave caregivers in a precarious state. They are not trained or subjected to background checks, nor held in compliance with caregiver regulations as listed in NRS 449. Independent contractors are not

Senate Committee on Commerce and Labor
March 6, 2023
Page 22

provided unemployment insurance, workers' compensation, overtime, or health insurance, as mentioned.

We support holding bad actors responsible and providing funding for the Labor Commissioner to enforce penalties and corrective action against agencies that deliberately disregard State labor and compliance regulations. We also support the amendment, [Exhibit G](#).

MARLENE LOCKARD (Service Employees International Union, Local 1107):

We support this bill. Many of you may remember that last Session we created a board for home healthcare workers. One of the board's recommendations was that home healthcare workers must be W-2 employees and not independent contractors. We, too, have experienced this problem and appreciate the bill.

MR. MORADKHAN:

The Vegas Chamber is opposed to the bill as drafted, but we are working with proponents. The bill sponsor addressed those concerns specifically in section 3, subsection 2, paragraphs (a) and (b), regarding the warning and the fine structure.

That was not the intent of the Task Force's recommendation. The Chamber did have a representative there. The proposed amendment, [Exhibit G](#), as proposed, will address those concerns. With adoption of that amendment, the Vegas Chamber will move to neutral.

TRAY ABNEY (National Federation of Independent Businesses):

I am representing the 2,000 members of the National Federation of Independent Businesses in Nevada. We have concerns about the "willfully" language. At least initially, we want the government to reach out and assist, instead of using use a hammer.

Certainly, folks should be punished if they are willfully breaking the law. But remember, I represent small businesses that do not have a human relations or legal department. Most are at their counter or desk, whenever their doors are open. If we can assist them through these issues first, we would appreciate it. We have moved to neutral because of the amendment, [Exhibit G](#).

Senate Committee on Commerce and Labor
March 6, 2023
Page 23

PAUL ENOS (Nevada Trucking Association):

We are neutral with the amendment, [Exhibit G](#). The trucking industry uses a tremendous number of independent contractors in our day-to-day business. Those independent contractors want to be independent contractors, to be able to control their own schedule. Maybe they do not want to drive over Donner Pass, maybe they want to take one or two months off. We have a lot of first-generation immigrants who come here, buy a truck, and operate as independent contractors. They want to be able to take a few months off to go back home and visit friends and family.

We know the law can be confusing with multiple standards. We appreciate the proponents and the sponsor working with us to keep the warning and the term "willful" in the bill.

BRETT HARRIS (Office of the Labor Commissioner, Nevada Department of Business and Industry):

We are monitoring this bill. I wanted to see if the Committee had any questions for our Office.

CHAIR SPEARMAN:

No questions.

PAUL BODINE:

I sent an email in opposition originally, but I am now neutral. There are a lot of people who want to be independent contractors. I am not against the idea of holding the bad players accountable. I am not sure the \$5,000 fine is really a prohibition for a viable business. The main course is for the employee, who feels they have been damaged, to take the employer to court.

I own two employment referral agencies. I use the Internal Revenue Service 1099 contractor reporting forms exclusively. We screen them at the beginning when they apply with us to ensure they are not looking for a job with benefits. Many want the benefit of being independent and running their own business.

My concern is for people who do not want to be employees, who still want to operate that way in Nevada. I appreciate the amendment, [Exhibit G](#). It takes care of my main concerns with the language of the bill.

Senate Committee on Commerce and Labor
March 6, 2023
Page 24

CHAIR SPEARMAN:

We all pay taxes, but some people get away with not doing things. Unlike many states, we do not have a State income tax. Our resources are limited. In 2015, former Governor Brian Sandoval looked at restructuring our revenue stream. There were employers scheduling workers for 39 hours a week, so they did not have to pay medical benefits. The costs fall back on the State when somebody gets away with that.

Even small businesses would want the big companies that are willfully getting away with not paying for benefits, to be held accountable. I would think that they would look at this judiciously; that means that we are not subsidizing the bad actors.

SENATOR LANGE:

Thank you, the Labor Commissioner, for her help on this bill. I ask Committee members to please support S.B. 145 as amended.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Commerce and Labor
March 6, 2023
Page 25

CHAIR SPEARMAN:

We will close the hearing on S.B. 145. Seeing no public comment, this hearing is adjourned at 10:32 a.m.

RESPECTFULLY SUBMITTED:

Kelly K. Clark,
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
S.B. 183	C	6	Senator Jeff Stone	Proposed Amendment
S.B. 145	D	15	Senator Roberta Lange	Misclassification and Hidden Taxes Report
S.B. 145	E	15	Senator Roberta Lange	National Employment Law Project Report
S.B. 145	F	16	Fran Almaraz Teamsters	Task Force 2022 Annual Report
S.B. 145	G	17	Senator Roberta Lange	Proposed Conceptual Amendment
S.B. 145	H	21	Connie McMullen	Support Testimony