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

Seventy-Third Session
April 4, 2005

The Committee on Commerce and Labor was called to order at 1:15 p.m., on Monday, April 4, 2005. Chairwoman Barbara Buckley 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 Oceguera, 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:

Sarah Gibson, Committee Attaché

OTHERS PRESENT:

Daniel Maxson, Secretary, Board of Registered Environmental Health Specialists
Teresa Long, Member, Board of Registered Environmental Health Specialists
Bob Sack, Division Director of Environment Health, Washoe County Health Department
Paula Berkley, Member, SEIU (State Employees International Union):
Russ Fields, President, Nevada Mining Association
Leo Drozdoff, Administrator, Nevada Division of Environmental Protection (NDEP)
Vicky Oldenburg, Chief Tobacco Counsel, Attorney General's Office
Michael Hering, Counsel, National Association of Attorneys General Tobacco Project
Dino DiCianno, Deputy Director of Compliance, Department of Taxation
Alfredo Alonso, Lionel, Sawyer, & Collins, representing RJ Reynolds
Samuel McMullen, Legislative Advocate, representing Altrea Corporate Services, Phillip Morris, USA
Peter Krueger, Legislative Advocate, representing Single Stick Tobacco
Jim Sala, Legislative Advocate, representing Southwest Regional Council of Carpenters
Ted Olivas, Director, Government and Community Affairs, City of Las Vegas
Russell M. Rowe, Legislative Advocate, representing Focus Property Group
Ronny Ashleman, Legislative Advocate, representing the City of Henderson
Duncan Crabtree-Ireland, Deputy General Counsel, Screen Actors Guild, Los Angeles, California
Bob Ostrovsky, Legislative Advocate, representing Nevada Resort Association
Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry
Robin Holabird, Director, Nevada Film Office
Mark Tratos, Attorney, Quirk & Tratos, Las Vegas, Nevada
Lauri Thompson, Attorney, Quirk & Tratos, Las Vegas, Nevada
Thomas Pastor, Secretary/Treasurer, Musicians Union of Las Vegas, Local 369
Roger Bremner, Administrator, Department of Business and Industry, Division of Industrial Relations

Mary Arnold-Ronish, Board member, Society of Permanent Cosmetic Professionals
Richard Whitley, Deputy Administrator, Health Division, Nevada Department of Human Resources
Glenn Savage, Director, Environmental Health, Clark County Health District, Clark County, Nevada
Diane Buckley, Chairwoman, National Patient Advocate Foundation
Barry Gold, Associate State Director, Advocacy for AARP Nevada (American Association of Retired Persons)
Lisa Black, Executive Director, Nevada Nurses Association
Bill Welsh, President and CEO, Nevada Hospital Association
Jon Sasser, Legislative Advocate, representing Washoe Legal Services and Washoe County Senior Law Project
Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors

Vice Chairman Oceguera:
[Meeting called to order. Roll called.] I would like to open the hearing on Assembly Bill 260.

Assembly Bill 260: Revises provisions relating to environmental health specialists. (BDR 54-855)

Assemblywoman Francis Allen, Assembly District 4, Clark County:
I am here to testify in support of A.B. 260. I am going to ask Senator Mathews to come up. She has sponsored the same bill in her Senate bill. We have combined our efforts into this bill.

Senator Bernice Matthews, Washoe County Senatorial District No. 1:
It was coincidental that the group from the south asked Ms. Allen to represent this bill and the group from the north asked me to do the same. There may be one or two differences of which I am in concurrence.

The bill is the same and I support it 100 percent. We are here soliciting your support. Because the two bills are the same, I am going to withdraw my Senate bill and support Ms. Allen's bill when it comes to the Senate. I am going to leave it to the experts now.

Daniel Maxson, Secretary, Board of Registered Environmental Health Specialists:
I am here to testify on behalf of the board in support of the passage of Assembly Bill 260. Our Chairman, Peter Allen, is currently out of the country,

but he will be available for any future meetings or questions after April 6. I would like to give the Committee a brief history on our board in reference to this bill (Exhibit B, Exhibit C, Exhibit D, and Exhibit E). Our board was formed in January, 1989. Of the approximate 350 persons practicing in Nevada in the environmental health career field, only 40 are currently registered with our board. That number has held steady over the past 16 years. These 40 persons recognize the value of meeting specific educational requirements, demonstrating competence, passing a difficult examination, and all of the things that go along with becoming an environmental health specialist. I mention these persons because they represent a volunteer spirit that has made it possible for the board, in its work, to continue hiring environmental health specialists over the past 16 years. Without these voluntary registrants, there would be no board today.

[Daniel Maxson, continued.] Over the past 16 years, our career field has changed dramatically. We have experienced the following firsts since the board's inception: In the area of environmental disease outbreaks, we have experienced our first outbreaks of legionellosis, echolalia 0 and 5787, the hamburger disease (Jack in the Box outbreak of 1993), and the West Nile Virus. There are many more diseases that are recent and new, and it is an ever-changing career filed in that regard. All of these things require competent investigations by competent environmental health specialists. They require efforts that need to be taken on a preventative basis in the environmental health specialist's mind.

Bio-terrorism is a growing threat that can involve our food supplies and public accommodations, and threaten our tourist industry. In late 2001, environmental health specialists, across the state, were called upon to respond to a number of malicious "white powder" incidences in the wake of several very real attacks of the anthrax bacillus. Any response to a bio terrorism event requires competent environmental health response teams to make rapid and accurate assessments, and make recommendations for possible emergency action.

The Board met three times in 2004 to collect input from the public and to work on drafting language for this bills submission. Assembly Bill 260 represents the Board's best efforts at establishing and implementing a reasonable mandatory registration standard for persons practicing and training as environmental health specialists in Nevada. We have worked hard to address the concerns of potential registrants and their employers. We believe we have the support of the effective public health agencies with only one minor change to the current bill having been requested in the last few weeks. I have submitted three endorsement letters: one from the State Health Officer, one from the Clark County Health Officer, and one from the Washoe County Health Officer.

[Daniel Maxson, continued.] There are a few amendments that have been brought about in the last few days. With some minor tweaking, I believe we can support those amendments. There are just some clarification issues that I think we need to nail down. The registration of environmental health specialists is now mandatory in all of the states immediately surrounding Nevada except Idaho. Setting a mandatory standard for environmental health specialists is consistent with existing Nevada standards for nurses, professional engineers, and teacher to name a few. Based on the significant public health problems confronting our state in the area of environmental health, the board believes that now is the time to set a mandatory standard for our profession in Nevada.

Assemblyman Parks:
My question deals with the grandfathering clause for individuals. Is there a provision that deals with having a certain level of training versus those individuals who have the formal education with no experience? It seems that there are a lot of people who have a lot of experience, but they do not have the required education. In contrast, there may be someone who has a Bachelor's degree with no experience.

Daniel Maxson:
Let's say someone is being hired June 30, 2005, that person would be registered as an environmental health specialist trainee. He will then have to spend at least two years in that job under the direct supervision of a registered environmental health specialist before he actually becomes registered. If we had an employee with 20 years military service, and there are many out there working for public health agencies across the state, he would be recognized as an environmental health specialist immediately, because they are already serving in that capacity. Our intent in registering them as opposed to just ignoring them, is that we want to hold them to the CEU requirements that go with this bill so they maintain their competence throughout the rest of their career.

Teresa Long, Member, Board of Registered Environmental Health Specialists:
[Read from statement (Exhibit F).] I am currently employed with Washoe County as an environmentalist. I have been credentialed since August 1, 2002. I am here to testify in favor of Assembly Bill 260. I believe the profession, as a whole, will improve if the Registered Environmental Health Specialist (REHS) credential is mandatory and continued education units (CEU) be required to ensure that the individuals working within the field are up to date as possible.

The environmental health field is constantly changing. In order to ensure that we are ready for the challenges ahead, I think we need to continue to be educated. As environmentalists, we are faced with public and environmental health issues on a daily basis. In all of our programs we conduct routine

inspections to ensure that the public is protected from unsafe and unhealthy practices. We continue to educate the people working in these positions so they have a better understanding of how their practices could be detrimental to the public. The inspections include restaurants, child care facilities, pools, schools, and motels. We review plans to ensue that septic systems and wells are properly installed, as well as construction inspections. We review plans for new restaurant facilities. We respond to outbreaks and play an integral role in demonological investigations. We review plans for underground storage tanks, conduct leak detection inspections, as well as construction inspections to ensure the systems are not leaking when installed. We have oversight of remediation for leaking underground storage tanks. These are to mention just a few of the areas we work in, all of which have a great impact on our communities as well as our environment. With the level of responsibility we have in this profession, I think we should be held to some minimal standard of credentialing process.

[Teresa Long, continued.] Historically, in Washoe County, the environmentalists have always been held to the same standards as nurses, with the exception that nurses have always been required to be credentialed to work in their profession while we have not. As Dan Maxson stated earlier, nearly every other State around Nevada is already involved in the mandatory registration program.

When I was studying for the REHS exam and gaining the necessary experience I needed to take the exam, my knowledge as an environmentalist was broadened. I feel like I could work in a specialized field or in a more generalized capacity.

Bob Sack, Division Director of Environment Health, Washoe County Health Department:
The Washoe County District Board of Health has voted unanimously in support of this bill. I echo Theresa and Dan's comments on the need for this. We do have one small amendment (Exhibit G) regarding exempting a job classification related to vector control. I have brought vector control staff to present that.

Assemblywoman Giunchigliani:
Currently, do we have environmental specialists in Health Districts in Nevada? [Bob Sack replied in the affirmative.] Local jurisdictions are only Clark County, Washoe County, Carson City, and the State. Approximately, how many individuals are you talking about?

Bob Sack:
There are about 200 affected individuals.

Assemblywoman Giunchigliani:
You are asking to create a licensing board similar to what we have for other occupations?

Bob Sack:
The board already exists. It is just a voluntary licensing and we are looking for it to be mandatory.

Assemblywoman Giunchigliani:
Why was it done voluntarily?

Bob Sack:
I assume politics. I believe Clark County, at the time, was not in support.

Assemblywoman Giunchigliani:
They are already charging fees, so the 200 would be enough to support the operations of the board if it becomes something that is mandatory.

Bob Sack:
That is my understanding.

Assemblywoman Giunchigliani:
The fees are not in here because they already exist in statute or did I miss seeing them. You did not do any increases in fees; you are simply making it mandatory for anyone who calls themselves an environmental specialist. Are there some in the school districts as well?

Bob Sack:
There are not. These are focused on regulators so working for public agencies such as the State Health Division or the Health Districts and some consultants, someone who would consult with restaurants, for instance.

Assemblywoman Giunchigliani:
You are currently inspecting, but you aren't calling it by a uniform name?

Bob Sack:
In Washoe County, they are called environmental health specialists, but they are not registered. We feel that there is a need for requiring our industry to be registered in different aspects of what they do. Frankly, we feel we should have to meet some of the same credentialing requirements.

Assemblywoman Giunchigliani:
Supervisory individuals would have to have what type of requirement?

Bob Sack:
They would have to have the same type of requirements. This would be a basic requirement for job entry through the hierarchy. A supervisor or division director would have to apply to register.

Assemblywoman Giunchigliani:
What does that really mean?

Bob Sack:
It means you have a minimum amount of education, a minimum of a Bachelor in Science Degree with some other specific requirements, a minimum of 2 years experience on the job, and passing an encompassing state exam that is actually the national exam. This program would be recognized by the National Environmental Health Association. There would be reciprocity.

Assemblywoman Giunchigliani:
Two years experience seems fairly minimal, but sometime when we establish a new certification or registry, you do tend to grandfather in.

Bob Sack:
Any of our present employees are grandfathered in; although it includes that they will have to go through with the continuing education requirements that are needed for the rest of their careers. Frankly, the division would support that.

Assemblywoman Giunchigliani:
What about a B.A., two years, or X number of years of experience of practice within the field?

Bob Sack:
It would still require a minimum education component. That is needed at the national level also for reciprocity.

Assemblywoman Giunchigliani:
Could you get us a sample with what other state's have? (Bob Sack answered in the affirmative.)

Paula Berkley, Member, SEIU (State Employees International Union):
I also have two amendments (Exhibit H) that relate to Ms. Giunchigliani's and Mr. Parks' comments. The first one is regarding the grandfathering issue. On page 8, Section 19, we have basically changed a "may" to a "shall." It reads

that "the Board shall issue a basic certificate of registration as an environmental health specialist to a person who is not qualified under subsection 1." Our intent was to get the 90 environmental health specialists in Clark County grandfathered into this registration.

[Paula Berkley, continued.] The second amendment is reflective of Mr. Parks' comments. It is aimed at recognizing military service specifically. If someone from the service had considerable service requirements, he could be allowed into it. We wrote some language in there that we feel could be improved upon, but we feel that it gets our intent out.

Russ Fields, President, Nevada Mining Association:
I think this bill is necessary and supported in many ways. We have personnel in our mines who work in what we would refer to as industrial hygiene mine safety and health, who provide their services solely to their employer and do not consult in the field of environmental specialists; however, they do perform some of the services that are identified in the bill. My question is whether we need to concern ourselves with registration of these employees who are working solely for one employer in a field that may overlap into the area of environmental specialist? Based at the testimony I have heard, I think this is legislation aimed at those working in the public sector.

Daniel Maxson:
It was not our intent to regulate the group of employees he is speaking to, although there is intent to regulate those in the private enterprise businesses who are doing significant consulting work. In this particular case, you are looking at somebody who is performing OSHA [Occupational Safety and Health Administration] work. It is not our intent to regulate OSHA.

Russ Fields:
That is satisfactory. We are operating under the Mine Safety and Health Administration, which has some of the same requirements. With that answer, The Nevada Mining Association supports the bill.

Assemblyman Anderson:
If I am reading this correctly, do you exclude those with mold assessments and mold remediation from belonging to your group?

Daniel Maxson:
We could end up going down that road. We were asked to do that two years ago with Senator Bob Coffin's bill, but we are a voluntary board. Practically speaking, this is probably something better handled by your local health agencies. I am not sure that they are completely supportive of it.

[Daniel Maxson, continued.] The reason the Board would struggle with our current examination is that our examination does not cover mold in a prioritized way. It is all over environmental health, but mold is a very small and precise area that would need its own exam, similar to what they have in the State of Texas. Texas certifies mold assessment professionals.

Assemblyman Anderson:
Am I to understand that somebody would be able to do mold assessment if this bill passes?

Daniel Maxson:
They would not have to be registered with our board in order to practice in mold assessment at this time.

Leo Drozdoff, Administrator, Nevada Division of Environmental Protection (NDEP):
[Read from prepared statement (Exhibit I).] NDEP does support the work of the National Environmental Health Association on its effort to clarify and certify individuals involved in the practice of environmental health. NDEP would request clarifying language in the areas which cross over between environmental health and environmental protection. The division has administered the Certified Environmental Manager Program since 1991. This program requires any person to be certified by the division who provides information, opinion, or advice for a fee on the management of hazardous waste, and/or investigation of a site to determine a release of a hazardous substance sampling of air, soil, surface water, and ground water.

We have discussed these proposed changes with Assemblywoman Allen. Specifically, Section 1 describes the practice of environmental health disciplines that would indicate that NDEP staff and persons certified by the division would be required to be certified as environmental health specialists. Section 2 of the bill would exclude persons whose primary work is being performed by NDEP; however, we are requesting that additional language be added to clarify the differences for registration as an environmental health specialist as described in this bill, and that environmental health protection activities performed by the division are environmental protection. We specifically suggest that Section 6, subsection 2, paragraph (a) be amended, and that Section 6, subsection 2, paragraph (d) be added that describes practices in the Nevada Administrative Code 459.970 through 459.9729. For your information, paragraph (d) would pertain to programs that NDEP administers, which conflict with the items listed in 6.1 of the bill. These programs include the regulation of hazardous materials,

certified environmental managers, voluntary cleanup, and underground storage tanks.

Vice Chairman Oceguera:
We are teleconferencing with Las Vegas and there do seem to be some people testifying in favor from the Health District. We will include that in the record. We will close the hearing on A. B. 260. We will open the hearing on A. B. 436.

Assembly Bill 436: Makes various changes regarding manufacturers of tobacco products. (BDR 32-120)

Vicky Oldenburg, Chief Tobacco Counsel, Attorney General's Office:
Michael Hering will be giving most of the testimony today. I will be referring to him for purposes of brevity. Assembly Bill 436 was before the Legislature last session and did not pass for various reasons; however, it is again before you today. It is a bill that will strengthen chapter 370A, which are the tobacco manufacturing compliance provisions under the MSA (Master Settlement Agreement). This bill will enhance compliance by nonparticipating manufacturers and allow greater enforcement against noncompliant manufacturers. This bill is otherwise known as the complimentary legislation. Forty-two of the 46 states that settled in the MSA have adopted this legislation.

The second part of the bill appeals the allocable share cap, which has proved to be a windfall for nonparticipating manufacturers that concentrate their sale in one or a few states. This is also known as the allocable share amendment, or which 39 of the 46 settling states have adopted.

Assemblywoman Giunchigliani:
This bill was huge last session and it died in the Assembly Committee on Ways and Means. I thought it had gone to Judiciary first? [Vicky Oldenburg replied in the affirmative.] Do we not have a bill in Ways and Means that is almost identical to this?

Vicky Oldenburg:
No. Last session this bill was combined with A. B. 460, the counterfeit tobacco legislation. These bills have been severed, but last session you did have two bills before you: the counterfeit, and the complimentary legislation.

Michael Hering, Counsel, National Association of Attorneys General Tobacco Project:

It is my job to assist the states in the enforcement, administration, and defense of the MSA. I am here today to testify in favor of A.B. 436. This bill, as was noted, is model legislation. It actually contains two components of model legislation that have been passed in the vast majority of the other settling states. In fact, it was noted that over 40 have passed both components and Nevada is now one of four states that has passed neither component. My understanding is that this happened last session because the bill was laden with too many other provisions. This session it is stripped down and contains just the two pieces of model legislation. The other pieces are in a separate bill, as was noted.

What do the two pieces of legislation do? The first is called the complimentary legislation. It is meant to deal with scofflaws, nonparticipating manufacturers who do not abide by the model escrow statute. The second is called the allocable share amendment. That is meant to fix a loop hole that currently exists in the model escrow statute here in Nevada. Both relate to the escrow statute that this Legislature passed in 1999.

I would like to give you a brief background on the MSA. You may remember that the MSA was entered into in 1998. There are 46 settling states and six territories that are participants. The four states that are not participants have their own separate settlements with the tobacco companies that predated the MSA and are similar in nature. The original settlement was done with the 4 original participating manufacturers: Phillip Morris, RJR, Brandon Williamson, and Lorillard. Since that time, there have been upwards to 40 companies who have joined the settlement. Now we have about 45 companies in the settlement. These companies are all paying these states—they make annual payments to the states—and they are also bound by advertising and marketing restrictions. They cannot do the things they could before the settlement. Joe Camel is gone, billboards are gone, and advertising to kids is out. All of those things were banned by the settlement.

Then there are the nonparticipating manufacturers (NPM). These are companies that make and sell cigarettes that have not joined the settlement. They are not bound by the settlement, they do not make payments to the states, and they are not bound by the marketing and advertising restrictions. These companies were addressed by the model escrow statute that this Legislature passed back in 1999. The purpose of that statute, as set out by the Legislature, was to implement the policy that the health care cost imposed on the State of Nevada by tobacco product manufacturers should be borne by those companies and not the State. The companies who are members of the settlement are actually

paying the State, but the non-participants are not. The way that was dealt with was to require the non-participants to place money into escrow. The money placed into escrow is about $4 a carton. It works out to a few cents less per carton than the companies that actually pay the State. It is similar in its magnitude. This money is then set aside in the manner of a security or bond so that if the State should, at a later time, bring an action or settle with this company, there is a fund from which it can recover. It prevents such companies from coming in, selling cheaply, running up a huge tab in terms of liability, and then exiting without ever making good.

[Mark Hering, continued.] Turning back to the actual legislation, the first part of the legislation is meant to deal with the scofflaws, the companies that do not abide by the bill that I just described. These companies are simply not making the escrow deposits. The way the bill is drafted, you can sell for 15 months because you sell for a calendar year and then up to April 15th, before you are obligated to make a deposit. Many companies do that and never make the deposit. If they sold for 15 months, causing Nevada some economic damage or future damage, there is nothing put aside.

When it comes time to chase these companies down, we are talking about companies that are often foreign. I have looked at the companies that are selling in the state, and among other things, they are companies that come from China, the Philippines, India, South America, and Bulgaria. These are not companies that are easy to find. They are not easy for the Attorney General in Carson City to chase down. They are able to sell for months until the Attorney General is able to get a court injunction to stop the sale. The model complimentary legislation is meant to give the Attorney General tools to stop the illegal sales before they happen. Companies will have to come in and certify that they will actually make the escrow deposits before they sell.

The second piece of the legislation is the allocable share amendment. This is meant to deal with a loophole in the statute as it was drafted. The allocable share release was a provision that was meant to protect the NPMs. It was meant to protect them by preventing the situation where they might have to deposit more as an NPM than they would have to pay if they joined the settlement. I permitted a release if they could ever show that they would have to deposit more than they would have to pay if they were joined. The problem was that it was not artfully drafted. Rather than comparing the amount they would have to pay for the same sticks, it compared the amount they would have to pay for the cigarettes sold in Nevada against the amount that the State of Nevada would receive if the company joined. Because the MSA is a national settlement, whereas the statute is a state statute, there is an apples and oranges comparison problem. A company doing business just in the State of

Nevada would receive a release of over 99 percent of the money placed in escrow. It is particularly ironic given that in such an example the harm is most concentrated in the State of Nevada. That means that they would put the $4 per carton into the escrow deposit account and receive a release of all but a few cents per carton with nothing left to secure to the bond.

Assemblyman Conklin:
In Section 21, I would like to know the intent of this specific part of the bill. It appears to me that it may belong in the other bill.

Michael Hering:
The two pieces of model legislation are both contained within this bill: the complimentary legislation, and the allocable share amendment. This provision is a portion of the complimentary legislation; this is the toolbox that would give the Attorney General the ability to stop the sales before they happened. A company that is a non-participating manufacturer, for that matter the participant as well, must come into the State and certify that they are either a participating manufacturer or they are a non-participating manufacturer and will have to say that they will be responsible for the escrow deposits due on April 15th of the following year. If no one steps forward to claim responsibility for a particular brand of cigarettes, the brand is not placed on the directory. I believe the Section you referred to says that it is illegal after such a directory is posted by the Attorney General's Office in conjunction with the Department of Revenue. You would not be able to place a tax stamp on a package of cigarettes and sell them. In other words, if no one has come forward and said that they would make the escrow deposits, they cannot be sold in the State. This allows the Attorney General to stop the sale of the cigarettes by the non compliant NPMs before they happen.

The second piece of legislation starts at Section 23 (Exhibit J) and goes through the end. That section is the allocable share amendment. It changes the apples to oranges comparison to apples to apples. It says that the non-participating manufacturer can still apply for a release of excess escrow deposit, but only where such money deposited is in excess of what it would pay under the MSA for the same sticks sold in the State of Nevada. We are comparing how much it deposited for the sticks in the State versus how much it would pay for the same sticks sold. If in that instance it would have to deposit more than it would have to pay, it would have the excess refunded.

Assemblywoman Giunchigliani:
When you find someone illegally affixing stamps, there is an escrow account?

Michael Hering:
No, the escrow account is for the actual manufacturer of the cigarettes. An NPM that is a cigarette company making cigarettes, that is not a member of the settlement, and not making payments under the MSA for the cigarettes, is required to place money into escrow as a sort of security or bond so that they can sell cigarettes in the State. This way the State can recover if the State settles against that company. There is no escrow account for the stamper. The stamper is the point of control for the sale of the cigarettes. It is illegal to sell cigarettes in the State without them being stamped. The bill says that if no one steps forward to take responsibility for the cigarettes, the cigarettes are not placed on the certified list and it is not legal to stamp and sell them in the State.

Assemblywoman Giunchigliani:
What about internet sales?

Michael Hering:
Internet sales are completely different. It is addressed in Assembly Bill 464.

Assemblywoman Giunchigliani:
Where is the escrow account established?

Michael Hering:
The escrow account is established at any bank of the companies choosing. It is an account segregated for the State of Nevada. Presumably, they are settling in multiple states and they have an account at a national bank. There are certain minimal requirements. The bank must have minimal assets of $500 million or thereabouts.

Assemblywoman Giunchigliani:
How does they money ever get released from the escrow?

Michael Hering:
There are three possibilities for release under the model escrow statute that was passed in 1999. I did not mention the other two here, but let me run through them quickly. The first is upon a judgment or settlement which was mentioned, because that is the purpose of the escrow. The second is the allocable share release provision, which this bill would amend. The third is after 25 years. The reasoning behind that is if, after 25 years, no action is brought, the money would return to the NPM in question. I should explain that the NPM, when it places this money into escrow, retains ownership of that fund. It is able to withdraw interest annually and get the money back after 25 years if there is no intervening judgment or settlement.

Assemblyman Anderson:
In Section 21, page 7, I note that this is a gross misdemeanor. On lines 42 and 43 of subsection 3, it says, "Civil penalty of $5,000 or 500 percent." Is that the same penalty we had in this legislation in the past go around, or is this a higher penalty?

Michael Hering:
It is a model bill and I have not gone back to compare them line by line, but I am pretty sure that is the model amount. Therefore, it was probably the same amount the last time around.

Assemblyman Anderson:
Is Section 29 the only new section of the bill that was different from last time?

Michael Hering:
I cannot represent that they are word for word the same, but I know that they do the exact same thing. They are both based on model legislation. I would be fairly certain the allocable share amendment is word for word aside from perhaps the severability provisions. I would venture to say that the complimentary is also almost the same. I pulled out the model which all of the states have based it on, and it does say 500 percent and $5,000. I think you would find this is as all of the other states that have passed it.

I would like to tell you again that this is something that has been passed in 42 of the 46 states when it comes to the complimentary portion and 39 of the 46 states when it comes to the allocable share portion. I think it is important that the state pass it. Nevada's payments under the MSA are at risk here if this is not passed. You receive some $39 million annually and those payments that are at risk should the adjustment ever come to be enforced against the states.

The States can protect themselves by passing and enforcing the escrow statute, which has been done, but it has become more difficult to enforce the escrow statute as time has gone on because of the scofflaw's aspect, and the loophole in the statute. These bills would greatly assist this State and the Attorney General in protecting the payments under the MSA. That is why they have been passed in so many states. That is why they are endorsed by the National Association of Attorneys General. That is why I would highly recommend that they be passed here.

Assemblyman Seale:
Of the states that have enacted this legislation, have there been any successful claims against these escrows to date?

Michael Hering:
There are three types of litigation that are associated with your question. Many states have brought litigation against companies that never made deposits. Then there are companies that have joined—by joining the MSA, you are settling a release claim under the MSA—and therefore, the money on deposit in the escrow accounts came to the states. Thus far, there has not been an action for health-related claims against an NPM. This would result in a judgment if it occurred. The reasoning behind the 25 years is that it is roughly the gestation period of cancer. The people who have smoked cigarettes may not be ill today, but they may be ill ten years from now. That is why a fund would be necessary for recovery.

Assemblyman Seale:
The reason there were no claims was because it is a relatively short period of time that these escrow accounts have been set up.

Vicky Oldenburg:
I have a minor amendment to A.B. 436 (conceptual). It is a construction clause in the event that any provisions of A.B. 436, particularly Sections 2 through 22, are deemed unconstitutional by a court of competent jurisdiction. The model statute, which we are required to have at the MSA in order to receive our payments, would still stand. It would not be invalidated in the event that any of the provisions can be harmonized with this act. It is a standard severability type clause.

Dino DiCianno, Deputy Director of Compliance, Department of Taxation:
I am here in support of the bill. We believe that this will assist the Department in its enforcement efforts. We look forward to working with the Attorney General's Office.

Alfredo Alonso, Lionel, Sawyer & Collins, representing RJ Reynolds:
We also support A.B. 436. In regard to what Assemblywoman Giunchigliani indicated earlier, there were two separate bills that were combined. This bill was severed at the end. It went to the Senate where it found its demise for completely different reasons. We removed the provisions that were of some consequence, with respect to the child smoking issues, and that is why they are in this Committee instead of Judiciary.

Samuel McMullen, representing Altrea Corporate Services, Phillip Morris, USA:
I would like to reiterate what Mr. Alonso said. We are certainly in support of this, but the provisions in this bill are exactly the same provisions that were drafted in A.B. 460 related to what Mr. Hering talked about. They have been separated, word for word, as passed by Assembly Judiciary last session and

they are the same language. The questionable provisions relating to minors in possession and criminalizing conduct of minors, Section 1 through 7 of that bill, were deleted. The other provisions have been moved, with some very minor changes, into another bill that you will look at later. This is absolutely as it was passed out last session.

Vice Chairman Oceguera:
What about the amendment that was just passed out in Section 23?

Samuel McMullen:
There has been a concern that the bill could be read in a manner that if some of it is unconstitutional, then all of it is unconstitutional. I think this allows any provision that might be sued, whatever would be determined to be unconstitutional, would preserve the remainder of the bill. It is a very positive and valid amendment. It is one that all of the Attorney Generals and Coalition feel is very valuable.

Peter Krueger, representing Single Stick Tobacco:
Single Stick is an NPM, but does have an escrow account. It is abiding by all of the rules. I would like to call the Committee's attention to Section 19 of the bill. I just passed out a proposed amendment (Exhibit K). The amendment would create a new subsection 6 to have the Attorney General provide certain information to a requesting NPM when the Attorney General questions the amount to go into the escrow and delineates what information should be provided. It goes on and says that it is only information concerning the NPM's product. We think this is an opportunity to ensure that we are paying our fair share in the escrow account.

Vicky Oldenburg:
We were provided with the amendment a few minutes before the hearing. I have not had a chance to completely evaluate it or determine the confidentiality of any of these documents and whether they would be confidential in any of the investigatory process. I would like to note that the Attorney General's Office does provide these documents to any NPM who wants us to substantiate any number of units they have sold in our state for purposes of complying with the escrow statutes. I am not quite sure this is needed legislation. I am not aware of any problems in the past where we have not provided requested information to an NPM. Now that we are in April and enforcing against NPMs and getting certificates of compliance, I have been sending these records out regularly and the Tax Department has provided me with those records knowing that they are going to the NPMs. I do not know what other types of issues might arise.

Samuel McMullen:
This is a new part proposed by the proponents of the amendments. It is not something that was in the last bill. We do not have an issue. It would be an issue of the Attorney General's Office and their ability to comply. It is our opinion that the representation by the Attorney General's Office should be adequate. If there are problems later, someone should come and address those.

Peter Krueger:
While this may be the current practice of the Attorney General, attorney generals come and go. My client would feel more comfortable with this language in statute. I have asked my client to contact Ms. Oldenburg tomorrow and let them discuss the particulars of our concern to determine how we would like to proceed.

Vice Chairman Oceguera:
I will close the hearing on A. B. 436. We will open A. B. 370, since everyone has indicated that they need video conferencing but there are only a few people in that room right now.

Assembly Bill 370: Revises definition of "contractor" to include certain construction managers, general contractors and employment agencies. (BDR 54-726)

Jim Sala, Legislative Advocate, representing Southwest Regional Council of Carpenters, Las Vegas, Nevada:
Assemblyman Manendo may not be able to make it today but we want to thank him for helping us sponsor this bill. We sponsored this bill in cooperation with the Contractor's Board and in consultation with many of our current contractors and some of the associations that we regularly deal with. I want to say at the outset that I think Nevada already does a pretty good job of licensing contractors and trying to keep up with the issues of quality and qualified contractors. That can be a tough job in Nevada because of the exponential growth. Currently, the law states that you must be licensed to perform or bid work in this state. I think the first part of the bill clearly states that in lines 3 through 10.

This bill basically is a clarifying bill for two areas. The first area is in the area of the construction manager. While I think the LCB [Legislative Counsel Bureau] did a fairly good job in this draft, there are a few areas we may have missed. Basically, construction managers perform work almost just like general contractors and so we feel that they should be licensed. I think the current

statute says that but, there are some loopholes where construction managers perform certain duties and they have not been licensed as contractors. We would like to get this clarified.

[Jim Sala, continued.] The second part of the bill, which deals with temporary employment agencies, may be a little bit more of a serious issue in regards to this part of the bill. Temporary employment agencies sometimes provide workers to licensed contractors on construction projects. These workers remain on temporary employment payroll as opposed to the contractor's payroll and should be governed by the same type of safety program, workers' compensation, taxes, unemployment insurance, and so on. When they remain on the payroll of the temporary employment agency we feel that doesn't really happen in the construction industry. The issue of quality and safety are certainly a concern to us. They are required to submit certified payrolls on public works projects and they can be fined or debarred just like a regular contractor, but they don't provide or comply with any of the other rules or guild lines that a licensed contractor would have to. We feel that if they are going to provide these services that they are going to need to be a licensed contractor.

I think that probably clarifies as much as we need to say here. We are working with Ted Olivas and the AGC [Associated General Contractors] to clarify a few definitions that LCB left out of the definition of construction manager. I think we will probably need to work on a couple of sentences in that paragraph of the language that probably was inadvertently left out. That wraps it up. We understand that there possibly could be an unfriendly amendment in regards to master plan developers which we would not be in favor of were it introduced.

Assemblywoman Giunchigliani;
If this were to move forward, again the antiquated term "workman" which is a drafting thing should be "worker", if it doesn't change every single statute that we have out there.

Ted Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada:
I appreciate Jim Sala and the Carpenter's Union allowing us to have some discussion on this bill. We were opposed to the bill in its current form. He is willing to work with us to expand some of the definitions of a construction manager. Specifically, on the public purchasing side, we select construction managers to act as our agents sometimes where they don't take any fiscal responsibility; we just hire them to oversee the project and let us know how it is going. Then, we also have construction managers at-risk, not only are they overseeing the project but they are financially responsible. The project is basically theirs in its entirety to manage. The definitions need to be further

expanded. In addition to that, I wanted to make sure the Committee is aware that we do hire construction managers that have a contractor's license but we also sometimes hire architects and engineers under their certain section of the law to perform those services for us as well. I wanted to make sure that we are clear on that.

Russell M. Rowe, representing Focus Property Group:
We are here in support of this legislation. We do have one minor amendment. (Exhibit L) We don't think it is an unfriendly amendment. This is what Jim Sala was referring to. I do apologize to Jim for not getting in touch with him sooner; this bill just came up on our radar. I spoke with him just before the hearing about this proposed amendment. The amendment itself does not impact the intent of this bill whatsoever, like his bill, the amendment actually is just a clarification of the impact on master developers. Most master developers, such as Focus, do not have a contractor's license. This amendment clarifies that practice and the statutes as to the proper way to go about it for master developers.

We are asking for this clarification for two reasons. First, the way the bill is drafted, it could very well bring master developers back into getting a contractor's license. Secondly, the way the statutes are drafted, it is not completely clear that master developers don't have to get a contractor's license. We have met many attorneys who believe we do and some who believe we don't have to have to license. We all agree that it should be clarified in the law. We have drafted this language essentially to say that if you are a master developer and you contract with a contractor or a construction manager then you do not need to get a contractor's license, which probably seems obvious but we wanted to make that clarification part of this bill. The intent of this bill doesn't go against the current practice of master developers.

Ronny Ashleman, Legislative Advocate, representing the City of Henderson:
I support Mr. Rowe's amendment on behalf of the Southern Nevada Home Builders. Far from being unfriendly, we intended to oppose large portions of this without the amendment and so we believe that this is a positive contribution to passing an otherwise desirable bill.

Vice Chairman Oceguera:
We will close the hearing on A. B. 370. We will open the hearing on A.B. 291.

Assembly Bill 291: Makes various changes relating to regulation of talent agencies. (BDR 53-1260)

Assemblyman David Parks, Assembly District No. 41, Clark County:
I am here to speak on A.B. 291. Nevada is a venue of great demand for filming and related activities such as numerous conventions. There are filmmakers and promoters who, when they come to Nevada, bring their actors and actresses with them because they do not have the assurance that the actors and actresses they might contract are going to be fairly treated and paid.

This bill would set in place the regulations related to regulating talents. I believe the best persons to speak on it are those individuals who work with it on a daily basis. One gentleman is Robert Cochrane, who approached me to introduce the bill, as well as several persons from the law firm of Quirk & Tratos. I believe they are joining us from Las Vegas. Here in Carson City, we have someone from the Screen Actors Guild.

You have a handout from Robert Cochrane (Exhibit M) where he explains the circumstances that he has experienced relative to talent agencies and individuals who abuse the system.

Duncan Crabtree-Ireland, Deputy General Counsel, Screen Actors Guild, Los Angeles, California:
The Screen Actors Guild (SAG) is an organization of about 120,000 members nationwide, and it represents film and television actors, particularly in primetime television, commercials, and all film. We are in support of this bill. It is an area of special concern for SAG members and performers, because of the inherent risks of this industry with regard to employment in the industry.

For those who might not be familiar with it, the nature of talent agencies in the entertainment industry is that the performers employ and retain agents to represents them, but the agent is their only connection to work. The agents typically require that their employers route all of their compensation through the agent, so that the agents can collect commission. This creates a special situation. For many performers, virtually all of their compensation comes through a third party. In other words, their employer does not pay them directly. The employer writes a check to them and mails it to their agent, who then deposits it into the agents trust account. They hold on to the money for some period of time, and then release the balance of the compensation minus the agent's commission to the performer.

We have seen, nationwide, that the vast majority of the agent community is very responsible and ethical. There is a small minority who are not. There are cases of embezzlement, delay, and absorbent fees being charged out there; that is why we support regulation that deals with those circumstances. There is

regulation of this type in California, New York, and a number of other states throughout the country. We feel that it would be very helpful to our members who work in this occupation to have this type of legislation.

[Duncan Crabtree-Ireland, continued.] In looking at the bill as it was originally drafted, we did come up with a few areas of concern. We submitted to Assemblyman Parks a few areas of concerns and the proposed amendments (Exhibit N) to that which should resolve those concerns. Particularly, one that we feel is very important is the issue of coverage for employee performers. As drafted, the bill is intended to apply to independent contract performers only. The fact of the matter is that the vast majority of performers do work as employees and not independent contractors. Those performers need this protection. The performers with less bargaining power are the "working actors." They may not be celebrities that you have heard of, but they are people who do television commercials; they are working as day players or even background performers on television and films. We urge you to expand the coverage of this provision to address employees as well.

In addition, we urge you to revisit the question of the amount of the bond required from talent agents. Because of the fact that employee compensation usually goes through the talent agent, there is a need for greater bond than there would be for a regular employment situation. These talent agents will hold upwards to hundreds of thousands of dollars across their various clients in their escrow account. A bond of only $1,000 does not provide adequate protection to these performers. If anyone on the Committee is interested, I have a list of eight to ten incidents that have happened of the last three to four years in various states where performers have been defrauded out of sums ranging from $10,000 to over $150,000. In many cases the agents have gone bankrupt or have been subjected to criminal prosecution, but the assets are gone and the performer's wages are gone. We strongly urge you to raise the bond amount to $10,000, which would be consistent with the current bond in New York and California. We think it would be minimally sufficient under the circumstances.

There are a couple of other relatively minor changes that we would also like to change regarding the amount of time an agent would have to turn around payment to a performer. We also have a provision related to referral of people to auditions without prior authorization. Normally, a talent agency would not get prior authorization from a producer before referring an actor for consideration to an audition. We recommend that those minor changes be made as well. Overall, we think this bill is an outstanding addition and that the regulation is warranted and reasonable.

Assemblyman Conklin:
On page 2, lines 35 through 37, and again on 42 through 44, you have an exclusion from hotel or casino which procures its own bookings for talent. Why is that exclusion in there?

Duncan Crabtree-Ireland:
We were not involved in the drafting of the legislation. As far as I am aware, that probably does not relate to the employment that our members would be covered by. I would assume that because the concern was for people who are acting as talent agents, if a business had their own in-house booking people, they are not really acting as agents for the performer. They would be acting as agents for the casino. Perhaps it was felt that there were sufficient assets backing them up. I was not involved in the drafting.

Assemblyman Conklin:
In Section 2, subsection 6, line 29 of page 2, we talk about the types of independent contractors working as talent. Would you assume that a singer, a saxophonist, or a pianist would be covered under this bill? If not, was it your intent to leave them off?

Duncan Crabtree Ireland:
I was not involved in the drafting of the legislation. It does appear that could be the situation. Having spoken with Mr. Cochrane who came up with this legislation, I do not think it was the intention to exclude them. The problems he had observed were more related to the categories that were listed therein. SAG would have no objection to them being included, and I am not aware of any reason why they were not included.

Assemblyman Conklin:
I think we will find that there is another bill that specifically deals with that group and it includes much of the same issues that your organization has.

Duncan Crabtree-Ireland:
I think you are referring to Assembly Bill 316. In principle, I think SAG supports that workers' compensation coverage, as opposed to a more general regulation of talent agencies. While I believe that the two pieces are relevant to the same general subject matter, I think there is a different focus.

Bob Ostrovsky, Legislative Advocate, representing Nevada Resort Association:
We have some questions about this bill, as well as the bill that follows. In Section 1, this bill says that an employee shall not harass a person placed for employment. It gives the Labor Commissioner the right to determine what that harassment is. We think that is broad language, and we are not even sure what

the purpose or intent is in that language. We did not hear any testimony with regards to that. That is one item of concern of ours.

[Bob Ostrovsky, continued.] Another item of concern is the amendments that were proposed. I have not had a chance to see them, but we are taking a huge step going from independent contractors to having this law cover employees. I am not sure what the definition of an employee is, if it was an employee of the talent agency or the casino. I have not seen the amendments so that is an issue.

The next issue in on page 2, Section 2, subsection 7, line 38, it says that a talent agency means "any person, who, with or without a fee…". When you put in the language "with or without a fee," I am afraid we are going to sweep up people who never believed they were talent agents. They could be some intermediary that says they can help someone get a job because they know somebody who can get you to perform on Tuesday night. They now fall under the provisions of this bill, including the penalty provisions of this bill. I am not sure we want to create such broad language in the statute.

On page 8, Section 19, it says, "In the State of Nevada, talent cannot be denied work for failure to sign an exclusive contract." I heard no testimony today about exclusive contracts and cannot find the specific language in this bill that discusses it. I do not know what the purpose and intent of the exclusive contract language is, nor do I know what the impact might be on any given entertainer. Those are our basic concerns about the bill. I am sorry that I did not approach Mr. Parks earlier to get a hold of those people, but we believe all of those issues need to be addressed.

Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry:

We are taking a neutral position on this, although we would have enforcement responsibility. I have included a fiscal note on this particular bill that requests that an additional investigator should this responsibility be given to our agency. I talked to one of my investigators today and she said it would be a better fit to ask for an entertainment law attorney rather than an investigator.

I do have a concern about the bill, but it is not something that would cause me to object to the bill itself; however, I think we might be mixing apples and oranges on the underlying premise of the employment agency legislation. We have a third party that is facilitating an employer/employee relationship. There are certain rights and obligations that entail on both sides of that relationship. In this particular case, we are bringing in an independent contractor in a venue type of relationship. In essence, this is a business to business type of

relationship and the dynamics between those two situations are different. You can see differences in the bill. For example, an employment agency, if the employment is less then seven days, the agent cannot charge that employee a fee at all, whereas, we are looking at a universal 15 percent. One reason for that is because there is a lot of day work involved in talent agencies. I think we are looking at an apples and oranges situation here. From a regulatory standpoint, the Office of the Labor Commissioner could probably make it work, but we would be more comfortable if it were its own section, and not mixed in with the traditional employment agencies.

[Michael Tanchek, continued.] I think the issue of harassment was brought up, and there is statutory language in NRS 200.571 that establishes harassment as a gross misdemeanor. The gentleman from the SAG brought up the question of the employee actor, those who are actually employed by the company. In those situations, we would probably look at those as fitting within the classic model of an employment agency. In other words, there is an employer/employee relationship between the talent and venue that is being generated. They would fall under the existing statutes under that particular situation anyway.

Robin Holabird, Director, Nevada Film Office:
I am speaking neutrally about the bill, although I will specify that the Nevada Film Office agrees that talent agencies should be licensed and regulated. Our focus is on the film and television aspect of talent agency functions, which is not everything addressed in this bill. Primarily, it is the gathering of extras and day players for projects. We want to ensure that production companies get smooth access to filming opportunities while assuring fair treatment of Nevada companies and personnel hired to work on those projects. The regulations should provide protection without putting Nevada at a competitive disadvantage. Assembly Bill 291 inserts the term "talent agencies" into what appears to be existing legislation addressing "employment agencies." As Mr. Tanchek said, this may not always quite match.

We just received a full copy of the legislation this morning so we have not managed it line by line. We see some potential concerns such as Section 8, which is an existing law that could limit the number of talent agencies licensed in a region. We are concerned with that and there are some other things that we will be able to put in writing once we get a chance to analyze the bill more thoroughly.

Mark Tratos, Attorney, Quirk & Tratos, Las Vegas, Nevada:
Lauri Thompson is an entertainment lawyer with our firm for over 20 years. She is also a professional performer and represents a significant number of individual

artists, as well as our general practice which is the representation of producer venues and the like.

[Mark Tratos, continued.] We are here to generally support the bill. There are some things tat we think may need to be considered. One of the reasons that we believe talent agencies need to be regulated is because there have been a dearth of oversight in a number of critical areas. The first thing I would like to do is split the area of talent agencies into two distinct groups. Specifically, talent agencies that work in the film/television industry, and those talent agents that work in the mainstream function in Las Vegas which is people who book trade shows, people who book and schedule talent to appear in various conventions. They seem to be distinct groups in the sense of the way business is done in those two areas.

The group of agents that work specifically for television and film are subject to a series of regulations that are put in place by the various unions that control the film and television industry. SAG and AFTRA [American Federation of Television and Radio Artists] mandate that a talent agent, someone who is procuring employment, cannot receive income of more than 10 percent of the fees generated for the talent and the booking. This bill specifically uses a more generous 15 percent standard. That may be appropriate in the areas that relate to booking trade shows and conventions, but it clearly would not be appropriate for television and film. I think the way the statute is drafted; it cannot be more than that. If there are other limits in the AFTRA or SAG agreements, that would be appropriate.

Having represented a number of the hotels, I was troubled to see the last sentence of paragraphs 6 and 7. We use a phrase that says the term does not include a prostitute or a person who works in a hotel or casino which procures its own booking for talent. I get uncomfortable when our major industry uses both the words ”prostitute” and “the industry” in the same sentence. I think they should be split so that you have two separate definitions. Instead of saying “A person who works in the hotel,” It would be helpful and more specific to say “A person who performs in the hotel.” It would be helpful to exclude production companies and the hotel-casinos that are procuring talent. Those changes would fit better in paragraphs 6 and 7.

What we now have in the statute relative to a talent agency paying talent within 45 days fits very well in the trade show convention setting. It does not work well as it relates to film and television talent agents. The film company or the television production is going to be paying the talent; the talent agency will not be paying the talent. Where the talent agency pays the talent is in the trade show environment in which the agency is booked. The talent then receives the

checks. You can change that by modifying to read, "In the event that the agent collects the talent fees, then they will pay." A reasonable time would be 30 days; 45 days probably stretches talent too far.

[Mark Tratos, continued.] The last thing I would note is that there is a particular section that tries to define and distinguish a talent agent charging or collecting fees from both the individual and the people that are hiring them. That is what we call "blind booking" in this industry. It has happened for years in Las Vegas, where an agency will secure a contract with Sony, and then separately contract talent to perform as spokespeople to collect the difference. I think that is what we are trying to accomplish here, but I think the way it could be done better is to preclude talent agencies from also being production companies. That may be a simpler way of doing it.

Lauri Thompson, Attorney, Quirk & Tratos, Las Vegas, Nevada:
I wanted to talk about the need for the licensing of talent agencies. I have three primary concerns with talent agencies and why they should be licensed. I was represented by many agents in Nevada. We do not have many agents that require exclusivity so it is possible to work for many different talent agencies.

My first concern is with safety. There are a number of situations where young talent, and even older talent, is sent to an audition that you hoped would be prescreened by someone who could be held responsible. There are many auditions that are held in remote warehouses. I can tell you that I went on a few auditions that were not legitimate, but I was mature enough of to get out of the situation. I was sent by people who defined themselves as agents. I feel that it is essential to know that you have a licensed and bonded agent that will be representing you.

My second concern is payment. As Mark Tratos discussed, we have situations where payment goes to the talent agent. The talent agent is essentially paid a fee. They go out and find the talent. It is difficult for talent to get paid because the agent is not necessarily working for the talent. The agent can be working primarily for the client. That client could provide much more future work for the agent, much more than the actual talent could. On one occasion, I was having trouble getting paid so I went to the agent. The agent did not want to push the client for payment because she was afraid she would not get additional work from that client. On trying to go directly to the client and get paid, I was told that I was contractually prevented from contacting the client on my own. In this situation, I actually contacted the Labor Commissioner. The Labor Commissioner contacted the talent agent and was able to get me payment within 48 hours.

[Lauri Thompson, continued.] My last concern is the exclusive right to book talent. The percentage can be very small on a convention and trade show job, as small as $50. You can imagine that, at 15 percent, it is not worth their time to handle the booking. I found that a lot of these talent agencies would do it off of volume, but they would also try to provide a discount so that they could be the talent agent that was contacted for the entire show. They wanted to become the authorized talent agency for that particular convention. They were asking the talent to work at a reduced rate and saying if they did, they would get them other bookings. If they did not work at the reduced rate, they would no longer call them for the film and television opportunities. I think putting the limitation on the percentage is going to be a double-edged sword here. I think it will be harder for some of the talent agents to provide those services at 15 percent, but on the other hand, it may not put the pressure on the talent to barter to get referrals for work.

Chairwoman Buckley:
I would like to ask one final thing before all of the witnesses leave. Assemblyman Parks, it is my sense that the bill needs some work if we should continue processing it, but perhaps there is enough concern in the industry that it is worth trying to see if there is something that can balance all of these interests. What is your preference? Would you like to work with the parties and see if something could be presented back to the Committee? We are trying to get amendments and concepts in quickly.

Assemblyman Parks:
I would like to see if we can have some thinking on the part of the parties to bring back something that may be agreeable to all. Today was the first that I heard there was a problem with the Resort Association. We would certainly like to address those issues as soon as we can understand. It does look like there are a wide number of issues that we need to address, but I would like to give it an opportunity to come up with a good bill.

Chairwoman Buckley:
We only have 5 hearings left in this Committee, and if it is not clean, it will not get processed.

Vice Chairman Oceguera:
I will close the hearing on A. B. 291.

Chairwoman Buckley:
We will open the hearing on A. B. 316.

Assembly Bill 316: Provides for regulation of agents who book performing artists. (BDR 53-1169)

Assemblyman Mo Denis, Assembly District No. 28, Clark County:
Some of this is similar to Assemblyman Parks' bill. Assembly Bill 316 provides that the administrator of the Division of Industrial Relations (DIR) issue a certificate of registration to any qualified applicant for registration as a booking agent. The certificate must be renewed annually. It provides a registered agent must maintain an office in this state, and the employment relationship with the performing artist must be established by a written agreement between the agent and client business. Consequently, these artists will no longer be exempted from the definition of employees for the purpose of industrial insurance.

The booking agent is deemed to be the employer of the performing artist for purposes of unemployment compensation and industrial insurance. The booking agent is also deemed to be the employer of the performing artist for the purposes of sponsoring and maintaining health insurance coverage for the artist. The booking agent may not offer a self funded program or be a member of an association of self insured public or private employers for industrial insurance purposes. The bill also provides for joint and severability among the agent and client businesses for any contributions, premiums, and other charges related to the provision of unemployment compensation and industrial insurance attributable to the wages of the performing artist with the business by the agent.

The DIR administrator may adopt regulations to carry out the provisions of this bill. It provides that if an agent fails to comply with the provisions of the bill, an action for damages may be brought against the person who is required to sign the application for certificate of registration for the agent. An agent doing business in this state on October 1, 2005, must comply with the requirements of the bill by January 1, 2006. The bill is effective upon passage and approval for the purpose of adopting regulations by October 1, 2005 for all other purposes.

Thom Pastor, Secretary/Treasurer, Musicians Union of Las Vegas, Local 369:
[Read from prepared statement, (Exhibit O).] For 20 years, I have worked at the Musicians Union and seen a gradual progression take place within the industry. It is good to have some perspective of the historical significance of what has transpired.

In 1976, there was a National Labor Relations Board suit between the Musicians Union and the Resort Hotel Association that centered on whether or not lounge

musicians were employees. We had employees in the main showrooms; they were there on a weekly basis. The lounges had a more itinerate nature, in that they would work for 2 or 3 weeks at a given venue, have a week off, and then work at a different hotel-casino. Louie Prima and others were examples of that type of booking. After an appeal to the Ninth Circuit Court in San Francisco, there was a settlement made, and the lounge musicians became independent contractors.

[Thom Pastor, continued.] In the interim, casinos have gotten out of the entertainment business, per se, and outsourced this to booking agencies. That became extremely lucrative in short order for the agents that were involved in the process. At first, it was fairly benign that they would accept the commission. Inevitably, they started collecting all of the money. The checks went directly to them from the casino where we have a collective bargaining agreement.

We audited the procedures that are audited by the collective bargaining agreement and found that the hotel paid the right money. Instead of paying it to the leader of the band, they ended up paying it to the agent. The agent would then pay the musicians. This created a monopoly. In the bulleted section that I faxed up there (Exhibit O), there is one individual who monopolizes the whole strip, in that he has over 70 percent of the work, with a take-it-or-leave-it attitude as to what he pays.

I would like to relate a story that I have put in an affidavit. One of our members, a piano player, was hired by this individual to play a cocktail party at Caesar's Palace for a trade show. It was a usual two hour show, and he went in and played. After an hour, he took a break and the man came running across the room asking him where he was going. He said that he wanted continuous music for the kind of money he was getting paid. The musician said he was only getting $150. At this time, he went across the room, opened up a briefcase, and the man showed him that the two hours cost that organization $750. This man made $150 and the agent picked up $600. We can say it is a free market economy, but, in my heart, I believe that this gives corporations a bad idea about Las Vegas trade shows.

Just like Assembly Bill 291, I am here on behalf of musicians to testify that this needs some regulation. These individuals are compelled to have a proper relationship with the state of Nevada where they are being paid workers' compensation, and that they do become an employer. The changes that I alluded to earlier with respect to the musicians being direct employees of the hotel in the old days and picking up their check in the casino has gone from being an independent contractor in 1976 to being a performer who rarely sees

the check that goes to the agent. The agent then becomes the de facto employer and in our estimation, they should be made accountable for that.

Bob Ostrovsky, Legislative Advocate, representing Nevada Resort Association:
I do not know if neutral is the right term for my testimony. I did not know, until today, that this bill was being supported by the Musicians Union. I guess I know more about this than I should know. I negotiated all of those union contracts on the Strip from 1973 to 1996, including a substantial period of strike with this union regarding the subjects that we are talking about, which included the maintenance of a house band and how lounge musicians would be paid. We have had a continuing problem in the industry relative to particular lounge musicians. We even inserted a requirement in the union contract that the band leader get a signed certificate from the other player in the group that they receive scale. The hotels pay the band leader scale, because we are required under contract to pay scale.

Since we do not pay the side men directly, it is hard for us to determine whether these side men actually got what they are entitled to. As such, he asks for the certificates to be signed. Then we found out later that the certificates were signed under duress, because the side man couldn't get more work if he didn't accept lower pay. It became a real problem in the industry on how to regulate payment of casual labor. House bands were employed by the hotels and received pay checks from the hotels.

I understand the Musicians Union's position, there is a problem. How to solve that problem is another issue. The Musicians Union has faced this problem for years with musicians playing without benefits. I was Chairman of the Northern Nevadan Musicians Health and Welfare Trust Funds, and we had problems getting our trust payments because, one night, they would work for the union and the next night they would work in a nonunion bar.

I have a few problems with this bill. On page 5, Section 10, subsection 4 says, "If the insurer cancels the policy of an agent, the insurance shall immediately notify the administrator in writing." That is not the way the system works today. We notify a third party, the NCCI [National Council on Compensation Insurance], who then notifies the administrator. I do not know what immediately means, but I think it is within 15 days that we must notify. NCCI will check to see if another policy was issued. I think the language in that Section is counter top what we do with all other insurers. If we want to do it, we should do it like we do for everybody.

Further down that page in Section 13, I have a problem with the joint and several liability issue. You will find that they are asking the client business—the

person hiring the talent through the agency—to become responsible for all of these payments if the talent agency fails to pay it: contributions, premiums, forfeitures, interest, wages, et cetera. "Client business" means a business that uses an agent to tend to services of the performing artist. We are asking the client business to step into the shoes of the talent agent. They have no contractual relationship with the performer. The performer has a contractual relationship with the agent and ought to go after the agent if they are not appropriately paid. Otherwise, they should get the benefits that they were promised. We would object to having to stand in the shoes of those people without knowing what the relationship is and what promises were made. We would object to at least those two sections. I know some people have concerns with how we would administratively handle this, but I sympathize with the issue of this trying to be resolved. That is why I came up on the neutral side and not the opposition side.

Roger Bremner, Administrator, Department of Business and Industry, Division of Industrial Relations:

If you look at the front of the bill, under fiscal note, it says, "Effect on the State: No." I would propose to you that it does have an effect on our agency. When we are asked to assume a new responsibility, that is the registration of talent agents, it is going to cost us some money. In addition to that we will need to develop a database and other regulatory things. After listening to the proponents of the bill, it sounds like the scope of the agreements to administer and regulate are much broader than what we had anticipated in our internal discussions of this bill.

We are proposing a small fiscal note that we will present to this Committee in the near future. I admit that it is not very big, but when you but it together with the other regulations that we are expected to adopt during this session, the cumulative affect will have a rather large fiscal impact on our agency. Those members of your Committee who are members of the Money Committee understand that it is difficult for an agency to predict the impact of certain pieces of legislation. While it is not a large fiscal impact, the cumulative will have an impact on our agency when it comes to the budget.

Duncan Crabtree-Ireland, Deputy General Counsel, Screen Actors Guild (SAG), Los Angeles, California:

SAG stands in support of the concept of the bill, to provide for workers coverage for the individuals covered by it; however, we are neutral because there is a question as to whether or not an actor who is a member of SAG would constitute a "performing artist" under the definition included herein. It is unclear to us whether or not this legislation is intended to cover film and television actors. Our general position is that film and television actors should be

covered by workers' compensation statutes, and in fact, they are covered by workers' compensation statutes in virtually every s-tate.

[Duncan Crabtree-Ireland, continued.] If the definition that is included in the bill is intended to cover film and television actors, we do have a concern with the way this particular proposal is drafted. It defines an agent as the employer of the performing artist. As I mentioned to the Committee in my testimony on A. B. 291, in the context of film and television, it is the artist who is the employer of the agent. The agents are literally the agent for the actor. I think part of the confusion comes from a lack of clarity about who works for who when we talk about a talent agent. They could be an agent for the performer; they could be an agent for the business that is employing the performer; and, in some circumstances, they could be the agent of both. Under SAG talent agency franchise rules, that is not permitted because it is viewed as an unacceptable conflict of interest.

If this proposal does in fact cover performers in film and television, we would be happy to work with Assemblyman Denis to change the language and address the realities of film and television performers who work in Nevada. If it is not intended to cover them, that particular objection would not be relevant.

Chairwoman Buckley:
Essentially the bill requires that agents who book performing artists have a written agreement, and the agent is the employer for purposes of providing workers' compensation.

Thom Pastor:
Yes, I would like to thank Mr. Ostrovsky for his comments. The hotel industry is fine with this. As he stated, we have collective bargaining agreements, and the hotels do pay the proper scales as outlined in those agreements; however, rather than having it paid to the artist, they are being paid to an agent. In the beginning of trying to regulate this without encumbering any of the agencies, was to constitute a proper relationship with the State of Nevada. Right now, it does not exist.

An agent should get a commission, and an agent should not be paying that because they will become the de facto employer. How many times do you 1099 someone if it is going to be an independent contractor status? Right now, we are two or three removed from where the actual monies are being emanated from. There are no unemployment contributions being made for individuals; no benefits. We should be concerned, in a compassionate way, that we are called the entertainment capital of the world. Indeed, there are many talented people working six nights a week in the city who deserve better than that. I do not

want to pontificate on this, but yes, it is designed to provide for workers' compensation.

As far as the one gentleman who testified about the encumbrance to his agency, in my statement (Exhibit O), it showed that there are perhaps two or three, at most, who are responsible for the lion's share of the booking on the Strip. Out of those two or three, one actually does about 70 percent. I do not think it is too difficult to find where the problem is.

Chairwoman Buckley:
Are there any other states that have adopted this model? If this is a problem in Nevada, it is probably a problem someplace else. How do they address some of these abuses?

Thom Pastor:
The musicians that testified had gone to see Mr. Terry Johnson, at which time a few musicians went and testified. They claimed that in California this type of thing does not exist. It is a much better environment; however, in California, it is not really like Las Vegas. This is supposed to be the big time, and when people who are the best at what they do in Des Moines, Iowa, and other places, feel that they have saturated what they can do there, they usually come here to move their careers forward. I would be happy to provide the Committee with any research.

Chairwoman Buckley:
The only thing I am a little concerned about is whether the bill is really going to change the situation much. You will get a written agreement. They will have to do the workers' compensation payment, but you are not addressing the scheme whereby that piano player only received $150. Of course, now there is only so much we can do. Each of us, whether you are a union representative or a legislator, I am wondering if any state has looked at any additional approaches to resolve the problems. We will see what our staff can come up with. With that, we will close the hearing on A. B. 316 and open the hearing on A. B. 360.

Assembly Bill 360: Provides for regulation and licensing of permanent cosmetics technicians. (BDR 54-925)

Assemblywoman Valerie Weber, Assembly District No. 5, Clark County:
I would like to thank you for the opportunity to present Assembly Bill 360 relating to permanent cosmetics and its operators. I bring you this bill per the request of practitioners in the field (Exhibit P and Exhibit Q). The intent of the

bill is to provide a definition of the practice of permanent cosmetics, to limit the practice of permanent cosmetics to those who are certified by a national organization, and to give health districts authority to adopt ordinances or regulations in this regard. The goal is to require certification of the practitioners and to protect the consumer who takes part in this particular procedure.

[Assemblywoman Weber, continued.] About a year ago I had a conversation with a practitioner in the field of permanent cosmetics, which is really a specialized form of tattooing. We chatted about her business, and I became interested in knowing more about the profession and the training she had here in Nevada. Previously, she had possessed a nursing license, and found that her new line of work was rewarding by helping clients with their appearances. Since that conversation, I found out the following regarding Nevada law. There are no State statutes or regulations directly regulating tattoo establishments or tattoo artists. Many other states have state level oversight which you will hear about in a few minutes.

The State of Missouri actually has a state office of tattooing, branding, and body piercing. This particular division falls under the division of professional registration. The regulation occurs locally under district and local boards of health. Clark and Washoe Counties both have a regulation, but they differ in their approaches. Washoe regulates facilities and not the person operating in the area of permanent cosmetic tattooing. Clark County regulates the premises and the operator. Clark additionally requires a technician to obtain a health card and be tested for tuberculosis and also to be vaccinated against Hepatitis A and B. No health card is required for Washoe County or in Carson City. I could not determine whether the other 15 counties had oversight of technicians or facilities. There are variables that exist through the counties with minimal to no oversight in the rural counties.

I would like to offer an amendment because the bill did not draft the intent. The first is to amend NRS 644.023, which is under the cosmetology section of the law, to exclude the occupation of permanent cosmetics. The way this bill was originally written, it was all under the Board of Cosmetology and was not deemed to be appropriate. Second, it would amend NRS 439, which involves public health in the areas that you see listed. First, the person shall not practice permanent cosmetics without certification from the Society of Permanent Cosmetic Professionals [SPCP] or another like national organization. Any person who violates the provisions of this section is guilty of a misdemeanor. The next one is to include the definition of permanent cosmetics, which is in Section 7 of the bill; we would like to retain that. Finally, each local health district may adopt ordinances or regulations that govern the practice of permanent cosmetics.

Such ordinances or regulations may be stricter than the certification requirements as outlined above.

Mary Arnold-Ronish, Board member, Society of Permanent Cosmetic Professionals:
[Read from prepared statement, (Exhibit R).] I am here to support A.B. 360. I am a permanent make-up artist and a certified cosmetic professional. I am certified by SPCP, have been a member since 1993, and serve on their board of directors. I am also the chairman of health and safety for the organization.

I have been performing permanent cosmetic procedures since 1993, following the completion of a six-month apprenticeship in Clark County, Nevada. When I first stared permanent cosmetics, there were only a few people in Clark County doing permanent tattooing; now there are many. The industry continues to grow at an unprecedented rate. I continue to see a growing proportion of work that has been done by someone else and that needs to be changed or corrected. This is devastating to many people who have experience poor quality of work, from poorly shaped eye brows to purple lips.

With the elevation of practice standards in this field, there will be fewer problems and greater protection for the public. Nationally, more than half of the states are state regulated. Several have pending state regulations and a few require physician oversight; some states don't allow tattooing. New Jersey and Ohio require 40 to 60 hours of training, approved by the SPCP or the American Academy of Micro-pigmentation; Maine and New Jersey also require a board certification by one of these organizations. There are many different requirements and restrictions from state to state.

I favor AB 360 for the following reasons. Even though there is regulation in Clark and Washoe Counties, it is not standardized. We apparently have no regulation in the rest of the state. By providing standard regulation statewide, giving the county health districts jurisdiction to license people and facilities, we will provide a safer consumer environment. We also have the opportunity to elevate the standard of practice for permanent tattooing. With the great interest of permanent cosmetics by both the public and people wanting to make it a career, you have the opportunity and the responsibility to make changes that will reflect the current standards of practice.

The SPCP has set industry standards which include the following. All members are required to sign a code of ethics every year upon renewal of membership. The SPCP also provides standardized training curriculum with a certain number of hours. They have approved trainers, a national certification exam that assist with state legislation. They work with the FDA, the CDC, and the SPCP pigment

manufacturers. They provide many educational opportunities and they educate and protect the public. As this industry grows, there will be more and more problems for the public. What we thought were once adequate regulations are not adequate at all.

[Mary Arnold-Ronish, continued.] Clark County requires a six-month apprenticeship. Since there are no actual hours in that requirement, trainers and students are not held to a standard of hours. As it is, one hour a month for six months would satisfy that requirement. This is insufficient training. Washoe County regulated the facility but not the technician. Who knows the background or training that a person might have. Neither county's regulations are adequate. This does not even include the rest of Nevada that apparently has no regulations whatsoever.

Clark County has no continued education requirement for the practice of permanent cosmetics with the exception of proof of a blood-borne pathogens class every two years. Products and technology are rapidly changing. As with any field of practice, there needs to be a requirement to keep current standards. Unless it is made a requirement, continued education will rarely be done. The SPCP has, in the past, banned certain equipment, certain pigments, and unsafe products because we keep on top of what works and what does not. Board certification is available from two national organizations. They test the entry-level basis of someone's educational knowledge after their basic education.

The SPCP exam tests for knowledge in sanitation and sterilization, color theory, technique, machines and needles, contraindications while doing a procedure, and skin anatomy. It was approved by a national testing company to ensure that it was non-biased and defensible. It is readily available through a national testing service throughout the world. In regard to the protection and safety of the general public, I have found that an increasing number of people require repair done by someone else.

With the abundance of new technicians without proper requirements, the result will be many poor procedures and unsatisfied clients. In the last 3 to 5 years, I have seen significant growth. There are more and more people choosing this as a career. They must be trained adequately, and we must know that they are before they are able to work on a consumer. There needs to be more in place than just sanitation and sterilization. We must also test their knowledge. We must know that they were adequately trained. There is a duty and responsibility to make sure that the public is safe in the hands of someone approved by the regulating body.

In summary, the following needs to be examined and made part of the Nevada regulations for the practice of permanent cosmetics: uniform regulation throughout Nevada governed by the State Board of Health; jurisdiction by the counties to license people in facilities based on state regulations; a standard training curriculum with number of hours; approved trainers and continuing education for relicensure; and a requirement of board certification by a national organization.

Chairwoman Buckley:
The definition of permanent cosmetics is on page 2, line 41 of the bill, "means cosmetic tattooing that includes application of pigments to or under the skin of a human being for the purpose of permanently changing the color or other appearance" and includes eyeliner, eye shadow, and lip color. I am wondering whether that would include regular tattoos. I do not think that is your intent. Is that covered by the bill or not?

Mary Arnold-Ronish:
Traditional tattooing is not covered by the bill, and it really is not my intent to do so. It could be, but, at this point, it is not.

Chairwoman Buckley:
If you just read the first part, I could make the argument that a tattoo is a pigment under the skin and would, therefore, be covered by the bill.

Brenda Erdoes, Legislative Counsel:
I agree; this is pretty broad. If you want to ensure that it does not include other types of tattoos, you will have to tell the bill drafters how we could tell the difference. If you are trying to distinguish between the rose tattoo on the shoulder, what happens if it is on your cheek? We need to know more detail to be able to do that, but we certainly could draw that distinction if we had more information.

Chairwoman Buckley:
How are tattoo artists currently regulated in our statutes?

Mary Arnold-Ronish:
Clark County regulates under the Department of Environmental Health with the Clark County Health District. Tattoo artist, body piercers, and permanent cosmetics are all considered part of body modification. They are all grouped together.

Chairwoman Buckley:
What would be the public policy rationale in treating permanent cosmetics differently than tattooing? I assume they are different fields, but, from a policy point of view, would we not want the regulatory body to be the same?

Mary Arnold-Ronish:
I have no objection to it being included; I feel that it should be. I am concerned that if we try to include traditional tattoo artists in this bill, there will be a lot of protest.

Chairwoman Buckley:
I am not sure if it is the right thing to do; from a policy point of view, we try to have consistency. Would this take the regulation away from the county and give it to the State Health Division? Did you consider putting this in the Cosmetology Board or an existing structure rather than to creating a new one? How many other businesses or occupations does the health division regulate?

Mary Arnold-Ronish:
I do not know how many types of businesses that the Department of Heath regulates. I do know that this had been approached to the State Board of Cosmetology. We do not feel that this goes along with what they do; they do not know our business. Because we are breaking the skin, we are concerned with blood-borne pathogenics; we felt it would be more appropriate to have it under the State Board of Health.

Richard Whitley, Deputy Administrator, State Health Division:
[Read from prepared statement (Exhibit S).] As proposed, I am not sure if the amendment removes responsibility of the State Board of Health for regulating the cosmetic technicians by defining that they would need to hold to a national standard. If it is correct, the impact is little on the Health Division in regard to a requirement for anyone who calls themselves a cosmetic technician and a national standard. The system is in place at a county level for local jurisdictions to regulate cosmetic tattooing, as well as other artistic tattooing; it is approached the same way in regulation. It was characterized correctly that all local jurisdictions regulate the facility. In Clark County, there is the addition in regulating the practitioner as well. The requirements do seem to synchronize up with the national standard.

In the local and rural areas, the State Health Division is responsible for the oversight of public health matters in rural frontier Nevada, where there is not a local health department. If the Health Division did need to adopt regulation to provide oversight for practitioners of cosmetic tattooing, there would be a fiscal note to this. The State Board of Health is not in the business of regulating

practitioners or providers of service. We regulate facilities; this would be a different scope of activity for the State Heath Division and the Board of Health.

Chairwoman Buckley:
Ms. Weber, it was not clear when you presented your amendments. Are you proposing to forget the approach of the State Health Division and to keep it with the local health districts, but require that the health district adopts the provision that a person cannot practice permanent cosmetics without certification?

Assemblywoman Weber:
That is the question. We were trying to determine, based on the county ordinances that already exist, that there is no standardization. In order to view this as a paradigm shift, we elevate the facility-level to the Department of Health and, somehow, get some standardization among the counties for the practitioners. It is kind of a split idea, but that is the intent. We want to protect the consumer more. There is virtually nothing in rural Nevada, and there is the differentiation between what goes on in Clark and Washoe Counties.

Chairwoman Buckley:
You do want the State Health Division to regulate?

Assemblywoman Weber:
They will regulate the facilities that deal with that.

Mary Arnold Ronish:
It was my understanding that it would all be regulated by the State Board of Health, but it would be handled on a local basis, as far as licensing, et cetera. It was my understanding that it would all be together with the Department of Health: the facilities and the technicians.

Assemblywoman Giunchigliani:
On the issue of facilities for health, people who generally practice in the area of cosmetics are still under the purview of the cosmetic board, not even the local government. For the public health side, of at least getting these individuals certified, that is the more appropriate group to handle both the licensing and the facility. The local health districts do not want to deal with the facilities; that has always been under purview of the Cosmetology Board. That may be the easiest way to not create another bureaucracy.

Chairwoman Buckley:
I tend to agree. The State Health Division regulates facilities in terms of hospitals, not an individual trade. It would be a big shift, but if you want more

uniformity, you could explore the testing. I will let you figure that out and come back to the Committee; we will see what you propose.

Assemblyman Parks:
Since we are talking about tattoos and permanent makeup, my concern is that many tattoo parlors are not well regulated as to what is in the inks they use for tattooing. One of the predominant elements in some inks is lead. We all know that lead is not good once it is in your body. I would look toward somebody regulating the various chemicals that are in the various inks. I understand that there are different chemicals used for different colors of ink that can be hazardous.

Glenn Savage, Environmental Health Director, Clark County, Nevada:
There are some concerns in Clark County. Last year, we investigated the case of a person who was supposed to be a tattoo artist and was removing tattoos with a laser. You can imagine the pain and suffering endured by people having that done.

Clark County has had regulations regarding tattooing and permanent makeup for many years. Our regulations have been adopted by other states. We feel they are very good. There is room for some improvements.

I would like to work with Assemblywoman Weber and Ms. Arnold-Ronish on these amendments. I agree with Mr. Parks that there are concerns about the lead-based pigmentations and dyes that we have to be assured of. I also agree that the tattoo artists in our community, who have learned their trade in prison, are very much against any sort of certification or formal education process. This is not to say it is not necessary, but that they would object very strongly.

Chairwoman Buckley:
We will close the hearing of A. B. 360 and open the hearing on A. J. R. 6.

Assembly Joint Resolution 6: Urges Congress to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to provide affordable, easily understood coverage for prescription drug benefits. (BDR R-152)

Vice Chairman Oceguera:
We will open up the hearing on A.J.R. 6. Last week, we said that A.B. 303 and A.B. 254 would go to a subcommittee. It was our intention to work on those individually and not send those to a subcommittee.

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:
I have the pleasure to present A.J.R. 6, which calls on Congress to amend the prescription drug benefit of the Medicare Modernization Act of 2003. Today, we have the ability to send Congress a message that our seniors need a more affordable, simplified prescription drug plan. Medicare is an essential program that more than 40 million elderly and disabled persons utilize, which includes over 273,000 Nevadans. The new prescription drug portion of the Medicare bill, which will begin enrolling seniors starting in 2006, is confusing, hard to understand, and not affordable.

Let me explain how the new prescription drug benefit will work. A person who receives benefits will pay a premium and a $250 annual deductible. The premium is expected to be about $420 in 2006. The plan will pay 75 percent of an individual's drug costs. The beneficiary will pay 25 percent. This will happen until the drug expenses equal $2,250. After that is reached, coverage stops and the beneficiary has to pay 100 percent of their drug costs for the next $2,850 entirely out of their pocket. This is called the donut hole. Coverage will begin again at the point when the drug expenses reach $5,100. At that point, a person would have paid $3,600 out of their own pocket plus a premium that would be close to $420. After that, a person would pay a flat co-payment of $2 for generic, $5 for brand name, or 5 percent, whichever is greater.

Congress has enacted a confusing benefit. This gets even trickier as time goes on, because the premium and the size of the donut hole increase with the rise of drug prices. It is not reasonable to provide seniors with a plan they cannot understand. This is ironic because we have already done this in Nevada. When Senior Rx was first proposed, it was not easy to understand and not affordable. As a result, we only had 200 people sign up in the first two years of the program. We streamlined it and made it easier to understand. We set benefits for generic; we set higher co-pays for brand names; and thousands signed up within days of changing the program. Congress should learn from their mistakes, fix it, and make it work.

How can we make it more affordable? The new law should allow the Secretary of Health and Human Services to negotiate with drug manufacturers to secure lower prices for Medicare beneficiaries, which is forbidden as it currently stands in the bill. This measure, pushed by pharmaceutical companies, makes absolutely no sense unless you are a pharmaceutical company. We negotiate for discounts right now for the VA [U.S. Department of Veterans Affairs], the Department of Defense, Medicaid, but not Medicare. Our neighbors in Canada pay 62 percent less on prescription drugs that we do as Americans. Why are we willing to settle for such higher prices for our seniors?

[Assemblywoman Buckley, continued.] Saying that prescription drugs are expensive is an understatement. Even under the new drug benefit, seniors cannot afford these drugs. Prescription drugs are not a luxury. Because many seniors cannot afford the skyrocketing prices, they will split pills in half. Instead of these drugs lasting longer, they are putting themselves at risk, and, in many cases, making their situations worse.

As we discussed with the Canadian Rx bill, most prescribed medication to seniors is Lipitor. Under the Medicare discount card, the drug would cost at least $64.67, while Canadian residents can get the same drug for $35.04. Our seniors need relief. To make it even worse, when this new law becomes effective, roughly 4 million seniors who currently have drug coverage through their former employers stand to lose that coverage and be dropped into the new entitlement. Many contractually bound companies have already indicated their intent to drop prescription drug coverage for the retirees they cover. For example, GM is estimated to save $150 million per year by dropping their retiree drug coverage.

One solution that is currently being proposed by some members of the Congress is for the federal government to pay the companies to keep their drug coverage up, but nothing has been resolved. I urge this Committee to support this resolution, urging Congress to amend the provisions of the Medicare Prescription Drug Act and do three things: provide beneficiaries of Medicare stable access to prescription drugs without extraordinary out-of-pocket costs, without unreasonable premiums, deductibles, and co-payments; authorize the Department of Human Services to negotiate discounts as we deal with our other programs; and allow seniors to re-import lower-costing prescription drugs from Canada. With these three improvements, Congress can improve upon their work as Nevada recently did to come down in favor of the people who need it the most, our seniors.

Diane Buckley, Nevada Chairperson, National Patient Advocate Foundation:
Medicare is very important to the National Patient Advocate Foundation. I have reviewed, and am in full support of, Ms. Buckley's bill. There are a couple things that I would like to inject with regard to the problems we face on the different costs that are involved.

The Medicare prescription drug program still has income restrictions. In addition to the saving of 20 percent to 40 percent, the applicant must have no more than a maximum income of $12,919 for a single individual per year or $17,320 for a married couple. You do not qualify for the Medicare prescription drug program if you make more than that. I would ask the Committee to take into

consideration this income restriction, as well as the other fees due to use the program. It doesn't work the way it is. The program only serves the financially needy; it does not serve those who still have the burden of trying to afford high prices of prescription drugs. I believe that options need to be made for seniors as well as the disabled population who receive Social Security and Medicare.

Barry Gold, Associate State Director, Advocacy for AARP (American Association of Retired Persons) Nevada:
[Read from prepared statement (Exhibit T).] AARP's Nevada advocacy campaign of prescription for Nevada is centered on the affordability and accessibility for prescription drugs. AARP Nevada is working with legislators, state agencies, and stakeholders in efforts to provide information and options to result in lower drug costs and increased accessibility. Information on the practices that contribute to higher drug prices must be available for everyone to see, and all tools available to consumers must be utilized. We applaud the efforts of the State of Nevada in recognizing the importance of this issue to the citizens.

Vive Chairman Oceguera:
I will close the hearing on A.J.R. 6 and reopen the hearing on A. B. 260.

Assembly Bill 260: Revises provisions relating to environmental health specialists. (BDR 54-855)

Glenn Savage, Director, Environmental Health, Clark County Health District:
I would like to say that the Health District is in support of the bill. We believe that it will raise the standards for environmental health specialists that are in a very challenging career field. Section 6 of the bill talks about the many different fields that are part of Public Health and Environmental Health these days, which include everything from tattooing and body piercing to hotels and hazardous waste, jails and hazardous waste, and many different things. We are also involved in public nuisance abatements such as mold and other problems of the day, such as West Nile Virus, Hantaan Virus, Neural Virus, methamphetamine lab cleanups, and bioterrorism.

The Health District is committed to providing training and education to staff members who are currently on staff and ones that we will be hiring in the future. We feel that this bill will allow existing staff, who might not have the science but have the wealth of knowledge and experience, the ability to become registered. We are in support of this bill and we are also in the process of talking to UNLV [University of Nevada, Las Vegas] about setting up an intern program which will allow students to work at the Health District and begin a

career path for them to work within the Health District. We believe that will also go in line for the environmental health specialist trainees.

Vice Chairman Oceguera:
We will close the hearing on A.B. 260. We have a document given to us by PhRMA [Pharmaceutical Research and Manufacturers of America], but they are not here to testify (Exhibit U).

Chairwoman Buckley:
We will go to the work session (Exhibit V).

Assemblywoman McClain:
I would like to talk about A.B. 436 before work session since I missed it.

Chairwoman Buckley:
Sure, we can discuss any bills we had for hearing today or that we have ready for work session. As I understand A.B. 436, there were two amendments from Mr. Krueger. The Attorney General's Office reviewed them and felt that they could meet his concerns without the amendment. The Attorney General had a severability clause amendment.

Assembly Bill 436: Makes various changes regarding manufacturers of tobacco products. (BDR 32-120)

ASSEMBLYWOMAN MCCLAIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 436.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

Assemblywoman McClain:
I have been Chairwoman for the Task Force for a Healthy Nevada for over a year now. We have seen the tobacco settlement funds get eroded year after year. I think measures like this are important to keep up with some of the good programs that our tobacco fund guarantees are working with.

THE MOTION CARRIED. (Mr. Perkins, Mr. Hettrick, Mr. Arberry, and Ms. Giunchigliani were absent for the vote.)

Chairwoman Buckley:
We will bring A.J.R. 6 to the Committee.

Assembly Joint Resolution 6: Urges Congress to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to provide affordable, easily understood coverage for prescription drug benefits. (BDR R-152)

ASSEMBLYMAN PARKS MOVED TO DO PASS A.J.R. 6.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

Assemblywoman McClain:
I just came from the Health Care Committee where we discussed this exact same thing, the Modernization Act. The statement from PhRMA (Exhibit U) offends me.

THE MOTION CARRIED. (Mr. Perkins, Mr. Hettrick, Mr. Arberry, and Ms. Giunchigliani were absent for the vote.)

Chairwoman Buckley:
The rest of the bills from today need some amendments and work, so let us turn to the ones in our work session document. We will turn first to A. B. 183.

Assembly Bill 183: Prohibits medical facilities from retaliating or discriminating unfairly against certain nurses for refusing to provide nursing services under certain circumstances. (BDR 40-927)

Diane Thornton, Committee Policy Analyst:
The bill was sponsored by Assemblywoman Leslie and first heard in Committee on March 14, 2005. Under Tab A (Exhibit V), you will find the amendments to the bill. Lisa Black is here to answer any questions. In addition to the medical facilities, the amendment prohibits other employees who employ a registered nurse, licensed practical nurse, or nursing assistant from retaliating against a registered nurse who refuses to provide service to a patient if the nurse, in

accordance with the established policy, reports to his immediate supervisor that services may be harmful to the patient. In addition, the amendment provides that the nursing professional is entitled to receive damages, payment for any hours that he is unable to work under the result of his retaliation, or unfair discrimination, and damages as deemed appropriate by the court of appropriate jurisdiction. It was previously in the bill that it was five times the amount of his annual salary.

Lisa Black, Executive Director, Nevada Nurses Association:
Since this bill was originally heard by this Committee, we have met with the Nevada Hospital Association and the Nevada State Board of Nursing. We have incorporated language suggested by each into the amended document that is now before the Committee. My understanding is that these amendment wording changes are acceptable. I spoke with Debra Scott [Executive Director, Nevada State Board of Nursing] on the phone this morning, and this language meets the concerns of the Nevada State Board of Nursing.

Bill Welsh, President and CEO, Nevada Hospital Association:
The Nevada Hospital Association appreciates the openness of the Nevada Nurses Association in working on this bill. We are supporting the bill as it is presented to you today.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 183.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

Assemblyman Seale:
I am going to vote yes on this bill, but I reserve the right to change my vote on the floor.

THE MOTION CARRIED. (Mr. Perkins, Mr. Hettrick, Mr. Arberry, and Ms. Giunchigliani were absent for the vote.)

Chairwoman Buckley:
We will move to A. B. 278.

Assembly Bill 278: Revises certain provisions governing termination of residential leases. (BDR 10-1147)

Diane Thornton:
The bill was sponsored by Assemblyman Hogan and heard on March 28, 2005. Assemblyman Hogan and Jon Sasser worked on this amendment (Exhibit V). There are three main concerns that the amendment addresses. One justifies the need for early termination due to the need for care or treatment that cannot be provided in the dwelling. Secondly, it defines the term cotenant. Thirdly, Assemblyman Hogan and Jon Sasser worked with Assemblyman Hettrick on the language for limiting the cotenant's ability to break the lease.

Jon Sasser, Legislative Advocate, representing Washoe Legal Services and Washoe County Senior Law Project:
We want to make sure that we were talking about persons who actually signed the lease. When discussed the term cotenant, I believe you raised the question, if I am a tenant and move my mother in with me and my mother has to go into a nursing home, does that give me the ability to be released form the lease? The answer is no. We want to make that clear.

Assemblyman Hettrick had a concern that I think we have fully addressed. It was if somebody were on a lease and they could afford the lease before they brought in a cotenant who later had to go into a nursing home, they could not get off the lease unless they were a senior or disabled because they already exhibited the ability to afford the lease.

I have been approached by Mr. Nadeau of the Realtor's Association who has also talked to Assemblyman Hogan. There is one small change that I do not have a problem with.

Assemblyman Anderson:
I was more comfortable with the original bill. What happens if the tenant has been there for some time and someone comes in who may be making the primary contribution to keeping the residence? Would they then be able to get out of the contract?

Jon Sasser:
Under the amendment to satisfy Assemblyman Hettrick's concern, they would not get out of the contract. His belief was that the original tenant had shown the ability to afford the property before the new tenant moved in. Based on the need of the new tenant to go into a nursing home, the tenant should have to pay out until the end of the lease.

Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors:
We were concerned about the element that if the cotenant was the one who had the lease and could afford the lease that we felt that to release him from the lease was an issue. We asked if we could narrow down the time rather than release him. In the current law there is a means test, and if we could narrow the time of notice, it would satisfy our concern. We are asking that they give a 60-day written notice within three months after the death, no later than three months after death. This would give the landlord an opportunity to find someone to take their place.

Chairwoman Buckley:
Is that just for cotenants? [Mr. Nadeau answered in the affirmative.] If the tenant needs to go into assisted living or a nursing home, they are still covered by the 30 days, but if the senior who needs to go into a nursing home did not rent the apartment from the beginning, the cotenant obligations begin. If they leave a cotenant behind, they have to give 60 days notice no longer than 3 months after death.

Jim Nadeau:
It is lines 10 and 11, Section 2 of the amendment. It says, "The person, tenant, may terminate the lease by giving the landlord 60 days written notice 3 months after the death."

Chairwoman Buckley:
We could process the original bill with the clarifications on the proof that is needed on the first page where it says you need reasonable verification of the physical and mental condition, and that the condition requires the relocation. We could keep all that or we could include the cotenant situation. It comes down to what the Committee thinks is the likelihood of that. Are people going to try to move someone in, get them approved, and have them approved, with another screening, as a cotenant? Or we could include the protections.

Assemblyman Anderson:
I will support the bill with the belief that it is going to meet greater approval in the other House. If we do not put them in, we will hear a rehash of the question again. Mr. Sasser believes this is the best he can get.

Assemblywoman Giunchigliani:
On page 2 of the amendments (page 15 of Exhibit V), it says, "The tenant may terminate the lease by giving the landlord 30 day's written notice within six months," or was that the one we changed to 60 days within three months?

Jon Sasser:
Line 10, under subsection (b), reads, "The tenant may terminate the lease by giving the landlord 60 days written notice within three months after the death."

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND USING AMENDMENTS IN EXHIBIT V AND NOTED CHANGE ON PAGE 2 AND DO PASS ASSEMBLY BILL 278.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins, Mr. Hettrick, and Mr. Arberry were not present for the vote.)

Chairwoman Buckley:
Do we have any other bills we can process to day? We will examine A. B. 203.

Assembly Bill 203: Makes various changes concerning osteopathic medicine. (BDR 54-1116)

Assemblyman Seale:
There were some amendments made. There has been one additional amendment made by Trey Delap [Deputy Executive Director, State Board of Osteopathic Medicine] that takes the search warrant provision out of the bill. It is only done in the Dental Board and the Veterans Board. It doesn't even include the Medical Board.

Chairwoman Buckley:
Were there any other proposed amendments besides the deletion of Section 7, lines 36 to 40, pertaining to the Board being able to obtain search warrants? Search warrants are out and the rest of the bill stands as is? [Assemblyman Seale answered in the affirmative.]

Assemblyman Anderson:
I was under the impression there was a proposed amendment on page 9 to Section 12, lines 27 and 28, to change the application fee from $1,000 to $800 and the annual license renewal fee from $800 to $500; is that still in?

Assemblyman Seale:
That is still there. I was not addressing those original changes. I was addressing the one additional change since the bill was testified on.

Chairwoman Buckley:
The proposal is to include the amendments that were presented at the hearing. In Section 2, the first amendment presented was to change "hearing officer" to mean "an individual who has been appointed by the Board to conduct a hearing pursuant to NRS 633.621." The second was changing the definition of a "panel" to mean "a group of not less than three members of the Board, as may be designated from time to time by the President of the Board to conduct a hearing. At least one member must have been appointed pursuant to subsection 2 or 3 of NRS 633.191." Section 4 also kept the panel language. Section 12 reduced those fees as mentioned by Assemblyman Anderson. The last change was made to Section 14, which kept the language "the President of the Board shall determine whether a hearing will be held before the Board, Hearing Officer or panel" and the deletion of the search warrants.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 203.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Assemblyman Conklin:
I would like to reserve my right to change my vote on the floor for the bill we just passed. I want to see A. B. 203 first. Since Mr. Gold has left, we can postpone discussion on A. B. 66 until next week. We are waiting from changes from the Attorney General's Office.

Chairwoman Buckley:
Is there any other business to come before the Committee? Then, we are adjourned [at 4:35 p.m.].

RESPECTFULLY SUBMITTED:

_____
James S. Cassimus
Transcribing Attaché

APPROVED BY:

_____
Assemblywoman Barbara Buckley, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 4, 2005 **Time of Meeting: 1:15 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
260	**B**	Daniel Maxson/Board of Registered Environmental Health Specialist	Statement
260	**C**	Daniel Maxson/Board of Registered Environmental Health Specialist	Clark County District Health Officer's Letter
260	**D**	Daniel Maxson/Board of Registered Environmental Health Specialist	Washoe County District Health Officer's Letter
260	**E**	Daniel Maxson/Board of Registered Environmental Health Specialist	Nevada State Health Officer's Letter
260	**F**	Teresa Long / Board of Registered Environmental Health Specialists	Statement
260	**G**	Bob Sack / Washoe County Health Department	Proposed change
260	**H**	Paula Berkley / State Employees International Union (SEIU)	Proposed Amendments
260	**I**	Leo Drozdoff / Nevada Division of Environmental Protection	Written Testimony
436	**J**	Michael Hering / National Association of Attorneys General Tobacco Project	Proposed Amendments
436	**K**	Peter Krueger / Single Stick Tobacco	Proposed Amendment
370	**L**	Russell Rowe / Focus Property Group	Requested Amendments
291	**M**	Assemblyman David Parks	Email from Attorney Robert Cochrane
291	**N**	Duncan Crabtree-Ireland / SAG [Screen Actors Guild]	Proposed Amendments
316	**O**	Thom Pastor / Musician's Union of Las Vegas, Local 369	Written Statement
360	**P**	Assemblywoman Valerie Weber	Written Statement
360	**Q**	Assemblywoman Valerie Weber	Email from Debi Walker of SPCP in support of bill

360	**R**	Mary Arnold-Ronish / Society of Permanent Cosmetic Professionals	Testimony
360	**S**	Richard Whitley / Nevada State Health Division	Testimony
AJR 6	**T**	Barry Gold / AARP Nevada	Testimony
AJR 6	**U**	Vice Chairman John Oceguera	Statement from PhRMA opposing the bill
183, 278	**V**	Diane Thornton	Work Session Document