

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

**Seventy-third Session
May 3, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:01 a.m. on Tuesday, May 3, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

COMMITTEE MEMBERS ABSENT:

Senator Warren B. Hardy II, Vice Chair (Excused)
Senator Sandra J. Tiffany (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7
Assemblywoman Susan Gerhardt, Assembly District No. 29
Assemblywoman Chris Giunchigliani, Assembly District No. 9
Assemblyman William C. Horne, Assembly District No. 34
Assemblyman R. Garn Mabey, Jr., Assembly District No. 2
Assemblyman Richard D. Perkins, Assembly District No. 23

STAFF MEMBERS PRESENT:

Kelly Gregory, Committee Policy Analyst
Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Shirley Parks, Committee Secretary

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OTHERS PRESENT:

Keith Lee, Board of Medical Examiners
Lawrence P. Matheis, Nevada State Medical Association
Drennan A. Clark, J.D., Executive Secretary, Special Counsel, Board of Medical Examiners
K. Neena Laxalt, K. Laxalt Consulting
Danny L. Thompson, Nevada State American Federation of Labor, Congress of Industrial Organizations
Earl Elijah, Nevada Small Business Alliance
Tami Vogel
Kendall Earl
Richard Geiser, Geiser Tile and Stone
William Booth
Larry D. Struve, Religious Alliance in Nevada
V. Robert Payant, Nevada Catholic Conference
Brendan Trainor, Libertarian Party of Nevada
Lynn P. Chapman, Nevada Eagle Forum
David K. Schumann, Independent American Party
David Alenik, Pasta Shop and Ristorante
Paymon Raouf, Paymon's Mediterranean Café
Robert Ansara, Ricardo's Mexican Restaurant
Richard Davies, 7-Eleven Franchise Owners Association
Don White, Burger King Franchise Owner
Mary Lau, Retail Association of Nevada
Christina Dugan, Las Vegas Chamber of Commerce
John L. Wagner, Burke Consortium of Carson City
Steven B. Miller, Nevada Policy Research Institute
John Schoenfeld

CHAIR TOWNSEND:

The Senate Committee on Commerce and Labor will open its meeting today with the hearing on A.B. 120.

ASSEMBLY BILL 120 (1st Reprint): Requires physicians to report to their licensing boards certain information concerning performance of office-based surgery. (BDR 54-888)

ASSEMBLYWOMAN SUSAN GERHARDT (Assembly District No. 29):

This morning I will present A.B. 120 to the Committee. This bill addresses the issue of office-based surgeries, an issue that has become a documented problem in many other states. Improvements of surgical and anesthesia technology and the demand to be cost-effective have contributed to an explosion of the number of surgeries performed in an office setting. Patients today, when given a choice, are increasingly opting for office settings over hospital settings for certain medical procedures. The surgeries are many and varied. Many physicians favor office-based surgeries since they can charge a facility fee and a fee for the anesthesiology in addition to a professional-services fee. There is a report that 10 percent of all surgeries and 30 percent of outpatient procedures are now office based. According to the American Society of Aesthetic Plastic Surgeons, more than 46 percent of cosmetic surgeries are performed in office-based surgical facilities. These figures are not surprising given the convenience and potential savings of having certain of these procedures performed in a doctor's office rather than the hospital surgery center.

Another consideration for these surgeries is the risk related to surgeries performed in doctor's offices. Just how safe are office-based surgeries? Reliable data is difficult to obtain since there are no federal requirements for reporting adverse events during office-based surgeries. Only a few states have mandated reporting such cases. My personal research on this topic suggests the problems associated with office-based surgeries tend to result from inadequate facilities and preventable anesthesia-related instances. In many states, doctor's offices are not subjected to the same regulatory and accreditation requirements that apply to hospitals. When an adverse event occurs, the patient is at a much greater risk of death or injury. There are no minimum safety standards and it is a possibility the surgery is being performed with limited and outdated equipment, few or no emergency resources, inadequately trained staff or insufficient safety precautions. Currently, six states have enacted safety legislation specific to office-based surgery. There are 16 additional states that have regulations or guidelines in place, most commonly administered by their medical boards. Nevada is one of the states having no standards in place to regulate office-based surgeries.

This bill is a first step in assessing the extent to which office-based surgery problems may be present in Nevada. The bill proposes to have medical doctors and osteopathic physicians report to their respective licensing boards

information concerning the number of office-based surgeries they performed that required sedation or general anesthesia. In addition, these doctors would be required to report information concerning any unexpected occurrences involving the death or injury to any of their patients. The bill requires the Board of Medical Examiners and the State Board of Osteopathic Medicine to include in their biennial reports to the Governor and Legislature information received from licensees regarding office-based surgeries, sedation or general anesthesia, including any sentinel events arising from these surgeries. The intent of A.B. 120 is to determine if we have a problem in Nevada.

Assemblyman Mabey and I worked on an amendment to the bill ([Exhibit C](#)). He will explain the amendment.

ASSEMBLYMAN R. GARN MABEY, JR. (Assembly District No. 2):
My original concern with the bill had to do with dispensing certain drugs. I am in support of the bill with this amendment.

CHAIR TOWNSEND:
That would be subsection 5, section 1 on page 2 of the amendment mock-up. It starts with, "The provisions of this section do not apply to surgical care requiring only the administration of oral medication" Is this the correct section of the additional language?

ASSEMBLYMAN MABEY:
Yes. Actually, the addition is in two places of the amendment.

SENATOR CARLTON:
Assemblyman Mabey, do you have any problems with this bill?

ASSEMBLYMAN MABEY:
I have mixed emotions with the bill. I have concern for some physicians who are practicing in their offices and may not be able to get privileges to work in a hospital or surgery center. It will mean more paperwork for the doctor. It is a compromise.

KEITH LEE (Board of Medical Examiners):
Assemblywoman Gerhardt has stated our position very well. We have been working with her in the Assembly and we are in complete support of this bill as presented to you together with the amendment by Assemblyman Mabey.

LAWRENCE P. MATHEIS (Nevada State Medical Association):

We have some of the same concerns as Assemblyman Mabey. There will be more reporting to do, but the issue is a fundamentally important one, that is to investigate if there are problems with the growing number of office-based surgeries in Nevada. There are reasons for the growth in office-based surgeries. Technology has permitted this to happen. It can be done safely and much quicker. It is effective, efficient and for the patient there is much less discomfort. The negative side is that it has been pushed by the insurers and the government who simply refuse to pay for these surgeries. Most of the push is from the federal government and Medicare. The federal government changes its rules. There will be 50 new surgery procedures beginning in January, 2006, that will no longer be handled by Medicare. They will be performed in a doctor's office. The federal government is making the push to get people out of the hospitals and medical centers and into the doctor's office. This will take some effort to make sure it will be safe. Some procedures raise people's concerns. We will be happy to work with the two boards on developing regulations and monitoring.

CHAIR TOWNSEND:

Assemblyman Mabey and Senator Heck have some of the same concerns about paperwork. Working with the Board, is there a way we can develop a computer "field screen" to help do the reporting? Mr. Matheis, would you work with the Board on a simple type of format to receive the most important information with the least amount of spent time?

MR. MATHEIS:

It is our intention to work with both boards that have this responsibility so they are working from the same format. We have a shared desire to make this as efficient as possible.

SENATOR LEE:

Several concerns were brought up in Assemblywoman Gerhardt's presentation such as outdated equipment in facilities that are not up to standard. I would say it is not expected for a doctor to build a surgical center in the office the day the business is opened, but do you inspect these offices as to how well they function?

MR. MATHEIS:

Most inspections and regulations are done through the state Health Division. Certain equipment and the laboratories are inspected regularly. These offices are not inspected as facilities, because they are not considered facilities. Part of what we want to accomplish is to observe the office activities and the safety issues as if it were such a facility. We now license the physician, not the facility.

DRENNAN A. CLARK J.D., (Executive Secretary, Special Counsel, Board of Medical Examiners):

Senator Lee, to answer your question, the Board does not inspect offices. We are not mandated to do this by the *Nevada Revised Statutes* (NRS) nor do we have the personnel or the expertise to do this. We license physicians and ensure their capabilities. We do discipline when necessary. The state Health Division would be the regulatory entity to do inspections.

CHAIR TOWNSEND:

This bill will obviously have an amendment on it as requested of the sponsor as well as Assemblyman Mabey. When it is completed, you may want to look at the issue in terms of the Health Division's role. This is a very important component. Although the bill addresses two different types of licensees, it really does not address the facility.

ASSEMBLYWOMAN GERHARDT:

I have had conversations with the state Health Division. They are the entity that monitors hospitals and surgical centers. At one point, I suggested they might be the organization that should have the responsibility of A.B. 120. I was told this was not in their jurisdiction. They do not have the responsibility to go into doctors' offices. This is not their sphere of influence.

CHAIR TOWNSEND:

Who inspects hospitals and surgical centers? Would it be a federal agency?

ASSEMBLYWOMAN GERHARDT:

The state Health Division has this responsibility. They do not inspect doctors' offices. This is part of the problem that I hope to address.

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SENATOR HECK:

The reason they do not inspect a doctor's office is because it is not in the statute of licensing. You have to tread lightly into the area of inspecting doctors' offices. There are thousands of offices within the state. The financial impact could be significant. This bill is a good first step. We will then know if there is a problem.

ASSEMBLYWOMAN GERHARDT:

This is the intent of the bill. At this point, we are not sure we have a problem.

K. NEENA LAXALT (K. Laxalt Consulting):

I lost a family member in an office-based procedure. I want to go on record supporting this bill. Yes, there is a problem.

CHAIR TOWNSEND:

Mr. Matheis, the Committee would like to know if there is a reason why patients cannot get paperwork before they go to the doctor's office. They could fill it out before their appointment. This would save time. We need to make the visit more convenient for the patient. We will close this hearing on A.B. 120.

SENATOR HECK MOVED TO AMEND AND DO PASS A.B. 120.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY AND TIFFANY WERE ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

We will open the hearing on A.B. 555.

ASSEMBLY BILL 555 (1st Reprint): Makes various changes relating to provisions governing medical professionals. (BDR 54-570)

ASSEMBLYMAN MABEY:

This bill was brought forth on behalf of the Board of Medical Examiners. I support it. Basically, A.B. 555 cleans up language for the Medical Examiners Board. The "executive secretary" will now be the "executive director." It deals

with the respiratory therapist and allows physician assistants to declare someone dead. This is an overview of the bill. Others may speak to it. I understand Senator Heck has a friendly amendment to the bill. I support this.

CHAIR TOWNSEND:

We will deal with Senator Heck's proposal. On page 4, section 8, delete line 36 and insert " ... a physician assistant pursuant to chapter 633 of the NRS."

SENATOR HECK:

Basically, this is an insertion of a reference to chapter 633 of the NRS which states an osteopathic physician assistant will be provided with the same authority to pronounce death.

CHAIR TOWNSEND:

Mr. Clark, is this the official bill this year?

MR. CLARK:

Yes. Assemblyman Mabey did not mention this part of the bill. This bill provides a way to issue unrestricted medical licenses to administrative physicians. Section 1 allows administrative physicians who are not employed by a public entity, but are employed by a private entity to obtain an unrestricted license. Section 5 of the bill states that an administrative physician cannot see patients clinically. They are limited to administrative practice only. Currently, we can only give a private-industry-employed physician who seeks an administrative license a restricted license. This means the doctor has to report every time he relicenses. With every state in which he relicenses, he has to communicate that he has a restricted license in Nevada. This is a hardship on the physician. This bill gives them an opportunity to receive an unrestricted license.

SENATOR CARLTON:

I have a concern with page 2, subsection 2, section 4 with regard to the inactive registrant. I understand why you want to know where the licensees are located, but I do not understand why you need to know where they are when they are on inactive status.

MR. CLARK:

The physicians are licensed and maintain an inactive license. They have applied for this inactive status. It is helpful to know where they are located. We may

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want to communicate with them any information on changes in the law and the regulations.

SENATOR CARLTON:

I understand an inactive registrant from a different perspective. I see it as a leave of absence. I do not have to report to anyone. I expect to have no paycheck from the employer. I am not in contact with them and I am not going to be involved.

MR. CLARK:

We are a regulatory agency. It is important to know where the inactive registrants are located.

SENATOR HECK:

As a person who holds three inactive licenses in three other states, it is a necessity. When laws and regulations change in each state and the physician wishes to maintain the privilege of the license, then it is important to be informed in order to maintain the credentials. One way to change the status is to give up the license.

CHAIR TOWNSEND:

I want to understand this. If the bill is approved, is it the Board that has to notify the inactive person that they have to fulfill the unrestricted-license application? Do we wait until the person's license has to be renewed?

MR. CLARK:

We usually notify by newsletters immediately and then when the reregistration period occurs they will be re-advised as to their status.

MR. MATHEIS:

We support the bill and the amendment.

CHAIR TOWNSEND:

The hearing on A.B. 555 is closed.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 555.

SENATOR HECK SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATORS HARDY AND TIFFANY WERE
ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
We will open the hearing on A.B. 87.

ASSEMBLY BILL 87 (1st Reprint): Establishes statutory minimum wage for
employees in this State. (BDR 53-1110)

ASSEMBLYWOMAN CHRIS GIUNCHIGLIANI (Assembly District No. 9):

I am joined today in this presentation by Assemblyman Perkins and Senator Titus. Minimum wage is exactly that, a wage that has not been changed by the federal government since 1997 when they changed it from \$4.75 to \$5.15. Nevada voters believed it was time for our state to join 13 other states to establish a reasonable, modest increase in its wage. Our voters felt so strongly that workers should never be frozen out again by Congress or by the State of Nevada that they passed an initiative petition which considers the consumer price index (CPI) in it. Our working poor are living in poverty. This is unacceptable. Because of Congress' failure to act, our working men and women would be making more if they were on welfare. We want to see incentives to get off welfare. This bill puts into the statute what the voters approved. There were 68 percent of the voters who passed this issue loud and clear. The bill simply is an opportunity to not waste time or money waiting for it to go on the ballot again. It will appear automatically anyway. This would get people the minimum wage a little earlier. This bill recognizes the employers who offer health insurance. I urge your support.

ASSEMBLYMAN RICHARD D. PERKINS (Assembly District No. 23):

I am here to speak in favor of A.B. 87. This bill will be helpful for all Nevadans. It is constructive and does not force anyone to go on government assistance. This bill provides real assistance to many of Nevada's working families. Six in ten Nevada wage earners are women. Twenty-five percent are working mothers. This bill will help Nevada business. A higher wage will attract a wider job pool, cultivate more productive and loyal employees and decrease the long-run cost of running the business for an additional \$1 an hour. This bill will impact real people and real lives.

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

This is an important issue. Nevadans have long been known for their enterprising spirit and hard work. From the Comstock Lode to the fabulous Las Vegas Strip, their accomplishments are legendary. In recent years, some of those who have given the most are slipping further and further behind. I am speaking of minimum-wage earners. These are people who do some of the toughest jobs in our communities. Currently, the minimum-wage earners work 40 hours a week and still earn less than \$11,000 a year. This is 28 percent below the federal poverty level. The buying power of the minimum wage has dropped 44 percent since 1968. The cost of living has risen. The cost of health care, auto insurance, housing and gasoline have all gone up between 135 and 170 percent. This does not include unexpected repairs, school supplies or any form of recreation. Minimum wage is about fairness and value of work and the opportunity to succeed.

CHAIR TOWNSEND:

I appreciate all of your remarks and have a great respect for the way you presented this issue. You have made a great case for minimum wage. My question has to do with pegging this into the federal wage and then locking it in. What is your reasoning behind this?

SENATOR TITUS:

There are three states that have raised the minimum wage and tied future wages to the CPI. This allows the minimum wage to build in the future.

CHAIR TOWNSEND:

Have these other states dealt with the health-care component?

ASSEMBLYWOMAN GIUNCHIGLIANI:

One of the key components to our bill is the health-care issue. This bill could be a trendsetter on health care. I have a handout with a graph of the annual price changes ([Exhibit D](#)).

CHAIR TOWNSEND:

It will be interesting to see how the federal interest rates impact housing and economics in general. There is a huge concern by labor and business with this issue.

ASSEMBLYWOMAN GIUNCHIGLIANI:

This bill transcends labor and business and brings everyone together.

DANNY L. THOMPSON (Nevada State American Federation of Labor, Congress of Industrial Organizations):

I am part of the growth task force for Clark County and I can tell you the price of land has driven home prices to the stars. Home builders are having a difficult time building an affordable product based on the price of land. Because of this, there are 100 high-rise projects that soon will be condominiums. Many people will move to the more rural areas. This is a huge problem and it will be with us for some time. I would like to clarify several issues about this bill. I have prepared a chart that gives the characteristics of Nevada workers affected by the \$1 increase of the minimum wage ([Exhibit E](#)). Minimum wage would currently affect 51,000 workers who make between \$5.15 and \$6.15 an hour. There are another 50,000 workers who are somewhere above \$6.15 an hour who could be impacted by the change. Who are the minimum-wage earners in Nevada? Six out of ten are women and twenty-five percent are single mothers. It is difficult to get some of these women here to testify because they cannot leave the job or they do not want to give up their pay. The exemption for collective-bargaining agreements added to the original petition was to clarify that these types of negotiations would not be impacted by the rise in the minimum wage. Some have argued about the various issues regarding this bill. We need to remember this bill comes from a mandate of the people. Results indicated 68 percent of the voters in Nevada gave a favorable vote for an increase in the minimum wage.

EARL ELIJAH (Nevada Small Business Alliance):

I have a slightly different approach to this bill. In my business, I analyze taxes, bookkeeping and payroll numbers specifically for the small-business owner. I process tax returns as well. Independent, small businesses support raising Nevada's minimum wage ([Exhibit F](#)). It is important to attracting and hiring good, productive and reliable employees. Since the wage floor will be raised uniformly, all of us will still be held to the same standard. These workers do some of most important jobs in Nevada such as child care and care for the elderly. What kind of message are we sending when someone can make more living off government assistance than working a full-time job? We encourage small business to support A.B. 87.

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TAMI VOGEL:

I work in the food and beverage industry. The minimum wage has not had a raise since 1997. The cost of living has gone higher and higher. I cannot rely on tips to supplement my wage. It is difficult to pay the bills on time.

CHAIR TOWNSEND:

Do you work full-time in the industry? Are you going to school?

Ms. VOGEL:

I am working part-time. I am not going to school right now.

CHAIR TOWNSEND:

Are you having a hard time finding work? Can you begin to work at the present job full-time?

Ms. VOGEL:

I am trying to get on full-time. There are others who are working overtime to make up for their low wage.

SENATOR CARLTON:

I have been a waitress for 30 years. It is important, when you can afford it, to go back to school. Training and education will help you find a different job.

Ms. VOGEL:

I would like to go back to school.

KENDALL EARL:

I have four children at home. I am in the food and beverage industry. It is not easy to work and raise a family on my wage. I cannot afford insurance and so I am on Medicaid assistance.

CHAIR TOWNSEND:

Is this a copy of your paycheck ([Exhibit G](#))? Are you working full-time? Do your tips fluctuate with the seasons and activities in the city?

Ms. EARL:

Yes. I cannot rely on tips to pay my bills. For example, when there is road construction, we have fewer customers which means fewer tips.

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CHAIR TOWNSEND:

You have four children. How old are they?

MS. EARL:

My oldest child is five and I have a three-year-old, a two-year-old and a 10-month-old baby. I am enrolled at the University of Nevada, Reno. I take as many classes as I can afford. My last class was in the fall of 2004. I cannot afford the classes right now. I do not qualify for help through the school because I am not a full-time student.

RICHARD GEISER (Geiser Tile and Stone):

I am in support of A.B. 87, the minimum wage increase. I am a small contractor in northern Nevada. I pay \$9 an hour for a starting wage.

CHAIR TOWNSEND:

Do you have a hard time finding people to work for you?

MR. GEISER:

Yes, we do. Our work is hard physical work. It is difficult to keep an employee on the job for less than \$9 an hour. The more we pay, the more reliable our employees become.

WILLIAM BOOTH:

I am in support of the bill to raise the minimum wage. I have a small business in Reno. Our lowest wage is \$10 an hour. This is our beginning wage. Those who have been with us for a while are making \$14-\$15 an hour. We pay well because it is hard work and we want to keep our employees loyal.

SENATOR LEE:

My question is for the tile contractor who is giving someone an apprenticeship. What do you pay as a beginning wage?

MR. GEISER:

I have a one-year employee on the payroll at \$10 an hour. A beginner in the trade is currently making about \$12 an hour.

MR. ELIJAH:

I did an analysis of what \$10 an hour would look like to the wage earner. It is 2,080 hours a year equaling \$20,800. With deductions and taxes, take

20 percent of this off the wage and the balance of \$16,000 is the take-home pay. The cost of living takes this wage down to a deficit of \$1,600 a year. This is a \$10-an-hour wage; we have not considered this breakdown with the minimum wage of \$5.15 an hour.

LARRY D. STRUVE (Religious Alliance in Nevada):

We are a coalition of five judicatories, the Roman Catholic Diocese, the Nevada Presbytery, the United Methodist Church, the Episcopal Diocese and the Lutheran Advocacy Ministry of Nevada. There are 500,000 people participating in the parishes of our alliance. The religious alliance supports minimum wage. They subscribe to the proposition that there is a moral imperative to help everyone achieve a sustainable livelihood. For many reasons brought forward today, we urge you to expeditiously process A.B. 87.

V. ROBERT PAYANT (Nevada Catholic Conference):

I am the executive director of the Nevada Catholic Conference. I am here today to speak in favor of A.B. 87. The material being distributed was prepared by the United States Conference of Catholic Bishops and was generally directed at the federal minimum-wage law, but the facts contained here are equally directed to the proposal before you concerning the Nevada minimum wage ([Exhibit H](#)). We know that \$1 an hour will not go far toward a living wage, but this bill is a step forward and we strongly urge your support.

BRENDAN TRAINOR (Libertarian Party of Nevada):

I am here to speak against A.B. 87. We are opposed to this bill. I have heard the words reasonable increase in the wage. Why would this word reasonable be used? The surveys that I have seen tell me that 85 percent of economists have stated an increase in the minimum wage causes unemployment. There is an excellent study by Richard Vedder and Lowell Gallaway, from Ohio University on the economic impact of Washington State's Minimum Wage Law ([Exhibit I](#)). It states:

The increase in the minimum wage approved by the voters was presumably motivated by a desire to create income for lower income people. The hope was that it would reduce poverty. Yet the law of demand suggests that when the price of something rises, the quantity the people wish to purchase falls. Government mandated higher minimum wages mean the price of labor is being increased, which should induce some reduction in the amount of

workers who will be hired. Thus, the income-generating effect of higher wages might be offset by the income-destroying impact of falling employment opportunities arising from higher wages. The Nobel Prize winning economist Joseph Stiglitz, who was chair of the Council of Economic Advisers under President Clinton, put it well: "a higher minimum wage does not seem to be a particularly useful way to help the poor. Most poor people earn more than the minimum wage when they are working; their problem is not low wages."

My suggestion is if you really want to do something for the poor, it would be more beneficial to do something about the overall economy.

SENATOR CARLTON:

Within the argument that is put forth in this handout ([Exhibit I](#)), was there a consideration of the Boeing Plant closure and the logging-industry slump?

MR. TRAINOR:

I am not sure about the Boeing Plant and the logging industry, but there was a dot-com problem. This study was done before these problems occurred.

LYNN P. CHAPMAN (Nevada Eagle Forum):

We are opposed to A.B. 87. I want to speak about Washington State. They were told that so many wonderful things were going to happen when the minimum wage was passed. Instead, it created and expanded poverty. The business community had warned that this was a possibility. Steven Miller, Policy Director, Nevada Policy Research Institute, speaks about this and quotes the previous handout, "The Economic Impact of Washington's Minimum Wage Law" by Richard Vedder and Lowell Gallaway from Ohio University. This study is a valuable tool in understanding how a higher minimum wage affects poverty rates.

DAVID K. SCHUMANN (Independent American Party):

I am opposed to A.B. 87. I have attached to my testimony a paper by Steven Miller of the Nevada Policy Research Institute in which he examines the destructive effects of a minimum-wage bill which was passed by the legislature of Washington State ([Exhibit J](#)). When there is a raise of the minimum wage, this raises the lower pay levels and wage negotiations will start at a higher pay level. This is passed on to the consumer in everything they purchase and the

net effect is to make finding employment harder for low-skilled people and raises their cost of living.

SENATOR CARLTON:

The statement was made about contract negotiations and unions. Contract negotiations are never about the wages. Health-care benefits are the most important aspect of negotiations.

MR. SCHUMANN:

Unions are the main proponents of using the bottom of the pay scale "minimum wage" as a starting number for negotiations. When the minimum wage goes up, it raises the negotiation numbers. Raising the minimum wage is a bad idea. There is no economist worth any notice who would support the notion that the government should be able to tell business what their minimum wage will be.

SENATOR CARLTON:

Wage-related issues develop and change over a 20-year period.

DAVID ALENIK (Pasta Shop and Ristorante):

I have a small, independently-owned neighborhood restaurant in Las Vegas. As a small-business owner, I have some concerns with this bill. In 16 years with this business, I have never hired an entry-level employee for the minimum wage. The labor market is so tight. We begin an entry-level dishwasher at \$8. This is good pay for an unskilled employee. We begin to teach other skills, if the employee is willing. The employee begins to climb the economic ladder. Our waiters and waitresses make \$20 to \$25 an hour. Most of our employees are college students. If the minimum wage is approved, we will have to raise these wages accordingly. The payment for labor is 35 percent of my costs. It will be difficult to give pay raises based on merit. As a small operator, I will find my profit margin shrinking more and more.

SENATOR CARLTON:

Do you offer health care?

MR. ALENIK:

I have considered it, but the price is prohibitive.

PAYMON RAOUF (Paymon's Mediterranean Café):

I have been a restaurant owner for about 17 years. I specialize in Mediterranean cuisine. It is a small business. We now have a second neighborhood restaurant. None of our employees started at entry levels with the minimum wage. We start our dishwasher at \$9 an hour. The food servers, with tips, make \$20-\$25 an hour. Our employees know how the higher minimum wage will affect their cost of living. The price of sandwiches or other specialty items will have to go up to cover these new wage costs. The way this bill is written, our matching of the federal minimum-wage raises will move the CPI up and up. I have concerns for my business's survival.

ROBERT ANSARA (Ricardo's Mexican Restaurant):

I am a co-owner of Ricardo's Mexican Restaurant in Las Vegas. I have been in the business for 25 years and have a great team of people working with me. The primary reason I am opposed to the bill is the CPI, indexing the minimum wage to the cost of living and making certain that is always \$1 above the federal minimum wage. In inflationary times, the restaurant business has difficulty putting money to the bottom line. This makes the minimum wage even more onerous to our business. Like my colleagues, our 78 employees make more an hour than the required minimum wage. Our menu prices will have to go higher. We serve working people and they cannot afford higher prices. We do provide health care for our employees.

SENATOR CARLTON:

This issue passed overwhelmingly by the vote of the people. Our constituents expect us to carry out their vote. It is important that we remember this.

MR. RAOUF:

The public is not educated about the CPI. Indexing will have more of an effect on prices. The voter may not have considered this.

MR. ANSARA:

I want to make one more point. Tips are classified as income. The State and the Internal Revenue Service established this in 1980s. We pay benefits and income tax on tips. I have a similar question about Nevada voters. Like Mr. Raouf, I wonder just how broadly the voter studied the line-item points on which they were voting. Having done this, did they understand what it would do to our economy? This is the unintended consequence of the point-by-point line items.

MR. ALENIK:

To add another thought, in my business, by the end of the decade, the cost of living indexing will push prices higher. This is a large concern for me.

CHAIR TOWNSEND:

You have raised the ballot issues. These are debatable issues. Whether you agree or not, the point has been well made as to the public's understanding of the indexing component in the ballot. The flip side of this is question 8. The public turned around and did not support a component that kept a 5-percent credit for them, and as a result they put 5 percent more back on their trade-in for an automobile. They did not have the time or interest to educate themselves and we have to go back and help fix this problem. This State has to be very concerned that we are going to end up with a phone-book-sized ballot like California. If we are going to run this State by ballot initiative, then all of the Legislature can become private citizens. Democracy is not easy.

RICHARD DAVIES (7-Eleven Franchise Owners Association)

I am a franchise owner of four 7-Eleven stores in Las Vegas. I have a prepared testimony ([Exhibit K](#)). I have been in the business for 30 years, of which 17 of those years I have been a franchisee. I represent 200 franchise stores in Nevada. I am here in opposition of A.B. 87. In the 17 years of managing 7-Eleven stores, I have never paid nor do I know any other franchisee that pays the minimum wage. I start all my employees at \$1 an hour or more above minimum wage. This hiring wage attracts better employees, they will do a better job with the public and it is better for my business. This bill has far-reaching implications across the state. Previous speakers have touched on the key issues with the bill. I will speak to the related tax increases affecting my business. This bill will mean a 19-percent increase and will raise all pay levels. The payments I am speaking of are Federal Insurance Contribution Act, Medicare, workers' compensation and unemployment taxes. These are taxes that are calculated directly by the percentage of payroll. My payroll accounts for 69 percent of my costs. We also have to split our gross profits with a parent company. We are responsible for all the payroll expenses and costs of goods; as my costs rise so will the cost to the consumer. The ultimate irony is that we are going to hurt the very people we want to help if this bill is passed. As can be seen, this bill will not help the consumer. Nevada has always been friendly to business, especially small business. Our employees are our number-one asset.

DON WHITE (Burger King Franchise Owner):

I am a Burger King franchisee in northern Nevada. I operate ten Burger King Restaurants in Nevada and six in Oregon. I have a different perspective when it comes to a mandated minimum wage. We are a labor-intensive industry. This kind of legislation has a severe impact on the way we do business. We are in opposition to A.B. 87 for a number of reasons. Many of my points have been made today. I do not want to be redundant. It is our belief that wages should be governed by the market. There is a perception that the fast-food industry pays everyone minimum wage. This is a misconception. I have fewer than 20 percent of employees at minimum wage. I do pay trainees and the entry-level people minimum wage. The average pay in the Nevada area is \$6.20 an hour. We are not paying minimum wages as a general practice. It is difficult to keep people at minimum wage for long when the job market is so tight. Opportunity abounds and they will move on to a better-paying job. Our concern with A.B. 87 really ties in with the ripple effect as has been identified earlier. We will be governed by federal activity on the minimum wage. We will no longer be able to set our own State's wage levels. This is a big step in the wrong direction. I do not believe the people had any idea what or how they were voting on this issue.

MARY LAU (Retail Association of Nevada):

I want to point out that the voters get another chance to vote on this issue. Perhaps, there will be some clearly defined language during the election cycle to help people understand what their vote will mean to the economy. The CPI will make everyone equal to Clark County. There will be no differences because of demographics within the State. The other problem with the CPI adjustment is the Governor publishes, or someone publishes for him, the adjusted rates by April of each year, and by July of each year it takes effect. This means the wages will be adjusted accordingly every year. An unintended consequence of this bill befalls the worker who is excluded from the bill such as a baby sitter, housekeeper or gardener.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):

We are here today in opposition to A.B. 87. The Las Vegas Chamber of Commerce believes all of Nevada should seek and strive toward higher income jobs. On-the-job training and educational opportunities are good venues to see this move forward. The issue I would speak to within the bill is the health-care provision. The Chamber of Commerce offers a group health-insurance plan for its members and we have spent a significant amount of time during the interim period working with a task force to find ways to leverage federal dollars in order

to provide health insurance to low-income workers. This is moving forward in the Assembly. The result of this work is reflected in the \$100 monthly subsidy for these workers to purchase health insurance. The concern we have with this bill is a provision to add incentives for employers to provide health care are not all we had hoped they would be. Relating to the 10 percent of gross taxable wages, this is a very small dollar amount for the employer to ask an employee to help pay the health-care coverage. The raise in the minimum wage will force employers to put money into wages that might have otherwise been used for health insurance. The trend now, with wage negotiations, is to forego the higher wage and seek better health-insurance coverage.

JOHN WAGNER (Burke Consortium of Carson City):

We oppose this legislation. We all want to see employees get good wages. If this bill was going to be a panacea, then we could all move forward; but on the downside, there is a shock wave coming because with the higher wages, higher prices will follow. There will be another opportunity next year for people of Nevada to vote on this issue. This bill can wait until we see what the voter will decide when they have been educated to the facts.

STEVEN B. MILLER (Nevada Policy Research Institute):

It is true the voters looked at the issue and thought they could help the poor. This law, if passed, however, could cause economic damage to Nevada. This is a discriminatory bill that if made a law will eventually create even more problems for the poor ([Exhibit L](#)).

CHAIR TOWNSEND:

The hearing on A.B. 87 is closed. No matter what your views, this is the way to process legislation. The Committee appreciates everyone who participated and the caliber of their professionalism. This has been a good give-and-take of information on this issue. We will open the hearing on A.B. 208.

ASSEMBLY BILL 208 (2nd Reprint): Revises provisions governing physicians and osteopathic physicians. (BDR 54-1108)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):

I am here to present A.B. 208. I believe this is an important piece of legislation necessary to help protect Nevada patients. As many of you are aware, last year a doctor was arrested for child pornography and child molestation. This doctor did not have a criminal record. This legislation would not have uncovered him

before he began practicing in Nevada. This case brought to my attention the gap that exists in our State that would allow doctors with criminal histories to practice in Nevada undetected, placing patients and families at risk. Imagine that a child is taken in for a physical examination. This is a normal, routine examination that has happened for many years. The child goes into the doctor's examination room alone. Unknown to the parent, the doctor is a pedophile with a criminal record in another jurisdiction. What about a woman or daughter who has a need to see a gynecologist and makes an appointment with a doctor who, unknown to anyone, is a sexual predator with a criminal record in another state and has come to Nevada because licensing restrictions that other states have in place prevented him from practicing. Imagine the doctor who has had a driving-under-the-influence (DUI) conviction who has had a high amount of arrests due to alcohol addiction.

These pictures are the scenarios of potential problems we could have in Nevada, because we do not have background checks as part of the licensing process for doctors. The application asks the applicant to divulge any criminal history; this is currently voluntary. It provides no responsibility on the part of the licensing board to follow up on these disclosures or lack thereof. Assembly Bill 208 requires the Board of Medical Examiners and the State Board of Osteopathic Medicine to verify that physicians wanting to practice medicine in Nevada do not have criminal backgrounds that would pose a threat to their patients in this State. The bill also requires that the currently licensed physicians undergo a background check once upon renewal of their license. This verification would be accomplished by the applicant submitting their fingerprints to the Board with their application and require the Board to submit the fingerprints to the Central Repository for Nevada Records of Criminal History, for submission to the Federal Bureau of Investigation (FBI). There are other states that have similar laws. It is important to note the bill was amended in the Assembly to give the licensing board discretion when dealing with the results of a negative background check. The intent of the bill is to require the licensing board to do their due diligence. This is an important bill for the protection of Nevada's citizens.

SENATOR HECK:

I will disclose that I am a physician. This bill will affect me just as any other physician in the State. I have had conversations with Assemblyman Horne on this issue. There are certain provisions in the bill that trouble me. A background check on those respected physicians who have practiced in Nevada and have been building a practice for 10 to 20 years troubles me. It is highly unlikely that

these doctors have a criminal history. I agree with the concept. This is basically for the new licensee. It may not need to be retroactive. It may not be necessary to take the fingerprints of established physicians. Yes, instituting background checks is a possibility as we move forward. The federal government investigates physicians every five years. The Central Repository cannot handle all the background checks they receive. If there is a way to off-load some of the investigation and still not lose the intent, then we could seek other ways to do these checks. Checking military records, government service, university and college records and concealed weapons' permits may all be ways to do a background check without going through the Central Repository. All physicians' licenses are due for renewal on December 31. This could create a hardship with the timing of application background checks on established physicians. They would accumulate and need to be reviewed in a timely manner.

SENATOR LEE:

I agree with the concept of background checks. I do have a question about the bill on page 3, subsection 11, section 2, concerning the many abuses related to convictions. Are domestic issues involved in these abuses? How would a board decide on the applicant's eligibility given these issues in a background check?

ASSEMBLYMAN HORNE:

Many of these convictions do not deal with the practice of medicine. These issues are placed in the category of character fitness. The Board should have the discretion to review the history and character of an applicant and determine how their lives may have developed and changed since the conviction.

SENATOR LEE:

How would it be determined, if a physician were to have a current altercation, that they could no longer practice medicine?

ASSEMBLYMAN HORNE:

The Board would review the circumstances and determine if there is a need for discipline, denial, suspension or no action on their license. The Board should have the right to do this. I would like to respond to Senator Heck's comment regarding the timeline. Nothing in the bill suspends the doctor's practice while these background checks are proceeding. This bill will take a responsible step in the right direction.

MR. LEE:

For the record, present in the audience today is Drennan A. Clark, Executive Secretary, Legal Counsel, Board of Medical Examiners. Assemblyman Horne has indicated that the State Board of Medical Examiners has two friendly amendments to the bill ([Exhibit M](#)). The first has to do with amending the NRS 179A.100 by adding the Board of Medical Examiners and the State Board of Osteopathic Medicine to the list of agencies that shall receive information from agencies of criminal justice. We submit the fingerprint information and should be entitled to receive these reports.

The second amendment is a proposal changing the NRS 630.301 by inserting the following language, "code of ethics adopted by the Board by regulation based on a" before "national code of ethics" and deleting "adopted by the Board by regulation," at the end of the line. The rationale being, the American Medical Association's code is too long and cumbersome. The board believes it could, through the regulatory process, adopt codes of ethics that would be concise and to the point. We have worked with Assemblyman Horne on A.B. 208. We may have some added fees to employ someone to follow up on this new public policy, but we will do whatever is needed to execute this bill.

SENATOR LEE:

I have a follow-up question. If the review of an established doctor were to uncover a past problem, is their license at risk? What would be the consequences to the doctor based on this information?

ASSEMBLYMAN HORNE:

The intent of the bill is to question the physician according to the felony and the length of time that has passed. There is a risk involved with the physician's license. There is a risk to patients when disclosures are not made.

MR. LEE:

The important language from our standpoint is page 5, subsection 5, line 19 giving the Board discretion to review the circumstances and has there been reasonable rehabilitation. There would be an investigative process in place. It is difficult to prejudge the procedures at this point. There should be no suspension or adverse reaction toward a licensee pending such actions regarding a report.

SENATOR HECK:

When the State of Nevada first started having applicants fingerprinted, was it retroactive for all attorneys currently admitted to the Bar?

ASSEMBLYMAN HORNE:

I really do not know how long the state Bar has been doing background checks on attorneys but along this line, attorneys have to submit a new set of fingerprints and information each time they take the examination and apply for the Bar.

MR. MATHEIS:

We have the same concerns as Senator Heck. Assemblyman Horne has worked with us on some of the amendments to the bill. We do not oppose A.B. 208. Security issues after the tragedy of September 11, 2001 are elevated sometimes even when they do not exist. One of the reactions is to find more and more background information about people who might be in sensitive positions. This is understandable. This will be a logical step for new applicants. It will take some implementation and practical questions about how you deal with thousands of currently existing licensees.

CHAIR TOWNSEND:

Are there any other questions on this bill? Senator Carlton chairs the subcommittee on boards. She and Senators Heck and Tiffany will have a meeting and decide if a subcommittee is needed to find a resolution to these issues.

JOHN SCHOENFELD:

I am a licensed optician in Carson City. I have concerns about the background checks in A.B. 208. It singles out juxtapositions. Background checks will be expected as a part of all professional licensure within the State in the future.

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CHAIR TOWNSEND:

We will close the hearing on A.B. 208. There being no further business, this meeting of the Senate Committee on Commerce and Labor is adjourned at 10:13 a.m.

RESPECTFULLY SUBMITTED:

Shirley Parks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____