

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

**Seventy-Third Session
March 16, 2005**

The Committee on Commerce and Labor was called to order at 2:08 p.m. on Wednesday, March 16, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 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 Ocegüera, 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:

None

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Vanessa Brown, Committee Secretary

OTHERS PRESENT:

Scott Watts, President, Nevada Alliance for Retired Americans
James Brown, Member, Nevada Alliance for Retired Americans
Virginia Cain, Board Member, Sanford Center for Aging, University of Nevada, Reno
William Birkmann, Legislative Advocate, representing Communications Workers of America, Local #9413
Ross Sidebottom, Private Citizen, Douglas County, Nevada
Barry Gold, Associate State Director for Advocacy, American Association for Retired Persons, Nevada
Clarence Larry Huff, Vice President, Alliance for Retired Americans, North Las Vegas, Nevada
Danny Coyle, President, American Federation of State, County, and Municipal Employees Local 4041, The State of Nevada Employees Association, Retiree Chapter 13
Louis Ling, General Counsel, Nevada Board of Pharmacy
Michael Hillerby, Chief of Staff, Office of the Governor
Pat Coward, Legislative Advocate, representing the Pharmaceutical Research and Manufacturers of America

Vice Chairman Ocegüera:

[Meeting called to order. Roll called.] I'd like to open the hearing on Assembly Bill 195.

Assembly Bill 195: Makes various changes concerning purchasing prescription drugs from Canadian pharmacies and regulation of certain pharmacies located outside Nevada. (BDR 54-875)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:

In the United States today, the high cost of prescription drugs is an ongoing problem we all face. In 2003, Americans spent more than \$163 billion in retail pharmacies. Nevadans spent more than \$930 million. Nationally, the average

price of retail prescriptions in 2003 was \$52.97, a 6.7 percent increase from the previous year.

[Assemblywoman Buckley, continued.] Paying for these drugs, which are prescribed by a physician when necessary for our health, is especially daunting for those without insurance. Nevada has one of the highest rates of uninsured people in the nation, with 19 percent of our population going without insurance in 2003. That equates to over 421,000 people. Approximately 45 million Americans were uninsured in 2003. That's about 16 percent of the population. While efforts have been made at the congressional level to reform Medicare, seniors on Medicare will still be required to pay 100 percent of their prescription costs when the costs go above \$2,520 but do not rise to a catastrophic level. That does not include the premiums and the deductibles, which will also be assessed.

Thus, while many state and federal representatives from all political persuasions are working to find effective solutions to bring down the cost of prescription drugs to reasonable levels for average citizens and not hurt the pharmaceutical industry, citizens continue to struggle daily to pay for their prescription drugs in addition to all of the other basic necessities of life.

The problem of the high cost of prescription drugs in the United States ultimately may take months or years to solve. In the meantime, people must find a way, today, to pay for their prescription drugs. Many people, including Nevadans, are turning to the Internet and foreign markets to buy less expensive prescription drugs so that they can still afford a roof over their heads and food on the table. I'm sure that you have all read about Americans, especially seniors, making bus trips to Canada specifically for the purpose of buying prescription medication. Recently, the executive director of the Canadian International Pharmacy Association estimated that the Canadian industry is now serving 1.8 million Americans.

In your packet ([Exhibit B](#)) behind the tab "Additional Information" is an article about Nevadans buying prescription medications from Canada on the Internet. In your packet also is a chart prepared by "Families USA" in May 2004 that compares prices of the ten drugs most frequently prescribed to seniors in Canada ([Exhibit B](#)). I'd like to go over a little bit of the cost with you. Let's look at the number-one drug prescribed to seniors, Lipitor. In Canada it's \$35.04. The lowest cost using a Medicare discount card is \$64.67, with the high being \$74.77. The number-two drug, Plavix, is \$99 and ranges from \$106 to \$127 with the Medicare discount card. Fosamax is \$27.71 in Canada and is \$57 to \$74 in the United States. Number four, Norvasc, calcium channel blocker, is \$28 in Canada, but \$41 to \$49 in the United States. Number five,

Celebrex, in Canada is \$54; in the United States, it's \$148 to \$182. I can go on, but the numbers really say it all.

[Assemblywoman Buckley, continued.] Unfortunately, people who turn blindly to the Internet for lower-cost drugs may run into safety issues when they think they are ordering from a Canadian operation, but in reality may be ordering drugs manufactured in Sri Lanka, China, India, South America, and other countries. Here are some of the concerns that have been identified by the Council of State Governments in a June 2004 report examining the issue. Quality assurance: Medications not approved for sale in the U.S. are not produced under verified quality assurance procedures. Counterfeit drugs are either totally ineffective or significantly diluted. Untested substances: Many drugs that are not approved by foreign governments have not been evaluated in the United States and may contain addictive or dangerous qualities.

There are other problems with our citizens buying drugs on the Internet, one being credit card fraud. Sometimes payments are required up front by credit card and the drugs are never sent or the person trying to buy the drugs is defrauded. Some drug sites from other countries imply a link to Canada because Canada has been proven to be so safe and reliable, but in fact they are operating from a different foreign location, such as the Bahamas. Unidentified Internet operations also may supply drugs from other countries, including China, Europe, India, Israel, Mexico, South America, Sri Lanka, and other countries in Central America.

These safety concerns do not exist when a person purchases medication from a licensed Canadian pharmacy that sells drugs approved by Health Canada, the equivalent of the FDA in the United States. The protections of these safety concerns and of our citizens is the goal of A. B. 195, as I will explain.

Recognizing that people have already made the Hobson's choice to purchase drugs from foreign markets, some states have taken action to give people a safer, more informed option for purchasing affordable prescription drugs. Four states now participate in the "I-SaveRx" program, which are Illinois, Kansas, Missouri, and Wisconsin. Vermont's governor signed the legislation on February 17, 2005. Through this program, residents access a clearinghouse administered by CanRx in Canada to obtain enrollment forms, a list of medications, and a comparative list of prices. Only prescription refills may be purchased and enrollment forms are faxed or mailed to CanRx, not to the state. Pharmacies used have been approved, not licensed by the states, which means that pharmacies meet the state standards and are regularly inspected by the states. There's also Minnesota. Minnesota runs a state website that lists Canadian pharmacies and provides order forms. The state is not a participant in

the order. The pharmacies are licensed by a Canadian province, and state officials visit the sites and review regulations. As of the end of November 2004, there were about 6,800 prescriptions filled under the Minnesota website plan. Minnesota also has a program under which state employees participating in the Minnesota health care plan can purchase their drugs from Canada. Under the program, the \$15 co-pay is waived for prescriptions purchased through Canadian pharmacies on the website.

[Assemblywoman Buckley, continued.] North Dakota and Rhode Island also provide links to Canadian pharmacies, but the links are not to pharmacies approved by these two states. Rhode Island passed a bill last year to license Canadian pharmacies, and they're reviewing applications for licensure today.

In addition, many other local governments, cities, and counties are currently using mail-order programs, through which local governmental employees can voluntarily obtain drugs from Canada. The co-pay is waived to encourage participation. Springfield, Massachusetts, was one of the pioneers in this area and estimates that 35 percent of their employees now take advantage of the program; it saved the city \$3.5 million in the first year.

Other jurisdictions participating in the program include Burlington, Vermont; Portland, Maine; Montgomery County, Maryland; Westchester County, New York; and many other jurisdictions are considering programs or are in the process of establishing programs right now including Albuquerque, Buffalo, and Cambridge, just to name a few.

A.B. 195 builds on the experience of states in this area and used our state's existing laws authorizing licensure of pharmacies in other countries. The bill offers protections for our citizens and the State is not a participant in the order. Here's what A.B. 195 proposes to do. First, it uses our State Board of Pharmacy. The bill utilizes the existing authority of the State Board to license pharmacies outside the state of Nevada, including those in other countries. This is the State law now. It uses this mechanism and goes on to allow the importation. Safety: The bill provides that Canadian pharmacies that provide mail order service to Nevada residents shall not sell, distribute, or furnish controlled substances, a prescription drug that has not been approved by the FDA or the Canadian government, a generic prescription drug that's not been approved by the FDA, any drug for which the FDA has withdrawn or suspended its approval, and a quantity that exceeds a three-month supply.

[Assemblywoman Buckley, continued.] A technical amendment has been provided in the meeting packet to clarify that these new, existing restrictions apply to licensed Canadian pharmacies and not to existing pharmacies within the United States that send in. So if they want to send in four months, they can still do that. That amendment has been offered in your packet ([Exhibit B](#)).

The next part of the bill includes the role of the Consumer Health Assistance Office. The Office of Consumer Health Assistance was established by the 1999 Legislature—it was my bill, by the way—to provide assistance to consumers with concerns and problems relating to health care. Like this bill, the Governor initially had concerns, but we were able to meet all of those concerns and pass this bill. A.B. 195 naturally extends the duties of this office to require it to establish and maintain the Internet website, which would include information concerning purchasing prescription drugs from State-licensed Canadian pharmacies, and links of the websites to these pharmacies.

Of course, this bill is not without controversy. I would like to provide some points to consider in response to the concerns that you may hear today. The first is violations of federal law. As noted in the 2004 Council of State Governments (CSG) report on this issue, people are currently ordering prescriptions through the Internet through a personal use exemption under the federal ban on drug imports. The exemption provides that citizens with a valid U.S. prescription can import a 90-day supply of drugs in the United States for personal use. There may be discussion on whether this exemption is intended to allow individuals to purchase drugs through Canada, but the reality is that the FDA has not closed down the state-run websites in the other states, or any of the programs operated by the local or city governments for their employees. Recently, the FDA did seize some shipments ordered from the I-SaveRx program, but the FDA Associate Commissioner denied that the agency stopped the shipments in an effort to shut down I-SaveRx. Associate Commissioner William Hubbert was quoted in the news as saying, “There’s no targeted effort aimed at either CanRx or I-SaveRx, but there is an effort to screen based on risk as resources allow.”

The second criticism that we hear often is that the Canadian market may close its doors or may not be able to meet the demand. Clearly, Canada’s smaller market is not equipped to meet the demands if all Americans try to buy their drugs in Canada. Some news media outlets have reported threats from Canadian officials to close the country’s borders to the American market. However, we cannot control the decisions made by the Canadian government, and as long as orders from Canada are an option, our citizens will seek those options to buy their drugs. We cannot legislate on the possibility of what might be decided in

the future by a foreign government. I also feel that if what happens is that our citizens have cheaper drugs for a few months, then they are better off than they would have been without it.

[Assemblywoman Buckley, continued.] The next scare tactic that we hear all the time, primarily from the pharmaceutical industry, is that drugs from Canada are not safe. As in the United States, counterfeit drugs can creep into a supply. This is the problem A.B. 195 is trying to address for people who think that they're ordering safe drugs, and they're not. Requiring state licensure before a Canadian pharmacy is put on a website will provide assurance that the standards applied to that pharmacy are as safe as or safer than the drugs available from pharmacies in the United States. Included in your packet ([Exhibit B](#)) is a tab with highlights from a federal Government Accounting Office (GAO) report in 2004, on Internet pharmacies ([Exhibit B](#)).

The GAO obtained 68 samples of 11 different drugs from different pharmacy websites in the United States, Canada, and other countries such as Argentina, Costa Rica, Fiji, India, Mexico, Pakistan, the Philippines, Spain, Thailand, and Turkey. Five U.S. and all Canadian pharmacy sites from which the GAO received samples required a patient providing a prescription. The remaining 24 U.S. and all 21 pharmacy sites outside of Canada didn't even include a prescription. The independent GAO found that Canadian pharmacies passed the test better than United States pharmacies and other countries.

The safety problems the GAO found with foreign pharmacies outside of Canada is one of the strong reasons why we should make sure our Nevada citizens are protected, and A.B. 195 does that. In conclusion, A.B. 195 is not intended to be a long-term fix for the problem of unaffordable prescription drugs. There's legislation on this issue now pending in Congress that would address this situation.

In my opinion, a lot more can be done to really solve this problem. They would include a voluntary stop to pharmaceutical advertising, which is driving up the cost and creating on-demand requests for prescription drugs, when that prescription may not be right for someone. It would include having options for individuals who are on Social Security, so that they don't have the high costs associated with the Medicare bill, about which I will be bringing a resolution tomorrow to urge Congress to change. It would also include parity between our countries. Americans will never accept the fact that they have to spend \$175 for a prescription that can be obtained in Canada or Ireland for \$35. They will never accept that, especially when they know that most of the companies making these drugs are based right here in the United States. Whether it is price

control in those other countries, or whatever the reason for the disparity, our seniors and citizens will never be convinced that is right, because it's not.

[Assemblywoman Buckley, continued.] On a final note, I just want to say that the meeting packet ([Exhibit B](#)) contains many of the points that I have raised. The first section is an overview of the bill, the second section has the technical amendment, the third section has the chart, the forth section contains much of the background information. The CSG report that I cited ([Exhibit B](#)) also has some very good information on it. It included information that noted that 18 Attorneys General have asked the federal government to endorse the state importation initiatives. Additionally, Senators John McCain [R-Arizona] and Ted Kennedy [D-Massachusetts] have written to the FDA urging them to again make it clear that these state importation initiatives should be allowed. I would urge the Committee to join Illinois, Kansas, Minnesota, Missouri, North Dakota, Rhode Island, Wisconsin, Vermont, Burlington, Montgomery County, Portland, Springfield, Boston, Pittsville, Revere, and Summerville in putting our citizens' need for affordable prescription drugs over the bottom-line profits of pharmaceutical companies.

Assemblyman Seale:

I'm a couple years away from being a senior citizen. I do purchase and have insurance for a considerable amount of prescription drugs. You hit upon a point, but it's one that does concern me a great deal, which is that we're in contravention with federal law and you explained that there is a personal exemption. Can we assure our citizens, myself included, that we're not going to end up in the slammer?

Assemblywoman Buckley:

What some of the other states have done is they put right on the website a description of the existing state of the law, which basically goes something like this: Congress has passed legislation allowing importation, but only until the FDA issues its order, which it hasn't done. It then lists the FDA's policy with regard to the 90-day importation. They respond to it in an honest way, similar to what some of our trade associations or national group of legislators have summarized, and they put that right on there, so the consumer makes the decision.

The I-SaveRx program is a little different because the state is taking a brokering role. What they put on their prescription is that you hereby waive liability of the state by doing that. That approach caused me some concern. I think the better approach is to license the pharmacies so that you've done your due diligence to know they're reliable and then tell people what the state of the law is. I would

say that no one has been put in the slammer from any of these 1.8 million Americans with prescriptions; no one has been put in the slammer yet. No dispute that the FDA doesn't like it, no dispute that the Administration doesn't like it.

Assemblyman Seale:

My other concern is the safety of the medication. I was shocked to realize that I'm on that chart of yours with several of those. How do I know that what I'm going to get hasn't been changed out somewhere? I feel comfortable with U.S. medication, but I don't know about a foreign country. If it was coming from some other place, I certainly wouldn't be. Canada, I could be, but how do I know that my medication is safe?

Assemblywoman Buckley:

That's why I picked the toughest possible standard to ensure that the drugs would be safe, and that is licensing. The State Board of Pharmacy will describe their licensing procedure for foreign entities. Basically, they're going to put them through the exact same licensing procedure that you would do for a pharmacy here in Nevada to ensure the utmost safety and to ensure that the drugs are legitimate.

Assemblyman Conklin:

You have listed in your chart ([Exhibit B](#)) the Medicare prices, so I think the answer is self-evident in that respect. What happens to people who have insurance if they choose to buy from Canada? For those who do have insurance, is there a benefit for them as well, or is this strictly for people who don't have insurance, of which we know we have one of the largest populations, and those who are on the Medicare plan?

Assemblywoman Buckley:

It would benefit anyone whose prices would be lower by purchasing a drug in Canada. For example, it's very clear on this chart, it is cheaper for senior citizens on Medicare to buy. Take a look at some of these drugs. Right now, one of the best examples is Lipitor, the number-one drug used by seniors. Even on Medicare, with the discount card, it's \$35 in Canada and an average of \$70 with the Medicare discount card. Yes, they're better off buying it from Canada, even, presumably, with insurance.

Assemblywoman Allen:

What happens when you buy on the Internet through a Canadian drug company and you need some assistance from a pharmacist? Many times seniors take a

lot of different drugs, and if you're not in communication with the pharmacist, how does he or she know when the drugs could be in conflict?

Assemblywoman Buckley:

First, the bill only allows refills, so that first prescription would have to be done in the United States, where a pharmacist could look at possible interactions and make recommendations to the senior. Second, the Canadian pharmacy services are available to advise individuals who need advice with regard to ongoing problems with their medication.

Scott Watts, President, Nevada Alliance for Retired Americans (NARA):

[Read from [Exhibit C.](#)] I'm here today on behalf of NARA to voice our strong support of [A.B. 195](#), sponsored by Assemblywoman Barbara Buckley. NARA represents approximately 16,000 retirees and senior citizens within 18 affiliated chapters in our state. NARA is a non-partisan, non-profit organization. Our members are on fixed incomes and are continuously struggling with the increased cost of health care, food, gas, and utility bills. We're facing a crisis when it comes to the cost of prescription drugs. It has become a matter of survival. The average mark up on drug prices in the United States, relative to Canada, is 45 percent. The source is the Medicare Index, by Sherrod Brown, January 28, 2004, and I imagine that figure is increased by now. Everyone in this room who pays for prescription drugs is paying that mark up. Prescription drugs that are researched and manufactured in this country and imported to Canada are significantly cheaper. Considering the drugs come from America, they should be cheaper here, but that is not the case. That's not right, and it's time for a change.

That is why I come to you in support of [A.B. 195](#). The issue in this bill crosses all party lines and all ages; it affects all Nevadans. There is no good reason why this bill should not pass in both the Assembly and the Senate and go to our Governor for his signature.

James Brown, Member, Nevada Alliance for Retired Americans (NARA):

We had some of the best insurance in the world. In May 2004, all that changed. We had a labor situation in southern California and the retiree settled it. We lost our death benefit, we lost our supplemental insurance, and each year now, I start with \$300 for my deductible on my prescriptions. I pay \$130 a month for my insurance now, with no supplemental insurance. We need a bill such as [A.B. 195](#) to protect all seniors, not only union members. It's up to you folks to provide us with a plan that will help us survive because we'll all be seniors one day. I am a senior and we need help. I wish that you would vote for [A.B. 195](#).

**Virginia Cain, Board Member, Sanford Center for Aging, University of Nevada,
Reno:**

I've been a member of the Commission on Aging in the State of Nevada afforded by Governor Guinn. I was the President of the Nevada Silver Haired Forum afforded by Governor Guinn. I am the past Chair of the State Democratic Party, and I am a member of the Sanford Center for Aging Board, as well as the Democratic National Committee Senior Council.

We have a national crisis in health. Nevada has a serious crisis in health. I don't know how many of you saw the other day about orphaned elders who die alone in Nevada. There are 186,745 Nevadans who live alone. Sadly, a large number of Reno/Sparks and southern Nevada residents will die alone. Therefore, you have to take that into consideration. Why do they die? The end of the life and care report card conducted by Last Acts, a national coalition to improve the end of life, scored Nevada with very low marks, including D and F in tending to the needs of our terminally ill persons. There are thousands of people who are orphaned people, terminally ill senior citizens who spend their last months, weeks, and days alone, abandoned, and experiencing zero or very little family care. What does this have to do with this legislation? Everything.

Those who are even in care frequently can't afford to buy prescription drugs. Their families who are taking care of them cannot afford to buy prescription drugs. Those who live alone are probably living in some dire circumstances in the tenements of Las Vegas, Reno, and other parts of the state. Therefore, we have to take into consideration a responsibility to these people. One of the circumstances involved is cost.

By the way, I use several of those drugs. I would like to respond to the question on how you would know they're safe. How did we know Vioxx was safe? Vioxx was removed from a number of flu drugs. Celebrex was taken off, but is back on. It has not been confirmed that it's that bad. There are many times that we are endangered by drugs that are coming from our own pharmaceutical companies. There is no reason why we should not trust the integrity of the Canadian government in helping to support us and helping us to buy these drugs.

No one can say it better than Barbara Buckley how desperately this is needed. I urge you to take this into consideration. There's another concept that's involved here. I live on pension. My husband was a state employee. I pay \$198.21 a month for my medical plan, and I find the cost of prescribed drugs competitive. I meant to bring with me a statement that I can get from a pharmaceutical company as to how much it would cost. This would be a very interesting point,

to see how many people are paying so much money and those who cannot buy them, do not have them, or they are dividing them in half thinking that's going to help them. In reality, they are endangering their lives. This is a very serious responsibility to the fastest-growing senior population in the country, here in the state of Nevada. I urge that you support this bill.

William Birkmann, Legislative Advocate, representing Communications Workers of America, Local 9413, Nevada-Tahoe:

I have approximately 500 members in my Council. I want to thank you, Assemblywoman Buckley, for your bill, and I'm going to ask you for your support from the Committee for this bill. My members are pretty tired of paying for these ridiculous television commercials.

Ross Sidebottom, Private Citizen, Douglas County, Nevada:

I'm a retired teacher, coach, and speaking for myself. The only point that I'd like to make that I don't think I've heard here is that I went on the web to do research and find competitive prices for, say, for example, Lipitor. I had a radius of 25 miles from my house, which would take in Reno and the outlying areas and priced all pharmacies. The prices didn't vary one penny. I think that suggests some sort of a monopolistic control to some sort, maybe not purposefully. Where's the competition that's supposed to be there? That's my point.

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

[Read from [Exhibit D](#)]. AARP is a nonprofit, nonpartisan 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.

AARP Nevada's Advocacy Campaign, "A Prescription for Nevada," is centered on the affordability and accessibility of prescription drugs. AARP members and Americans of all ages are concerned about their inability to afford the medicine they need. Prescription drug affordability is a keystone to quality healthcare. Prices for brand-name prescriptions raised three times faster than the cost of inflation in 2003.

We must all work together to find ways for consumers to get the information they need to make the best decisions concerning their health care. The use of technology in providing information and as a means to accessing services should be available. Mail-order pharmaceuticals have proven to be a cost-effective means for many who purchase their medicine in three-month supplies.

[Barry Gold, continued.] Drug companies must listen to the voice of the people and act to control the spiraling cost of prescription medications. Across the country, states have passed or are considering legislation to implement methods to reduce costs to consumers. Pressure must continue to get them to limit the increase in costs. Alternative purchasing processes is one method that benefits consumers with lower costs while sending a message to the drug companies that people in the United States are looking for relief.

AARP's Prescription for Nevada is a multi-faceted campaign looking at reducing costs through differing means and providing information to enable informed choice. We applaud the efforts of the State of Nevada in recognizing the importance of this issue to the citizens. Leadership in finding solutions must come from a nonpartisan effort, working with all branches of government, and listening to consumers.

Ninety-three percent of members surveyed in the 2004 AARP Nevada member opinion survey felt it is important for Nevada to work toward making prescription drugs more affordable. AARP is looking forward to assisting the efforts that will enable all Nevada families access to affordable prescription drugs.

Clarence Larry Huff, Vice President, Nevada Alliance for Retired Americans:

I'm here because there are some things that are truly bothering me. I don't understand why is it that the pharmaceutical companies, even the one here, I believe, receive money from the states to come about bringing new drugs into our state. The federal government also understands and gives money to pharmaceutical companies to come up with new drugs, and when they come up with the new drugs, the drugs are sent to Canada and I don't know where else. For us to get the right kind of price for drugs, we should be able to get it right here at home. Why should we have to go to any other country to get our drugs? I think we need to wake up very quickly and begin to do something about it.

One of the things that I'm still concerned about is why are we giving so much money to them, and we're not getting anything in return for some reason other than they don't feel that our drugs here in our country should be the first before we go anywhere else. I'm concerned about that. I don't know what we can do about it, but I think if Congress cuts off the money that they're giving the drug companies, that will do something. If money is coming from the state, we need to cut that off. If we cut that off, I think that something will be done. I'm certainly in favor of the bill that the Committee is proposing. I want you to know that I'm for it and want you to know that if you need any additional help, for us to go out and walk and do something, we'll be there for you.

Danny Coyle, President, American Federation of State, County, and Municipal Employees (AFSCME) Local 4041, The State of Nevada Employees Association (SNEA), Retiree Chapter 13:

I'd like to speak in favor of A.B. 195. I think probably some of the other people here have probably more eloquently articulated their support and the reasons why the bill should be supported, but I just wanted to make sure that the AFSCME are on record of supporting A.B. 195.

Fred Hillerby, Legislative Advocate, representing Nevada State Board of Pharmacy:

Since the bill was only introduced on March 11, our Board does not have an official position, but we are here to answer questions that you may have of a technical nature that perhaps we can shed a little light on any of your concerns.

Vice Chairman Ocegüera:

I think there was some concern about the licensing and the safety issues. Is there anything that you could add to that conversation?

Louis Ling, General Counsel, Nevada State Board of Pharmacy:

As Ms. Buckley outlined, the Board of Pharmacy has had this authority to license out-of-state and out-of-country pharmacies for some time. We have been licensing out-of-state pharmacies for a number of years. We've not had an application from an out-of-country pharmacy, but this bill will enable that. We have quite a bit of experience in licensing out-of-state pharmacies. We've never licensed a pharmacy out of the country at this point, but we are prepared to do so. We've spoken with Ms. Buckley and we submitted a fiscal note; we will send our inspectors up to Canada and go check these pharmacies out.

Vice Chairman Ocegüera:

As far as your experiences with the safety issues from folks from other states, what's your general impression of the safety issues? You're regulating the folks, so you have the ability to determine what the safety issue is and what the safety standards are.

Louis Ling:

Yes, what we would be doing is treating these pharmacies just like any other pharmacy, so if we were to receive a consumer complaint regarding something, we would investigate that complaint and handle it like we handle any other complaints. So if we found safety issues, we'd be addressing them just like we would address any safety complaints from pharmacies licensed in the United States.

Assemblyman Arberry:

If this bill passes and is signed by the Governor, how long would it take you to go to Canada and get all this online so the people can benefit from it?

Louis Ling:

We could do that in a matter of weeks. I've already talked to my inspector today; in fact, I asked him if he had a nice heavy coat because by the time this thing passes, it's going to be pretty cold in Winnipeg. We'll be sending them up there just as soon as we are authorized to do so.

Assemblyman Arberry:

Once they go up there, how much time?

Louis Ling:

We issue licenses within weeks of getting an application, so you're talking probably turnaround time of two to three weeks. It just depends on how long it would take us to get up there.

Michael Hillerby, Chief of Staff, Office of the Governor:

I know this bill has gotten a fair amount of publicity and concerns about where the Governor stands or doesn't stand on this. I want to try to shed some light on that today. Like all of you, we're very concerned about the cost of prescription drugs and certainly their availability to seniors. That's why the Governor recommended and, working with you the last several sessions, we created and continue to improve Senior Rx. As a commercial announcement, I hope if any of the people are sitting in the audience today or listening over the Internet, if they think they qualify as a senior, I would hope they would get an application from us. They can go to the website or call the toll-free number and we'd like to get them signed up for the program if they're having difficulty paying for their prescription drugs and they qualify.

The Governor has outlined essentially three concerns about the bill, which I certainly hope we can have addressed and move this forward. One is patient safety. I think the Board staff and the appointed members of the Board have an excellent reputation with this Body and around the state. They've done a very good job, have very high standards, and having them do the licensing procedure would seem to address the majority of patient safety concerns. As Chairwoman Buckley said, the studies that have been done about Canadian drugs from Health Canada and FDA-approved drugs. We believe that is largely addressed by having a Board of Pharmacy do the licensing.

[Michael Hillerby continued.] Second is the question of legality. I am not a lawyer, so I can't render an opinion based on the information that we have from the FDA, the stuff that I've looked at, the *United States Code*. These are really our questions. The Governor has been strong in his statement that he would not approve a bill that knowingly puts us in violation of federal law or potentially encourages Nevada citizens to put themselves in a position of being in violation of federal law. I think these concerns are really questions. If they can be answered, then we can certainly move on from there.

There's a January 28, 2005 letter from the FDA to Patrick Lynch, the Attorney General of Rhode Island, talking about their bill to have Rhode Island license Canadian pharmacies. They express a number of concerns. I'll quote a couple of things from the letter. Based on what I have seen from the FDA, I don't know that we will get a clear answer from them if we pose the questions, so we'll go ahead and get that off the table right now. If your staff wishes to opine, we would love to see that. If we want to talk to the U.S. Attorney, or somebody else who would be responsible for potentially prosecuting people in the state of Nevada, we would love to hear that. We need to get those questions answered and I think Ms. Buckley is nodding, we would all like to see them answered, you as well, to make sure that we are not doing anything that potentially puts our citizens at risk either in terms of safety or in violation of federal law.

The Rhode Island issue, the letter in part says, "Accordingly, if an entity or person within the state of Rhode Island were to import prescription drugs into the state of Rhode Island from Canada, it would violate the federal Food, Drug, and Cosmetic Act in virtually every instance. Furthermore, the drug importation scheme sent forth by Congress preempts conflicting state or local legislation that would legalize the importation of certain drugs from Canada in contravention of the Act." I don't know what "certain drugs" means, and that's been one of the key questions, trying to get that defined.

I have done some looking at what the personal loophole is. It is not at all clear to me, and, again, I cannot offer legal opinion. I won't try exactly how that personal loophole applies or may not apply. We're anxious to have that question answered as much as any of you are.

One other section of the law talks about American goods returned. It does prohibit the re-importation of drugs that originally came out of America, so that's a concern. We need to find out whether those Canadian pharmacies do that. If that's a part of the Board of Pharmacies licensing procedure, I'm not sure, but that may be a question we need to ask.

[Michael Hillerby continued.] In here, in the letter to the Rhode Island Attorney General, the FDA says to date, it has "focused its enforcement resources on those who commercialize the practice of importing drugs into the United States from abroad." As a matter of enforcement discretion, the FDA generally has not seized drugs from those who have taken buses across the border and then brought foreign drugs back into the United States for their own personal use. Instead, the FDA is attempting to educate such citizens about safety issues. That paragraph ends, "Nevertheless, FDA retains the authority to bring enforcement action in any case in which the provision of the Act has been violated." Again, a relatively threatening letter from the FDA, but I will refer back to Ms. Buckley's testimony: to date, they have not done that, but they clearly have expressed their intent to retain their authority to do that. Simply because they haven't doesn't mean they won't. We do need to get an answer to that question. Whether or not we have put the state in a position of knowingly violating the federal law or we're setting up the scheme where we have told Nevada citizens something is okay, that eventually puts them in violation of federal law.

Lastly is the issue of liability. That's two-pronged. One is patient recourse. If they were to receive the wrong prescription, get something that wasn't safe or somehow injured them, do they have adequate recourse in our courts? Will it be difficult for them to pursue that pharmacy in Canada? They are licensed and regulated by the State Board of Pharmacy, so there is some reach there. That's simply a question.

If Nevada can be the court of competent jurisdiction, and they could pursue any recourse they might have there, that would answer that. The second is the State exposure. Do we have a liability exposure if one of those patients who might use the website, if that ever materialized, if they were harmed by that, if they got the wrong drug, if they ended up with a counterfeit drug? Again, not making an indictment about whether the importation is safe or not safe, but if they were and chose to take action, would the State be liable? Ms. Buckley mentioned some of the bills that put a specific language in laws in other states that waived liability. That may be something we want to consider. If this were enacted, we would clearly try to put on our website, through the Office of Consumer Health Advocate, information that patients were making that decision, that these were licensed pharmacies, but they were liable for that. Again, whether or not that ought to be clearly in the law, that the State was not liable, is a question that remains to be answered. Those are really the three primary concerns. The policy of whether or not it's appropriate, whether the federal law is appropriate or not, we'll stay out of. Those are just the very mechanical concerns that we have.

Assemblyman Seale:

Do you have any idea how long it might take to get these answers? Do you have any kind of handle on that?

Michael Hillerby:

I do not. We have not requested any opinion from the FDA or the U.S. Attorney or anybody else. We'd be happy to see what opinions your staff has come up with. We'll certainly ask our general counsel to do that. We have not engaged the Nevada Attorney General in any way on this to date. I want to be clear, we're not looking for ways to try to trip anything or stop people having access to this, but I think there are very legitimate questions that probably all of us, regardless of your feelings on the bill, want to be sure that we have answered for the safety of our citizens.

Pat Coward, Legislative Advocate, representing the Pharmaceutical Research and Manufacturers Of America (PhRMA):

Mr. Hillerby hit on some of the areas that we have concerns with. I can quote some different letters that have come out of the FDA. For example, on September 23, there was a letter to the Governor of Illinois, stating the same concerns about the legality of the issue and the safety concerns. If we could basically get to some resolution on those areas from the legality of it, the distribution of the drugs in the system and how it would be handled through the Board of Pharmacy here. We could probably work with Ms. Buckley on that. I won't belabor the point any further.

Vice Chairman Ocegura:

[Recessed briefly. Called the meeting back to order.] We also received a letter from the Retail Association of Nevada from Elizabeth MacMenamin ([Exhibit E](#)).

With the plan outlined by Assemblywoman Buckley and with the amendments presented in her document ([Exhibit B](#)), I think that there's somewhere we can work from there.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 195 WITH ASSEMBLYWOMAN BUCKLEY'S
AMENDMENTS AS DEFINED IN [EXHIBIT B](#).

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

Assemblyman Hettrick:

Based on the questions asked by the Governor's Office—and I did sign on this bill—I am uncomfortable in voting without knowing the outcome of some of those questions in regard to voting to, at least on the face of it, would appear to violate federal law. I would be a no, on the basis of not having the questions answered that were raised.

Assemblyman Seale:

I'll just reiterate where Mr. Hettrick is. I'm uncomfortable not knowing the answers to some of those questions, so I'll be a no on this.

Assemblyman Parks:

I guess I should disclose the fact that my parents were both Canadian, and I have at least a thousand relatives in Canada. I don't know how they would be affected any differently, or not, but I will be voting on this bill.

Assemblyman Sherer:

I'm going to vote yes on this bill, but I hold the opinion to be able to change my vote on the Floor.

Assemblywoman Buckley:

I'd like to respond to some of the questions raised by the Governor's Chief of Staff, with whom I have committed to continue to work in order to address the concerns. With regard first to legality, we're never going to get a letter from the FDA saying that it is okay to import Canadian drugs. The Food and Drug Administration has, I think, made their position very clear. They are not in favor of Americans importing drugs from Canada, but the bottom line is that if you use a licensing scheme, consumers are protected and they can get drugs anywhere from a third to 70 percent cheaper. Our constituents need affordable choices. Prescription drugs are not a luxury item. They are vital, and we shouldn't put our constituents in a position of having to choose between whether or not they can take a drug that they need to live and whether they should eat.

States have chosen much broader measures, such as actually brokering with Canadian pharmacies, such as brokering prices, having their state employees buy the drugs. All this bill would say is that we license pharmacies and we let our citizens know what pharmacies are licensed so they can get safe, affordable drugs. That's all that this is doing. I pledge to work to make sure that the language on the website makes it very clear to anyone reading what the current state of the law is. I'll ask the Attorney General and our Legal Division, along with the legal counsel of the Governor, to make it as clear as possible so that

everyone knows what they're getting into. But, they say silence is complicity. We need to do something for our citizens, and this is a step in the right direction. It's time we stood up to the federal government. We stand up to them on Yucca Mountain; we stood up to them on medical marijuana. I don't see why this is any different and I think it's what our constituents want.

Assemblywoman Gansert:

I'm going to vote yes, with a reservation on the Floor.

THE MOTION CARRIED WITH ASSEMBLYMAN HETTRICK AND
ASSEMBLYMAN SEALE VOTING NO.

Vice Chairman Oceguela:

This meeting is adjourned [at 3:30 pm].

RESPECTFULLY SUBMITTED:

Vanessa Brown
Committee Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 16, 2005

Time of Meeting: 2:00 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	Legislative Counsel Bureau	Agenda
195	B	Assemblywoman Buckley	Presentation on Purchasing Prescription Drugs from Canada
195	C	Scott Watts/Nevada Alliance for Retired Americans	Comments by Scott Watts in support for A.B. 195
195	D	Barry Gold/AARP Nevada	Letter in support of A.B. 195
195	E	Elizabeth MacMenamin/ Retail Association of Nevada	Letter in opposition of A.B. 195