

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Third Session
March 7, 2005**

The Committee on Commerce and Labor was called to order at 2:00 p.m., on Monday, March 7, 2005. Vice Chairman John Oceguela presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Oceguela, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry, Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Genie Ohrenschall, Assembly District No. 12,
Clark County
Senator Dina Titus, Clark County, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Sarah Gibson, Committee Attaché

OTHERS PRESENT:

Thelma Clark, American Association of Retired Persons (AARP)
Richard Doyle, Private Citizen, Las Vegas, Nevada
Renee Diamond, Administrator, Nevada Division of Manufactured Housing
Barry Gold, American Association of Retired Persons (AARP), Nevada
Bettye Thomas, Volunteer Team Leader for Health Advocacy, American
Association of Retired Persons (AARP), Nevada
Tom Wood, Legislative Advocate, representing Wyeth Pharmaceuticals
and the Pharmaceutical Research Manufacturers of America
George Ross, Legislative Advocate, representing National Association of
Chain Drugstores

Vice Chairman Ocegüera:

[Calls meeting to order and roll called.] This afternoon we are going to start with
Assembly Bill 81.

**Assembly Bill 81: Requires contract for sale of mobile home located in mobile
park to include special statements and disclosures. (BDR 43-200)**

Assemblywoman Genie Ohrenschall, Assembly District No. 12, Clark County:

I am the prime author of Assembly Bill 81, a really very quick and easy bill that is just picking up pieces of things that should have been looked at before. It requires certain disclosures to be made in a contract for the sale of a mobile home or manufactured home residence. Among these disclosures, in Section 1, paragraph 1, it requires that the contract for sale state clearly that the land on which the mobile home is located is not included in the purchase price of the mobile home if the buyer is just buying the mobile home. It doesn't sound like a lot, but you would be surprised how many people do get confused, particularly in areas where you might have what is called an "estate park" across the street from a normal mobile home park. It causes confusion. There are people who will buy a mobile home thinking that they have also bought the land under it, when

in fact they do not. The only time you do that is if you buy into an estate park and at that time, what you are buying is not the living unit, per se, but the land. The living unit just happens to be an attachment. At least in some parts of the state, the two types of parks are close together geographically and those confusions happen. That's one.

[Assemblywoman Ohrenschall, continued.] The next one should probably be in any contract for anyone. It should state in conspicuous type that it's a good idea if you are making a major purchase, such as a mobile home would be, to get legal assistance. Also it would state where there might be free legal advice, assuming that such exists in the community where the park is located; for example, Legal Aid, Senior Citizen Law Project, and groups like that where the person can go to and go over the fine points. Under the bill, the same contract would have to include the dates, if known, of the last maintenance of the mobile home and of any required maintenance or cleaning of major equipment, including the air conditioner, furnace, chimney, and water heater, again, if known. So it's not as onerous or burdensome as it sounds.

The final part [of the bill], and I guess the most important part of all, is if the owner of the mobile home park is the seller of the mobile home and if it was constructed before June 15, 1976, the seller must, before the execution of the contract, disclose to the buyer any known elements in the construction or the connection of the mobile home to utilities that do not meet the standards required by a statute or ordinance at time of sale. In other words, if you are dealing with an older mobile home, the legal requirements for what was acceptable as a place to live in may have been different. They may have been a lot slacker than they are today. A mobile home that may have passed certain types of inspection 10 or 15 years ago might not be able to pass one today. It is good to have that pointed out so people know what they are getting into.

If the seller, being the park owner, does disclose that the mobile home does not comply with safety standards set forth in NRS 461.A [*Nevada Revised Statutes*], then the seller must also disclose specifically the manner in which the mobile home doesn't comply. In other words, once again the buyer is given enough knowledge to be able to figure out if he wants to take the risk of a buying a used mobile home; just exactly what it is that he is buying; and if he decides that he wants to take the risk, how much it would cost him to bring this unit up to current county standards for safety.

Assemblywoman Giunchigliani:

Would this cover a situation such as what happened in southern Nevada with the Skyview where actual homes were moved and nobody seems to know where they even came from, those that wound up in the park? Then people

were sold the homes for very miniscule amounts. Nothing was ever told to them about the quality of the home or lack thereof.

Assemblywoman Ohrenschall:

Precisely; it would cover that. In fact, I forgot to mention to the Committee that I am presenting the bill as is, but in the course of the bill coming out I got a communication from Mr. Steve Ray, who lives in a mobile home in Lake Tahoe. He has a suggested amendment ([Exhibit B](#)) to the bill. His amendment would be, "If the owner of a mobile home park is the seller, include a buyer acknowledgment that the park owner makes no guarantees as to the longevity of the park, unless otherwise stated."

What happened to their park is that they got a much better offer to sell the land because mobile home parks are generally valued at commercial rather than personal prices. The land itself quite often becomes very valuable. This park was literally sold out from under the people who lived there. A lot of them had to go around very short term and try to find someplace else to live. To try to find a place to move your mobile home is not easy. What you were saying, Ms. Giunchigliani, is something that has been happening at several parks in southern Nevada. In fact, there are two parks that seem to be in the business of selling used mobile homes. Since they are not supposed to be dealers by statute, one has to assume that they got those homes because of unpaid rents or a foreclosure on the lien. The actual titles and documents are just not there.

Assemblywoman Giunchigliani:

Could you require, not only upon sale, that the seller of the mobile home provide a copy of the titling so the people know where these come from?

Assemblywoman Ohrenschall:

I think that would be a very good addition to the bill. I would be in favor of it. I don't believe that the language as written is broad enough. That would require an amendment. I would be very happy to work with this Committee to construct such an amendment.

Assemblywoman Giunchigliani:

I think it just might pose an additional loophole that is out there if you are taken advantage of. You have some people who, because they couldn't afford the rent, lost their mobile home and it sits there. The owner just takes it over and then turns around and sells it two or three times in some cases.

Assemblywoman Ohrenschall:

This situation occurred to one of my constituents in the park in my district. Some people came in and they were up the creek without a paddle.

Assemblywoman Giunchigliani:

In the circumstance that you are talking about, you are absolutely correct that if you are a dealer, you have to be licensed as a dealer. Who do you bring the complaint against if someone has set up this fake business because apparently they do not have the authority to do so?

Assemblywoman Ohrenschall:

Presently, as near as I can figure out, it would be the Division of Manufactured Housing, but they are very overworked. I think maybe that is something else that should be put in if we close that loophole. As I said, I would be very happy to work with the Committee.

Thelma Clark, American Association of Retired Persons (AARP):

I live in a mobile home. We are in favor of this bill because we have so many problems in a park, especially if a mobile home is sold. I had a neighbor that bought a mobile home and it looked nice, the furniture was nice inside. They paid a lot of money for it, more than they should have but they thought it was nice. It was their first start home, I guess. It was in the summertime and the air conditioner worked. They were there about 2 weeks and the water heater went out. Then when they tried to turn on the furnace, it didn't work when it got cold in the winter. The seller had not told them anything about what worked and what didn't work. They just thought that automatically everything would work or it could not be sold to them. So we are in favor of this bill. I like the amendments you talk about.

Richard Doyle, Private Citizen, Las Vegas, Nevada:

I live in Las Vegas, also in a manufactured home. As you all know, park managers are now licensed to be able to sell mobile homes within their parks, presenting us with a problem, because the key to a sale in a mobile home park is to fill it so the owner gets the revenue and to get the commission that the salesperson gets when that house is sold. Disclosure is not a high priority. It doesn't occur in most mobile home sales. Personally, I am in favor of this bill. I do not represent any organization; I am speaking as an individual. We would endorse this bill. The more disclosure the better it is for the buyer, most of them being seniors.

Assemblywoman Giunchigliani:

When did the park managers become eligible? Are they automatically deemed a dealer?

Richard Doyle:

It's not automatic. They have to take courses and they have to have continuing education but, they are authorized to sell within the ownership of the park that

they manage. Let me rephrase that, the owner of my park, Las Vegas Valley, owns 5 parks. The managers of my park can sell within those 5 parks.

Assemblywoman Giunchigliani:

So they could basically raise your rent just enough where you cannot afford it. When did we give them that authority?

Richard Doyle:

It has been about three years, to my recollection.

Assemblywoman Giunchigliani:

We may want to revisit that to some extent. That's where a game can really be played, especially if you don't know how the mobile home unit actually even got in the park in some cases.

Richard Doyle:

In many of the upscale parks the age of the home discriminates against what the unit is. Most of them don't have the 376 houses, they are disappearing rapidly. Even with the newer ones, there are a lot of coercion opportunities which are taken advantage of in parks.

Assemblywoman Giunchigliani:

Right, regardless of whether they are upscale, middle, or the ones that are...

Richard Doyle:

He has the commission that is larger many times than site-built houses.

Assemblywoman Giunchigliani:

Thanks for bringing that to my attention.

Renee Diamond, Administrator, Nevada Division Manufactured Housing:

[Introduced herself.] We are neutral on the bill, but I do have some comments, prepared testimony which I believe my staff brought to your Committee this week ([Exhibit C](#)).

First of all, I have the answer to a couple of those questions about sales. In 1999, effective October 1, the Nevada Legislature adopted standardized contracts which I have attached to your packets ([Exhibit D](#)). It was in the Division's bill in 1999. We attached it because they are quite comprehensive for the sale of used homes. Prior to 1999 every person who could sell homes, who was licensed to sell homes used a different contract. That led to problems when a consumer needed to complain to the Division. A contract might or might not

have the kind of disclosures that the Division approves of. I will tell you that we work closely with industry. We had hearings and these are in regulation so that this contract has to be used by everybody licensed to sell a home, except an individual who is selling their personal residence.

[Renee Diamond, continued.] Somebody said that we are overworked, but we always take complaints through the Division. We have an investigator about unlicensed sales activity. If anybody bought a home from anyone other than an individual home owner, they could complain to the Division. We license manufactured home community owners, and through them their managers to sell only the homes that they own through the lien process. We do have a limited license that we give them on an individual basis.

Let's say Mrs. Smith wants to go back to Kansas and she sells the park a home, the park buys it, they cannot sell that home. They can turn it over to a used home dealer to sell the home, who is fully licensed with us, who has to use the contracts that do disclose everything that you have just talked about, which included for Ms. Clark's benefit, a walkthrough and a sign-off page that would acknowledge if a system is not working. We elucidate in statute what the 5 essential systems are, and those have to be working at the time that they do the walkthrough at the close of the contract. In any case, if the Division hears of unlicensed activity, they always shut it down. We think this contract has a lot disclosure.

Assemblyman Anderson:

How would you have to change the practical application to the forms that you are currently utilizing if this is already included in your July 20 form? Heating, air conditioning, electrical, plumbing, and drainage systems are already there.

Renee Diamond:

Section 3 talks to maintenance of a manufactured home. Maintenance is not something we consider the same as working conditions of essential systems. Maintenance would be things like cleaning of the major equipment—air-conditioning, cleaning, and things like that. In terms of working order, we insist that anybody who uses our contract and is licensed with the Division actually turn on the heat, even though it is July in Las Vegas, and show that the heat works, show that air conditioning works. As to somebody coming out and changing the air conditioning pads, we have no way of knowing that. I'm not sure how anybody would.

Assemblyman Anderson:

Then what I am to understand of this bill is that it would in reality make the owner, if it happens to be the mobile home park owner, responsible for knowing

when maintenance was done and then noting that to the perspective buyer. In addition, it is the buyer's responsibility to turn on the heat, the air conditioning, flushing the toilet, and doing those other kind of things that you would do in any other kind of purchase agreement whether it was a mobile home, manufactured house or a second-story apartment.

Renee Diamond:

Our contract calls for the dealer who is selling the home to actually turn on those systems and then everyone has to initial it to acknowledge that they either work or don't work. If they don't work, Ms. Buckley had an addendum to the original bill that says you can acknowledge that something doesn't work and waive the responsibility of the seller. Sections 1, 2, and 3 of this bill, it seems to me in the way it is drafted, would apply to anybody selling a home in a manufactured home community, not just the owner. It's only Section 4 that applies to the park being the owner.

We think that in the contract, as we put in the written testimony, we can easily bold the type that says to contact an attorney, that this is a contract. We have it at the top of every page on the right-hand side that they should contact an attorney. It would be no problem to bold it. Our difficulty comes where it concerns the requirement about estimated payment to landlord on page 3; we would require a regulation change, but we could do that. It cost the Division a little under \$2,000 to draft the regulation, so we could do that. Our problem with this bill is only that we are not aware, even now, of any attorneys that do free or pro bono legal work concerning purchase contracts. There is a lot of pro bono legal work going on in the community, but most of that is related to other issues, not real estate contracts.

I have a problem with subsection 4 because only a small percentage of homes are sold by the owners of mobile home parks. They have to use, in the sale of the homes that they buy, a licensed dealer to sell them. The only homes that they can sell are the homes they own through the lien sales, and that was specified in the last session of the Legislature. They gave them the right to sell lien homes. More importantly, I think that some of the problem that Ms. Giunchigliani alluded to would not relate to this at all. The dilemma at the parks was that the park had bought homes or had gotten them through lien sales and hadn't called for a safety inspection when they moved them. They are required under NRS 489 [*Nevada Revised Statutes*] to call for an inspection before utilities are connected. I would maintain that the rogues that own some of those parks that do that kind of thing are flouting the laws that are already on the books. We certainly could take care of Sections 1 and 2, making type more conspicuous, but I don't know how I would enforce or include the attorneys list. My suggestion would be that somewhere in this contract we are

already using it say that available from the Division might be a list of attorneys available to the community. We would certainly attempt to get that.

Assemblyman Hettrick:

I had marked some of the things that Renee is talking about. I see a problem that it says, "if so available." So if somebody prints a form, even if there was a free attorney available and the attorney decides to quit doing it. Now you have got the owner or whomever selling responsible for the fact that some attorney quit doing a free service and you are misinforming. I see that as a problem. If they don't know of one available, then they are going to print their forms and they are not going to go looking for anybody who is available, so I don't know that it changes much. I think that Ms. Diamond's suggestion that this is a legal contract and one should obtain legal advice, is good advice. That could be put on a contract and that makes sense to me, in case somebody doesn't know that.

I agree with Section 3, the comments. It says include the dates "if known." If they don't want to disclose then they will claim that they just don't know. They won't disclose that. It is about maintenance, but not about whether it works. You could say you maintained it and had someone come out and work on it but it still doesn't work, but he worked on it. You could hand them a bill and say, "I paid this guy a \$100 to service the heater," and it still may not work. I don't know that it helps much.

I think the language in Section 4 is ambiguous. It says, "Any known elements in the construction or the connection of the mobile home to utilities do not meet standards required..." I don't know that they have anybody who's able to make those kinds of judgments and I agree with the comments in Ms. Diamond's paper ([Exhibit C](#)) here that you are forcing someone to be paid to come in and go through those who have liability insurance for making those kinds of judgments. Otherwise, no one would disclose anything. It seems to me that if you wanted to say in Section 4, "If constructed before 1976, the seller must notify the buyer or would-be buyer that it may not meet the current codes." That's about all you could do reasonably because you don't know whether it meets the codes. Are you going to have it inspected before you have a buyer? I don't know that you are going to have it inspected before you have a buyer, so how could you inform that person without knowing whether it satisfied the current codes? How would that person, without going into the mobile home itself, know whether it was constructed to current codes? Or even the codes that applied when they built it. You wouldn't know. You would have to tear it apart to find out.

[Assemblyman Hettrick, continued.] I agree that the intent here is great, it's a good thing to try to do these things but, it strikes me that what we have here is pretty ambiguous. It's not going to accomplish anything. I think, unfortunately, the gentleman from Las Vegas who testified said they apparently find a way around it. I think with the language we see here, they are going to do it again. I think this would need to be cleaned up a lot to be very effective.

Assemblywoman Ohrenschall:

I believe that certainly some of the language can be cleared up, but again, on subparagraph 4 we are specifically talking about the standards set forth in NRS 461A.120. Also, we are leaving this as an honor thing. You disclose or don't disclose. What it is meant to do is to put the buyer on his notice that he should take this thing very, very seriously. In that respect, I think it would be very good. As I said, certainly the language can be clarified a little.

Renee Diamond:

All homes constructed before the Manufactured Housing Act of 1974 were not constructed to current codes, but any home after that time, I don't know what, June 15, 1976, is. Also, NRS 461A.120 is the list from current statute that renders a mobile home substandard. That is quite a different story than codes. A substandard item is something that we enforce on a regular basis if we are called out either by a resident or by the owner of the home who might be a renter. The problem with an unsafe, substandard condition is that the person who owns the home has to repair it and in some cases some of these units cannot be repaired.

Vice Chairman Oceguela:

[Asked if there is there anyone testifying against the bill.] We will close the hearing on Assembly Bill 81.

I would like to open the hearing on Assembly Bill 66. It is one of our member's bills, Mr. Conklin.

Assembly Bill 66: Requires reporting of certain gifts or other economic benefits provided by wholesalers or manufactures regulated by State Board of Pharmacy. (BDR 54-562)

Assemblyman Marcus Conklin, Assembly District No. 37, Clark County:

[Introduced himself.] This is a simple little piece of legislation, Assembly Bill 66. There should be passing around an article from the American Medical Association regarding physicians and the pharmaceutical industry entitled,

"Is a Gift Ever Just a Gift?" ([Exhibit E](#)) I think it is appropriate reading for this bill as we currently have it legislated.

[Assemblyman Conklin, continued.] Basically, what this bill does is it requires wholesalers and manufacturers of pharmaceuticals to disclose the amount of monies, gifts, donations, payments, subsidies, and other economic benefits that they are providing to doctors, retailers, which would be pharmacists, and hospitals in order to influence the prescribing habits of said doctors, pharmacists and hospitals. You could read through most of it. Obviously, it has a reporting mechanism. We have put it in the house of the Board of Pharmacy, although it is my understanding that there is an amendment coming forward, which I agree with. That will be coming from Mr. Barry Gold that AARP would like to propose based on some legislation that was passed similar to this in another state. It would take it out of the Board of Pharmacy's hands and put it into the office of the Attorney General. I spoke briefly with the office of the Attorney General and conceptually they don't have an issue with it, although fine-tuning it may be something that they may want to take part in. I just mention that as a courtesy. The concern was from the Board of Pharmacy that they would not have the ability to enforce the mechanisms brought out in Assembly Bill 66.

We are requiring that, on or before December 31, each wholesaler disclose the amounts and to whom these gifts are given to, and that those reports are provided to the Legislature and to the public so the public can use them to the best of their ability. This is a very controversial topic in many respects. In the last session, Senate Bill 387 came forth. Senator Titus did a lot of work in this area. One of the things that were left out of that bill was a similar mechanism to this. I believe that was probably part of a compromise to get some legislation brought forward. Since then, obviously, I am providing you with some information from the American Medical Association ([Exhibit E](#)) that conclusively proves that this type of behavior from the pharmaceutical industry, while it is not unethical in any sense, does have an impact on the prescribing habits that prescribers of pharmaceuticals make. As such, it could potentially have significant impact in the costs of pharmaceuticals and such items that people are spending on Medicaid, through State agencies, and also through private insurers. I think it is very important that we take a serious look at a step forward in terms of disclosures.

Nowadays people have an opportunity to take a much more active role in their medicine. In the old days, you went to your doctor and your doctor told you what was good for you and you just followed it. Now, with all the advertising, all of the pressure that is put on the public, they have become more consumer-driven with respect to their own medicine. Unfortunately, they do not get the whole story. They only get what's given to them; they only get one side of the

equation. That's the side that is advertised to them through television and radio. What we are trying to do here is give them the other side of the equation so that they have a better ability to make good decisions for themselves, particularly when it comes to safe and effective drugs and without the distortion of other marketing mechanisms that may take part in the prescription-writing habits of their doctor. That is what this bill is really about.

[Assemblyman Conklin, continued.] I would also like to mention, before I turn this over, because it is of some importance to some doctors that this bill will not only reach pharmaceuticals as we understand the term of "prescribed drugs" but also to all entities there within. I would make note that Chapter 639 in NRS talks at length about wholesalers and what they can manufacture. One of the items listed there is devices. Under *Nevada Administrative Code* 639.448, devices include "components, parts, and accessories for the use in the diagnosis, cure, mitigation, treatment, and prevention of disease in persons or animals." It is important because this type of activity takes place whether you are talking about the drug Valtrex, a specific ceramic hip replacement, a stent used in surgery, or anything else. It is by administrative code encompassed within what we would interpret to this bill but I would like it on the record that we want all of those categories included as part of legislative intent to be covered by this bill.

Assemblyman Sherer:

Mr. Conklin, how does the Pharmacy Board feel about this? Have you talked to them about that?

Assemblyman Conklin:

I have talked with the lobby team for the Board of Pharmacy. It was their feeling that they did not have the ability to enforce this, nor did they have the staff. We have seen this concern come up before in other states that have similar legislation, most notably Vermont. Vermont, after much discussion, put it in the Attorney General's office. The Attorney General's office has a Bureau of Consumer Advocacy within it. We think that this might fall within that category or some other category under the Attorney General's office quite well. As I mentioned prior, there would be an amendment forthcoming with one of the next speakers.

Assemblywoman Giunchigliani:

That was somewhat along the lines I was going to go. If I also look at page 3, subsection 6, "they fail to timely file a report, they could in addition to criminal penalty be subject to civil penalty of not more than \$10,000 for each violation." We have a circumstance going on right now with a suit within the Board of Pharmacy that has gotten somewhat out of hand. Is this the Board that would

be issuing this, or are you saying the Attorney General's office would be issuing this fine?

Assemblyman Conklin:

It would be my assumption that would go to the Attorney General's Office (AG). We would take the Board of Pharmacy out of here, I think completely, although I don't have the actual amendment in front of me, and turn the entire mechanism over to the Attorney General's office.

Assemblywoman Giunchigliani:

So the Board on or before January 15, prepares and submits a report. Then it says that they "fail to timely file the report." I am just trying to understand what your flow is.

Vice Chairman Ocegüera:

Mr. Conklin, Ms. Giunchigliani, why don't we see if your AG is in the crowd here. Maybe that would help.

Assemblyman Conklin:

I don't believe the AG has come to testify today. I received an email from them about 15 minutes ago that they are not going to be here, I believe. I would be more than happy to share that email with the Committee. They did have some concerns, they were mostly drafting concerns.

Assemblywoman Giunchigliani:

I can hold my question maybe from some of the other testimonies.

Assemblyman Conklin:

Is there a concern here that the Board is preparing the report and you are not sure if the Board is the one that they are going to take action against, or if it's the actual pharmaceutical company for not meeting the requirement to disclose to the Board?

Assemblywoman Giunchigliani:

The former, not the latter.

Assemblyman Conklin:

I don't think that the Board is going to be caught under this, but I can certainly see the concern because it gets a bit wordy there in subsection 5. Maybe we could get drafting to check that out for us.

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada:

[Introduced himself and read from [Exhibit G](#).] I am joined by AARP Volunteer Team Leader for Health Advocacy Bettye Thomas, who will offer concluding remarks for this testimony. AARP is a non-profit, non-partisan membership organization for people aged 50 and older. We provide information and education, advocate on legislative, consumer and legal issues, and assist members to serve their communities.

Prescription drug affordability is a keystone to quality health care. Prices for brand-name prescriptions rose three times faster than the cost of inflation in 2003. AARP members and Americans of all ages are concerned about their inability to afford the medicine they need. A number of states, beginning with Vermont, have enacted or are considering drug marketing disclosure legislation as part of their efforts to control drug costs. Disclosure laws highlight the huge expenditures the drug companies spend to promote predominantly high-cost, brand-name medications to doctors, pharmacists, and other providers. Drug companies spend so much money on promotion because it pays off in sales of high-cost drugs. In 2004, the first annual disclosure report in Vermont showed that the pharmaceutical industry spent \$2,466,000, despite a state population of only 620,000 and less than 2,500 doctors. Direct payments in the form of fees, cash, checks, honoraria, and donations accounted for over half the total monies spent. Upwards of \$500,000 was spent on meals.

PhRMA [Pharmaceutical Research and Manufacturers of America] adopted a voluntary code in 2002 that was supposed to limit these payments to less than \$50. Yet, in the Vermont 2004 report, it shows they spent \$2,466,000. Once these promotional expenditures are made a matter of public record, the rationale for offsetting their influence becomes compelling. The use of evidence-based research, preferred drug lists, and counter-detailing can ensure that providers consider appropriate lower-cost medications. Exposing the gifts, payments, travel, and entertainment that the drug industry lavishes on doctors and other providers and putting a dollar figure on them may also have a deterrent effect—at least in eliminating some of the more extravagant practices. If indeed most of these gifts are \$50 and below, the pharmaceutical industry should have little or no concern over reporting and making them public.

A.B. 66 will provide the State of Nevada with a valuable tool to support the efforts to reduce the costs of prescription drugs. The information gathered will allow policymakers, state government, and consumers to gauge the direct impact of marketing on prescribing patterns. Wholesalers and manufacturers will be required to report gifts, fees, payments, or other economic benefits provided in excess of \$25, with exclusions that are specifically designed for consumer

benefit. Including the names of the recipient is beneficial for data analysis, surveying the scope of the issue and identifying individuals who may be exploiting consumers.

[Barry Gold, continued.] This information may also be of a beneficial influence on prescribing habits of providers who routinely recommend high-cost, brand-name drugs without considering appropriate alternatives.

AARP supports A.B. 66 and hopes this Committee and the Legislature will pass it to help the citizens of Nevada control the costs of prescription drugs.

The Vermont experience concurs with the need to have the Attorney General's Office be the reporting agent, as suggested by the amendments. When Vermont first passed this law, you heard that they had the Board of Pharmacy as the reporting body. Problems arose as the pharmaceutical industry and some professional medical associations attempted to assert influence on the Board of Pharmacy to dilute the impact of the reporting requirements. The law was amended to require manufacturers and wholesalers to report directly to the Attorney General, who is also empowered to enforce it. In Vermont they also require information on the purpose of the gifts, fees, payments, or economic benefit. Amending A.B. 66 to include the Attorney General's Office, instead of the Board of Pharmacy, will avoid these problems as well as give the appropriate authority for enforcement to the correct agency.

If you see the amendments [[Exhibit F](#)], which are going around, what they basically do is just substitute the Attorney General's office for the Board of Pharmacy. The other minor amendment clearly and further defines who a practitioner is. This is necessary to be sure to have information furnished by all those who are involved in the process of prescription drug marketing and detailing, including physicians, pharmacists, hospitals, nursing homes, health facilities, and health plan administrators, as well as "others who prescribe, dispense, or purchase prescription drugs or do business in the state" will enable information to be gathered from the entire spectrum of those who receive the gifts and payments. I will now ask Mrs. Thomas to complete this testimony.

Assemblywoman Giunchigliani:

I think that gives a better flow on who would be doing the regulatory part of that process.

Bettye Thomas, Volunteer Team Lead for Health Advocacy, American Association of Retired Persons (AARP), Nevada:

[Introduced herself.] The high cost of medicine affects all Nevada families. Older adults on fixed incomes are among those who this affects most. Seniors take

more medicine than any part of the population. Many of them take more than 8 prescriptions a month for chronic conditions. We have all heard of people who split their doses or choose between the medications they will take in order to make their monthly supply last longer. We must do something to help the people now and help them to avoid this dangerous practice. These people risk becoming very ill, and this may lead them into long-term care that could cost more for everyone.

AARP Nevada conducted a member opinion survey in 2004 and 93 percent of the members surveyed felt that it is important to us to work toward making prescription drugs more affordable. This piece of legislation is an important step towards that goal. It helps in understanding and identifying the reasons behind the cost of prescription drugs as well as being a tool to help in making them more affordable.

AARP Nevada looks forward to working with the Legislature, state agencies, stakeholders, and consumers in achieving our goal of helping make prescription drugs affordable and accessible. We have over 282,000 members in Nevada and will continue to be a voice in legislative and regulatory issues affecting older adults.

Assemblyman Hettrick:

Not directed to anybody in particular, just looking at the bill, "disclose the value, nature, and purpose of any gift," I can't imagine somebody is going to write down, "I was trying to bribe the doctor." That's a problem to me. There is no Nevada penalty provided in this bill if you report a gift that is illegal under federal law. The area is already regulated under federal law. The penalty is if you fail to report. Who is going to disclose that they broke the federal law so they can get tried under the federal law? It doesn't make sense; I don't see why they would do it. It says in the amendment, which may help some, that you have to determine who the practitioner is and we define who has to disclose, but it doesn't say that I couldn't take the gift to my wife or my son, my uncle, or anybody else. Who is going to disclose that, even if they gave it? Nobody is going to disclose.

This feels good, but it's not going to have any impact whatsoever. This is already in federal law. We haven't heard yet that the Attorney General is willing to do this. Is there a fiscal note attached with it? I think we need to know that to determine what is going to happen here. I have concerns. Ms. Giunchigliani pointed out an issue, "If you fail to file a timely report." It doesn't say "knowingly" or "willingly," it says "if you fail to file a timely report, you are subject to criminal charges." Even if you did it by mistake, even if you didn't know it was required, you are going to be subject to criminal charges and a

\$10,000 fine and court costs. It seems to me that a whole lot of work needs to be done on this. I think it is something that is meaningful because the federal law already regulates all of this, and this doesn't really do anything. I think to believe that someone is going to disclose if they are subject to criminal charge is laudable, but I don't believe it is reasonable, and I just don't think it is going to happen.

Thomas Wood, Legislative Advocate representing the Pharmaceutical Research Manufacturers of America and Wyeth Pharmaceuticals (PhRMA):

PhRMA respectively opposes A.B. 66 because it singles out the pharmaceutical industry and the wholesalers to require disclosure and reporting of trade secret information that is protected by federal law. Additionally, we feel it is unnecessary for the state to address this issue because the industry and the federal government are already standardizing communications with health care professionals and health entities. ([Exhibit H](#))

There are actually four concerns that we have: disclosure of marketing information; the trade secrets being legally protected property; the anti-competitive and anti-free market nature of this bill; and HHS [U.S. Department of Health and Human Services] and PhRMA marketing guidelines make A.B. 66 unnecessary and quite duplicative.

As you know, A. B. 66 passing would require the reporting of gifts, with some exemptions. One of the concerns that we have with this reporting is the proprietary business information. In doing so, this would violate Section 1927 (b)(3)(d) of the Social Security Act [42 U.S.C 1396r-8], which provides that requested information remain confidential and not be disclosed by the secretary in a form which reveals the identity of a specific manufacturer or prices charged. That is basically the Medicaid law. Also, trade secrets are legally protected property. This is a real specific issue that we have tremendous concern about. It is likely a violation of federal Medicaid law. Moreover, the bill does not adequately describe procedures the State will implement to ensure confidentiality of the requested information. The bill does ask that trade secret information not be disclosed. Where does that start and where does it stop? It is not clear at all. Further, the bill does not indicate the extent of the State's liability and a drug maker's recourse for the unauthorized disclosure of protected trade secrets. By requiring disclosure of trade secrets, A. B. 66 could constitute a violation of federal trade secret law.

Let's take a look at what a trade secret is. Basically, it is "any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others." That's a trade secret. This is a re-statement of the

Unfair Competition Act 39 in 1995. This definition includes compilations of data, pricing, marketing techniques, the identity, and requirements of customers. Business and negotiating strategies vary by drug maker and are the product of focused research and ongoing relationships with health care providers. Drug makers engage in strategic negotiations with physicians and other health care providers to ensure that the most appropriate contract is approved for each individual client's needs. Disclosure of the agreed-upon terms for one client might compromise competition in drug negotiations with other clients. Such financial strategies are closely guarded by each drug maker and are not commonly known. Given the secrecy and competitive value of drug makers' marketing and promotional activities, Nevada courts are likely to recognize this information as a trade secret, and thus not available to the state for public use or distribution. In addition, we seem to be the only industry being singled out for the recording of this information.

[Thomas Wood, continued.] The other things that I mentioned that we have concerns about are marketing disclosures being anticompetitive and anti-free market. Mandatory disclosure of marketing expenses is anti-free market and represents unwarranted government interference. That's our opinion. No other business entities doing business in Nevada must disclose their marketing costs associated with doing business in the state. Gaming certainly doesn't. Further, the requirement to mandate disclosure of marketing activities causes unintended effects. Competition among drug makers is fierce, with even the largest companies only having a 5 to 6 percent market share. Mandated disclosure of marketing expenses would give competitors proprietary information about each drug maker's marketing practices. The potential result is a dampening of the level of competition and thus, paradoxically, to what Mr. Conklin is intending to do might even drive up costs.

We think that mechanisms are already in place that give what Mr. Conklin and the co-signers of the bill want. The pharmaceutical industry has issued its own voluntary guidelines [the "PhRMA Code"] related to communications with health care practitioners. In addition, the HHS Office of Inspector General also issued mandatory marketing guidelines that exact even stricter standards on manufacturers that will be enforced by the U.S. Department of Justice. The actual penalty here, as you have already seen with their guidelines with Columbia Sunrise [Hospital, Las Vegas] can be huge, the anti-kickback issue being prosecuted to the largest extent. These marketing guidelines already prohibit quid pro quo between drug makers and health care professionals.

Given the presence of both sets of guidelines, existing legal sanctions for non-compliance, and in a time when most people are concerned with rising prescription drug expenditures, PhRMA believes legislators should ask why

Nevada is attempting to increase administrative costs on drug makers, which could eventually cause price increases.

For the reasons stated above, PhRMA (Pharmaceutical Research Manufacturers of America) opposes passage of A.B. 66.

Assemblyman Conklin:

Mr. Wood, does your company, the company that you work for, operate in the state of Vermont?

Thomas Wood:

Yes, they do, Mr. Conklin.

Assemblyman Conklin:

And as a result of Vermont's passage of their bill... I'm just curious if there was a price increase in Vermont. They have had their legislation passed, or the five other states that have similar legislation, and there has been no reported indication that prices have actually gone up. There might be some suggestion that they have done just the opposite. I'm curious if your own company has found that to be true.

Thomas Wood:

Mr. Conklin, I don't have the answers to the question that you are cross-examining me on. I would certainly try to get that information to you, if you like. I certainly don't have access to any other company's.

Assemblyman Conklin:

I think a cross-examination is only fair since you are making a claim that is probably not true, so I think that's appropriate.

George Ross, Legislative Advocate, representing National Association of Chain Drugstores:

We certainly sympathize with the reasons why this bill has been developed. Certainly the need to assure Americans access to pharmaceuticals at a reasonable price is a great goal. I certainly take enough of them myself, so I understand.

The chain drug stores, however, do have a concern, and that is that the bill as drafted may inhibit the training and educational programs that pharmaceutical manufacturers provide for pharmacists. They conduct a number of programs by which pharmacists become familiar with a particular pharmaceutical, learn how it should be prescribed, how it should be taken, what it's for, what its interactions with other drugs are, and what its side effects are so that they can

catch mistakes that have been possibly made so that they can adequately counsel the customers at the drug stores and suggest other alternatives sometimes. And they can do this intelligently. As new, more advanced drugs and the multiplicity of new drugs come out that are very different, unlike others before for all sorts of different purposes, this is a very valuable service. Pharmacists need this service and are concerned that the requirements of the bill might impede or inhibit the manufacturers from continuing to provide these sessions.

Senator Dina Titus, Clark County Senatorial District No. 7:

I am just pleased to come up here and testify in favor of this bill. As you will recall, last session, those of you who were here, we passed a generic drug bill that was aimed at lowering the cost of drugs. In it were several provisions about doctors who just automatically sign off on tablets that are provided by pharmaceutical companies where the prescription is already written and it's just easy for them to sign off and turn in. That bill also had a provision similar to this to get at all the freebees that doctors get from pharmaceutical companies that might have some influence on the decision of what type of drugs they prescribe when perhaps a generic would be just as effective and just as good, and certainly a lot cheaper for the person who is filling the prescription. That provision was taken out of the bill last session. I very much supported it then and I support it now too because I believe the problem still exists. It is just bringing some things out into the sunshine. It's just a reporting requirement. The more you know about where doctors get their information or who they might have been playing golf with can only be helpful. That is where this came from, and I think it is not a bad idea anytime you have more sunshine on things like this. Lots of people have to report contributions or have to report associations. This is no different. I don't see it as something that is too burdensome for companies or that it would be any kind infringement on some privacy that they might have. I would support the bill.

Vice Chair Ocegüera:

We will close the hearing on Assembly Bill 66. I am sure we will discuss it in the future.

We will open the hearing on Assembly Bill 137, Mr. Anderson's bill.

Assembly Bill 137: Revises provisions governing insurance payments in settlement of certain third-party liability claims. (BDR 57-503)

Assemblyman Bernie Anderson, Assembly District No. 31, Washoe County:

[Introduced himself.] Assembly Bill 137 is a piece of legislation that I requested in order to clarify some of the insurance questions and liabilities of this. I am not an insurance expert nor do I wish to become one. One of the continuing questions that has plagued the people who come in front of me and who call me, the constituency, is that they lack the knowledge of when a third party was paying claims and some how they were unaware that certain bills were being paid and therefore they paid them themselves and then they have a difficult time getting money returned to them. This piece of legislation then came forward at request. It was hopeful that we were going to take this up. I was hoping that the experts behind this would be here today to talk a little bit about the bill and hopefully clarify this area of insurance transfer.

Assemblywoman Buckley:

My only additional comment is that I recently had the opportunity to talk to Rob Baer, who is the general counsel for the State Bar of Nevada, who wanted to offer his support of the bill. The number of lawyers who steal from their clients is pretty small. It is less than 1 percent, but there have been a number of hits on the Client Security Fund, whereby a portion of lawyers' bar dues goes into a trust fund to help people ripped off by lawyers. There are not very many of them, but having a tool to signal when the payment goes in could help prevent and deter instances of misappropriation. For that reason, the State Bar of Nevada indicated to me their support of the bill. That's it in a nutshell. I think it is a consumer protection measure designed to ensure a timely flag if something is not going the way it should.

Assemblyman Anderson:

I might point out that it might have been nice to have it in Judiciary, but clearly, Ms. Buckley has a clear understanding of how the State Bar functions. We would love to see them in Judiciary because there are occasionally issues that they State Bar has in front of that Committee also.

Vice Chairman Ocegüera:

We will close the hearing on Assembly Bill 137. We will adjourn [at 3:15].

RESPECTFULLY SUBMITTED:

Sarah Gibson
Committee Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Commerce and Labor

Date: 03/07/05 **Time of Meeting:** 2:00 p.m.

Bill #	Exhibit ID	Witness	Dept.	Description
	A	Agenda		
81	B	Assemblywoman Ohrenschall		Suggested Amendment
81	C	Renee Diamond	B & I	Testimony on A.B. 81
81	D	Renee Diamond	B & I	Contract for used mobile home
66	E	Assemblyman Conklin		American Medical Association document
66	F	Barry Gold	AARP	Suggested Amendment
66	G	Barry Gold	AARP	AARP Testimony
66	H	J.Thomas Wood	PhRMA	Statement of Pharmaceutical Research opposing A.B. 66