

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
April 27, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 9:11 a.m. on Wednesday, April 27, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20
Assemblyman David R. Parks, Assembly District No. 41
Assemblyman Bob Seale, Assembly District No. 21

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine M. Wittenberg, Committee Secretary

OTHERS PRESENT:

Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Department
of Business and Industry
Fred L. Hillerby, MasterCard International, Incorporated

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John P. Sande, III, MBNA; Nevada Bankers Association
Chris MacKenzie, American Express
Mary Lau, Retail Association of Nevada
George A. Ross, Las Vegas Chamber of Commerce
Terry L. Johnson, Deputy Director, Department of Employment, Training and Rehabilitation
Cynthia A. Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Keith M. Lyons, Jr., Nevada Trial Lawyers Association
J. Thomas Susich, Attorney

CHAIR TOWNSEND:

We will open the hearing on Assembly Bill (A.B.) 19.

ASSEMBLY BILL 19 (1st Reprint): Prohibits, under certain circumstances, issuance of gift certificate that contains expiration date and prohibits, under certain circumstances, issuer of gift certificate from charging certain fees to buyer or holder of gift certificate. (BDR 52-558)

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):

Many gift cards have expiration dates and are loaded with fees. The value can diminish quickly if they are not used in a timely manner. That was the genesis of this bill. The industry has become inundated with many different types of cards and fees. According to records we were able to find, the longer you hold the card, the more likely you will not get the full purchasing power. Unfortunately, it is estimated that about 25 percent of individuals who receive gift cards still have them one year later unused. In the long run, it is estimated that consumers never redeem approximately 15 percent of the money on the gift card. This creates a windfall for retailers and bankers. Not all gift cards are alike and the consumer needs to read the fine print. We are hoping to rectify concerns that were expressed to Assemblyman Hardy and me.

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

We have taken into consideration groups and individuals who have experienced problems. That is part of the first reprint of this bill. It was easy to acknowledge the card was purchased with cash and should be cash. That simple concept became more complicated, and we tried to take into consideration those who have had issues with promotions, phone cards, service cards and a variety of other things. There have also been issues with deceptive-trade practices.

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SENATOR TIFFANY:

I am surprised that you became involved in this. This is usually the State Treasurer's issue. They have been fairly involved with gift certificates and unclaimed property. Did you also work with Assemblyman Bob Seale on this bill?

ASSEMBLYMAN PARKS:

Yes. We did discuss it with him and he was very helpful. We found that while the unclaimed cards should be part of the state unclaimed property fund, across the country very few, if any, retailers actually turn in the money to their state unclaimed property fund. Quite often, the reason is many of these gift certificates are sold without a record to trace the owner. American Express, Visa, MasterCard and others with higher fees do track the purchaser. They do have certain benefits such as reloading.

SENATOR TIFFANY:

What happens with a gift certificate that is purchased in another state but is redeemed in our State and we have different requirements than the state in which it was issued?

ASSEMBLYMAN HARDY:

That was a reason for the bill. The concept would be to honor a gift card in Nevada if it is subject to our retail laws.

SENATOR TIFFANY:

What if it came from California but does not meet Nevada requirements?

ASSEMBLYMAN HARDY:

We do not have control over what other states do on their gift cards. What we can do is honor the concept that cash purchased the gift card and that should be valid.

SENATOR TIFFANY:

If someone from Nevada purchases a gift card in Wisconsin and they have different standards, is it null and void in our State?

ASSEMBLYMAN HARDY:

I would propose that it is not null and void in our State.

SENATOR TIFFANY:

I would like our Committee Counsel's opinion on that.

KEVIN POWERS (Committee Counsel):

Senator Tiffany's question concerns exactly how a retailer in this State would have to treat a gift certificate that was issued in another state and presented in this State for redemption. Because the retailer would be present in this State, they would be subject to the provisions of this bill, A.B. 19. Therefore, to the extent that they could comply with the law, with regard to that gift certificate, they would have to. In other words, if there was an expiration date on that gift card in the other state, and they brought it to this State, generally, the retailer would have to honor it. Even ... though there was an expiration date if the expiration date did not comply with Nevada law. ... Essentially, the retailers in this State would have to comply with this law and any out-of-state gift cards that were brought into this State would generally have to be honored under the terms of this law.

SENATOR TIFFANY:

How would we know there will not be successive service fees from one state to the next?

ASSEMBLYMAN PARKS:

The issue was discussed and while it is not clearly defined, the notion would be if the card were redeemed in Nevada, the service fees would apply to language in A.B. 19. In other words, if you had a \$100 card for 20 months, the maximum fee that could be charged would be \$10. One thing we discovered working on this bill was that most retailers want to have good relationships with their customers and their gift cards retain their full face value.

SENATOR TIFFANY:

Did you address the unclaimed-property issue?

ASSEMBLYMAN PARKS:

We did look at the unclaimed property and there really was not an answer for us. We found that there was little activity and money turned in as unclaimed property. Most of those that were turned over to the state unclaimed-property fund were issued by Visa, Discover, MasterCard or American Express. As far as

the individual company goes, no. I think the other side is there is a dispute as to if it is sold by a major retailer; where does the unclaimed money end up?

SENATOR SCHNEIDER:

In the travel industry, they rely on "breakage." They issue travel certificates that are often given away as prizes with expiration dates. They rely on a certain number not being redeemed and it is my understanding that is where they make their money. Did you consider that in this bill?

ASSEMBLYMAN PARKS:

We looked at that as a major issue. We included an exclusion on page 3, subsection 2 of section 1, beginning on line 7. If it is something that is not cash-for-cash or a cash equivalent to face value, we excluded it.

SENATOR LEE:

Was cash redemption for a portion of the value remaining on a gift card addressed?

ASSEMBLYMAN PARKS:

We did discuss cash value. That depends on the retailer's policy. There were a lot of questions relative to this bill and our concern was to not reach too far and direct retailer's policy. We did see language from other states' laws where they do require a cash refund if the person does not want to purchase something. We did not take this bill that far. We looked at Illinois and California law when crafting this bill.

It is buyer beware to not purchase a gift card for someone at an establishment they may not patronize.

SENATOR CARLTON:

There is a lot more to this. There are retailers with return policies where you get a card with the returned value less a restocking fee instead of a credit to your credit card. The value of a gift is lessened in that example and it is becoming an issue in southern Nevada.

SENATOR HARDY:

It seems there is a movement toward the Visa debit card for rebates. Are there issues with those types of debit cards?

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ASSEMBLYMAN HARDY:

We have opened a huge can of worms and this bill does not address all of the issues. If you look at the experience in California, they instituted this some time ago and it continues to evolve. That is why we had a certain comfort level with the Retail Association of Nevada in going to the language of Illinois which seemed to be friendlier. There will be further issues and Assemblyman Parks was wise not to reach too far on this bill.

SENATOR HARDY:

Is there an amendment for the credit card font size? Is there a compelling reason why we may not be able to address that?

ASSEMBLYMAN HARDY:

You will probably receive testimony from others who may address that.

SENATOR HARDY:

From your perspective, is that something that is problematic?

ASSEMBLYMAN HARDY:

I think this bill is simple and there are problems. We are flexible in working with the industry. We have tried to adapt to concerns of those who have come forward in attempting to make this bill as clean as it can be.

SENATOR HARDY:

I am less inclined to deal with an issue in the Senate if it was not dealt with in the Assembly. Was the font-size issue brought forward in the Assembly?

ASSEMBLYMAN HARDY:

MasterCard International, Incorporated brought that issue forward and it is not included in the print of this bill at this time. That may be a proposed amendment brought forward to you.

ASSEMBLYMAN PARKS:

There are a number of references in the bill to the ten-point font. The important thing is that we want someone to know in advance before purchasing a gift card that there could be applicable fees.

SENATOR LEE:

Why does there have to be an expiration date? I have a problem with that.

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ASSEMBLYMAN PARKS:

I agree entirely with you. I think that is a corporate decision relative to their marketing programs and philosophies. I think they lose solid supporters of their establishments when they impose restrictions.

SENATOR LEE:

I believe this is an interesting issue that we need to continue to review, and I would like this to go to subcommittee.

CHAIR TOWNSEND:

We need to explore the whole credit card issue to ensure we understand where you want to go with your bill. Nondisclosure of blackout dates and restrictions have always been troublesome to me. You have identified some of the frustrating things with which the public has had to deal.

PATRICIA MORSE JARMAN (Commissioner, Consumer Affairs Division, Department of Business and Industry):

I am in opposition to this bill in its current form. I have highlighted the issues we have with this bill in its current form in ([Exhibit C](#)). We request to be included in the subcommittee discussions. We have had dialogue with Assemblyman Parks and Assemblyman Hardy. We thought this bill was a great idea until the expiration date and service fees were added.

CHAIR TOWNSEND:

How did you address the issue of diminishing value and expiration dates?

ASSEMBLYMAN PARKS:

We discussed it extensively and there was significant opposition expressed in the Assembly Committee on Commerce and Labor from various companies that market those types of cards. We did not want to interfere too much with free enterprise. We simply felt the best middle ground, which is fairly consistent with Illinois and California law, is what is contained in the bill.

CHAIR TOWNSEND:

We will send this bill to subcommittee:

FRED L. HILLERBY (MasterCard International, Incorporated):

I have a proposed amendment for MasterCard International, Incorporated ([Exhibit D](#)).

There are cards under a general category called stored value that serve many purposes. They are very much like a charge card but are not. Someone has deposited money onto the card. Some of the things that the cards can be used for are payroll, travel expenses, and children away at college. These cards have expiration dates and security features. This is an evolving area. The sponsors of this bill have been gracious in recognizing that these types of cards are different than the typical gift card. That is the reason for the proposed amendment.

JOHN P. SANDE, III (MBNA; Nevada Bankers Association):

We support [Exhibit D](#) and think it makes a lot of sense. It is important to recognize that there are costs associated with issuing, processing and maintaining the stored-value cards.

CHRIS MACKENZIE (American Express):

We have proposed amendments in ([Exhibit E](#)). American Express is concerned with the ten-point-font requirement because different states have different standards. We are also in support of [Exhibit D](#).

CHAIR TOWNSEND:

Would you prefer to have the card clearly legible without specifying font size?

MR. MACKENZIE:

The font size is the biggest concern.

SENATOR CARLTON:

What is the current font size on the card?

MR. MACKENZIE:

Because they have several different products, there was debate even within American Express on that question.

SENATOR CARLTON:

In looking at my credit cards, American Express has larger print than MasterCard. Would the font size of the expiration date be the same as American Express currently uses?

MR. MACKENZIE:

The pre-paid credit card is the most utilized card from American Express and is generally in the same form as what is before you.

ASSEMBLYMAN BOB SEALE (Assembly District No. 21):

I am here today in the capacity of being a former State Treasurer. I wanted to point out the important implications of this bill relative to unclaimed property and the impact that can have on the future in our State. These types of cards are growing in use and will probably continue to do so. How these cards are structured, relative to expiration and fees, can and does have a significant impact on the State's unclaimed-property fund. This is an issue that state treasurers have been looking at for a number of years. I do not know what the impact of the proposed amendments might be, but I am in agreement with this bill as it is currently written.

CHAIR TOWNSEND:

Is there a fiscal note or does anyone know what the impact could be to the Office of the State Treasurer? Mr. Young please send an e-mail to the Office of the State Treasurer to see if they have concerns on the bill and the proposed amendments from today.

MARY LAU (Retail Association of Nevada):

This is a large state and national issue rapidly expanding, because these cards are replacing cash. There are concerns related to the Financial Accounting Standards Board (FASB). A gift card shows on a balance sheet as an accounts-payable item that must be declared as a liability. At one point, there was a FASB ruling that allowed a retailer to move that over as an asset. That is a concern to state treasurers at this time, because that creates a different value for the amount of money that is escheated to the state. These things are being addressed on a federal level. The market is changing and expiration dates are being eliminated. I do not have a problem with the amendments proposed today.

CHAIR TOWNSEND:

Are the bill and amendments okay?

Ms. LAU:

Yes.

GEORGE A. ROSS (Las Vegas Chamber of Commerce):

We are thankful and pleased with the direction this bill took. We worked with the sponsors of the bill and are grateful that they listened to the business community and still were able to craft a bill that captured the essence of what they were trying to accomplish. We would strongly disagree with the previous

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statement regarding expiration dates as a deceptive-trade practice. The market is taking care of and addressing many of the issues that were discussed here today. The changes proposed in this bill are things that government can do to help with minor imperfections and abuses.

SENATOR LEE:

You just advocated for expiration dates and stated the market would take care of those things. Could you further explain that?

MR. ROSS:

Most of these companies are large. The reason for the expiration date is to expire liabilities on a balance sheet eventually.

SENATOR LEE:

Are they using the money for their own benefit?

MR. ROSS:

It is a matter of managing exposure.

SENATOR LEE:

I went through an entire Legislative Session without cashing my paycheck from the State of Nevada. Thank heavens they did not tell me, "Since you did not cash your check, you do not get your money for working."

To me, this comes down to treating people with respect and respecting the value of hard work. It is not all about accounting spreadsheets. It is about business responsibility and fairness of value.

CHAIR TOWNSEND:

I will close the hearing on A.B. 19 and open the hearing on A.B. 502.

[ASSEMBLY BILL 502 \(1st Reprint\)](#): Makes various changes to provisions governing unemployment compensation. (BDR 53-323)

TERRY L. JOHNSON (Deputy Director, Department of Employment, Training and Rehabilitation):

We are here today to present to the Committee for your consideration A.B. 502.

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CHAIR TOWNSEND:

What is the amendment ([Exhibit F](#)) that you have provided?

MR. JOHNSON:

This bill was required as a result of legislation of the U.S. Congress. We have been going back and forth with the U. S. Department of Labor (DOL) to ensure that this bill meets the intent of federal legislation. The amendments in [Exhibit F](#) meet those federal legislative requirements.

CHAIR TOWNSEND:

Are you trying to comply with the federal State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004?

MR. JOHNSON:

Yes.

CHAIR TOWNSEND:

We are fairly familiar with this problem and I am pleased that something was done on a federal level.

CYNTHIA A. JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

[Exhibit F](#) includes my written testimony and how this bill seeks to comply with the federal guidelines.

CHAIR TOWNSEND:

On page 3, what is the purpose of 11 days? Is that a federal issue?

MS. JONES:

Yes. When the rule was changed, the manner in which time is counted for periods of less than 11 days cannot count judicial days. That means you cannot count Saturdays, Sundays or holidays. By changing the timelines from 10 days to 11 days, we do not have to exclude holidays or weekends in the counting of the time, thereby meeting our timeliness standards.

SENATOR LEE:

A company with a large tax liability can purchase another company with a tax carryover loss and benefit from that. From what I read here, that basically could happen with unemployment insurance contributions. You could have

one company with a high experience rating purchase another company for the purpose of lowering the experience rating. If that happened, would you blend the experience rating if it is done for that particular purpose, or are you saying you cannot blend them at all?

Ms. JONES:

If a part or total business is transferred from one entity to another, there will be a blending of the experience ratings. However, if you are purchasing a business for the sole purpose of transferring the experience rate, that transfer would be prohibited.

SENATOR LEE:

Why would the Employment Security Division (ESD), Department of Employment, Training and Rehabilitation care? How does that benefit the ESD?

Ms. JONES:

The reason is twofold. It is a federal requirement and it ensures equitable contributions of the cost of running the unemployment insurance program to all businesses. Businesses that engage in that sort of activity shift the liability to businesses that do not. The amount of money collected for the trust fund is established to pay the expected unemployment insurance claims. If a business finds a way to reduce their proportionate share, other businesses will have to pay the difference.

SENATOR HECK:

How would you determine that the purpose of two businesses coming together was to lower the experience rating?

Ms. JONES:

The federal government is beginning an electronic-detection system that will detect movement of workforce as a primary flag to that activity. The electronic-detection system will just flag potential cases. At that point, our internal investigators will look at a variety of factors related to that activity to make a determination.

SENATOR LEE:

I have an issue with that in like trades. A business may just be trying to keep their doors open and their employees employed.

MR. JOHNSON:

In addition to software detection, we will have cooperation with the DOL.

As part of this measure before you, there is a requirement that the administrator would bring back regulations that would seek to answer some of those questions and allow an opportunity for the input of the business community and labor organizations to ensure it is fair and equitable to all that are affected.

MS. JONES:

The mandatory provisions under SUTA do not affect Nevada's law for voluntary transfers of experience rating between non-related business entities in the case of a legitimate business purchase. If one construction company purchases another construction company because they are growing or there is a business reason for doing that, the voluntary transfer of experience rating would still be allowed. It is only when the sole purpose of the acquisition of that business is to obtain that lower unemployment-insurance tax rate that the activity would be monitored and prohibited.

KEITH M. LYONS, JR. (Nevada Trial Lawyers Association):

We support this bill with a strong amendment. We believe on page 2, beginning on line 18, the wording should be rewritten. A person or business entity could very easily mean a lawyer or a law firm giving legal advice to their clients. Admittedly, no lawyer can knowingly tell a client to violate the law. For example, doctors make money with their practice and have to do extensive billing. I have had a few medical practices that have decided to open a separate billing entity that would obviously have a different unemployment insurance rate. They also could purchase an existing billing company which may have a different unemployment insurance rate. A lawyer may set up the two separate corporations and the administrator can come in and say that the lawyer should have known and is in reckless disregard of the law and impose a fine on the lawyer for simply performing the job he was hired to do. To that extent, we believe it needs to be clarified so it does not pertain to the dispensing of legal advice.

We think the ten-day issue should remain as is. When you are talking about someone appealing, give them all the time they need. If there are holidays or weekends, that shortens the time to seek legal advice as to whether there is a basis for appeal.

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CHAIR TOWNSEND:

Do you understand the concern of Mr. Lyons? Is that addressed in federal law?

MR. JOHNSON:

That language is derived from federal provisions. The law must require provisions that provide for meaningful civil and criminal penalties with respect to "persons that knowingly advise another person and violate those provisions." That is directly from the federal language.

CHAIR TOWNSEND:

I am not sure that there is any state bar in this country that would not disbar someone for advising a client to break federal or state law. The federal language provision seems odd and broad to me.

MR. JOHNSON:

The question for this Committee would be whether or not the ESD, in bringing this matter forward, complied with the letter and spirit of the federal act.

CHAIR TOWNSEND:

We are not in disagreement.

J. THOMAS SUSICH (Attorney):

I am the independent legal counsel for the ESD. It does use the word "knowingly." So even in the context of an attorney, I do not think we are discussing someone who inadvertently provides advice without meaning to advise a violation of the statute. This would require some proof that the attorney or accountant specifically knew the law and advised someone on a method to try to avoid paying taxes by utilizing the SUTA dumping process. We believe that is very unlikely to happen.

With regard to the 11-day provision, the problem we have with that is the Nevada Supreme Court made the 10-day requirements applicable to administrative proceedings. By changing the rules of civil procedure, the ten-day provision, by not counting nonjudicial days, extends the appeal times to a point that we would possibly be in violation of federal requirements concerning adjudication of benefit rights. That is why that language is used.

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CHAIR TOWNSEND:

I now close the hearing on A.B. 502. We will go into work session. I want to discuss A.B. 58. Mr. Young, I would like you to update the Committee on this bill.

ASSEMBLY BILL 58 (1st Reprint): Enacts various provisions relating to industrial insurance. (BDR 53-250)

SCOTT YOUNG (Committee Policy Analyst):

It is essentially a reporting requirement for the Division of Industrial Relations (DIR), Department of Business and Industry, and the Department of Administration to provide some statistical data on hearings.

Also, if you are required to travel more than 50 miles in one direction to receive medical treatment while you are eligible for temporary total disability, you are reimbursed for your lost time.

SENATOR CARLTON MOVED TO DO PASS A.B. 58.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

CHAIR TOWNSEND:

I believe Senator Heck had an interest in A.B. 203.

ASSEMBLY BILL 203 (1st Reprint): Makes various changes concerning osteopathic medicine. (BDR 54-1116)

SENATOR HECK:

Senator Carlton and I met with Trey Delap, Deputy Executive Director, State Board of Osteopathic Medicine, and reviewed their concerns. It was agreed that to alleviate those concerns, section 8, subsection 5, would be deleted (Exhibit G). The other area of concern was section 12. It was agreed that while we would increase the cap on fees, the intent over the next biennium is to only increase the licensing fee by \$100 and then Mr. Delap would

reevaluate the status of their reserve account before going to the full \$200 increase on annual renewals.

SENATOR HECK MOVED TO AMEND AND DO PASS A.B. 203.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 502.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR LEE VOTED NO. SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

There being no further business before the Senate Committee on Commerce and Labor, we are adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____