

**MINUTES OF THE
HEALTH AND HUMAN SERVICES INTERIM COMMITTEE**
Wednesday, October 17, 2012 – 2:00 p.m. – Room 20 House Building

Members Present:

Sen. Allen M. Christensen, Senate Chair
Rep. Paul Ray, House Chair
Sen. Patricia W. Jones
Sen. Mark B. Madsen
Sen. Stuart C. Reid
Sen. Luz Robles
Rep. Tim M. Cosgrove
Rep. Bradley M. Daw
Rep. Wayne A. Harper
Rep. Ronda Rudd Menlove
Rep. Dean Sanpei
Rep. Evan J. Vickers
Rep. Christine F. Watkins

Members Absent:

Rep. Daniel McCay

Staff Present:

Mr. Mark D. Andrews, Policy Analyst
Ms. Cathy Dupont, Associate General Counsel
Ms. RuthAnne Frost, Associate General Counsel
Ms. Lori Rammell, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Christensen called the meeting to order at 2:30 p.m. Rep. McCay was excused from the meeting.

Mr. Andrews explained how a committee may prioritize a bill for drafting. He said that Rep. Ray is requesting that the committee prioritize the drafting of a bill that would make amendments to the controlled substance list.

Rep. Ray discussed why he thought the committee should open a bill request to amend the controlled substance list.

Dr. David N. Sundwall, Chair, Controlled Substances Advisory Committee, reviewed a report from the committee he chairs, which stated that, despite the efforts of law enforcement and medical professionals, new synthetic drug substances continue to be identified, and discussion should continue regarding prohibition of these substances.

Mr. John Fellows, General Counsel, Office of Legislative Research and General Counsel, commented on the Controlled Substances Advisory Committee's desire to add substances to the list of controlled substances. He cited two cases already considered by the Utah Supreme Court, which determined that statute cannot be changed nor items added to the controlled substance list without approval of the state Legislature. He expressed sympathy for the Controlled Substances Advisory Committee's and law enforcement's desire to make these changes when the Legislature is not in session, but he stated that the constitution takes precedence. He proposed a scenario where someone could be convicted for possession of one of the new substances, only to find later that the substance was not, in fact, added to the list; in such a case, that conviction could be appealed. He suggested that, occasionally during the interim, special sessions of the Legislature could be held solely for the addition of substances to the controlled substances list.

Ms. Susan Allred, Associate General Counsel, Office of Legislative Research and General Counsel, pointed out that it would almost be guaranteed that there would be a legal challenge to convictions of criminals possessing items added to the controlled substance list without proper legislative approval.

Mr. Scott Reed, Attorney General's Office, asked the committee to consider forming a special legislative committee with rulemaking authority to address these issues. In response, Mr. Fellows pointed out that such a subset of the Legislature would still be unable to pass legislation on behalf of the entire Legislature.

MOTION: Rep. Ray moved that the committee open and prioritize a committee bill file to make additions and technical changes to the state's statutory schedule of controlled substances, then bring that bill before the November interim meeting of the committee. Voting in favor was unanimous with Sen. Reid, Sen. Robles, Rep. Daw, and Rep. Harper absent for the vote.

2. Sunset Review—Standard of Proof for Emergency Care When Immunity Does Not Apply

Mr. Andrews reviewed the purpose of sunset reviews and the committee's options. He stated that sunset reauthorizations require a separate bill and sponsor for each statute reauthorized. He pointed out the previously distributed copy of the statute to be reviewed, Utah Code Ann. Section 58-13-12.5, which establishes an evidentiary standard of "clear and convincing" for certain care provided in a hospital emergency department.

Mr. Steven Hester, General Counsel, Utah Medical Insurance Association, stated that the Utah Medical Insurance Association believes this statute is sound and should be reauthorized and that the sunset provision, Subsection (5) of the statute, should be eliminated entirely. He explained the importance of providing emergency medical personnel with the ability to better defend themselves against malpractice claims. He said it is far too early to evaluate whether the statute has achieved the desired benefit, as there have been no malpractice claims filed yet which would have been affected by this legislation.

Mr. David Gessel, Vice President, Utah Hospital Association, said that the Utah Hospital Association was part of the group that negotiated this provision originally, and the association still believes in the importance of the provision. He said that several other states have similar statutes, and at least one court has upheld its constitutionality. He said that the association supports reauthorization of the statute and removal of the sunset provision.

Mr. Charlie Thronson, attorney, Utah Association for Justice, stated that clear and convincing evidence is not usually required as a burden of proof in medical malpractice cases. He said there are 32 other separate statutes that apply after a health care provider has committed malpractice. He stated that the important thing to remember when considering this sunset review is that it is the burden of the proponents of the statute to justify its continuation. He said this statute should sunset as written on July 1, 2013. He suggested that, if this statute is not allowed to sunset, then an audit should be conducted to determine its effectiveness.

Chair Christensen informed the committee that he has requested that a bill file be opened on this issue and anticipates having it ready by the November interim meeting of the committee.

Mr. Mark Brinton, General Counsel and Director of Government Affairs, Utah Medical Association, reviewed the original passage of this bill and expressed the Utah Medical Association's strong support of it. He indicated that removing the statute's sunset provision would not remove the statute from the committee's purview because the statute will come up for sunset review again when the chapter of which it is a part comes up for sunset review in 2016.

Chair Christensen indicated that the discussion would be continued at the next interim committee meeting and that he intends to extend the sunset date for Utah Code Ann., Section 58-13-12.5 so that the statute sunsets in 2016, the same time as the chapter of which it is a part.

3. Concussions and Other Traumatic Head Injuries

Rep. Ray introduced draft legislation "Protection of Athletes With Head Injuries Act" (2013FL-0288/002), which clarifies that making a field, facility, or other location that is owned, leased, or controlled by a government entity available to an amateur sports organization or a child does not constitute a "sporting event" for purposes of the Protection of Athletes with Head Injuries Act. He outlined the various changes in the draft and the purpose of each.

Mr. Robert Wall, City Attorney, South Jordan City, stated that this bill puts the burden of supervising the athletes on the sponsor of an event, not on the owner of the facility where the event occurs. He explained why the language "the child is suspected of sustaining" was changed to "the organization or agent knows or should have known the child sustained." Mr. Wall answered questions from the committee.

Dr. Joe Eyring, retired surgeon, spoke about his own experience with his athlete son and emerging technology that can detect a concussion through online tests. He stated that his son was able to take the postconcussion test on the Internet and as a result was notified of his concussion and given instructions to manage it.

Rep. Harper requested that clarifications and changes be made to the bill and that the bill be brought back to the committee.

Rep. Cosgrove spoke in favor of the bill.

Rep. Vickers recommended the bill be passed out favorably and that Rep. Ray be allowed to continue working on it.

Rep. Ray said that he does not believe any changes need to be made to the bill.

Mr. Wall indicated that he thought that if the "suspected" language is not changed, a court may apply the reasonable person standard anyway.

MOTION: Rep. Ray moved to pass draft legislation "Protection of Athletes With Head Injuries Act" favorably as a committee bill. The motion passed with Sen. Madsen and Rep. Harper voting in opposition to the bill. Rep. Daw was absent for the vote.

4. Licensing Requirements for Certain Pharmaceutical Research Activities

Sen. Jones distributed and discussed draft legislation "Research Using Pharmaceuticals" (2013FL-0282/002), which addresses licensing requirements for certain pharmaceutical research activities. She stated that this bill attempts to eliminate the red tape for university research facilities using pharmaceuticals.

Dr. Kristen Keefe, University of Utah, clarified that this bill does not exempt the university from federal controlled substance licensing; this draft simply attempts to eliminate the need for a state pharmacy license for researchers. She clarified that the research referred to involves chemicals, controlled substances, and animal research, not human trials.

Mr. Ray Walker, Division of Occupational and Professional Licensing, clarified that the Pharmacy Practice Act made it unlawful to practice pharmacy without a license. He said it has been viewed as over-regulation, and the department is now trying to define what research is for the purpose of licensing. He stated that the division is neutral but has no concerns with the language in this bill. He stated that some states exempt research from pharmaceutical licensing and others require it.

Sen. Jones stated that the rate of biomedical research being performed in Utah is higher than in other states, but onerous licensing requirements are discouraging those efforts.

Rep. Vickers inquired about record keeping and was told by Mr. Walker that accountability is required as a result of having a controlled substance license and a U.S. Drug Enforcement Administration license. Rep. Vickers said he would feel comfortable supporting the bill.

Sen. Madsen spoke in favor of the bill and reducing federal regulation.

MOTION: Sen. Jones moved that "Research Using Pharmaceuticals" be passed out as a committee bill. The motion passed unanimously with Rep. Daw absent for the vote.

5. Adjourn

MOTION: Rep. Watkins moved to adjourn. The motion passed unanimously with Rep. Daw absent for the vote.

Chair Christensen adjourned the meeting at 4:00 p.m.