

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
March 9, 2005**

The Committee on Judiciary was called to order at 8:08 a.m., on Wednesday, March 9, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mrs. Sharron Angle (excused)
Ms. Barbara Buckley (excused)
Mr. Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel

Katie Miles, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

C. Brooke Wong, Director of Program Services, American Lung Association
Helen Foley, Legislative Advocate, representing Clean Indoor Air Alliance
Sean Higgins, General Counsel, Herbst Gaming, Inc.
Judy Bennett, Private Citizen
William Bible, President, Nevada Resort Association
Christina Dugan, Government Affairs Director, Las Vegas Chamber of Commerce, Las Vegas, Nevada
Rod Atamian, Chief Financial Officer, Golden Gaming Inc.
Ron Drake, Board Member, Nevada Tavern Owners Association
Steve Johnson, President, Berry-Hinckley Industries and Winner's Corner Convenience Stores
Rich Davies, Franchisee, 7-Eleven Stores
Rob Woodson, Vice President, Regulatory Compliance for United Coin Machine Company
Samuel P. McMullen, Legislative Advocate, representing Nevada Retailers Association
Gene Hill, President, Nevada Tavern Owners Association
Stan Olsen, Lieutenant, Las Vegas Metropolitan Police Department; and Nevada Sheriffs' and Chiefs' Association
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association

Initiative Petition 1: Provides for enactment of Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, excluding stand-alone bars and gaming areas of casinos.

Initiative Petition 2: Provides for enactment of Responsibly Protect Nevadans From Second-Hand Smoke Act.

Chairman Anderson:

[Meeting was called to order and roll was taken.] A quorum is present. Recognizing that we are dealing with two initiative petitions which, in order to reach the Governor's desk, must clear the legislative process by March 18, 2005 in order to keep to the rule of law. That is, by the 40th day.

[Chairman Anderson, continued.] As we consider these two petitions, I.P. 1 provides for the enactment of the Clean Indoor Air Act and I.P. 2 provides for the enactment of the Responsibly Protect from Second-hand Smoke Act.

The Legislature has three options directly in front of us, relative to these initiative petitions, to amend state statute. First, the Legislature can choose to do nothing. If the proposal is not approved by the Legislature within the first 40 days of the session, it is placed on the next general election ballot for final action by the voters. Second, the Legislature can pass the initiative. If the initiative is approved by the Legislature and the Governor, then the initiative proposal would become law. That would mean it would be cleared out of this Committee today and be on the floor for vote and passage by Friday. Then it would go to the Senate on Monday for them to hold a hearing. It would have to pass out of the Senate by Thursday and then go to the Governor.

Third, with the approval of the Governor the Legislature may present to the voters a substitute measure on the same subject matter. In this case, both the original initiative process and the legislative substitute would provide three opportunities for the voters to look at the next general election: I.P. 1, I.P. 2, and whatever the Legislature were to craft and create. Only the measure receiving the largest number of votes, of course, becomes state law. Finally, as a reminder, an initiative proposal approved by the voters, enacted into a new law, or amended as existed may not be repealed or amended by the Legislature for at least three years after it goes into effect.

For the members of the Committee, Ms. Combs has prepared some documents making a comparison between what current law is and what the Nevada Clean Indoor Act as compared to the Responsibly Protect Nevadans From Second-Hand Smoke Act. This document provides the difference between I.P. 1 and I.P. 2 relative to the questions of how it affects elementary, secondary, high school, child care facilities, grocery stores, convenience stores, malls, retailer stores, tobacco stores, restaurants, bars, taverns, saloons, strip clubs, brothels, video arcades, movie theatres, licensed gaming establishments, public government buildings, hotels and motels, medical facilities, and authority of local government.

Let me remind the members of the Committee, it is not possible for the Committee to amend the documents in front of us. These are not laws that we are dealing with. We do not have the option of changing the spelling or correcting the syntax. For example, on I.P. 1, line 24 is missing a conjunction. The word "and" was left out. Of course, the bill drafters would have noted that, but these initiatives are copied exactly as the people who signed them and agreed to have them put in place. There should be the word "and" after "retail

tobacco stores.” It is missing and we can’t fix it. So for those of you who think we will have the opportunity to change the wordings of these petitions, we do not. That is not an option in front of us. Any questions from the Committee?

[Chairman Anderson, continued.] We will start with I.P. 1.

C. Brooke Wong, Director of Program Services, American Lung Association:

I am speaking today on behalf of the American Cancer Society, the American Heart Association, and the Nevada Tobacco Prevention Coalition ([Exhibit B](#)). On March 17, 2004, all of the aforementioned entities filed with the Nevada Secretary of State an initiative petition to protect Nevadans from exposure to second-hand smoke. Sitting before you is that very same petition that over 70,000 Nevadans signed.

In November 2002, we placed on the ballot two advisory questions regarding protecting Nevadans from second-hand smoke. Voters in Clark County, and Washoe County overwhelmingly voted in favor of limiting exposure to second-hand smoke. Clark County voters showed 66.8 percent support to ban smoking in public places frequented by children. Washoe County voters voted 67.9 percent to ban smoking in public places. As health care nonprofit organizations with histories of protecting Americans for over 100 years, we felt compelled to engage in the initiative petition process to protect our citizens from the dangers of exposure to second-hand smoke.

Tobacco companies spend millions of dollars every year opposing smoking bans. The American Cancer Society, the American Heart Association, the American Lung Association, and Nevada Tobacco Prevention Coalition support this initiative since it will save lives. The Centers for Disease Control and Prevention in 2004 made the following information public:

- Each year, exposure to second-hand smoke is associated with an estimated 8,000 to 26,000 new asthma cases in children and an estimated 150,000 new cases of bronchitis and pneumonia in children.
- Each year, 3,000 lung cancer deaths and 35,000 cardiac deaths occur among adult non-smokers as a result of exposure to second-hand smoke.

In fact, second-hand smoke is so dangerous that the Centers for Disease Control issued a health advisory last year that said “Smoke-free environments can prevent acute heart attacks in non-smokers.” On behalf of the American Lung Association, the American Cancer Society, the American Heart Association, and the Nevada Tobacco Prevention Coalition, we ask you to not sacrifice the health of Nevada’s citizens and children to the tobacco industry. Please vote to support I.P. 1.

Chairman Anderson:

Ms. Wong, as I'm sure you heard in the very beginning here if we were to vote for I.P. 1 then I.P. 2 would move to the ballot, assuming the Senate voted in a similar fashion. Therefore, you would not have it in front of the voters.

Is there any other particular issue you feel necessary to get on the record other than your written statement which we have?

Brooke Wong:

I do have testimony for I.P. 2 but I will hold off until the next round.

Helen Foley, Clean Indoor Air Alliance:

We are a consortium of individuals as well as organizations that actively supported the signature gathering and will support the ballot initiative on I.P. 1. One of the major reasons why we support I.P. 1, in addition to the things that both of the petitions have in common, is the critical area of grocery stores and convenience stores. During the last several sessions of the Legislature, you have seen individuals come before you and say that, although there are areas within the grocery stores that have gaming, there is still an awful lot of tobacco smoke that infiltrates the rest of the store. Many of these areas are in front of the stores and people have a very difficult time shopping when they have respiratory problems.

Initiative Petition 1 includes the grocery stores and the convenience stores and bans smoking in both of those locations. I can't imagine a small convenience store, 7-Eleven, or any of the others, being able to seal off the area where there are slot machines. The stores are simply too small. Even if you open up the door, there would be a big plume of smoke coming out when the individual left the slot machines. That is the major difference in these two different pieces of legislation and it makes it very critical that I.P. 1 be supported because of the absolute ban on smoking in grocery stores and convenience stores. We encourage you to support I.P. 1.

Assemblyman Horne:

I see the restrictions in grocery stores you are speaking about. It is my understanding we were trying to keep some status quo within other venues like stand-alone bars, gaming and casinos. I am curious about the definition of "casino" in this petition on casinos on page three. The last sentence says the "casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word 'casino' as part of its proper name." That strikes me as odd. I can't even imagine how many gaming properties we have in the state, but I know the big ones don't have "casino" in their proper

name. Can you address that? We can't amend it so are we unintentionally bringing them into these restrictions?

Helen Foley:

I don't know the answer to that question. The Clean Indoor Alliance did not write the legislation so someone else might be able to address that for you. I will say within gaming operations, under I.P. 1, there would be no smoking in the restaurants and shopping areas of casinos. Only in the areas where children are restricted from loitering, which would mean around the gaming tables and the slot machines. If they were walking around smoking a cigarette close to the restaurants, that would be banned. So they would follow the same rules as they currently do wherever they do not allow children to loiter; they also would not be allowed to smoke. To specifically answer your question about the term 'casino', I don't know the answer to that.

Assemblyman Horne:

I'm sorry as I thought you might know more detail. Maybe I can get an answer from Legal on that.

Assemblywoman Allen:

I have a question on page 3, line 24, concerning the stand-alone bar. While campaigning for this position, I went into a Timbers Bar in my district. I have grave concerns that there is some inequity in the stand-alone bar language. The owner was concerned because he had this restaurant in his bar, and he wouldn't be allowed to let people smoke in the bar. The owner indicated to me he would have to close the restaurant portion of his business, laying off a third of his staff. Can you speak to this at all?

Helen Foley:

I can. I believe the intent of that section is so that you don't have a bar in the center of a restaurant such as a Chili's. You have a bar then a restaurant all the way around it. It would have to be a stand-alone facility. As far as what types of foods they can serve, I.P. 1 is quite restrictive. I can understand why they would have some concerns.

Assemblywoman Allen:

Of course when you are campaigning for office, people have questions for you everywhere you go and I didn't have an answer for him. That would be of great concern to him because he would be balancing between having a restaurant and having smoke in his bar.

Helen Foley:

I appreciate that. I will say that the countries of Ireland and Italy have completely banned smoking, and those two were the last bastions of smoke-filled operations.

Assemblyman Carpenter:

Consider the Star Hotel in Elko, which is famous, and has a bar. You walk past the bar and then walk right into the restaurant. So they would not be allowed to smoke in the bar in the Star?

Helen Foley:

I believe in the interpretation of this legislation that would be true, because it is not a stand-alone bar. The smoking would infiltrate the other areas.

Assemblyman Carpenter:

So what happens in a casino that has licenses when smoke from the casino can infiltrate to the restaurant? So, if smoke from the casino area can infiltrate to the restaurant, the casino will have to be closed?

Helen Foley:

No, if they are within the gaming area of the casino, they can take their cocktail from the bar, their cigarettes, puff away, and gamble.

Assemblyman Carpenter:

As I read this, if the smoke can infiltrate or go into the restaurant from the casino, you have to close the casino.

Helen Foley:

Under the provisions of this initiative petition, if they are within the casino area, they are exempt from this legislation and they can smoke in the casino.

Assemblyman Carpenter:

What I am talking about is that the smoke is going into the restaurant because it is a large area where there are no windows or glass, then what happens?

Helen Foley:

It certainly appears that there is an inconsistency; however, the authors of this initiative petition wanted to make sure that this was not harmful or detrimental to our major industry. If there is gambling in those areas, then they are exempt from this even if it not totally consistent with the rest of the legislation. So if there is smoking and using gaming equipment, they can smoke.

Assemblyman Carpenter:

So smoke from a casino in a restaurant is okay but not from a bar.

Helen Foley:

I'm giving you that opinion. I'm just saying casinos are exempt.

Chairman Anderson:

Let me point out in the research handout we received relative to the questions of restaurants. The Nevada Clean Indoor Air Act would prohibit smoking in all indoor areas of restaurants in bars, taverns, or saloons. Our current statutes deal with how much their gross receipts are. In the Star you would have to determine whether more money is made at the bar or in the family's dining area as compared to the casino itself.

The only thing I have not heard, and I'm surprised it wasn't mentioned in the opening presentation, is that the responsibility moves to the county health in I.P. 1 as compared to the State Legislature. Isn't that one of the questions that is involved in the pro-side of the argument? It puts it as a local question rather than a state uniform code.

Helen Foley:

I believe enforcement would be the health departments. Right now with bars, they have to have a sign notifying pregnant women that drinking could be dangerous. When we testified on that a few sessions ago, they said they would do that in the course of the inspection of the bar and the restaurant to make sure that sign was there. So I think they would do the same thing here with enforcement.

Chairman Anderson:

There is also the opportunity for the local health department to come up with more stringent rules if they so chose in that particular location, since they are currently prohibited from under current state statute.

Helen Foley:

That is correct.

Chairman Anderson:

Except in those specified areas that are not within the purview of the health board.

Helen Foley:

That is correct and casinos are outside of that.

Assemblyman Horne:

You had mentioned restaurants that were separate from shopping areas. I can only think of a few casinos where I can make it to a restaurant without going through a casino. Can you give me examples of properties that don't have those types of entrances?

Helen Foley:

I believe you could easily get into the Forum Shops through the strip entrance without going through the casino. There is some gaming play within that area, I believe. All restaurants within gaming establishments under I.P. 1 are excluded from smoking. You could walk through a gaming area that has smoking but once you are in the restaurant or in a shopping area of a casino, they are smoke free. It's just on the gaming floor where you have the opportunity to smoke whether you walk through or not.

Assemblywoman Allen:

While I appreciate the bill's deference to our state's largest industry, my larger concern is for the small business owner that owns a stand-alone bar, tavern, or saloon. Perhaps you might be able to provide the Committee with data that shows how many of those bars would qualify and how many wouldn't qualify under this bill language. Is this possible?

Helen Foley:

I could certainly speak with some others and see. The tavern owners are here and well equipped to tell you your answer today. I don't have that information.

Chairman Anderson:

Is there any other piece of information that you need to make sure the Committee has on the pro side of I.P. 1?

Helen Foley:

There hasn't been a lot of testimony today primarily because there has been a frustration over the last ten years with the Legislature pushing, as far as many individuals would like to see, a ban on smoking in locations where there are children. That is why I.P. 1 was first presented, and signatures gathered. We are anxious to have it on the ballot. If the Legislature could make a few modifications that would probably be better, but that is the way it is. It either goes this way or it doesn't. There are a few faults with it. I'm the first to recognize it, but I do believe it far more preferable than I.P. 2.

Chairman Anderson:

Assembly Bill 17 of the 58th Legislative Session first established public elevators, libraries, museums, buses, public meeting rooms, hallways, waiting

rooms, lobbies and medical facilities as being nonsmoking. Assembly Bill 155 of the 64th Legislative Session prohibited smoking in hotels, motels, and restaurants when so designated by the operators which put them in control of the question. In 1989, we prohibited smoking in child care facilities licensed for 13 or more children. In 1989, we expanded the prohibition in public buildings. Assembly Bill 324 of the 66th Legislative Session prohibited smoking on school buses because bus drivers were smoking when the kids weren't in the buses. Senate Bill 313 of the 66th Legislative Session required the county board to enforce nonsmoking in maintenance facilities of offices, bus systems, and restaurants with seating capacity of more than 50. We expanded that between 1993 and 2003 to the university and college system. Then in 1999 we established that over 10,000 square feet grocery stores have air circulatory systems and walls separating the area for gaming. In the last session, we cut down the time. We asked in Senate Bill 50 of the 72nd Legislative Session for the school districts to adopt more stringent regulations than current state law. We had originally asked for the ventilation systems to be done by 2010 but decreased it to 2007. Of course, the question, should the state or local government control the issue?

[Chairman Anderson, continued.] Let's turn to people who wish to speak in support of Initiative Petition 2.

Sean Higgins, General Counsel, Herbst Gaming, Inc.:

The group that I represent put forward the Initiative Petition 2, Responsibly Protect Nevadans From Second-Hand Smoke Act. That group included members from the Nevada Retail Gaming Association, Terrible Herbst Gaming, Golden Gaming, PT Pubs, the Nevada Tavern Owners Association, the Nevada Petroleum Marketers and Convenience Store Association, Berry-Hinckley Industries, Rebel Oil, Liquor Distributors, International Gaming Technology, the Nevada Restaurant Association, the Nevada Retail Association, the Nevada Chamber of Commerce and the Nevada Resorts Association. All were involved in that process. We collected over 87,000 signatures in each county within the state of Nevada.

Sponsors of I.P. 2 agree that more needs to and can be done to protect children from second-hand smoke in the state of Nevada. We, therefore, support a responsible restriction on smoking in this state. To this end, we propose the Responsibly Protect Nevadans From Second-hand Smoke Act which prohibits smoking in the locations enumerated within our petition including child care facilities, elementary, secondary and high schools, hospitals and medical offices, motion picture houses, theatres and concert halls, video arcades, government buildings, museums, libraries, galleries and other places of public display collections, convenience stores, retail establishments, grocery stores—except

for the gaming areas, and restaurants—except areas of such restaurants where persons under the age of 21 are prohibited.

[Sean Higgins, continued.] Unlike the Nevada Clean Indoor Air Act, the sponsors of I.P. 2 recognize that leisure and entertainment for adults is a key to Nevada's economy both on a tourism and local basis. We believe our state should not sacrifice its status as the premier entertainment destination of the United States by passing overly aggressive restrictions on smoking. Rather, we propose to restrict smoking in places where minors are typically present and allow it in places where it is specifically intended for adult use only. We believe we have gone to great measures to accommodate this and accomplish this under our initiative petition.

We have conducted polling and over 60 percent of the polled Nevadans were in favor of setting aside smoking areas in areas that allowed gaming within locations that allowed gaming. We believe the people of Nevada prefer prohibition of smoking where persons under 21 years of age are not permitted, rather than to prohibit locations that are limited to persons under the age of 21 to smoke. An example would be a bar, tavern, or saloon. Our definition of a bar, tavern, or saloon is one such as Bully's in the north, PT Pub's, Steiner's, and Putter's in the south—your typical sports bar. Our petition does not seek to change the current law which requires that any location which offers 50 seats to the public must allow for a nonsmoking area.

With regard to grocery stores, as the Chairman noted, there is legislation currently in place which requires ventilation and separation of those areas from the remainder of the grocery store. We have agreed with that legislation and have agreed to move the requirement of the remaining ventilation system up to 2007. In addition, our group has commissioned a study by CH2M Hill which placed particle-detection monitors both on the gaming device within the area and on the nearest checkout stand, at eight locations. At only one of these locations did a monitor on top of one of the grocery store's gaming devices show any detection for particle matter, and this detection was below the OSHA [Occupational Safety and Health Administration] 8-hour minimum standard requirement for people working at a location.

In summary, it is our goal to protect the health of minors without jeopardizing the health of the economy of the state of Nevada, both on a tourist and a local basis in major hotels and casinos, convenience stores, grocery stores, bars and taverns.

Chairman Anderson:

Clearly, your initiative also states that it is the prerogative of the State Legislature. Would it be possible for a motel owner to prohibit smoking in motel rooms? Do you anticipate that it would not be an option for a local motel to say this is a nonsmoking motel?

Sean Higgins:

I think it is within their prerogative to do so under our initiative. The only portions of the section that are changed are the ones that are outlined. I don't believe we mentioned either motel or hotel rooms. I think that would remain within their prerogative.

Assemblyman Carpenter:

What is the situation in regard to restaurants in your bill?

Sean Higgins:

In our bill there are two ways a restaurant can be looked at. The first is a restaurant that is a stand-alone restaurant that is not within a nonrestricted gaming establishment. In a restaurant there, you would be allowed to smoke in areas that are restricted to persons over the age of 21. Typically, in those restaurants that is the bar area. Within a nonrestricted hotel/casino, the restaurants are exempted within that building. That does not exempt them from the requirement to provide a nonsmoking area if they have 50 or more seats.

Assemblyman Carpenter:

What about a stand-alone restaurant?

Sean Higgins:

A stand-alone restaurant may provide a smoking area in an area that is restricted to persons over the age of 21.

Assemblyman Carpenter:

That is what I don't understand. Can you clarify that for me?

Sean Higgins:

I assume the Star Hotel has a bar in it. I assume you do not allow persons under the age of 21 to sit at that bar. Therefore, at the bar, within that establishment, you would be allowed to smoke. Now, if the dining area does not have any designated areas that restrict persons under the age of 21, you would not be allowed to smoke in the dining area of that restaurant.

Assemblyman Carpenter:

So a restaurant that doesn't have a bar and doesn't have a nonrestrictive gaming license, you would be prohibited from smoking, correct?

Sean Higgins:

No, sir. If you designated an area which was restricted to persons over the age of 21, you could allow smoking within that area.

Assemblyman Carpenter:

That means no kids.

Sean Higgins:

That's what it means.

Assemblyman Mabey:

With the convenience stores, 7-Eleven and Circle K, will there be smoking at all if this I.P. 2 passes?

Sean Higgins:

With regard to your first question, per our initiative you would be allowed smoke in the bar area if it was limited to persons over the age of 21. I would like to point out that people do have a choice in restaurants and if you chose to go to a restaurant in a casino, you could be put in the same situation very easily. With regard to your second question, yes. In the gaming areas of 7-Eleven or convenience stores, persons under the age of 21 are not allowed to loiter around the gaming machines and per Nevada law, you would be allowed to smoke in those areas.

Assemblyman Mabey:

That would be the same with the grocery stores?

Sean Higgins:

That is correct.

Assemblyman Mabey:

I don't understand what the difference is between this initiative petition and what the current law is in those areas.

Sean Higgins:

I don't know there is. We were simply putting forward in a petition format some of the current law as it exists today.

Chairman Anderson:

Let me draw your attention to the comparison that Research did relative to how these stack up to current law. You can see where they are silent on some issues and they attempt to clarify what they perceive to be current law.

Assemblyman Horne:

A person who testified last session on this issue had some serious questions about the validity of your monitoring tests on the gaming devices. I don't think at that time those were properly answered. You reminded me when you cited that study.

Sean Higgins:

Again, we hired an independent environmental consultant, CH2M Hill, who is a nationally recognized firm. The only question was to put a particle detection device on one of the machines in the gaming area. They put a second identical device at the nearest check stand to that gaming area. They ran it for a 24-hour period at 8 different locations from 8:00 a.m. to 8:00 a.m., so you got a full reading. Locations were randomly picked because we did not want to be seen as picking locations. The report that came back stated there was a non-detect on every one of the locations. These were locations that did have the ventilation in place as required by the Legislature. Each monitoring device came back as a non-detect except for one inside one of the gaming areas; however, it did not rise to the level of OSHA's 8-hour requirement standard.

Chairman Anderson:

Let me point out a former member of this Committee was concerned the methodology in which the control part of the test was handled. Those were technical questions that had not been resubmitted. If it's a part of the initiative petition, by all means request them.

Assemblyman Horne:

It isn't in the initiative petition so I'll let it go.

Sean Higgins:

His question was, if you had non-detects, how do you know the devices were working? I think the point is we did receive one detect. That was his specific question so the answer was we hired a nationally recognized firm to do this study. It was not in our control and we did have a collection device that did come back with one detection.

Chairman Anderson:

Was there any more testimony you would like to add, Mr. Higgins?

Sean Higgins:

The power to oversee and make rules and regulations on smoking within the state of Nevada should remain vested with the State Legislature.

Chairman Anderson:

Ms. Bennett, you did not speak but you did submit a document. Did you wish it to be included in the record?

JudyAnn Bennett, Citizen:

I would like the document I submitted to be a part of this record ([Exhibit C](#)).

William Bible, President, Nevada Resort Association:

I would like to speak in support I.P. 2. It would continue to provide the flexibility to casino operators to provide responsible provisions to accommodate those guests that chose to smoke in a manner they see fit in accordance with their business judgment. Everybody on this Committee knows the facts and figures of the Nevada economy. We have between 42 and 43 million visitors annually. We have 170,000 hotel rooms and that number has been increasing on a yearly basis and will increase again next month with the opening of a Las Vegas resort.

Initiative Petition 2 provides considerably more flexibility than contained in I.P. 1. You have already identified some of the concerns. One of those concerns is the local control issue. We believe it is very important that control reside within the State Legislature and not within the various units of the local government. This way you don't have a hodgepodge of rules and regulations to subject our guests to as they cross county lines. It's best to retain tobacco control as a state issue so you have uniformity of application and you don't have confusion. You have criminal sanctions in some of these matters where a person can be cited. It is not reasonable when you have so many guests in the state to create confusion in their minds as to whether they can or cannot engage in an activity.

Christina Dugan, Government Affairs Director, Las Vegas Chamber of Commerce, Las Vegas, Nevada:

We have over 680 small business members. We are in support of the I.P. 2 due to the fact we prefer to see the jurisdiction of smoking remain with the Legislature. We believe that the principles of government are to encourage businesses to operate and the best way we can do that is to have standardized

uniform rules for all businesses. Therefore, we would ask that you consider supporting I.P. 2 and preventing I.P. 1 from moving forward.

Assemblyman Carpenter:

What happens if both these petitions receive a majority?

René Yeckley, Committee Counsel:

If both of these petitions receive a majority of the votes in the 2006 election, then the measure with the highest number of votes will prevail.

Chairman Anderson:

There is another option available to the Committee but it is coming up on Friday. We will have the entire smoking statute available to the Committee in that format when the particular piece of legislation comes forward. It is different, however, from the initiative petitions in that we wanted to deal with any changes to state law that are currently are in place.

First we will hear those who are in opposition to I.P. 1.

Sean Higgins, General Counsel, Herbst Gaming, Inc.:

The issue of I.P. 1 starts with its very title. As far as we can see, it is a fraud on the public. Section 1 of the petition claims the act excludes stand-alone bars. But deep in the text of this petition is a peculiar definition of stand-alone bars, taverns and saloons. It takes up 22 lines to get through the complete definition along with ancillary definitions. In practice, this definition virtually leaves out every bar in the state of Nevada. Under I.P. 1, the bar may only provide incidental food service. Incidental food service is defined as a service of pre-packaged food items that do not require a food-handling license under state law. Any establishment that serves alcohol but also serves food that requires a food-handling license, is not defined as a stand-alone bar, tavern or saloon. Thus, such as PT Pub's, Putter's, Timber's and Bully's, which are defined by the public as bars and are regulated as bars by the local jurisdictions, do not qualify as a bar under I.P. 1.

Initiative Petition 1, therefore, attempts to perpetrate a fraud on the public by stating in its title that it exempts these locations while the fine print clearly prohibits smoking in these establishments that are commonly known as bars throughout the state of Nevada. We believe any voter who signed the petition believing that bars were exempted was clearly deceived.

Initiative Petition 1 disregards Nevada's unique business climate. Simply stated, this is an issue that will have ruinous consequences for the state's economy. Nevada historically protects the freedom of adults to choose to participate in

such activities as gaming and smoking. Clearly, these activities are not appropriate for minors and are regulated so. Gaming is obviously the primary component of business in Nevada both on a tourist level and, in some instances, on a local level as well. The ability to smoke, while in a gaming establishment, is a vital element to a successful gaming operation whether it is a hotel/casino, a bar, tavern, or gaming area of a grocery store.

[Sean Higgins, continued.] Initiative Petition 1 disregards the tourism base for our state's economy. The petition does not provide any provision for businesses located with nonrestricted gaming licensees. For example, restaurants and bars located within hotels will be subject to this smoking prohibition. Moreover, the purported exemption of gaming areas of casinos is vague. The term "casino" is very nebulous the way it is stated. Initiative Petition 1 defines "casino" as establishments that typically use the word "casino" as part of their proper name. Since the term "casino" is not used nor defined in the *Nevada Revised Statutes*, the definition in I.P. 1 stands by itself and provides very little guidance because very few hotels and resorts use the word "casino" as part of their name. Thus, we believe I.P. 1 may be interpreted as prohibiting smoking even in some gaming areas that now are nonrestrictive locations.

Finally, I.P. 1 is problematic because it requires police and health authorities to enforce an act and issue criminal citations for violations but fails to provide any manner to raise revenue necessary for such enforcement. This deficiency renders the whole initiative void under Article 19, Section 6 of the *Nevada Constitution*.

We are so concerned with the wording and content of I.P. 1 that our group has filed a lawsuit because of the items contained within it. The lawsuit is based on the constitutional and statutory defects of I.P. 1. These defects include that the petition is a fraud on the public because it misleads that certain locations are exempt while they are not. It is ineffective under Article 19, Section 6 of the *Nevada Constitution* for failure to raise revenue for enforcement. Additionally, it is extremely vague because it fails to give notice whether smoking is permitted in bars and casino areas. The act attempts to void and nullify existing state law without conducting a referendum. The existing state law I am pointing out is taking jurisdiction of smoking away from this legislative Body and allowing local health districts and municipalities to add stricter restrictions than those imposed by state law. This will inevitably lead to uneven and disparate regulations in smoking throughout the state and render the Legislature powerless to correct any such problems.

Assemblyman Carpenter:

What is your definition on page 3, line 23 through 25, where it says you can smoke in a stand-alone bar but if you have food service, which is incidental to that operation, the smoke from that bar could infiltrate into that area? I am talking about a casino where the restaurant area is not fully enclosed. It is an open area where the gaming area is right beside it and you can smoke. The smoke can infiltrate into the restaurant. What is your analysis of this situation? Do you have to close down the casino or move the slot machines?

Sean Higgins:

We think that is one of the issues. They use the term "casino" which is an undefined term within the *Nevada Revised Statutes*. They use the term "stand-alone bar, tavern, and saloon" which again doesn't fit the common-use definition of those terms. To be honest with you, we are at a loss as to the possible ramifications of this petition. To be blunt, we don't know either what some of those ramifications are going to be. At the end of the day, our opinion is if it passes the people the local health districts and not this Legislature will decide this issue.

William Bible, President, Nevada Resort Association:

We have already had a number of questions asked by the Committee members and I think you can understand that some of the problems we have with the initiative cannot be explained. You cannot tell the effect of what would happen with the application of I.P. 1 to a commercial hotel.

There is one area that has not been mentioned today. One of the previous testifiers indicated I.P. 1 really didn't affect the casinos. I don't believe that is true. If you take a look at Section 2, subsection 1, line 13, you have a prohibition on smoking in indoor places of employment including but not limited to government buildings and public places. Public places is a defined term on page 2 of I.P. 1, line 39 and 40 which says "any enclosed area to which the public is invited or which the public is permitted." Our attorneys have extensively reviewed that provision and they are of the opinion that means hotel rooms. You would not be able to provide a smoking room to a patron who chose to smoke. I don't know if you have analyzed that, asked your staff to analyze it, or have that on your matrix chart, but that is fundamental to the economy of this particular state.

As mentioned previously, we have some 179,000 hotel rooms. We have guests that come not only nationally but internationally from places and cultural traditions where they have a heavy usage of tobacco. An example of that would be race weekend in Las Vegas. I know the people from Winston-Salem are going to be at the speedway and they do smoke. And I know they would

expect to be able to smoke at these kinds of events as do a number of other guests. Casino businesses are no different than any other business. We make accommodation to meet the needs of our clientele. Our aim is to please our customers.

[William Bible, continued.] You enumerated rather elaborately the progressive steps the Legislature has taken in order to address smoking issues. You have also had the same sort of things occur within the casino environment. There was a great article that appeared in the *Nevada Magazine* in 2004 which was a survey. There had been a survey some 17 years earlier regarding smoking policies within the various casinos. They observed that 17 years earlier you had extensive smoking in showrooms. There are no smoking showrooms that I know of at this particular point. You have rooms that are provided for guests that choose not to smoke and you have rooms for guests that choose to smoke. You also have gaming areas where smoking is not permitted. In some establishments, management has chosen to cater to that kind of business. The customer really drives that particular decision. You have bars that are nonsmoking. You have a whole variety of facilities within a gaming establishment where nonsmoking decisions have been made and where facilities were provided on a nonsmoking basis to accommodate the needs of the guests. The casino business, like any other business, is driven by the needs of the customer.

We want to have the continued flexibility to address those needs. We can compete in a marketplace that is both national and international in characteristic. You are familiar with the tribal gaming developments in California. They are not subject to control in terms of restricting tobacco usage. Internationally, I will use Macao as an example. They are developing world-class facilities by Nevada licensees. No such restrictions exist there. This is a competition situation. We have to be very careful in order to accommodate the needs, wants, and desires of our customers should they choose to smoke.

I don't know how you have addressed the question on the hotel room issue but our staff feels very strongly and our legal analysis does apply to hotel rooms. I believe there has been some confusion of the proponents of I.P. 1 because they have been quoted fairly extensively in the press indicating it was not their intent to ban that kind of an accommodation within a hotel room. The language of this particular issue does not reflect that.

A secondary concern is those areas within a casino where you have restaurants and bars. What is the application? The application here is that smoking is not prohibited in areas of casinos where minors are not allowed to loiter pursuant to NRS 463.350. That is in Section 2, subsection 1, lines 20 and 21.

NRS 463.350 is a gaming statute and addresses loitering in areas where gaming machines are present. You also have bars within gaming areas where the smoke can infiltrate into non-gaming areas and seemingly this petition would require you to wall up that bar in order to prevent the infiltration of tobacco smoke. That area is not clear. It is vague and susceptible to legal challenge.

[William Bible, continued.] Lastly is the local control issue. I feel very strongly, as I testified earlier, that control should remain with the State Legislature. We should have uniformity within the state of Nevada in terms of how we approach tobacco and tobacco-related issues.

Chairman Anderson:

The matrix was created by the Research staff for us. It provides the distinction that there is an affirmative statement that is not prohibited in private residence including hotel rooms. Initiative Petition 1 is silent on the question and does not make the affirmation that it is not. I think it is an open question.

William Bible:

I agree it is an open question.

Rod Atamian, Chief Financial Officer, Golden Gaming:

[Referred to [Exhibit D.](#)] Golden Gaming is the largest operator of bars and taverns in the state of Nevada. We currently operate 37 taverns statewide under the PT's Pub, PT's Place, and PT's Gold brands in the south, and Sparky's Sierra Gold, and the Little Waldorf in the north. We currently have more than 600 team members statewide in our tavern subsidiary alone.

Golden Gaming supports responsible smoking regulation. In addition, we believe that it is important for establishments that provide alcoholic beverages for on-premises consumption to also provide food. In this regard, we are in agreement with several municipalities statewide. We have increasingly stressed the importance of food as a component in granting special use permits for taverns, and we have gone so far as to consider and pass local ordinances that would require a certain percentage of a bar's floor space to be dedicated to food service. The purpose of such legislation is to encourage bar and tavern operators to serve food along with alcoholic beverages to improve the appeal of these neighborhood establishments. We agree with this approach and have consistently expanded our food offerings over the past several years as a convenience to our customers. For this reason, smoking legislation that would eliminate a bar owner's ability to serve food if smoking is allowed is ill-advised.

Initiative Petition 1 would destroy our ability to serve food to our customers because it would prohibit smoking in our locations. While the title of I.P. 1

suggests that bars are exempt, PT's Pubs' location, for example, would not be considered bars because virtually all of our locations hold food handling licenses. Consequently, if I.P. 1 passes, we will be forced to stop serving food because we cannot afford to prohibit smoking in our locations. The neighborhood tavern serves as a convenient, first preference for many local residents to eat, drink and game; but if smoking were to be prohibited at our locations, much of this business would be displaced to other entertainment options where smoking is allowed. Elimination of our food service would require us to lay off half of our employee base. Thus, the passage of I.P. 1 would have a devastating impact on our business.

[Rod Atamian, continued.] Finally, we do not believe I.P. 1 is a responsible approach to smoking regulation. It would, in effect, take either food service or gaming operations out of bars and taverns. Since we are prepared to cease food service in order to preserve our smoking privileges, Golden Gaming stands to be negatively impacted by I.P. 1 and, therefore, we are strongly opposed.

Chairman Anderson:

Now we will listen to people wishing to speak against Initiative Petition 2.

Ron Drake, Board Member, Nevada Tavern Owners Association:

I am also a partner in the Point After Lounge in Las Vegas, Nevada. The Nevada Tavern Owners Association (NTOA) represents many taverns in the state of Nevada. Some of those are with us here today and some are in Las Vegas with our president, Geno [Gene] Hill. At the end of 2004, the NTOA had 182 members. That number represents primarily tavern owners where the owners had one or two locations. We are the little guys. We are the ones that will be directly impacted by I.P. 1. The crux of our problem with I.P. 1 is the definition of stand-alone bars and its subsequent definition of food service as Mr. Higgins pointed out.

Of our 182 members, 153, or 84 percent, responded to the question that they had kitchens and full-food service. The remaining 29 or 16 percent stated that they did not have a kitchen but when further queried, more than half stated they did have food service. They sold hot dogs, microwave pizzas, and used greaseless fryers. They too would be impacted by I.P. 1. The passage of I.P. 1 would necessitate a major business decision to be made by many tavern owners—do I allow smoking or do I serve food? It's a lose/lose situation.

All of our people attend techniques of alcohol management classes. In those classes they are taught that drinking on a full stomach tends to slow down absorption since it takes longer for the alcohol to reach the intestine. A full stomach would retard the absorption of alcohol. The type of food in the

stomach is also important. If the alcohol is soaked up with food, especially fatty food and we can provide that in the taverns, it will not be absorbed as quickly. Not allowing food in a bar where smoking is permitted, in my opinion, is not a responsible act. The economic impact would be severe.

Chairman Anderson:

I wanted to make sure we had somebody who represents the industry speak so that those of you who had questions about the impact would be able to ask questions of that individual.

Steve Johnson, President, Berry-Hinckley Industries and Winner's Corner Convenience Stores:

[Referred to [Exhibit E.](#)] We are the largest operator of convenience stores in northern Nevada. We have 36 stores located in Reno, Sparks, Winnemucca, Fallon, Lovelock, Gardnerville, Carson City, Battle Mountain, and Fernley. We also distribute petroleum products to 36 independently-owned dealers in northern Nevada which are family-owned businesses. Berry-Hinckley Industries and Winner's Corner Convenience Stores agree that steps need to be taken to protect our customers from second-hand smoke but at the same time, we need to shield our tourism and entertainment industries from the harmful impact of an overly-broad smoking prohibition. To that end, Winner's Corner Convenience Stores has already spent thousands of dollars installing ventilation systems and smoke-removing devices in many of our convenience stores. While our company and the Nevada Petroleum Marketers Association support responsible smoking legislation, we are definitely opposed to I.P. 1 because it would be ruinous to the convenience store industry.

Operation of gaming devices is critically important to the operation, profitability, and viability of our convenience stores and all convenience stores in the state of Nevada. For example, slot machine space rent income we received from slot route operators to place slot machines in our convenience stores represented 79 percent of our company's convenience store net income in 2004. In 2004, 16 of our 36 Winner's Corner Convenience Stores, 16 stores would have generated significant operating losses without the slot machine space rent revenue we received from slot route operators.

Enactment of I.P. 1 would eliminate or significantly decrease these slot machine space rent revenues because our gaming customers would cease patronizing our locations. One study indicated that 35 percent of convenience store customers would reduce or cease playing at our stores if smoking was not permitted. Not only would our space rent revenue be decreased or eliminated, but the revenues from convenience store sales and gas sales would decrease from the 35 percent of our gaming customers who ceased to visit our facilities. The resulting

reduction in space rent revenue and other convenience store sales would make the convenience store model an unfeasible business in the state of Nevada. For example, with regard to our 16 Winners Corners locations, they would have lost money in 2004 without any or decreased slot machine space rent revenue. If we closed those stores, at least 150 jobs would be eliminated in northern Nevada.

[Steve Johnson, continued.] In short, passage of I.P. 1 would put an end to the convenience store industry as it exists in Nevada, thus forcing business closures, loss of sales and gaming tax revenues, and loss of thousands of jobs. For this reason, Berry-Hinckley Industries and Winner's Corner Convenience Stores oppose I.P. 1.

Chairman Anderson:

This is clearly an opportunity to talk to somebody who has to deal with Winners Corner Convenience Stores, 7-Eleven, and other groups regarding what the potential impact would be. We note that many of those locations are fairly close to schools and other places where children do business in them. That has been an ongoing part of the question. Do the store owners or petroleum industry install your ventilation systems?

Steve Johnson:

In our particular situation, we own and operate our 36 stores. We installed and paid for the ventilation devices in our stores.

Chairman Anderson:

Have you conducted any kind of scientific study as to the effectiveness of these ventilation systems?

Steve Johnson:

No, we haven't, but they obviously help.

Chairman Anderson:

They obviously help compared to none, but your store is open to people under 21 years of age. Is what you are telling us is that you will have to remove the gaming devices and you think this is what keeps your stores open?

Steve Johnson:

Absolutely. First of all, people under 21 years of age are not allowed near the gaming devices. Those are where the ventilation systems and smoke removal devices are to collect that particular matter. With regards to the removal of the slot machines, it wouldn't be required unless the slot route operators suffered a

35 percent decline in the revenues they receive from the slot machines. They then are either going to reduce their space rent or will move their machines.

Rich Davies, Franchisee, 7-Eleven Stores:

[Referred to [Exhibit F.](#)] I am accompanied by Marilee Wright who is the current president of the Franchise Owners Association of Southern Nevada and Rich Rose who is president of the Northern Nevada Association. Together they represent over 200 7-Eleven Stores in Nevada. These stores employ over 2,000 employees.

Initiative Petition 1 will create a significant impact on convenience stores that hold restricted gaming licenses or lease space from gaming licensees. Prohibition of smoking in convenience stores will substantially reduce gaming in convenience stores as you have already heard. Market research has shown that nearly 35 percent of all gaming customers would either reduce or stop gaming at convenience stores if smoking is prohibited. Thus, convenience stores stand to lose significant gaming revenue if I.P. 1 is passed. Moreover, convenience stores that lease gaming devices from gaming licensees would be unable to offset gaming losses with a concurrent reduction of rent because rent obligations are fixed in our stores.

In addition, revenue on non-gaming operations would be reduced as a consequence of the decrease in gaming customers. The state would thereby see not only a reduction in gaming tax revenues from these locations, but also a reduction in sales tax revenue from 7-Elevens and other convenience stores throughout the state. For these reasons, the 7-Eleven convenience stores operators oppose the passage of I.P. 1.

Assemblyman Mabey:

Personally, I don't like smoking in convenience stores and that's just the way I feel about it. We just heard testimony about a month ago that at one time here in Nevada you could have a slot machine in a hardware store or in any store really. We have changed the law. I don't have anything against a 7-Eleven but I can go to a 7-Eleven in Salt Lake City or Denver, and it's running and they do well. You said you would lose gaming revenue. I think that would be good if people didn't go to 7-Eleven and gamble. I know that would help Mr. Bible but that's the way it goes. I just have a problem with gambling in stores and smoking in convenience stores. How do your stores do in other parts of the country compared to Nevada?

Rich Davies:

I'm a 7-Eleven franchisee in southern Nevada. I'm not really sure. You would have to talk to a 7-Eleven corporate employee for that. I believe 7-Elevens in southern Nevada usually have higher merchandise sales than average.

Assemblyman Horne:

What is the percentage of your gaming revenue as opposed to your retail sales? The people that game in 7-Eleven usually don't leave the house saying I'm going to play the machines at 7-Eleven. It just happens while they're there.

Rich Davies:

I have four stores and I can only speak for them. Merchandise sales and gasoline sales are at least 60 or 70 percent as opposed to gaming.

Chairman Anderson:

There are still some people that wished to speak but we are running out of time. Mr. Woodson from the United Coin Machine Company, do you have a written statement you wish to submit to be part of the record?

Rob Woodson, Vice President, Regulatory Compliance for United Coin Machine Company:

Yes, I do have a written statement and would like to submit to be part of the record ([Exhibit G](#)).

Chairman Anderson:

Mr. McMullen, I note that you had wished to speak from the Nevada Retailers in opposition. Do you have a written statement, sir?

Samuel P. McMullen, Nevada Retailers Association:

I do not.

Chairman Anderson:

I'm sorry we are out of time. If you could prepare a written statement on behalf of your constituents, we will try to make it part of the record.

Samuel P. McMullen:

Okay. I guess I should have probably testified in favor of I.P. 2 so we would be able to put our remarks with respect to both petitions together. We are in opposition to I.P. 1.

Chairman Anderson:

Mr. Hill, I see you have a statement that was faxed from Las Vegas. If you want it submitted into the record, I will make sure it is entered into the record

([Exhibit H](#)). You don't feel your information has been presented fairly here this morning?

Gene Hill, President, Nevada Tavern Owners Association:

Yes, I do.

Chairman Anderson:

So then we have on record from the President of Nevada Tavern Owners Association and specifically Mr. Hill as what problems he has with the I.P. 1. Questions for Mr. Hill who those of you who have read this statement?

Assemblyman Manendo:

I am very concerned about alcohol consumption in the taverns concerning DUIs. As far as the option of smoking or food, you would disallow the food to keep the smoking?

Gene Hill:

We would have to go to packaged food as stated in I.P. 1. If you took away the smoking, there is no way that we could serve food to our patrons. If you take away smoking, that would take away a lot of the patronage. Therefore, it would make it economically impossible to keep our restaurants open.

Assemblyman Manendo:

I just want to make sure that is what you're saying you would do.

Gene Hill:

Yes.

Assemblyman Manendo:

I would have a big concern with that.

Assemblyman Ocegüera:

I have some questions about I.P. 1 that weren't really answered. I think they were addressed in part by Mr. Higgins when he brought up the enforcement issue in Section 7. I was just wondering if it was your intention to have any of the law enforcement folks testify.

Chairman Anderson:

It is my intention to bring up law enforcement if we can manage to get to the opposition. I know we have various members here who serve on various boards such as yourself who need to make a disclaimer. I want to take other questions from the Committee first. We will now turn our attention to those in opposition to I.P. 2.

C. Brooke Wong, Director of Program Services, American Lung Association:

[Referred to [Exhibit I.](#)] We are opposed to I.P. 2 for the reasons mentioned in testimony heard earlier this morning. Upon review of I.P. 2, we have come to the conclusion that the intent of this petition is not to protect the public health of Nevada. As mentioned earlier by Mr. Higgins, I.P. 2 codifies current law but does very little to restrict smoking in Nevada. I would also like to point out that the 16 states and 13 countries that have gone smoke-free have not suffered adverse economic impact. We can provide this information to the Committee if you would like. We have included a comparison of both petitions for your review.

Assemblyman Carpenter:

My question is regarding states or countries that have banned smoking. Has there been a decrease in the number of people that smoke or a decrease in deaths? I think people are still going to smoke so has it really done anything in those areas?

Brooke Wong:

There actually is evidence from other locations. I just read a report from Ireland who had a 16 percent decrease in cigarette consumption since they have gone smoke free. I can provide more materials to you on the states. California's consumption actually dipped down into the single digits.

Assemblyman Horne:

Isn't Nevada unique from these other jurisdictions and countries you mentioned? We are arguably the number one tourist destination in the world. Unlike any of the places you stated, it seems it may have a sort of different impact on our state than it would somewhere else because we get all different types of people from all over the world coming here.

Brooke Wong:

Actually the focus of our petition was to protect kids from second-hand smoke in places that kids are present. We have no interest in the impact to casinos and that is why we have the exemption there for gaming floors. It is not unreasonable to expect to have clean air for our kids to breathe in grocery stores, convenience stores, and restaurants.

Assemblyman Horne:

It is difficult without going into what we were discussing in I.P. 2. Ms. Wong's response deals with I.P. 1. You stated you were trying not to impact gaming, only children. I agree with part of that and I see all the exemptions where children would go. We have questions whether or not hotel rooms would be included, et cetera. So I think it has that impact as well. Do you agree in part

that in protecting the children, you may be affecting other aspects of gaming in Nevada?

Brooke Wong:

Our definition of private residences was actually very broad to include private residences that are used for commercial purposes but also to include hotel rooms. The only difference between the two petitions is that in I.P. 2 they specifically said private residences including hotels. We did not include hotels but it is obvious that even in I.P. 2, hotels were considered a private residence so we also consider them private residences.

Chairman Anderson:

We will make the Clean Indoor Air Act versus Responsible Protection as part of this record. Having heard the counterargument on I.P. 1 for 40 minutes and this one for three minutes, it concerns me trying to bring equity and equality here.

Stan Olsen, Lieutenant, Las Vegas Metropolitan Police Department and Nevada Sheriffs' and Chiefs' Association:

We are neutral on the I.P. 1 but we do have concerns for enforcement.

Chairman Anderson:

How would you enforce the provisions of these two statutes?

Stan Olsen:

With extreme difficulty. In southern Nevada in 2003, we responded to 172 murders, 664 rapes, nearly 4,400 armed robberies, nearly 16,000 burglaries, nearly 37,000 traffic accidents, and nearly 18,000 auto thefts. We responded to 415 violent crimes every 24 hours in southern Nevada. This does not count domestic violence, neighborhood disturbances, man-with-gun calls, fight calls, and things of that nature. For us to be able to respond to this, I can tell you the response time would be days. At this point even on burglaries, we are telling people we just don't have the officers to respond at this point and they will be waiting for several hours for a response unless it's in progress. So we have some real concerns regarding the resources available to address this issue.

Chairman Anderson:

Traffic citations were not one of the things you spoke about. So you envision you would be called to the local 7-Eleven because someone is upset about smoking there. The 7-Eleven employees are not going to detain him because he is smoking. Does that create a problem for police?

Stan Olsen:

Yes, it would create a major problem. Law enforcement prioritizes all calls. It is not uncommon to have 25 to 30 calls waiting per area command within Metro's [Las Vegas Metropolitan Police Department] jurisdiction at shift change and they are various types. Yes, it would be a significant problem.

Chairman Anderson:

It boggles the mind when someone gets out of their car at the Winners Corner with a cigarette dangling from their mouth, walks by the pump, walks into the store to pay their money, then walks back to their car. How about I.P. 2? Does that create any kind of law enforcement problems that you perceive?

Stan Olsen:

In reading I.P. 2, there is no response from law enforcement needed so it does not affect us.

Assemblyman Ocegueda:

I know your response time on burglaries is slow. It wouldn't be your intent to have your officers patrol establishments to see if someone was smoking?

Stan Olsen:

No, sir, we would not patrol those establishments for that reason. We do patrol the areas and we patrol those establishments because we are worried about armed robberies. But the smoking issue would be an extremely low priority for us.

Assemblyman Ocegueda:

If you had to patrol these establishments, there would be a cost associated with that, I assume.

Stan Olsen:

There would be a significant cost both in resources and time. The other issue is whether or not we could ever get there based on the demand that is going on now in our jurisdictions.

Assemblyman Ocegueda:

In anticipating one of these bills passing, have you built those costs into your budget or thought about it at all?

Stan Olsen:

No, sir. Currently, the Las Vegas Metropolitan Police Department has 1.6 officers per 1,000 residents and the national average is 2.5. Henderson has one officer per 1,000 residents and North Las Vegas is at 1.4 officers per

1,000 residents. None of this counts the 350,000 tourists that are in our city on any given day. We did not build a budget in. We have enough issues trying to address the crime that is now occurring rather than try to deal with these types of calls.

Assemblyman Ocegueda:

Section 2, subsection 7 of the bill was what I was concerned about. It says "health authorities, police officers of cities or towns," so it is saying the police department would have the responsibility. Obviously, the health authorities aren't going to come with gun and badge and cite somebody for smoking so it would fall upon you.

Stan Olsen:

Yes, it would fall to us and again; it would be prioritized if the law went through and it would be an extreme low priority.

Chairman Anderson:

I look at my *Crime and Justice in Nevada* for 2003 and see 23 areas of law that do require surveillance at 7-Elevens and Winners Corners. They have a height measurement by the door. I don't believe it is there for decoration because of the frequency of robberies that take place. So obviously, police are in and out of those establishments on a regular basis. Would this be a distraction for the officer on the street by adding another to the list of crimes in the state? Do you currently have to report underage smoking violations?

Stan Olsen:

We do not do that. Quite honestly, I can't think of one police officer that has the time to devote towards addressing an underage smoking or someone in a nonsmoking area. We recently had a police officer hold six felony suspects at gunpoint for 15 minutes because there wasn't an officer to back him up. This is the problem we have.

Chairman Anderson:

In NRS 202.249, health authorities and police, particularly with juveniles, are to enforce the provisions of the state regarding smoking. From time to time you conduct sting operations regarding this. How much time do you spend enforcing NRS 202.249?

Stan Olsen:

The activities of the sting operations have been curtailed quite a bit simply because of the lack in manpower. In the past, we have tried to do it out of an area command once or twice a month. I have not heard of any sting operations that have been done in at least a year.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

I would like to speak for the areas outside of Clark County and Washoe County. Those agencies also are very strapped for manpower and also have the problem of responding at great distances in the rural areas. The other issue I would like to comment about is the training issue that might go along with the enforcement of I.P. 1, particularly if each county sets their own standards. That would be an area we would be concerned about.

Chairman Anderson:

Does anybody wish to submit information for the record and had not had the opportunity to do so?

Samuel P. McMullen, Nevada Retailers Association:

I just wanted to make three quick points, if I could, on behalf of the Retail Association. I just want to make sure the record is clear. That is, we clearly support current law. In terms of our opposition to I.P. 1, we have three concerns. One is the preemption standard. The second one is the information that the communities already had about ventilation and the progress we have made on that. Then I'm just going to say we have an additional concern about the effect on revenues in making all the hotel rooms in Nevada nonsmoking but I won't focus on that one.

I want you to understand the preemption from a retail point of view. Of course the retail association is convenience stores, grocery stores, pharmacies, and other general retailers. We would prefer to have one standard and that is why we like it, just so you understand how it works with retailers. There are criminal provisions, as everyone knows, with respect to enforcement of smoking laws. Particularly with relationship to the stings we did in 1995 and after that. Also of concern is the compliance for our employees and for the ownership of the businesses themselves as they are criminally liable.

What we want is one standard and one ability to train. These are very, very serious things when your employees can be criminally charged for inadvertently or even purposely selling cigarettes to minors.

With respect to grocery stores and the issue of ventilation, we are actually pleased with the progress we have made on that. By 2007, we will have to be fully ventilated in terms of the gaming areas of grocery stores. We can argue whether scientists know how to study these things and do the test right. The number of complaints has dropped significantly since we have started ventilating and enclosing these facilities. Those are two points that hadn't been testified before and we just wanted to make sure that everyone knows that those are issues that we think support the current law.

[Samuel P. McMullen, continued.] Consequently, we are against I.P. 1. Initiative Petition 2 or something like that is something we support.

Chairman Anderson:

I continue to hear complaints from individuals regarding the ventilation system as to whether they are really doing the job in the large grocery stores. Of course these are anecdotal stories where people have to take their children through the aisle of slot machines in order to enter the store. That has become a bigger issue because of the draft of the store itself and whether those are adequately being taken care of. Has the retail association and grocery store owners thought about moving them away from the specific entrance into alcoves which was what we thought was going to happen?

Samuel P. McMullen:

Let me say that not all facilities are in compliance yet. Where we have ventilated and alcoved smoking areas, the complaints have dropped significantly. If there are complaints, they may very well be facilities that haven't moved into the standards of the law.

The alcoving requirement means you can't have a straight walkway because that would not be an alcove. Alcove under the statute means that there has to be a separate area. So the stores that have been built are being changed so that issue should be naturally resolved by the restrictions already imposed. If they haven't been done yet, they will be done by 2007.

Can written statements still be submitted and be part of the record?

Chairman Anderson:

If people have written statements they wish to be entered into the record, they have to be submitted by close of business today. [([Exhibit J](#))] was submitted by Mike Zunini.]

The hearing on Initiative Petition 1 and Initiative Petition 2 is closed. I am of the opinion as a member of this Committee that the best course of action would be to allow these to go to the voters and not take a position. The only vote we have is a yes vote if we are to move either of these. That would take it out of the prerogative of public to vote on this issue. Since we cannot amend either of these, I guess we could go to the Speaker and ask for an initiative petition of our own. I think our best course of action is to note problems in the existing law that we feel we can clarify and then take up that issue on Friday when we have another bill scheduled.

Assemblyman Carpenter:

I agree with the chair.

Assemblywoman Ohrenschall:

I think I would agree with the chair in this matter.

Assemblyman Manendo:

I would concur with you, Mr. Chairman.

Assemblyman Mabey:

I agree. I think I.P. 1 goes too far and I.P. 2 doesn't go far enough.

Assemblyman Conklin:

I agree with the chair.

Assemblywoman Allen:

I have no further comment.

Assemblywoman Gerhardt:

I'm in agreement with the chair.

Assemblyman Holcomb:

I think I.P. 1 is unduly restrictive.

Assemblyman Horne:

I am in agreement with you, Mr. Chairman.

Chairman Anderson:

So it is the intention of the chair to allow the clock to continue ticking which means, of course, if we don't move it out of here then the Senate will not get the opportunity to hear it. This will be the end of this issue other than the fact when we deal with the smoking bills that are coming from the nonsmoking coalition. [Meeting was adjourned at 10:33 a.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: JUDICIARY

Date: March 9, 2005 **Time of Meeting:** 8:00 A.M.

[illegible]