

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

**Seventy-Third Session  
May 20, 2005**

The Committee on Commerce and Labor was called to order at 1:12 p.m., on Friday, May 20, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Valerie Wiener, Clark County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Brenda J. Erdoes, Legislative Counsel  
Russell Guindon, Deputy Fiscal Analyst

Keith Norberg, Deputy Fiscal Analyst  
Diane Thornton, Committee Policy Analyst  
Gregory Sharry, Committee Attaché

**OTHERS PRESENT:**

Jim Endres, Legislative Advocate, representing Albertson's, Inc.  
Jack Jeffrey, Legislative Advocate, representing Safeway, Inc.  
Gary Wolff, Business Agent, International Brotherhood of Teamsters  
Local 14, Las Vegas, Nevada  
Alfredo Alonso, Legislative Advocate, representing the Nevada Beer  
Wholesalers Association and the Alliance of Automobile  
Manufacturers  
Tony Sanchez, Legislative Advocate, representing Delucca Liquor  
Distributors  
Morgan Baumgartner, Legislative Advocate, representing Southern Wine  
and Spirits  
Samuel McMullen, Legislative Advocate, representing the Retail  
Association of Nevada and Miller Brewing Company  
Robert Crowell, Legislative Advocate, representing the Anheuser-Busch  
Companies, Inc.  
Robb Miller, President, Caladon Health Solutions, Las Vegas, Nevada  
Louis Ling, General Counsel, Nevada State Board of Pharmacy  
John P. Sande III, Legislative Advocate, representing the Nevada  
Franchise Auto Dealers Association  
Don Soderberg, Chairman, Public Utilities Commission of Nevada

**Vice Chairman Oceguela:**

[Meeting called to order. Roll called.] We will open up the hearing on S.B. 457.

**Senate Bill 457 (1st Reprint): Revises provisions governing storage and transfer  
of liquor between certain retail liquor stores. (BDR 32-1408)**

**Jim Endres, Legislative Advocate, representing Albertson's, Inc.:**

Senate Bill 457 was a result of trying to clear up the ambiguity in Nevada's liquor laws, as those laws relate to changes in the movement of liquor from the wholesaler to the retail chain. Throughout Nevada—Las Vegas, in particular—there are a couple of retailers that use warehouses as an interim transfer point for liquor products. Those products are sold to the retailer, but they are dropped off at the mentioned interim points. They are transferred to the retail stores from those interim points.

[Jim Endres, continued.] Ambiguities arose over the last couple of sessions because of changes in the law. The Nevada Department of Taxation requested that the wholesale and retail industry clear up these ambiguities, and that is the purpose of this bill: how the transfer points can operate in the context of the retail chain and the movement of products. Senate Bill 457 was negotiated in the Senate, addressing all of the issues between the supplier segment, the wholesaler, and the retail segment. Albertson's supports the bill as it appears today, and it would encourage its adoption.

**Jack Jeffrey, Legislative Advocate, representing Safeway Stores, Inc.:**

Safeway supports S.B. 457. I talked to Roberta West on this issue. The food and commercial workers have an interest in this bill, because the workers are under contract at a variety of supermarkets. They generally support everything that maintains the bottom line. The expenses would be higher without this bill.

**Gary Wolff, Business Agent, International Brotherhood of Teamsters Local 14, Las Vegas, Nevada:**

This bill does affect all of our drivers and warehouse people in Las Vegas. We are in support of the bill.

**Alfredo Alonso, Legislative Advocate, representing the Nevada Beer Wholesaler Association:**

We support the bill, but we do have an amendment ([Exhibit B](#)). The issue of trans-shipping has been an important issue to us. We believe that Albertson's has worked in good faith with us to try and alleviate this problem, and we have come up with a good solution. The key to the bill is the penalty provisions. That is where the amendment comes into play. Section 3 applies to the "private right of action" with respect to violations of the transfer provisions. The three-tier system has been under attack this session, probably more than before. We would like to expand that to the rest of the chapter. We are replacing Section 3 with the language before you. We hope that you will agree with the processing of this amendment also.

**Chairwoman Buckley:**

With regard to the statutory damages, I have some language that would limit it to certain sections of the bill. We all know that if statutory damages are broad, the world would end. I presume you will not have a problem with that?

**Alfredo Alonso:**

I do not have a problem with that. The ability for our members to sue as a result of violations of NRS [*Nevada Revised Statutes*] 369 is the important aspect of this bill. We do not have a problem with narrowing it. It goes to the heart of the three-tier system, and we believe that this will strengthen this.

**Morgan Baumgartner, Legislative Advocate, representing Southern Wine and Spirits:**

We would simply request that the definition of liquor to be expanded to include wine coolers ([Exhibit C](#)). Given the current definition, we are uncertain whether wine coolers would be included. We would like the retailers to have the ability to transfer wine coolers.

**Tony Sanchez, Legislative Advocate, representing Delucca Liquor Distributors:**

We are here in support of the underlying bill, as well as both amendments ([Exhibit B](#) and [Exhibit C](#)). These were thoroughly negotiated. Senate Bill 457 is an extension of a policy adopted two sessions ago to gaming companies. This is going to be something that will provide greater facilitation and convenience within the industry.

**Samuel McMullen, Legislative Advocate, representing the Retail Association of Nevada and Miller Brewing Company:**

We support the bill as it came over from the Senate. We have no problem with the clarification on a wine cooler. We just saw the amendment on the private right of action to enforce a tax chapter ([Exhibit B](#)). We have some concerns about it. Originally, we understood that additional penalties were to cover issues of transport or transfer to a warehouse. I did not understand that the issue of being able to enforce the whole chapter was something that was required or at issue in our discussion and negotiations relating to this subject matter.

Besides giving private right of action for the whole chapter, the amendment gives it only to wholesale dealers. I do not know if that is appropriate. It does not talk about transfer; it only talks about a person engaged in the sale or importation of liquor. If you delete Section 1 of this bill, which relates to transfers, you may have done the opposite of what we understood was their request, which were additional penalties relating to the transfer in this law.

After talking to Mr. Alonso, there was supposed to be a limitation on it being "knowingly" or "willful." That is not in this language. It is strict liability, \$1,000 for each violation, and all other actual damages. That would be a private right of action. Theoretically, these things would be adequately enforced by the Department of Taxation and their staff. It would also allow actions against suppliers, and that was not considered in the prior amendment or the bill as it came out. Again, I did not understand that there was an intention to do more than that. Those are some of the concerns with the overbreadth of this amendment.

**Assemblyman Perkins:**

I would like to understand the consequence of defining a wine cooler as liquor. What is the difference between the percentages of the malt beverage and the liquor that is in those sorts of things? What is the ultimate consequence as it relates to taxation and distribution? How would they be considered without this changed in the definition?

**Morgan Baumgartner:**

I believe there is confusion as to how they are currently considered. There is a percentage of malt in wine coolers. Because of the current definitions, we are fearful that wine coolers might be considered beer and not be subject to transfer among the retail facilities. Our attempt is to clarify that wine coolers may be transferred; it will not fall into the beer category. We would like to move it from the malt beverage category for purposes of transfer only. There should be no impact on taxation. It is not our intent to change the taxation structure at all.

**Assemblyman Perkins:**

There is some confusion, but it is generally handled as liquor today. This is just to clear that up? [Ms. Baumgartner answered in the affirmative.] Do you know of any products that are coming into the market, whether it is a percentage of change in the malt, that may make us revisit this issue?

**Morgan Baumgartner:**

I am not sure of the products that are coming out. I would not have that information, but I could certainly try and gather it.

**Assemblyman Perkins:**

I remember a national discussion on the percentages of each beverage. If it becomes 51 percent malt beverage and 49 percent something else, it would be included as a liquor product instead of a beer product. I am not sure that is what we are trying to do.

**Samuel McMullen:**

This only relates to the issue of whether a wholesale dealer can directly deliver these to a retail store or warehouse. Secondly, it would only be for that limited transfer; it would not redefine these for purposes of taxation. Whether or not that occurs would be determined by and with consent of the wholesale dealer. I think that should limit any of those additional concerns.

**Vice Chairman Ocegüera:**

I will send you all out in the hall so you may address these issues. We can bring it back at the end of the work session.

**Assemblywoman Buckley:**

My comments in the beginning were referring to the payday loan bill. They were not really applicable to the bill.

**Robert Crowell, Legislative Advocate, representing Anheuser-Busch Companies, Inc.:**

It is my understanding that this bill does not apply to beer, and by beer, I mean malt-based beverages. We would be supportive of an amendment that clarifies wine-based coolers, as opposed to wine coolers ([Exhibit C](#)) that may have a malt base. We have a concern if the reach of this bill extends beyond beer to malt-based beverages.

**Assemblywoman Buckley:**

Legal counsel had the same concern. You might want to discuss that with Brenda Erdoes, our Legislative Counsel.

**Assemblyman Perkins:**

There are so many new products coming on to the market that have various combinations of malt, wine, spirits, et cetera. I am not sure we will adopt something with unintended consequences.

**Vice Chairman Ocegüera:**

We will close the hearing on S.B. 457.

**Chairwoman Buckley:**

We will turn to the Work Session Document ([Exhibit D](#)). The first bill on the list is S.B. 37. Assemblyman Conklin and Assemblywoman Gansert were on the subcommittee and will present the subcommittee report (page 16 of [Exhibit D](#)).

**Senate Bill 37 (1st Reprint): Revises provisions governing wholesalers of prescription drugs. (BDR 54-13)**

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

The subcommittee met twice, once last week and once this week. In the first meeting, we uncovered that not all parties had the opportunity to sit down and see if they would be able to work out a compromise. We closed that session early and gave them some direction. They came back this week with an amendment that was a compromise amendment. Mrs. Gansert and I reviewed the amendment. It was my understanding, and Mrs. Gansert would agree, that it was fine. We referred it back to the Committee for full Committee approval. We did not approve or deny it, because I have some discomfort with it. It is

incredibly restrictive to wholesalers. The wholesalers came forward at the meeting and agreed to the amendment. There was some stuff left out of the amendment that the wholesalers wished to include. I did reserve the right to take a look at the issue and possibly bring forward a second amendment that speaks to a separate issue passed by the Legislature last session. It might be better if the parties that proposed the amendments walked us through them. Then I can refer to mine.

**Senator Valerie Wiener, Clark County Senatorial District No. 3:**

This is an extraordinarily important issue in regard to public safety. I have brought Louis Ling and Robb Miller, because they are the significant parties to the amendment (pages 18 to 30 of [Exhibit D](#)) that was brought forward.

One of the concerns was in Section 2, subsection 2. Initially, we asked for everybody's fingerprints. With this amendment, it allows for a list be provided. It would be at the discretion of the Pharmacy Board to request specific fingerprints. Two parties requested that we specify what a "lender" was to mean. The intention was not a financial institution, which is already heavily regulated, but as explained and defined on page 2 (page 19 of [Exhibit D](#)).

At the subcommittee meetings, there were concerns about deliverers being in commerce. We created an exception for them as well. In Section 2.5, dealing with the updated list, we initially asked for "monthly," but now it is "annual." If there are changes, there is a 30-day window for providing those changes. These are provisions agreed to by the parties with a strong vested interest, who are seated with me today. Page 3 is the 30-day change provision. You will see repeat language for "lender" and "common motor carriers" repeated there.

In Section 4, one of the concerns voiced consistently was about the \$100,000 bond, surety, or collateralization requirement. In conversation, the agreement was that there would be a range and there would be discretion as to how that would be reached. The range for that surety or collateralization is \$25,000 to \$100,000, not a hard \$100,000.

Mr. Miller had concerns with Section 6, page 5, since it was compromise language. There was a substantial commitment to developing regulations. The Pharmacy Board, wholesalers, pharmacists, and the general public spent about nine months developing the regulations. The Legislative Commission, through its regulatory subcommittee, accepted those in February of this year. Much of the original language reflected what had already been developed in regulation. That was the version I brought before you. Rather than use the language "shall adopt regulations," we changed to "ensure" because the regulations had already been

adopted. We did not want this to be confusing or conflicting. It would be the job of the Pharmacy Board to do this.

[Senator Wiener, continued.] On page 6, Section 6.5, after Mr. Miller shared his experiences with us about the wholesalers issue, we limited it to three wholesalers, rather than unlimited wholesalers. This is important in order to protect the integrity of the prescription drug—the pedigree issue. We added language before Section 7 to make that clear. Section 8.1, at the bottom of page 6, covers the requirement for the wholesaler to compile information about wholesalers with whom they do business. There was some deleted technical language about not being licensed in Nevada, because it would have produced unintended consequences.

Section 8.1, subsection 5 adds language for a product liability policy of at least \$1 million, in addition to the \$100,000 surety. This is important for consumer protection. Due diligence requirements are also in that section. Section 8.2 also has due diligence; the wholesaler must know with whom he is doing business, regarding requirements of the Fair Credit Reporting Act of 1970 [15 USC § 1681 et seq.].

In Section 8.3, Mr. Miller suggested the wholesaler be responsible for those with whom they do business and do onsite inspections to sure that they are not doing business with convicted felons, et cetera.

Section 8.4 requires that the wholesaler be the authorized distributor of record. We added that you can get that confirmation for the wholesaler’s website. Again, evidence of surety is required.

**Chairwoman Buckley:**

In Section 8.2, what does “in accordance with any applicant requirement of the Fair Credit Reporting Act” entail?

**Senator Wiener:**

I would prefer Mr. Miller or Mr. Ling respond to that question.

**Robb Miller, President, Caladon Health Solutions, Las Vegas, Nevada:**

It means that an individual cannot look at a person’s personal credit record. The obtaining of a driver’s license, et cetera, is to ensure the wholesaler is not dealing with a convicted felon or whatever. That was the intent.

**Chairwoman Buckley:**

You cannot check their credit or abuse that information without either consent or something like that; is that the purpose of it?



**Robb Miller:**

That is exactly correct.

**Assemblyman Anderson:**

In Section 8.2 and another section, there is a requirement of verification of the Social Security number. In terms of reporting factors, this is something we are trying to keep out of the hands of individuals where there was to be Internet access.

**Senator Wiener:**

We made specific provisions in this bill to protect against identity theft with amendatory language about information sharing at the State level. I didn't catch this one. It would be the will of the Committee to add it. Because of our substantial work on that issue, we included strict provisions regarding what the Board could share with other agencies within or outside of the state. Only information that is required for a specific investigation would be provided. Even if there is a 12-page application process, the rest would be protected.

**Assemblyman Anderson:**

Once we start to ask for this information, it becomes part of the search engine on a website. We have no control over it and cannot protect that information.

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

I would point out that Section 8.2 is not information the government is going to gather. It is information between private actors. It is information a wholesaler would have to get from someone he is going to do business with.

**Chairwoman Buckley:**

The government would be requiring it.

**Louis Ling:**

But it will not be in our databases.

**Assemblyman Anderson:**

It is not behind a secure wall. They are standing behind their own wall. Once they pass outside that wall, the information becomes part of use requiring it. We don't want to endanger Social Security numbers, since that is part of the identity theft question.

**Chairwoman Buckley:**

Is that something we could remove? Do you feel that it is very important?

**Senator Wiener:**

I need clarification of the Senate's identity theft bill. If we included businesses to do encryption, that would apply here. Whatever you feel comfortable with.

**Assemblyman Anderson:**

It is my understanding that information behind a secure wall, like bank to bank within their secured system, would not be applicable to these. We are trying to remove Social Security numbers from everything we could.

On page 5 (page 22 of [Exhibit D](#)), where we are taking out "adopt regulation to provide for" and adding "ensure the," will the Board still have the ability to recommend necessary changes to regulation? We are not removing this ability from you in its entirety, are we?

**Louis Ling:**

That is correct. This gives the Board some guidance for the Legislature as to what we should be looking at if it chooses to go back into the regulatory arena. It is removing it as a mandatory requirement to pass regulations. We still have the ability to pass regulations under our general authority.

**Assemblyman Anderson:**

I just wanted to be certain that you still had that ability, in case you discover something you needed to fix later in the regulations.

**Assemblyman Conklin:**

When the subcommittee looked at this, we think this is a comprehensive bill. All would agree that this puts Nevada in the forefront, in terms of regulating this particular industry. We took everything from Mr. Miller's original mockup from the first Committee hearing, in terms of consumer protection, and put it into the Senator's original bill as it came to us. This added a lot toward protecting the consumer to the bill.

I have no concern with removing the Social Security requirement from the bill. We can do that; we have enough problems with identity theft as it is.

**Chairwoman Buckley:**

Are there any other comments or questions before we move forward on the bill?

**Assemblywoman Giunchigliani:**

I have a couple of proposed amendments; the sponsor is aware of these. This is cleanup language regarding the expiration date for dispensing medications. That language is in Section X of NRS 639.2801 ([Exhibit E](#)). It clarifies what year must be used for the date of the dispensation; the practitioner must use one

year from the date of the dispensing as the expiration date. This brings more safety to the consumer and that the drugs are not outdated.

[Assemblywoman Giunchigliani, continued.] The second amendment, Section X of NRS 639.040 ([Exhibit F](#)), is a policy decision. It makes a recommendation that the Board employ an executive secretary with experience as a licensed pharmacist or other jurisdiction with a comparable licensing requirement. Those are the two amendments I have for discussion.

**Chairwoman Buckley:**

Could you tell us what the role of the executive secretary is?

**Assemblywoman Giunchigliani:**

Basically, it is what Keith [McDonald, Executive Secretary, Pharmacy Board] does. They work with the board, deal with policy, and bring forth regulation ideas. They would have more of a working relationship with the pharmacists on the Board. They initiate, sponsor, and write much of the legislation regarding pharmacy issues.

**Chairwoman Buckley:**

Who is the executive secretary?

**Assemblywoman Giunchigliani:**

It is Keith McDonald. He is in the audience.

**Chairwoman Buckley:**

Is he the current secretary? I thought his title was director; I was confused.

**Assemblywoman Giunchigliani:**

I believe that Executive Secretary is the actual terminology that they use.

**Chairwoman Buckley:**

Are there any questions on these issues? Any concerns?

**Assemblywoman Giunchigliani:**

The second one ([Exhibit F](#)) deals with how long a drug is good for. We have had discussion in past sessions about the expiration dates. This tightens it up, and it works for the pharmacists and retailers; it clears up that it is one year from the date of dispensing that they use as their actual expiration date.

**Chairwoman Buckley:**

This is an interesting issue. You get a drug and it automatically says one year. I have always wondered what the real date is, and I could use it longer. You

don't what people going too long without consulting with their doctor or checking on interactions. You have a balancing act to do.

**Assemblyman Conklin:**

When we took testimony in subcommittee, there was an issue that came up from Mr. Miller regarding S.B. 425 of the 72nd Legislative Session. Brenda [Erdoes] looked up the statute. In NRS 639.2615, there is a statement that a sale "shall be deemed a bona fide transaction if there is reasonable assurance by the wholesaler that the purchases that the wholesaler will sell directly and only to a pharmacy or practitioner."

This requires a wholesaler to determine exactly what the person to whom he is selling is doing with the purchase he has made. The Board has adopted regulations requiring the wholesaler to go to whomever he sold the drugs and get documentation on what they did with the purchases. That is very prohibitive. If you go to Rite Aid and buy acetaminophen or another item that you could make drugs from, Rite Aid has no right to ask you what you do with it after you leave. The regulations have become incredibly restricting, to a point that it has impacted the number of customers who are available to anyone who operates in the State of Nevada as a wholesaler.

We want to make sure that we are not letting our drugs be out of control. We don't want someone to take them, cut them in half, and add something to them. There is reasonableness when you do business that a signed contract can make sure that you are doing business with the right people. There was a concern that this regulation went too far.

In Mr. Miller's original mockup, he addressed this issue in Sections 8 and 9 of that amendment by defining specifically, in law, what a bona fide transaction is, thereby closing that loophole. It also closed another loophole, called the "wheel of fortune," where drugs get purchased by wholesalers and sold to pseudo-pharmacies, which are really wholesalers, who in turn sell them again. It keeps going on and on to jack up the price of drugs until it is finally dispensed.

It is my intent to ask the Committee to look at S.B. 425 of the 72nd Legislative Session and NRS 639.2615.

**Chairwoman Buckley:**

Do you have copies of that?

**Assemblyman Conklin:**

No, I don't. I only have a copy of Mr. Miller's original amendment. I could have them made up for the Committee.

**Chairwoman Buckley:**

It would be hard to go to a consumer and have them fill something out a month later. It would be like a survey. No one wants to do that. Can't they be sold to another wholesaler? Isn't that why you are trying to keep it pure?

**Assemblyman Conklin:**

Yes. You are potentially selling to another wholesaler, and in this case, that is what you are trying to get at. The problem is that a wholesaler has options from whom he is going to buy. You can enter into a contract and agree that this is what you are going to use the drugs for and nothing else. If I have to come back to you and ask you to tell me exactly what you did with it, why would you buy from me? You don't have time to do that. The contract is already in place.

The intent of the regulation is either to put people out of business, because no other state requires this, or make it very difficult to do business in this state.

**Chairwoman Buckley:**

Mrs. Gansert, you sat through all of this. Do you have any thoughts on it?

**Assemblywoman Heidi Gansert, Assembly District No. 25, Washoe County:**

If you look at page 6 of the mockup, it talks about having three prior sales, and then you can't sell the prescription. What was happening was that on the last sale, you had to provide evidence of it being the final sale and whoever was receiving that was going to provide that to a dispenser.

Some of the wholesalers have lost customers because they have to get a receipt, which provides information about who that end customer was. It has hurt business because they have to define the endgame and were giving away their customer database. The wholesaler who sold it to the person who is supposed to dispense it could have gone straight to them and skipped that intermediary step. This person does not wish to give that information back to the wholesaler who was selling it.

We were trying to come up with another definition of a "bona fide transaction," so we know that it is the endgame and, at the same time, are not damaging a business by providing the database of the customer list.

**Chairwoman Buckley:**

That is a fascinating area. I cannot imagine why people think licensed Canadian pharmacies have problems after you hear all of these.

**Senator Wiener:**

I am sorry to interrupt your work session. I talked with Mr. Miller and Mr. Ling; they have scheduled a June 1 board meeting to address that regulation on those concerns, so that clientele can be recovered and so that it is more meaningful and addresses the concerns of the subcommittee and full Committee.

**Chairwoman Buckley:**

Legislators do not like relying on boards. We have the power and we are here, and there may not be time. Have you looked at this issue? If it were narrowed along those lines they are discussing—but still ensure the pedigree—would you...

**Senator Wiener:**

I am amenable to whatever the Committee feels is good policy. I am trying to work between groups as well. Whatever you come up with, I would appreciate your consideration.

**Chairwoman Buckley:**

Thank you. Are there any questions for Assemblyman Conklin, Assemblywoman Gansert, or other members of the subcommittee?

We have four possible amendments: the Social Security number elimination; two from Assemblywoman Giunchigliani; and the clarification on the bona fide transaction. Are we comfortable with those? We will look at it when the language comes back, and if there are concerns, we can refine it or do a further floor amendment. It would give Senator Wiener a chance to look at it further as well. I would accept a motion for amend and do pass.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO  
PASS SENATE BILL 37.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

Thank you, Senator Wiener. Let's move to S.B. 44.

**Senate Bill 44 (1st Reprint): Revises provisions regulating organizations for buying goods or services at discount. (BDR 52-763)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 44 (page 3 of [Exhibit D](#)) revises provisions regulating organizations for buying goods or services at discount. It was heard on April 20 and was sponsored by the Committee on Commerce and Labor. Testifying on behalf of the bill were John Sande and Mike Alonso for Direct Buy. No one testified in opposition to this bill, and there were no proposed amendments.

**Chairwoman Buckley:**

What is the pleasure of the Committee?

ASSEMBLYMAN SEALE MOVED TO DO PASS SENATE BILL 44.

ASSEMBLYMAN PERKINS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

Let us consider S.B. 188.

**Senate Bill 188 (1st Reprint): Makes various changes relating to energy.  
(BDR 58-364)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 188 (pages 4 of [Exhibit D](#)) makes various changes related to energy. It was heard on May 16 and was sponsored by the Committee on Commerce and Labor. Testifying on behalf of the bill was Don Soderberg from the PUC [Public Utilities Commission of Nevada]; John Wellinghoff, representing MGM/Mirage; Michael Yackira for Sierra Pacific and Nevada Power; Adrianna Escobar-Chanos for the Bureau of Consumer Protection (BCP); Mark Russell from the Renewable Energy and Conservation Task Force; Dan Schochet for ORMAT, and Joseph Johnson for the Toiyabe Chapter of the Sierra Club. There are three amendments (pages 32, 35, and 37 of [Exhibit D](#)) to this bill.

Behind Tab C of your Work Session Document (page 32 of [Exhibit D](#)) is a proposed amendment from those interested parties I mentioned. Currently, the Renewable Portfolio Standard (RPS) requires 15 percent of the state's electricity be generated from renewables by 2013. This amendment allows an additional two years to meet the RPS. The amendment also preserves the RPS and adds an additional 5 percent for energy efficiency, for a new total of 20 percent for the RPS.

[Diane Thornton, continued.] Behind Tab D (page 35 of [Exhibit D](#)) is a proposed amendment, sponsored by Assemblywoman Buckley, to amend the bill to include Section 1 and Section 2 of S.B. 123. The language in Section 1 reduces the percentage that the PUC can use towards the cost of administration from 3 percent to 2 percent. Section 2 increases the percentage the Welfare Division may utilize towards the cost of administration from 3 percent to 7 percent.

Behind Tab E of your Work Session Document (page 37 of [Exhibit D](#)) is a proposed amendment from Joseph Johnson for the Sierra Club. It adds the language "schools and public buildings" to certain provisions of the bill.

**Chairwoman Buckley:**

The first amendment behind Tab C has the full support of all those who worked on the bill. Is there anyone in the audience who has any concerns with the first amendment? We appreciate everyone working on this. I don't like to have renewables and conservation mixed up. This was a great effort.

The second amendment behind Tab D was from the energy assistance bill. It got very complex, and these were the only sections from it that were originally at the request of the Legislature.

On the third amendment behind Tab E, I have no position on this either way, but I want to make sure that this has no Ways and Means implications. I don't want this bill going to that Committee. Ms. Giunchigliani or Mr. Arberry, could you review this amendment? If this has to go to Ways and Means, we don't want to do it.

**Assemblyman Conklin:**

Looking at the amendment under Tab E, is it the utility's job to do this or ours? It is understandable if we are trying to market this to residential and private businesses. There is a private interaction that we are not supposed to be in. When you put it in schools and public buildings, whose responsibility is it? Or should we be prompting that within our own?

**Chairwoman Buckley:**

Diane Thornton just consulted with Mr. Arberry and has asked that it be deleted, because it may impact the budget.

**Assemblywoman Giunchigliani:**

By taking it away from General Fund and putting it into the Trust Fund, this might actually help the budget rather than impact it, but the way I am reading this, the proposal from Mr. Johnson to add the schools and public buildings goes into the "whereas" clause of state policy in Section 5. Is that correct? "It



is the policy of this State to promote conservation.” That is where he is suggesting this. We have had several bills that have passed this session that now include the schools and public buildings. That is all that it is changing, if I am reading it correctly.

[Assemblywoman Giunchigliani, continued.] The only question we have to look at is on page 10 of the bill. There is the Trust Fund for Renewable Energy and Energy Conservation that exists. All this would do is make sure that the title of where the funding goes is changed, rather than impacting any change in funding.

**Chairwoman Buckley:**

I will defer to you and Mr. Arberry when it comes to questions of budget. These amendments may be okay. Are there any concerns, questions, or discussion? I would accept an amend and do pass motion with all three of the amendments.

ASSEMBLYWOMAN McCLAIN MOVED TO AMEND AND DO PASS  
SENATE BILL 188 WITH ALL THREE PROPOSED AMENDMENTS.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

Let’s move on to S.B. 189.

**Senate Bill 189: Makes various changes relating to franchises for sales of vehicles. (BDR 43-1076)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 189 (page 6 of [Exhibit D](#)) makes various changes relating to franchises for sales of vehicles. It was heard on May 4 and was sponsored by the Committee on Transportation and Homeland Security. Testifying on behalf of the bill were John Sande and Alfredo Alonso. There was an amendment to the bill from the Alliance of Automobile Manufacturers that was passed out ([Exhibit G](#)).

**Chairwoman Buckley:**

Mr. Alonso, would you like to explain it?

**Alfredo Alonso, Legislative Advocate, representing the Alliance of Automobile Manufacturers:**

The amendment before you ([Exhibit G](#)) is a compromise with the dealers. We believe it gets to the main issue of changing the areas of primary responsibility without notifying the dealer or doing so without due process. This should fix the problem and still make it fair.

**Chairwoman Buckley:**

Mr. Sande, are you in support of this?

**John P. Sande III, Legislative Advocate, representing the Nevada Franchise Auto Dealers Association:**

This was requested by the Alliance of Automobile Manufacturers. We were fine with the bill the way it originally read. The question is whether you have a mere modification of the franchise where you would go to one type of hearing, or if it is within the relevant 10-mile market area around a dealership, would it change the area of primary responsibility within that 10-mile radius and go to another type of hearing process? They requested we delete the part that said any change in the area of primary responsibility within the 10-mile radius would be a relocation of a dealership within the 10-mile area. I agreed to this with hope for a better relationship with the Alliance in the future. Maybe they will start meeting with us, so we don't have to keep coming back to the Legislature each time. We are fine with the language; we will go along with it in the spirit of compromise.

**Chairwoman Buckley:**

We appreciate that very much and hope that will be carried back to the client as well.

**Assemblyman Anderson:**

If you move to the very arc of the 10-mile radius, does that change the radius?

**John Sande III:**

Yes, it does, but you would have to get permission from the manufacturer before you move the location of your dealership. It would, under Nevada law, change. If you moved the physical location of your dealership, it would change the relevant market area, but you cannot move it without getting the consent of the manufacturer.

**Chairwoman Buckley:**

I see no further questions. Thank you for your testimony and clarifications.

What is the pleasure of the Committee?

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS  
SENATE BILL 189.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

Let's consider S.B. 238.

**Senate Bill 238 (1st Reprint): Revises provisions governing regulation of certain public utilities. (BDR 58-1156)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 238 (page 7 of [Exhibit D](#)) revises provisions governing regulation of certain public utilities. It was heard on May 4 and was sponsored by Southwest Gas Corporation. Testifying on behalf of the bill was Debra Jacobson for Southwest Gas, Don Soderberg from the PUC, Adrianna Escobar-Chanos from the Bureau of Consumer Protection (BCP), and Judy Stokey for Sierra Pacific Power.

Behind Tab F (page 39 of [Exhibit D](#)) you will find a mockup of an amendment from Assemblyman Conklin. It addresses concerns expressed by the Committee during the hearing, including requiring quarterly reporting and that filed statements include all increases and decreases in both revenue and expenses.

**Assemblyman Conklin:**

The most important about this bill is that the parts being added are to help the consumer. On page 2 of the mockup (page 40 of [Exhibit D](#)), Mr. Hettrick and I advocated for this part during the hearing. We are requiring the gas company to adjust its rates quarterly based solely on the purchase price of gas.

There is a net effect to the consumer of an increase or decrease, based on the price of gas. The net effect will always be smaller than if we had not done this on a quarterly basis and waited for them to make a general rate filing biannually. The consumer would bear the burden of the gas increase; the interest on that money collected, which is substantial, would go to the gas company.

The proponents of the bill originally wanted it as an option. It was our recommendation that they do file it quarterly to make the impact to the consumer smaller.

**Chairwoman Buckley:**

I would like to thank you for working with all the parties to get us one solid mockup. This looks like a very good consensus document.

**Assemblyman Conklin:**

On page 4, Section 4, subsection 4 of the mockup (page 42 of [Exhibit D](#)), we changed the days from 240 to 210. The reason for the change is that it was also done in another related bill—S.B. 256—and they have to conform.

The concern was that we would allow the utility to continue to give information to the PUC at a rate filing beyond the time that they actually make the general filing; this is positive. If they are not allowed to give the information by the time the rate filing is conferred upon by the PUC, since some of that data could be outdated or changed, it allows the PUC to make its determination based on the most current information. We also put in not only to show increases to cost, but also decreases, to protect the consumer.

**Assemblyman Anderson:**

By moving it from an 8-month window to a 7-month window, is that so that they make their decision sooner, so the consumer is better off? Why are you moving?

**Assemblyman Conklin:**

It was 180 days. The original proposal was to move it to 240 days. We are moving it out a couple months on the amount of information that they can give. That is consistent with the timeframe that the PUC has to deliver a decision for a rate filing.

**Assemblyman Anderson:**

If the current is 180 days, that is 6 months. You are moving it to 210 days; that is 7 months. You said it was beneficial to the consumer to increase it from the current 6 months to 7 months, as compared to 8 months. I thought the quicker they made their decision, the stronger the public felt about the decisions that were made.

**Assemblyman Conklin:**

These rate cases tend to be highly complicated. The purpose is that we don't want to make mistakes and that we have all the information, so the decision is accurate for the consumer. Giving the extra time would be good so long as, during that time, information can continue to be opened and brought forward. That would make the most accurate rate case possible.

**Chairwoman Buckley:**

Are there further questions, concerns, or discussion?

**Assemblyman Conklin:**

There is terminology that may need to be looked at. On page 4 (page 42 of [Exhibit D](#)), on line 38, we have "of all expected changes"; is that very tight or very broad? Should it say something else, like "all known?" The concern is if something comes up later that is not known. Is there a potential here?

**Brenda Erdoes, Legislative Counsel:**

I would say that it is qualified by "all that is expected." You would have to show that you did reasonably or not reasonably expect it. It is an interesting standard to have in there. It might be difficult to prove. It would be "all expected." If you didn't know about it and it wasn't reasonable that you would have known about it, then it wouldn't be included.

**Chairwoman Buckley:**

Why don't we have the commissioner come up and tell us what his reading of it is so we know that our legislative intent is clear?

**Don Soderberg, Chairman, Public Utilities Commission of Nevada (PUC):**

In the section that Assemblyman Conklin referred to, it is always expected that a utility file all known instances. From that point, the Bureau of Consumer Protection and the regulatory operations staff conduct their audit. They often find other instances that would adjust the rate in either direction.

The word "expected" is the qualifier that we believe will put the onus on the utility to file as well as possible the first time. We would still expect under any language change here that the BCP and our staff would find other instances or view certain transactions as coming within this provision. The term that is currently used, "of all," makes explicit what we have viewed as implicit.

**Chairwoman Buckley:**

Are there any other questions or issues? The Chair would entertain a motion.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS  
SENATE BILL 238.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen,  
Assemblyman Arberry, Assemblywoman Giunchigliani, and  
Assemblyman Parks were not present for the vote.)

**Chairwoman Buckley:**

Let's consider S.B. 240.

**Senate Bill 240 (1st Reprint):** Enacts provisions relating to health benefit plans that have high deductibles and are in compliance with certain federal requirements for establishing health savings accounts. (BDR 57-47)

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 240 (page 8 of [Exhibit D](#)) enacts provisions pertaining to health benefit plans that have high deductibles and are in compliance with certain federal requirements for establishing health savings accounts. It was heard on May 6 and was sponsored by Senator Washington.

Testifying on behalf of the bill were Janice Pine from St. Mary's Hospital and Janine Hansen from Nevada Eagle Forum. There were no amendments proposed and no opposition.

**Chairwoman Buckley:**

I asked Brenda to look into the legal effect of this bill, since we have this federal legislation, and to analyze what this bill actually would change or do in relation to the federal legislation.

**Brenda Erdoes, Legislative Counsel:**

The bill would implement the federal legislation. It is not necessary to enable the health savings accounts to be sold in this state. They would be regulated without this bill specifically stating that. They would be caught under the general provisions in the insurance title. The bill provides specific provisions—if someone wanted to sell these in the state, they would know what they had to do with the Insurance Commissioner—and states that the HIPAA [Health Insurance Portability and Accountability Act of 1996] provisions explicitly do apply to the health savings accounts.

**Chairwoman Buckley:**

Are there any questions from the Committee on the bill or legal research? Seeing none, I would entertain a motion.

ASSEMBLYMAN HETTRICK MOVED TO DO PASS  
SENATE BILL 240.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen, Assemblyman Arberry, Assemblywoman Giunchigliani, and Assemblyman Parks were not present for the vote.)

**Chairwoman Buckley:**

Let's consider S.B. 256.

**Senate Bill 256 (1st Reprint): Revises certain provisions relating to regulation of public utilities. (BDR 58-655)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 256 (page 9 of [Exhibit D](#)) revises certain provisions relating to the regulation of public utilities. The bill was heard on May 11 and was sponsored by the Committee on Commerce and Labor.

Testifying on behalf of the bill was Don Soderberg, Commissioner with the PUC, Adrianna Escobar-Chanos from the BCP, Debra Johnson from Southwest Gas, Jody Stokey from Sierra Pacific, and Mary Simmons from Sierra Pacific. During the Committee hearing, several issues were raised, including concern as to the rate design, the carryover charge, and the affect on customers' rate.

There are two amendments in the Work Session Document (pages 50 to 62 of [Exhibit D](#)). Behind Tab G is the mockup of a proposed amendment (pages 50 to 60 of [Exhibit D](#)) from Assemblyman Conklin. It addresses his concerns and those of Adrianna Escobar-Chanos from the BCP.

Behind Tab H is a proposed amendment from Rose McKinney-James and Daniel Gulino from Ridgewood Renewable Power (page 62 of [Exhibit D](#)). It redefines what is a renewable energy system. Mr. Soderberg was neutral on this amendment, but he suggested that the amendment may represent a shift in policy regarding Nevada's Renewable Portfolio Standard (RPS).

**Chairwoman Buckley:**

Assemblyman Conklin, do you have an discussion on this amendment?

**Assemblyman Conklin:**

No, I do not. I am in agreement with the mockup.

**Chairwoman Buckley:**

We will allow the Committee members to look through the Tab G amendment to see if they have any specific questions. Again, thank you for working with all the parties involved and ensuring we had a good, clean mockup.

The second amendment (page 62 of [Exhibit D](#)), behind Tab H, has some positive and negative aspects. It would take the state on a different course in regard to renewable energy; it may allow and do harm in state development of alternative energy. Others think that we cannot prohibit that and it would provide alternative sources and be good for Nevada. We will open our discussion on that amendment first to get a sense of the Committee's feelings.

**Assemblywoman Giunchigliani:**

Initially, I was uncomfortable with this amendment. I do not want to impact any manufacturers; we are just getting some wind manufacturing going on. After looking at this further, we have not made any of the gains we were trying to do in this area of renewable energy. At best, this is antiquated language. We need to open our borders to allow in other manufacturing to come in and expand this area. Therefore, I have switched my position on this amendment.

**Assemblyman Conklin:**

I support renewable energy. My concern with this amendment is that if we open our borders and go outside, we have to compete outside our market for this. This could drive up the price and be directly reflected to our consumers. Our current statute, however, could be unconstitutional via the interstate commerce clause. So, I have a price concern for the consumers who are already paying a high price.

**Assemblyman Seale:**

I agree with Assemblywoman Giunchigliani, and I am now comfortable with this language.

**Assemblywoman Gansert:**

Power is on a grid. It is over a transmission system. Whether we obtain it here or somewhere else, we can still encourage development. We are constantly buying power, whether it is within the state or not. It would be better if it were within the state to have renewable sources. I am in agreement; it is fine.

**Chairwoman Buckley:**

You are then comfortable with this amendment?

**Assemblywoman Giunchigliani:**

Yes, because we are still encouraging the development of renewable sources.



**Assemblyman Anderson:**

There is great potential in Nevada in three different areas of alternative energy sources. Historically, some of those have been around for some time and utilized in a limited fashion. If we are to compete in the outside markets, there are some things we have to do to promote solar energy, wind power, and geothermal energy to be a seller, rather than just a consumer. The concern is that we may be losing ground on this. Therefore, I have reservations with this amendment.

**Chairwoman Buckley:**

With a show of hands, how many are comfortable with this amendment? Six have indicated that they are. That doesn't give us eight, but we will be lucky if we have eight with so many other committees meeting; it is a little difficult. Why don't we include in the motion to keep it alive and see what happens later? We could do further research, do a Floor amendment, or whatever, and see what will of the Body is.

**Assemblyman Anderson:**

To move this along, I will support this amendment (page 62 of [Exhibit D](#)) with reservation. I recognize we need to get the bill to the Floor. At that time, I may introduce an amendment.

**Chairwoman Buckley:**

I am pleased to go wherever the Committee wishes to go. Do I have a motion?

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS  
SENATE BILL 256 WITH BOTH PROPOSED AMENDMENTS.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen and Assemblyman  
Parks were not present for the vote.)

**Chairwoman Buckley:**

Let's consider Senate Bill 333.

[Senate Bill 333 \(1st Reprint\)](#): Revises provisions governing practice of  
cosmetology and related professions. (BDR 54-764)

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 333 (page 10 of [Exhibit D](#)) revises provisions governing the practices of cosmetology and related professions. It was first heard on May 11 and was sponsored by the Committee on Commerce and Labor.

Testifying on behalf of the bill were Joe Lamarca, John Cummings, and Mike Sullivan from Euphoria Salon, as well as Annie Curtis from the Nevada Board of Cosmetology. Joe Lamarca presented the Committee with an amendment. In the Work Session Document, there is a mockup of the bill (pages 64 to 70 of [Exhibit D](#)).

The Committee voices several concerns with the amendment, including the bond amount for the school, the jurisdiction over the massage school, the number of instructors that must be present when the school opens, and the student hours.

**Chairwoman Buckley:**

I would like to run through the various sections quickly. I was not at the hearing, and I need to look at this. I think there are a couple of mistakes in here as to what was presented in the testimony. I know a couple of the members of the Committee were very active in the discussion during the hearing, while I was in the Senate presenting another bill. I would appreciate any input on this bill and its amendment so that we get it right.

Diane, do you want to lead us through this and go over the changes?

**Diane Thornton:**

On page 2 of the mockup (page 65 of [Exhibit D](#)), the language was retained on requiring not more than one member of the board may be connected, directly or indirectly, to a school of cosmetology. This was deleted from Joe Lamarca's amendment.

**Assemblywoman Giunchigliani:**

In Mr. Lamarca's amendment, was this in or out?

**Diane Thornton:**

It was struck.

**Chairwoman Buckley:**

What is the Committee's feeling on that? Okay, we will leave it in.

**Diane Thornton:**

In Section 3(b), Mr. Lamarca had a requirement of one year of experience for a provisional instructor, and that was taken out. In the mockup you have, that was left in. Therefore, a provisional instructor must have one year of experience.

**Chairwoman Buckley:**

Should that language stay in, that you must have one year of experience?

**Assemblyman Hettrick:**

It should stay in. Mr. Lamarca commented that he wanted to be able to take a student and have him or her directly become a teacher. I do not think that is appropriate. A better teacher would be someone with more experience with the public, rather than just coming directly out of the school.

**Assemblywoman Giunchigliani:**

That was for them to become a teacher?

**Chairwoman Buckley:**

That is what I understand. It does use that terminology on lines 5 and 6 of Section 3 of the mockup (page 65 of [Exhibit D](#)).

**Diane Thornton:**

In Sections 4 and 5, it is the same with the one year experience language.

**Chairwoman Buckley:**

We are okay keeping that the way it is?

**Diane Thornton:**

In Section 6, this allows a cosmetologist to lease space to other professionals. However, professionals, in this mockup, remain under the jurisdiction of the regulatory body that governs them. In Mr. Lamarca's amendment, if the school was under the Board of Cosmetology, then the Board would regulate them.

**Chairwoman Buckley:**

There was a lot of confusion over this section as to what that language actually did. This allows more professionals to join together, but whoever licensed them would regulate them. Are we okay with that? Are there any concerns?

**Diane Thornton:**

Section 7 deletes the bond requirement. Mr. Lamarca's amendment allowed the Board of Cosmetology to have a school that regulated both massage therapy and cosmetology.

[Diane Thornton, continued.] By deleting this requirement, in combination with Section 10 on page 6 of the mockup (page 69 of [Exhibit D](#)), it would keep the jurisdiction of the massage therapy school, even though under the same roof as the school of cosmetology, under the Commission on Postsecondary Education, which currently regulates them. The Commission on Postsecondary Education has bonding requirements of its own; therefore, Section 7 was not necessary and deleted.

**Chairwoman Buckley:**

This weaves into who should oversee and what should the bond be. We can look at the bond amounts and make sure they are reasonable, as well as the number of students, the amount of tuition, and other items, to make sure we have a good range. That would be good public policy.

As to who should regulate, Postsecondary Education has a good umbrella. In running a school, you want to have curriculum, required hours, et cetera. You need to know less of the subject and more about the educational components. Let's open the discussion on that topic.

**Assemblywoman Giunchigliani:**

I had that same question in regard to a couple of other bills this session. We were trying to say who is the one to properly license a school. I spoke with David Perlman, Administrator of the Commission on Postsecondary Education, to be clear on how this works.

They have a staff of four and regulate every vocational program in Nevada, from dog grooming to cosmetology. It is a huge range of programs. They contract with consultants to review the curriculum of these programs. Mr. Lamarca pointed out that they hired one of his students to review his own curriculum. Mr. Perlman realized that was bad and not what they wanted to do.

Who is the proper group that should be licensing? You don't want a business to have five groups coming in to review the same procedures.

**Chairwoman Buckley:**

Currently, massage therapies are regulated by Postsecondary Education. There are the cosmetology schools regulated by the Board of Cosmetology.

**Assemblywoman Giunchigliani:**

The Barbers' Board licenses barbers, but I'm not sure they do the actual barber schools. I am not sure if we even have barber schools.

**Chairwoman Buckley:**

How do you streamline this? You have Board of Cosmetology over cosmetology and Postsecondary Education over massage therapy. When you offer all of these things for a full-service business, how do you minimize the bureaucracy, but make sure that you have good business practices?

**Assemblywoman Giunchigliani:**

I agree. You want to have some sort of firewall there to protect the public. You want someone to make sure that the school itself, not the people working in it, is properly regulated. The people who work there are regulated by the agencies that license them.

**Chairwoman Buckley:**

I worry about the Cosmetology Board's capacity to handle this. What is the pleasure of the Committee?

**Assemblywoman Giunchigliani:**

I would suggest that we do it with the Cosmetology Board reviewing, so that you don't have two different schools. I am not comfortable with the \$750,000 bond. I would like to see a formula that is tied to the amount of tuition they pay and number of students they have, but not to exceed a certain amount. I do not want a restraint of trade. I do not think that was the intent. It should be tied to a formula, so people could start up a business but not be restricted.

**Assemblywoman Gansert:**

I am in agreement. There should be a range that the board could designate. When you get to page 5, Sections 8 and 9 (page 68 of [Exhibit D](#)), it talks about how many licensed instructors have to be onboard. If you had a small school with maybe only one instructor, they would require a lesser bond than a larger school. We were also looking in Section 8 to changing the language back to one, because of the night-school individuals.

**Assemblyman Hettrick:**

I remember this discussion well. I was concerned why we were going to three. The testimony was that two was actually one on at a time and they had night classes, and it counted. We went back and Brenda reviewed the language. She found that was not what it said. It said two instructors only; that meant they had to be full-time. That is why we should go with two, but we never were at one. It has always been at least two instructors.

**Chairwoman Buckley:**

The Chair would entertain a motion to amend and do pass, retaining the language of one year experience, the existing board member requirement, and the leasing of space, which would be under the Cosmetology Board. We will do a sliding fee scale for a bond in a range from \$10,000 to \$400,000, depending upon factors like volume, students, tuition, and in conformance with other similar statutes.

**Assemblywoman Giunchigliani:**

I had made a note in my book from the original hearing. In that confusing part about the Cosmetology Board in the very first section, whether that should be deleted or not, is that the one that we are to undelete?

**Chairwoman Buckley:**

No, that is still deleted.

**Diane Thornton:**

It was a convoluted conversion; she wanted it the way it was in Mr. Lamarca's original mockup, which did not include that language.

**Assemblywoman Gansert:**

The only thing we have not discussed is the hours. They increased them from 20 to 25 percent regarding experience, and would they learn more if we did. That is quite a bit more; many are doing this part time. When the students are performing these hours, the school gets to charge for these haircuts. Is that for profit making or better education?

**Chairwoman Buckley:**

Do any other Committee members have an opinion on this?

**Assemblyman Parks:**

The change in the number of hours was the number of hours of training prior to actually working on a client. It gave them more training time before starting on the public.

**Assemblyman Conklin:**

There was testimony that this would not change the tuition or the number of hours to graduate. It was simply a requirement to be sure that the student knew what they were doing before working on the public.

**Assemblywoman Giunchigliani:**

I need to disclose that I have a small business relationship and investment in a business that I found out Mr. Lamarca is also involved in. It will not affect me any differently. It has absolutely nothing to do with a cosmetology school.

ASSEMBLYMAN PARKS MOVED TO AMEND AND DO PASS  
SENATE BILL 333 WITH THE DISCUSSED AMENDMENTS.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen,  
Assemblyman Anderson, and Assemblywoman McClain were not  
present for the vote.)

**Chairwoman Buckley:**

Let's consider S.B. 339.

**Senate Bill 339 (1st Reprint):** Makes various changes concerning partial  
abatement of certain taxes for new or expanded businesses.  
(BDR 32-845)

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 339 (page 11 of [Exhibit D](#)) makes various changes concerning partial abatement for certain taxes for new or expanded businesses. The bill was heard on May 13 and was sponsored by Senator Amodei.

Testifying on behalf of the bill were Berlyn Miller, LeRoy Goodman, and Tim Rubald from the Nevada Commission on Economic Development (NCED); Ray Bacon from Nevada Manufacturers Association; and Mary Walker, representing Carson City, Douglas County, and Lyon County. There was no opposition to the bill. Ms. Giunchigliani just passed out a proposed amendment ([Exhibit H](#)) to the Committee.

**Assemblywoman Giunchigliani:**

At the hearing, Mr. Miller and I had a conversation about non-managerial and managerial wages. He agreed to work on some language; I wrote this up with him. We passed it by Senator Amodei and Senator McGinness, who found it acceptable. The Commission wanted to look at wages—administrative versus non-administrative—to have a statewide wage based on amounts not skewed by large dollar amounts paid to your CEO [chief executive officer] or have a heavier administrative staff. It is not mandatory; it will be established by

regulation to segregate those two types of wages. This will allow them to gather the data and decide what they need to do to report back to the Legislature.

[Assemblywoman Giunchigliani, continued.] The language isn't technically correct regarding legislative purposes. We didn't know whether to use "identifier" or "defined" for managerial jobs. It would be inserted in order for them to start collecting the required data.

**Chairwoman Buckley:**

Would the amendment establish, by regulation, a method to compute, or would it require whatever is established by regulation be utilized?

**Assemblywoman Giunchigliani:**

It does not require the utilization. It is to compute, begin the methodology, collect the information, and then decide, as a commission, what to do with that data.

**Chairwoman Buckley:**

I just wanted that to be clear and on the record. Are there any questions on this amendment?

**Assemblyman Seale:**

Do we have access to this information?

**Assemblywoman Giunchigliani:**

Yes, we do. They have started to gather it. [Mr. Miller and Mr. Bacon both voiced agreement.]

**Chairwoman Buckley:**

The Chair would entertain a motion.

ASSEMBLYMAN SEALE MOVED TO AMEND AND DO PASS  
SENATE BILL 339.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen and  
Assemblywoman McClain were not present for the vote.)

**Chairwoman Buckley:**

Let's consider S.B. 431.



**Senate Bill 431 (1st Reprint): Makes various changes to provisions governing financial institutions and related business entities. (BDR 55-361)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 431 (page 12 of [Exhibit D](#)) makes various changes to provisions governing financial institutions and related business entities. The bill was heard on May 6 and was sponsored by the Committee on Commerce and Labor.

Testifying on behalf of the bill was Carol Tidd, Commissioner of the Financial Institutions Division. There are two amendments. Behind Tab J is a mockup of the bill with the proposed changes ([Exhibit I](#)) from Assemblywoman Buckley and Carol Tidd; it was drafted by Legal. Behind Tab K is an additional amendment (page 71 of [Exhibit D](#)) from Carol Tidd, which requires fingerprinting for background checks.

**Chairwoman Buckley:**

Brenda, would you mind helping us to understand this amendment under Tab J?

**Brenda Erdoes, Legislative Counsel:**

There is a lot of repetitive language in this amendment. I can explain it from the amendment sheet (page 73 of [Exhibit D](#)) provided by Carol Tidd, which outlines the larger amendment ([Exhibit I](#)).

The amendment sheet shows an amendment to Chapter 671. Most of that amendment is in or applies to Chapter 671 because of the new overall section that was added. There is subsection (f) that would not be there except for that. We had to make an exception in Section 5 of the bill to take out the reference to Chapter 671, and we replaced it with a new Section 29.7 (page 17 of [Exhibit I](#)) to put that language back into Chapter 671, requiring that new subsection (f).

At that the bottom of that page (page 73 of [Exhibit D](#)), it says to add a new section to Chapters 658, 669, 670, and 670A. Chapter 658 applies to all of Title 55; new Section 7.5 covers that. In the mockup, Chapter 673 has a new Section 71.5; Chapter 676 has a new Section 94.5; Chapter 677 has a new Section 103.5; and Chapter 678 has a new Section 111.5. The amendments to Section 56 are in this mockup as well.

Section 116 is amended as shown. At the end of Section 116 (page 63 of [Exhibit I](#)), there is a new section added, modeled after Sections 37.1 and 37.2 already in the bill. The rest is pretty much as stated in the mockup. This mockup has the whole bill; that is why it is 63 pages.

**Chairwoman Buckley:**

I would like to note that, with A.B. 384 passed out of the Senate, we will have to get either a conflict amendment or be sure that the correct bill passes first. A lot of the fines and authority of the Division are increased in this bill and not at all addressed in the other bill. I don't know how those two will be reconciled.

**Brenda Erdoes:**

I believe our conflict staff has gone through them, and it is possible to ascertain the intent of the Legislature there and put those in. If there are any questions, we will come back to the Committee.

**Assemblyman Anderson:**

Noting the increase in fees, does this constitute a potential harm for the bill?

**Chairwoman Buckley:**

I have met with Lisa Foster of the Governor's Office and they believe that, since it spreads out the fee to ensure everyone is examined, they could support this. Also, they were very concerned about this area because it is not being regulated properly. This may avoid future legislation.

Are there any further questions or concerns? The Chair will entertain a motion.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO  
PASS SENATE BILL 431.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen and  
Assemblywoman McClain were not present for the vote.)

**Chairwoman Buckley:**

Let's consider S.B. 493.

**Senate Bill 493 (1st Reprint): Provides certain tax incentives for registered motion picture companies. (BDR 18-354)**

**Diane Thornton, Committee Policy Analyst:**

Senate Bill 493 (page 13 of Exhibit D) provides certain tax incentives for registered motion picture companies. The bill was first heard on May 9 and was sponsored by the Senate Legislative Operations and Elections Committee.

[Diane Thornton, continued.] Testifying on behalf of the bill was Lt. Governor Hunt and Robin Holabird of the Nevada Film Office. There was a fiscal note from the Motor Carrier Division of the DMV [Nevada Department of Motor Vehicles].

Carole Vilardo sent to the Committee members an email questioning the constitutionality of the exemption. Behind Tab L in your Work Session Document is a letter to Assemblywoman Buckley (page 75 through 80 of [Exhibit D](#)) from the Legal Division on that question on S.B. 493. The letter states that it is the opinion of Legal that the provisions in the bill are valid and enforceable.

**Chairwoman Buckley:**

There were some concerns from the Nevada Taxpayers Association about the legality of the bill. We distributed that letter to the Committee to make them aware of the opinion.

I will entertain a motion to amend and re-refer to Ways and Means.

**Assemblyman Conklin:**

Is this bill exempt?

**Chairwoman Buckley:**

We will rely on Assemblyman Arberry to get the exemption issued today. If not, it will die. Any further discussion?

ASSEMBLYMAN PARKS MOVED TO AMEND AND RE-REFER  
SENATE BILL 493 TO THE ASSEMBLY COMMITTEE ON WAYS  
AND MEANS.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Chairwoman Buckley:**

Let's reconsider S.B. 457.

**Senate Bill 457 (1st Reprint):** Revises provisions relating to intoxicating liquor.  
(BDR 32-1408)

**Samuel McMullen, Legislative Advocate, representing the Retail Association of Nevada and Miller Brewing Company:**

Continuing the discussion of the proposed amendment ([Exhibit B](#)), relating to a private right to action, that is the long paragraph Mr. [Alfredo] Alonso passed out. It is not as clear whether we had time to restate the entire amendment, but time was running out. This is a technical area. The bill drafter may have some changes or questions. With the Chair's review, we could ensure that it still matches our original intent.

On page 2 of the bill, we would retain the existing Section 3, which has two subsections. This relates to the enforcement of the provision you are adopting today, which is the transfer of liquor. It speaks to violations and enforcement of that provision.

We have asked that it be clarified that the violation must be knowingly, as noted in Section 3(a), and relates only to enforcement of the sections listed: licensing or restrictions where alcohol may be obtained—an importer can only get it from a supplier; a retailer can only get it from a state-licensed wholesaler—which goes to the heart of the concerns and possible enforcement by private action that the Nevada Beer Wholesalers asked for.

Since it was making enforcement on those types of sections, we wanted to broaden it to other people affected by those sections; thus, our item C to amend Section 3. Item D ([Exhibit B](#)) takes the language from the proposed subsection 2 and applies it to Section 1, which talks about the aiding of these violations by other individuals if they knowingly do that and makes them subject to civil action as well.

**Alfredo Alonso, Legislative Advocate, representing the Nevada Beer Wholesalers Association:**

We are in agreement with this. We have a compromise that captures most of the significant chapter that deals with the three-tiered system. It is a good step toward protecting it.

**Robert Crowell, Legislative Advocate, representing Anheuser-Busch Companies, Inc.:**

After a lot of thought, it appears we are at logger-heads on this issue of what is a malt-based beverage and wine coolers. We had a substantial discussion on this. On behalf of Anheuser-Busch, the issue of beer being excluded from this is of critical importance to our understanding of the operation of the three-tier system in Nevada. It is critical to our company and our wholesalers.

[Robert Crowell, continued.] While we include malt-based beverages in the definition of what can be transferred and stored outside of the three-tiered system, it impinges upon our relationship with our wholesalers, our marketing approach, and on our ability to control our product. Despite our good effort, we have to respectfully oppose the amendment ([Exhibit C](#)) Ms. Baumgartner proposed, which says you can transfer malt-based beverages between stores. It is a major issue to my client and to our wholesalers.

**Morgan Baumgartner, Legislative Advocate, representing Southern Wine and Spirits:**

Considering Mr. Crowell's concerns, we would like to propose a definition of "malt beverage." We would like to continue with the exclusion of beer from the definition of liquor and the ability to transport malt beverages, but not beer. Accordingly, we would offer this definition: flavored malt beverages mean liquor, wine, or wine coolers that are not sold or marketed as beer, providing a specific exclusion for beer. We would not put that in the transfer category. It would be limited to liquor and malt beverages that are not beer. This would take care of Mr. Crowell's concerns, as well as keep the integrity of the tax structure and the transfer provisions.

**Robert Crowell:**

With due respect, it does not. The term "wine cooler" is false; there is no such thing as a wine-based cooler. Wine coolers are all malt-based beverages. That is the concern we run into here. Beer is defined as a malt-based beverage. The definition Ms. Baumgartner just offered also includes malt-based beverages. We sell not only beer, but other things that would qualify as a wine cooler. That is part of our marketing technical strategy. We would have to be opposed to that as well.

**Tony Sanchez, Legislative Advocate, representing Delucca Liquor Distributors:**

If you look at the underlying bill, we are still allowing liquor and wine to be transferred in the same exact way. If those concerns were legitimate—and I am not saying they aren't—our clients, the wholesalers, would have the same concerns with respect to liquor and wine. We didn't bring this bill, but we agreed to the underlying bill of S.B. 457 with the protections. It is just for transfers; it is not impacting the taxes. We feel this isn't doing any more than what wine and liquor are already doing in S.B. 457.

**Chairwoman Buckley:**

I will open it to Committee discussion and questions.

**Assemblywoman Giunchigliani:**

Basically, "wine cooler" is a misnomer. Like Schlitz Malt Liquor, it is a malt-based beverage; it is considered, by many, a beer. It would help if we could we have a brief refresher on the three-tier system.

**Chairwoman Buckley:**

I recently reviewed the history of the three-tier system. It was instituted after Prohibition to make sure that liquor stayed out of the hands of minors. The three tiers are manufacturing, distribution, and retailing. It was also to ensure that there weren't monopolies in the sale and distribution. It was thought by having a restrictive three-tier system—especially in states where there are the "blue laws" where liquor can't be sold—those checks and balances, we would preserve those laws so that Prohibition didn't come back.

Is there any way to compromise so we can move this bill along and further the discussion on whether wine is beer and beer is wine or how to handle those products that are difficult to define?

**Robert Crowell:**

If you want to amend it with the first amendment that Mr. McMullen did, that would be fine. We can continue to talk. We would do that because it has to go back to the Senate for concurrence. I am not sure, but I think there is a way.

**Samuel McMullen:**

It may be that the concerns about marketing and integrity of the product could be resolved by saying that a malt-based beverage would be treated as we talked about in this statute. It would be allowed to be given to the warehouse; then the warehouse distributes it to its authorized retail outlets. You could say that the supplier themselves could regulate whether that particular product could or could not be transferred.

Currently, the law says that the wholesale dealer would decide whether or not there could be such transfer. What you could do, in the case of malt-based beverage, is add that the supplier could decide whether or not they had an issue with respect to integrity or marketing. That might be an alternative. This only relates to that simple issue of whether or not it could go to a warehouse or be delivered directly to the store. That, really, is what this bill is about.

**Chairwoman Buckley:**

Why don't we do an amend and do pass, leave off that amendment, and give the Committee an opportunity to study it further? We can do a "behind the Bar" meeting and elaborate on it further to make sure that it is handled appropriately.

[Chairwoman Buckley, continued.] We will take the first amendment ([Exhibit B](#)) with regard to the revisions on the private right of action. We will leave off the second amendment ([Exhibit C](#)), with regard to wine coolers. We will further the discussion and bring it back to Committee for a possible amendment on the Floor.

**Assemblyman Anderson:**

I missed the discussion at the beginning on this bill. Is this to clarify the ability of the Tax Department to do what they are supposed to, relative to collections, and not take away that ability? Are we finally going to get them to the right page at the right time?

**Alfredo Alonso:**

The bill came about with respect to the shipping of liquor outside of franchise areas. The bill, as you see it, is something the wholesalers have accepted. It preserves those wholesale franchise areas. It is a good compromise.

**Assemblyman Anderson:**

Will it get the Tax Department to begin penalizing those that are doing the wrong thing, rather than just sending out letters?

**Alfredo Alonso:**

We believe it will. It will go a step further. It allows a private right of action against these individuals if they do break the law again. We have both the state and private action; it is a good balance.

**Chairwoman Buckley:**

Any further discussion on the bill?

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO  
PASS SENATE BILL 457.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Allen and  
Assemblywoman McClain were not present for the vote.)

**Chairwoman Buckley:**

We are adjourned [at 3:18 p.m.].

RESPECTFULLY SUBMITTED:

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Gregory Sharry  
Recording Attaché

RESPECTFULLY SUBMITTED:

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James S. Cassimus  
Transcribing Attaché

APPROVED BY:

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Assemblywoman Barbara Buckley, Chairman

DATE: \_\_\_\_\_



**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** May 20, 2005

**Time of Meeting:** 1:12 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	<b>A</b>		Agenda
S.B. 457	<b>B</b>	Alfredo Alonso / Nevada Beer Wholesalers Association	Proposed Amendment to S.B. 457
S.B. 457	<b>C</b>	Morgan Baumgartner / Southern Wine and Spirits	Proposed Amendment to S.B. 457
	<b>D</b>	Diane Thornton / LCB	Work Session Document S.B. 37, 44, 188, 189, 238, 240, 256, 333, 339, 431, and 493
S.B. 37	<b>E</b>	Assemblywoman Giunchigliani	Proposed Amendment to S.B. 37
S.B. 37	<b>F</b>	Assemblywoman Giunchigliani	Proposed Amendment to S.B. 37
S.B. 189	<b>G</b>	Alfredo Alonso / Alliance of Automobile Manufacturers	Proposed Amendment to S.B. 189
S.B. 339	<b>H</b>	Assemblywoman Giunchigliani	Proposed Amendment to S.B. 339
S.B. 431	<b>I</b>	Assemblywoman Buckley and Carol Tidd / Financial Institutions Division	Proposed Amendment to S.B. 431