IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN YAFCHAK, Statutory Heir and Special Administrator to the ESTATE OF JOAN YAFCHAK, Deceased, Appellants, vs. LIFE CARE CENTERS OF AMERICA, a foreign corporation d/b/a LIFE CARE CENTER OF SOUTH LAS VEGAS; and DOES 1-10, inclusive, Respondent.	Case No.: 82746

APPELLANTS' ADDENDUM TO OPENING BRIEF PURSUANT TO NRAP 28(f)

VOLUME 3 (ADD 0417–0654)

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(in order of citation in Brief)

ALPHABETICAL INDEX

Senate Bill No. 130–Senators Woodhouse and Goicoechea

CHAPTER.....

AN ACT relating to radiation; creating the Radiation Therapy and Radiologic Imaging Advisory Committee; providing for a license to engage in radiation therapy or radiologic imaging; providing for a limited license to engage in radiologic imaging; prescribing the requirements for the issuance and renewal of such a license and limited license; authorizing certain persons to practice as radiologist assistants; prescribing additional qualifications for a person to perform certain types of radiation therapy and radiologic imaging; providing for the enforcement of the requirements concerning radiation therapy and radiologic imaging; authorizing the imposition of disciplinary action or an injunction against a person who engages in radiation therapy or radiologic imaging in certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Health to adopt regulations for the licensing of persons to: (1) receive, possess or transfer radioactive materials and devices; and (2) engage in certain other activities relating to radioactive materials. (NRS 459.201) **Section 9** of this bill authorizes the Division of Public and Behavioral Health of the Department of Health and Human Services to suspend, revoke or amend such a license or registration of a person who violates any provision of statute or regulations governing radioactive materials or radiation.

Sections 22-51 of this bill add a new chapter to NRS governing the licensing and regulation of persons who engage in radiation therapy and radiologic imaging. **Section 32** of this bill exempts physicians, physician assistants, dentists, dental hygienists, dental assistants, chiropractors, chiropractor's assistants, certain persons training to engage in the practice of chiropractic, podiatrists, veterinarians, veterinary technicians, certain persons working under the supervision of a veterinarian or veterinary technician and persons engaging in mammography from such licensing and regulation. **Section 72.3** of this bill exempts podiatry hygienists and persons training to be podiatry hygienists from such licensing and regulation if the State Board of Podiatry adopts regulations prescribing the conditions under which such persons may engage in radiologic imaging and radiation therapy. **Sections 62 and 63** of this bill authorize a podiatry hygienist to take and develop X-rays without obtaining a license to engage in radiation therapy and radiologic imaging under certain conditions before the effective date of such regulations. **Sections 72.6 and 73.5** of this bill make conforming changes.

Section 35 of this bill prohibits a person from engaging in: (1) radiologic imaging unless he or she has obtained a license or limited license from the Division; or (2) radiation therapy unless he or she has obtained a license from the Division. **Sections 54 and 55** of this bill clarify that a practitioner of respiratory care or homeopathic assistant is prohibited from engaging in radiation therapy or radiologic imaging unless he or she holds a license or limited license. **Section 75** of this bill requires the Division to issue a license or limited license, as applicable, to the scope of practice of the person, to any person who is performing radiation

therapy or radiologic imaging as part of his or her employment on or before January 1, 2020, and registers with the Division. The holder of a license or limited license issued pursuant to **section 75** would be required to comply with all requirements to renew the license or limited license, including requirements for continuing education, as if the license or limited license were issued pursuant to **sections 22-51**.

Sections 36 and 37 of this bill prescribe the qualifications for obtaining a license or a limited license. **Section 37** also establishes the types of limited licenses that may be issued. **Sections 38 and 39** of this bill provide for licensure by endorsement of persons who hold licenses in another state that correspond to a license to engage in radiation therapy and radiologic imaging or a limited license to engage in radiologic imaging. **Sections 40 and 50** of this bill provide for the denial or suspension of a license or a limited license if the licensee is delinquent in child support payments, in conformance with federal law. **Section 41** of this bill authorizes certain holders of a license to engage in radiation therapy and radiologic imaging to practice as a radiologist assistant. **Sections 2 and 65** of this bill authorize the holder of a license to engage in radiation therapy and radiologic imaging or a person training to obtain such a license to take certain actions with regard to drugs to the same extent as was previously authorized for a radiologic or nuclear medicine technician or trainee. **Section 3** of this bill makes a conviction of certain crimes involving dangerous drugs grounds for the suspension or revocation of a license to engage in radiation therapy and radiologic imaging.

Section 42 of this bill authorizes: (1) an unlicensed person to engage in supervised radiation therapy or radiologic imaging without compensation for the purpose of qualifying for a certification that is a prerequisite for a license or limited license; or (2) a license to practice outside the scope of his or her license under supervision for the purpose of qualifying for a certification that is a prerequisite for being licensed. **Section 42** also authorizes the Division to issue a temporary student license, which authorizes an unlicensed person to engage in radiation therapy or radiologic imaging for compensation for the purpose of qualifying for certification that is a prerequisite for being licensed.

Sections 44 and 45 of this bill prescribe the required qualifications to perform computed tomography and fluoroscopy, respectively. **Section 43** of this bill authorizes unlicensed persons who register with the Division and meet certain other requirements to take X-ray photographs at certain federally-qualified health centers or rural health clinics. **Section 43** also authorizes a person who is employed performing computed tomography or fluoroscopy to continue to do so without obtaining a license from the Division if he or she registers with the Division and meets certain other requirements.

Existing law prohibits a person from operating a radiation machine for mammography unless the person holds a certificate to do so or is a licensed physician or physician assistant. (NRS 457.183) **Section 4.5** exempts an applicant for such a certificate who also holds a license to engage in radiation therapy and radiologic imaging from the requirement to pay an application fee. **Section 6** of this bill makes a conforming change.

Section 47 of this bill authorizes the Division to: (1) enter and inspect any private or public property for the purpose of enforcing the provisions of this bill governing radiation therapy and radiologic imaging; and (2) request any information necessary to ensure that persons engaged in radiation therapy and radiologic imaging meet applicable requirements. **Sections 19 and 47** of this bill provide for the confidentiality of such information and reports of inspections. **Section 48** of this bill: (1) prescribes the grounds for disciplinary action against a holder of a license or limited license; and (2) authorizes a person whose license or

limited license has been revoked to apply to the Division for reinstatement after 2 years. **Section 49** of this bill requires the Division to: (1) investigate a complaint filed against a licensee; and (2) provide a licensee against whom disciplinary action may be imposed with the opportunity for a hearing. **Section 51** of this bill authorizes the Division to seek an injunction to prevent a violation of provisions of this bill governing the licensing and regulation of persons who engage in radiation therapy or radiologic imaging. **Sections 35, 41, 44 and 45** make it a misdemeanor to engage in radiation therapy, radiologic imaging or other activity for which a credential is required without the proper credential.

Section 33 of this bill creates the Radiation Therapy and Radiologic Imaging Advisory Committee to advise the State Board of Health, the Division and the Legislature concerning radiation therapy and radiologic imaging. **Section 34** of this bill requires the Board to adopt certain regulations relating to radiation therapy and radiologic imaging, including regulations defining the scope of practice for radiologist assistants and the holders of licenses and limited licenses. **Section 34** requires those standards of practice to be at least as stringent as those adopted by a national professional organization designated by the Board and recommended by the Committee. **Section 33** requires the Committee to recommend a national professional organization for that purpose.

Existing law requires the Legislative Committee on Health Care to review each regulation that certain licensing entities adopt which relates to standards for the issuance or renewal of a license. (NRS 439B.225) **Section 1** of this bill adds to the regulations reviewed by the Committee relating to the standards for the issuance of a license to engage in radiation therapy or radiologic imaging and a limited license to engage in radiologic imaging.

Existing law prohibits the Division from issuing or renewing the registration of a radiation machine unless the applicant attests that the radiologic technicians and nuclear medicine technicians employed by the applicant have knowledge of and are in compliance with certain guidelines for the prevention of transmission of infectious agents. (NRS 459.035) **Section 8** of this bill deletes those provisions and instead requires the operator of a radiation machine to be properly licensed and in compliance with the provisions of this bill concerning radiation therapy and radiologic imaging or be exempt pursuant to **section 32**. **Section 35** requires a person to have knowledge of and be in compliance with guidelines for the prevention and transmission of infectious agents.

Sections 10-18, 20, 52, 58 and 64-72 of this bill make conforming changes to treat holders of licenses and limited licenses similarly to other providers of health care in certain respects.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 439B.225 is hereby amended to read as follows:

439B.225 1. As used in this section, "licensing board" means any division or board empowered to adopt standards for the issuance or renewal of licenses, permits or certificates of registration pursuant to NRS 433.601 to 433.621, inclusive, 435.3305 to

435.339, inclusive, chapter 449, 625A, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640D, 641, 641A, 641B, 641C, 652 or 654 of NRS ~~.~~ ***or sections 22 to 51, inclusive, of this act.***

2. The Committee shall review each regulation that a licensing board proposes or adopts that relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the board, giving consideration to:

(a) Any oral or written comment made or submitted to it by members of the public or by persons or facilities affected by the regulation;

(b) The effect of the regulation on the cost of health care in this State;

(c) The effect of the regulation on the number of licensed, permitted or registered persons and facilities available to provide services in this State; and

(d) Any other related factor the Committee deems appropriate.

3. After reviewing a proposed regulation, the Committee shall notify the agency of the opinion of the Committee regarding the advisability of adopting or revising the proposed regulation.

4. The Committee shall recommend to the Legislature as a result of its review of regulations pursuant to this section any appropriate legislation.

Sec. 2. NRS 454.213 is hereby amended to read as follows:

454.213 1. Except as otherwise provided in NRS 454.217, a drug or medicine referred to in NRS 454.181 to 454.371, inclusive, may be possessed and administered by:

(a) A practitioner.

(b) A physician assistant licensed pursuant to chapter 630 or 633 of NRS, at the direction of his or her supervising physician or a licensed dental hygienist acting in the office of and under the supervision of a dentist.

(c) Except as otherwise provided in paragraph (d), a registered nurse licensed to practice professional nursing or licensed practical nurse, at the direction of a prescribing physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician or advanced practice registered nurse, or pursuant to a chart order, for administration to a patient at another location.

(d) In accordance with applicable regulations of the Board, a registered nurse licensed to practice professional nursing or licensed practical nurse who is:

(1) Employed by a health care agency or health care facility that is authorized to provide emergency care, or to respond to the immediate needs of a patient, in the residence of the patient; and

(2) Acting under the direction of the medical director of that agency or facility who works in this State.

(e) A medication aide - certified at a designated facility under the supervision of an advanced practice registered nurse or registered nurse and in accordance with standard protocols developed by the State Board of Nursing. As used in this paragraph, "designated facility" has the meaning ascribed to it in NRS 632.0145.

(f) Except as otherwise provided in paragraph (g), an advanced emergency medical technician or a paramedic, as authorized by regulation of the State Board of Pharmacy and in accordance with any applicable regulations of:

(1) The State Board of Health in a county whose population is less than 100,000;

(2) A county board of health in a county whose population is 100,000 or more; or

(3) A district board of health created pursuant to NRS 439.362 or 439.370 in any county.

(g) An advanced emergency medical technician or a paramedic who holds an endorsement issued pursuant to NRS 450B.1975, under the direct supervision of a local health officer or a designee of the local health officer pursuant to that section.

(h) A respiratory therapist employed in a health care facility. The therapist may possess and administer respiratory products only at the direction of a physician.

(i) A dialysis technician, under the direction or supervision of a physician or registered nurse only if the drug or medicine is used for the process of renal dialysis.

(j) A medical student or student nurse in the course of his or her studies at an accredited college of medicine or approved school of professional or practical nursing, at the direction of a physician and:

(1) In the presence of a physician or a registered nurse; or

(2) Under the supervision of a physician or a registered nurse if the student is authorized by the college or school to administer the drug or medicine outside the presence of a physician or nurse.

➥ A medical student or student nurse may administer a dangerous drug in the presence or under the supervision of a registered nurse alone only if the circumstances are such that the registered nurse would be authorized to administer it personally.

(k) Any person designated by the head of a correctional institution.

(l) An ultimate user or any person designated by the ultimate user pursuant to a written agreement.

(m) A ~~[nuclear medicine technologist,]~~ ***holder of a license to engage in radiation therapy and radiologic imaging issued pursuant to sections 22 to 51, inclusive, of this act,*** at the direction of a physician and in accordance with any conditions established by regulation of the Board.

(n) ~~[A radiologic technologist, at the direction of a physician and in accordance with any conditions established by regulation of the Board.~~

~~(o)]~~ A chiropractic physician, but only if the drug or medicine is a topical drug used for cooling and stretching external tissue during therapeutic treatments.

~~[(p)]~~ ***(o)*** A physical therapist, but only if the drug or medicine is a topical drug which is:

(1) Used for cooling and stretching external tissue during therapeutic treatments; and

(2) Prescribed by a licensed physician for:

(I) Iontophoresis; or

(II) The transmission of drugs through the skin using ultrasound.

~~[(q)]~~ ***(p)*** In accordance with applicable regulations of the State Board of Health, an employee of a residential facility for groups, as defined in NRS 449.017, pursuant to a written agreement entered into by the ultimate user.

~~[(r)]~~ ***(q)*** A veterinary technician or a veterinary assistant at the direction of his or her supervising veterinarian.

~~[(s)]~~ ***(r)*** In accordance with applicable regulations of the Board, a registered pharmacist who:

(1) Is trained in and certified to carry out standards and practices for immunization programs;

(2) Is authorized to administer immunizations pursuant to written protocols from a physician; and

(3) Administers immunizations in compliance with the "Standards for Immunization Practices" recommended and approved by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

~~[(t)]~~ ***(s)*** A registered pharmacist pursuant to written guidelines and protocols developed and approved pursuant to NRS 639.2809 or a collaborative practice agreement, as defined in NRS 639.0052.

~~[(u)]~~ ***(t)*** A person who is enrolled in a training program to become a physician assistant licensed pursuant to chapter 630 or 633 of NRS, dental hygienist, advanced emergency medical technician, paramedic, respiratory therapist, dialysis technician, ~~[nuclear medicine technologist, radiologic technologist,]~~ physical therapist or veterinary technician ***or to obtain a license to engage in radiation therapy and radiologic imaging pursuant to sections 22 to 51, inclusive, of this act*** if the person possesses and administers the drug or medicine in the same manner and under the same conditions that apply, respectively, to a physician assistant licensed pursuant to chapter 630 or 633 of NRS, dental hygienist, advanced emergency medical technician, paramedic, respiratory therapist, dialysis technician, ~~[nuclear medicine technologist, radiologic technologist,]~~ physical therapist ***,*** ~~[or]~~ veterinary technician ***or person licensed to engage in radiation therapy and radiologic imaging*** who may possess and administer the drug or medicine, and under the direct supervision of a person licensed or registered to perform the respective medical art or a supervisor of such a person.

~~[(v)]~~ ***(u)*** A medical assistant, in accordance with applicable regulations of the:

(1) Board of Medical Examiners, at the direction of the prescribing physician and under the supervision of a physician or physician assistant.

(2) State Board of Osteopathic Medicine, at the direction of the prescribing physician and under the supervision of a physician or physician assistant.

2. As used in this section, "accredited college of medicine" has the meaning ascribed to it in NRS 453.375.

Sec. 3. NRS 454.361 is hereby amended to read as follows:

454.361 A conviction of the violation of any of the provisions of NRS 454.181 to 454.371, inclusive, constitutes grounds for the suspension or revocation of any license issued to such person pursuant to the provisions of chapters 630, 631, 633, 635, 636, 638 or 639 of NRS ~~[.]~~ ***or sections 22 to 51, inclusive, of this act.***

Sec. 4. (Deleted by amendment.)

Sec. 4.5. NRS 457.183 is hereby amended to read as follows:

457.183 1. A person shall not operate a radiation machine for mammography unless the person:

(a) Has a certificate of authorization to operate a radiation machine issued by the Division; or

(b) Is licensed pursuant to chapter 630 or 633 of NRS.

2. To obtain a certificate of authorization to operate a radiation machine for mammography, a person must:

(a) Submit an application to the Division on a form provided by the Division and provide any additional information required by the Division;

(b) Be certified by the American Registry of Radiologic Technologists or meet the standards established by the Division pursuant to subsection 1 of NRS 457.065;

(c) Pass an examination if the Division determines that an examination for certification is necessary to protect the health and safety of the residents of this State;

(d) Submit the statement required pursuant to NRS 457.1833; and

(e) ~~[Pay]~~ ***Except as otherwise provided in subsection 4, pay*** the fee required by the Division, which must be calculated to cover the administrative costs directly related to the process of issuing the certificates.

3. An application for the issuance of a certificate of authorization to operate a radiation machine for mammography must include the social security number of the applicant.

4. ***An applicant for the issuance or renewal of a certificate to operate a radiation machine for mammography is not required to pay a fee pursuant to paragraph (e) of subsection 2 or subsection 6, as applicable, if the applicant holds a license issued pursuant to sections 22 to 51, inclusive, of this act.***

5. The Division shall certify a person to operate a radiation machine for mammography if the person complies with the provisions of subsection 2 and meets the standards adopted pursuant to subsection 1 of NRS 457.065.

~~[5.]~~ ***6.*** A certificate of authorization to operate a radiation machine for mammography expires 3 years after the date on which it was issued unless it is renewed before that date. ~~[The]~~ ***Except as otherwise provided in subsection 4, the*** Division shall require continuing education as a prerequisite to the renewal of a certificate and shall charge a fee for renewal that is calculated to cover the administrative costs directly related to the renewal of a certificate.

~~[6.]~~ ***7.*** A person who is certified to operate a radiation machine for mammography pursuant to this section shall not operate such a machine without a valid certificate of authorization issued pursuant to NRS 457.184 for the machine.

Sec. 5. (Deleted by amendment.)

Sec. 6. NRS 457.185 is hereby amended to read as follows:

457.185 1. The Division shall grant or deny an application for a certificate of authorization to operate a radiation machine for mammography or a certificate of authorization for a radiation

machine for mammography within 4 months after receipt of a complete application.

2. The Division shall withdraw the certificate of authorization to operate a radiation machine for mammography if it finds that the person violated the provisions of subsection ~~[6]~~ *7* of NRS 457.183.

3. The Division shall deny or withdraw the certificate of authorization of a radiation machine for mammography if it finds that the owner, lessee or other responsible person violated the provisions of subsection 1 of NRS 457.184.

4. If a certificate of authorization to operate a radiation machine for mammography or a certificate of authorization for a radiation machine for mammography is withdrawn, a person must apply for the certificate in the manner provided for an initial certificate.

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 459.035 is hereby amended to read as follows:

459.035 The Division shall not issue or renew the registration of a radiation machine pursuant to regulations adopted by the State Board of Health unless the applicant for issuance or renewal of the registration attests that the ~~[radiologic technologists and nuclear medicine technologists]~~ ***persons*** employed by the applicant ~~[have knowledge of and are in compliance with the guidelines of the Centers for Disease Control and Prevention concerning the prevention of transmission of infectious agents through safe and appropriate injection practices.]~~ ***to operate the radiation machine are properly licensed pursuant to sections 22 to 51, inclusive, of this act or are exempt from the requirement to obtain such licensure pursuant to section 32 of this act.***

Sec. 9. NRS 459.260 is hereby amended to read as follows:

459.260 ***1. The Division may suspend, revoke or amend a license or registration issued pursuant to NRS 459.201 to a person who has violated any provision of NRS 459.010 to 459.290, inclusive, or any rule, regulation or order issued pursuant thereto.***

2. In the event of an emergency, the Division may impound, or order the impounding of, sources of ionizing radiation in the possession of any person who is not equipped to observe, or who fails to observe, any provision of NRS 459.010 to 459.290, inclusive, or any rules or regulations issued under NRS 459.010 to 459.290, inclusive.

Sec. 10. NRS 7.095 is hereby amended to read as follows:

7.095 1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in connection with an action for injury or death

against a provider of health care based upon professional negligence in excess of:

(a) Forty percent of the first $50,000 recovered;

(b) Thirty-three and one-third percent of the next $50,000 recovered;

(c) Twenty-five percent of the next $500,000 recovered; and

(d) Fifteen percent of the amount of recovery that exceeds $600,000.

2. The limitations set forth in subsection 1 apply to all forms of recovery, including, without limitation, settlement, arbitration and judgment.

3. For the purposes of this section, "recovered" means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs.

4. As used in this section:

(a) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(b) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, ***holder of a license or a limited license issued under the provisions of sections 22 to 51, inclusive, of this act,*** medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees.

Sec. 11. NRS 41A.017 is hereby amended to read as follows:

41A.017 "Provider of health care" means a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, ***holder of a license or a limited license issued under the provisions of sections 22 to 51, inclusive, of this act,*** medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians' professional

corporation or group practice that employs any such person and its employees.

Sec. 12. NRS 42.021 is hereby amended to read as follows:

42.021 1. In an action for injury or death against a provider of health care based upon professional negligence, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or worker's compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure the plaintiff's right to any insurance benefits concerning which the defendant has introduced evidence.

2. A source of collateral benefits introduced pursuant to subsection 1 may not:

(a) Recover any amount against the plaintiff; or

(b) Be subrogated to the rights of the plaintiff against a defendant.

3. In an action for injury or death against a provider of health care based upon professional negligence, a district court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages.

4. In entering a judgment ordering the payment of future damages by periodic payments pursuant to subsection 3, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

5. A judgment ordering the payment of future damages by periodic payments entered pursuant to subsection 3 must specify the recipient or recipients of the payments, the dollar amount of the

payments, the interval between payments, and the number of payments or the period of time over which payments will be made. Such payments must only be subject to modification in the event of the death of the judgment creditor. Money damages awarded for loss of future earnings must not be reduced or payments terminated by reason of the death of the judgment creditor, but must be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before the judgment creditor's death. In such cases, the court that rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection.

6. If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the periodic payments as specified pursuant to subsection 5, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including, but not limited to, court costs and attorney's fees.

7. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given pursuant to subsection 4 reverts to the judgment debtor.

8. As used in this section:

(a) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(b) "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

(c) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(d) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, ***holder of a license or a limited license issued under the***

provisions of sections 22 to 51, inclusive, of this act, medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees.

Sec. 13. NRS 200.471 is hereby amended to read as follows:

200.471 1. As used in this section:

(a) "Assault" means:

(1) Unlawfully attempting to use physical force against another person; or

(2) Intentionally placing another person in reasonable apprehension of immediate bodily harm.

(b) "Fire-fighting agency" has the meaning ascribed to it in NRS 239B.020.

(c) "Officer" means:

(1) A person who possesses some or all of the powers of a peace officer;

(2) A person employed in a full-time salaried occupation of fire fighting for the benefit or safety of the public;

(3) A member of a volunteer fire department;

(4) A jailer, guard or other correctional officer of a city or county jail;

(5) A justice of the Supreme Court, judge of the Court of Appeals, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee, including a person acting pro tempore in a capacity listed in this subparagraph;

(6) An employee of this State or a political subdivision of this State whose official duties require the employee to make home visits;

(7) A civilian employee or a volunteer of a law enforcement agency whose official duties require the employee or volunteer to:

(I) Interact with the public;

(II) Perform tasks related to law enforcement; and

(III) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for the law enforcement agency;

(8) A civilian employee or a volunteer of a fire-fighting agency whose official duties require the employee or volunteer to:

(I) Interact with the public;

(II) Perform tasks related to fire fighting or fire prevention; and

(III) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for the fire-fighting agency; or

(9) A civilian employee or volunteer of this State or a political subdivision of this State whose official duties require the employee or volunteer to:

(I) Interact with the public;

(II) Perform tasks related to code enforcement; and

(III) Wear identification, clothing or a uniform that identifies the employee or volunteer as working or volunteering for this State or a political subdivision of this State.

(d) "Provider of health care" means a physician, a medical student, a perfusionist or a physician assistant licensed pursuant to chapter 630 of NRS, a practitioner of respiratory care, a homeopathic physician, an advanced practitioner of homeopathy, a homeopathic assistant, an osteopathic physician, a physician assistant licensed pursuant to chapter 633 of NRS, a podiatric physician, a podiatry hygienist, a physical therapist, a medical laboratory technician, an optometrist, a chiropractor, a chiropractor's assistant, a doctor of Oriental medicine, a nurse, a student nurse, a certified nursing assistant, a nursing assistant trainee, a medication aide - certified, a dentist, a dental student, a dental hygienist, a dental hygienist student, a pharmacist, a pharmacy student, an intern pharmacist, an attendant on an ambulance or air ambulance, a psychologist, a social worker, a marriage and family therapist, a marriage and family therapist intern, a clinical professional counselor, a clinical professional counselor intern, a licensed dietitian, ***the holder of a license or a limited license issued under the provisions of sections 22 to 51, inclusive, of this act,*** an emergency medical technician, an advanced emergency medical technician and a paramedic.

(e) "School employee" means a licensed or unlicensed person employed by a board of trustees of a school district pursuant to NRS 391.100 or 391.281.

(f) "Sporting event" has the meaning ascribed to it in NRS 41.630.

(g) "Sports official" has the meaning ascribed to it in NRS 41.630.

(h) "Taxicab" has the meaning ascribed to it in NRS 706.8816.

(i) "Taxicab driver" means a person who operates a taxicab.

(j) "Transit operator" means a person who operates a bus or other vehicle as part of a public mass transportation system.

2. A person convicted of an assault shall be punished:

(a) If paragraph (c) or (d) does not apply to the circumstances of the crime and the assault is not made with the use of a deadly

weapon or the present ability to use a deadly weapon, for a misdemeanor.

(b) If the assault is made with the use of a deadly weapon or the present ability to use a deadly weapon, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

(c) If paragraph (d) does not apply to the circumstances of the crime and if the assault is committed upon an officer, a provider of health care, a school employee, a taxicab driver or a transit operator who is performing his or her duty or upon a sports official based on the performance of his or her duties at a sporting event and the person charged knew or should have known that the victim was an officer, a provider of health care, a school employee, a taxicab driver, a transit operator or a sports official, for a gross misdemeanor, unless the assault is made with the use of a deadly weapon or the present ability to use a deadly weapon, then for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

(d) If the assault is committed upon an officer, a provider of health care, a school employee, a taxicab driver or a transit operator who is performing his or her duty or upon a sports official based on the performance of his or her duties at a sporting event by a probationer, a prisoner who is in lawful custody or confinement or a parolee, and the probationer, prisoner or parolee charged knew or should have known that the victim was an officer, a provider of health care, a school employee, a taxicab driver, a transit operator or a sports official, for a category D felony as provided in NRS 193.130, unless the assault is made with the use of a deadly weapon or the present ability to use a deadly weapon, then for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

Sec. 14. NRS 200.5093 is hereby amended to read as follows:

200.5093 1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited, isolated or abandoned shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation, isolation or abandonment of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office; or

(3) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited, isolated or abandoned.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation, isolation or abandonment of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, music therapist, athletic trainer, driver of an ambulance, paramedic, licensed dietitian ***, holder of a license or a limited license issued under the provisions of sections 22 to 51, inclusive, of this act*** or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited, isolated or abandoned.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or

similar institution upon notification of the suspected abuse, neglect, exploitation, isolation or abandonment of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 449.4304.

(g) Any employee of the Department of Health and Human Services, except the State Long-Term Care Ombudsman appointed pursuant to NRS 427A.125 and any of his or her advocates or volunteers where prohibited from making such a report pursuant to 45 C.F.R. § 1321.11.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation, isolation or abandonment of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

(m) Every person who operates or is employed by a peer support recovery organization, as defined in NRS 449.01563.

(n) Every person who operates or is employed by a community health worker pool, as defined in NRS 449.0028, or with whom a community health worker pool contracts to provide the services of a community health worker, as defined in NRS 449.0027.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect, isolation or abandonment, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the

appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

(a) Aging and Disability Services Division;

(b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and

(c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited, isolated or abandoned, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

Sec. 15. NRS 200.50935 is hereby amended to read as follows:

200.50935 1. Any person who is described in subsection 3 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that a vulnerable person has been abused, neglected, exploited, isolated or abandoned shall:

(a) Report the abuse, neglect, exploitation, isolation or abandonment of the vulnerable person to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the vulnerable person has been abused, neglected, exploited, isolated or abandoned.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation, isolation or abandonment of the vulnerable person involves an act or omission of a law enforcement agency, the person shall make the report to a law enforcement agency other than the one alleged to have committed the act or omission.

3. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, perfusionist, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, music therapist, athletic trainer, driver of an ambulance, paramedic, licensed dietitian ***, holder of a license or a limited license issued under the provisions of sections 22 to 51, inclusive, of this act*** or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats a vulnerable person who appears to have been abused, neglected, exploited, isolated or abandoned.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation, isolation or abandonment of a vulnerable person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide nursing in the home.

(e) Any employee of the Department of Health and Human Services.

(f) Any employee of a law enforcement agency or an adult or juvenile probation officer.

(g) Any person who maintains or is employed by a facility or establishment that provides care for vulnerable persons.

(h) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation, isolation or abandonment of a vulnerable person and refers them to persons and agencies where their requests and needs can be met.

(i) Every social worker.

(j) Any person who owns or is employed by a funeral home or mortuary.

4. A report may be made by any other person.

5. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a vulnerable person has died as a result of abuse, neglect, isolation or abandonment, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the vulnerable person and submit to the appropriate local law enforcement agencies and the appropriate prosecuting attorney his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

6. A law enforcement agency which receives a report pursuant to this section shall immediately initiate an investigation of the report.

7. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 16. NRS 200.5095 is hereby amended to read as follows:

200.5095 1. Reports made pursuant to NRS 200.5093, 200.50935 and 200.5094, and records and investigations relating to those reports, are confidential.

2. A person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse, neglect, exploitation, isolation or abandonment of older persons or vulnerable persons, except:

(a) Pursuant to a criminal prosecution;

(b) Pursuant to NRS 200.50982; or

(c) To persons or agencies enumerated in subsection 3,

➥ is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 2 and NRS 200.50982, data or information concerning the reports and investigations of the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person is available only to:

(a) A physician who is providing care to an older person or a vulnerable person who may have been abused, neglected, exploited, isolated or abandoned;

(b) An agency responsible for or authorized to undertake the care, treatment and supervision of the older person or vulnerable person;

(c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse, neglect, exploitation, isolation or abandonment of the older person or vulnerable person;

(d) A court which has determined, in camera, that public disclosure of such information is necessary for the determination of an issue before it;

(e) A person engaged in bona fide research, but the identity of the subjects of the report must remain confidential;

(f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(g) Any comparable authorized person or agency in another jurisdiction;

(h) A legal guardian of the older person or vulnerable person, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation, isolation or abandonment of the older person or vulnerable person to the public agency is protected, and the legal guardian of the older person or vulnerable person is not the person suspected of such abuse, neglect, exploitation, isolation or abandonment;

(i) If the older person or vulnerable person is deceased, the executor or administrator of his or her estate, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation, isolation or abandonment of the older person or vulnerable person to the public agency is protected, and the executor or administrator is not the person suspected of such abuse, neglect, exploitation, isolation or abandonment; or

(j) The older person or vulnerable person named in the report as allegedly being abused, neglected, exploited, isolated or abandoned, if that person is not legally incompetent.

4. If the person who is reported to have abused, neglected, exploited, isolated or abandoned an older person or a vulnerable person is the holder of a license or certificate issued pursuant to chapters 449, 630 to 641B, inclusive, or 654 of NRS, ***or sections 22 to 51, inclusive, of this act,*** the information contained in the report must be submitted to the board that issued the license.

5. If data or information concerning the reports and investigations of the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person is made available pursuant to paragraph (b) or (j) of subsection 3 or subsection 4, the name and any other identifying information of the person who made the report must be redacted before the data or information is made available.

Sec. 17. NRS 200.810 is hereby amended to read as follows:

200.810 "Health care procedure" means any medical procedure, other than a surgical procedure, that requires a license to perform pursuant to chapters 630 to 637, inclusive, 639 or 640 of NRS ~~.~~ ***or sections 22 to 51, inclusive, of this act.***

Sec. 18. NRS 200.820 is hereby amended to read as follows:

200.820 "Surgical procedure" means any invasive medical procedure where a break in the skin is created and there is contact with the mucosa or any minimally invasive medical procedure where a break in the skin is created or which involves manipulation of the internal body cavity beyond a natural or artificial body orifice which requires a license to perform pursuant to chapters 630 to 637, inclusive, 639 or 640 of NRS ~~.~~ ***or sections 22 to 51, inclusive, of this act.***

Sec. 19. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379,

338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 433.534, 433A.360, 437.145, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 445A.665, 445B.570, 449.209, 449.245, 449A.112, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.325, 641A.191, 641A.289, 641B.170, 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190,

692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, ***and section 47 of this act,*** sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 20. NRS 432B.220 is hereby amended to read as follows:

432B.220 1. Any person who is described in subsection 4 and who, in his or her professional or occupational capacity, knows

or has reasonable cause to believe that a child has been abused or neglected shall:

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. Any person who is described in paragraph (a) of subsection 4 who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by a fetal alcohol spectrum disorder or prenatal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency which provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency which provides child welfare services for appropriate counseling, training or other services. A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require prosecution for any illegal action.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) A person providing services licensed or certified in this State pursuant to, without limitation, chapter 450B, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640B, 640C,

640D, 640E, 641, 641A, 641B or 641C of NRS ~~[.]~~ ***or sections 22 to 51, inclusive, of this act.***

(b) Any personnel of a medical facility licensed pursuant to chapter 449 of NRS who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.

(c) A coroner.

(d) A member of the clergy, practitioner of Christian Science or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.

(e) A person employed by a public school or private school and any person who serves as a volunteer at such a school.

(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.

(g) Any person licensed pursuant to chapter 424 of NRS to conduct a foster home.

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.

(i) Except as otherwise provided in NRS 432B.225, an attorney.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

(k) Any person who is employed by or serves as a volunteer for a youth shelter. As used in this paragraph, "youth shelter" has the meaning ascribed to it in NRS 244.427.

(l) Any adult person who is employed by an entity that provides organized activities for children, including, without limitation, a person who is employed by a school district or public school.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, report this belief to an agency which provides child welfare services or a law enforcement agency. If such a report is made to a law enforcement agency, the law enforcement agency shall notify an agency which provides child welfare services and the appropriate medical examiner or coroner of the report. If such a report is made to an agency which provides child welfare

services, the agency which provides child welfare services shall notify the appropriate medical examiner or coroner of the report. The medical examiner or coroner who is notified of a report pursuant to this subsection shall investigate the report and submit his or her written findings to the appropriate agency which provides child welfare services, the appropriate district attorney and a law enforcement agency. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of NRS 432B.230.

7. The agency, board, bureau, commission, department, division or political subdivision of the State responsible for the licensure, certification or endorsement of a person who is described in subsection 4 and who is required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State shall, at the time of initial licensure, certification or endorsement:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and

(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is licensed, certified or endorsed in this State.

8. The employer of a person who is described in subsection 4 and who is not required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State must, upon initial employment of the person:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and

(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is employed by the employer.

9. Before a person may serve as a volunteer at a public school or private school, the school must:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section and NRS 392.303;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section and NRS 392.303; and

(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person serves as a volunteer at the school.

10. As used in this section:

(a) "Private school" has the meaning ascribed to it in NRS 394.103.

(b) "Public school" has the meaning ascribed to it in NRS 385.007.

Sec. 21. Title 54 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 22 to 51, inclusive, of this act.

Sec. 22. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 23 to 31, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 23. ***"Board" means the State Board of Health.***

Sec. 24. (Deleted by amendment.)

Sec. 24.5. ***"Department" means the Department of Health and Human Services.***

Sec. 25. ***"Division" means the Division of Public and Behavioral Health of the Department of Health and Human Services.***

Sec. 26. ***"License" means a license to engage in radiation therapy and radiologic imaging issued pursuant to section 36, 38 or 39 of this act. The term does not include a limited license.***

Sec. 27. ***"Limited license" means a limited license to engage in radiologic imaging issued pursuant to section 37, 38 or 39 of this act.***

Sec. 28. ***"Mammography" has the meaning ascribed to it in NRS 457.182.***

Sec. 29. ***"Radiation therapy" means the administration of ionizing radiation for therapeutic purposes.***

Sec. 30. ***"Radiologic imaging" means the use of ionizing radiation to diagnose or visualize a medical condition.***

Sec. 31. ***"Radiologist assistant" means a person who holds a license and meets the requirements of section 41 of this act.***

Sec. 32. ***The provisions of this chapter do not apply to:***

1. A physician or physician assistant licensed pursuant to chapter 630 or 633 of NRS.

2. A dentist or dental hygienist licensed pursuant to chapter 631 of NRS or a dental assistant working within the scope of his or her employment under the direct supervision of a dentist.

3. A chiropractic physician or chiropractor's assistant licensed pursuant to chapter 634 of NRS.

4. A person training to become a chiropractor's assistant or a student practicing in the preceptor program established by the Chiropractic Physicians' Board of Nevada pursuant to NRS 634.1375.

5. A podiatric physician licensed pursuant to chapter 635 of NRS.

6. A veterinarian or veterinary technician licensed pursuant to chapter 638 of NRS or any other person performing tasks under the supervision of a veterinarian or veterinary technician as authorized by regulation of the Nevada State Board of Veterinary Medical Examiners.

7. The performance of mammography in accordance with NRS 457.182 to 457.187, inclusive.

Sec. 33. *1. The Radiation Therapy and Radiologic Imaging Advisory Committee is hereby created.*

2. The Committee consists of seven members, all of whom are voting members, appointed by the Governor. The Governor shall ensure that the members of the Committee represent the geographic diversity of this State. The Governor shall appoint to the Committee:

(a) One member who holds a license and is certified by the American Registry of Radiologic Technologists, or its successor organization, to practice in the area of radiography.

(b) One member who holds a license and is certified by the American Registry of Radiologic Technologists, or its successor organization, to practice in the area of nuclear medicine technology.

(c) One member who holds a license and is certified by the American Registry of Radiologic Technologists, or its successor organization, to practice in the area of radiation therapy.

(d) One member who holds a limited license.

(e) One member who is a physician specializing in radiology.

(f) One member who is a physician specializing in an area other than radiology, or a dentist, chiropractor or podiatrist.

(g) One member who is certified to provide clinical professional services in a field of medical physics.

3. After the initial terms, the members of the Committee serve terms of 3 years. A vacancy on the Committee must be filled in the

same manner as the initial appointment. No member may serve more than two consecutive terms.

4. Members of the Committee serve without compensation, except that each member of the Committee is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

5. The Committee shall annually select a Chair from among the members appointed pursuant to paragraphs (a) to (d), inclusive, of subsection 2, and a Vice Chair from among its members.

6. The Committee shall meet at least once each year and such other times as requested by the Administrator of the Division. The Committee may meet by telephone, videoconference or other electronic means in accordance with the provisions of chapter 241 of NRS. The Administrator shall prescribe the agenda for each meeting. The Committee may submit items to the Administrator to consider for inclusion on the agenda for a meeting.

7. The Committee shall:

(a) Recommend to the Board a national professional organization against which the scope of practice will be measured pursuant to paragraph (b) of subsection 1 of section 34 of this act; and

(b) Make such other recommendations to the Board, the Division and the Legislature concerning radiation therapy and radiologic imaging as it deems proper.

Sec. 34. *1. The Board shall adopt regulations:*

(a) Establishing the fees for the application for and the issuance and renewal of a license or limited license.

(b) Defining the scope of practice for radiologist assistants and persons who hold licenses and limited licenses. Such regulations must be at least as stringent as the scope of practice adopted by a national professional organization whose membership consists of persons licensed or certified to engage in radiation therapy or radiologic imaging. The national professional organization must be designated by the Board upon the recommendation of the Radiation Therapy and Radiologic Imaging Advisory Committee pursuant to subsection 7 of section 33 of this act.

(c) Prescribing the requirements for continuing education for the renewal of a license or limited license. Such regulations must require the holder of a license to complete more hours of continuing education than the holder of a limited license.

(d) Prescribing the qualifications of a person who is authorized to supervise the holder of a limited license, the tasks for

which such supervision is required and the level of supervision required.

(e) Defining the terms "crime involving moral turpitude" and "unprofessional conduct" for the purposes of section 48 of this act.

2. The Board may adopt any other regulations necessary or convenient to carry out the provisions of this chapter.

3. At the same time that the Board provides notice pursuant to chapter 233B of NRS or NRS 241.020 of any meeting or workshop relating to the adoption of a proposed regulation pursuant to this chapter, the Board shall submit an electronic copy of the notice to the Radiation Therapy and Radiologic Imaging Advisory Committee created by section 33 of this act.

4. All money received from penalties pursuant to the provisions of this chapter must be forwarded to the State Treasurer for credit to the Fund for the Care of Sites for the Disposal of Radioactive Waste created by NRS 459.231.

5. All money received from fees pursuant to the provisions of this chapter must be used by the Division to administer the provisions of this chapter.

6. The Division shall enforce the provisions of this chapter.

Sec. 35. *1. Except as otherwise provided in sections 42 and 43 of this act, a person shall not engage in:*

(a) Radiologic imaging unless he or she has obtained a license or limited license from the Division.

(b) Radiation therapy unless he or she has obtained a license from the Division.

(c) Radiation therapy or radiologic imaging which is outside the scope of practice authorized for his or her license or limited license by the regulations adopted pursuant to section 34 of this act.

2. A person who wishes to obtain or renew a license or limited license must apply to the Division in the form prescribed by the Division.

3. A license or limited license expires 2 years after the date on which the license was issued and must be renewed on or before that date.

4. The Division shall not issue or renew a license or limited license unless the applicant for issuance or renewal of the license or limited license attests to knowledge of and compliance with the guidelines of the Centers for Disease Control and Prevention concerning the prevention of transmission of infectious agents through safe and appropriate injection practices.

5. A provisional license or provisional limited license may not be renewed and expires:

(a) On the date on which the holder of the provisional license or provisional limited license is issued a license or limited license by the Division;

(b) On the date on which the application of the holder of the provisional license or provisional limited license for a license or limited license is denied by the Division; or

(c) One year after the date on which the holder of the provisional license or provisional limited license is initially employed to engage in radiation therapy or radiologic imaging.

6. A person who engages in radiation therapy or radiologic imaging in violation of the provisions of this section is guilty of a misdemeanor.

Sec. 36. *The Division may issue a license to engage in radiation therapy and radiologic imaging to a person who:*

1. Has successfully completed an educational program accredited by the Joint Review Committee on Education in Radiologic Technology, or its successor organization, the Joint Review Committee on Educational Programs in Nuclear Medicine Technology, or its successor organization, or another national accrediting organization approved by the Division; and

2. Is certified by the American Registry of Radiologic Technologists, or its successor organization, to practice in the area of radiography, nuclear medicine technology or radiation therapy or the Nuclear Medicine Technology Certification Board, or its successor organization, in nuclear medicine or meets any alternative standards prescribed by regulation of the Board.

Sec. 37. *1. The Division may issue a limited license to engage in radiologic imaging to a person who has completed a course of study in limited X-ray machine operation that incorporates the Limited X-Ray Machine Operator Curriculum prescribed by the American Society of Radiologic Technologists, or its successor organization, and satisfies the provisions of subsection 2.*

2. A person may obtain a limited license only if the person:

(a) Has passed an examination for the limited scope of practice in radiography administered by the American Registry of Radiologic Technologists or its successor organization;

(b) If applying for a limited license in spine and extremity radiography, is certified by the American Chiropractic Registry of Radiologic Technologists or its successor organization;

(c) If applying for a limited license in podiatric radiography, is licensed as a podiatry hygienist pursuant to NRS 635.093 or certified by the American Society of Podiatric Medical Assistants or its successor organization; or

(d) If applying for a limited license in bone densitometry, is certified as a bone densitometry technologist or a certified densitometry technologist by the International Society for Clinical Densitometry, or its successor organization, or has successfully completed the examination for bone densitometry equipment operators administered by the American Registry of Radiologic Technologists or its successor organization.

3. The holder of a limited license may perform radiologic imaging only within the scope of the limited license, as described in this subsection and the regulations adopted pursuant to section 34 of this act, and under the supervision required by those regulations. The Division may issue a limited license in:

(a) Chest radiography, which authorizes the holder of the limited license to engage in radiography of the thorax, heart and lungs;

(b) Extremities radiography, which authorizes the holder of the limited license to engage in radiography of the upper and lower extremities, including the pelvic girdle;

(c) Spine and extremity radiography, which authorizes the holder of the limited license to engage in radiography of the vertebral column and the upper and lower extremities, including the pelvic girdle;

(d) Skull and sinus radiography, which authorizes the holder of the limited license to engage in radiography of the skull and face;

(e) Podiatric radiography, which authorizes the holder of the limited license to engage in radiography of the foot, ankle and lower leg below the knee;

(f) Bone densitometry, which authorizes the holder of the limited license to engage in the determination of bone mass by measuring the absorption of radiation in the bone; or

(g) Any combination thereof.

4. The holder of a limited license shall not perform procedures using contrast media, nuclear medicine or radiation therapy.

5. As used in this section:

(a) "Bone densitometry" means the quantitative assessment of bone mass using single or dual energy X-ray absorptiometry.

(b) "Radiography" has the meaning ascribed to it in NRS 457.182.

Sec. 38. *1. The Division may issue a license by endorsement to engage in radiation therapy and radiologic imaging or a limited license by endorsement to engage in radiologic imaging in accordance with the provisions of this section to an applicant who meets the requirements set forth in this section.*

2. An applicant for a license by endorsement or a limited license by endorsement pursuant to this section must submit to the Division an application in the form prescribed by the Division and:

(a) Proof satisfactory to the Division that the applicant:

(1) If applying for a license to engage in radiation therapy and radiologic imaging, holds a valid and unrestricted license, certificate or other credential to engage in radiation therapy and radiologic imaging issued in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States;

(2) If applying for a limited license to engage in radiologic imaging, holds a valid and unrestricted license, certificate or other credential to engage in radiologic imaging issued in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States;

(3) Is a citizen of the United States or otherwise has the legal right to work in the United States;

(4) Has not been disciplined or investigated by a regulatory authority of the state or territory in which the applicant holds or has held a license; and

(5) Has not ever been held civilly or criminally liable for malpractice related to his or her license;

(b) An affidavit stating that the information contained in the application and any accompanying material is true and correct; and

(c) Any other information required by the Division.

3. Not later than 15 business days after receiving an application for a license by endorsement to engage in radiation therapy and radiologic imaging or a limited license by endorsement to engage in radiologic imaging pursuant to this section, the Division shall provide written notice to the applicant if any additional information is required by the Division to consider the application. Unless the Division denies the application for

good cause, the Division shall approve the application and issue a license by endorsement or limited license by endorsement, as applicable, to the applicant not later than 45 days after receiving the application.

Sec. 39. *1. The Division may issue a license by endorsement to engage in radiation therapy and radiologic imaging or a limited license by endorsement to engage in radiologic imaging in accordance with the provisions of this section to an applicant who meets the requirements set forth in this section.*

2. An applicant for a license by endorsement pursuant to this section must submit to the Division with his or her application:

(a) Proof satisfactory to the Division that the applicant:

(1) If applying for a license to engage in radiation therapy and radiologic imaging, holds a valid and unrestricted license, certificate or other credential to engage in radiation therapy and radiologic imaging issued in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States;

(2) If applying for a limited license to engage in radiologic imaging, holds a valid and unrestricted license, certificate or other credential to engage in radiologic imaging issued in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States;

(3) Is an active member of, or the spouse of an active member of, the Armed Forces of the United States, a veteran or the surviving spouse of a veteran;

(4) Is a citizen of the United States or otherwise has the legal right to work in the United States;

(5) Has not been disciplined or investigated by a regulatory authority of the state or territory in which the applicant holds or has held a license; and

(6) Has not ever been held civilly or criminally liable for malpractice related to his or her license;

(b) An affidavit stating that the information contained in the application and any accompanying material is true and correct; and

(c) Any other information required by the Division.

3. Not later than 15 business days after receiving an application for a license by endorsement to engage in radiation therapy and radiologic imaging or a limited license by endorsement to engage in radiologic imaging pursuant to this

section, the Division shall provide written notice to the applicant if any additional information is required by the Division to consider the application. Unless the Division denies the application for good cause, the Division shall approve the application and issue a license by endorsement or a limited license by endorsement, as applicable, to the applicant not later than 45 days after receiving all the additional information required by the Division to complete the application.

4. At any time before making a final decision, the Division may grant a provisional license authorizing an applicant to engage in radiation therapy and radiologic imaging or a provisional limited license authorizing an applicant to engage in radiologic imaging, as applicable, in accordance with regulations adopted by the Division.

5. As used in this section, "veteran" has the meaning ascribed to it in NRS 417.005.

Sec. 40. *1. In addition to any other requirements set forth in this chapter:*

(a) An applicant for the issuance of a license or limited license shall include the social security number of the applicant in the application submitted to the Division.

(b) An applicant for the issuance or renewal of a license or limited license shall submit to the Division the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license or limited license; or

(b) A separate form prescribed by the Division.

3. A license or limited license may not be issued or renewed by the Division if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 41. *1. The holder of a license may practice as a radiologist assistant if the holder is:*

(a) Certified by the American Registry of Radiologic Technologists, or its successor organization, to practice in the area of radiography and is registered as a radiologist assistant by that entity; or

(b) Certified by the Certification Board for Radiology Practitioner Assistants.

2. In addition to the duties that the holder of a license is authorized to perform by the regulations adopted pursuant to section 34 of this act, a radiologist assistant:

(a) May perform any duty relating to the care and management of patients, including, without limitation, radiologic imaging and interventional procedures guided by radiologic imaging, under the supervision of a radiologist.

(b) May provide initial observations concerning the images of a patient to a supervising physician who specializes in radiology.

(c) Shall not interpret images of a patient or otherwise engage in the practice of medicine, as defined in NRS 630.020.

3. A person who practices as a radiologist assistant without meeting the requirements of subsection 1 is guilty of a misdemeanor.

Sec. 42. *1. A person who does not meet the requirements of section 35 of this act may, without compensation, engage in radiation therapy or radiologic imaging under the direct supervision of a physician, dentist, chiropractor or podiatrist or a person who holds a license for the purpose of qualifying for any certification required to obtain a license or a limited license.*

2. A holder of a license or limited license may engage in radiation therapy or radiologic imaging outside the scope of practice authorized for his or her license or limited license by the regulations adopted pursuant to section 34 of this act if:

(a) Necessary to qualify for certification by a national accrediting organization in that area; and

(b) The licensee registers with the Division before engaging in such activity.

3. The Division may issue a temporary student license to a person who is enrolled in a program to qualify for any certification that is required to obtain a license or limited license. A holder of a temporary student license may engage in any activity described in subsection 1 for compensation.

4. A temporary student license may not be renewed and expires on the earlier of:

(a) The date on which the holder of the temporary student license is issued a license or limited license by the Division;

(b) The date on which the application of the holder of the temporary student license for a license or limited license is denied by the Division; or

(c) One year after the date on which the holder of the temporary student license is initially employed to engage in radiation therapy or radiologic imaging.

Sec. 43. *1. A person who does not hold a license or limited license may take X-ray photographs under the supervision of a physician or physician assistant as part of his or her employment or service as an independent contractor in a rural health clinic or federally-qualified health center described in subsection 2 if the person:*

(a) Registers with the Division in the form prescribed by the Division;

(b) Submits to the Division proof that he or she has completed training in radiation safety and proper positioning for X-ray photographs provided by the holder of a license; and

(c) Completes the continuing education prescribed by regulation of the Department.

2. A person described in subsection 1 may take X-ray photographs as part of his or her employment or service as an independent contractor in a rural health clinic or federally-qualified health center that:

(a) Is located in a county whose population is less than 55,000; and

(b) Has established a quality assurance program for X-ray photographs that meets the requirements prescribed by regulation of the Division.

3. A person who performs computed tomography or fluoroscopy as part of his or her employment on January 1, 2020, may continue to perform any such activity on and after that date

without complying with the requirements of section 44 or 45, as applicable, of this act if he or she:

(a) Registers with the Division in the form prescribed by the Division;

(b) Provides any information requested by the Division; and

(c) Does not expand the scope of his or her duties relating to computed tomography or fluoroscopy, as applicable.

4. As used in this section:

(a) "Federally-qualified health center" has the meaning ascribed to it in 42 U.S.C. § 1396d(l)(2)(B).

(b) "Rural health clinic" has the meaning ascribed to it in 42 U.S.C. § 1395x(aa)(2).

Sec. 44. *1. A person shall not perform computed tomography except as authorized by this section and section 43 of this act.*

2. Except as otherwise provided in this section, a holder of a license may only perform computed tomography within his or her scope of practice, as authorized by the regulations adopted pursuant to section 34 of this act, if he or she is certified by:

(a) The American Registry of Radiologic Technologists, or its successor organization, to practice in the area of nuclear medicine technology or radiation therapy; or

(b) The Nuclear Medicine Technology Certification Board, or its successor organization, in nuclear medicine.

3. A holder of a license who is certified by the American Registry of Radiologic Technologists, or its successor organization, or the Nuclear Medicine Technology Certification Board, or its successor organization, in computed tomography may perform computed tomography.

4. A holder of a license who does not satisfy the requirements of subsection 2 or 3 may perform computed tomography if he or she:

(a) Performs computed tomography to qualify for certification by the American Registry of Radiologic Technologists, or its successor organization, or the Nuclear Medicine Technology Certification Board, or its successor organization, in computed tomography; and

(b) Registers with the Division before performing computed tomography.

5. A person who performs computed tomography in violation of this section is guilty of a misdemeanor.

Sec. 45. *1. A person shall not perform fluoroscopy except as authorized in this section and section 43 of this act.*

2. A holder of a license may perform fluoroscopy:

(a) If he or she is certified by the American Registry of Radiologic Technologists, or its successor organization, to practice in the area of radiation therapy;

(b) Only within the scope of his or her practice; and

(c) Only to the extent authorized by the regulations adopted pursuant to section 34 of this act.

3. A person who performs fluoroscopy in violation of this section is guilty of a misdemeanor.

Sec. 46. (Deleted by amendment.)

Sec. 47. *1. Except as otherwise provided in this section, any authorized representative of the Division may:*

(a) Enter and inspect at any reasonable time any private or public property on which radiation therapy or radiologic imaging is conducted for the purpose of determining whether a violation of the provisions of this chapter or the regulations adopted pursuant thereto has occurred or is occurring. The owner, occupant or person responsible for such property shall permit such entry and inspection. An owner, occupant or person responsible for such property who fails to permit such entry and inspection is guilty of a misdemeanor.

(b) Request any information necessary to ensure that any person who engages in radiation therapy or radiologic imaging meets any requirements specified by this chapter concerning the radiation therapy or radiologic imaging in which the person engages.

2. An authorized representative of the Division may only enter an area that is subject to the jurisdiction of the Federal Government if the authorized representative obtains the consent of the Federal Government or its duly designated representative.

3. Any report of an investigation or inspection conducted pursuant to paragraph (a) of subsection 1 and any information requested pursuant to paragraph (b) of subsection 1 shall not be disclosed or made available for public inspection, except as otherwise provided in NRS 239.0115 or as may be necessary to carry out the responsibilities of the Division.

Sec. 48. *1. The Division may deny, suspend, revoke or refuse to renew a license or limited license issued pursuant to the provisions of this chapter, impose limitations on the practice of a holder of such a license or limited license or impose a civil penalty of up to $1,000 per violation if a person:*

(a) Obtains a license or limited license through fraud, misrepresentation or concealment of material facts;

(b) Engages in unprofessional conduct, as defined by the regulations adopted pursuant to section 34 of this act;

(c) Is convicted of a crime involving moral turpitude, as defined by the regulations adopted pursuant to section 34 of this act, or any crime which indicates that the person is unfit to engage in radiation therapy or radiologic imaging;

(d) Violates any provision of this chapter or any regulations adopted pursuant thereto;

(e) Is guilty of malpractice, gross negligence or incompetence while engaging in radiation therapy or radiologic imaging;

(f) Engages in conduct that could result in harm to a member of the public; or

(g) Has disciplinary action imposed in another jurisdiction against a license or certificate of the person that is equivalent to a license or limited license issued pursuant to this chapter.

2. At least 2 years after the date on which the license or limited license of a person is revoked, the person may apply to the Division for reinstatement of the license, which is within the discretion of the Division.

Sec. 49. *1. The Division may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute grounds for initiating disciplinary action, investigate the actions of any person who engages in radiation therapy or radiologic imaging.*

2. A person may file a complaint anonymously pursuant to subsection 1. The Division may refuse to consider such a complaint if anonymity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.

3. The Division shall retain all complaints received by the Division pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon by the Division.

4. Before initiating proceedings to impose disciplinary action, the Division shall notify the accused person in writing of the charges. Such notice may be served by personal delivery to the accused person or by mailing it by registered or certified mail to the place of business last specified as noted in the records of the Division.

5. In any proceeding to impose disciplinary action, the Division shall afford an opportunity for a hearing on the record upon the request of the accused person. The Division may compel the attendance of witnesses or the production of documents or objects by subpoena.

6. The Division shall render a written decision at the conclusion of each hearing, and the record and decision in each hearing must be made available for inspection by any interested person.

7. The Division may delegate to a hearing officer or panel its authority to take any disciplinary action pursuant to the provisions of this chapter. Any disciplinary action taken by the hearing officer or panel is subject to the same procedural requirements applicable to the Division pursuant to subsection 6, and the officer or panel has those powers and duties given to the Division in relation thereto.

8. A decision imposing disciplinary action pursuant to this section is a final decision for the purposes of judicial review.

Sec. 50. *1. If the Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license or limited license, the Division shall deem the license or limited license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Division receives a letter issued to the holder of the license or limited license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license or limited license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

2. The Division shall reinstate a license or limited license that has been suspended by a district court pursuant to NRS 425.540 if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license or limited license was suspended stating that the person whose license or limited license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 51. *1. The Division or the Attorney General may maintain in any court of competent jurisdiction a suit to enjoin any person from violating a provision of this chapter or any regulations adopted pursuant thereto.*

2. Such an injunction:

(a) May be issued without proof of actual damage sustained by any person as a preventive or punitive measure.

(b) Does not relieve any person from any other legal action.

Sec. 52. NRS 622.520 is hereby amended to read as follows:

622.520 1. A regulatory body that regulates a profession pursuant to chapters 630, 630A, 632 to 641C, inclusive, or 644A of NRS ***or sections 22 to 51, inclusive, of this act*** in this State may enter into a reciprocal agreement with the corresponding regulatory authority of the District of Columbia or any other state or territory of the United States for the purposes of:

(a) Authorizing a qualified person licensed in the profession in that state or territory to practice concurrently in this State and one or more other states or territories of the United States; and

(b) Regulating the practice of such a person.

2. A regulatory body may enter into a reciprocal agreement pursuant to subsection 1 only if the regulatory body determines that:

(a) The corresponding regulatory authority is authorized by law to enter into such an agreement with the regulatory body; and

(b) The applicable provisions of law governing the practice of the respective profession in the state or territory on whose behalf the corresponding regulatory authority would execute the reciprocal agreement are substantially similar to the corresponding provisions of law in this State.

3. A reciprocal agreement entered into pursuant to subsection 1 must not authorize a person to practice his or her profession concurrently in this State unless the person:

(a) Has an active license to practice his or her profession in another state or territory of the United States.

(b) Has been in practice for at least the 5 years immediately preceding the date on which the person submits an application for the issuance of a license pursuant to a reciprocal agreement entered into pursuant to subsection 1.

(c) Has not had his or her license suspended or revoked in any state or territory of the United States.

(d) Has not been refused a license to practice in any state or territory of the United States for any reason.

(e) Is not involved in and does not have pending any disciplinary action concerning his or her license or practice in any state or territory of the United States.

(f) Pays any applicable fees for the issuance of a license that are otherwise required for a person to obtain a license in this State.

(g) Submits to the applicable regulatory body the statement required by NRS 425.520.

4. If the regulatory body enters into a reciprocal agreement pursuant to subsection 1, the regulatory body must prepare an annual report before January 31 of each year outlining the progress

of the regulatory body as it relates to the reciprocal agreement and submit the report to the Director of the Legislative Counsel Bureau for transmittal to the next session of the Legislature in odd-numbered years or to the Legislative Committee on Health Care in even-numbered years.

Sec. 53. (Deleted by amendment.)

Sec. 54. NRS 630.279 is hereby amended to read as follows:

630.279 The Board shall adopt regulations regarding the licensure of practitioners of respiratory care, including, without limitation:

1. Educational and other qualifications of applicants;
2. Required academic programs which applicants must successfully complete;
3. Procedures for applying for and issuing licenses;
4. Tests or examinations of applicants by the Board;
5. The types of medical services that a practitioner of respiratory care may perform, except that a practitioner of respiratory care may not perform those specific functions and duties delegated or otherwise restricted by specific statute to persons licensed as dentists, chiropractors, podiatric physicians, optometrists, physicians, osteopathic physicians or hearing aid specialists pursuant to this chapter or chapter 631, 633, 634, 635, 636 or 637B of NRS, as appropriate ~~[.]~~ ***, or persons who hold a license to engage in radiation therapy and radiologic imaging or a limited license to engage in radiologic imaging pursuant to sections 22 to 51, inclusive, of this act;***
6. The duration, renewal and termination of licenses; and
7. The grounds and procedures for disciplinary actions against practitioners of respiratory care.

Sec. 55. NRS 630A.299 is hereby amended to read as follows:

630A.299 The Board shall adopt regulations regarding the certification of a homeopathic assistant, including, but not limited to:

1. The educational and other qualifications of applicants.
2. The required academic program for applicants.
3. The procedures for applications for and the issuance of certificates.
4. The tests or examinations of applicants by the Board.
5. The medical services which a homeopathic assistant may perform, except that a homeopathic assistant may not perform those specific functions and duties delegated or restricted by law to persons licensed as dentists, chiropractors, podiatric physicians, optometrists or hearing aid specialists under chapter 631, 634, 635,

636 or 637B, respectively, of NRS ~~[.]~~ ***or persons licensed to engage in radiation therapy or radiologic imaging pursuant to sections 22 to 51, inclusive, of this act.***

6. The duration, renewal and termination of certificates.

7. The grounds respecting disciplinary actions against homeopathic assistants.

8. The supervision of a homeopathic assistant by a supervising homeopathic physician.

9. The establishment of requirements for the continuing education of homeopathic assistants.

Secs. 56 and 57. (Deleted by amendment.)

Sec. 58. NRS 632.472 is hereby amended to read as follows:

632.472 1. The following persons shall report in writing to the Executive Director of the Board any conduct of a licensee or holder of a certificate which constitutes a violation of the provisions of this chapter:

(a) Any physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, nursing assistant, medication aide - certified, perfusionist, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, alcohol or drug abuse counselor, music therapist, ***holder of a license or limited license issued pursuant to sections 22 to 51, inclusive, of this act,*** driver of an ambulance, paramedic or other person providing medical services licensed or certified to practice in this State.

(b) Any personnel of a medical facility or facility for the dependent engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a medical facility or facility for the dependent upon notification by a member of the staff of the facility.

(c) A coroner.

(d) Any person who maintains or is employed by an agency to provide personal care services in the home.

(e) Any person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 449.4304.

(f) Any person who maintains or is employed by an agency to provide nursing in the home.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect or exploitation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Any social worker.

(l) Any person who operates or is employed by a community health worker pool or with whom a community health worker pool contracts to provide the services of a community health worker, as defined in NRS 449.0027.

(m) Any person who operates or is employed by a peer support recovery organization.

2. Every physician who, as a member of the staff of a medical facility or facility for the dependent, has reason to believe that a nursing assistant or medication aide - certified has engaged in conduct which constitutes grounds for the denial, suspension or revocation of a certificate shall notify the superintendent, manager or other person in charge of the facility. The superintendent, manager or other person in charge shall make a report as required in subsection 1.

3. A report may be filed by any other person.

4. Any person who in good faith reports any violation of the provisions of this chapter to the Executive Director of the Board pursuant to this section is immune from civil liability for reporting the violation.

5. As used in this section:

(a) "Agency to provide personal care services in the home" has the meaning ascribed to it in NRS 449.0021.

(b) "Community health worker pool" has the meaning ascribed to it in NRS 449.0028.

(c) "Peer support recovery organization" has the meaning ascribed to it in NRS 449.01563.

Secs. 59-61. (Deleted by amendment.)

Sec. 62. Chapter 635 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as authorized by this section, a podiatry hygienist shall not engage in radiation therapy or radiologic imaging unless he or she has obtained a license or limited license pursuant to sections 22 to 51, inclusive, of this act.

2. A podiatry hygienist may take and develop X-rays only:

(a) Within the practice of podiatry and under the direction of a podiatric physician; and

(b) Except as otherwise provided in subsection 3, if he or she has successfully completed the training prescribed by the Board pursuant to subsection 4.

3. A podiatry hygienist who has not successfully completed the training prescribed by the Board pursuant to subsection 4 may, as part of that training, take and develop X-rays under the direct supervision of a podiatric physician.

4. The Board shall adopt regulations prescribing training that a podiatry hygienist must receive before taking and developing X-rays.

5. As used in this section:

(a) "Radiation therapy" has the meaning ascribed to it in section 29 of this act.

(b) "Radiologic imaging" has the meaning ascribed to it in section 30 of this act.

Sec. 63. NRS 635.098 is hereby amended to read as follows:

635.098 1. Any podiatry hygienist in the employ and under the direction of a podiatric physician may:

(a) Apply orthopedic padding.

(b) Administer to patients by means of physiotherapeutic equipment.

(c) Make up surgical packs.

(d) Strap and cast for orthopedic appliances.

(e) Take and develop X-rays ~~[.]~~ ***, if authorized by section 62 of this act.***

(f) Assist in foot surgery.

(g) Administer oral medications.

2. The Board may require that every podiatry hygienist have a general knowledge of sterile techniques, aseptic maintenance of surgery rooms, emergency treatments, podiatric nomenclature and podiatric surgical procedure.

Sec. 64. NRS 637B.080 is hereby amended to read as follows:

637B.080 The provisions of this chapter do not apply to any person who:

1. Holds a current credential issued by the Department of Education pursuant to chapter 391 of NRS and any regulations adopted pursuant thereto and engages in the practice of audiology or speech-language pathology within the scope of that credential;

2. Is employed by the Federal Government and engages in the practice of audiology or speech-language pathology within the scope of that employment;

3. Is a student enrolled in a program or school approved by the Board, is pursuing a degree in audiology or speech-language pathology and is clearly designated to the public as a student; or

4. Holds a current license issued pursuant to chapters 630 to 637, inclusive, or 640 to 641C, inclusive, of NRS ~~[,]~~ ***or sections 22 to 51, inclusive, of this act,***

➥ and who does not engage in the private practice of audiology or speech-language pathology in this State.

Sec. 65. NRS 639.100 is hereby amended to read as follows:

639.100 1. Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, engage in wholesale distribution, compound, sell or dispense, or permit to be manufactured, distributed at wholesale, compounded, sold or dispensed, any drug, poison, medicine or chemical, or to dispense or compound, or permit to be dispensed or compounded, any prescription of a practitioner, unless the person:

(a) Is a prescribing practitioner, a person licensed to engage in wholesale distribution, ~~[a technologist in radiology or nuclear medicine]~~ ***a person licensed pursuant to sections 22 to 51, inclusive, of this act*** under the supervision of the prescribing practitioner, a registered pharmacist, or a registered nurse certified in oncology under the supervision of the prescribing practitioner; and

(b) Complies with the regulations adopted by the Board.

2. A person who violates any provision of subsection 1:

(a) If no substantial bodily harm results, is guilty of a category D felony; or

(b) If substantial bodily harm results, is guilty of a category C felony,

➥ and shall be punished as provided in NRS 193.130.

3. Sales representatives, manufacturers or wholesalers selling only in wholesale lots and not to the general public and compounders or sellers of medical gases need not be registered pharmacists. A person shall not act as a manufacturer or wholesaler unless the person has obtained a license from the Board.

4. Any nonprofit cooperative organization or any manufacturer or wholesaler who furnishes, sells, offers to sell or delivers a controlled substance which is intended, designed and labeled "For Veterinary Use Only" is subject to the provisions of this chapter, and shall not furnish, sell or offer to sell such a substance until the

organization, manufacturer or wholesaler has obtained a license from the Board.

5. Each application for such a license must be made on a form furnished by the Board and an application must not be considered by the Board until all the information required thereon has been completed. Upon approval of the application by the Board and the payment of the required fee, the Board shall issue a license to the applicant. Each license must be issued to a specific person for a specific location.

6. The Board shall not condition, limit, restrict or otherwise deny to a prescribing practitioner the issuance of a certificate, license, registration, permit or authorization to prescribe controlled substances or dangerous drugs because the practitioner is located outside this State.

Sec. 66. NRS 644A.880 is hereby amended to read as follows:

644A.880 1. If the Board determines that a complaint filed with the Board concerns a matter within the jurisdiction of another licensing board, the Board shall refer the complaint to the other licensing board within 5 days after making the determination.

2. The Board may refer a complaint pursuant to subsection 1 orally, electronically or in writing.

3. The provisions of subsection 1 apply to any complaint filed with the Board, including, without limitation:

(a) A complaint which concerns a person who or entity which is licensed, certified or otherwise regulated by the Board or by another licensing board; and

(b) A complaint which concerns a person who or entity which is licensed, certified or otherwise regulated solely by another licensing board.

4. The provisions of this section do not prevent the Board from acting upon a complaint which concerns a matter within the jurisdiction of the Board regardless of whether the Board refers the complaint pursuant to subsection 1.

5. The Board or an officer or employee of the Board is immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions of this section.

6. As used in this section, "licensing board" means ~~[a]~~ ***:***

(a) A board created pursuant to chapter 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640B, 640C, 640D, 640E, 641, 641A, 641B, 641C, 643, 644A or 654 of NRS ~~[.]~~ ***; and***

(b) The Division of Public and Behavioral Health of the Department of Health and Human Services.

Sec. 67. NRS 654.185 is hereby amended to read as follows:

654.185 1. If the Board determines that a complaint filed with the Board concerns a matter within the jurisdiction of another licensing board, the Board shall refer the complaint to the other licensing board within 5 days after making the determination.

2. The Board may refer a complaint pursuant to subsection 1 orally, electronically or in writing.

3. The provisions of subsection 1 apply to any complaint filed with the Board, including, without limitation:

(a) A complaint which concerns a person who or entity which is licensed, certified or otherwise regulated by the Board or by another licensing board; and

(b) A complaint which concerns a person who or entity which is licensed, certified or otherwise regulated solely by another licensing board.

4. The provisions of this section do not prevent the Board from acting upon a complaint which concerns a matter within the jurisdiction of the Board regardless of whether the Board refers the complaint pursuant to subsection 1.

5. The Board or an officer or employee of the Board is immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions in this section.

6. As used in this section, "licensing board" means ~~[a]~~ ***:***

(a) A board created pursuant to chapter 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640B, 640C, 640D, 640E, 641, 641A, 641B, 641C, 643, 644A or 654 of NRS ~~[.]~~ ***; and***

(b) The Division of Public and Behavioral Health of the Department of Health and Human Services.

Sec. 68. NRS 679B.440 is hereby amended to read as follows:

679B.440 1. The Commissioner may require that reports submitted pursuant to NRS 679B.430 include, without limitation, information regarding:

(a) Liability insurance provided to:

(1) Governmental agencies and political subdivisions of this State, reported separately for:

(I) Cities and towns;

(II) School districts; and

(III) Other political subdivisions;

(2) Public officers;

(3) Establishments where alcoholic beverages are sold;
(4) Facilities for the care of children;
(5) Labor, fraternal or religious organizations; and
(6) Officers or directors of organizations formed pursuant to title 7 of NRS, reported separately for nonprofit entities and entities organized for profit;

(b) Liability insurance for:
(1) Defective products;
(2) Medical or dental malpractice of:
(I) A practitioner licensed pursuant to chapter 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639 or 640 of NRS ~~[,]~~ ***or who holds a license or limited license issued pursuant to sections 22 to 51, inclusive, of this act;***
(II) A hospital or other health care facility; or
(III) Any related corporate entity ***;*** ~~[.]~~
(3) Malpractice of attorneys;
(4) Malpractice of architects and engineers; and
(5) Errors and omissions by other professionally qualified persons;

(c) Vehicle insurance, reported separately for:
(1) Private vehicles;
(2) Commercial vehicles;
(3) Liability insurance; and
(4) Insurance for property damage;

(d) Workers' compensation insurance; and

(e) In addition to any information provided pursuant to subparagraph (2) of paragraph (b) or NRS 690B.260, a policy of insurance for medical malpractice. As used in this paragraph, "policy of insurance for medical malpractice" has the meaning ascribed to it in NRS 679B.144.

2. The Commissioner may require that the report include, without limitation, information specifically pertaining to this State or to an insurer in its entirety, in the aggregate or by type of insurance, and for a previous or current year, regarding:
(a) Premiums directly written;
(b) Premiums directly earned;
(c) Number of policies issued;
(d) Net investment income, using appropriate estimates when necessary;
(e) Losses paid;
(f) Losses incurred;
(g) Loss reserves, including:
(1) Losses unpaid on reported claims; and

(2) Losses unpaid on incurred but not reported claims;

(h) Number of claims, including:

(1) Claims paid; and

(2) Claims that have arisen but are unpaid;

(i) Expenses for adjustment of losses, including allocated and unallocated losses;

(j) Net underwriting gain or loss;

(k) Net operation gain or loss, including net investment income; and

(l) Any other information requested by the Commissioner.

3. The Commissioner may also obtain, based upon an insurer in its entirety, information regarding:

(a) Recoverable federal income tax;

(b) Net unrealized capital gain or loss; and

(c) All other expenses not included in subsection 2.

Sec. 69. NRS 686A.2825 is hereby amended to read as follows:

686A.2825 "Practitioner" means:

1. A physician, dentist, nurse, dispensing optician, optometrist, physical therapist, podiatric physician, psychologist, chiropractor, doctor of Oriental medicine in any form, director or technician of a medical laboratory, pharmacist ***, person who holds a license to engage in radiation therapy and radiologic imaging or a limited license to engage in radiologic imaging pursuant to sections 22 to 51, inclusive, of this act*** or other provider of health services who is authorized to engage in his or her occupation by the laws of this state or another state; and

2. An attorney admitted to practice law in this state or any other state.

Sec. 70. NRS 686B.030 is hereby amended to read as follows:

686B.030 1. Except as otherwise provided in subsection 2 and NRS 686B.125, the provisions of NRS 686B.010 to 686B.1799, inclusive, apply to all kinds and lines of direct insurance written on risks or operations in this State by any insurer authorized to do business in this State, except:

(a) Ocean marine insurance;

(b) Contracts issued by fraternal benefit societies;

(c) Life insurance and credit life insurance;

(d) Variable and fixed annuities;

(e) Credit accident and health insurance;

(f) Property insurance for business and commercial risks;

(g) Casualty insurance for business and commercial risks other than insurance covering the liability of a practitioner licensed

pursuant to chapters 630 to 640, inclusive, of NRS ~~[,]~~ ***or who holds a license or limited license issued pursuant to sections 22 to 51, inclusive, of this act;***

(h) Surety insurance;

(i) Health insurance offered through a group health plan maintained by a large employer; and

(j) Credit involuntary unemployment insurance.

2. The exclusions set forth in paragraphs (f) and (g) of subsection 1 extend only to issues related to the determination or approval of premium rates.

Sec. 71. NRS 690B.250 is hereby amended to read as follows:

690B.250 Except as more is required in NRS 630.3067 and 633.526:

1. Each insurer which issues a policy of insurance covering the liability of a practitioner licensed pursuant to chapters 630 to 640, inclusive, of NRS ***or who holds a license or limited license issued pursuant to sections 22 to 51, inclusive, of this act*** for a breach of his or her professional duty toward a patient shall report to the board which licensed the practitioner within 45 days each settlement or award made or judgment rendered by reason of a claim, if the settlement, award or judgment is for more than $5,000, giving the name of the claimant and the practitioner and the circumstances of the case.

2. A practitioner licensed pursuant to chapters 630 to 640, inclusive, of NRS ***or who holds a license or limited license issued pursuant to sections 22 to 51, inclusive, of this act*** who does not have insurance covering liability for a breach of his or her professional duty toward a patient shall report to the board which issued the practitioner's license within 45 days of each settlement or award made or judgment rendered by reason of a claim, if the settlement, award or judgment is for more than $5,000, giving the practitioner's name, the name of the claimant and the circumstances of the case.

3. These reports are public records and must be made available for public inspection within a reasonable time after they are received by the licensing board.

Sec. 72. NRS 690B.320 is hereby amended to read as follows:

690B.320 1. If an insurer offers to issue a claims-made policy to a practitioner licensed pursuant to chapters 630 to 640, inclusive, of NRS ~~[,]~~ ***or who holds a license or limited license issued pursuant to sections 22 to 51, inclusive, of this act,*** the insurer shall:

(a) Offer to issue to the practitioner an extended reporting endorsement without a time limitation for reporting a claim.

(b) Disclose to the practitioner the premium for the extended reporting endorsement and the cost formula that the insurer uses to determine the premium for the extended reporting endorsement.

(c) Disclose to the practitioner the portion of the premium attributable to funding the extended reporting endorsement offered at no additional cost to the practitioner in the event of the practitioner's death, disability or retirement, if such a benefit is offered.

(d) Disclose to the practitioner the vesting requirements for the extended reporting endorsement offered at no additional cost to the practitioner in the event of the practitioner's death or retirement, if such a benefit is offered. If such a benefit is not offered, the absence of such a benefit must be disclosed.

(e) Include, as part of the insurance contract, language which must be approved by the Commissioner and which must be substantially similar to the following:

> If we adopt any revision that would broaden the coverage under this policy without any additional premium either within the policy period or within 60 days before the policy period, the broadened coverage will immediately apply to this policy.

2. The disclosures required by subsection 1 must be made as part of the offer and acceptance at the inception of the policy and again at each renewal in the form of an endorsement attached to the insurance contract and approved by the Commissioner.

3. The requirements set forth in this section are in addition to the requirements set forth in NRS 690B.290.

Sec. 72.3. Section 32 of this act is hereby amended to read as follows:

> Sec. 32. The provisions of this chapter do not apply to:
>
> 1. A physician or physician assistant licensed pursuant to chapter 630 or 633 of NRS.
>
> 2. A dentist or dental hygienist licensed pursuant to chapter 631 of NRS or a dental assistant working within the scope of his or her employment under the direct supervision of a dentist.
>
> 3. A chiropractic physician or chiropractor's assistant licensed pursuant to chapter 634 of NRS.

4. A person training to become a chiropractor's assistant or a student practicing in the preceptor program established by the Chiropractic Physicians' Board of Nevada pursuant to NRS 634.1375.

5. A podiatric physician ***or podiatry hygienist*** licensed pursuant to chapter 635 of NRS***, or a person training to be a podiatry hygienist.***

6. A veterinarian or veterinary technician licensed pursuant to chapter 638 of NRS or any other person performing tasks under the supervision of a veterinarian or veterinary technician as authorized by regulation of the Nevada State Board of Veterinary Medical Examiners.

Sec. 72.6. Section 35 of this act is hereby amended to read as follows:

Sec. 35. 1. Except as otherwise provided in sections 42 ~~[and]~~ **,** 43 ***and 62*** of this act, a person shall not engage in:

(a) Radiologic imaging unless he or she has obtained a license or limited license from the Division.

(b) Radiation therapy unless he or she has obtained a license from the Division.

(c) Radiation therapy or radiologic imaging which is outside the scope of practice authorized for his or her license or limited license by the regulations adopted pursuant to section 34 of this act.

2. A person who wishes to obtain or renew a license or limited license must apply to the Division in the form prescribed by the Division.

3. A license or limited license expires 2 years after the date on which the license was issued and must be renewed on or before that date.

4. The Division shall not issue or renew a license or limited license unless the applicant for issuance or renewal of the license or limited license attests to knowledge of and compliance with the guidelines of the Centers for Disease Control and Prevention concerning the prevention of transmission of infectious agents through safe and appropriate injection practices.

5. A provisional license or provisional limited license may not be renewed and expires:

(a) On the date on which the holder of the provisional license or provisional limited license is issued a license or limited license by the Division;

(b) On the date on which the application of the holder of the provisional license or provisional limited license for a license or limited license is denied by the Division; or

(c) One year after the date on which the holder of the provisional license or provisional limited license is initially employed to engage in radiation therapy or radiologic imaging.

6. A person who engages in radiation therapy or radiologic imaging in violation of the provisions of this section is guilty of a misdemeanor.

Sec. 73. Section 40 of this act is hereby amended to read as follows:

Sec. 40. 1. In addition to any other requirements set forth in this chapter ~~[~~:

~~(a) An applicant for the issuance of a license or limited license shall include the social security number of the applicant in the application submitted to the Division.~~

~~(b) An]~~ ***, an*** applicant for the issuance or renewal of a license or limited license shall submit to the Division the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license or limited license; or

(b) A separate form prescribed by the Division.

3. A license or limited license may not be issued or renewed by the Division if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other

public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 73.5. Section 47 of this act is hereby amended to read as follows:

Sec. 47. 1. Except as otherwise provided in this section, any authorized representative of the Division may:

(a) Enter and inspect at any reasonable time any private or public property on which radiation therapy or radiologic imaging is conducted for the purpose of determining whether a violation of the provisions of this chapter or the regulations adopted pursuant thereto has occurred or is occurring. The owner, occupant or person responsible for such property shall permit such entry and inspection. An owner, occupant or person responsible for such property who fails to permit such entry and inspection is guilty of a misdemeanor.

(b) Request any information necessary to ensure that any person who engages in radiation therapy or radiologic imaging meets any requirements specified by this chapter ***or section 62 of this act, as applicable,*** concerning the radiation therapy or radiologic imaging in which the person engages.

2. An authorized representative of the Division may only enter an area that is subject to the jurisdiction of the Federal Government if the authorized representative obtains the consent of the Federal Government or its duly designated representative.

3. Any report of an investigation or inspection conducted pursuant to paragraph (a) of subsection 1 and any information requested pursuant to paragraph (b) of subsection 1 shall not be disclosed or made available for public inspection, except as otherwise provided in NRS 239.0115 or as may be necessary to carry out the responsibilities of the Division.

Sec. 74. As soon as practicable after the effective date of this section, the Governor shall appoint to the Radiation Therapy and Radiologic Imaging Advisory Committee created by section 33 of this act:

1. One member pursuant to paragraph (g) of subsection 2 of section 33 of this act to an initial term commencing on July 1, 2019, and expiring on June 30, 2020.

2. One member each pursuant to paragraphs (d), (e) and (f) of subsection 2 of section 33 of this act to initial terms commencing on July 1, 2019, and expiring on June 30, 2021.

3. One member each pursuant to paragraphs (a), (b) and (c) of subsection 2 of section 33 of this act to initial terms commencing on July 1, 2019, and expiring on June 30, 2022.

Sec. 75. 1. Notwithstanding the requirements of sections 36 and 37 of this act, the Division of Public and Behavioral Health of the Department of Health and Human Services shall issue a license or a limited license, as applicable, to the scope of practice of the person, to any person who:

(a) Is performing radiation therapy or radiologic imaging as part of his or her employment on or before January 1, 2020;

(b) Registers with the Division; and

(c) Provides any information requested by the Division.

2. As used in this section:

(a) "License" has the meaning ascribed to it in section 26 of this act.

(b) "Limited license" has the meaning ascribed to it in section 27 of this act.

(c) "Radiation therapy" has the meaning ascribed to it in section 29 of this act.

(d) "Radiologic imaging" has the meaning ascribed to it in section 30 of this act.

Sec. 76. (Deleted by amendment.)

Sec. 77. 1. This section and sections 1, 21, 74 and 75 of this act become effective upon passage and approval.

2. Sections 2 to 20, inclusive, and 22 to 61, inclusive, and 64 to 72, inclusive, of this act become effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on January 1, 2020, for all other purposes.

3. Sections 62, 63, 72.6 and 73.5 of this act:

(a) Become effective on January 1, 2020, only if regulations adopted by the State Board of Podiatry pursuant to NRS 635.030 prescribing the conditions under which a podiatry hygienist or a person training to be a podiatry hygienist may engage in radiation therapy and radiologic imaging have not become effective before that date; and

(b) Expire by limitation on the date on which regulations adopted by the State Board of Podiatry pursuant to NRS 635.030 prescribing the conditions under which a podiatry hygienist or a

person training to be a podiatry hygienist may engage in radiation therapy and radiologic imaging become effective.

4. Section 72.3 of this act becomes effective on January 1, 2020, or the date on which regulations adopted by the State Board of Podiatry pursuant to NRS 635.030 prescribing the conditions under which a podiatry hygienist or a person training to be a podiatry hygienist may engage in radiation therapy and radiologic imaging become effective, whichever is later.

5. Section 73 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

➥ are repealed by the Congress of the United States.

6. Sections 50 and 73 of this act expire by limitation 2 years after the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

➥ are repealed by the Congress of the United States.

SKILLED NURSING FACILITIES –
PROPOSED AMENDMENT TO SENATE BILL NO. 292

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

We enthusiastically support SB292. Our two proposed changes are simply intended to further the goals of SB292, by streamlining and harmonizing Nevada's statutes dealing with civil actions for negligence.

Amendment 1

Our first proposed amendment is intended to add further clarity to this bill by enhancing the language in Section 2 to ensure that all health care providers are specifically included in the definition of "provider of health care" in NRS 41A.017. These changes would help to make it clear that NRS Chapter 41A applies to all providers of health care, whether the care in question was provided by a medical professional in a hospital, a surgical center, an obstetric center, a skilled nursing facility, or any other medical facility.

There are three key NRS sections dealing with professional negligence in the medical field with definitions of "provider of health care" – NRS 41A.017, NRS 42.021 (8)(d), and NRS 629.031(1). With this bill amending the definition of "provider of health care" in one of these, NRS 41A.017, we wanted to ensure that any changes are made across the board. Our amendment proposes to cross-cite the definitions between the relevant statutes, and syncs the language across these definitions, to make it clear that they cover the same entities and individuals.

We also added a citation to the definition of "medical facility" in NRS 449.0151 to each of the definitions, to clarify that these medical professionals are covered whether or not they work in a licensed hospital or another form of licensed medical facility.

These clarifications are essential to our skilled nursing facilities, to protect them from having to spend hundreds of thousands of dollars litigating this basic fact - that we are a provider of health care covered under NRS 41A. It will also harmonize the professional negligence statutes in the medical field to the benefit of all medical professionals and entities.

For background information, NRS 449.0151 reads as follows:

NRS 449.0151 "Medical facility" defined. "Medical facility" includes:

1. A surgical center for ambulatory patients;

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2. An obstetric center;
3. An independent center for emergency medical care;
4. An agency to provide nursing in the home;
5. A facility for intermediate care;
6. A facility for skilled nursing;
7. A facility for hospice care;
8. A hospital;
9. A psychiatric hospital;
10. A facility for the treatment of irreversible renal disease;
11. A rural clinic;
12. A nursing pool;
13. A facility for modified medical detoxification;
14. A facility for refractive surgery;
15. A mobile unit; and
16. A community triage center.

PROPOSED AMENDMENT 1:

Sec. 2. NRS 41A.017 is hereby amended to read as follows:

41A.017 "Provider of health care" means ***a "provider of health care" as defined in NRS 629.031(1) and NRS 42.021 (8)(d),*** a physician licensed ~~[under]~~ ***pursuant to*** chapter 630 ***, 630A*** or 633 of NRS, ***physician assistant,*** dentist, licensed nurse, dispensing optician, optometrist, ***practitioner of respiratory care,*** registered physical therapist, ***occupational therapist,*** podiatric physician, licensed psychologist, ***licensed marriage and family therapist, licensed clinical professional counselor, music therapist,*** chiropractor, ***athletic trainer, perfusionist,*** doctor of Oriental medicine ~~[,]~~ ***in any form,*** medical laboratory director or technician, ***pharmacist or*** licensed dietitian or a licensed hospital ***, clinic, surgery center, skilled nursing facility, medical facility as defined in NRS 449.0151 or other entity that employs any such person*** and its employees.

Sec. 2A. NRS 42.021 (8)(d) is hereby amended to read as follows:

8. (d) "Provider of health care" means ***a "provider of health care as defined in NRS 41A.017 and NRS 629.031(1),*** a physician licensed ~~under~~ ***pursuant to*** chapter 630***, 630A*** or 633 of NRS, ***physician assistant,*** dentist, licensed nurse, dispensing optician, optometrist, ***practitioner of respiratory care,*** registered physical therapist, ***occupational therapist,*** podiatric physician, licensed psychologist, ***licensed marriage and family therapist, licensed clinical professional counselor, music therapist,*** chiropractor, ***athletic trainer, perfusionist,*** doctor of Oriental medicine ***in any form***, medical laboratory director or technician, ***pharmacist or*** licensed dietitian or a licensed hospital***, skilled nursing facility, medical facility as defined in NRS 449.0151 or other entity that employs any such person*** and its employees.

Sec. 2B. NRS 629.031(1) is hereby amended to read as follows:

NRS 629.031 "Provider of health care" defined. Except as otherwise provided by a specific statute:

1. "Provider of health care" means ***a "provider of health care as defined in NRS 41A.017 and NRS 42.021 (8)(d),*** a physician licensed pursuant to chapter 630, 630A or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, occupational therapist, podiatric physician, licensed psychologist, licensed marriage and family therapist, licensed clinical professional counselor, music therapist, chiropractor, athletic trainer, perfusionist, doctor of Oriental medicine in any form, medical laboratory director or technician, pharmacist, licensed dietitian or a licensed hospital***, skilled nursing facility, medical facility as defined in NRS 449.0151 or other entity that employs any such person and its employees*** ~~as the employer of any such person~~.

Amendment 2

Our second proposed amendment is intended to add further clarity to Nevada's statutes regarding professional negligence in the medical realm by making clear that a plaintiff cannot circumvent the limitations of NRS 41A by improperly bringing an additional claim under NRS 41.1395 (the elder abuse statute).

Our skilled nursing facilities have repeatedly had to defend themselves against attorneys bringing what should be clear 41A claims under the auspices of NRS 41.1395 as well. This puts our facilities in jeopardy of being forced to pay out significant damages under NRS 41.1395 for causes that are rightfully included under the limits of NRS 41A. Skilled nursing facilities are forced to expend hundreds of thousands of dollars engaging in extensive discovery and pretrial motion practice defending NRS 41.1395 claims that are rightfully included under NRS 41A.

Allowing attorneys to pursue health care "neglect" or "abuse" claims under NRS 41.1395 renders the cap provided by NRS 41A.035 meaningless. Damages under NRS 41.1395 are not capped and then doubled in addition to attorney fees and costs.

PROPOSED AMENDMENT 2:

Sec. 11. NRS 41.1395 is hereby amended to read:

NRS 41.1395 Action for damages for injury or loss suffered by older or vulnerable person from abuse, neglect or exploitation; double damages; attorney's fees and costs.

1. Except as otherwise provided in subsection 3, if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is

liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if the person did not know or have reason to know that the harmed person was a vulnerable person.

4. The provisions of this section do not apply to an act of professional negligence as covered under NRS 41A.

~~4.~~ ***5.*** For the purposes of this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person.

(b) "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:

(1) Obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of that person's money, assets or property; or

(2) Convert money, assets or property of the older person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of that person's money, assets or property.

As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another.

(c) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person, or who has voluntarily assumed responsibility for such a person's care, to provide food, shelter, clothing or services within the scope of the person's responsibility or obligation, which are necessary to maintain the physical or mental health of the older person or vulnerable person. For the purposes of this paragraph, a person voluntarily assumes responsibility to provide care for an older or vulnerable person only to the extent that the person has expressly acknowledged the person's responsibility to provide such care.

(d) "Older person" means a person who is 60 years of age or older.

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

The term includes, without limitation, a person who has an intellectual disability, a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury.

Contact:
Jennifer J. Gaynor, Dickinson Wright, PLLC, (702) 550-4462, jgaynor@dickinsonwright.com

NVHCA –
PROPOSED AMENDMENT TO SENATE BILL NO. 292

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

We support SB292, with the exception of the current version of Section 2 of the bill, which amends the definition of the term "provider of health care" for purposes of NRS 41A. With the amendments made to this section of SB292 in the Senate, the sponsors have added in some new entities as part of this definition, including clinics, surgery centers, professional corporations, and physician's group practices. By adding in these additional specific entities, SB292 could be interpreted to exclude key healthcare providers, including, but not limited to, the expansive post-acute care medical facilities throughout the state of Nevada.

This version of the definition of "provider of health care" is therefore very concerning to the Nevada Health Care Association ("NVHCA"), which represents the interests of Nevada's post-acute care medical providers. If SB292 were to pass with this definition intact, Nevada's post-acute care facilities would become the attractive target for plaintiff's attorneys and would likely cripple this industry.

Already, Nevada's skilled nursing facilities[1], are operating on razor-thin margins (approximately 1.8% statewide). They have not received an increase in their Medicare rate since 2001, and actually had a cut to their rates in 2010. There are approximately the same 5,000 skilled nursing beds available to Nevada's elderly, health-compromised patients as there were ten years ago, and certain types of beds, such as ventilator beds, are in shortage. Right now, there are no ventilator beds available for patients in Northern Nevada, and Northern Nevada patients who need this service must be transferred to Las Vegas for care.

Our proposed amendment will ensure that the protections of NRS Chapter 41A apply to licensed healthcare professionals regardless of the location where they are providing their professional services. Adding the term "Medical Facility," as defined in NRS 449.0151, to the definition of "Provider of Health Care" will clarify that it is the professional healthcare professionals that are being accorded protection under NRS 41A, and not create an artificial distinction based on the category of medical facility where they are providing such services.

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[1] NRS 449.0039 "Facility for skilled nursing" defined.

1. "Facility for skilled nursing" means an establishment which provides continuous skilled nursing and related care as prescribed by a physician to a patient in the facility who is not in an acute episode of illness and whose primary need is the availability of such care on a continuous basis.

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Submitted by: Jennifer Gaynor

For background information, NRS 449.0151 reads as follows:

NRS 449.0151 "Medical facility" defined. "Medical facility" includes:

1. A surgical center for ambulatory patients;
2. An obstetric center;
3. An independent center for emergency medical care;
4. An agency to provide nursing in the home;
5. A facility for intermediate care;
6. A facility for skilled nursing;
7. A facility for hospice care;
8. A hospital;
9. A psychiatric hospital;
10. A facility for the treatment of irreversible renal disease;
11. A rural clinic;
12. A nursing pool;
13. A facility for modified medical detoxification;
14. A facility for refractive surgery;
15. A mobile unit; and
16. A community triage center.

PROPOSED AMENDMENT:

Sec. 2. NRS 41A.017 is hereby amended to read as follows:

41A.017 "Provider of health care" means a physician licensed pursuant to chapter 630, ~~***630A***~~ or 633 of NRS, ***physician assistant,*** dentist, licensed nurse, dispensing optician, optometrist, ~~***practitioner of respiratory care,***~~ registered physical therapist, ~~***occupational therapist***~~, podiatric physician, licensed psychologist~~***, licensed marriage and family therapist, licensed clinical professional counselor, music therapist,***~~ chiropractor, ~~***athletic trainer, perfusionist,***~~ doctor of Oriental medicine ~~***in any form,***~~ medical laboratory director or technician~~***, pharmacist***~~ or licensed dietitian or a licensed hospital, ***clinic, surgery center,*** ***medical facility as defined in NRS 449.0151,*** ***professional corporation or physician's group practice*** ~~***or other entity***~~ ***that employs any such person*** and its employees***.***

*If this amendment language is not workable for the committee, we request alternatively that the language in Section 2 of SB 292 be stricken in its entirety, leaving the definition of "provider of health care" as it was prior to the introduction of this bill. Leaving the language in its current form would have incredibly harmful consequences to Nevada's post-acute care medical providers as it actually contracts rather than expands the protections for providers of medical care in Nevada.

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MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
May 26, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, May 26, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman James Oscarson, Assembly District No. 36
Senator Greg Brower, Senate District No. 15

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Robert Jacot, Private Citizen, Reno, Nevada
Bryan A. Nix, Senior Appeals Officer, Hearings Division, Department of Administration
Adam Laxalt, Attorney General, Office of the Attorney General
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance
Stacey Upson, Attorney, Farmers Insurance
Margo Piscevich, representing Nevada Rural Hospital Partners; and Keep Our Doctors In Nevada
James L. Wadhams, representing Nevada Hospital Association
Justin Harrison, representing Las Vegas Metropolitan Chamber of Commerce
Dan Musgrove, representing CSAA Insurance Group; and The Valley Health System
Tray Abney, Director of Government Relations, Reno Sparks Chamber of Commerce
Mark Wenzel, representing Nevada Justice Association
Graham Gallaway, representing Nevada Justice Association
Lesley Pittman, representing Keep Our Doctors In Nevada
Denise Selleck, representing Nevada Osteopathic Medical Association
Kathleen Conaboy, representing Nevada Orthopaedic Society
George A. Ross, representing Sunrise Hospital and Medical Center; Institute for Legal Reform; and American Tort Reform Association
Jennifer Gaynor, representing Nevada Health Care Association
Daniel Mathis, President/CEO, Nevada Health Care Association
Robert Rourke, Attorney, Rourke Law Firm, Las Vegas, Nevada
Stephen Osborne, representing Nevada Justice Association

Chairman Hansen:
[Roll was called and protocol was explained.] We have six bills on the docket this morning, and we will also have a work session tomorrow. We may try to move Assembly Bill 487 on the floor today. Also, this will probably be our last full-blown meeting, so I would like to let all of the Committee members know what an honor and privilege it has been to be the Chairman of this Committee and to be able to work with you. I think we have shown great decorum and respect for one another. We have strong and very divergent opinions on this Committee, and I think we have been able to express them very freely without any personal animus or animosity. In my three sessions here, being Chairman is by far the greatest privilege I have had, so I want to thank all of you. I especially want to thank Diane Thornton and Brad Wilkinson who have been behind the scenes helping to keep this Committee going and advising us all. Since this is probably the end for us, I just wanted to take a moment to publicly thank you for that.

We are going to go to Assembly Bill 487 very quickly and bring up Assemblyman Oscarson. If you have been living under rock somewhere and not familiar with this whole situation, this bill is basically a verbatim amendment that was on Senate Bill 175 (1st Reprint). They have taken it and used it as an emergency measure. It deals with campus carry and we are going to have a very brief hearing on it and then we will move on to the other bills.

Assemblyman James Oscarson, Assembly District No. 36:
I was just approached to see if you would hear Senate Bill 230 first. We have a young gentleman here in the front—if you would not mind—I appreciate your indulgence.

Chairman Hansen:
I do not mind. Senator Brower is here to present S.B. 230.

Senate Bill 230: Revises provisions governing the payment of compensation to certain victims of crime. (BDR 16-1038)

Senator Greg Brower, Senate District No. 15:
I am here to present Senate Bill 230. I am introducing this bill upon the request of two gentlemen. First of all, I want to introduce you to Aiden Jacot, who is the young man over to my right. His father, Robert Jacot, is here and will testify in a moment, and we have Mr. Bryan Nix from the Department of Administration in Las Vegas who will be able to provide some answers to questions and an explanation of how this bill would actually work. Suffice it to say, this bill is an effort to change the law with respect to our state Fund for the Compensation of Victims of Crime. The effort is to reform the law the best

we can in a monetary sense to make victims of crime whole. With that, I will turn it over to Mr. Jacot and let him give some opening remarks, show a brief video, and then Bryan Nix in Las Vegas is the real subject matter expert on behalf of the Executive Branch, and he can explain how this will work.

Robert Jacot, Private Citizen, Reno, Nevada:
[Video presentation of photographs of Aiden Jacot] Aiden was ten months old on May 12, 2010, when he was shaken and beaten so badly by his babysitter that it caused him to have a skull fracture and swelling to his brain, which caused a lack of oxygen to his brain. The injuries have now left Aiden without the use of his arms, legs, and head. He also cannot eat on his own and must be fed every three to four hours through a G-tube in his stomach. Aiden is blind in both eyes and could suffer a seizure at any given time. He requires 24-hour care. Over the last five years, we have incurred significant cost due to Aiden's injury and care. The Victims of Crime Program has been there every step of the way for us, and without their financial support, there is no way Aiden would be where he is today. Five years ago, we were in the pediatric intensive care unit (ICU) at Renown Regional Medical Center and they told us Aiden would never leave the hospital. Four weeks after being in the pediatric ICU, Aiden did leave the hospital. Aiden's doctors and therapists have told us, "Do not stop what you are doing. You guys are doing a great job." The doctors and therapists have also told us that Aiden's recovery to this point is amazing. Aiden and I are here this morning to respectfully request your consideration of S.B. 230 and to answer any questions you may have for us.

Bryan A. Nix, Senior Appeals Officer, Hearings Division, Department of Administration:
I serve as the Senior Appeals Officer for the Hearings Division of the Department of Administration. In this capacity, I also oversee the Victims of Crime Program, and I have done so for the past 25 years. This bill is intended to lift the statutory cap on how much money we can pay on a claim. The statute currently caps the amount at $150,000. The purpose of lifting that cap is because we have a certain category of claimants who cannot have their bills or needs satisfied within the $35,000 cap we have placed administratively through our policies. We have the category of catastrophic claims for cases like Aiden's where you have traumatic injuries involving paraplegia, blindness, loss of limbs, et cetera. Unfortunately, in Aiden's case, he is going to need long-term care. The care that he requires cannot be provided by any other governmental program, and we are able to provide that at a very efficient rate. In this case, Aiden's claim is probably somewhere in the range of $120,000 currently, but we will run out of that claim amount in another year if this cap is not lifted.

Most of our catastrophic injury claims; we have had 18 in the last 16 years; are typically in the range of $60,000. Of course, Aiden's case is different, and we think there will be other cases like Aiden's in the future. We are simply asking to lift that cap. The State Board of Examiners has policies in place which provide claim cap limits at $35,000, and would have oversight for any claim exceeding $35,000. The State Board of Examiners directly oversees the Victims of Crime Program. They have to vote quarterly on our financial reports. They have to oversee all the appeals on any administrative issue regarding the program. We think they are well-equipped to monitor and control the funds that are paid out on these claims.

The Victims of Crime Program is primarily funded through fines and forfeitures imposed by the courts. It is not a State General Fund agency. We are financially very well set. We have probably $13 million to pay claims and we pay about $6 million to $8 million a year in claims, so we have about a $7 million or $8 million reserve. We do not see this as having any negative financial impact on the state or the Victims of Crime Program, but we do think this will enable us to help more victims like Aiden.

Assemblyman Nelson:
You mentioned federal funding coming in, but in your written materials you think it might go down in the future?

Bryan Nix:
Our federal funding varies based on how much we spend of state funds. They are actually considering raising it from a 60 percent match—which means they will give us 60 cents for every dollar we pay out of state funds—to 75 cents per dollar. We do not anticipate less. Amazingly enough, over the past few years, we have seen our claim costs go down for a variety of reasons—hospital bills are smaller in some situations, some of these violent crimes have reduced in number, and our caseload has not grown like our population has, yet it continues to grow at a moderate rate. The funding we get from the federal government is similarly sourced to criminals and criminal fines at the federal level. They have an incredibly healthy fund—it is just a matter of how much they are going to pay as a percentage of what we have paid out. We do not anticipate it will drop much. We certainly have the reserves in the event that we spend fewer state funds and we get less of a match.

Chairman Hansen:
This is strictly for the victims? There are no attorney fees that factor in any of this money?

Bryan Nix:
No, we have never paid attorney fees on a claim in the 25 years I have been doing this.

Chairman Hansen:
Okay. I just wanted to make sure that was on the record.

Bryan Nix:
It is purely for medical bills and the kinds of costs that Aiden incurs—for instance, home care, prosthetic devices, wheelchairs, et cetera.

Chairman Hansen:
Senator Brower, do you have anyone else you would like to come up at this time?

Senator Brower:
No. On behalf of Mr. Nix and the Jacot family, particularly Aiden, who is once again performing in an outstanding manner here for his third hearing on this bill, we appreciate the Committee's time and consideration. This is as close to a perfect bill as it gets around here, especially given the fact that there is no impact on the General Fund. We hope that we can see quick movement on this bill with the limited time we have left in the session.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in favor of S.B. 230? [There was no one.] Is there anyone opposed to S.B. 230? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on Senate Bill 230. Next, we will go to Senate Bill 60 (2nd Reprint) at the request of the Attorney General.

Senate Bill 60 (2nd Reprint): Revises various provisions related to the Office of the Attorney General. (BDR 16-470)

Adam Laxalt, Attorney General, Office of the Attorney General:
I am here to testify about one portion of Senate Bill 60 (2nd Reprint). This bill will establish an official title for the Office of Military Legal Assistance. I have had the opportunity to discuss this with many of you, but this is going to be a first-of-its-kind program—a public/private partnership between lawyers of the State Bar of Nevada and our military community. We believe it is going to be an exceptional program. The concept is that we create no new entitlement and no new bureaucracy. The Office of the Attorney General will be the clearinghouse

to have all military components in the state of Nevada on one side and it will be our job—my job, in particular—to recruit individual lawyers and law firms from around the state who are willing to give up ten hours per year for them to take pro bono cases for our military community.

We started a community in January 2015, and were fortunate enough to have what I believe were the 16 players who were most important to get to the table to make sure we did this right and that we received all the input we needed, which included the commanders of Fallon Naval Air Station, Nellis Air Force Base, and the Nevada National Guard—our reserve components on the military side—as well as our veteran community. On the pro bono side, it included the Legal Aid Center of Southern Nevada, Nevada Legal Services, and a number of the other existing pro bono service providers, the State Bar of Nevada, the Washoe County Bar Association, and the Clark County Bar Association. We had everyone at the table to make sure we were not doing any duplicative services, and we found a universal desire to move forward with this program. Certainly, we are very excited that something like this could emerge, and we are set to move on this program. We have a number of pro bono hours committed from our Bar community already.

Assemblyman Thompson:
How will this program differ from the other pro bono-type of programs in communities? Would this not be a subsection of those types of programs, or would this put those programs at risk?

Adam Laxalt:
This is why it was important for us to get the existing pro bono service providers. I was loosely aware that some of the county and state bars were trying to help our military community. We discovered that no one was actually able to take on this huge burden that the state has. Everyone has a small program but, as we all know, we have over 300,000 veterans and potentially as many as 100,000 who are active-duty or reserve guard unit service members in the state. We are all working together. We are going to continue to meet as a committee with these pro bono service providers, and I am going to use Barbara Buckley of the Legal Aid Center of Southern Nevada as an example. They do a number of services that are going to be able to overlap with our program. As we intake from a military base or from a veterans service officer, we will figure out by a matrix if it is something that should route directly to an existing pro bono service provider or, if it is something that does not fit their criteria, we move over to the pro bono bank of lawyers.

Assemblyman Thompson:
I am really concerned about flow and access. Is this going to be an extra layer that they have to go into a portal and apply online? Right now, they can walk into offices and get that service right then and there.

Adam Laxalt:
The great part about us having everyone at the table is that we will be able to continue to communicate about this. My goal is not to re-create the wheel, which is why we want to get everyone at the table. If someone is already going to a legal service provider, there is nothing to stop them, and it is great. We want to get everyone served the best we can. We believe that we are going to be able to increase awareness. We spend a lot of time at these bases, and we are going to spend the time with the active-duty and reserve judge advocate generals (JAG) and continue to update them on this program. The service members rotate all the time, so programs like this can rise and lower in importance. We believe this is a win-win. We are going to get more people who understand that the service is available.

Assemblyman Elliot T. Anderson:
Would you give me a briefing on what exactly happened with the insurance issue? Was it resolved well, and do you feel comfortable with how it went?

Adam Laxalt:
We had toyed with trying to figure out if we had to create a liability shield by statute and basically ended up getting a universal opinion from the State Bar and legal service providers. We also have the trial lawyers association—all these people are on board. Everyone felt like we should go without that kind of liability shield. In the interim, the Legal Aid Center of Southern Nevada is going to provide a liability shield for anyone who enters the program, and we have been working on a memorandum of understanding with them.

Assemblyman Elliot T. Anderson:
To be clear, they are going to be put on their insurance? Am I understanding that correctly?

Adam Laxalt:
Essentially, any pro bono lawyer who signs up through this program will be covered under their insurance.

Assemblyman Elliot T. Anderson:
Good. Thank you for wrapping it up neatly and working with everyone. I think it is important because there is a lot of experience out there doing this and combining your office with all of our existing service providers is a good way to increase the amount of help that we can give them.

Assemblywoman Diaz:
Is there a way we are going to be prioritizing the cases that we take? Is this something that is going to be worked out later? Are we going to take everyone? That would be awesome.

My second question is about section 11 where it says your area can request donations and gifts. Is there a reporting mechanism that lets the public know who is contributing to this program?

Adam Laxalt:
We have been working to figure out how to take on this huge project. The way we started in this committee was a wish list of all the types of legal services we felt were needed. Then we have been able to go to some of our lawyer partners and some of our legal aid partners and try to figure out what we should start with. We are going to start with six to eight specific civil legal-type issues, and I would rather not go on the record on that right now. We are whittling down what we think we have the capacity to cover for the first year. Again, we are going to be a standing committee so we can continue to monitor this.

You mentioned the volume. On day one we could get 6,000 new clients, which would overrun the program. We envision treating this the way they do in the service, which is active duty always gets first line of coverage. Then active reservist, active guard, and then reservists. Obviously, our goal will be to track all of this. We hope this program, over the next number of years, will be able to cover everyone, and from the start, plan to cover families of service members as well. That is what we are going to do to try to make sure we have a grip on this program to start for the first year. We plan on matrixing this and trying to understand if we are turning away people, who we are turning away, and what type of legal service it is so we will have a good grip in a year on how we can expand.

With the second question, I apologize. We can get back to you. It is something my budget person is tracking for us, but we plan on taking donations from presumably Nevada companies who are willing to support this mission. We know we are going to have a lot of costs that are going to accompany this project. We certainly want to make sure we can reach into the rurals, and it is

something that we are working on already. We do not know how much that is going to be, but we want the capacity to be able to not spend General Fund dollars as we meet these needs.

Assemblyman Ohrenschall:
Sometimes my wife volunteers through the Legal Aid Center of Southern Nevada where she goes to the rescue mission and provides legal advice to people staying there. Sometimes she meets veterans who are homeless and staying at the rescue mission. I wonder if you envision this program trying to reach out to homeless veterans at all? I think we have quite a large number in Las Vegas.

Adam Laxalt:
I have spoken with the gentleman who runs Veterans Village—for those of you who are familiar with it in Las Vegas. It is an incredible program that has turned an abandoned motel into 120 apartments for our homeless veterans. The biggest problem we are going to have is that we need to have criteria to get in. We are going to make sure that people are coming in through JAGs, coming in as far as our active duty National Guard reserve components because they can verify these people are in good standing and are active duty or reserve. For the veteran community, they are going to come through our existing veterans service organizations (VSO). It is a long answer to say that to the extent that the homeless person is an honorably or other than honorably discharged veteran and they are coming through a VSO, that is something we will be able to help at the front end.

The great thing about this project is how collaborative it is. It is a testament to our state that we are able to pick up the phone and I can get a law firm to commit 25 lawyers to this program and we can get all these pro bono service providers who are ecstatic about having this centralized in one place. I can commit to you that we will continue to monitor all the needs. Obviously, my goal would be to meet all the needs in the state. With over 400,000, I am concerned about us being able to do that and want to make sure the Committee understands it is a first step. We are going to work very hard to cover as many veterans and service members as we can.

Assemblyman Nelson:
You are talking about donations, and I presume that is to cover the out-of-pocket costs, such as the filing fees and expert witness fees?

Adam Laxalt:
We will certainly have plenty of travel costs as we try to figure out how to make sure we are doing this within the rurals. One example of something that

we hope to be able to do is at the Fallon Naval Air Station. When they get a 300-person unit that is going to be deployed all of a sudden, we want to be able to write 300 wills ideally with this program with pro bono lawyers who are willing to spend a Saturday and whatever it is going to cost to host that kind of thing. As you can imagine, these bills are going to add up. We also want to, hire a contractor to make sure we can metric this properly and make sure that we can really monitor this program so they can grow and that two years from now, I can bring back to the Legislature how successful we are being, what our thresholds are, such as we found 300 lawyers who were able to help and it allowed us to cover 25 percent of the population and we need X amount more support to cover the rest. These are the kinds of things that we want to be able to cover—some of these outside costs.

Assemblyman Nelson:
I do not see a fiscal note. You are not going to be taking any General Fund money and you are going to absorb all of this within your budget?

Adam Laxalt:
Absolutely.

Chairman Hansen:
My understanding is that this is acceptable to the Secretary of State as well?

Adam Laxalt:
(He nodded his head.)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
I am going to briefly touch on the two other components of S.B. 60 (R2). Attorney General Laxalt detailed the Office of Military Legal Assistance, which would be set forth in sections 10 and 11 of the bill. Sections 1 through 5 transfer administration of an existing program from the Office of the Secretary of State. This program is called the Confidential Address Program and we agree with the Secretary of State's Office that this function makes more sense in the Attorney General's Office because it has a nexus to our existing victim service functions. Address confidentiality programs are available to protect victims of certain types of crimes, such as stalking, domestic violence, and sexual assault. It allows them to obtain a fictitious address to transact certain business and maximizes their safety. There are about 36 such programs nationwide. Our program was established by the Legislature in 1997. There are currently about 680 victims who utilize this program. Once again, this is something that we agreed with the Secretary of State's Office that this function probably made more sense in the Attorney General's Office, and they agreed with it. That is what sections 1 through 5 of this bill would do.

Section 16 extends the life of the Substance Abuse Working Group, which is currently set to sunset on June 30, 2015. It would extend it for another four years to June 30, 2019. The Attorney General chairs the Substance Abuse Working Group, and it is obviously a very important group. We have problems connected with substance abuse throughout our state, and Attorney General Laxalt would like to continue the work of this important group. Section 16 would extend the life of that entity. In a nutshell, those are the three components of S.B. 60 (R2). [Submitted prepared testimony (Exhibit C).]

Chairman Hansen:
Are there any questions? [There were none.] Attorney General Laxalt, is there anyone else you would like to have called up at this time to testify in favor of S.B. 60 (R2)?

Adam Laxalt:
No. Thank you for your time this morning.

[A letter from Secretary of State Barbara Cegavsky was submitted but not discussed (Exhibit D).]

Chairman Hansen:
Is there anyone in Carson City or Las Vegas who would like to testify in favor of S.B. 60 (R2)? [There was no one.] Is there anyone in opposition to S.B. 60 (R2)? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on S.B. 60 (R2) and open the hearing on Assembly Bill 487, which revises provisions governing firearms.

Just so everyone knows, we have discussed this at length in several hearings. There will be no testimony on this today, pro or con. This is an emergency measure from the Speaker, and everyone has had more than their fair share of saying pro or con in this particular bill. I can assure you that you are not going to change anyone's views on this Committee. We are going to have a very brief introduction to it, and that will end the hearing on A.B. 487.

Assembly Bill 487: Revises provisions governing firearms. (BDR 5-1279)

Assemblyman James Oscarson, Assembly District No. 36:
Assembly Bill 487 is the work of a lot of people over a long period of time; two sessions that I am aware of and have been engaged in. I think what we have done is taken the best of this legislation and put it in A. B. 487, which, as you know, is an emergency measure from the Speaker and we have been

allowed to move this forward. We appreciate the support of this Committee and the support of those who have come before us who have worked diligently and tirelessly to bring this legislation forward for those who we feel truly need it.

Chairman Hansen:
My understanding is that this language is identical to the amendment that we had placed on Senate Bill 175 (1st Reprint), which was rejected on the floor. Is that correct?

Assemblyman Oscarson:
That is correct.

Chairman Hansen:
One request for amendment has been approved by the Speaker, and several people have requested to be cosponsors, so we will have that as an amendment as well. We will allow some questions very briefly.

Assemblyman Araujo:
First and foremost, we have a lot of people signed up to testify, so it is really unfortunate that they are not going to get a chance to share their views. I apologize to all the people. Given the restraints, my biggest question is if any of the bill sponsors have actually spoken to the Nevada System of Higher Education (NSHE), that would be directly impacted by this legislation, and taken their perspectives into serious account. They have put a lot of things on the record and their voices are not being heard. I am wondering why we are not listening to the people who would be directly impacted by this legislation.

Assemblyman Oscarson:
I know that there are ongoing conversations with them. I know that I talked as late as yesterday evening with one of the NSHE people and discussed their concerns with him. This bill—the way it is with time constraints the way they are—is prudent and good legislation for us at this point in time. I appreciate your comments and appreciate their concerns and yours as well.

Assemblyman Thompson:
How about the account of the students' perspectives? There were some students who testified that they may actually leave the institutions in Nevada and go elsewhere. Would you speak to that? How much did that weigh in with the decision to make this an emergency measure?

Assemblyman Oscarson:
I think the emergency component was that we want to make sure we put as clean a piece of legislation through as possible to make this happen. I have received letters from students in opposition, but I have received letters from students asking for it as well. One particular student, who is the head of an organization—I do not remember the name—requested specifically that we do this and that it be for the protection of the students. As we well know, some unfortunate circumstances have occurred on campuses, and those who would qualify to carry concealed weapons and go through that process would be allowed to do that and there would be an opportunity for them to protect themselves in those instances. I understand the sensitivity of the issue, but we have worked diligently with people and continue to have those conversations. I appreciate your comments.

Assemblyman Elliot T. Anderson:
Is there any indication that this bill is going to move through the process? I feel like we have gone through this, and I am wondering if this has any better chance than the other one?

Assemblyman Oscarson:
I have every hope that this is going to move forward. There have been no promises made to me specifically. It is a clean bill and will be processed appropriately.

[(Exhibit E), (Exhibit F), (Exhibit G), (Exhibit H), (Exhibit I), and (Exhibit J) were submitted but not discussed.]

Chairman Hansen:
We will close the hearing on Assembly Bill 487 and open the hearing on Senate Bill 291 (2nd Reprint), which provides for the determination of damage awards in certain civil actions.

Senate Bill 291 (2nd Reprint): Provides for the determination of damage awards in certain civil actions. (BDR 3-951)

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance:
The basic premise of this legislation is to protect consumers from fictitious medical expenses and economic damages, which adversely affect the general welfare of Nevada consumers. The problem with the collateral source rule is that it keeps important information relevant to the determination of damages

from reaching the jury. It allows plaintiffs to be compensated twice for the same injury. We are going to call these damages "phantom damages." You will hear testimony from Ms. Upson, who is going to walk you through the bill and the amendment that we are proposing today.

It should be noted that courts of jurisdiction will still instruct the jury to base the general damage offset by paid damages, and only reduce the amount of the award by the amount of these phantom damages. Basically, what happens in court right now is the jury is hearing what the actual damages are, not the paid damages. I am not going to go through the whole testimony; I sent you five pages that I believe you have on the Nevada Electronic Legislative Information System (NELIS) (Exhibit K) which show all of the different states that have adopted the reforms to the collateral source rule. What happens is, if you go and get treated through your medical provider and you pay for that insurance premium, you are paying for their right to negotiate down the actual paid costs. When the jury in Nevada hears those costs, what they are hearing is what the damages are, not what the paid damages are under a pure collateral source rule. We are not asking for that. The jury would only hear what the paid damages were. We are not asking this Committee to do that. We are asking that, after all the damages are assessed and the jury has made the award, they reduce the amount of the double-dipping by that amount.

Now the plaintiff bar may say that they bought insurance and therefore they should be allowed to do this. We did an argument in Assembly Bill 7 (1st Reprint) when we talked about no pay, no play. People who buy insurance should not be penalized. Unfortunately, people who are buying insurance and the uninsured people are being penalized. We are not seeking to have the jury look at the paid damages. It is complicated. We went through two revisions with this on the Senate side. After the second amendment, when the bill came out of the Senate, a lot of people had concerns, the medical malpractice people had some problems with it, the Nevada Hospital Association had some issues with it, and so we worked with them to present the amendment that you have today. I would like to have Ms. Upson walk you through it and answer questions as we go along.

Stacey Upson, Attorney, Farmers Insurance:
I would like to give a brief background history of why this bill is necessary in Nevada and why now. One of the things you will hear is that the collateral source rule has been in existence for more than 100 years. It came over from common law and has been in the United States since the 1850s and 1860s. When the collateral source rule was originally implemented, it was because they wanted to have individuals pay for their harm. There was a deterrent effect to it. There was a societal effect to it that if someone caused harm, they

should pay for the harm. Back during that time frame, you did not have what is in existence today—health insurance policies, personal liability policies, workers' compensation policies, and governmental benefits. The reasons for the origination of the rule are no longer in existence today. That is why there have been changes across the country with the collateral source rule.

This particular bill is designed to fairly and adequately compensate a person who has been injured in an accident. This is what has happened previously in the state of Nevada. If someone has $1 million in medical bills, they go before a jury, but insurance only pays $200,000 of that. The jury is awarding the $1 million, thinking those medical bills have to be paid back. They do not know there has been an $800,000 write-off. What has happened in the past is the injured person has been able to keep that windfall of $800,000. What changes have started occurring in the collateral source bill—because it affects insurance premiums across the board and across the country—is we are going to let them blackboard what the charges are, which is $1 million, but if insurance only pays $200,000, they do not get to keep the remaining $800,000. The question you have to ask yourself would be is it fair and equitable in today's society, and if it is, this is the reason why. They still get the blackboard in front of the jury, the full amount of the charges—$1 million. Any pain and suffering award would be based upon that number, not the $200,000 number. Nothing is being taken out of the injured person's pocket other than the windfall that is there.

The one argument that has been presented every single time by the plaintiff's bar is, "Wait a minute. They paid for this insurance, and if there is a windfall, they should keep it." Let us think about that for a second. There are two separate issues. What premium are they paying for? The premium is not for $1 million in coverage. If it was, their premium would be much higher. The premium they are paying is the contracted rate, which is the $200,000. That is what they are paying for, and that is what they are getting back. So the way this bill has been drafted, they would get the blackboard—the $1 million in damages—post trial. A motion could be filed with the courts saying there has been a contractual discount. The injured person is not legally obligated to pay the $800,000, therefore, they should not keep that money.

One provision that was changed in the bill—outside of the original presentation—was the addition of the attorney's fees. Under the amendment that is in front of you (Exhibit L), starting on page 1, lines 37 and 38 and line 39 on page 2, is the cost and attorney's fees incurred by the plaintiff to pay the health insurer or third party pursuant to any lien or right of subrogation. We have deleted that and this is the reason why. That was put in simply for attorneys to make more money in litigated matters. There are already

mechanisms under the law if someone proceeds to trial whether attorney's fees are awarded or not. It has been in existence as long as I have been practicing for 23 years.

The way it works in a litigated case is if we receive an offer from an injured person to settle for $1 million and we do not accept it, it goes to trial and it comes back above $1 million, the court then has the ability to award attorney's fees. Same example—if we serve an offer of judgment for $500,000 and they do not accept it and the award comes in below $500,000, then the defense is able to move for attorney's fees. It is an equitable solution for attorney's fees because each side can weigh the information when the offer comes in. This particular provision on the attorney's fees that we put in would basically violate an individual's Sixth Amendment right to a jury trial because you would go to trial knowing that you could serve an offer which is now null and void by this amendment because they would get to move for attorney's fees as a matter of right. Based upon that, we have deleted that provision to let the existing rules apply.

Rule 68 of the *Nevada Rules of Civil Procedure*, and *Nevada Revised Statutes* (NRS) Chapter 18, address attorney's fees. It does not preclude them from getting attorney's fees. They would have to serve the appropriate offer. That is the particular basis of the collateral source statute. I would note that there is the added language, which was in the original section of NRS 42.021 dealing with professional negligence. There has always been a carve-out for professional negligence. I would defer that to Ms. Piscevich because that is the area she practices, but we put that original language back in so the intent of the legislation in NRS 42.021 could remain in effect, and section 1 would deal with the collateral source provisions as they exist and should exist in the state of Nevada today.

Assemblyman Elliot T. Anderson:
I think the original bill is fair. I would be inclined to support it if it stays as it is written. I have an issue with the amendment because if you are talking about attorney's fees pursuant to a right of subrogation, that means they basically have to pay someone to take care of it. You are not subrogated unless you have an amount that someone else has paid for you. If a health insurance company has paid you money, you are subrogated as to that amount, so they can get some recovery to your judgment. So the language pursuant to a right of subrogation means that someone else has already paid it, so you are really not making someone whole in that case if someone has already paid it. I think

it is a tenet of tort law that the idea is to make the victim whole. If someone has spent money to get recovery, they spent attorney's fees to collect, they have had a health insurance payment—which is money that has already been spent—they need recovery because they have already spent it to make themselves whole. That is what subrogation is. I am wondering why cross it out if it is pursuant to right of subrogation.

Secondly, what does the Sixth Amendment have to do with a civil law? I do not understand how that violates the Sixth Amendment. I have never heard of that being applied in a civil context.

Bob Compan:
Are you referencing the original bill or the first reprint?

Assemblyman Elliot T. Anderson:
I am sorry. I meant the bill as it has been presented to us here, and I am referring to your amendment.

Stacey Upson:
As for the subrogation question, everyone is made whole. When insurance is paid for medical treatment—we will use the example again of $1 million in charges and they pay $200,000—they automatically have a right of subrogation for the $200,000 if someone else is responsible for that particular injury. The reason for that is they only want the policy that should be paying for the injury. So if the injured person does nothing and they choose not to sue, they never have to pay that money back. If the insurance company wants to go after the $200,000, they certainly can, saying, "We should not be paying this. You should be paying the driver of car A." What happens in a litigated case when a matter settles or goes to trial and there is the $1 million, the $200,000 has to be paid back. The subrogation rights are already in existence, and that money is being paid back. That policy is whole. The plaintiff is whole because they do not have to pay the other $800,000. They are getting pain and suffering that has been awarded by the jury. If they have any wage loss, that wage loss is being taken care of by the jury, so the plaintiff is made whole.

The only thing the collateral source bill does, if it does not go into existence, is it gives a windfall to the plaintiff of $800,000 for an amount they never would have had to pay because their insurance contractually made an arrangement with the doctor before treatment ever started. This is what you are going to pay, and this is the reasonable value of the services are that you are taking. If that occurs, it is only a windfall. In relation to the Sixth Amendment right to a trial, here is where it comes to play in the civil action such as this. If I have a client that comes in and I am advising them, "Look, this person has $1 million

worth of charged medical bills and at the end of the day, only $200,000 was paid," they want to contest and go to trial potentially on my ability or other issues. What happens is now, even if they come back at a lower number, there is automatically going to be an award of attorney's fees, when that never would have happened before.

To give you an example on a $1 million award, in Las Vegas they are now giving attorney's fees. That is $400,000 more. If I, as an individual, or any one of your constituents want to exercise their right to trial, they now have to take into account—I can get hit with hundreds and thousands of dollars in attorney's fees. Is that going to change someone's perspective whether they want to exercise their right to a trial? Of course it would. If you look at larger verdicts where there is an astronomical injury—$20 million—and if they give 40 percent in a contingency fee, that is $8 million in attorney's fees. What happens, and how it takes you out of the realm of potentially going to a jury trial, is if you served an offer of judgment, whatever that number is, and you beat that number, the way this amendment provides is that that offer means nothing now. You are going to be hit for attorney's fees no matter what, and it is up to the court to decide. That will affect someone's ability and determination on whether they wish to proceed to trial or not.

Assemblyman Nelson:
I want to make sure I understand that under the most recent iteration of the bill, any collateral source will not be admitted into evidence. Is that correct? It will just be part of the calculation after the verdict?

Stacey Upson:
That is correct.

Assemblyman Nelson:
That is actually quite a compromise from what other states have been doing. On the attorney's fees issue, what you are saying is that the offer of judgment is really the only way under the bill to determine that right now?

Stacey Upson:
No. The way this particular bill is written without the deletion of the attorney's fees is the offer of judgment rule is then null and void. The way the bill amendment reads is that they get attorney's fees to build back up the award. So if the opposing side serves an offer of judgment, it is never going to come into play. It is taking out NRS Chapter 18 and Rule 68 of *Nevada Rules of Civil Procedure*, which then effectively prevents a defendant from ever serving

an offer of judgment. They can never before trial, even if they are being reasonable, serving a number, they are going to say on the other side, "I do not care; I can ignore that offer now because by this we can move for attorney's fees mandatory." It becomes a strict liability.

Assemblyman Nelson:
You would never want that, would you?

Stacey Upson:
I do not think anyone would, unless you are on the other side.

Assemblyman Nelson:
So you are saying you are against that portion being stricken out?

Stacey Upson:
Absolutely.

Assemblyman Thompson:
How often does this occur? I want to use your $1 million example, where people get this windfall of $800,000. Where can we have a balance? People have the right for pain and suffering and wage loss. It is subjective to say whether that $800,000 is a windfall for them or not. Where could the balance be instead of just striking it out?

Stacey Upson:
The balance is already in play by letting them put up the full amount of the billed charges, not the paid charges. The pain and suffering award that a jury would render would be on the full amount of the charges. Other states have said, "No, we are just going to let them blackboard the $200,000 and that is it." That is not what we are trying to do. We are trying to keep it fair by saying, "You can blackboard the $1 million so the jury can give you your pain and suffering on those charges." Posttrial we would then be able to move the court to say, "No, that $800,000 you should not keep." I will give you an example and then I will answer your first question on frequency.

I have talked with jurors after verdicts and they have general questions such as what happens with attorney's fees because they are told in the instructions they are not to consider (1) whether a party has or does not have insurance on both sides of the table, and (2) an award of attorney's fees because there are mechanisms after the trial for that. We explain what happens if there is an offer in the case, and we are upfront. They then ask about the medical bills. I have had cases where it has been $250,000 in charged bills, but insurance paid about $50,000. So the jurors have asked what happened to that money.

Under the law right now, they get to keep it. The jurors I have talked to said, "Well, that is not fair. We thought we were giving that money because those medical bills had to be paid. If we would have known that, we would have done something different."

The other aspect of it is when they were told that, they said, "We thought we were supposed to be the ones making the determination, and now you are telling us after the fact what we found is not even going to apply?" Jurors have issues with it as well because they are giving the pain and suffering on the amount that is before them. That is the first issue. As to frequency, any time insurance is involved and the case goes to trial, it happens every single time. As to the amount, the amount is always going to be dependent upon the case. Is it a soft tissue case? Is it a back surgery case? Is it a neck surgery case? Some have a much higher windfall than others. At the end of the day, if you are leveling the playing field, you are going to let them blackboard the full amount of the charged bills, get their pain and suffering on it, and then at the end, there is the offset for what is the windfall of the phantom damages.

Assemblyman Thompson:
I do not see a lot of my constituents talking about such a windfall, and that is why I wanted to ask about the frequency.

Assemblyman Gardner:
You said it was originally done to make sure that the person who caused the harm would pay for the harm. That is not applicable now because of all the insurance that we carry?

Stacey Upson:
Yes. Let me clarify. When it first came out in England in common law, it was designed as a deterrent because they wanted people to be responsible for whatever harms they caused. Back then, you did not have personal liability insurance or health insurance. Most of the insurance was for shipping and product-type issues. Because of that, the law set up the framework that said we want to have a deterrent effect, we want to have a punitive effect, and we want to have a social, individual responsibility aspect of it that you are going to pay for what you cause.

Fast-forward 150 years and you have the individual defendant who is involved in an automobile accident that is negligence—I am not talking about drinking and driving—but simply for whatever reason they did not see a light. What deterrent effect is there to them when there is insurance to pay for it? There is none. It is not coming out of that person's pocket. So the risk has now shifted, society-wise, to the public by paying higher premiums and by higher

taxes on your property. That is what is shown over the years as to what has happened. That is why other states have stepped in and said, "We are going to help control this. We are not taking any money out of an individual's pocket because they are not being responsible legally for any medical bills, they are getting their full pain and suffering and wage loss." That is the change that is in existence now as opposed to 150 years ago. In England 150 years ago, if a person caused an accident, they paid out of their pocket. That was the deterrent effect and the punitive effect. Now people have automobile coverage, umbrella coverage, workers' compensation coverage, social security disability—it is a societal shift that we are all paying for through higher insurance premiums.

Assemblyman Gardner:
My concern is—let us use your example of the $1 million that was worked down to $200,000—the person who hit the defendant, in one case they pay $1 million plus whatever else and in another case they pay $200,000. So if this bill passes, what you are doing is basically changing what you term a windfall from the person who was injured by the accident to the person who caused the accident?

Stacey Upson:
No. When someone is injured, the true purpose of the law is to give them compensation to make them whole. When you go before a jury, the jury is then making the determination, after they hear all of the evidence, what will make that individual whole. They receive jury instructions, how to look at damages, they hear the evidence to make the person whole. When they give the award for the $1 million in medical bills, they believe that $1 million is having to go to pay the medical bills. Let us say they give $2 million in pain and suffering. Let us say that is what the jury comes back with. They are saying that is what makes that injured person whole. They do not believe that the injured person is going to keep the $800,000, which is indeed the windfall. So if you are looking at it from a commonsense perspective and, if I was in your shoes and if the constituent came to me and asked if you are taking money that is rightfully theirs away from an injured person, the answer is no. All of their medical bills are being paid back. They do not have any legal obligation to pay anything else on the medical bills, and they get pain and suffering. That is the intent of the rule. True collateral source in other states has said, "No, you only get to show the jury the $200,000 and your damages are on that." That is not what this bill is seeking to do. This bill is seeking to let them put up the full amount of the charges, and thereafter, letting the court make the determination after the fact.

You are not taking any compensation out of the person's pocket other than the windfall. Forty percent of that windfall would go to the attorney, in addition to if they served an offer of judgment and beat that, there would be attorney's fees on top of that. It is leveling a playing field to help get things more even, which will help cases resolve sooner.

If you take my example, what happens now is they are going to be forced to go to court because they know they can keep an $800,000 windfall, unless there is something that is making them settle sooner. So what the bill does is simply take away the windfall but leave them with the full compensation under the law.

Assemblywoman Diaz:
I am looking at this through my constituency's lens and you keep referencing the court and the jury. Let us be clear. Many of these claims do not get that far, and it is my understanding—as I am reading this change to the law—that we are putting at a disadvantage a responsible person who has paid their health insurance through their pocket and their medical claims are going to be at a significantly lower value than that person who does not have health insurance. To me, it is about parity and equity and fairness. If I am a responsible person who has been religiously paying for my health insurance, why should my settlement be lower than someone who does not have health insurance? That is my first heartburn with this.

Why are we giving a drunk driver and the drunk driver's insurance company a leg up on people like me who are paying their health insurance? Lastly, I want to know why were these amendments not worked on in the Senate? Why were they not added there? Are they being supported by the bill sponsor?

Stacey Upson:
I will defer the last question to Mr. Compan because I am not familiar with that. Here is what I can tell you about the paying of the insurance. The insurance that we buy—I buy health insurance so that if something happens, I have coverage. I do not buy health insurance with the intent that if I am in an accident, I get to keep a windfall. But what I do know is that the premium I pay on my policy of insurance is for the contractual rate of what that amount is going to be. So again, using the $1 million example, my premiums are based on the $200,000 agreed-to rate that those doctors accepted prior to me ever getting treatment. That is what my premium is going towards. If not, my premium would be much higher. In that context, I do not think we are taking anything away unlawfully from someone who has paid for the insurance.

As for your comment regarding a drunk driver, someone who has done something intentional is completely separate and apart because there is going to be a punitive damage claim made within the complaint that all of those punitive damages are always going to be made payable by the person who caused the harm. Insurance never pays that because it is against public policy. Those individuals are not getting a free pass in that regard.

Bob Compan:
Yes, I spoke with the bill sponsor on this. Things move so fast—this bill was heard recently. The amendments were actually put in at the last minute and were not vetted until after the bill had already passed through the second house. He is aware of these.

Assemblywoman Diaz:
If I ask him, he is going to say, "I love this amendment?"

Bob Compan:
I cannot speak for the Senator, but he is aware of them.

Assemblyman Ohrenschall:
Earlier in this session, we had a bill that I was not able to support. In my opinion, it seemed to try to penalize people for not making a right decision in terms of insurance. I almost feel like this penalizes people who have done the responsible thing. I have been lucky enough to have a job where I have health insurance for my family and, notwithstanding having health insurance, I am fighting with them over claims going back 9 or 10 months ago that they have denied and we send them back. These are claims for my kids when they were infants, young toddlers, et cetera. If you are an injured party and you get hit by a drunk driver or a negligent driver, and you are prudent enough that you have medical insurance but you are involved in the kind of things that I am involved with—such as with my medical insurance company where they are stonewalling, denying, or trying to find out if it was a workers' compensation injury—how can we realistically reduce that award when we do not even know if the injured party is going to get paid and made whole? I am worried about that. I also have a question about the amendment.

Bob Compan:
You are going to be whole. You are going to get your body fixed. Under that scenario, we have made sure that hospitals can—you can treat on a lien through a hospital if your insurance company is not going to pay for it. Everyone, sooner or later, is going to be paid whether it is Medicare, Medicaid, or whatever. The jury is still going to hear what the damages are. If you are getting billed, whether the insurance company is paying for it or not, you get

these bills and if it does go to trial, the jury is still going to hear that amount, whether it is the amount paid or it is the actual amount of damages. When it is all said and done at the end of the day, the only thing that is going to be reduced is the amount your insurance company actually paid.

Assemblyman Ohrenschall:
My concern is if it is reduced by what they should pay and then a year down the line they still have not paid and I have the doctor and the anesthesiologist coming after me personally because my insurance never paid, I am concerned about what that is going to do to our people who do not have the kind of resources to fight another insurance company in addition to the wrongdoer who harmed them.

My next question has to do with the amendment and being able to reduce the costs of procurement for the attorney. Is that not going to make it harder for the injured party to find an attorney who is willing to take them to the courthouse? It is all great to say that we are going to make the victim whole, but if they cannot get to the courthouse because no attorney is going to take the risk, could the amendment not potentially hurt injured parties?

Stacey Upson:
No. I respectfully disagree, and this is why. The offers of judgment rule which has been in effect for the 23 years that I have been practicing has not affected anyone taking a litigated case for an injured person because there are mechanisms in the rule where they can serve a demand to settle the case.

I will give you an example of how that works and how they are whole with the attorney's fees and why that provision is not necessary here. It is called an offer of judgment. They serve an offer of judgment. They are willing to settle for $1 million, and they have however much in medical bills that they know they have to pay back contractually. They know there are attorney's fees and whatever costs are in the case. When they send that demand to us, they already know broken down what number is in the injured person's pocket. That person then gives authority to put that number out there, so they know, if we accept it, exactly what amount of money is going in the injured person's pocket. They have had that control over the last 23 years I have been practicing because they serve the number, the numbers are worked out, they get the consent from their clients saying, "If we settle for this amount today, I can get you $300,000 in your pocket." It is tax-free because it is a personal injury settlement. They know that. That stays in existence, even without the attorney's fees provision in here. It is the same rule and statute that has been

in existence in my practice. They use that all the time. Defense uses it all the time if they feel they have served a reasonable offer. Nothing is taken out of pocket for them in that regard, and they do not have a problem getting an attorney.

The only other question I would like to answer is because I realize I did not respond to Assemblywoman Diaz. Is there a disparity of treatment for someone who has insurance and someone who does not? In that context, I would say no, and here is why. If someone is treating on a lien, whatever that lien amount is that is being charged, they have an obligation to pay that lien amount back when the case settles. So if they receive treatment, and it is a $250,000 lien, when the case settles, they have to pay that back. That would be the same charge under insurance. Those rates are negotiated all of the time on a lien and insurance contract amounts on a lien. There is no disparity of treatment for someone who has insurance and someone who does not.

Chairman Hansen:
Okay. We have exhausted that to a certain extent at the moment, as we have two additional bills with similar verbiage and discussion with attorneys. Mr. Compan, do you have anyone else specifically lined up to testify on this bill?

Bob Compan:
Yes, we do. We have Ms. Piscevich from Nevada Rural Hospital Partners to talk about the issues with the hospital liens.

Margo Piscevich, representing Nevada Rural Hospital Partners:
I am an attorney who has practiced for 43 years primarily in the medical malpractice arena. The bill on the attorney's fees basically says that before a judgment is entered, any amount that the plaintiff is required to pay for health insurance or lien, the officer shall determine that. The cost incurred with a lien—in any case, but especially in a medical malpractice case—the subrogation issues are already entwined in the case, whether it is Medicare, Medicaid, or whatever. What you are doing is allowing an attorney's fee over and above the contingency fee. They take a case, for example, on a 40 percent contingency, knowing very well that they are going to have to deal with Medicare, Medicaid, or any insurance subrogation. All you are doing with this particular thing is saying, "Okay, I get my 40 percent, plus I am going to carve out another third of that amount for subrogation work and that gets added on." So it is really an addition to the contingency fee that has already been allowed in any negligence or malpractice case.

We have asked that section 2 be left alone. *Nevada Revised Statutes* 42.021 applies only to medical malpractice cases. In the state of Nevada, there have been two exceptions to the collateral source rule. One is workers' compensation, and there is a statutory scheme that workers' compensation charges are handled differently. This has been from medical malpractice. What it has done is basically allowed the defendant, if allowed to do so by the court, to put in damages of the amount paid versus the amounts charged. I am going to use Ms. Upson's example. If the amounts charged are $1 million, but the amounts paid are $200,000, there is no collateral source. The hospital or doctor cannot sue for that other $800,000, nor is the plaintiff responsible for the other $800,000. There is no collateral source there because no one has to pay that amount. So what has happened is that in the medical malpractice arena, we have been able to put in the amounts charged. It makes a huge difference in a medical malpractice case because we can have care plans that go up to $15 million to $20 million. It makes an amazing difference in those types of cases. We have asked from our particular specialty to just leave NRS 42.021 alone because it only applies in professional malpractice cases. We have asked that you let it be as it is, as the law has been for the past several years since the Keep Our Doctors In Nevada (KODIN) bill.

On the attorney's fee bill, that was not in the original bill in the Senate. It was added through committees—I do not know as I was not part of it. Again, that request for attorney's fees on the subrogations or liens is over and above the contingency fee that was agreed to between the plaintiff and the attorney.

Regarding the attorney's fee for liens, for example, if you are uninsured, there is only one statute that would apply in a medical setting, and hospitals have to reduce their bills by a third, regardless if you have no insurance. The others are set up by contract, whether it is with United Healthcare, the state of Nevada, or whomever the carriers are—Aetna, or Blue Cross, or Blue Shield. I agree with Ms. Upson. When you buy your insurance, you are buying at that lower rate. So if I have my insurance with company A and they are going to pay the doctor $50 for this particular procedure and they charge $100, I do not pay the other $50 and the doctor does not get it. That is what was built into my premium. That is basically the issue in this case. From the professional malpractice, we would just prefer that we keep our own bill. There has been some language added that has been accepted by everyone that says if it is inconsistent with the other, we will work it out in court, and anyone can use those provisions. But if it is inconsistent, then it will be worked out with the courts. I think the actual language is the use or application of one or more of the provisions of section 1 shall in no way limit or contravene the use and application of the provisions of section 2. Section 2 would then remain its own statute.

[Assemblyman Nelson assumed the Chair.]

Vice Chairman Nelson:
Could you tell me again the section number you said you did not want us to mess with?

Margo Piscevich:
If you look at your bill in section 2, it knocks out subsections 1 and 2 of NRS 42.021. This only applies in a medical malpractice case. We are requesting that this bill remain separate. In the amendments, we added the language in section 2, "NRS 42.021 is hereby not amended," and section 3 reads, "The use or application of one or more of the provisions in Section 1 shall in no way limit or contravene the use and application of one or more of the provisions in Section 2. Unless otherwise prohibited, the provisions and remedies found in Sections 1 and 2 may be used in combination with each other and the use or reference to any particular provision(s) in either section does not preclude or limit the use or reference to any other provision(s) therein." So you would be able to say that you have your two things. Collateral source primarily arises in negligence cases. Medical malpractice is a subsection of medical cases. Products do not apply to NRS 42.021. Product cases do not apply. Slip and falls do not apply. We are only asking that that be kept the way it was.

Assemblyman Elliot T. Anderson:
I think we need to clear up the issues. We keep hearing about contingency amounts, but I think you are talking about two separate types of actions. You are talking about subrogation. You are talking about an attorney being retained to get the health insurance company to cover their claim. That is what the amendment looks like to me. You are crossing out the right to get back the money that they spent to get the health insurance company to pay. It may be contingency, or it may not be. Either way, they have had to spend that money to get covered by their insurance company.

Margo Piscevich:
Nevada Revised Statutes Chapter 42 talks about if you are going to go to any type of administrative hearing or trial, it is in a contested setting—an arbitration and mediation. Basically, it says that the court or appropriate judicial officer shall not reduce the judgment by the amount of any payment pursuant to medical payment coverage. That is something that you paid for. It says that you cannot reduce it for what the amount the plaintiff was required to pay for his health insurance benefits. Then it goes to the costs and attorney's fees incurred by the plaintiff to pay the health insurer or third party pursuant to any lien or right of subrogation they get extra for it. You either hire an attorney on

an hourly basis or you hire them on a contingency basis. There are only two ways you can hire an attorney. The problem is that in a negligence case, very rarely are they done on an hourly basis. They are mostly done on a contingency basis and the attorney takes the risk of providing the cost and then once the case settles or goes to verdict, they are reimbursed their costs.

With medical cases, you generally know that you are only going to get the amounts paid, not the amounts charged. There are a zillion contracts out there from Social Security on down, so you are only going to get the amounts paid. From there, it is already known if you have a Medicare or Medicaid lien or you have an Employee Retirement Income Security Act of 1974 (ERISA) health policy. Those are governed by federal statute anyway. You are not going to be affected because the federal takes the preemption. They know you have to compromise. The defense knows it. The plaintiffs know it, and we work together to get it down. I can give you an example. If someone is a Medicare patient and they are over the age of 65, with Medicare, by government regulations—and they set the funding—you will probably get 10 percent of the bill. Then the plaintiff's lawyer works with the defense lawyer to figure out what that is going to be, what that Medicare lien is going to be, because both sides are responsible for it. It is a very complicated system; it just is not what people are thinking.

Collateral source, if you really look at it, is if my company says they are going to pay $10 and the doctor wants $50, he has to take the $10 and no one is responsible for the other $40. He gets paid that $10. Most insurance companies have to accept or reject a bill. Now you are talking about some of this on enforcement with an insurance company without going into litigation. That is a whole different ballgame. If you hire a lawyer on that, it could be a blended rate or hourly plus. But in an actual negligence Medicare malpractice case, we are talking collateral source, and those are the things that go to mediation or trial or some kind of adjudication.

Assemblyman Elliot T. Anderson:
What I meant is that it contemplates that there are two separate—maybe not two separate attorneys, but going after two separate parties. It says any third party.

Margo Piscevich:
No. What happens in the medical arena is you have—as an example we will use Renown Regional Medical Center. They have Hometown Health, which is their insurance company. You have been in an accident. You go in and Hometown Health says, "We have to pay that bill within 30 days." So Hometown Health pays X number of dollars for the X-ray or magnetic

resonance imaging and it is billed at twice that amount. Once you pay that, there can be subrogation. That is handled internally because if there is a car accident involved, they still have paid that amount, but they will then turn to the car insurance company and say, "I think you owe us that" but it is handled internally in a billing office. In a litigation, you never get into that. In litigation, these are your bills, these are the amounts charged, and these are the amounts paid.

Assemblyman Elliot T. Anderson:
We are obviously on different wavelengths, so we will have to take this offline, but it talks about a health insurer. If I get into an accident and I am trying to get my own health insurer to cover me, and they are not covering me, I then hire an attorney to get them to cover me under my policy of insurance. Then there is the auto insurer who is the insurance company for the person who injured me—those are two separate parties.

Margo Piscevich:
This would not cover your first case. This is only for a case that is going into litigation in some form. It talks about a plaintiff in "the initial presentation of a case to a judge, jury, tribunal, arbitrator, or other finder of fact, claim the full amount of any past and future medical expenses...." This is not a case where you are upset with your insurance company, which everyone is. I do not know anyone who is happy with their health insurance coverage.

Assemblyman Elliot T. Anderson:
I am just making the point that it is contemplated under the attorney's fees provisions that are proposed to be struck out. Health insurer—Farmers, for example, is an auto insurer. They are two separate insurance companies, and the person who has fought to get their health insurer to pay for them and then gets recovery from an auto insurer, they have already spent that money and it should not be reduced for that amount because it is not a windfall. You are making them whole. In fact, someone else is getting the windfall if you strike out those provisions.

Margo Piscevich:
Let us look at the system that we are talking about. You hire an attorney on an hourly or contingency basis. If you are hired on a contingency basis, which they all are in Medicare malpractice, they are already getting their amount. They know they have to deal with these liens. It is part of representing the plaintiff that goes with the territory. I did personal liability, meaning auto insurance defense, for 25 years. You know you have to deal with those. That is part of the job of what you accept. They want money over and above the contingency fee. That is what this bill provides, and that is what should be

taken out. We are not talking about you going individually against your insurance company. That is a different case. It could even be a bad faith case, and then again it would be on a contingency.

Assemblyman Nelson:
This is fascinating for all the lawyers. We are getting the equivalent of five days of first-year torts and advance torts in law school.

Assemblyman Araujo:
Who do you typically represent in the courtroom?

Margo Piscevich:
I primarily represent doctors, lawyers, and hospitals.

Assemblyman Araujo:
You mentioned this is a very complicated issue and I am looking at this through the lens of my constituents and all the working class residents of Nevada. Noting that this is a complicated issue, who is going to defend them?

Margo Piscevich:
They have plaintiff's lawyers. The plaintiff's lawyers sign them up on a contingency agreement. They generally take 40 percent. Within that package, they do everything related to that claim, whether it is an automobile accident, medical malpractice claim, or a slip and fall. They take the responsibility of dealing with the health care providers, if that is necessary. It can be—and in probably 10 percent of the cases, there can be a complication. I am not going to say it is a perfect system. Everyone wants to get their medical payments back. All this bill is saying is that if you hire a lawyer, they know they have to take this on. There is no reason they should get money over and above their contingency.

The other thing that they are doing on this is really double-dipping. If you are going to take it on a contingency, then you pay 33 percent. A general contract is 33 percent, if we can get the money before we file a lawsuit. If we file a lawsuit, the contingency goes up to 40 percent because you have these issues, and if it goes on appeal, the contingency can go up to 50 percent. All of them are different, but it has to be in writing. Now if you are hiring a lawyer for a business transaction, you are paying an hourly rate. They are very rarely done on a contingency basis. The only ones are very large subrogation cases, like multimillions of dollars.

Assemblyman Araujo:
With all due respect, I stand firm on my ground. I think this is adding additional burdens to the average consumers that we are elected to represent.

Margo Piscevich:
The average consumer hires really good lawyers. They are not underrepresented. It is an extra amount of money that the plaintiff's lawyers are receiving.

Assemblyman Araujo:
I respectfully disagree with that.

Vice Chairman Nelson:
Just for the record, you are speaking in support of the bill.

Margo Piscevich:
I am speaking in support of the amendment. I do not have any problem with section 1 of the bill itself. I would just like section 2 out and the attorney's fee provision out.

James L. Wadhams, representing Nevada Hospital Association:
I think we have more of a drafting issue than we have a debate issue. I think if section 2 of S.B. 291 (R2) is deleted, then the existing law on NRS 41.021 stays exactly as it is in the law and as it was adopted by an initiative petition in 2007. It has been on the books for a number of years. The Nevada Hospital Association supports leaving NRS 42.021 by itself, and I defer to the Legislative Counsel Bureau. I think if we simply delete section 2, that will be the case.

Vice Chairman Nelson:
As you know, if you want to say ditto, that is acceptable.

Justin Harrison, representing Las Vegas Metropolitan Chamber of Commerce:
I will ditto the remarks of Mr. Wadhams.

Dan Musgrove, representing CSAA Insurance Group; and The Valley Health System:
CSAA Insurance Group is in favor of the bill. The Valley Health System and I agree with Mr. Wadhams' comments on behalf of the Hospitals' perspective.

Tray Abney, Director of Government Relations, Reno Sparks Chamber of Commerce
Ditto.

Vice Chairman Nelson:
Is there anyone else in support of the bill? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position?

Mark Wenzel, representing Nevada Justice Association:
The efforts on behalf of everyone to make S.B. 291 (R2) acceptable to everyone is worthy of noting. Myself, members of the Nevada Justice Association, Senator Roberson—who is the bill sponsor—Senator Brower, who is the Chair of the Senate Committee on Judiciary where this bill was heard, have all worked together tremendously hard for a number of hours to try and take what was to me and my organization a very unacceptable concept and to try and make it into the best possible bill. I think that it is not a perfect bill by any stretch, but certainly one that takes everyone's interest into consideration. I think that is what S.B. 291 (R2) has done. It has reached across the aisle, given everyone an effort to be heard, and taken people's considerations into effect. I think it does exactly what a piece of legislation should in that it takes concerns that the sponsor and proponents obviously had and addresses concerns that people in opposition have to it. The biggest hot button issue that I received from the people who were in support of the bill concept but opposed to the attorney's fees and cost provision was the fact that attorney's fees and costs are part and parcel of what is generally referred to as the procurement cost.

The procurement costs are: what is the cost that someone who has been injured needs to expend in order to become whole? I think this echoes somewhat Assemblyman Anderson's concerns about if someone is injured and they are forced into litigation, forced into retaining an attorney because the other party is not being straight up with them, is not being fair with them, then what are those people's costs? For this, the cost would be the cost of the premiums. The premiums that the injured party spent to procure that insurance to get those bills down lower was not taken into consideration in the original bill. Through negotiation and a good faith effort with the bill sponsor, with the Senate Judiciary Chair, and members of our organization, those premiums are now part and parcel of this bill that has passed with bipartisan support through the Senate.

The next addition was the addition of the attorney's fees and costs for the person who has been injured to build back up their medical expenses. I will use an example that I have talked about with several of you. It occurred just several blocks from here. I had a client a couple of years ago who was out for a jog in the morning on the side of the road and a drunk driver who just got done getting high with one of his friends drove home at the same time this woman—who was a state employee and had health insurance—was on the side of the road jogging. The stone-drunk driver drifted off the side of the road,

ran over the top of this woman while she was jogging on the gravel side of the road, fractured her skull, and she was Care Flighted to Renown Regional Medical Center for treatment of a fractured skull and a broken neck. Because that woman had the foresight to get health insurance through her job working for the state, when she went in to seek medical attention, the $100,000 or so in medical expenses that she had were reduced down.

The question is, why were those medical expenses for her reduced down to about half of what they would be for someone who did not have insurance? The reason why they were brought down was the fact that every single pay period that woman has money taken out of her paycheck—just like many, if not all, of us do—to get medical insurance to protect ourselves and our families in case something happens. It was because of her planning, her foresight, the money that is taken out of her pocket each pay period, and that is why her bills were reduced down. So her medical expenses would have been a little over $100,000 had she not had medical insurance, but because she did, they were reduced. Her claim against the drunk driver's auto insurance carrier was denied. Inexplicably, unbelievably denied because the auto insurance company took a statement from the drunk driver and asked, "Why did you hit this person?" He said, "Well, she was jogging out in the middle of the road." That was the drunk driver's excuse for why he ran over this woman. This woman was forced to come to my law firm, and forced to retain an attorney to represent her.

We interviewed a neighbor who said, "She was not in the middle of the road. She was on the side of the road jogging in the gravel roadway. I saw it; I was out that morning about 6 o'clock getting my paper and I saw the whole thing." When we received the police photographs, it confirmed exactly what this neighbor said. She was literally knocked out of her shoes and her shoes were photographed right on the gravel road where she said she was jogging. Eventually, after retaining my law firm and me personally, this woman was able to receive some compensation. She was able to get paid back for the medical expenses, the couple of months that she missed from work, and for her pain and suffering. That is why I think, in the collateral source context that we are currently talking about, it is fair to take into consideration the fact that this woman was forced into litigation, was forced to incur attorney's fees, and those fees should be built back in when you are dropping that $100,000 in charges down to the $50,000 that was actually paid to compensate her medical providers. That $50,000 is now built back up with the attorney's fees and costs and with the premiums she paid. These are the procurement costs which were not in the originally drafted bill but which are in the version of the bill that was passed with bipartisan support in the Senate and the version of the bill that is in front of you here today. I would request that that very important provision remain in the bill that you will eventually be voting on.

Graham Gallaway, representing Nevada Justice Association:
I would like to address my comments to the amendment being proposed. I would first like to address Ms. Upson's example of the $1 million medical expense situation. If you have $1 million in medical expenses, you are missing body parts, your brain is scrambled beyond repair, or you are a quadriplegic. I hardly find any windfall in that situation. When you are an innocent person minding your own business and then one day later you are a quadriplegic, I do not think you can use the term "windfall" in that situation.

As for Mr. Compan's use of the words "phantom damages," I like to use the term "phantom recovery," because the jury is not told about the expenses that an injured party, a victim, an accident victim incurs—the attorney's fees, procurement costs, and cost of litigation. When a jury does give an award, they are not understanding that all of a sudden a big chunk of that is going to go to cost. I think it is inappropriate to use the words phantom damages. I think phantom recovery is a better term.

Going back to the $1 million example because that seems to be high on the list of the proponents of the amendment, there are no million dollar cases falling out of the sky. Most are $5,000, $10,000, $15,000, or $25,000 cases. The numbers are not $800,000—the high numbers that were being used a few minutes ago—most cases also settle without litigation, so no one is getting attorney's fees in those situations. When you settle without litigation, when you settle with the insurance companies directly, they are not paying attorney's fees. The injured parties, in the majority of cases, are being compensated for the attorney's fees and the procurement costs.

The concept of using fees and costs in a posttrial situation—we already have something that exists in our body of law. In the workers' compensation situation—if you have been injured in a tort case, but you are on the job, you have a tort case and you have a workers' compensation case, but you have to pay back the workers' compensation carrier for expenses they have paid out on behalf of the injured worker. Under our case law, the Nevada Supreme Court has deemed it appropriate for the court to consider fees and costs in that situation. It is similar to this. If they do it in a workers' compensation situation, there is no reason not to do it here.

We are talking about a posttrial calculation. We are not talking about giving $800,000 on top of what has already been awarded. This is just a calculation done after the fact, and it is just putting more money back into the injured party's pocket. It is not putting it back into the attorneys' pockets.

The attorneys are not charging 40 percent and then asking for the $800,000 that Ms. Upson was talking about. That is just a calculation that puts more money back into the injured party's recovery.

[Assemblyman Hansen reassumed the Chair.]

Assemblyman Ohrenschall:
Am I incorrect in thinking that it is going to be harder for injured parties to find an attorney willing to work on contingency with the provisions of the amendment? That is the way I interpret it, but am I misunderstanding it?

Mark Wenzel:
It absolutely will, especially as Mr. Gallaway alluded to a moment ago on a smaller case. Again, I wish these $1 million dollar cases and $20 million cases that were referred to earlier were more frequent but thankfully for the people who are injured, they are not more frequent. On a smaller case, if that provision is not built in there, that impetus for the insurance company to do something that perhaps they should have done from the beginning with people and actually treat people fairly instead of forcing them into litigation, without that provision in there, it is darn near impossible for people in a smaller case to retain an attorney to represent them. There is virtually nothing left. If you reduce the medical expenses down to the amount that was actually paid and that is the only number that you get, if it is not a big dollar case and perhaps there is not a wage loss component to it, or a very nominal wage loss component—in my 20-year history as both an insurance defense attorney as well as representing injured parties—if it is a smaller case, the pain and suffering component is going to be very nominal. In a whiplash-type of case, it is going to be very, very small.

Assemblyman Ohrenschall:
In many of those cases then, if the injured victim cannot get to the courthouse or cannot get an attorney who is willing to take their case because of the new provisions, they probably are not going to be made whole.

Mark Wenzel:
Absolutely not.

Assemblyman Elliot T. Anderson:
I want to get out a little bit on what the Nevada Justice Association is giving up on this because it feels—I know you have not been in opposition or going after it—on this version you have come to a compromise. I know originally you were opposed and now you are not opposed anymore. Is that correct?

Mark Wenzel:
Yes.

Assemblyman Elliot T. Anderson:
What did you give up?

Mark Wenzel:
We gave up the current status of the law. I am glad you mentioned it. This is not some arcane concept. There is information that is provided on NELIS (Exhibit K). This is a concept that in the last couple of years three different federal judges in the state of Nevada—Judge Jones, Judge Dawson, Judge Mahan—have all confirmed that the collateral source rule, this prohibition from introducing evidence of health insurance for any purposes, is still the law in the state of Nevada. It gives them very learned explanations as to why, if there is a windfall to be had, the windfall should go to the person who is paying their health insurance, that is getting those bills reduced down as opposed to, to use my example, the drunk driver that ran over the victim on the side of the road. Their insurance company should not get that windfall. It should be the person who has been injured and paying the health insurance premiums.

Chairman Hansen:
You testified in favor of the bill?

Mark Wenzel:
We testified in a neutral capacity because we have worked out some of the differences that we had earlier. We are not in opposition to the version that has passed through the Senate with bipartisan support. I would like to applaud Senators Roberson and Brower in particular for working through many of those differences that we had when we did testify in opposition at the Senate Judiciary Committee level.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position at this time? [There was no one.] We will close the hearing on S.B. 291 (R2) and open the hearing on Senate Bill 292 (1st Reprint), which revises provisions relating to certain civil actions involving negligence.

Senate Bill 292 (1st Reprint): Revises provisions relating to certain civil actions involving negligence. (BDR 3-954)

Lesley Pittman, representing Keep Our Doctors In Nevada:
I am here on behalf of KODIN, which is an acronym for the organization Keep Our Doctors In Nevada. I am joined by Ms. Piscevich in full support of Senate Bill 292 (1st Reprint). I will go through a brief background on why we are here today with this bill and walk through some of the general provisions.

In 2002, Nevada's health care delivery system was in a crisis. Doctors were leaving Nevada due to skyrocketing medical malpractice insurance premiums. Insurers who offered those type of coverage programs were leaving Nevada, and we had obstetric-gynecology facilities shutting down. In response to that, Governor Kenny Guinn called a special session and there were some statutory changes made to help stabilize the medical malpractice insurance premium market, but those changes made statutorily did not go far enough. In 2004, the group KODIN initiated a ballot question to put a couple more provisions in law that would help stabilize the medical malpractice insurance market. Principally, one key piece of that ballot question was to put a cap of $350,000 on pain and suffering for medical malpractice cases, and also to implement a statute of limitations. Those reforms were passed by 60 percent of Nevada voters, and those reforms have worked. I believe there is an exhibit that has been submitted to you that shows Nevada mutual insurance company medical malpractice premiums have dropped significantly since 2004 (Exhibit M). Again, the KODIN initiative worked, and we are in a great place.

The problem is that in the past couple of years, there have been some district court decisions that have been inconsistent with each other and inconsistent with what we believe is the intent of the KODIN initiative and the 60 percent of the voters who approved it. That is why S.B. 292 (R1) is here before you today. It is nothing more than clarifying what we believe was the intent and the voters' approval of the KODIN Initiative of 2004. I will walk through some of the main provisions of the bill.

First, section 2 adds the following to the definition of provider of health care under *Nevada Revised Statutes* (NRS) 41A.017. It adds physician assistant, clinic, surgery center, professional corporation or physicians' group practice that employs any such person and its employees. This was really designed because the KODIN initiative captures only physicians and hospitals, but as our health care delivery system has changed and morphed over the years, there are hospitals that have clinics and there are urgent care centers, so this is designed to capture those entities as well.

Second, the legislation clarifies—and this is very important—that noneconomic damages awarded in professional negligence actions must not exceed $350,000 regardless of the number of plaintiffs, defendants, or theories upon which the liability may be based.

Third, the legislation extends the time to trial requirement on medical malpractice cases from two years to three years. Fourth, it also requires that when an action is filed in district court that the court shall dismiss the action if the action is filed without an affidavit that supports the allegations contained in the action, is not submitted by a medical expert, and does not specifically and factually outline the name or describes by conduct each eligible negligent health care provider.

Fifth, it clarifies that all actions against health care providers will be subject to the mandatory settlement conference provisions. The legislation also provides that the rebuttable presumption shall not apply in cases where any plaintiff submits an expert affidavit pursuant to NRS 41A.071, or otherwise designates an expert witness to establish that the specific provider of health care deviated from the accepted standard of care and does not preclude any party to the suit from designating and presenting expert testimony as to the legal or proximate cause of any alleged personal injury or death.

The legislation also revises the definition of professional negligence within NRS 41A.015, as "the failure of a provider of health care, in rendering services, to use the reasonable care, skills or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care." We believe this language helps clarify and clear up the definition of professional negligence.

Finally, an amendment was brought forward by the bill sponsor that provides that the board of trustees of a school district or the governing body of a charter school that allows or establishes a school-based health center to locate on or in school premises, buildings, or other school district facilities is not subject to a suit for and is not liable for civil damages resulting from any act or omission by an employee or volunteer of such a center.

[Assemblyman Nelson assumed the Chair.]

Assemblyman Elliot T. Anderson:
My question is on rebuttable presumption. The way I read it now, it appears like the exception swallows the rule. It looks like *res ipsa loquitur* would not apply in any case, so what I want to figure out is what cases would still be left?

Lesley Pittman:
I would like to hand the microphone over to Ms. Piscevich so she can respond to that question.

Margo Piscevich, representing Keep Our Doctors In Nevada:
Res ipsa still applies. For example, if you cut on the wrong side of the body and there is an explosion, those issues all apply. All this amendment is doing on the *res ipsa* is basically saying it does not apply if you have a medical affidavit. If you have a *res ipsa* case, you do not need the medical affidavit. If you come in with a medical affidavit, then you do not get the presumption. For example, I was supposed to have my left knee replaced and they replaced the right knee, you do not need a medical affidavit. However, you may need something on causation and damages, and that still allows the plaintiff or the defendant to put in that evidence on causation and damages, but it does not gut the five exceptions.

Assemblyman Elliot T. Anderson:
I want to follow up with that because that language refers as an internal reference to NRS 41A.071 which is proposed to be amended by section 6 of the bill.

Margo Piscevich:
Section 6 is the beginning of the case. You have to have an affidavit in order to bring the case. When you file your complaint, you need an affidavit by a doctor. What was happening, and the reason section 6 came into play, is because you would have a complaint that says medical malpractice occurred. Then you would have an affidavit that said, "I reviewed the records and I agree with allegations of the complaint." That does not tell you what happened or whom or what date. Section 6 is strictly the provision that says when you bring your case, you have to have an affidavit that tells the defense what happened. You do not have to know the person, but you can say—I am not going to use the *res ipsa* case that the person developed a decubitus ulcer or the person got an infection or the nurse did not call the doctor in time or whatever— all of that is at the beginning of the case so that the defense has an idea of what the allegations are. I believe the *res ipsa* is in section 9.

Assemblyman Elliot T. Anderson:
Section 9 added language referring to section 6 as amended. It refers to NRS 41A.071. So as I read the *res ipsa* section, it says that if you file that affidavit, you do not get the rebuttable presumption. When I look back up to when you have to file the affidavit, it looks like you have to file it in every case under section 6 in the existing law.

Margo Piscevich:
As a practical matter, you would be smarter to do it. The Supreme Court has said in case law that you do not need the affidavit in *res ipsa*, but you are probably going to need expert witness testimony at the time of trial. All this is saying is you still keep your five exemptions. However, if you produce an affidavit, then it is no longer *res ipsa*. You can still say they did the knee replacement on the wrong knee. That is a no-brainer. They cut off the wrong finger or whatever the issue may be. That one you do not need an affidavit for, but it also allows the plaintiff as well as the defense to use affidavits on causation and damages.

Assemblyman Elliot T. Anderson:
It might be helpful to get that case because the way I read it, it looks like you would have to file to get the benefit of the rebuttable presumption you would need to file an affidavit. Maybe we could talk about that offline because I do not want to take any more of the Committee's time today. It looks like if you do not file the affidavit under section 6, you would have the district court dismiss the action, but then under the *res ipsa* section, if you file the affidavit, you do not get the rebuttable presumption. It looks like it could swallow the rule to me.

Margo Piscevich:
I think the language says, "The rebuttable presumption pursuant to subsection 1 [of NRS 41A.100] does not apply in an action in which a plaintiff submits an affidavit pursuant to NRS 41A.071." That means if you want to do it, that is fine, but then you do not have the rebuttable presumption. You do not have to file it. As the case progresses, you are obviously going to disclose experts on causation and damages because things can happen that sound like they are bad but there is no causation. For example, you can go in for a surgery and come out with a nerve injury because of positioning. That is not negligence. You are going to need an expert somewhere along the way to say that positioning is one of the risks.

Assemblyman Elliot T. Anderson:
If there is case law that supplements that statute, please send it to me because that makes more sense and would help me understand why that does not swallow the rule.

Assemblywoman Fiore:
In section 3 of this bill, it limits the amount of an award to a total of $350,000 regardless of the number of plaintiffs. If this bill was in place in 2007, that Dr. Dipak Desai case—I am not talking about the product liability aspect of it,

but the actual case against the clinic, the doctor, or the insurer—how would we handle it? If you recall that incident, there was a ton of patients. What would happen under this bill in section 3? Would we be limited?

Margo Piscevich:
I was not in Las Vegas nor do I know all about that case other than he was convicted criminally and there was a case against the manufacturer. I do not know what happened in the underlying case, but I know there were multiple people involved. The concept is not made for that case, and that is why I think it went into the drug part of it and everything else into the criminal. It became an intentional tort, not a negligent tort. I do not know if it proceeded through the medical malpractice arena. However, the general run-of-the-mill medical malpractice cases against one or two doctors and a hospital or one or two nurses, what it is saying in those cases is that the claim of not calling the doctor in time and having an adverse result on the delivery of a baby, that is one claim that is $350,000. That is what has happened. It has always been interpreted as one claim. However, there were four or five cases in Clark County that said it is per person, per doctor, and that was never the intent of KODIN. It was limited to two per claim.

Assemblywoman Fiore:
As we vote new law and new language into law, the judges can only abide by the language. In section 3, it is crystal clear that if this would have taken place in 2007, there would have been quite a lot of plaintiffs who would have been out of luck.

Margo Piscevich:
Actually, KODIN came into effect in 2004 and it has been interpreted to be $350,000 per claim by 98 percent of the judges in this state. When there is an abnormal finding such as seven plaintiffs or something like that, it does not give us a stable or predictable plan of attack for either the plaintiffs or the defendants or especially the insurance companies who are writing for these doctors. The cap is there for a reason, and it is for the predictability of making sure we can keep doctors in this state so we can all evaluate the case and say "You have $500,000 in special damages, $500,000 in medical, $300,000 in lost earnings, and you get another $350,000." It can apply in a wrongful death case. It may seem arbitrary, but it works, and it keeps our doctors here. California's cap is $250,000. They have had it in effect for 20-plus years. They interpret it as one cap per claim, as have we, except for a couple of judges in Las Vegas who did not. We are trying to make it extremely clear that it is $350,000.

Vice Chairman Nelson:
The $350,000 only applies to noneconomic damages. Is that correct?

Margo Piscevich:
Correct.

Vice Chairman Nelson:
Why do you not explain the difference to the Committee between the different things, because I think we are getting some confusion that the plaintiffs are only entitled to $350,000 total, and that is not correct.

Margo Piscevich:
In medical malpractice, they have changed the name from special damages to economic damages and noneconomic damages. As another example, in an automobile accident, pain and suffering is noneconomic. Economic damages are your medical expenses, loss of earnings, and whatever other out-of-pocket expenses you may have. So if it is a wrongful death, you have funeral expenses and those sorts of things. The cap is only on the noneconomic part of the case, not the economic part.

Assemblyman Gardner:
I will probably want to talk with you offline as well. I read section 9 the same as Assemblyman Anderson does. I think section 3 might cause us more issues than not. I do not do medical malpractice, but if I did and I said okay, regardless of the number of plaintiffs and I have seven plaintiffs, then I would just file seven cases. Would this not provide diseconomy of scale?

Margo Piscevich:
Not at all. What would happen if you filed seven cases—let us assume it is a wrongful death case and you have a wife and six children and this is all one occurrence. You would be consolidated into one, and you would still have one cap.

Assemblyman Gardner:
In section 6, the additional two subsections 3 and 4 we are putting we are putting in there, let us say I got injured in a hospital and all I know is that I had a surgery and it went wrong. How am I supposed to know who the anesthesiologist was, who the nurses were, who exactly did the damages to me.

Margo Piscevich:
You do not need to know that. You have to know that something went wrong in the surgery and it is either the doctor, the surgeon and his assistant, or a nurse, or someone at the hospital. You have to know what conduct you did, and in order to bring the affidavit to start with, you have to have someone review the medical records. Someone in a similar specialty has to review those records, so they would look at it and say, "I think what went wrong occurred in the surgery"—let us make this up—"I assume the blood pressure went low for too long." You do not have to know who did it, you have to know the conduct. So someone could come in and say that it appears that during the surgery the blood pressure dropped for too long a period of time and it resulted in brain damage. You do not have to say the doctor did it. You have to say the conduct or identify the person.

Assemblyman Gardner:
In Section 6, subsection 4, it says, "Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms." I think that is where the issue was. I agree that we can talk about the conduct that caused it, but how am I supposed to know? For example, it was not the actual surgeon who caused the problem, but someone who read my records wrong, such as reading my magnetic resonance imaging (MRI) wrong. How am I supposed to know it was the MRI guy, and not the surgeon or the nurse?

Margo Piscevich:
You do not need to say that. You just need to know the conduct. The MRI was misinterpreted, which caused me subsequent problems. Now we know to focus on the MRI and then we can do the investigation. The plaintiff's lawyer will be doing the same thing, and knowing how I have seen these cases pled, generally they put in fictitious Does, and say it could be a physician, nurse, or physician assistant. But you do not need to say that. You need to say the MRI was misinterpreted and it resulted in A, B, C, and D. Everyone knows at least where to focus. We need the conduct or the surgeon who messed up. He caused me a problem with my arm when I went in for my leg. At least we know where to go. We know it is the operating team. That is the problem. We get these complaints, and we have no idea what we are talking about.

Assemblyman Gardner:
In this case, I have a doctor review and we get the affidavit. He says it was the MRI. Upon discovery, we find out it actually was not the MRI, it was the surgeon who misinterpreted what the MRI guy had told him, and then we find out it was not the MRI and it was actually the surgeon. Will the plaintiffs be able to amend their complaint?

Margo Piscevich:
Yes, you can amend if you find out there is a specific person. You can also put in there that you believe it could be either one. I have seen them pled that it could either be the surgeon who misread it or the radiologist misread it. We do not know. If you have an expert reviewing the files and they cannot tell who did what, you say, "It could be the surgeon, the radiologist, or the physician assistant. We do not know." You do not need to know that specifically, but you have to give us an idea of what is happening.

Assemblyman Trowbridge:
Going back to Senate Bill 291 (R2), we received the definition between punitive effect and charges: pain and suffering and lost wages in terms of a settlement. Now we are introducing a new term "noneconomic damages." Where does that fit in? Is that the charges from the hospital?

Margo Piscevich:
The medical malpractice has its own little section. They define economic and noneconomic damages. Economic would be the medical expenses, the loss of earnings, or the cost of a funeral if it is a wrongful death. The noneconomic is the pain and suffering. What happens in a medical malpractice trial is that the jury is not told about the cap. They say, "This is for pain and suffering," and it is reduced by the judge later. There is generally not even any reference to the cap.

Assemblyman Trowbridge:
In the case that we are talking about with the six children, it would have the cap of the $350,000 per case for six kids and they divvy up the $350,000?

Margo Piscevich:
Correct. That would be a wrongful death case when you have multiple plaintiffs. It is generally not the normal run-of-the-mill case. It is generally because someone is injured, becomes a paraplegic, has brain damage, or something to that effect.

[Assemblyman Hansen reassumed the Chair.]

Assemblywoman Diaz:
My question pertains to the effect of this new legislation being put into place. We had a little boy earlier today—I want to understand the implication of this law going through. Let us pretend Aiden, who was here earlier, was in the state he was because of medical malpractice, and we cap this to $350,000.

We heard from the parents that he needs care 24 hours a day, 7 days a week, probably a lot of therapy, and a lot of medical attention. What does this do for Aiden?

Margo Piscevich:
Aiden will get all of that 24-hour-a-day care and all of the special therapy. Those are special damages. He will be provided with whatever the care plan provides for, assuming it is a case of negligence. If he needs 24-hour-a-day nursing care, assisted care, special testing, and special therapy, those are the special damages. He only gets $350,000 in pain and suffering, but all of his future care is covered.

Assemblyman Ohrenschall:
I agree with you that I do not think the voters wanted all the physicians involved in a malpractice case to be on the hook if they were not involved, but what if someone goes in for surgery on their knee and the anesthesiologist commits malpractice and they suffer brain damage and the surgeon also commits malpractice and they have to get their foot amputated? Has that victim not been harmed by both doctors in separate instances and should they not be able to recover noneconomic damages for both?

Margo Piscevich:
No. That is one event. They are in the surgery. An occurrence is what occurs at the time of the medical malpractice. That is one event.

Assemblyman Ohrenschall:
There are two separate instances of malpractice—it is two separate injuries to the body. One body, but two separate injuries.

Margo Piscevich:
You cannot have a surgery without an anesthesiologist and a surgeon, so it is one event. What will happen in that case, if there is brain damage, there will be a care plan that says you need X number of tests, X amount of nursing, and X amount of daily care. That is the economic. The economic does not go away. I think that one of the policy reasons behind the cap is because in medical malpractice, if there is a catastrophic result, the damages are catastrophic. If you have brain damage and you cannot work again and you are 40 years old, you have several million dollars right there in loss of earnings. We are not talking the $15,000, $25,000, or $50,000 case. We are generally talking in multimillions. All you are doing is adding on additional monies that do not provide for predictability for even assessing the cases or for the insurance companies.

If it is criminal conduct or something really bad, there is an exemption for that. If someone was grossly negligent and it was criminal, such as your case in Las Vegas, there would be an exception for that. If it is negligence, there is a $350,000 cap because no one intends to hurt a patient. Absolutely no one.

Chairman Hansen:
Thank you. Ms. Piscevich, do you have someone else you would like to have called up at this time to testify in favor of the bill?

Denise Selleck, representing Nevada Osteopathic Medical Association:
Ditto.

Kathleen Conaboy, representing Nevada Orthopaedic Society:
Ditto.

James L. Wadhams, representing Nevada Hospital Association:
Ditto.

George A. Ross, representing Sunrise Hospital and Medical Center:
Ditto.

Chairman Hansen:
Is there anyone in opposition to S.B. 292 (R1)?

Jennifer Gaynor, representing Nevada Health Care Association:
The Nevada Health Care Association is a nonprofit organization dedicated to promoting public health and welfare for improved postacute care among health care providers in Nevada. We support the substance of S.B. 292 (R1) with the exception of the current version of section 2 of the bill which amends the definition of the term "provider of health care" for the purposes of NRS 41A.017. With the amendments that were made to this section in the Senate, the sponsors have added in some new entities as part of this definition including clinics, surgery centers, professional corporations, and physicians' group practices. We are fine with them being included; however, by adding in these additional specific entities, S.B. 292 (R1) could now be interpreted to exclude key health care providers, including but not limited to, postacute care medical facilities throughout the state of Nevada.

This version of the definition of provider health care is therefore very concerning to the Nevada Health Care Association. If S.B. 292 (R1) were to pass with this definition intact, our postacute care facilities in Nevada would become the attractive target for plaintiff's attorneys and it could cripple the industry.

Therefore, we are presenting an amendment (Exhibit N) and I would like to add that the language we are concerned with was not something that was requested in an amendment or discussed in the hearing in the Senate. It was added by the sponsor during the work session; therefore, this is our first opportunity in a hearing to address this concern.

Our proposed amendment will ensure that the protections of NRS Chapter 41A apply to licensed health care professionals like doctors and nurses regardless of the category of medical facility where they are providing professional services. This would allow the sponsor to keep the specifically enumerated new categories of physician facilities they added without causing the harm that we fear. However, if the amendment language we are presenting is not workable to the Committee, we would request alternatively that the language of section 2 in S.B. 292 (R1) be stricken in its entirety, leaving the definition of provider of health care as it was prior to the introduction of this bill, the way that it had been adopted by the voters of the state of Nevada by initiative petition. With me to explain a little more is Daniel Mathis, the President and Chief Operating Officer of the Nevada Health Care Association, who will talk very briefly about the practical impacts that this could have on the industry, as well as Robert Rourke, an attorney who represents these facilities to discuss the legal ramifications and to answer any questions you may have.

Chairman Hansen:
Just so you know, I am strongly interested in your amendment.

Daniel Mathis, President/CEO, Nevada Health Care Association:
On insurance availability for skilled nursing facilities (SNF), a large percentage of these provider types are self-insured because insurance is either unavailable or very expensive for this level of postacute care provider. Another issue that we are concerned with is that as the costs increase for skilled nursing for this segment, bed availability will become an issue. We are seeing that right now with ventilator beds available in northern Nevada. Currently, they are only available in southern Nevada, and we feel like other changes in the business model are on the horizon.

The effort to clarify language for providers of health care has fallen short for SNF providers whose clinicians provide the same services in both acute and postacute care settings. In SNFs, clinicians including physicians, registered nurses, licensed practical nurses, certified nursing assistants, registered dieticians, and trained, licensed therapists provide direct care services to a patient population, including complex wound care, intravenous therapy, G-tube feeds, ventilator services, and physical, occupational speech, and respiratory therapy. These same services are provided by the same licensed

clinicians in hospitals across the state; however, they do not enjoy the same protection under the current language in section 2 of S.B. 292 (R1) when they provide such services in a SNF setting.

Skilled nursing facility providers operate on very thin margins. Nationally, it is 1.8 percent—and Nevada is very similar—after years of both Medicare and Medicaid funding cuts. On May 1, 2015, skilled nursing facilities started admitting behavioral residents who, up to now, have been sent out of state because appropriate programming was not available for Nevadans. Skilled nursing facility providers are concerned that their efforts to provide this new programming will result in another area of exposure for litigation without being included as a provider of health care. While skilled nursing facility providers are happy now to be able to offer this new programming, we feel additionally exposed while providing a much-needed service. Please approve S.B. 292 (R1) with the inclusion of skilled nursing facilities or similar language in the definition of provider of health care. [Daniel Mathis submitted his testimony (Exhibit O).]

Robert Rourke, Attorney, Rourke Law Firm, Las Vegas, Nevada:
I am an attorney with Rourke Law Firm and defend claims against both acute and postacute care facilities. The practicality of what is being proposed in the work session language in section 2 of S.B. 292 (R1) will have a dramatic effect upon the postacute clients that I represent. As Ms. Gaynor pointed out, we are not opposed to having individuals necessarily enumerated under section 2 such as professional corporations, physicians' groups, surgical centers, or clinics, but when you do that to the exclusion of the postacute care setting, the argument will come—because I have faced this argument for many years in the district court in front of various judges—that the postacute facilities are not covered. What is the practical effect? If we are talking about policy that we want to make sure that the citizens of the state have adequate access to health care, a vital role in that is the postacute care setting. The way that the postacute care setting gets skirted is simply by not naming the individual providers of health care such as our nurses or therapists, but they name the postacute care facility as the defendant, and do not name the provider.

When you take that to the conclusion and read section 3, it says, "In an action for injury or death against a provider of health care based upon professional negligence." You have the caps, and you have the protections afforded under NRS Chapter 41A. They do not sue the provider of health care. They then argue that you do not have the caps. So we now have—Mr. Mathis can tell you the number of beds—over 5,000 beds that are going to be exposed and become the target of the plaintiffs' lawyers in the state because of the way this

language is fashioned in section 2. I would echo the comments of Ms. Gaynor that we need to strike section 2 or include all of the health care providers. The easiest way to do that is through enumerating the medical facilities' definition that we already have in our statutes. I think that is the simplest, clearest, and most effective way to ensure that we have the right policy, and that is that the citizens of the state have the ability to seek the medical care in a reasonable manner. I also echo the comments of Mr. Mathis as it relates to the insurance. The majority of my clients, as it relates to postacute, are self-insured because they are trying to scramble to get coverage that they can afford.

Chairman Hansen:
Is there anyone else in opposition?

Robert Rourke:
Chairman Hansen, may I clarify the record? When I said that they are self-insured, it is that they buy policies that the individuals control. It is not fully self-insured. I want to make sure that it is clear for the record.

Chairman Hansen:
Is there anyone else who would like to testify in opposition to S.B. 292 (R1) at this time? [There was no one.] Is there anyone in the neutral position?

Stephen Osborne, representing Nevada Justice Association:
We are neutral on S.B. 292 (R1). We worked on some language with KODIN and with others. While we do not support caps in any form or fashion, we remain neutral on the bill as presented. We are in opposition to any amendment that would expand the "provider of health care" definition. The caps that are enjoyed by KODIN at this time are in place because of prior legislation. There was a special session in 2002 specifically for doctors and hospitals only when they had the so-called health care crisis. A bill was proposed in 2003 by KODIN and was rejected by both houses. It then went to the voters and was passed in 2004. It has been in existence since 2004. It is specific and limited to those parties. It is an infringement on our constitutional right to a jury trial, which is specifically to remain inviolate, meaning it should not be tampered with whatsoever. It is the most fundamental right that we have in this state to have a trial by jury. To expand this to additional parties would violate that Seventh Amendment right. When you talk about it, it shifts the responsibility from the negligent parties to the victims of malpractice. It also puts more burden on our state for those people who are not insured and for those people who become unemployed due to disability. It does have a financial impact on people who are injured in our state due to malpractice and through no fault of their own.

When you talk about the skilled nursing facilities, you are also talking about a component of our most vulnerable type of people. These are the people who need a higher level of care, and they are completely dependent upon it. When you have that, they are vested with the rights and responsibility to care for them. When they do not fulfill that obligation, it is not right to put that burden and cap on the victim or the people of this state.

Assemblyman Elliot T. Anderson:
What cases would the rebuttable presumption be left for?

Stephen Osborne:
This was not our provision. This was something that was passed by the sponsor. With regard to *res ipsa*, it has to do with the specifics of the standard of care. You do not need an affidavit at the complaint stage because you have the enumerated items on the affidavit requirement. That is my understanding of the bill. If you do retain an expert, they do not want to have the rebuttable presumption in addition to your expert testimony.

Assemblyman Elliot T. Anderson:
We will talk about it offline to be respectful of the Committee's time.

[(Exhibit P) was submitted but not discussed.]

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position? [There was no one.] Normally, I would bring Ms. Pittman back up, but you are going to have to talk with the other people who have concerns over this bill. I would definitely like to see some of that amendment language discussed between the two parties, so hopefully we can work out some resolutions. In the meantime, I am going to close the hearing on Senate Bill 292 (R1) and open the hearing on Senate Bill 296 (2nd Reprint), which revises provisions relating to exemplary or punitive damages in certain civil actions. It will be presented by Mr. Ross.

Senate Bill 296 (2nd Reprint): Revises provisions relating to exemplary or punitive damages in certain civil actions. (BDR 3-940)

George A. Ross, representing Institute for Legal Reform; and American Tort Reform Association:
I am here on behalf of the Institute for Legal Reform and the American Tort Reform Association. Senate Bill 296 (2nd Reprint) attempts to reform punitive damage statutes in the state of Nevada. Currently, product liability is not under the existing three times compensatory damages cap. This bill proposes to say first that you cannot bring punitives in the initial stage of the case. I will explain

that in a moment as to why that would be an improvement. Second, we would move products under the cap but have full exceptions so that for particularly egregious behavior, you still would not get the cap. It does not take away punitive damages. It just moves the products under the cap as long as they do not meet those four exceptions.

What we really hear about is balance. We would argue that over the past several decades the tort liability laws of the state of Nevada have not been particularly balanced; they have been kind of tilted in a particular direction. We are trying to restore balance and restore a sense of justice and fairness. Basically this whole issue is about how you perceive justice and fairness. We would argue that a defendant who has done little to nothing wrong deserves the same kind of fair treatment that a plaintiff does. Clearly, we are not saying that a plaintiff deserves nothing. We are not taking away his right to go to court, and we are not taking away even his punitive damages awards, which, in some cases, would be limited. Let us look at how the statutes of the state of Nevada define some of the key words in punitive damages. This really drives the rest of what I am going to be saying for the rest of my time.

As used in *Nevada Revised Statutes* (NRS) 42.001, unless the context requires otherwise, "conscious disregard"—which is one of the keys to getting punitive damages—means the knowledge of the probable harmful effects of a wrongful act and—this is key—a willful and deliberate failure to act to avoid those consequences.

"Malice, express or implied," means conduct which is intended—another key word—to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others. It is conscious disregard. It is intentional behavior, it is malice, it is cruelty, and it is a wrongful and deliberate failure.

The use of punitive damages in civil litigation as a tool, as a deterrent, and to punish egregious conduct is somewhat controversial. Some states do not even allow it. They let the attorney general and other enforcement agencies address conduct that warrants punishment. In the states that do allow private litigants to pursue punitive damages, such as Nevada, all too often the claim is misused or misapplied, requiring remediation in posttrial or appellate proceedings.

Nevada has long allowed juries in most civil cases to allow punitive damages in exceptional cases involving malicious and despicable conduct. In practice, however—and this is one of the real key points as to why we believe this bill would be helpful and necessary—punitive damages claims are not raised only in exceptional cases. They are pled in the vast majority of personal injury and

product liability cases. Where an exceptional remedy is commonly evoked, the system is broken down. This overuse results in damage to the integrity of the civil justice system. Simply raising an allegation changes the dynamic of a lawsuit. It raises the stakes to a much higher level. Those gigantic judgments that you occasionally see in the newspaper are, generally speaking, punitive damages. The existence of allegations of egregious conduct in a public filing has the potential to stain the defendant's reputation even if the allegations are meritless. Further, because they are usually uninsurable, the ongoing financial viability of individuals in small businesses are put into immediate doubt, often leading to quick settlements on unfavorable terms and pressure on their insurance to do the same in order to ensure an enterprise's continued existence, even when the claims of liability of any sort are defensible. A lot of what we see in the tort world in the bills that are brought before this Legislature over the years has to do with the balance of power at various stages in the case waiting for settlements. Instead of the recognized purposes, punitive damages are used as a threat without regard to the legitimacy of the claims, and even when that happens, it is not appropriate.

We think S.B. 296 (R2) would rein in this abusive use of punitive damages claims. Section 1 precludes the inclusion of damages in initial filings. Before a claimant can raise punitive damages, he must develop evidence and convince the trial court that a prima facie case can be made with admissible evidence that the defendant's conduct can actually be demonstrated to rise to that exceptional level of egregiousness—which we talked about being necessary in Nevada law to justify a punitive claim. Section 1 would put the onus on claimants to ensure there is real evidence for imposing against a defendant a cost and burden of the offending punitive damages claim, including not only the psychological threat of higher damages, but also the burden of adding discovery on topics such as the company's finances. This particular limitation has been deployed in a number of states, including Colorado, Florida, and Oregon.

The next section of the bill deals with punitives under the cap, and I will have to say that first, I want to thank the sponsor of this bill, Senator Roberson, for bringing this bill. He tried very hard to work with both sides to come up with a fair and balanced bill. He did try to take into account both the interest of the defendants and the interest of the plaintiffs. Unfortunately, there was a last-minute amendment added on the Senate floor, which was not adequately vetted and we have not had a chance to vet. The clients who I represent, which involve many large companies in the United States, felt that they could not support that final amendment. The prior wording was much more to their liking, quite frankly, and we felt much more balanced in terms of serving the

interest of a balanced sense of justice. Consequently, we are proposing an amendment to the bill that came over to you from the Senate, and I will explain that in a few minutes.

There are four areas of exceptions in the proposed amendment (Exhibit Q). In section 3.2, subsection 3, "The manufacturer, distributor or seller intentionally, and in violation of any applicable laws or regulations," we would like to add, "'as determined by the responsible government agency', withheld from or misrepresented to a governmental agency information material to the approval of the product and that information is material and relevant to the harm that the plaintiff allegedly suffered." In section 3.2, subsection 4, "After the product was sold," we would like to put back in, "'a government agency found that' the manufacturer, distributor or seller intentionally violated any applicable laws or regulations by failing to report risks of harm to that governmental agency." What we are doing here is getting an objective standard of whether this standard was violated. What happens is there are a lot of regulatory filings, a lot of information goes back and forth. Under the bill as it came to you, a plaintiff's attorney can go through all those filings. It is very easy to second-guess, very easy to go back and re-create a story that you want it to have, and then you end up having to have a jury trial based upon putting all this together that you find in discovery. What we feel is that in many cases, this raises into question and brings in the punitives—companies who did little or nothing wrong, if a story can be made.

This bill does not keep the plaintiff from getting punitive damages. It puts an objective standard rather than making this a subject of years and years of litigation and ultimately a jury trial at great expense. It does not deny the plaintiff at least three times punitives. Everything can be second-guessed, and this puts in an objective standard. That is why Arizona, which is the state that originated the concept of the exceptions now included in subsections 3 and 4, included a requirement that an agency must make an objective determination of violation before the manufacturer is stripped of their veil of protection against product liability suits. Without that agency determination, there frankly is not very much protection left for manufacturers at all, and in the view of my clients, this essentially means that the cap would only apply to essentially nonregulated businesses and that does not mean very many because most businesses are now regulated one way or the other.

The exchanges between the agency and the company would be a tremendous discovery, so we feel that by having the agency make that determination when companies are involved in the kind of conduct that I described when I read you what is defined as punitive damages, that conduct would clearly go forward and be outside the gap. We are not denying people that right.

We would love to see this bill passed with the amendment for the reasons I just described. I would again stress that we are not taking punitive damages away. Having said that, if we cannot amend section 3 in this manner, we would prefer that section 3 be deleted from the bill and go forward with section 1.

Assemblyman Araujo:
With the passage of S.B. 296 (R2), can punitive damages still be sought against companies who produce defective products?

George Ross:
Absolutely. This bill does not take away the right to seek punitive damages; it just says you do not get it when you bring the initial case. When you bring your initial case, and after you have gone through discovery, you can go to a judge and say, here is the evidence, I should be able to get punitives, the judge can grant that if he sees enough evidence. Secondly, you then have the issue of if you are under the cap or not. You can at least go for the three times compensatories, and if you fall under one of those four exceptions, then you get no cap at all and you still get to have punitive damages. We are trying to get a little more balance in the overall system.

Assemblyman Nelson:
As determined by the responsible government agency, I guess that is going to be pretty easy to determine. I presume it is the one regulating the defendant?

George Ross:
That would be correct.

Assemblyman Nelson:
Would it be the U.S. Food and Drug Administration in the instance of a drug?

George Ross:
Yes.

Assemblyman Nelson:
Without this amendment, would it be the jury who would make that determination?

George Ross:
Yes, it would.

Assemblywoman Diaz:
I keep hearing the word "balance." Would you clarify exactly how this version of S.B. 296 (R2) balances it for both sides?

George Ross:
We are not taking away punitive damages. We are creating a situation where a company that did not intentionally do the kind of behaviors that are described as punitives, that is on a margin, that makes them inadvertent acts, that does not meet that high standard of what exactly is punitives to the extent that those exceptions would not apply to them and we feel that would be a better balance. The companies who did engage in egregious behavior would still be outside the cap, but the companies for whom something may have happened are going to get the benefit of the cap. There are all sorts of acts and things that happen that are not intentional. People do not intend to hurt people and they do not intend to make products that are going to harm people.

Assemblywoman Diaz:
You have mentioned the company's side of it, but where is the little guy's side of it—the person who gets harmed by this?

George Ross:
The little guy side of it is that we did not take away punitive damages and we still have him at a three times compensatory cap even with this bill. Most punitive cases in the state of Nevada—that three times cap applies. Products are one of the few items that are exempted from that cap.

Assemblyman Ohrenschall:
My question has to do with the amendment and the governmental agency action. A lot of times we are beholden to our friends in the federal agencies in terms of their discovering there is an issue. As you and I know, they move very slowly. What if there are press accounts about a product that might have an issue, might be unsafe, maybe our state Department of Health and Human Services feels it is unsafe or our Attorney General feels it is unsafe, but the appropriate federal agency has not acted yet and maybe they are not going to act for another year or two. Is that going to put an injured party in our state in a position to where we are waiting on the people in Washington, D.C., and we are blocking that person from getting to the courthouse?

George Ross:
I suspect that the smart thing to do would be to bring that case and see what happens. I do not think this would necessarily block that person, particularly the way you described it.

Chairman Hansen:
Due to limited time, I will put on the record that the Las Vegas Metropolitan Chamber of Commerce, the Reno Sparks Chamber of Commerce, and the Retail Association of Nevada are all proponents of the bill.

Graham Gallaway, representing Nevada Justice Association:
We signed in neutral on this bill because there has been a lot of effort amongst all of the different parties and the sponsors of this bill to craft something that we could all live with, albeit uncomfortably. We are neutral on the bill, but on this recent proposed amendment that was just presented to you, I would have to say that we are in opposition to it.

I find it interesting when the big corporations of the world say that the playing field is not level and is tilted against them. Think about what happens in these product liability cases, and that is what we are talking about—it is an individual, some poor schlep, one of your constituents. Maybe I should not have said that term, constituent, but rather an honest individual who is going up against the biggest corporations in the world with legions of attorneys and legions of experts. We oppose the amendment being pitched to you here because using the government agencies acquiescence to some product or approving some product I think is a failed standard. Look at all the products that every day we see something in the paper. Airbags, automobile ignitions, car seats—the National Highway Traffic Safety Administration passed the Pinto. There are products. There are legions of products that the government has approved and then later subsequently learned were highly dangerous. We are opposed to the proposed amendment.

Mark Wenzel, representing Nevada Justice Association:
The changes to subsections 3 and 4 that Mr. Ross mentioned were in an earlier version. They were excised out as part of an effort to reach an accord with the bill's sponsor and the Senate committee chairman. Government agencies just do not find that someone is trying to make a defective product. The language that is trying to be inserted in there is a standard that is incapable of being established. That is the genesis of why we had issues with it and why that language was ultimately stricken by the bill sponsor and the committee chairman and approved with bipartisan support on the Senate side. Leaving things in the hands of federal government entities—I have a great deal of problem with that because, as Mr. Galloway alluded to, there are many products that the government has approved, perhaps not knowing the full range of issues that were with the product internally. It is not an appropriate standard to have to determine whether or not a product is defective or if the manufacturer knew that product had problems during the research, development, and manufacturing stage.

Chairman Hansen:
Are there any questions? [There were none.] Is there anyone in Carson City or Las Vegas who would like to testify in the neutral position on S.B. 296 (R2)? [There was no one.] We will close the hearing on S.B. 296 (R2) and open it up for public comment. Is there anyone who would like to address the Committee at this time? [There was no one.]

Assemblyman Nelson:
I have spoken with many people and we are very grateful to you as Chairman for the way you have conducted this Committee. I am personally grateful for the confidence you showed me in making me your Vice Chairman. You have dealt with a lot of lawyers and a lot of opinions on this Committee and have done an excellent job. We are grateful for that. Thank you.

Chairman Hansen:
Thank you very much for those nice comments. The meeting is adjourned [at 10:52 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: May 26, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 60 (R2)	C	Brett Kandt, Special Deputy Attorney General	Letter in support
S.B. 60 (R2)	D	Barbara Cegavske, Secretary of State	Letter in support
S.B. 487	E	Daniel Reid, National Rifle Association	Letter in support
S.B. 487	F	J. L. Rhodes, Stillwater Firearms Association	Letter in support
S.B. 487	G	Lesley Dickson, Nevada Psychiatric Association	Letter in opposition
S.B. 487	H	Chuck Price, UNR, Faculty Senate	Testimony in opposition
S.B. 487	I	Nevada System of Higher Education	"NSHE Arguments Against Concealed Weapons on Campus"
S.B. 487	J	Christopher Lively, Students for Concealed Carry	Testimony in support
S.B. 291 (R2)	K	Robert L. Compan, Farmers Insurance	Testimony
S.B. 291 (R2)	L	Robert L. Compan, Farmers Insurance	Proposed Amendment
S.B. 292 (R1)	M	Lesley Pittman, Keep Our Doctors In Nevada	Chart
S.B. 292 (R1)	N	Jennifer Gaynor, Nevada Health Care Association	Proposed Amendment
S.B. 292 (R1)	O	Daniel Mathis, Nevada Health Care Association	Testimony

S.B. 292 (R1)	P	Rudy Manthei, Keep Our Doctors in Nevada.	Testimony in support
S.B. 296 (R2)	Q	George Ross, Institute for Legal Reform, and American Tort Reform Association	Proposed Amendment

History of SB80 1997

Versions: As Introduced First Reprint Second Reprint Third Reprint As Enrolled

BDR 3-613
Introduced:01/29/97
Introduced By: Judiciary

Summary: —Makes person liable for two times the actual damages incurred for abuse, neglect or exploitation of certain older persons or vulnerable persons. (BDR 3-613)

- 01/29/97 Read first time. Referred to Committee on Judiciary. To printer.
- 01/30/97 From printer. To committee. 2/12; 2/18; 3/3; 6/18
- 03/03/97 From committee: Amend, and do pass as amended.
- 03/05/97 Read second time. Amended. To printer.
- 03/06/97 From printer. To engrossment. Engrossed. First reprint.
- 03/10/97 Taken from General File. Placed on General File for next legislative day.
- 03/12/97 Read third time. Passed, as amended. Title approved, as amended.
- 03/12/97 To Assembly.
- 03/13/97 In Assembly. Read first time. Referred to Committee on Judiciary. To committee. 3/31; 4/15; 4/1
- 06/11/97 From committee: Amend, and do pass as amended. 5/30; 6/4
- 06/12/97 Read second time. Amended. To printer.
- 06/13/97 From printer. To re-engrossment. Re-engrossed. Second reprint.
- 06/13/97 Placed on General File.
- 06/13/97 Read third time. Passed, as amended. Title approved, as amended. To Senate.
- 06/16/97 In Senate.
- 06/20/97 Assembly amendment not concurred in. To Assembly.
- 06/20/97 In Assembly.
- 06/24/97 Assembly amendment not receded from. Conference requested. First Committee on Conference appointed by Assembly. To Senate.
- 06/25/97 In Senate.
- 06/26/97 First Committee on Conference appointed by Senate. To committee.
- 07/02/97 From committee: Concur in Assembly amendment and further amend. First Conference report adopted by Senate.
- 07/02/97 First Conference report adopted by Assembly.
- 07/02/97 To printer.
- 07/03/97 From printer. To re-engrossment. Re-engrossed. Third reprint.
- 07/03/97 To enrollment.
- 07/05/97 Enrolled and delivered to Governor.
- 07/17/97 Approved by the Governor.
- 07/17/97 Chapter 672.
- 07/23/97 Effective July 17, 1997.

Go back Home Page

ADD 0543

BILL SUMMARY
69th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

SENATE BILL 80
(Enrolled)

Senate Bill 80 provides that any person who willfully inflicts pain, injury, or mental anguish on an individual over the age of 60 or on a vulnerable person is liable for two times the actual damages to the victim or victim's estate. In addition, S.B. 80 authorizes two times the actual damages for any resulting loss if a person, either through deception or by taking advantage of a physical, mental, or emotional condition, obtains control over the money, assets, or property of an older or vulnerable person with the intent of permanently depriving that person of their use, benefit, or possession.

This measure is effective on July 17, 1997.

SENATE BILL NO. 80–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF THE ATTORNEY GENERAL)

JANUARY 29, 1997

Referred to Committee on Judiciary

SUMMARY–Makes person liable in treble damages for abuse, neglect or exploitation of person 60 years of age or older. (BDR 3-613)

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

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

AN ACT relating to civil actions; making a person who abuses, neglects or exploits a person who is 60 years of age or older liable in treble damages for any loss or damage sustained by the older person; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *If a person:*

1. Willfully and without justification inflicts pain, injury or mental anguish on a person who is at least 60 years of age;

2. Intentionally deprives a person who is at least 60 years of age of food, shelter, clothing or services that are necessary to maintain the physical or mental health of the person; or

3. Who has assumed legal responsibility or a contractual or voluntary obligation for the care of a person who is at least 60 years of age fails to provide him with food, shelter, clothing or services that are necessary to maintain the physical or mental health of the person,

and the older person suffers an injury or death as a result of such conduct, the person who caused the injury or death is liable in treble damages to the older person or the estate of the older person for all injury and damage sustained as a result thereof.

Sec. 3. *1. A person who obtains control over the money, assets or property of an older person who is at least 60 years of age:*

(a) Through deception, intimidation or wrongfully overcoming the free will of the older person; or

(b) By taking advantage of his physical, mental or emotional condition, with the intent of permanently depriving that older person of the ownership, use, benefit or possession of his money, assets or property, is liable in treble damages to the older person for any loss sustained as a result.

2. In determining whether the free will of an older person has been wrongfully overcome, the trier of fact shall consider, without limitation:

(a) The relationship of the older person to the person who caused the injury;

(b) Whether the older person and the person who caused the injury sought independent advice and if so, whether such advice was or should have been followed;

(c) Whether the older person was isolated from other people by the person who caused the injury; and

(d) The prudence of the gift or transaction in relation to the entire net worth of the older person.

3. For the purposes of this section:

(a) The normal influence that one family member has over another does not result in the free will of a person being wrongfully overcome.

(b) It is presumed that the free will of an older person was overcome if the older person is determined to have been mentally confused or incompetent at the time that he lost control over his money, assets or property.

Sec. 4. *1. If it is determined that a person:*

(a) Is liable for treble damages pursuant to section 2 or 3 of this act; and

(b) Is employed by another person who was responsible for his conduct at the time that he engaged in the wrongful conduct,

the employer is jointly and severally liable for the treble damages imposed pursuant to those sections.

2. If it is established by a preponderance of evidence that a person who is liable for treble damages pursuant to section 2 or 3 of this act acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who brought the lawsuit.

Sec. 5. This act becomes effective on July 1, 1997.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-ninth Session
February 12, 1997

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:20 a.m., on Wednesday, February 12, 1997, in Room 2143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Ernest E. Adler
Senator Dina Titus
Senator Valerie Wiener

GUEST LEGISLATORS PRESENT:

Assemblyman Brian E. Sandoval, Washoe County Assembly District, Number 25

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Maddie Fischer, Administrative Assistant
Kat Souders, Committee Secretary

OTHERS PRESENT:

Mary Henderson, Lobbyist, Public Affairs Director, Washoe County
Scott Jordan, District Judge, Family Division, Second Judicial District
Richard Gammick, District Attorney, Washoe County
John Yacenda, MPH, Ph.D., Lobbyist, Director, Great Basin Primary Care Association
Bruce Glover, Chief, Drivers' License Division, Department of Motor Vehicles and Public Safety
Stewart Bell, District Attorney, Clark County

Senator McGinness questioned if it would be considered more acceptable if it were discretionary.

Mr. Kunzi responded the problem was being "ordered" by the courts to collect these fines. He stated he felt this would cause interplay between the district attorneys' office and the courts.

A discussion ensued between Senator McGinness and Mr. Kunzi dealing with changing the language "the court order" to "the court may". They discussed dealing with the time frame and workload which would be involved with these collections.

Chairman James appointed a subcommittee consisting of Senator Adler (as chairman), Senator McGinness and Senator Wiener to deal with these issues. He commented S.B. 29 is a worthwhile bill to state and local governments. In addition, Brad Wilkinson, Committee Counsel, Legal Division, Legislative Counsel Bureau, raised a constitutional concern with the wording with respect to indigent persons.

The chairman closed the hearing on S.B. 29 and opened the hearing on S.B. 80.

SENATE BILL 80: Makes person liable in treble damages for abuse, neglect or exploitation of person 60 years of age or older. (BDR 3-613)

A letter (Exhibit D) was submitted to the committee as testimony from Frankie Sue Del Papa, Attorney General, outlining the subject of S.B. 80.

Bonnie Brand, Deputy Attorney General, Office of the Attorney General, spoke with regard to serious cases of elder abuse and financial exploitation which are very difficult to prove. She concurred by allowing recovery of attorney's fees the private bar would be encouraged to prosecute these cases when criminal prosecutors cannot. Attorneys would also be able to assist senior citizens when they are at a stage in their lives where they cannot help themselves.

Senator Porter suggested S.B. 80 could possibly be improved by adding the wording "vulnerable adults" after "60 years of age". He asked Ms. Brand for a definition of "vulnerable adult."

Ms. Brand responded with the definition in Nevada Revised Statute 599B.270.

"Disabled person" means a person who: (a) Has a physical or mental

> impairment that substantially limits one or more of the major life activities of the person; (b) Has a record of such an impairment; or (c) Is regarded as having such an impairment.

Senator Porter stated language needed to be broadened to include people with disabilities who needed this protection.

Ms. Brand commented on the criminal statute which doubly penalized persons who victimized someone because of age or disability.

Senator Wiener questioned the language "...and the older person suffers an injury or death as a result of such conduct, the person who caused the injury or death...". She inquired whether the bill should include language to cover "illness or prolonged illness" or if this issue would be covered by the word "injury."

A discussion ensued between Senator Wiener and Ms. Brand dealing with the need for wording to protect persons from the possibility of withholding treatment or medication.

Senator Porter referred to wording "...pay the attorney's fees and costs of the person who brought the lawsuit." The concern is the victim should be first to receive restitution.

Senator James requested to hear the definition of "disabled person" read a second time.

Ms. Brand commented it could be improved upon, but it read :

> "Disabled person" means a person who: (a) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; (b) Has a record of such an impairment; or (c) Is regarded as having such an impairment.

Chairman James questioned whether S.B. 80 covered willful conduct along with negligent care. He also questioned if this bill should cover persons who were responsible for the care of children. Ms. Brand answered these provisions were not specific but appeared to defer to laws which covered abused children.

Senator Washington voiced his concern with section 4, subsection 1, paragraph (b) with respect to false accusations.

Ms. Brand responded this would have to be handled in a lawsuit when it went to trial. A judge and jury would be making these decisions.

Senator Washington commented on the understanding it would go to trial but he felt once it went to trial it would be very difficult to disprove accusations. He was concerned with the need for retribution if it were a felonious charge.

Ms. Brand replied there were rules of civil procedure to prevent this and a person could cross-claim. She mentioned also Rule 11 of the Nevada Rules Of Civil Procedure against lawsuits brought without merit. There are safeguards to prevent wrongful accusations.

The chairman called for further testimony or questions on S.B. 80. He closed the hearing on S.B. 80.

Chairman James provided reports from subcommittees on S.B. 15 and S.B. 17 (Exhibit E).

SENATE BILL 15: Changes provisions governing decisions by state board of parole commissioners. (BDR 16-181)

SENATE BILL 17: Makes various changes relating to state board of parole commissioners. (BDR 16-180)

Senator Porter outlined the wording of S.B. 15 to be amended to clarify a member's vote on a case without being present at a hearing.

Senator Wiener questioned the wording of "review the file or a video tape...at a later date..." and the need to include "prior to the disposition of a parole decision."

Allison Combs, Committee Policy Analyst, Research Division, Legislative Counsel Bureau, commented on the member's vote being required to confirm a decision which would require they review all material.

Senator Wiener continued by stating it did not point out they must review this material prior to voting.

Senator Adler agreed this wording was also a concern of his.

Senator James stated the amendment was to be drafted to include commissioners review all material from a hearing prior to voting.

SENATOR ADLER MOVED TO AMEND AND DO PASS S.B. 15.

SENATOR WIENER SECONDED THE MOTION.

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

February 10, 1997

Senator Mark James, Chair
Judiciary Committee
Nevada State Senate
Carson City, Nevada

Dear Senator James and Committee Members:

The Office of the Attorney General is proposing three bills with regard to protecting the elderly. The first proposal comes up before your committee on Wednesday, February 12.

The subject of this bill is the creation of a civil cause of action for elder abuse and exploitation. Its purpose is to encourage private attorneys to take up the fight on behalf of elder victims. The law would allow attorneys to recover fees and costs and would also award triple damages to the victim upon successful conclusion of the suit. The burden of proof required in a civil action is not as high as that in a criminal trial, so it is hoped that this will help victims to recover for their losses.

The other two bills proposed by the Attorney General are for the establishment of a new crime called isolation of the elderly, and for mandatory P.O.S.T. training on elder abuse.

If you have any questions on any of these three proposals, please feel free to contact me. Our office would appreciate your consideration and support on these elder protective issues. Thank you.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: Bonnie Brand
Bonnie Brand
Deputy Attorney General

8
EXHIBIT D
(O)-3352C

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-ninth Session
February 18, 1997

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:40 a.m., on Tuesday, February 18, 1997, in Room 2143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Ernest E. Adler
Senator Dina Titus
Senator Valerie Wiener

STAFF MEMBERS PRESENT:

Don Williams, Committee Policy Analyst
Allison Combs, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Maddie Fischer, Administrative Assistant
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Madelyn Shipman, Lobbyist, Assistant District Attorney, Washoe County
Ben Graham, Lobbyist, Legislative Representative, Nevada District Attorneys' Association
Chris Owens, Chief Deputy District Attorney, Clark County
Paula Berkley, Lobbyist, Nevada State Board of Psychological Examiners
Stephanie Tyler, Lobbyist, Nevada State Psychological Association
Bobbie Gang, Lobbyist, National Association of Social Workers, Nevada Chapter
Robert Stuyvesant, Licensed Clinical Social Worker, Juvenile Sex Offender Task Force
Ian Curley, Juvenile Probation Officer II, Juvenile Probation Department, Carson City/Storey County
Arthur H. Brown III, Ph. D., Director of Impulse Disorder Unit, Benchmark Behavioral Health Systems, Salt Lake City, Utah
John C. Morrow, Chief Administrative Deputy, Washoe County Public Defender

provision on equipment. Senator James clarified that line 7, on page 2, was being omitted.

Senator McGinness asked Mr. Graham if the language states the D.A. "may" establish a program. Mr. Graham answered the language states the D.A. "shall" establish a program. Senator McGinness expressed concern that it would force every DA's office to establish a program. Mr. Graham indicated it would not mandate the magnitude of the program, it may be as minimal as a programmed sheet to show people how to balance their check book. Senator McGinness was comfortable with the explanation.

Senator James requested a motion on S.B. 68.

SENATOR PORTER MOVED TO AMEND AND DO PASS S.B. 68.

SENATOR WASHINGTON SECONDED THE MOTION.

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

*****

SENATE BILL 80: Makes person liable in treble damages for abuse, neglect or exploitation or person 60 years of age or older. (BDR 3-613)

Senator James explained the language "vulnerable adults" was to be added from Nevada Revised Statutes (NRS) 599B.270; and Senator Wiener had requested the language "suffers an illness or an injury." Ms. Combs indicated Senator Wiener had requested language be added to assure the victim received the restitution money before any mandated attorney's fees.

SENATOR PORTER MOVED TO AMEND AND DO PASS S.B. 80.

SENATOR WIENER SECONDED THE MOTION.

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

*****

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-ninth Session
March 3, 1997

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 9:15 a.m., on Monday, March 3, 1997, in Room 2143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Ernest E. Adler
Senator Dina Titus
Senator Valerie Wiener

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Maddie Fischer, Administrative Assistant
Kat Souders, Committee Secretary

OTHERS PRESENT:

Ben Graham, Lobbyist, Nevada District Attorneys' Association
Judy M. Jacoboni, Lobbyist, Mothers Against Drunk Driving (M.A.D.D.)
Glen Whorton, Chief, Classification and Planning, Department of Prisons
Marilynn Morrical, Chief, Bureau of Alcohol and Drug Abuse, Department of Employment, Training and Rehabilitation
May S. Shelton, Director, Department of Social Services, Washoe County
Georgia J. Rohrs, Acting Director, Office of the Court Administrator

The chairman opened the hearing with Senate Bill (S.B.) 118.

SENATE BILL 118: Changes penalties for certain crimes related to theft. (BDR 15-1038)

disseminators do not share in paramutual wagers, the result is a decline in the disseminators' revenue while their tax liability remains constant.

SENATOR PORTER MOVED TO REQUEST A BILL DRAFT.

SENATOR MCGINNESS SECONDED THE MOTION.

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

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The chairman explained last legislative session a bill came before the committee requiring a custodial parent receive a non-custodial parent's permission to move. The measure did not pass. A number of judges are requesting the committee consider this bill again.

Allison Combs, Committee Policy Analyst, Research Division, Legislative Counsel Bureau, commented in order for the statute to take effect the judges want to clarify that both parents must live within the vicinity of one another and to establish how far away the move must be for the statute to apply.

SENATOR PORTER MOVED TO REQUEST A BILL DRAFT.

SENATOR WASHINGTON SECONDED THE MOTION.

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

*****

The chairman then discussed S.B. 80, commenting the bill had received a vote of amend and do pass. He wanted the committee to review the prepared amendment.

SENATE BILL 80: Makes person liable in treble damages for abuse, neglect or exploitation of person 60 years of age or older. (BDR 3-613)

Senator James read the definition of "vulnerable person" as a person who has a mental or physical impairment which substantially limits one or more of the major-life activities of the person, and has a medical or psychological record of the impairment or is otherwise regarded as having an impairment. This includes but is not limited to a person who is mentally retarded, has a severe learning disability, suffers from a mental or emotional illness, or suffers from a terminal or catastrophic illness or injury.

Senator Titus questioned if the language is "and" a person is 60 years of age, or would it be "or" a person is 60 years of age.

Senator James responded the language will be "or" a person is 60 years of age. The amendment also makes sure the victim would be paid from any award first. The committee approved the amendment.

The chairman then turned to A.B. 78 and requested a motion.

SENATOR TITUS MOVED TO DO PASS A.B. 78.

SENATOR PORTER SECONDED THE MOTION.

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

Senator Rawson moved that the bill be referred to the Committee on Government Affairs and re-referred to the Committee on Finance.

Motion carried.

By the Committee on Legislative Affairs and Operations:

Senate Bill No. 189—An Act relating to state government; authorizing the legislative auditor to request payment from the department of administration for the cost of conducting a single audit when federal law requires the State of Nevada to conduct such an audit; authorizing the legislative auditor to submit a final audit report to the appropriate federal agency before presenting it to the audit subcommittee; and providing other matters properly relating thereto.

Senator Augustine moved that the bill be referred to the Committee on Legislative Affairs and Operations.

Motion carried.

By the Committee on Judiciary:

Senate Bill No. 190—An Act relating to children; authorizing a court to issue an ex parte order under certain circumstances for the physical custody of a minor child; authorizing a court in certain circumstances to waive the period of notice otherwise required before a person who is awarded physical custody of a minor child may obtain physical custody of that child; and providing other matters properly relating thereto.

Senator James moved that the bill be referred to the Committee on Judiciary.

Motion carried.

By the Committee on Judiciary:

Senate Bill No. 191—An Act relating to criminal procedure; revising provisions governing the transmittal of the report of a presentence investigation to the department of prisons; and providing other matters properly relating thereto.

Senator James moved that the bill be referred to the Committee on Judiciary.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 80.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 24.

Amend the bill as a whole by deleting sections 1 through 4, renumbering sec. 5 as sec. 8, and adding new sections designated sections 1 through 7, following the enacting clause, to read as follows:

"Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Older person" means a person who is at least 60 years of age.*

Sec. 4. *1. "Vulnerable person" means a person who:*

(a) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(b) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

2. The term includes, but is not limited to, a person who:

(a) Is mentally retarded;

(b) Has a severe learning disability;

(c) Suffers from a severe mental or emotional illness; or

(d) Suffers from a terminal or catastrophic illness or injury.

Sec. 5. *If a person:*

1. Willfully and without justification inflicts pain, injury or mental anguish on an older person or vulnerable person;

2. Intentionally deprives an older person or vulnerable person of food, shelter, clothing or services that are necessary to maintain the physical or mental health of the older person or vulnerable person; or

3. Who has assumed legal responsibility or a contractual or voluntary obligation for the care of an older person or vulnerable person fails to provide him with food, shelter, clothing or services that are necessary to maintain the physical or mental health of the older person or vulnerable person,

and the older person or vulnerable person suffers an illness, injury or death as a result of such wrongful conduct, the person who caused the illness, injury or death is liable in treble damages to the older person or vulnerable person, or the estate of the older person or vulnerable person, for all injury and damage sustained as a result of the wrongful conduct.

Sec. 6. *1. A person who obtains control over the money, assets or property of an older person or vulnerable person:*

(a) Through deception, intimidation or wrongfully overcoming the free will of the older person or vulnerable person; or

(b) By taking advantage of his physical, mental or emotional condition,

with the intent of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property, is liable in treble damages to the older person or vulnerable person for any loss sustained as a result of the wrongful conduct.

2. In determining whether the free will of an older person or vulnerable person has been wrongfully overcome, the trier of fact shall consider, without limitation:

(a) The relationship of the older person or vulnerable person to the person who caused the injury;

(b) Whether the older person or vulnerable person and the person who caused the injury sought independent advice and if so, whether such advice was or should have been followed;

(c) Whether the older person or vulnerable person was isolated from other people by the person who caused the injury; and

(d) The prudence of the gift or transaction in relation to the entire net worth of the older person or vulnerable person.

3. For the purposes of this section:

(a) The normal influence that one family member has over another does not result in the free will of a person being wrongfully overcome.

(b) It is presumed that the free will of an older person or vulnerable person was overcome if the older person or vulnerable person is determined to have been mentally confused or incompetent at the time that he lost control over his money, assets or property.

Sec. 7. *1. If it is determined that a person:*

(a) Is liable for treble damages pursuant to section 5 or 6 of this act; and

(b) Is employed by another person who was responsible for his conduct at the time that he engaged in the wrongful conduct,

the employer is jointly and severally liable for the treble damages imposed pursuant to those sections.

2. If it is established by a preponderance of evidence that a person who is liable for treble damages pursuant to section 5 or 6 of this act acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who brought the lawsuit. If attorney's fees and costs are awarded pursuant to this subsection, the money recovered from the person who is liable for treble damages must be distributed in the following order of priority:

(a) To the person who brought the lawsuit, until that person's actual damages and costs have been paid; and

(b) To the person who brought the lawsuit and to his attorney in equal amounts, until the remaining damages and the attorney's fees awarded pursuant to this subsection have been paid.".

Amend the title of the bill to read as follows:

"An Act relating to civil actions; making a person who abuses, neglects or exploits certain older persons or vulnerable persons liable in treble damages for any loss or damage sustained by the older person or vulnerable person; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"Summary—Makes person liable in treble damages for abuse, neglect or exploitation of certain older persons or vulnerable persons. (BDR 3-613)".

Senator James moved the adoption of the amendment.

Remarks by Senator James.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 78.

Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that Senate Bills Nos. 11, 68, 84, 98, 141, be taken from the General File and placed on General File for the next legislative day.

Remarks by Senator Raggio.

Motion carried.

SENATE BILL NO. 80–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF THE ATTORNEY GENERAL)

JANUARY 29, 1997

Referred to Committee on Judiciary

SUMMARY—Makes person liable in treble damages for abuse, neglect or exploitation of certain older persons or vulnerable persons. (BDR 3-613)

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

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

AN ACT relating to civil actions; making a person who abuses, neglects or exploits certain older persons or vulnerable persons liable in treble damages for any loss or damage sustained by the older person or vulnerable person; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Older person" means a person who is at least 60 years of age.*

Sec. 4. *1. "Vulnerable person" means a person who:*

(a) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(b) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

2. The term includes, but is not limited to, a person who:

(a) Is mentally retarded;

(b) Has a severe learning disability;

(c) Suffers from a severe mental or emotional illness; or

(d) Suffers from a terminal or catastrophic illness or injury.

Sec. 5. *If a person:*

1. Willfully and without justification inflicts pain, injury or mental anguish on an older person or vulnerable person;

2. Intentionally deprives an older person or vulnerable person of food, shelter, clothing or services that are necessary to maintain the physical or mental health of the older person or vulnerable person; or

3. Who has assumed legal responsibility or a contractual or voluntary obligation for the care of an older person or vulnerable person fails to provide him with food, shelter, clothing or services that are necessary to maintain the physical or mental health of the older person or vulnerable person,

and the older person or vulnerable person suffers an illness, injury or death as a result of such wrongful conduct, the person who caused the illness, injury or death is liable in treble damages to the older person or vulnerable person, or the estate of the older person or vulnerable person, for all injury and damage sustained as a result of the wrongful conduct.

Sec. 6. *1. A person who obtains control over the money, assets or property of an older person or vulnerable person:*

(a) Through deception, intimidation or wrongfully overcoming the free will of the older person or vulnerable person; or

(b) By taking advantage of his physical, mental or emotional condition,

with the intent of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property, is liable in treble damages to the older person or vulnerable person for any loss sustained as a result of the wrongful conduct.

2. In determining whether the free will of an older person or vulnerable person has been wrongfully overcome, the trier of fact shall consider, without limitation:

(a) The relationship of the older person or vulnerable person to the person who caused the injury;

(b) Whether the older person or vulnerable person and the person who caused the injury sought independent advice and if so, whether such advice was or should have been followed;

(c) Whether the older person or vulnerable person was isolated from other people by the person who caused the injury; and

(d) The prudence of the gift or transaction in relation to the entire net worth of the older person or vulnerable person.

3. For the purposes of this section:

(a) The normal influence that one family member has over another does not result in the free will of a person being wrongfully overcome.

(b) It is presumed that the free will of an older person or vulnerable person was overcome if the older person or vulnerable person is determined to have been mentally confused or incompetent at the time that he lost control over his money, assets or property.

Sec. 7. *1. If it is determined that a person:*

(a) Is liable for treble damages pursuant to section 5 or 6 of this act; and

(b) Is employed by another person who was responsible for his conduct at the time that he engaged in the wrongful conduct,

the employer is jointly and severally liable for the treble damages imposed pursuant to those sections.

2. If it is established by a preponderance of evidence that a person who is liable for treble damages pursuant to section 5 or 6 of this act acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who brought the lawsuit. If attorney's fees and costs are awarded pursuant to this subsection, the money recovered from the person who is liable for treble damages must be distributed in the following order of priority:

(a) To the person who brought the lawsuit, until that person's actual damages and costs have been paid; and

(b) To the person who brought the lawsuit and to his attorney in equal amounts, until the remaining damages and the attorney's fees awarded pursuant to this subsection have been paid.

Sec. 8. This act becomes effective on July 1, 1997.

(30)

Senate Bill No. 11 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Senate Bill No. 68.
Bill read third time.
Remarks by Senators Neal, Porter and Augustine.
Roll call on Senate Bill No. 68:
YEAS—21.
NAYS—None.

Senate Bill No. 68 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Senate Bill No. 80.
Bill read third time.
Roll call on Senate Bill No. 80:
YEAS—21.
NAYS—None.

Senate Bill No. 80 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Senate Bill No. 84.
Bill read third time.
Roll call on Senate Bill No. 84:
YEAS—19.
NAYS—Adler, Titus—2.

Senate Bill No. 84 having received a constitutional majority, Mr. President pro Tempore declared it passed.
Bill ordered transmitted to the Assembly.

Senate Bill No. 98.
Bill read third time.
Roll call on Senate Bill No. 98:
YEAS—21.
NAYS—None.

Senate Bill No. 98 having received a constitutional majority, Mr. President pro Tempore declared it passed.
Bill ordered transmitted to the Assembly.

Senate Bill No. 129.
Bill read third time.
Remarks by Senators Raggio, O'Donnell and James.
Senator Raggio moved that Senate Bill No. 129 be taken from the General File and placed on the Secretary's desk.
Remarks by Senator Raggio.
Motion carried.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-ninth Session
March 31, 1997

The Committee on Judiciary was called to order at 9:14 a.m., on Monday, March 31, 1997, Chairman Bernie Anderson presiding in Room 3142 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Barbara Buckley, Vice Chairman
Ms. Merle Berman
Mr. John Carpenter
Mr. Don Gustavson
Mr. Dario Herrera
Mrs. Ellen Koivisto
Mr. Mark Manendo
Mr. Dennis Nolan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Brian Sandoval
Mrs. Gene Segerblom

COMMITTEE MEMBERS ABSENT:

Mr. Clarence (Tom) Collins (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Marcia deBraga, Assembly District 35

STAFF MEMBERS PRESENT:

Risa L. Berger, Committee Counsel
Juliann K. Jenson, Senior Research Analyst
Joi Davis, Committee Secretary

OTHERS PRESENT:

Trip Barthel, Private Citizen
Patricia Morgan, Administrator, Better Business Bureau

David Howard, Legislative Affairs Director, Reno-Sparks Chamber of Commerce
Phil Bushard, Mediator, Washoe County Family Mediation Program
Bernie Romero, White Pine County Sheriff
Judy Jacoboni, Legislative Liaison, Mothers Against Drunk Driving
Les Berkson, Attorney at Law, and Private Mediator/Arbitrator
Anne Cathcart, Senior Deputy Attorney General
David Gibson, Legislative Representative, Clark County Public Defender's Office
Susan Mayes, Program Director of Opportuntiy School, Washoe County School District
Carlos Concha, Deputy Chief, Division of Parole and Probation

SENATE BILL 80 - **Makes person liable in treble damages for abuse, neglect or exploitation of certain older persons or vulnerable persons.**

Chairman Anderson advised the sponsor of S.B. 80, the Office of the Attorney General, requested the bill be rescheduled so a review could be made of the applicability of the bill to a recent Supreme Court decision.

ASSEMBLY BILL 244 - **Requires state agency that arrests person and places him in county jail to reimburse county for cost of housing person.**

Assemblywoman Marcia deBraga, Assembly District 35, primary sponsor, introduced Bernie Romero, Sheriff of White Pine County, who requested the legislative measure. She stated White Pine County and other counties were burdened by the cost of housing and maintaining individuals arrested by the Nevada Highway Patrol, Investigation Division, Department of Wildlife, and other state agencies. She indicated A.B. 244 allowed counties to charge state agencies for the costs associated with detention and maintenance of certain prisoners.

Sheriff Romero explained costs of maintaining county jails continued to escalate and the Nevada Revised Statutes needed to be amended to include provisions for reimbursement from state agencies to county jails for housing certain inmates. Sheriff Romero read from prepared testimony attached as Exhibit C. He pointed out the bill was supported by White Pine County Commissioners (pages 4-8, Exhibit C) and the Humboldt County Sheriff's office (pages 10-11, Exhibit C).

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-ninth Session
April 15, 1997

The Committee on Judiciary was called to order at 8:15 a.m., on Tuesday, April 15, 1997. Chairman Bernie Anderson presided in Room 3142 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Barbara Buckley, Vice Chairman
Mr. Clarence (Tom) Collins
Ms. Merle Berman
Mr. John Carpenter
Mr. Don Gustavson
Mr. Dario Herrera
Mrs. Ellen Koivisto
Mr. Mark Manendo
Mr. Dennis Nolan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Brian Sandoval
Mrs. Gene Segerblom

STAFF MEMBERS PRESENT:

Risa L. Berger, Committee Counsel
Juliann K. Jenson, Senior Research Analyst
Matthew Baker, Committee Secretary

OTHERS PRESENT:

John Slansky, Assistant Director, Operations, Nevada Department of Prisons
Carlos Concha, Deputy Chief, Parole and Probation Division, Department of Motor Vehicles and Public Safety
Pamela Roberts, Deputy Attorney General, Medicaid Fraud Control Unit

The floor assignment for A.B. 315 was given to Assemblywoman Ohrenschall.

Testimony commenced on S.B. 80.

SENATE BILL 80 - **Makes person liable in treble damages for abuse, neglect or exploitation of certain older persons or vulnerable persons.**

Pamela Roberts, Deputy Attorney General, Medicaid Fraud Control Unit, addressed the committee. She stated the purpose of the bill was to encourage private attorneys to take up the fight on the behalf of elder victims. The law would allow private attorneys to recover fees and costs and would award treble damages to the victim upon conclusion of the suit.

Ms. Roberts explained how difficult it was to prove criminal abuse due to the victim's inability to testify and some other evidentiary problems. She pointed out the burden of proof in a civil action was not as high as a criminal trial, so it was hoped S.B. 80 would help victims to recover their losses, both in terms of damages from abuse and neglect, but especially when financial exploitation occurred.

Since the bill was drafted, Ms. Roberts explained there had been a significant development in case law regarding employer liability for employee's actions.

She pointed out section 7, subsection b of the bill, which made the employer responsible for its employee's conduct, and jointly and civilly liable for treble damages imposed. She explained when that section was drafted it was based upon the existing case law and the interpretation of "respondeat superior," or "let the master answer," a term of the law that held an employer vicariously liable for its employee's acts.

Ms. Roberts explained the case law at the time S.B. 80 was drafted would have held the employer responsible for the acts of the employee if that action was during the course of the employee's employment. A recent case involving the State of Nevada and the Department of Human Resources Division of Mental Hygiene and Retardation, versus Julie Jimenez as guardian for John Doe, had called into question what the status of the law was regarding employer liability for employee's acts.

She commented the case had created a lack of clarity and some concern about what the original intent was, in terms of the scope of liability for S.B. 80. It was her suggestion, with the Chairman's consent, that perhaps the bill should

be put into a work session to analyze and further assess the implications of the Jimenez case, in terms of whether to keep the bill as drafted, in terms of that particular provision. It was her understanding there was a pending bill draft request to address the definition of scope of employment. Depending on its passage, it would help clarify whether S.B. 80 needed to be amended.

Assemblyman Sandoval questioned how far the bill went in helping to determine civil liability, especially as dealt with mistreatment in nursing homes and managed care facilities.

Ms. Roberts stated the potential of liability would include the detrimental conduct rumored to occur in nursing homes and managed care facilities. Most such conduct would fall under section 5, subsection 3 of the bill, dealing with certain obligations for care, making it necessary to maintain an older person's physical or mental health.

Assemblyman Carpenter questioned if the bill dealt strictly with civil actions. Ms. Roberts stated the bill dealt strictly with private civil causes of action a victim could pursue. In the event of the victim's death, the family could pursue a civil action on behalf of the victim.

Assemblyman Carpenter asked if there were criminal liabilities connected with the detrimental conduct and situations mentioned in section 5, subsection 3 of the bill. Ms. Roberts noted criminal liability already existed in statute under NRS 200.5092, which were the elder abuse statutes. She stated the reason there was a need to clarify and be specific about civil liability was that there was a difficulty in proving certain types of criminal cases against the perpetrators of fraud, abuse and neglect. The bill allowed some recourse for the family of those victimized to recover damages and losses.

Assemblyman Carpenter commented on the "mental anguish" language of the bill in section 5, subsection 1. He questioned what the actual definition of mental anguish was. Risa Berger, Committee Counsel, stated she would research the matter.

Assemblyman Carpenter questioned the language referring to the voluntary obligation of a person, spoken of in section 5, subsection 3 of the bill. He wondered how the language would apply to the "real world." Ms. Roberts noted the background of putting such language into the bill originated from the elder abuse and neglect statutes. It sought to only impose liability upon people who voluntarily assumed the obligation of taking care of an elderly person. She stated a family member volunteering to take on the obligation of taking care of a family member, for whom they were responsible and handling all their personal

affairs and having that person come into their home, was an example. Those family members had an obligation to provide care in a reasonably fair fashion, not neglecting the elderly person.

Chairman Anderson questioned if a volunteer program, such as "Meals on Wheels," that visited an elderly person and fed them and checked up on them periodically but then discontinued their help for a period of time and exposed that elderly person to potential neglect, would be held civilly liable.

Ms. Roberts explained in such a situation the volunteer organization should not be held liable because the context of the bill discussed someone who had assumed a legal responsibility, such as a nursing professional, or a contractual responsibility such as a long-term care facility, group home, family member or caregiver who had assumed responsibility for taking care of the person. It would not extend to a helpful neighbor or volunteer.

Ms. Berger informed the committee NRS 200.5092 defined terms for purposes of the elder abuse statutes. The term "mental anguish" was used under the definition of abuse of an older person and also in the definition of neglect of an older person.

Ms. Roberts said the bill's intent was not for someone to incur liability for acting in good faith in trying to help neighbors, family members and others they cared about. She suggested the bill might need to be clarified through a change in language or legislative intent.

Assemblyman Sandoval questioned if the bill would allow resentful siblings to sue one another, especially if they were not happy with how one or the other was taking care of their parents. Ms. Roberts explained the cause of civil action belonged to the victim—the older person. As long as the older person was alive, they would be the one who would be able to obtain counsel and sue on behalf of themselves, in terms of being a victim: intentional pain or injury, neglect of services, negligent failure to provide food and services. In terms of siblings suing one another, they could only do so if the elderly person died and there was a cause of action. If the elderly person was still alive and one of the siblings was appointed guardian, they would be able to litigate certain things on behalf of the older person.

Assemblyman Carpenter questioned how an elderly person would initiate a civil action if they were mentally incompetent. Ms. Roberts noted she could not fully answer that question and the subject should be addressed or looked into.

Ms. Roberts noted much of the discussion on the bill had focused on the neglect and abuse, in terms of physical harm, which might result to an older person. One of the additional intents of the bill was to bring others into the scope of liability. This dealt mainly with the financial exploitation which occurred with elderly people.

Bill Bradley, Representative, Nevada Trial Lawyer's Association (NTLA), addressed the committee. With him was Thomas Brennan, of the law firm of Durney and Brennan, located in Reno, Nevada.

Mr. Bradley stated Mr. Brennan was one of the attorneys who represented Julie Jimenez and her son, John Doe. Mr. Bradley wished for the committee to be able to get the actual facts underlying the case because it would be greatly discussed in the future. He felt Mr. Brennan could provide information that was not contained in any of the information the committee had received so far.

Chairman Anderson noted the committee had requested for a bill draft to come forward that would, in part, deal with the Jimenez case. The impact of the case on legislation, if any, would be open to interpretation.

Mr. Bradley was in favor of the underlying policy of protecting elderly people from abuse. The questions on volunteers was very viable. A volunteer who provided medical assistance may fall under the absolute immunity of a "good samaritan." It was something to look at and the committee's concerns were valid. He had concerns with section 7 of the bill which stipulated the distribution of fees and how the award of treble damage should be distributed. It was of concern because it broached the area of regulating fees between victims and their attorneys. There was a long standing opposition by the NTLA against such policies.

The effective date of the legislation was troubling. When a new statute was implemented that affected civil litigation, it was important to know if the act applied to only acts of abuse that occurred on or after a certain date or did they apply only after a lawsuit was filed after an effective date. The effective date of the legislation needed to be clarified further.

Chairman Anderson asked Mr. Bradley if he had an opinion about mental anguish as it applied. Was it always open to judicial discretion? Mr. Bradley replied he classified "mental anguish" as humiliation, embarrassment, depression, fear, anxiety, and concern. Those were all feelings encompassed by the term "mental anguish." He was unfamiliar with any statute which actually defined "mental anguish." When someone described such emotions as previously stated, it is up to a jury to decide if they constituted "mental anguish."

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-ninth Session
April 16, 1997

The Committee on Judiciary was called to order at 8:10 a.m., on Wednesday, April 16, 1997. Chairman Bernie Anderson presided in Room 3142 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Barbara Buckley, Vice Chairman
Mr. Clarence (Tom) Collins
Ms. Merle Berman
Mr. John Carpenter
Mr. Don Gustavson
Mr. Dario Herrera
Mrs. Ellen Koivisto
Mr. Mark Manendo
Mr. Dennis Nolan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Brian Sandoval
Mrs. Gene Segerblom

GUEST LEGISLATORS PRESENT:

Christina R. Guinchigliani, Assembly District No. 9
David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Donald O. Williams, Chief Principal Research Analyst
Risa L. Berger, Committee Counsel
Brenda Olson, Committee Secretary

OTHERS PRESENT:

David A. Boggs, General Manager, ATC/Vancom of Nevada

Vince J. Juaristi, Executive Assistant, Office of the Governor
Robert L. Auer, Deputy Attorney General, Office of the Attorney General
Robert L. Crowell, Attorney, Representing Farmers Insurance Company
Kurt Weinrich, P.E., Director, Regional Transportation Commission
Rich Shrader, Representing Nevada AAA
Ben Graham, Representing Nevada District Attorney's Association

Mr. Anderson presented a letter (Exhibit C) from Mary Liveratti, Deputy Administrator, Department of Human Resources, Division for Aging Services regarding S. B. 80 which was heard at a previous meeting and a memo (Exhibit D) from Donald Williams, Chief Principal Research Analyst regarding age discrimination in employment.

ASSEMBLY BILL 110 - Provides for defraying medical expenses of certain victims of crime.

Assemblywoman Christina Giunchigliani, District No. 9, primary sponsor of A.B. 110 stated the bill was being reheard at the request of Chairman Anderson. She said the bill was requested by the Nevada Domestic Violence Prevention Council to allow federal grants to be captured. Ms. Giunchigliani stated there were problems with the language and the way it had been drafted. She presented a document (Exhibit E) from the Office of the Attorney General which contained the corrected language.

Robert L. Auer, Deputy Attorney General, supported A.B. 110 and stated the Violence Against Women Act through the Domestic Violence Council had received over $2.5 million in grant money. Mr. Auer said in order to continue to receive those moneys certain assurances were made to the Federal Government. He stated one of the assurances was to certify the laws, policies and practices in connection with the prosecution of any misdemeanor or felony domestic violence offense. Mr. Auer said the victim should not bear the cost associated with the filing of the charges or the cost associated with the issuance or service of a warrant protection order or a witness subpoena. He said the intent of this legislation was to comply with the federal grant assurance requirement.

Vince Juaristi, Executive Assistant, Office of the Governor spoke on behalf to an amendment (Exhibit F) proposed by Governor Bob Miller. Mr. Juaristi stated the amendment called for four changes to the existing Nevada Revised Statutes (NRS); 1) allows for applications to be accepted from nonresidents of Nevada for compensation as victims of crime; 2) allows claims to be filed by those individuals who were live-ins of people who had abused them; 3) allows claims of Nevada residents who were outside the state, when victimized, to file a claim

JOB MILLER
Governor

STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
DIVISION FOR AGING SERVICES
340 N. 11th Street, Suite 203
Las Vegas, Nevada 89101
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April 15, 1997

Bernie Anderson, Chairman
Assembly Judiciary Committee
Nevada State Legislature
Carson City, NV 89710

Dear Assemblyman Anderson:

Betsy Kolkoski, Chief of Elder Rights, is unavailable to testify on SB-80. Attached for your information is the Division's impact statement on this bill.

Thank you for your consideration. If you have any questions, please call Carla Sloan, Administrator (486-3545) or me at 687-4210.

Sincerely,

Mary Liveratti

Mary Liveratti
Deputy Administrator

ML/bc

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Submitted to the Committee on Judiciary on 4-16-97
by Mary Liveratti, Human Resources
EXHIBIT C

DIVISION FOR AGING SERVICES
SB-80 IMPACT STATEMENT

The Division for Aging Services strongly supports the intent of SB-80. However, the Division recommends that the bill be amended to clarify that an employer would be responsible for the actions of an employee only in the event that the employer was negligent.

The Division employs social workers who provide case management services to older people and contracts with individuals and agencies who provide in-home services, such as personal care, homemaker, respite and companion.

The opportunity for abuse, neglect or exploitation by employees and caregivers is significant due to the frailty of the population we serve and to our special access to them. The Division would not like to place the state in the position of being liable for treble damages nor would it like to see others placed in such as position when it was not negligent nor culpable in any way.

Additionally, without requiring an employer to be culpable before liability attaches, this commendable and necessary bill may hinder the provision of services to our frail elderly. Employers may be reluctant to provide services when they have little control over such liability.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
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Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

Wm. GARY CREWS, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
BRENDA J. ERDOES, *Legislative Counsel* (702) 687-6830

MEMORANDUM

DATE: April 12, 1997

TO: Chairman and Members, Assembly Committee on Judiciary

FROM: Donald O. Williams, Chief Principal Research Analyst

SUBJECT: **Time Taken for Decisions by Nevada's Supreme Court**

On March 3, 1997, the Assembly Committee on Judiciary heard Assembly Bill 1, which revises the provisions governing appeals from final judgments in actions for age discrimination in employment. During the hearing, Assemblyman John Carpenter requested information on the time it takes for the Nevada Supreme Court to decide cases.

Enclosed is a document I obtained from Brian Burke, Program Analyst in the Fiscal Analysis Division of the Legislative Counsel Bureau. Mr. Burke advised me that the Assembly Committee on Ways and Means had requested this information from the Office of the Court Administrator (Administrative Office of the Courts). This material includes statistics on the average time that it takes for the Supreme Court to make decisions in civil and criminal cases. Based on a random selection of cases decided in 1996, the average number of days from judgment to decision is 436 days for civil appeals and 664 days for criminal appeals. Of the pending cases awaiting decision as of February 1, 1997, the majority of these cases have been on the court's docket for two or more years, and the oldest cases date back five years.

Please call on me if you have any questions or need additional information.

DOW/jp:W71063.03
Enc.

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Submitted to the Committee on Judiciary on 4-16-97
by Donald Williams, LCB
EXHIBIT D

QUESTION 2

Please provide statistics on the average time required to obtain Supreme Court decisions for civil and criminal cases.

RESPONSE

Case Category	Average Days From Judgment to Decision	Average Days On Supreme Court Docket
All Civil Appeals	436	355
Civil Appeals Non-Proper Person	477	392
Civil Appeals Proper Person	123	57
All Criminal Appeals	664	534
Criminal Appeals Non-Proper Person	738	676
Criminal Appeals Proper Person	421	176

Statistics based on a random sample of 100 cases decided by the supreme court in 1996.

Please see the attached chart showing the age of pending cases currently awaiting decision by the Supreme Court.

AGE OF PENDING CASES AWAITING DECISION: FEBRUARY 1, 1997

Year Docketed	All Cases		Submitted		Proper Person		Original Proceedings	
1992	4	<1%	4	<1%	0	0%	0	0%
1993	18	2%	13	2%	5	<1%	0	0%
1994	193	16%	122	23%	69	12%	2	3%
1995	413	35%	257	47%	142	25%	14	19%
1996	508	43%	147	27%	313	55%	48	65%
1997	46	4%	0	0%	36	6%	10	14%
Total:	1182		543		565		74	

- Approximately 2,200 cases are currently pending before the Nevada Supreme Court.
- Slightly more than half of these cases (53%) are awaiting decision by the court, and about half remain in the briefing process.

- About 53% of the 1,182 cases ready for decision have been on the court's docket for 2 or more years

- Almost 20% of the cases ready for decision are at least 3 years old.

- The oldest unfinished cases date back to 1992.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-ninth Session
May 30, 1997

The Committee on Judiciary was called to order at 8:15 a.m., on Friday, May 30, 1997. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Barbara Buckley, Vice Chairman
Mr. Clarence (Tom) Collins
Ms. Merle Berman
Mr. John Carpenter
Mr. Don Gustavson
Mr. Dario Herrera
Mrs. Ellen Koivisto
Mr. Mark Manendo
Mr. Dennis Nolan (attending via audio-conference)
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Brian Sandoval
Mrs. Gene Segerblom

STAFF MEMBERS PRESENT:

Donald O. Williams, Chief Principal Research Analyst
Risa L. Berger, Committee Counsel
Juliann K. Jenson, Senior Research Analyst
Joi Davis, Committee Secretary

OTHERS PRESENT:

Pam Roberts, Deputy Attorney General
Bonnie Brand, Deputy Attorney General
Captain Jim Nadeau, Washoe County Sheriff's Office

A.B. 242. Speaking to the amendment, Ms. Roberts indicated initially language was removed to "clean-up" the bill and not create an entirely separate crime. Therefore, the provisions defined in the bill should be moved to the definition section of NRS 200.5092.

Ms. Roberts further detailed the proposed amendment for the committee, keeping in mind that there was no intent to criminalize legitimate conduct by family members or other concerned persons attempting to protect an elderly person.

Chairman Anderson noted there were additional amendments brought forth on the bill, including pages 8-10 of Exhibit J, specifically, page 10 thereto proposed by David Gibson, Clark County Public Defender's Office, involving problems with sections 3, 4 and 5 of the bill.

Bonnie Brand, Deputy Attorney General, Human Resources Division, stressed the importance of the legislation and asked the committee to seriously consider the bill.

ASSEMBLY BILL 385 - **Provides specifically for civil liability of a person who abuses, neglects, or exploits older person.**

SENATE BILL 80 - **Makes person liable in treble damages for abuse, neglect, or exploitation of person 60 years of age or older.**

Pam Roberts, Deputy Attorney General provided the committee with a proposed blending of A.B. 385 and S.B. 80 (Exhibit L). Chairman Anderson informed the committee that he had requested Ms. Roberts prepare the conceptual document considering the blending of the two bills and hence the document was not derived from the Legislative Counsel Bureau. He added that Assemblywoman Vivian Freeman, primary sponsor of A.B. 385, was not in total concurrence with the proposed blending of the two bills.

Responding to Ms. Buckley, Ms. Roberts clarified there was a distinct difference between A.B. 242 and the proposed blending of S.B. 80 and A.B. 385 and the committee should recognize that. She stated A.B. 242 sought to criminalize the conduct of elder isolation. Whereby, S.B. 80 and A.B. 385 created a separate civil cause of action for the rights of the victimized elderly person to sue the offender and allowed for treble damages so lawyers had incentive to take these types of cases.

Chairman Anderson noted the committee would consider A.B. 242, A.B. 385, and S.B. 80 together at the next work session and asked the committee to review the materials provided on the bills.

There being no further business before the committee, the meeting was adjourned at 11:08 a.m.

RESPECTFULLY SUBMITTED:

Joi Davis, Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: June 17, 1997

PROPOSED BLENDING OF AB 385 INTO SB 80

Both AB 385 and SB 80 create a separate civil cause of action for victims of elder abuse, neglect or exploitation. SB 80 was introduced and passed on the Senate side with an amendment which includes "vulnerable" persons as well as persons sixty years of age and older. Vivian Freeman's bill, AB 385, contains language which tracks the definitions of abuse, neglect and exploitation located in NRS 200.5092 (NRS 200.5091 through NRS 200.5099 consist of Nevada's elder abuse statutes which impose certain mandatory reporting requirements regarding elder abuse as well as impose criminal penalties for persons who knowingly violate the reporting requirements or commit elder abuse, neglect or exploitation).

SB 80 uses additional definitional language not found in the criminal statutes and could be replaced by the more succinct language used in AB 385. SB 80 also includes treble damages and the mandatory award of attorney fees and costs if the elderly victim prevails in the civil trial. These were designed to be incentives for private attorneys to accept otherwise unattractive cases due to limited damage awards. Since elderly victims may be retired and have inherently shorter life expectancies, actual damages awards may be less for an elderly person even though the collateral consequences may be greater. Treble damages may also be appropriate for victims of elder exploitation because once the money and assets are gone, the elderly victim has limited potential to replace the lost money or assets. For example, if the prevailing plaintiff is awarded the $100,000 (life savings) and pursuant to a normal contingency fee arrangement, the attorneys receive between one-third to fifty percent of the award, the elderly victim is still not made whole.

Below is a blended version of both bills is proposed incorporating the best parts of both bills and addressing the following concerns:

1) whether the effective date applied to time of filing the lawsuit or the accrual of the cause of action;

2) the potential interference in the attorney-client fee arrangements;

3) whether a good samaritan friend, neighbor or family member could become civilly liable for "neglect" if he or she goes on vacation and something bad happens to the older person.

The blended bill does not contain any language in reaction to the State v. Jiminez case which imposed civil liability against the State of Nevada, the employer of a person who sexually assaulted a juvenile sex offender placed in a state facility.

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions of set forth in sections 2 to 9, inclusive of this act.

Submitted to the Committee on Judiciary on 5/30/97
by Pam Roberts, Office of the Attorney General

/.

EXHIBIT L

Sec. 2. *As used in sections 2 to 9, inclusive of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Older person" means a person who is at least 60 years of age.*

Sec. 4. *1. "Vulnerable person" means a person who:*
(a) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and
(b) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.
2. The term includes, but is not limited to, a person who:
(a) Is mentally retarded;
(b) Has a severe learning disability;
(c) Suffers from a severe mental or emotional illness; or
(d) Suffers from a terminal or catastrophic illness or injury.

Sec. 5. *"Abuse" means willful and unjustified:*
(1) Infliction of pain, injury or mental anguish; or
(2) Deprivation of food, shelter, clothing, or services that are necessary to maintain the physical or mental health of an older or vulnerable person.

Sec. 6. *"Exploitation" means any act taken by a person or any use of the power of attorney or guardianship of an older or vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older or vulnerable person with the intention of permanently depriving the older or vulnerable person of the use, benefit or possession of his money, assets or property. As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another member.*

Sec. 7. *"Neglect" means the failure of a person has assumed legal responsibility or a contractual obligation for caring for an older or vulnerable person [or who has voluntarily assumed responsibility for his care] to provide food, shelter, clothing or services necessary to maintain the physical or mental health of the older or vulnerable person.*

Sec. 8. *If an older or vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money, assets or property caused by exploitation, the person who causes the injury, death or loss is liable to the older or vulnerable person for treble damages.*

Sec. 9. *1. If it is determined that a person:*
(a) Is liable for treble damages pursuant to section 8 of this act; and
(b) Is employed by another person who is responsible for his conduct at the time he engaged in the wrongful conduct, the employer is jointly and severally liable for the treble damages imposed pursuant to section 8.

2.

2. If it is established by a preponderence of the evidence that a person who is liable for treble damages pursuant to section 8 of this act acted with recklessness, oppression, fraud or malice, the court shall/may order the person to pay the attorney fees and costs of the person who brought the lawsuit.

Sec. 10. This act becomes effective as to causes of action accruing after July 1, 1997.

MINUTES OF THE

ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-ninth Session

June 4, 1997

The Committee on Judiciary was called to order at 6:45 p.m., on Wednesday, June 4, 1997. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Barbara Buckley, Vice Chairman
Mr. Clarence (Tom) Collins
Ms. Merle Berman
Mr. John Carpenter
Mr. Don Gustavson
Mr. Dario Herrera
Mrs. Ellen Koivisto
Mr. Mark Manendo
Mr. Dennis Nolan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Brian Sandoval
Mrs. Gene Segerblom

GUEST LEGISLATORS PRESENT:

Joseph E. Dini, Jr., Assembly District No. 38

STAFF MEMBERS PRESENT:

Risa L. Berger, Committee Counsel
Juliann K. Jenson, Senior Research Analyst
Brenda Olson, Committee Secretary

Mr. Anderson addressed Mr. Collins' concerns with regard to section 5. He said isolation being the new definition which included Ms. Buckley's statement relative to someone preventing an older person from having contact with another person, with willful and malicious intent. Mr. Collins replied it would be easier for him not to vote on the motion than to try to solve the issue and would not support the bill.

Mr. Carpenter expressed similar concerns and would not support the motion.

Mr. Gustavson stated he would abstain on the motion and would not vote until the bill was rewritten and he had a chance to look at it.

Mr. Anderson stated it was the intention of the chair to review the amendments after it returned from the bill drafters.

Ms. Ohrenschall commented although she sympathized with the intent of the bill she still had the same concerns as other members of the committee and would not support the motion.

Mr. Nolan stated that sometimes the committee would nit pick at every single tiny remote possibility of something that could or should happen in face of situations and conditions which were currently happening and thought there was a need for this as elderly people were being abused. He said he had more confidence in the uniformed people who had to make these kinds of decisions and strongly supported the motion.

THE MOTION CARRIED WITH EIGHT VOTING YES, FIVE VOTING NO AND ONE ABSTENTION.

Mr. Anderson closed the hearing on A.B. 242 and opened the hearing on A.B. 385 and S.B. 80. He stated the intention of the chair was to blend A.B. 385 into S.B. 80.

ASSEMBLY BILL 385 - **Provides specifically for civil liability of persons who abuses, neglects or exploits older person.**

SENATE BILL 80 - **Makes person liable in treble damages for abuse, neglect or exploitation of certain older persons or vulnerable persons.**

Ms. Jenson proceeded to reference the work session document (Exhibit C) stating A.B. 385 was heard on May 8 and was part of the May 30 work session, but no action was taken. She said Assemblywoman Freeman introduced the bill and worked in conjunction with the Office of the Attorney General on this measure. S.B. 80 was a similar measure requested by the Office of the Attorney General. Ms. Jenson referred to (Exhibit E) and (Exhibit F) stating these would be the amendments focused on and the Office of the Attorney General would present them.

Mr. Anderson commented he had asked Ms. Roberts, after several discussions, to see how S.B. 80 could be improved by taking clear language out of A.B. 385 and combining the two bills resulting with a better piece of legislation.

Ms. Roberts stated the Attorney General's Office did not care which bill went forward. She said the document (Exhibit E) was an attempt to combine the best parts of both bills together. She wanted to make it clear that they were talking about a civil cause of action for elderly abuse, neglect or exploitation. Unfortunately when it came to abuse and neglect in financial exploitation, it was often difficult for law enforcement and the prosecution to prove the case beyond a reasonable doubt, and yet the elderly person was still left without the money or severely injured as a result of someone's bad conduct. Because of their age and their frailty they were not necessarily the most popular plaintiffs in terms of the private bar taking the case. She said they hoped to create incentives for the private bar of attorneys to take these cases. Ms. Roberts said the Attorney General's Office presented a letter regarding A.B. 385, (Exhibit G) and asked the committee to look at the second page of the letter which suggested an amendment to section 1 of the bill. The Attorney General's Office had clients that were concerned about the scope of liability for social workers and other employees who might do something unanticipated. They had done complete background checks, they had done everything they could to make sure they had the right person on the job and nevertheless they willfully abused, neglected or exploited one of the people that they were supposed to be helping. It would also apply to private employers who also had done a thorough background check and found nothing to indicate the person was an evil-doer. On page 2, section 1, subsection (b), language was included to read "the employer is liable for damages if he knew or had reason to know the person was likely to cause the injury, death or loss". In a previous hearing on the bill there was a case discussed which involved the state being held liable for the outrageous acts of an employee who had committed a crime but was never prosecuted to the point where he had committed the crime.

Mr. Anderson commented at the end of the letter (Exhibit G), page 2, section 1, subsection (b), reopened the tort question. Ms. Roberts replied the language

was requested by some state agencies. She said the committee needed to make a decision as to whether they wanted to address this now or plan to have it addressed in some other fashion. Mr. Anderson replied the committee had requested a bill draft relative to this and despite their best efforts, the response from the Attorney General's Office came too late. He stated unless he heard differently from his colleges, (Exhibit F) and (Exhibit G) would be rejected.

Ms. Roberts commented in rejecting those amendments it was consistent with the committee's commitment to provide the greatest possible protection to older and vulnerable persons.

Mr. Carpenter asked in (Exhibit E) under section 4, line 1, subsection (b), "has a medical or psychological record of the impairment or is otherwise regarded as having the impairment", what it meant. Ms. Brand replied there were people who had a medical record of a disability but then there are others who were born with a disability.

Mr. Carpenter referenced section 8 and asked how would someone figure the worth on the death of an older person. Would this affect the surviving heirs. Ms. Roberts responded a jury would decide what the actual damages were, the compensatory damages to the victim. If the abuse resulted in death they would have to assess the damages and there would be an argument as to what the actual damages would be. If they assessed in an amount of $100,000 then the statute would say not only did the victim or the estate of the victim receive $100,000 they would also receive $300,000.

Mr. Herrera agreed with the intent of the legislation, but was concerned about a person committing a crime against someone and it was evident that person was older, however when a crime was committed against someone whose mental disposition was not all there as outlined in section 4, subsection 2, (a) through (d), that person was unaware of the elderly person's severe mental illness or mental impairment. It would not be fair to hold that person to the same standard of liability without that person's knowledge. Ms. Brand replied the same kind of logic would apply if a person was murdered who had a heart condition or high blood pressure and the murderer did not know it they would still be guilty of murder.

Mr. Herrera stated he was not talking about guilt, he was talking about civil liability and was not sure if that same defense or lack of defense would apply. Ms. Brand stated what they were trying to address was the recovery for the victim rather than the wrongdoer. Ms. Roberts commented if she understood this correctly what Mr. Herrera was saying, we were imposing treble damages and was not just a straight forward compensation to the victim, therefore there

would be an additional damage that would be awarded and if the person did not have some level of knowledge that the person they were abusing, neglecting or taking financial advantage of was mentally impaired, there would be the risk of being subjected to the treble damages.

Mr. Herrera stated if language was included to the effect "knowingly causing damage to a person" he would feel more comfortable with S.B. 80.

Ms. Berger stated section 8 should be reworded with language to the effect of "if a person knowingly caused a vulnerable person to suffer". Language to that effect could be worked out. Ms. Roberts added there could be a provision which stated "a person causing injury, death or loss was liable to the older vulnerable person for treble damages, that the person had reason to know of the age and the status of the vulnerable person".

Ms. Buckley made a motion to delete section 9 of (Exhibit E) which dealt with the employers liability and would like it to be governed by existing law.

Mr. Sandoval commented in regards to section 8 of (Exhibit E) the committee needed to know that there was an existing statute pertaining to punitive damages and this was a dramatic departure from the policy that had been set in the punitive damage statute. There were caps on the punitive damages that would be awarded.

Ms. Buckley stated what the discussion would become was what was the difference between treble damages and punitive damages. Treble damages would be three times the amount of damages that were actually sustained. Punitive damages by contrast were damages assessed to punish, the only relation to the compensatory damages were the damages for the harm. It was based on a person's financial worth, the purpose was different and was more to punish.

Mr. Sandoval said there was a potential for a person to gain six times the amount of the award because you had treble damages and punitive damages on top of it. He said if he were the lawyer he would plead the statute and plead punitive as well.

Mr. Anderson asked Ms. Berger if they could craft the amendment in such a way as to allow for the opportunity of either use of this statute or the punitive damage statute but not both.

Ms. Roberts stated her understanding of punitive damages was not only the standard of clear and convincing evidence, but you would also have to plead that there was malicious, malice, oppression or fraud.

Ms. Berger noticed in other statutes it was stated a person could be ordered to pay punitive damages to a person in an amount not to exceed. She said perhaps it would resolve the problem if it was called "punitive damages in the amount not to exceed three times the amount of the underlying award".

Mr. Sandoval commented he was not trying to confuse people but it was one thing to create an incentive for a plaintiff's lawyer to take these cases but another thing to create a plaintiff's lawyers paradise.

Mr. Anderson stated to Mr. Sandoval that the committee was trying to resolve one single issue by setting a standard by which the elderly would be able to gain some level of protection.

Mr. Herrera stated the intent of the legislation was to increase the actual damages without necessarily having anything to do with the punitive damages. The statute regarding treble damages would not create a windfall for the plaintiff but would be consistent with the intent behind the legislation.

Ben Graham, representing the Nevada District Attorney's Association said it was his understanding that punitive damages was smart money. The treble damages was a legislative intent and mandate that if a person had been damaged one dollar they would be directed to receive three or four dollars regardless if the person was a multimillion dollar industry or a mom and pop operation. There were two different types of policies and two different types of standards. Mr. Graham stated it appeared that the compensatory would require one burden of proof and to get punitive damages would probably require a higher level of proof and a higher standard of offensiveness.

Mr. Herrera said he understood Mr. Sandoval's argument, but the policy behind treble damages was for this legislature to show how serious a crime against these types of people was. If we were just dealing with actual and punitive, we were not sending a clear statement of intent.

Mr. Anderson commented in order to get a clear message he would ask each member of the committee, who expressed concerns to restate their positions.

Ms. Ohrenschall said they should leave the treble portion in section 8, (Exhibit E) and add a statement to the effect that the claim or treble damages would be the

exclusive claim in the action and no claim for punitive damages would be allowed.

Mr. Carpenter commented he had concerns in regards to awarding treble damages plus the possibility of punitive damages. We should look at the situation of who would have to pay all the damages.

Ms. Buckley had two observations, 1) it was ironic because no one was bringing these cases now, no one could find attorneys to bring these cases. The people were getting ripped off and they're done. The idea was that if they said your actual damages, meaning the person got their $5,000 life savings ripped off, by treble they could get $15,000. If the person did it and it could proved by clear and convincing evidence that it was done with malice, and you could prove they had wealth, then you might receive an additional penalty, 2) the court and its jurisdiction had the power to downgrade the damages if they felt the verdict was out of line.

Mr. Sandoval said he did not disagree with the policy they were trying to accomplish, but there was a larger picture and by passing this in the present form it would be open season on the nursing homes. Nursing homes would have insurance policies and the plaintiff's lawyer would have the wedge of threatening a six times damage award and it would be a tremendous negotiating advantage in the civil litigation area. Once a plaintiff's lawyer became aware that this law was available, there would be television advertising soliciting these kinds of cases, because there would be a tremendous potential to recover large verdicts against insurance companies.

Mrs. Segerblom suggested to just say vulnerable person for damages and let the attorney work it out.

Ms. Buckley requested to amend her previous motion.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS EXHIBIT E WITH THE AMENDMENTS TO BE TO MODIFY SECTION 6, AND SECTION 8 TO HAVE KNOWLEDGE OF THE VULNERABLE SITUATION, AND SECTION 9 DELETING THE PARAGRAPH REFERENCING EMPLOYER LIABILITY, ADDITIONALLY CHANGING TREBLE DAMAGES TO ALLOW TWICE THE RECOVERY AND TO BECOME EFFECTIVE UPON APPROVAL.

ASSEMBLYMAN HERRERA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY BY THOSE PRESENT.

A representative from the American Association of Retired Persons supported the intent of the bill.

Proposed Amendment

The Office of the Attorney General recommended changes to the measure, and reported that Assemblywoman Freeman was amenable to such alterations. **(See letter dated May 8, 1997, to Chairman Anderson from the Office of the Attorney General; RE: Assembly Bill 385 - Elder Abuse.)**

■ **SENATE BILL 80** makes person liable in treble damages for abuse, neglect, or exploitation of person 60 years of age or older. (BDR 3-613 was requested by the Senate Committee on Judiciary on behalf of the Office of the Attorney General.) Heard in committee on April 15 and was part of the May 30 work session, but no action was taken.

Background Information

A representative of the Office of the Attorney General testified that this measure would create a cause of civil action for elder abuse. She explained that it is difficult to prove elder abuse under existing law, and the enactment of this measure would allow victims, or victim's family in cases of death, to file a civil suit in such cases.

A representative of the Nevada Trial Lawyers Association questioned how the measure would apply to volunteers. He also inquired about attorney fees, as outlined in Section 7, and the rights of individuals to contract.

Proposed Amendment

Because the bill is comparable to A.B. 385 (described above), the Office of the Attorney General has proposed to merge the two measures. **(See "Proposed Blending of A.B. 385 into S.B. 80," prepared by the Office of the Attorney General.)**

AJUD.WS15

PROPOSED BLENDING OF AB 385 INTO SB 80

Both AB 385 and SB 80 create a separate civil cause of action for victims of elder abuse, neglect or exploitation. SB 80 was introduced and passed on the Senate side with an amendment which includes "vulnerable" persons as well as persons sixty years of age and older. Vivian Freeman's bill, AB 385, contains language which tracks the definitions of abuse, neglect and exploitation located in NRS 200.5092 (NRS 200.5091 through NRS 200.5099 consist of Nevada's elder abuse statutes which impose certain mandatory reporting requirements regarding elder abuse as well as impose criminal penalties for persons who knowingly violate the reporting requirements or commit elder abuse, neglect or exploitation).

SB 80 uses additional definitional language not found in the criminal statutes and could be replaced by the more succinct language used in AB 385. SB 80 also includes treble damages and the mandatory award of attorney fees and costs if the elderly victim prevails in the civil trial. These were designed to be incentives for private attorneys to accept otherwise unattractive cases due to limited damage awards. Since elderly victims may be retired and have inherently shorter life expectancies, actual damages awards may be less for an elderly person even though the collateral consequences may be greater. Treble damages may also be appropriate for victims of elder exploitation because once the money and assets are gone, the elderly victim has limited potential to replace the lost money or assets. For example, if the prevailing plaintiff is awarded the $100,000 (life savings) and pursuant to a normal contingency fee arrangement, the attorneys receive between one-third to fifty percent of the award, the elderly victim is still not made whole.

Below is a blended version of both bills is proposed incorporating the best parts of both bills and addressing the following concerns:

1) whether the effective date applied to time of filing the lawsuit or the accrual of the cause of action;

2) the potential interference in the attorney-client fee arrangements;

3) whether a good samaritan friend, neighbor or family member could become civilly liable for "neglect" if he or she goes on vacation and something bad happens to the older person.

The blended bill does not contain any language in reaction to the State v. Jiminez case which imposed civil liability against the State of Nevada, the employer of a person who sexually assaulted a juvenile sex offender placed in a state facility.

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions of set forth in sections 2 to 9, inclusive of this act.

Sec. 2. As used in sections 2 to 9, inclusive of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7 of this act have the meanings ascribed to them in those sections.

Sec. 3. "Older person" means a person who is at least 60 years of age.

Sec. 4. 1. "Vulnerable person" means a person who:

(a) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(b) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

2. The term includes, but is not limited to, a person who:

(a) Is mentally retarded;

(b) Has a severe learning disability;

(c) Suffers from a severe mental or emotional illness; or

(d) Suffers from a terminal or catastrophic illness or injury.

Sec. 5. "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing, or services that are necessary to maintain the physical or mental health of an older or vulnerable person.

Sec. 6. "Exploitation" means any act taken by a person or any use of the power of attorney or guardianship of an older or vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older or vulnerable person with the intention of permanently depriving the older or vulnerable person of the use, benefit or possession of his money, assets or property. As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another member.

Sec. 7. "Neglect" means the failure of a person has assumed legal responsibility or a contractual obligation for caring for an older or vulnerable person [or who has voluntarily assumed responsibility for his care] to provide food, shelter, clothing or services necessary to maintain the physical or mental health of the older or vulnerable person.

Sec. 8. If an older or vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money, assets or property caused by exploitation, the person who causes the injury, death or loss is liable to the older or vulnerable person for treble damages.

Sec. 9. 1. If it is determined that a person:

(a) Is liable for treble damages pursuant to section 8 of this act; and

(b) Is employed by another person who is responsible for his conduct at the time he engaged in the wrongful conduct, the employer is jointly and severally liable for the treble damages imposed pursuant to section 8.

2. If it is established by a preponderence of the evidence that a person who is liable for treble damages pursuant to section 3 of this act acted with recklessness, oppression, fraud or malice, the court shall/may order the person to pay the attorney fees and costs of the person who brought the lawsuit.

Sec. 10. This act becomes effective as to causes of action accruing after July 1, 1997.

Clark County

AB 385

Suggested Amendment to Section 1. Subsection 1. (b)

(b) [If the person who causes the injury, death or loss is employed by another person who is responsible for conduct of that person, the person so responsible is liable to the older person for damages.] ***If the person who causes the injury, death or loss to the older person is employed by another person who is contractually responsible, for the express purpose of providing food, shelter, clothing or services that are necessary to maintain the physical or mental health of the older person, that person who is legally or contractually responsible for providing food shelter clothing or services that are necessary to maintain the physical or mental health of the older person is liable to the older person for damages.***

Section (b) seems to hold **any** employer, of a person who may injure an older person, liable for the injuries to an older person whether or not the employer has any knowledge of or connection whatsoever with the care of the injured older person. It appears that what the bill is intended to do is to hold people responsible, who care for older people, but who do so in a careless manner, and who do not take any great care in how they choose, train or oversee their employees, monitor patients conditions or inspect the condition of their institution. The above change would make a reasonable connection between an employee and an employer and give rise to agency liability that is foreseeable.

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Submitted to the Committee on Judiciary on 6-4-97

by Clark County

EXHIBIT F

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

May 8, 1997

Bernie Anderson, Chairman
Assembly Judiciary Committee
Nevada State Legislature
Carson City, Nevada

RE: Assembly Bill 385 - Elder Abuse

Dear Chairman Anderson and Members of the Committee:

Assembly Bill 385, introduced by Assemblywoman Vivian Freeman, is similar in nature to Senate Bill 80, which this committee has been considering over the past several weeks.

Upon review by our staff, it appears that AB 385 is a more clearly drafted bill, and contains most of the provisions which the Attorney General's office considers important to enact. In addition, AB 385 has received the initial support of most of the members of the Assembly. Assemblywoman Freeman has indicated she would be receptive to including several amendments to AB 385 which our staff has recommended. For these reasons, AB 385 would appear to be the better vehicle for elder abuse legislation. Chairman Anderson has graciously agreed to assist in this process.

We recommend the following changes be considered in Assembly Bill 385:

1. Insert the word "treble" before the word "damages" on line 7 and line 10 on page 1 of the bill;

2. Add the phrase "jointly and severally" before the word "liable" on line 10, page 1 of the bill;

3. Add appropriate language to state that the bill applies to causes of action which arise from the effective date of the bill;

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Submitted to the Committee on Judiciary on 6-4-97
by OFFICE OF THE ATTORNEY GENERAL

EXHIBIT G

4. Amend section 1 of the bill to read as follows:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If an older person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation:

(a) The person who causes the injury, death or loss is liable to the older person for damages; or

(b) If the person who causes the injury, death or loss is employed by another person, the employer is liable for damages if he knew or had reason to know the person was likely to cause the injury, death or loss [who is responsible for the conduct of that person, the person so responsible is liable to the older person for damages].

We will be pleased to work with the Committee on this matter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Anne B. Cathcart
Senior Deputy Attorney General

ABC:

Assembly Bill No. 526.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 522.

Amend section 1, page 1, by deleting line 8 and inserting: "water users [.] *in order to charge such users.*".

Amend section 1, page 2, by deleting lines 10 through 12 and inserting: "(b) The written consent is recorded with the county recorder of the county in which the property is".

Amend section 1, page 2, line 16, by deleting "5." and inserting "5.]".

Amend section 1, page 2, line 18, by deleting "6." and inserting "[6.] *5.*".

Assemblyman Bache moved the adoption of the amendment.

Remarks by Assemblyman Bache.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 528.

Bill read second time and ordered to third reading.

Assembly Bill No. 550.

Bill read second time and ordered to third reading.

Assembly Bill No. 556.

Bill read second time and ordered to third reading.

Senate Bill No. 44.

Bill read second time.

The following amendment was proposed by Assemblyman Bache:

Amendment No. 637.

Amend sec. 9, page 6, line 28, by deleting: "*Tuesday in March*" and inserting: "*Monday in May*".

Amend sec. 9, page 6, lines 29 and 30, by deleting: "*first Tuesday in June.*" and inserting: "*third Monday in May.*".

Assemblyman Bache moved the adoption of the amendment.

Remarks by Assemblyman Bache.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 80.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 563.

Amend the bill as a whole by deleting sections 1 through 8 and adding new sections designated sections 1 and 2, following the enacting clause, to read as follows:

"Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, if an older person or a

vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if he did not know or have reason to know that the harmed person was a vulnerable person.

4. For the purposes of this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person;

(b) "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another;

(c) "Neglect" means the failure of:

(1) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or

(2) An older person or a vulnerable person to provide for his own needs because of inability to do so;

(d) "Older person" means a person who is 60 years of age or older; and

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

The term includes, without limitation, a person who is mentally retarded, a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury.

Sec. 2. This act becomes effective upon passage and approval.".

Amend the title of the bill, second and third lines, by deleting: "in treble

damages for any loss or damage sustained" and inserting: "for two times the actual damages incurred".

Amend the summary of the bill, first line, by deleting: "in treble damages" and inserting: "for two times the actual damages incurred".

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 245.

Bill read second time and ordered to third reading.

Senate Bill No. 330.

Bill read second time and ordered to third reading.

Senate Bill No. 338.

Bill read second time and ordered to third reading.

Senate Bill No. 364.

Bill read second time and ordered to third reading.

Senate Bill No. 380.

Bill read second time and ordered to third reading.

Mr. Speaker announced that if there were no objections, the Assembly would recess subject to the call of the Chair.

Motion carried.

Assembly in recess at 12:20 p.m.

ASSEMBLY IN SESSION

At 12:29 p.m.

Mr. Speaker presiding.

Quorum present.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Health and Human Services:

Assembly Bill No. 599—An Act relating to cancer; revising provisions governing the system for the reporting of information on cancer; and providing other matters properly relating thereto.

Assemblywoman Freeman moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By the Committee on Health and Human Services:

Assembly Bill No. 600—An Act relating to county hospital districts; providing in skeleton form for the establishment of a hospital district that includes territory within more than one county; and providing other matters properly relating thereto.

Assemblywoman Freeman moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

SENATE BILL NO. 80–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF THE ATTORNEY GENERAL)

JANUARY 29, 1997

Referred to Committee on Judiciary

SUMMARY—Makes person liable for two times the actual damages incurred for abuse, neglect or exploitation of certain older persons or vulnerable persons. (BDR 3-613)

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

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

AN ACT relating to civil actions; making a person who abuses, neglects or exploits certain older persons or vulnerable persons liable for two times the actual damages incurred by the older person or vulnerable person; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if he did not know or have reason to know that the harmed person was a vulnerable person.

4. For the purposes of this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person;

(b) "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another;

(c) "Neglect" means the failure of:

(1) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or

(2) An older person or a vulnerable person to provide for his own needs because of inability to do so;

(d) "Older person" means a person who is 60 years of age or older; and

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

The term includes, without limitation, a person who is mentally retarded, a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury.

Sec. 2. This act becomes effective upon passage and approval.

Senate Bill No. 44 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 80.

Bill read third time.

Remarks by Assemblymen Anderson and Freeman.

Roll call on Senate Bill No. 80:

YEAS—42.

NAYS—None.

Senate Bill No. 80 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 245.

Bill read third time.

Remarks by Assemblyman Price.

Roll call on Senate Bill No. 245:

YEAS—42.

NAYS—None.

Senate Bill No. 245 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 338.

Bill read third time.

Remarks by Assemblyman Arberry.

Roll call on Senate Bill No. 338:

YEAS—42.

NAYS—None.

Senate Bill No. 338 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 380.

Bill read third time.

Remarks by Assemblywoman Giunchigliani.

Roll call on Senate Bill No. 380:

YEAS—42.

NAYS—None.

Senate Bill No. 380 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

By Assemblymen Williams, Cegavske, Gustavson, Collins, Chowning, Koivisto, Manendo, Ohrenschall, Von Tobel, Hickey and de Braga:

Assembly Concurrent Resolution No. 44—Directing the Legislative Com-

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-ninth Session
June 18, 1997

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:30 a.m., on Wednesday, June 18, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Ernest E. Adler
Senator Valerie Wiener

COMMITTEE MEMBERS ABSENT:

Senator Jon C. Porter, Vice Chairman (Excused)
Senator Dina Titus (Excused)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Maddie Fischer, Administrative Assistant
Randall C. Robison, Committee Secretary

OTHERS PRESENT:

Ben Graham, Lobbyist, Nevada District Attorneys' Association
Leonard I. Gang, General Counsel, Commission on Judicial Discipline
I.R. (Renny) Ashleman, II, Lobbyist, Nevada Health Care Association

Chairman James opened the hearing on Senate Bill (S.B.) 281.

SENATE BILL 281: Makes sexual penetration of body of murder victim circumstance aggravating murder. (BDR 15-1508)

Hearing no further discussion, Chairman James accepted a motion to amend and do pass A.B. 344.

SENATOR ADLER MOVED TO AMEND AND DO PASS A.B. 344.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS PORTER AND TITUS WERE ABSENT FOR THE VOTE.)

*****

ASSEMBLY BILL 386: Makes various changes concerning electronic communications. (BDR 14-173)

Senator Adler explained amendments to the bill by referring to Exhibit F, noting the purpose of the bill was to increase efficiency in the system.

SENATOR ADLER MOVED TO AMEND AND DO PASS A.B. 386.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS PORTER AND TITUS WERE ABSENT FOR THE VOTE.)

*****

SENATE BILL 80: Makes person liable for two times the actual damages incurred for abuse, neglect or exploitation of certain older persons or vulnerable persons. (BDR 3-613)

I.R. (Renny) Ashleman, II, Lobbyist, Nevada Health Care Association, explained proposed amendments outlined in Exhibit G. Referring specifically to the second reprint of the bill, page 2, line 14, he asked whether the word "fails" carries the connotation of fault, which would have unintended negative consequences in cases such as a do-not-resuscitate order. Senator Adler remarked he had a bigger problem with the bill as amended by the Assembly because the voluntary care responsibility provision applies to about 75 percent of homeless shelters in Nevada, making them potentially liable for double damages. Mr. Ashleman agreed, commenting the bill presented a "minefield" of potential unintentional

liability. Chairman James suggested the committee not concur in the amendments to S.B. 80 by the Assembly, and send the bill to conference committee to work through these issues.

SENATOR ADLER MOVED NOT TO CONCUR IN ASSEMBLY AMENDMENT NO. 563 TO S.B. 80.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS PORTER AND TITUS WERE ABSENT FOR THE VOTE.)

*****

ASSEMBLY BILL 336: Make various changes to provisions concerning exhibition, sale or rental of obscene material to minors. (BDR 15-1031)

Chairman James noted this was the biggest example of much ado about nothing in this entire legislative session. The bill was amended by this committee in order to apply to video and computer discs which can be viewed on a television or computer screen, making such discs accountable to the same harmful-to-minors standard. During its time in the Assembly, the scope of the amendment was "blown completely out of proportion" and they refused to concur, requesting this committee to recede from its amendment. Chairman James emphasized in amending A.B. 336, this committee attempted to accommodate the Assemblyman sponsoring the bill by addressing an overlooked issue which came up during testimony in this committee from Councilman Adamsen, Mayor Pro Tempore, City of Las Vegas. Chairman James suggested it be taken to conference committee, remarking he would be notably disappointed to see Assemblyman Lee lose a good bill which addresses an important issue.

SENATOR ADLER MOVED NOT TO RECEDE ON A.B. 336.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS PORTER AND TITUS WERE ABSENT FOR THE VOTE.)

*****

JUN 12 1997

A SB80 R1 563

1997 REGULAR SESSION (69th)

ASSEMBLY ACTION		SENATE ACTION		
Adopted	☐	Adopted	☐	Assembly Amendment to Senate Bill No. 80 First Reprint BDR 3-613 Proposed by Committee on Judiciary
Lost	☐	Lost	☐	
Date:		Date:		
Initial:		Initial:		
Concurred In	☐	Concurred In	☐	
Not Concurred In	☐	Not Concurred In	☐	
Date:		Date:		
Initial:		Initial:		

Amendment No. 563

Amend the bill as a whole by deleting sections 1 through 8 and adding new sections designated sections 1 and 2, following the enacting clause, to read as follows:

"**Section 1.** Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable

Drafted by: LH:ddr

Date: 6/7/97

S.B. No. 80—Makes person liable for two times the actual damages incurred for abuse, neglect or exploitation of certain older persons or vulnerable persons.

for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if he did not know or have reason to know that the harmed person was a vulnerable person.

4. For the purposes of this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person;

(b) "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another;

(c) "Neglect" means the failure of:

(1) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or

(2) An older person or a vulnerable person to provide for his own needs because of inability to do so;

(d) "Older person" means a person who is 60 years of age or older; and

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

FLUSH *The term includes, without limitation, a person who is mentally retarded, a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury.*

Sec. 2. This act becomes effective upon passage and approval.".

3

Amend the title of the bill, second and third lines, by deleting:

"in treble damages for any loss or damage sustained" and inserting:

"for two times the actual damages incurred".

Amend the summary of the bill, first line, by deleting:

"in treble damages" and inserting:

"for two times the actual damages incurred".

employee of the institution in which the prisoner is confined that are performed to carry out the necessary duties of such a person or employee.

Sec. 3. The amendatory provisions of section 2 of this act do not apply to offenses that are committed before October 1, 1997.".

Amend the title of the bill to read as follows:

"An Act relating to offenders; requiring the director of the department of prisons to adopt regulations establishing a program to prevent an offender from possessing or receiving certain publications; prohibiting sexual conduct between an offender and another person under certain circumstances; and providing other matters properly relating thereto.".

Amend the summary of the bill by deleting the first line and inserting:

"Summary—Revises provisions relating to offenders in custody or".

Senator James moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 113.

Remarks by Senator James.

Motion carried.

Bill ordered transmitted to the Assembly.

Senate Bill No. 148.

The following Assembly amendment was read:

Amendment No. 985.

Amend the bill as a whole by deleting sections 1 through 3 and renumbering sections 4 through 7 as sections 1 through 4.

Amend the title of the bill to read as follows:

"An Act relating to the department of human resources; revising provisions governing the issuance of certain subpoenas by the department of human resources; prohibiting the department from collecting or maintaining certain information; repealing the requirement that the department disseminate a listing of hospitals and their charges for services; and providing other matters properly relating thereto.".

Amend the summary of the bill by deleting the second line and inserting:

"resources and revises provisions governing collection and".

Senator O'Connell moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 148.

Remarks by Senator O'Connell.

Motion carried.

Bill ordered transmitted to the Assembly.

REPORTS OF CONFERENCE COMMITTEES

Mr. President:

The first Committee on Conference concerning Senate Bill No. 80, consisting of the undersigned members, has met, and reports that:

It has agreed to recommend that the amendment of the Assembly be concurred in. It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 5, which is attached to and hereby made a part of this report.

Conference Amendment.

Amend section 1, page 2, line 4, by deleting "*person;*" and inserting "*person.*".

Amend section 1, page 2, line 13, by deleting "*another;*" and inserting "*another.*".

Amend section 1, page 2, by deleting lines 14 through 21 and inserting:

"(c) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person, or who has voluntarily assumed responsibility for his care, to provide food, shelter, clothing or services within the scope of his responsibility or obligation, which are necessary to maintain the physical or mental health of the older person or vulnerable person. For the purposes of this paragraph, a person voluntarily assumes responsibility to provide care for an older or vulnerable person only to the extent that he has expressly acknowledged his responsibility to provide such care.".

Amend section 1, page 2, line 22, by deleting "*older; and*" and inserting "*older.*".

MIKE MCGINNESS	ELLEN KOIVISTO
DINA TITUS	DARIO HERRERA
MAURICE E. WASHINGTON	BRIAN SANDOVAL
Senate Committee on Conference	*Assembly Committee on Conference*

Senator McGinness moved to adopt the report of the first Committee on Conference concerning Senate Bill No. 80.

Remarks by Senator McGinness.

Motion carried.

Mr. President:

The first Committee on Conference concerning Senate Bill No. 258, consisting of the undersigned members, has met, and reports that:

It has agreed to recommend that the amendment of the Assembly be concurred in. It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 9, which is attached to and hereby made a part of this report.

Conference Amendment.

Amend section 1, page 1, line 15, by deleting "certified [record]" and inserting: "[certified record] *verified*".

Amend sec. 2, page 2, line 34, by deleting "*certified*" and inserting "*verified*".

MAURICE WASHINGTON	CLARENCE W. COLLINS
ERNEST E. ADLER	BRIAN SANDOVAL
JOSEPH M. NEAL, JR.	BERNARD J. ANDERSON
Senate Committee on Conference	*Assembly Committee on Conference*

Senator Washington moved to adopt the report of the first Committee on Conference concerning Senate Bill No. 258.

Remarks by Senator Washington.

Motion carried.

Mr. President:

The first Committee on Conference concerning Assembly Bill No. 99, consisting of the undersigned members, has met, and reports that:

It has agreed to recommend that the amendment of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 8, which is attached to and hereby made a part of this report.

Conference Amendment.

Amend the bill as a whole by renumbering section 1 as sec. 4 and adding new sections designated sections 1 through 3, following the enacting clause, to read as follows:

"Section 1. NRS 218.241 is hereby amended to read as follows:

218.241 1. Upon request made within the time allowed and within limits established by the legislature by concurrent resolution, the legislative counsel shall advise any agency or officer of the executive branch of the state government, and shall advise any county , *school district* or city, as to the preparation of measures to be submitted to the legislature.

2. To ensure the greatest possible equity in the handling of requests, drafting must proceed as follows:

(a) Requests for legislative measures from each agency or officer of the executive

SENATE BILL NO. 80–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF THE ATTORNEY GENERAL)

JANUARY 29, 1997

Referred to Committee on Judiciary

SUMMARY—Makes person liable for two times the actual damages incurred for abuse, neglect or exploitation of certain older persons or vulnerable persons. (BDR 3-613)

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

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

AN ACT relating to civil actions; making a person who abuses, neglects or exploits certain older persons or vulnerable persons liable for two times the actual damages incurred by the older person or vulnerable person; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if he did not know or have reason to know that the harmed person was a vulnerable person.

4. For the purposes of this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person.

(b) "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another.

(c) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person, or who has voluntarily assumed responsibility for his care, to provide food, shelter, clothing or services within the scope of his responsibility or obligation, which are necessary to maintain the physical or mental health of the older person or vulnerable person. For the purposes of this paragraph, a person voluntarily assumes responsibility to provide care for an older or vulnerable person only to the extent that he has expressly acknowledged his responsibility to provide such care.

(d) "Older person" means a person who is 60 years of age or older.

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

The term includes, without limitation, a person who is mentally retarded, a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury.

Sec. 2. This act becomes effective upon passage and approval.

3. Two members whose terms of office expire on July 1, 2000; and
4. Two members whose terms of office expire on July 1, 2001.

Sec. 8. 1. This section and sections 1 to 6, inclusive, of this act become effective on July 1, 1997.

2. Section 7 of this act becomes effective on June 30, 1997.

Senate Bill No. 80–Committee on Judiciary

CHAPTER 672

AN ACT relating to civil actions; making a person who abuses, neglects or exploits certain older persons or vulnerable persons liable for two times the actual damages incurred by the older person or vulnerable person; and providing other matters properly relating thereto.

[Approved July 17, 1997]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, if an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the older person or vulnerable person.

2. If it is established by a preponderance of the evidence that a person who is liable for damages pursuant to this section acted with recklessness, oppression, fraud or malice, the court shall order the person to pay the attorney's fees and costs of the person who initiated the lawsuit.

3. The provisions of this section do not apply to a person who caused injury, death or loss to a vulnerable person if he did not know or have reason to know that the harmed person was a vulnerable person.

4. For the purposes of this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person.

(b) "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to obtain control, through deception, intimidation or undue influence, over the money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this paragraph, "undue influence"

does not include the normal influence that one member of a family has over another.

(c) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person, or who has voluntarily assumed responsibility for his care, to provide food, shelter, clothing or services within the scope of his responsibility or obligation, which are necessary to maintain the physical or mental health of the older person or vulnerable person. For the purposes of this paragraph, a person voluntarily assumes responsibility to provide care for an older or vulnerable person only to the extent that he has expressly acknowledged his responsibility to provide such care.

(d) "Older person" means a person who is 60 years of age or older.

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

The term includes, without limitation, a person who is mentally retarded, a person who has a severe learning disability, a person who suffers from a severe mental or emotional illness or a person who suffers from a terminal or catastrophic illness or injury.

Sec. 2. This act becomes effective upon passage and approval.

Senate Bill No. 365–Senator Rawson

CHAPTER 673

AN ACT relating to taxation; increasing and providing for the adjustment of the amount of household income allowed for a senior citizen to qualify for a refund of a portion of the property tax on his primary residence; and providing other matters properly relating thereto.

[Approved July 17, 1997]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 361.833 is hereby amended to read as follows:

361.833 1. A senior citizen whose home is placed upon the secured or unsecured tax roll, who has owned the home and maintained it as his primary residence since July 1 immediately preceding the filing of his claim and whose household income is [not more than $19,100] *within one of the income ranges for which assistance is provided pursuant to this subsection* is entitled to a refund of the property tax accrued against his home to the extent determined by the percentage shown opposite his household income range on the schedule below [:] , *as that income range is adjusted pursuant to subsection 3:*

Legislative Subcommittee to Study Medical Malpractice

Legislative Counsel Bureau
Bulletin No. 03-9

January 2003

LEGISLATIVE SUBCOMMITTEE TO STUDY MEDICAL MALPRACTICE

BULLETIN NO. 03-9

JANUARY 2003

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REPORT TO THE 72ND SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE SUBCOMMITTEE TO STUDY MEDICAL MALPRACTICE

I. INTRODUCTION

In 2002, Nevada experienced a crisis involving both the cost and availability of medical malpractice coverage for its physicians. Because of the skyrocketing premiums, physicians considered closing their practices or severely limiting the services they could provide, and the State's only Level I Trauma Center in Southern Nevada closed for a short period in July 2002. The ability of Nevadans to access health care was at risk, particularly in Southern Nevada.

This report summarizes the work of the Legislative Subcommittee to Study Medical Malpractice and includes an overview of the legislation enacted during the Eighteenth Special Session. Also provided in the report is a list of additional resources concerning Nevada's medical malpractice crisis, including the data and analysis generated through the work of the Subcommittee.

A. CREATION OF AN INTERIM STUDY

The 2002 crisis involving the affordability and availability of medical malpractice coverage developed when the Nevada Legislature was not in session. Constitutionally, the Nevada Legislature meets once every two years, and only the Governor is authorized to call a Special Session. Due to the urgency of the situation and the threatened shortage of health care providers, the Legislative Committee on Health Care and the Nevada Legislative Commission acted jointly in March and April 2002 to create the Subcommittee to Study Medical Malpractice to determine the steps necessary to address the crisis and report its findings to the 2003 Session.

The following six legislators (three Senators and three Assembly members) were appointed to the Subcommittee:

Assemblywoman Barbara E. Buckley, Chairwoman
Senator Mark E. Amodei (Appointed in May 2002 to replace Senator James)
Senator Mark A. James (Until May 2002)
Senator Dina Titus
Senator Randolph J. Townsend
Assemblyman Bernie Anderson
Assemblyman Lynn C. Hettrick

Legislative Counsel Bureau (LCB) staff services for the study were provided by Allison Combs, Principal Research Analyst, Research Division; Vance A. Hughey, Principal Research Analyst, Research Division; Bradley A. Wilkinson, Principal Deputy Legislative

Counsel, Legal Division; Risa B. Lang, Principal Deputy Legislative Counsel, Legal Division; Debby Richards, Manager of Office Services, Research Division; and Ricka Benum, Senior Research Secretary, Research Division.

B. OVERVIEW OF COMMITTEE PROCEEDINGS

The Subcommittee received extensive testimony regarding the impact of rising medical malpractice premiums, possible causes for the increases, and recommended solutions. Between March and July 2002, the Subcommittee held three lengthy meetings. All of the meetings were held in Las Vegas with simultaneous videoconferencing between meeting rooms at the Grant Sawyer State Office Building in Las Vegas and the Legislative Building in Carson City.

For more detailed information, please consult the minutes and exhibits from the meetings, which are available from the LCB's Research Library. The minutes (without exhibits) and a copy of this report are electronically available on the Legislature's Internet Web Site at www.leg.state.nv.us.

Meeting on March 21, 2002 – Status and Impact of the Crisis

During its first meeting, the Subcommittee focused on the status and impact of the medical malpractice crisis nationally and in Nevada. Following is an overview of the topics discussed.

- **National Perspective on the Medical Malpractice Crisis** – A national perspective of the concerns involving medical malpractice insurance coverage and efforts by other states to address the problem presented by the National Conference of State Legislatures (NCSL). Also discussed were the primary areas of reform targeted in other jurisdictions and possible methods of addressing the rising medical malpractice premiums;

- **Nevada History** – A chronology of Nevada legislative actions since 1975 to address past increases in medical malpractice premiums;

- **Creation of a Joint Underwriting Association** – An update on the recently established joint underwriting association (The Medical Liability Association of Nevada or "MLAN");

- **Medical Community Perspectives on the Causes and Impact of the Crisis** – A presentation on the medical malpractice crisis from the perspective of the medical community. Speakers included representatives of the Nevada State Medical Association, the Clark County Medical Society, the Clark County Obstetrics and Gynecology Society, the West-Crear Medical Society, the Nevada Hospital Association, Nevada Concerned Physicians, and the Nevada Osteopathic Medical Association. The physicians also presented historical information on the current increases in premiums and identified possible causes and solutions;

- **Legal Community Perspectives on the Causes and Impact of the Crisis** – A presentation on the medical malpractice crisis from the perspective of the legal community from representatives of the Nevada Trial Lawyers Association;

- **Insurance Industry Perspectives on Nevada's Situation** – An overview by the Division of Insurance, Nevada's Department of Business and Industry, of its *Survey on the Nevada Medical Malpractice Marketplace*; and

- **Options for Increasing Coverage Availability and Affordability** – An overview of the options for increasing the availability of affordable medical malpractice coverage under Nevada's existing insurance laws, including the types of insurance groups or associations that may be created to provide medical malpractice coverage and a discussion of the creation of the Nevada Essential Insurance Association.

Meeting on May 13, 2002 – Civil Justice Reform

At its second meeting, the Subcommittee received an update on the status and operation of the State's newly established joint underwriting association (MLAN) and focused on medical malpractice cases in Nevada, Nevada's civil justice system, and potential reforms. Following is a summary of the topics discussed:

- **Nevada's Joint Underwriting Association** – Alice A. Molasky-Arman, Nevada's Commissioner of Insurance, testified on the nonlegislative efforts in Nevada to address the medical malpractice crisis, including the creation of the Nevada Essential Insurance Association and efforts in Nevada to create a locally owned company for medical malpractice insurance;

- **Civil Justice Laws** – The National Conference of State Legislatures presented an overview of civil justice laws relating to medical malpractice in other states. The Subcommittee received a detailed overview of civil justice laws in other states, including limitations on damage awards, collateral source rules, joint and several liability, and statutes of limitation. Members also discussed mechanisms enacted in other states to address medical malpractice premiums, including patient compensation funds. Nevada legislative staff provided an overview of Nevada's enacted civil justice laws, including a statute of limitations, immunity from liability for physicians involved in certain emergency situations, comparative negligence, medical malpractice screening panels, use of expert witnesses to demonstrate a deviation from accepted standards of care and to prove causation, circumstances establishing patient consent, collateral source rule, and periodic payments for future damages;

- **National Perspective of the Impact of Imposing Caps on Damages** – The Subcommittee also received information on the impact of caps nationally from the American Medical Association, which indicated physicians in other states were also experiencing problems

similar to Nevada's. Representatives of the Nevada Trial Lawyers Association discussed the impact of caps and provided testimony from persons injured while under medical care;

- **Closed Medical Malpractice Claims in Nevada** – Commissioner Molasky-Arman presented data collected on closed claims for medical malpractice by the Division of Insurance pursuant to *Nevada Revised Statutes* 679B.144. The presentation focused on the amount of reserves and average claim severity for closed claims from 1999 to 2001. The total average claim severity for 1999 to 2001 (including those closed with no payment) for physicians was $138,734 (based on a sum total of $86,985,957 in paid indemnity on 627 claims, 349 of which were not decided by trial or settled. The 349 were "closed otherwise" with no payment). In addition, according to the database, from 1999 to 2001, the majority of physicians with claims closed (with and without payment) had only one claim filed against them (393 of 487). One had eight claims, and one had 14 claims;

- **Nevada Screening Panels** – Commissioner Molasky-Arman also provided an overview on the operation of Nevada's medical malpractice screening panels, which are administered by the Division of Insurance. Since 1985, Nevada has required a review of medical malpractice cases by the Medical/Legal Screening Panel prior to proceeding to court. In addition to the overview of the panel operations, Commissioner Molasky-Arman also presented statistics on the decisions and number of claims filed with the panel and noted areas of delays in the process, including stipulations for extensions for time and conflicts for panel members resulting in rescheduling of hearings. As presented in the statistics, claims filed with the panel increased from 152 in 1995 to 220 in 2001; and

- **Insurance Company Presentations** – Representatives of two insurance companies (the Physicians Insurance Company of Wisconsin and The Medical Protective Company) testified on the factors involved in determining rates and reserve amounts for medical malpractice coverage.

Meeting on July 22, 2002 – Prevention of Medical Malpractice

At its third meeting, the Subcommittee received an update on the status and impact of the closure of the Trauma Center at the University Medical Center of Southern Nevada. The meeting then focused on the following presentations involving methods of preventing medical malpractice:

- **Licensure and Discipline of Physicians** – The State's Board of Medical Examiners testified on its procedures for licensing and disciplining physicians;

- **Medical Error Reporting** – Representatives of the National Academy for State Health Policy provided a national overview of the medical malpractice crisis and of systems for reporting medical errors. The Subcommittee also received an update on the work of other legislative subcommittees studying this issue and discussed Nevada issues relating to medical errors reporting legislation; and

- **Reimbursement of Physicians for Services** – Finally, the Subcommittee discussed the combined financial impact on physicians of problems involving reimbursement for services and the high cost of medical malpractice coverage. The discussion included an overview of laws enacted or considered in other states to authorize collective bargaining for physicians.

Meeting on July 29, 2002 – The Insurance Industry and Medical Malpractice Coverage

The Subcommittee scheduled a meeting for July 29, 2002, to focus on the insurance industry. However, on July 26, 2002, Governor Kenny C. Guinn issued a proclamation convening a Special Session of the Legislature to address medical malpractice insurance issues on July 29, 2002. As a result, the Subcommittee's fourth scheduled meeting was cancelled.

Following the conclusion of the Eighteenth Special Session and the enactment of legislation to address the crisis (as discussed below), no future meetings of the Subcommittee were scheduled prior to the 2003 Session.

II. PRELIMINARY FINDINGS

In May 2002, the Subcommittee prepared a "white paper" containing its preliminary findings on the medical malpractice situation in Nevada. The white paper includes findings regarding the insurance market and the impact of the withdrawal of the St. Paul Companies from the Nevada market in December 2001; proposals to limit damages awards; and potential recommendations for reform. A copy of the white paper is provided as Appendix A to this report.

There are no formal recommendations for legislation or other action by the Subcommittee, as its study of the issue concluded when the Eighteenth Special Session convened on July 29, 2002.

III. SPECIAL LEGISLATIVE SESSION ON MEDICAL MALPRACTICE

On July 26, 2002, Governor Guinn issued a proclamation calling for a Special Session of the Legislature and specifying the issues that may be considered. The Legislature convened on the morning of July 29, 2002, and concluded its work early in the morning on August 1, 2002. At the start of the Special Session, legislators received three volumes of background information concerning medical malpractice prepared by LCB staff at the request of Subcommittee Chairwoman Barbara E. Buckley. A list of the information contained in the three volumes is provided under Appendix C ("Additional Resources").

During the Special Session, legislators received extensive testimony from medical providers, attorneys, representatives of health care facilities, and members of the public as it reviewed the causes and consequences of the broad malpractice issue. After much testimony and debate, the Legislature passed Assembly Bill 1 (Chapter 3, *Statutes of Nevada 2002 Special Session*), which addresses many of the issues identified as contributing to the unstable medical malpractice insurance environment. This bill includes the following provisions:

- A limit on civil liability in certain emergency situations for care rendered gratuitously;
- A $350,000 cap on noneconomic damages with certain exceptions;
- Changes to address the delays in bringing cases to trial and shorten the statute of limitations;
- Required pretrial settlement conferences and elimination of the Medical/Legal Screening Panel;
- Standards for expert testimony and mandatory training for district judges who hear malpractice cases;
- Requirements for physicians and dentists to carry malpractice insurance with minimum limits in certain circumstances;
- Submission of periodic reports on disciplinary action by the Board of Medical Examiners and the State Board of Osteopathic Medicine;
- Stronger requirements for physicians and dentists to report malpractice claims; and
- A system for reporting medical errors.

A detailed summary of Assembly Bill 1 is provided under Appendix B. The bill and its history are available electronically on the Legislature's Web Site at www.leg.state.nv.us and by request through the LCB's Research Library.

IV. CONCLUSION

Although the convening of a Special Session to address the medical malpractice crisis interrupted the work of the Subcommittee, its hearings on the issue and the efforts of its members played an important role in the State's analysis and understanding of the crisis. The preliminary findings of the Subcommittee and the information compiled through its study were utilized during the course of the Special Session as a readily available source of data necessary to consider difficult legislation during a short period of time. With the complexity of the problems surrounding medical malpractice coverage for health care providers that may again be debated during the 2003 Session, the work of the Subcommittee will be a vital source of information as the Legislature continues its discussion of the issues.

V. APPENDICES

APPENDIX A

Preliminary Findings
The Legislative Subcommittee to Study Medical Malpractice
May 2002

PRELIMINARY FINDINGS

The Legislative Subcommittee to Study Medical Malpractice

May 2002

This document provides an overview of consensus information, research, and observations concerning Nevada's medical malpractice crisis presented to date to the members of the Legislative Subcommittee to Study Medical Malpractice. The Subcommittee will continue its work and report its official findings and recommendations to the 2003 Legislature.

THE INSURANCE MARKET

Dramatic increases in medical malpractice premiums have had a severe impact on Nevada's physicians, particularly those in Clark County. Although the causes of these increases are the subject of much discussion, certain facts regarding the insurance market nationally and in Nevada are evident:

- **Developing "Hard Market"** – Prior to the September 11, 2001, terrorist attack in the United States, a "hard market" was developing throughout the insurance industry. Hard markets involve conditions in which premiums are high and coverage is difficult to obtain.[1] Since the late 1980s the insurance industry had generally experienced a "soft market" in which competition for the premium dollar was strong, and as a result, premiums remained lower. Prior to September 11, most major commercial lines were experiencing increases in renewals from 10 to 15 percent.[2]

- **Post September 11, 2001** – The September 11th terrorist attack has had a severe impact throughout our nation's economy. For the insurance industry, cost estimates have varied widely—from $30 billion to $70 billion. After that event, the rate of increases for 2002 renewals in commercial lines doubled, on average, to 30 percent.[3] Reinsurers (companies that insure other insurance companies) are expected to pay a large percentage of the insurance costs for September 11th, thus raising the rates charged by reinsurers and by insurance companies to its customers to cover those costs.

- **Importance of Investment Income** – The two main sources of income for insurance companies are underwriting profits and returns on investments from policyholder surplus. One measure of the financial status of an insurance company is the combined ratio, which is the ratio of the total insurance costs (losses incurred plus all expenses) to the revenues from premiums. A company is operating with an underwriting profit if it

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[1] *Rupp's Insurance and Risk Management Glossary.*
[2] "Special Report: Groundhog Forecast 2002," Insurance Information Institute.
[3] "Special Report: Groundhog Forecast 2002," Insurance Information Institute.

has a combined ratio under 100 percent. If a company has a combined ratio over 100 percent, it is operating at an underwriting loss.

In a strong economy, because of investment returns, insurers can accept higher combined ratios because their losses can be recouped in the market. However, the recent downturn in the nation's economy has had a significant effect on the insurance industry.[4]

- **National Market for Medical Malpractice** – As noted by the Insurance Information Institute in an April 2002 report, "The medical malpractice combined ratio, a measure of profitability, is likely to hit the 140 percent mark nationally for 2001. This means that insurers on average have been paying out $1.40 for every dollar they collected in premiums. In most of the 1990s when the bull market and higher interest rates generated higher earnings on securities, investment income helped offset underwriting losses. In addition, insurers were keeping rates artificially low by using reserves accumulated in earlier years, but reserves are now depleted."[5]

National Withdrawal of the St. Paul Company

- **Decision to Leave Market** – In December 2001, the St. Paul Company announced its decision to exit the medical malpractice business on a global basis, not just Nevada.

- **Entrance into Nevada's Market** – In the mid-1990s, St. Paul purchased the Nevada Medical Liability Insurance Company, which was a doctor-owned company originally formed by the State as a joint underwriting association during an earlier crisis involving medical malpractice in the 1970s. At that time of its acquisition by St. Paul, the Nevada Medical Liability Insurance Company was one of the State's three major medical malpractice insurers. (The other two insurers with a large market share were The Doctors Company and the Medical Insurance Exchange of California [MIEC].)

- **Impact on Nevada's Market** – At the time of its withdrawal, St. Paul insured a large percentage of Nevada's physicians, and therefore the effect of its exit was heightened. According to the Nevada State Medical Association, in September 2000, the company

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[4] Testimony of Cheye Calvo, Program Manager, Employment and Insurance, National Conference of State Legislatures (NCSL), at the May 13, 2002, meeting of the Legislative Subcommittee to Study Medical Malpractice.

[5] In a May 17, 2001, press release from the Conning Corporation, the following observation is reported:

> According to the Conning study, "Medical Malpractice Insurance: A Prescription for Chaos," in 1999 the medical malpractice line of insurance ended a twelve-year streak of outperforming the property-casualty industry as a whole. This coincided with insurer reserve deficiencies growing to $1.7 billion, leaving insurers little margin for any negative surprises in 2001. "From 1992-1997, medical malpractice insurers aggressively took down reserves to increase their investment portfolios," said Geri Riley, assistant vice president at Conning and author of the study. "This strategy helped them maximize their investments during the bull market." However, insurers have depleted reserves and must utilize surplus to reduce the deficiency.

insured approximately 60 percent of the state's physicians (a total of 1,328 physicians under 522 policies).

- **Relationship of St. Paul's Experience to Market Decisions of Other Companies in Nevada** – Because St. Paul had a large share of the medical malpractice market in Nevada and Clark County, other companies (particularly companies new to Nevada's marketplace) utilized St. Paul's rates and experience to determine their rates. As noted recently by one of these companies:

> [St. Paul] not only had the greatest market share, but their data was relied upon by many of the carriers for both pricing and loss reserving. * * * While Nevada has had a very competitive market, most of that competition came from companies new to the market and therefore unfamiliar with its historic volatility. Physicians enjoyed those years of competition, but it came at the cost of a stable market and healthy insurers. Rates are only now approaching the levels they should have been at over the years, and even then may not be adequate.[6]

Nevada's Medical Malpractice Marketplace

- **Multiple Rate Increases Requested and Approved Since September 2000** – Insurance companies have requested and received approval of numerous increases in medical malpractice premiums in Nevada, many of which only affect Clark County. In September 2000, the St. Paul Company received approval for a 7.5 percent increase for Clark County. Two companies followed suit with similar increases: The Doctors' Company with a 13.9 percent increase for Clark County in January 2001, and the Physicians Insurance Company of Wisconsin, Inc. (PIC Wisconsin) with a 7.5 percent increase for Clark County in May 2001. In December 2001, PIC Wisconsin received an additional 20.7 percent increase for Clark County.[7]

  In August 2001, the CNA Group requested a 100 percent increase, which was decreased to 52 percent by Nevada's Insurance Commissioner before approval. At the hearing, the Commissioner urged the company, which had not requested an increase since it started doing business in Nevada in 1994, to file requests on a regular basis in the future to avoid such large increases.

  More recently, the Medical Insurance Exchange of California received a 30 percent increase for Clark County physicians effective May 1, 2002. The MIEC had also received approval in 2001 for a 19.5 percent increase.

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[6] Response of Physicians Insurance Company of Wisconsin in its response to survey questions posed by Nevada's Insurance Commissioner prior to the March 4, 2002, hearing on medical malpractice.

[7] Source: Nevada State Medical Association.

American Physicians Assurance Company and Obstetricians

The American Physicians Assurance Company recently received approval for a rate increase, the impact of which is estimated to be between 70.6 percent and 85.1 percent depending on how many of the company's obstetricians qualify for a new 25 percent underwriting credit, which will be available to obstetricians who perform no more than 125 annual deliveries.[8] Based upon testimony at the Subcommittee's hearing on May 13, 2002, it appears this standard may be based upon the underwriting practices of other companies formerly operating in Nevada, including St. Paul and Nevada Medical Liability Insurance Company.

At this time, however, it is unclear how this standard developed. Nationally recognized medical organizations, including the American College of Obstetricians and Gynecologists (ACOG), do not publish recommended guidelines on the minimum or maximum number of deliveries obstetricians/gynecologists (OB/GYNs) should optimally perform annually. Based upon the ACOG's last survey (1997), OB/GYNs nationally performed an average of 141 deliveries annually.

- **Tail Coverage** – The increased cost for coverage for many physicians also includes "tail coverage" for physicians who change to a new insurance company. The cost covers actions that may be filed for injuries that occurred prior to the time the coverage with the new company starts. Nevada limits the time in which injuries for medical malpractice can be filed.

  Statute of Limitations – In Nevada, medical malpractice actions must be filed within 4 years after the date of the injury or 2 years after the plaintiff discovers the injury, *whichever occurs first*. This limitation is tolled during the time the medical screening panel is considering the complaint.

  Parents or guardians of children are responsible for filing an action within this time period. However, the statute of limitation is extended until the child is 10 years of age for brain damage or birth defects. In addition, the limitation is extended in cases of sterility until 2 years after the child discovers the injury. (*Nevada Revised Statutes* 41A.097)

- **Creation of a Joint Underwriting Association** – Pursuant to laws established in the 1970s, Nevada has again created a joint underwriting association to offer coverage at competitive rates to doctors unable to obtain coverage through the voluntary market. Information concerning the Medical Liability Association of Nevada (MLAN) is available through the Division of Insurance and its Web Site (**http://doi.state.nv.us/**).

[8] Source: Nevada's Division of Insurance.

PROPOSALS TO LIMIT DAMAGE AWARDS

Many groups are involved in the intense effort to find solutions for Nevada's medical malpractice crisis to ensure such rapid and severe increases in premiums do not reoccur in the future. One of the main targets for change is the civil justice system. Nevada has enacted laws providing for comparative negligence, immunity from liability for medical professionals who provide emergency obstetrical care, periodic payments for future damages, and a medical malpractice screening panel to review cases prior to trial.

In addition to these enacted reforms, limiting the amount of damages that may be awarded by a jury is a focal point of the discussions concerning Nevada's civil justice system.

- **Punitive Damages** – Punitive damages are not at issue in Nevada because, in order to award punitive damages, a finding of malice is required. Medical malpractice cases involve allegations of negligence, not intentional or malicious acts.

- **Caps on Damages in Other States** – The medical malpractice situation in states with and without caps on noneconomic damages varies.[9]

  > Nevada is one of 27 states that do not have caps on noneconomic damages. Of these states, some are experiencing problems with rising medical malpractice costs (Florida, Nevada, Texas, and Pennsylvania). It does not appear that other states like Minnesota and Vermont are experiencing a crisis at this time.

  In comparison, the states with caps on damages that are not reportedly experiencing a crisis include California, New Mexico, and South Dakota. However, states like Missouri, Virginia, and West Virginia are faced with sharp increases in medical malpractice premiums. In addition, certain localities within states with caps on noneconomic damages (like Detroit, Michigan) are facing similar problems.

  Proponents of caps on noneconomic damages argue enactment of caps, while not necessarily guaranteeing lower rates, will provide stable rates because losses will be more predictable for insurance companies. The proponents often cite the effect of the $250,000 cap on noneconomic damages in California as an example, and note that injured persons will not be capped on the amount that can be awarded for economic damages.

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[9] Based upon testimony and information on laws in other states provided by Cheye Calvo, Program Manager, Employment and Insurance, NCSL, during the March 21, 2002, and May 13, 2002, meetings of the Legislative Subcommittee to Study Medical Malpractice. Sources also include the October 1, 2001, survey conducted by the *Medical Liability Monitor* ("Trends in 2001 Rates for Physicians' Medical Professional Liability Insurance") and news accounts of medical malpractice premiums in other states.

Opponents of caps on noneconomic damages argue an injured person should not be deprived of the right to have a jury determine the extent of the impact of a health care provider's malpractice. Opponents also note noneconomic damages are often the only means to compensate injured individuals with no demonstrable loss of earnings, including minors, homemakers, and seniors.

Variety of Rates in States With and Without Caps on Damages

Because experience demonstrates damage caps alone do not explain rate differentials, it appears a variety of factors (in addition to the existence of caps on noneconomic damages) must be considered in determining the reasons for higher or lower rates within a particular jurisdiction.

Rates within Nevada vary between the higher rates for Clark County and the lower rates in the remainder of the State. In addition, the actual rates between states with and without caps on noneconomic damages also vary drastically. For example, according to the 2001 survey of medical malpractice rates published in October 2001 by the *Medical Liability Monitor*, the rates for OB/GYNs in states with no caps varied between a low range in Minnesota of $16,141 to $18,439 to a high range in Florida of $61,908 to $208,949.

In states with caps, the rates are also diverse. In California, the rates of OB/GYNs ranged from $22,899 to $71,728. In Michigan, the rates in the survey ranged from $43,722 to $123,890. Lower rates ($12,288 to $17,297) were charged in Nebraska.

- **Lapse of Time Before the Impact of Enacted Caps is Recognized** – When a legislature enacts caps on noneconomic damages, lawsuits challenging the constitutionality of those caps inevitably follow. In some states (including Alabama, Florida, Illinois, New Hampshire, Oregon, Texas, Washington, and Wyoming), the courts found such a cap to be unconstitutional. In addition, caps typically only affect future claims, and the average amount of time nationally for filing a claim after an injury is approximately 22 months.[10]

  It is probable that if Nevada were to enact a cap on noneconomic damages, it would be years before doctors noticed any impact on their rates. Further, if a cap were enacted, it is not clear that Clark County would realize any benefit from the caps in future years. The current experience of Clark County and other large counties and cities (like Detroit, Michigan) demonstrates that the urban, more populated areas often have premiums that are much higher than the rest of the state regardless of whether or not the state has enacted caps on noneconomic damages.

[10] Testimony of Cheye Calvo, Program Manager, Employment and Insurance, NCSL, at the May 13, 2002, meeting of the Legislative Subcommittee to Study Medical Malpractice.

As an example of the delayed effect of enacting caps, California's Medical Injury Compensation Reform Act (MICRA), which included a cap of $250,000 on noneconomic damages, was enacted in 1975, but more stable rates were not realized until many years later. According to a 1986 General Accounting Office study, during the period from 1980 to 1986, premiums continued to increase, varying throughout the state and between particular specialties. In Southern California, increases in premiums ranged from 16 percent for general practice to 337 percent for radiology. In Northern California, the change in premiums ranged from a decrease of 27 percent for anesthesiology to an increase of 92 percent for obstetrics/gynecology.[11]

As reported in the 1986 study, "Since the legislation was enacted in 1975, its provisions have been frequently contested in California courts. * * * Several officials believe that the full impact of the act will now be felt since the U.S. Supreme Court in 1985 refused to hear a case questioning the constitutionality of California's cap on noneconomic losses, such as pain and suffering, which in effect, upheld the provision's constitutionality."[12]

RECOMMENDATIONS FOR REFORM

The Subcommittee will continue its in-depth review of the causes contributing to Nevada's medical malpractice crisis at its future meetings scheduled for July 29th, October 2nd, and December 2nd. Based upon this examination, the Subcommittee will vote on recommendations to the 2003 Legislature for legal and regulatory reforms designed to avoid future crises.

Topics Identified for Possible Recommendations

During the Subcommittee's first two hearings on March 21, 2002, and May 13, 2002, multiple topics were raised during the hearings for the Subcommittee's consideration. Following is a list that broadly identifies many of the topics for reform raised for consideration by various speakers to date. ***The Subcommittee has not formally endorsed any of these recommendations at this time.***

C **Civil justice reforms:**

- ***California-Like Legislative Package*** – Enact laws in Nevada like those under California's Medical Injury Compensation Reform Act of 1975 (MICRA), including the following:

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[11] "Medical Malpractice: Six State Case Studies Show Claims and Insurance Costs Still Rise Despite Reforms," published by the General Accounting Office in December 1986. (GAO/HRD-87-21).

[12] "Medical Malpractice: Case Study on California," published by the General Accounting Office in December 1986. (GAO/HRD-87-231S-2).

- **Cap on damages** – Limit awards for noneconomic damages to $250,000.
- **Collateral source payments** – Allow a defendant to introduce evidence of collateral source payments. (Nevada has a collateral source law requiring damages to be reduced by amounts received by an injured person for medical care, loss of income, or other financial losses from a collateral source.)
  - A related recommendation was presented to require that collateral source payment information be provided to a jury prior to the awarding of damages.
- **Periodic payments** – Allow health care professionals to elect to pay a claimant's future economic damages over $50,000 in periodic amounts. (Nevada has a law under which the claimant elects to receive future damages in a lump sum at present value or under an annuity with periodic payments.)
- **Attorney contingency fees** – Limit attorneys' fees based upon a sliding scale: 40 percent of the first $50,000 recovered; 33 percent of the next $50,000; 25 percent of the next $500,000; and 15 percent of any amount over $600,000.
- **Statute of limitations** – Require that claims be brought within 3 years from the injury or within 1 year of discovery.
  - A related recommendation was presented to establish an 8-year statute of limitations for birth injuries.
  - A second recommendation was presented to create a statute of limitations of 2 years after the date of the injury.

  (Currently, Nevada requires that actions must commence within 4 years from the date of the injury or 2 years after discovering the injury, whichever occurs first. The limitation is tolled during the time the medical malpractice screening panel is considering the complaint. Parents or guardians of children must file actions within the statutory time frame, except the time for filing actions for brain damage or birth defect is extended until the child is 10 years of age.)
- **Binding arbitration of disputes** – Allow written contracts for medical services to include a clause requiring parties to resolve disputes through binding arbitration.
  - A related recommendation was presented to require arbitration for cases with a screening panel finding of probable malpractice or no malpractice.

- ***Encourage Settlements*** – Examine methods of encouraging parties to settle meritorious cases at an early stage. Create an automatic bad faith finding when an insurer fails to settle a claim within policy limits and prohibit the insurer from using losses in excess of policy limits in these situations to justify rate increases.

- *Medical Malpractice Screening Panel* – Evaluate the effectiveness of the panel in screening out nonmeritorious cases.

C **Insurance Reform:**

- *Rate approval* – Ensure that the procedures involved in approval of rates are fair and grounded in actual losses.
- *Intervention* – Allow for intervention in rate filings by interested parties and individuals.
- *Tail coverage* – Eliminate the ability to charge for tail coverage or from profiteering on the amounts charged for tail coverage.
- *Public disclosure* – Publicly disclose underwriting decisions so that physicians are informed regarding the reasons they were declined or rated at higher than average premiums.
- *Confidentiality agreements and consent clauses* – Examine confidentiality agreements and consent provisions existing in medical malpractice policies and consider eliminating or modifying these provisions. Any changes should improve settlement negotiations, not discourage settlement negotiations.
- *Claims-made policy* – Evaluate the claims-made policy (as opposed to occurrence based policies) and discuss the continued viability of this policy.
- *Definition of "claim"* – Define "claim" so that there is a universal definition applicable to all insurers for the consideration of a "claim" in underwriting.
- *Business practices* – Hold insurers accountable for bad business practices and for poor claims decisions.
- *Surplus lines* – Consider regulatory authority over surplus lines in the area of medical malpractice.

C **Prevention/Reduction of Incidents of Medical Malpractice:**[13]

- *Risk Management* – Mandate greater risk management on the part of hospitals and individual doctors. Incorporate risk management classes into licensing for medical providers.

[13] Cheye Calvo, Program Manager, Employment and Insurance, NCSL, raised some of the issues involving prevention and reduction of medical malpractice for the Subcommittee's consideration in conjunction with an overview of laws in other states. Mr. Calvo emphasized that neither he nor NCSL was taking a position on the issues or endorsing a specific proposal.

- *Discipline of Doctors* – Ensure that Nevada's Board of Medical Examiners is effectively disciplining negligent physicians and protecting the public from physicians who are the subject of disciplinary actions both in Nevada and in other jurisdictions.

- *Medical Error Reporting* – Create a system of medical error reporting to increase patient safety and provide information on incidences of medical malpractice so that appropriate corrective measures may be taken. At least 20 states have enacted medical reporting systems, 15 of which have mandatory systems.

C **Other Topics Raised for Consideration:**

- *Patient compensation fund* – Create a patient compensation fund for emergency obstetrical care, other high-risk obstetrical care, and emergency department physicians and surgeons.

- *Collective bargaining* – Allow physicians to collectively bargain with health care companies so they can effectively negotiate and pass along additional costs.

Emerging Areas of Consensus

During the Subcommittee's first two hearings, possible reforms were identified on which the parties to the debate (including physicians, insurance companies, and attorneys) appear able to agree, and thus may be included in the final package presented to the 2003 Legislature. These potential reforms include improvements to enhance the operation of the medical malpractice screening panel if it is determined that the panel is effective in screening out frivolous claims, and methods of addressing the unpredictable length of time that elapses before a claim is filed in court.

- **Limitation on Time to Trial** – Currently, taking a case to trial may take as long as 5 years, including the time to process the case with the medical malpractice screening panel. One generally accepted proposal for reform is to decrease this time to 2 years. Cases not brought to trial within the 2-year period would be barred from any future consideration. Such a requirement should positively impact pricing of medical malpractice rates because of the increased predictability.

- **Improve the Medical/Legal Screening Panel** – Assuming it is determined that the panel is effective in eliminating frivolous claims, the following recommendations would improve the panel's operation and eliminate delays in the process:

  - **Panel Resources** – Provide sufficient resources (including adequate staffing) for the Division of Insurance to administer the medical malpractice screening panels;

- **Panel Member Conflicts** - Address the number of conflicts for screening panel members resulting in numerous delays in scheduling the panels. These conflicts reportedly include both issues raised in preemptory challenges and challenges for cause by parties and actual scheduling conflicts; and

- **Stipulations** - Decrease the number of stipulations approved for extensions of time within the screening panel process.

ADDITIONAL INFORMATION

Attachment A provides an overview of Nevada's existing civil justice laws relating to the medical malpractice issue.

For additional information on the Subcommittee, including a schedule of future meetings, please call Assemblywoman Barbara E. Buckley, Chairwoman, at 702/386-1070, or Allison Combs, Principal Research Analyst, Nevada Legislative Counsel Bureau, at 775/684-6825.

ATTACHMENT A
NEVADA LAWS RELATING TO THE CIVIL JUSTICE SYSTEM AND MEDICAL MALPRACTICE

Statute of Limitations	Immunity from Liability for Certain Emergency Care	Comparative Negligence	Medical Malpractice Screening Panels	Use of Expert Witnesses	Patient Consent	Limits on Punitive Damages	Damages from Collateral Source	Periodic Payments for Future Damages	Damages in Cases Involving Wrongful Death
NRS 41A.097	NRS 41.505	NRS 41.141	NRS 41A.003-41A.069	NRS 41A.100	NRS 41A.110-41A.120	NRS 42.005	NRS 42.020	NRS 42.020	NRS 41.085
Must commence actions against a provider of health care for injury or death not more than 4 years after the date of the injury ***or*** 2 years after plaintiff discovers or should have discovered the injury, ***whichever occurs first***. Limitation tolled during the screening panel process. Also tolled for any period during which physician concealed acts, errors, or omissions ***and*** which are known, or should have been known, to him. Parents, guardians, or legal custodians of minor child are responsible for determining whether to prosecute, and if the period commencing the action passes, child prohibited from bringing action. Exceptions: (1) brain damage or birth defect (extended until child is 10 years of age); or (2) sterility (extended until 2 years after the child discovers the injury).	No liability for damages for certain acts or omissions in good faith not amounting to gross negligence: 1. For physicians or registered nurses giving instruction or supervision to emergency personnel at scene or while transporting, and for emergency medical attendants and nurses obeying instructions. 2. For physicians, physicians assistants, practitioners of respiratory care, nurses, or osteopaths for rendering emergency care gratuitously. (Exception if preexisting relationship with patient.) Also for retired licensees rendering emergency care gratuitously to indigent person. Emergency Obstetrical Care No liability for civil damages for acts or omissions for physicians, physicians assistants, practitioners of respiratory care, nurses, or osteopaths rendering emergency obstetrical care to a pregnant woman during labor or the delivery if: (a) In good faith and not amounting to gross negligence or reckless, willful, or wanton conduct; (b) Has not previously provided prenatal or obstetrical care to the woman; and (c) Damages related to or caused by a lack of prenatal care. (Licensed medical facility also not liable for civil damages in this situation.)	In action to recover damages for death or injury to persons, no recovery if plaintiff's comparative negligence is greater than defendant's negligence or the combined negligence of multiple defendants. If jury determines plaintiff entitled to recover, two jury verdicts required: general verdict on total amount of recoverable damages; and special verdict on percentage of negligence of each party. Exempt from statute: actions based on strict liability, intentional tort; hazardous waste, toxic materials; concerted acts of defendants; or injuries from products manufactured, sold, distributed, or used in this state.	Before a cause of action for malpractice is filed in court, it must be submitted to a screening panel, and any action filed without going first to a screening panel is subject to dismissal. The written findings of the panel are admissible in court, with the exception of any findings of a panel that is unable to reach a decision on the issue of medical malpractice.	Imposition of liability on physician for personal injury or death requires evidence to demonstrate alleged deviation from accepted standard of care and to prove causation of the alleged personal injury or death. Such evidence not required, and rebuttable presumption exists that the personal injury or death was caused by negligence, in certain circumstances such as unintentionally leaving a foreign substance in patient's body following surgery or performing a surgical procedure on the wrong patient or on the wrong organ, limb, or part of a patient's body.	Patient consent conclusively obtained if physician explains procedures to be undertaken, alternative methods of treatment, and risks involved. Must also obtain signature of patient on statement explaining these items. Consent to a medical or surgical procedure is implied if person authorized to consent is not readily available, procedure reasonably necessary, and any delay in performing procedure could reasonably be expected to result in death, disfigurement, impairment of faculties or serious bodily harm.	Punitive damages limited to 3 times any compensatory damages awarded, or $300,000 if the compensatory award is less than $100,000. Must prove the defendant guilty, by clear and convincing evidence, of "oppression, fraud or malice, express or implied."	In action for damages for medical malpractice, the amount of damages awarded must be reduced by the amount of any prior payment made by or on behalf of the provider of health care against whom the action is brought to the injured person or to the claimant to meet reasonable expenses of medical care, other essential goods or services or reasonable living expenses. Court must hold separate hearing to determine if expenses incurred by claimant for medical care, loss of income, or other financial loss have been paid or reimbursed as a benefit from a collateral source. If the court determines claimant has received such a benefit, amount of damages awarded reduced by the amount of the benefit.	If future economic damages are awarded in an action for medical malpractice, the award must be paid, at the election of the claimant: (1) in lump sum reduced to its present value as determined by the trier of fact and approved by the court; or (2) by an annuity purchased to provide periodic payments (award not reduced to present value).	When the death of any person is caused by the wrongful act or neglect of another, heirs and the personal representatives of the decedent may each maintain action for damages. Heirs may be awarded pecuniary damages for grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering, or disfigurement of the decedent. Damages recoverable by the personal representatives of a decedent on behalf of his estate include special damages (such as medical expenses) that the decedent incurred before his death; funeral expenses; and any penalties, including exemplary or punitive damages, which the decedent would have recovered if he had lived. Damages recoverable by personal representatives do not include damages for pain, suffering or disfigurement of the decedent.

Prepared by the Research Division, Nevada Legislative Counsel Bureau
May 2002

APPENDIX B

Summary of Assembly Bill 1
(Chapter 3, *Statutes of Nevada 2002 Special Session*)

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

BILL SUMMARY

18th SPECIAL SESSION
OF THE NEVADA STATE LEGISLATURE

ASSEMBLY BILL 1
(Enrolled)

Topic

Assembly Bill 1 makes various changes related to medical and dental malpractice.

Summary

This bill limits civil damages in some emergency situations for care rendered gratuitously, limits noneconomic damages, addresses delays in bringing cases to trial, shortens the statute of limitations, requires pretrial settlement conferences, eliminates malpractice screening panels, regulates expert testimony, requires training for district judges who try malpractice cases, requires physicians and dentists to carry malpractice insurance with minimum limits in certain circumstances, requires the Board of Medical Examiners to submit periodic reports on disciplinary actions and malpractice cases, requires physicians and dentists to report malpractice claims, and establishes the Repository for Health Care Assurance.

$50,000 Cap on Damages for Emergency Care

Assembly Bill 1 limits civil damages in certain emergencies to no more than $50,000 for any claimant. The limit applies to certain parties that in good faith render care or assistance made necessary by a "traumatic injury" demanding immediate medical attention, for which the patient enters the hospital through its emergency room or trauma center. A "traumatic injury" is defined as any acute injury, which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities. The parties affected by this limit include:

- A hospital;
- An employee of a hospital who renders care or assistance to patients;
- A physician or dentist who renders care or assistance at a hospital, whether the care is gratuitous or for a fee; and
- A physician or dentist whose liability is not otherwise limited and who renders care or assistance at such a hospital, whether the care is gratuitous or for a fee.

This limitation on liability does not apply:

- If there is gross negligence or reckless, willful, or wanton conduct;
- To any act or omission in rendering care or assistance occurring after a patient is stabilized, unless surgery is required within a reasonable time after stabilization; and
- To any act or omission in rendering care or assistance that is unrelated to the original traumatic injury.

Total Immunity for Treatment in Governmental or Nonprofit Facilities

Assembly Bill 1 further provides that any licensed physician, osteopathic physician, or dentist who renders care at a health care facility of a governmental entity or a nonprofit organization is not liable for any civil damages if the care or assistance is rendered gratuitously, in good faith, and in a manner not amounting to gross negligence or reckless, willful, or wanton conduct.

$350,000 Cap on Noneconomic Damages

The bill establishes a general limit on the amount of noneconomic damages that may be awarded to a plaintiff in a malpractice action brought against a dentist, physician, hospital, or employee of a hospital. Noneconomic damages are defined to include damages for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages.

Unless certain exceptions apply, the noneconomic damages awarded to each injured plaintiff must not exceed $350,000. The exceptions to the $350,000 cap on noneconomic damages apply when the conduct of the defendant is grossly negligent or the court determines by clear and convincing evidence at trial that an award in excess of $350,000 for noneconomic damages is justified because of exceptional circumstances.

Subsection 3 of Section 5 of the bill provides that in all cases of medical malpractice the amount of damages awarded to the plaintiff may not exceed the amount of money remaining under the professional liability insurance policy limit covering the defendant after subtracting the economic damages awarded to the plaintiff. In addition, a single defendant cannot be held liable for noneconomic damages in an amount that exceeds the defendant's professional liability insurance policy limit even if there is more than one plaintiff. Economic damages are defined as damages for medical treatment, care or custody, loss of earnings, and loss of earning capacity.

Moreover, A.B. 1 provides that in order for physicians, dentists, and osteopathic physicians to obtain the benefit of the $350,000 cap on noneconomic damages they must maintain professional liability insurance of not less than $1 million per occurrence and not less than $3 million in the aggregate.

Several Liability

The measure also provides that each defendant is individually liable for noneconomic damages only to the extent of that defendant's percentage of negligence, but is not jointly liable for the total amount of such damages. This provision applies to a certified nurse midwife and a certified registered nurse anesthetist, as well as to physicians, hospitals, and hospital employees.

Expediting Trials

Assembly Bill 1 also limits delays in bringing medical malpractice cases to trial. Cases filed between October 1, 2002, and October 1, 2005, must be dismissed if they are not brought to trial within three years unless good cause is shown for a delay. Cases filed on or after October 1, 2005, must be brought to trial within two years. Dismissal of an action bars the filing of another action upon the same claim. Assembly Bill 1 further requires dismissal of an action for medical or dental malpractice if the action is filed without an affidavit submitted by a qualified medical expert supporting the allegations.

The bill also requires district courts to adopt rules on or before March 1, 2003, to expedite medical and dental malpractice trials.

Pretrial Settlement Conferences

The bill requires that settlement conferences be held before a judge other than the judge assigned to the case. Each plaintiff, defendant, representative of the physician's or dentist's insurer, and each of their respective attorneys must attend and participate in the settlement conference. The judge presiding at the settlement conference must decide what information the parties may submit. The failure of any party, his insurer, or his attorney to participate is grounds for sanctions. The settlement conference replaces the medical and dental malpractice screening panels, which are eliminated.

Statute of Limitations

Additionally, A.B. 1 shortens the statute of limitations for commencing an action for injury or death that occur after October 1, 2002, from four years to three years, or two years after the plaintiff discovers or should have discovered the injury, whichever occurs first.

Expert Medical Testimony

Further, this measure specifies that expert medical testimony may only be given by a medical care provider who practices or practiced in an area substantially similar to the type of practice engaged in at the time of the alleged negligence.

Periodic Payment of Future Damages

Assembly Bill 1 also provides that future economic damages may be awarded in periodic payments by a means other than an annuity if the defendant posts an adequate bond or other security to ensure full payment by periodic payments of the damages. Upon termination of the payment of the periodic payments, the court shall order the return of the bond or other security to the defendant.

Special Training for Trial Judges

This measure requires the Supreme Court of Nevada to provide for training concerning the complex issues of medical malpractice litigation for each district judge to whom actions involving medical malpractice are assigned.

Malpractice Reporting Requirements

The Board of Medical Examiners must submit to the Governor and the Director of the Legislative Counsel Bureau a written report compiling disciplinary actions taken by the Board during the previous biennium against physicians for malpractice or negligence and other information reported to the Board. Additionally, the Court Administrator of the Supreme Court of Nevada must submit to the Governor and the Director of the Legislative Counsel Bureau a written report compiling the information pertaining to physicians and osteopathic physicians submitted by the clerks of the courts. These reports must include aggregate information for statistical purposes and exclude any identifying information related to a particular person.

Further, A.B. 1 strengthens requirements for physicians, osteopathic physicians, their insurers, a person, medical school, or medical facility to report to licensing boards actions that could be grounds for discipline, as well as all actions filed or claims submitted to arbitration or mediation for malpractice or negligence against the physician or osteopathic physician. The measure also requires similar reports from the clerks of the courts. Administrative fines of $10,000 may be imposed on certain parties for failure to comply.

Assembly Bill 1 also requires insurers to report to the Commissioner of Insurance within 30 days on a breach of professional duty by osteopathic physicians. Current law only applies to physicians. Additionally, the Commissioner of Insurance must report to the State Board of Osteopathic Medicine within 30 days after receiving the report of the insurer.

Medical Error Reporting

In addition, Assembly Bill 1 requires reporting of "sentinel events" to the Health Division of the Department of Human Resources. A "sentinel event" is defined as an unexpected occurrence involving death or serious physical or psychological injury or the risk thereof, including any process variation for which a recurrence would carry a significant chance of a

serious adverse outcome. The term includes the loss of a limb or function. An employee of a medical facility must report "sentinel events" to the facility's patient safety officer within 24 hours. Subsequently, within 13 days, the patient safety officer must report the date, time, and description of the sentinel event to the Health Division. Medical facilities include hospitals, obstetric clinics, ambulatory surgery centers, and independent centers for emergency medical care.

Medical facilities must also notify patients affected by a sentinel event within seven days. However, the notification cannot be considered an acknowledgement or admission of liability.

To the extent of legislative appropriation and authorization, the Health Division must safely and confidentially maintain reports of sentinel events. The Division must also contract with a quality improvement organization to analyze and report trends regarding sentinel events. If the Health Division receives notice from a medical facility that it has taken corrective action to remedy the causes or contributing factors of a sentinel event, the Division must make a record of the information and ensure that the information is aggregated and does not reveal the identity of the person or facility.

In addition, the information concerning corrective actions must also be forwarded to the quality improvement organization. The findings of the organization regarding its analysis of aggregated trends of sentinel events must be forwarded to the new Repository for Health Care Assurance. To the extent of legislative appropriation and authorization, the Repository serves as a clearinghouse of information relating to aggregated trends of sentinel events. Assembly Bill 1 specifies that no report, document, recommendation, or any other material compiled pursuant to the reporting of sentinel events is admissible as evidence in any administrative or legal proceeding.

Patient Safety Plans and Committees

Further, Assembly Bill 1 requires medical facilities to develop internal patient safety plans in consultation with licensed health care professionals at the facility, which must be submitted for approval to the facility's governing board. Compliance with the plan is a condition of employment at the facility. Medical facilities must also establish patient safety committees to meet monthly. Each committee must receive reports relating to patient safety, make recommendations to reduce the number and severity of sentinel events, and report quarterly to the facility's governing body regarding the number of sentinel events and any recommendations to reduce the number and severity of such events.

No person involved in the reporting, transmitting, or compiling of information concerning sentinel events is subject to any criminal penalties or civil liability if the reporting, transmitting, or compiling is made without malice.

Whistle-blower Protections

Finally, Assembly Bill 1 includes "whistle-blower" protections for employees of medical facilities, physicians, and osteopathic physicians who report either: (1) a sentinel event to the Health Division; or (2) grounds for initiating discipline or information that raises questions regarding a physician's competence to a physician licensing board. The bill prohibits the medical facility or physician from retaliating or discriminating against an employee for these actions and from restricting the rights of an employee to make these reports or participate in any related investigation.

An employee of a medical facility who believes he has been unlawfully retaliated or discriminated against for making these reports may file an action in court for appropriate relief.

Effective Date

The majority of this measure is effective on October 1, 2002, while the medical error reporting provisions are effective on July 1, 2003.

The State of Nevada is experiencing extreme difficulties attracting and maintaining a sufficient network of physicians to meet the needs of the residents of this state due to the escalating cost of obtaining professional liability insurance. The Governor of Nevada called a special session of the Legislature after it was determined that the shortage of physicians and the inability to attract new physicians to this state posed a serious threat to the health, welfare, and safety of the residents of the state. Subsequently, the Legislature enacted provisions to increase the availability and affordability of malpractice insurance while safeguarding the rights of patients and relatives to seek compensation for medical injuries.

APPENDIX C

Additional Resources

ADDITIONAL RESOURCES

Following is a list of additional resources for background information on the medical malpractice crisis in Nevada in 2002. Each of these resources is available through the Research Library of the Legislative Counsel Bureau. Many of the resources listed are also available electronically on the Legislature's Web Site at www.leg.state.nv.us.

A. PAST LEGISLATIVE STUDIES

- **1977 Legislative Report** – In 1975, the Legislature also adopted a resolution (Senate Concurrent Resolution No. 21, File No. 115, *Statutes of Nevada 1975*) directing the Legislative Commission to undertake a study of the problems of medical malpractice insurance. The subcommittee was directed to assess the effectiveness of the measures enacted in 1975 and make recommendations to the Legislature in 1977. The report of this subcommittee, entitled *The Problems of Medical Malpractice Insurance* (Bulletin No. 77-1), is available in the legislative library.

- **1987 Legislative Report** – The 1985 Legislature also directed the Legislative Commission to study the business of insuring against medical malpractice (Assembly Concurrent Resolution No. 53, File No. 106, *Statutes of Nevada 1985*). The report of this study, entitled *Study of Insurance Against Medical Malpractice* (Bulletin No. 87-17), is available in the legislative library.

- **1997 Legislative Report** – The 1995 Legislature appropriated $75,000 for an independent study of all open and closed claims for medical malpractice in Nevada over the last ten years. The report of this subcommittee, entitled *Claims for Medical Malpractice* (Bulletin No. 97-2), is available in the legislative library.

B. BACKGROUND MATERIAL PREPARED FOR THE SPECIAL SESSION

Three volumes of material provided by the Research Division of the Legislative Counsel Bureau as background material for the Legislature at the request of Assemblywoman Barbara E. Buckley, Chairwoman of the Legislative Subcommittee to Study Medical Malpractice.

- **Volume 1** includes the following information regarding the work of the Subcommittee:
  - The white paper prepared by the Subcommittee;
  - The minutes of the March 21, 2002, meeting of the Subcommittee;
  - The minutes of the May 13, 2002, meeting of the Subcommittee;
  - The May 13, 2002, response from The Doctors Company to questions raised by the Subcommittee concerning medical malpractice coverage and rates;
  - The July 22, 2002, letter from Alice A. Molasky-Arman, Nevada's Commissioner of Insurance, responding to questions raised by the Subcommittee; and
  - A list of proposed insurance reforms presented throughout the course of the study.

- **Volume 2** contains data on the following issues:
  - Past Nevada legislative actions;
  - The Insurance Market – Generally and in Nevada;
  - Nevada's Civil Justice Laws;
  - An overview of tort laws in other states; and
  - An overview of California's Medical Injury Compensation Reform Act of 1975 (MICRA).

- **Volume 3** contains data on the following issues:
  - An overview of caps on damages in other states;
  - Statistical data and statutes pertaining to Nevada's Medical/Legal Screenings Panels;
  - Data regarding past medical malpractice claims and cases in Nevada (including information on the monetary amounts involved in judgments and settlements);
  - An overview of the operation of the State Board of Medical Examiners;
  - General information on the issue of reporting of medical errors;
  - Data on the number of physicians in Nevada and the number of physicians involved in medical malpractice claims;
  - General information on physician negotiating groups;
  - An overview of issues involving health care costs that relate to medical malpractice coverage; and
  - National statistics on the number of physicians.

C. THE INSURANCE INDUSTRY IN NEVADA

Nevada's Division of Insurance is a primary source of information concerning the insurance industry and the situation involving medical malpractice, in particular. The Division's Web Site (www.doi.state.nv.us/) includes information regarding medical malpractice coverage, the creation of the Medical Liability Association of Nevada (MLAN) and the operation of the Medical/Legal Screening Panels, which were repealed under Assembly Bill 1 of the Eighteenth Special Session of the Nevada Legislature in August 2002.

The Division maintains offices in Carson City and Las Vegas and may be contacted as follows:

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