

**MINUTES OF THE  
SENATE COMMITTEE ON TAXATION**

**Seventy-third Session  
May 12, 2005**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 2:15 p.m. on Thursday, May 12, 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 Mike McGinness, Chair  
Senator Sandra J. Tiffany, Vice Chair  
Senator Randolph J. Townsend  
Senator Dean A. Rhoads  
Senator Bob Coffin  
Senator Terry Care  
Senator John Lee

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Valerie E. Weber (Assembly District No. 5)

**STAFF MEMBERS PRESENT:**

Chris Janzen, Deputy Fiscal Analyst  
Ardyss Johns, Committee Secretary  
Tanya Morrison, Committee Secretary

**OTHERS PRESENT:**

Al Kramer, Treasurer, Carson City  
Carole Vilardo, Nevada Taxpayers Association  
Christina Dugan, Las Vegas Chamber of Commerce  
Andrew List, Nevada Association of Counties  
Charles (Chuck) W. Fulkerson, Executive Director, Office of Executive Director  
for Veterans' Services, Office of Veterans' Services

Senate Committee on Taxation  
May 12, 2005  
Page 2

Dave Dawley, Assessor's Office, Carson City  
Alfredo Alonso, Southern Wine and Spirits; Nevada Beer Wholesalers  
Association c/o Bonanza Beverage  
Anthony F. Sanchez, DeLuca Liquor and Wine, Limited  
Gary E. Milliken, Distilled Spirits Council of the United States  
Scott M. Craigie, Frank-Lin Distillers Products, Limited  
Anthony M. (Tony) DeMaria, Chief Financial Officer, Frank-Lin Distillers  
Products, Limited  
Michael A.T. Pagni, McDonald Carano Wilson  
Sean Gamble, Storey County  
Greg Hess, Chairman, Board of Commissioners, Storey County  
Raymond Bacon, Nevada Manufacturers Association  
Tim Rubald, Director, Business Development, Division of Economic  
Development, Commission on Economic Development  
Ronald J. Weisinger, Executive Director, Northern Nevada Development  
Authority  
Stan Olsen, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and  
Chiefs' Association

CHAIR MCGINNESS:  
We will open the hearing on Assembly Bill 128.

**ASSEMBLY BILL 128 (1st Reprint)**: Requires disclosure of certain information  
concerning property taxes. (BDR 32-335)

ASSEMBLYWOMAN VALERIE E. WEBER (Assembly District No. 5):  
This bill has information concerning property taxes which can be disseminated  
to taxpayers. It is my belief, as well as everyone here, that transparent and  
open government best serves its citizens. Unfortunately, there is information the  
public would like to have at times, but it is hard to find or just not available. As  
a result, a lack of understanding leads to dissatisfaction with government and  
the services provided.

In this particular case, this happened with property tax. You have prepared  
testimony in front of you ([Exhibit C](#)). I will refer to an information statement we  
receive in Clark County, [Exhibit C](#), that gives taxpayers information regarding all  
the different taxing districts and the tax liability for the taxpayer. You will note  
on page 2 of this exhibit, I have made a copy of the tax statement Clark County  
residents receive. I have had calls from some of my constituents who

Senate Committee on Taxation  
May 12, 2005  
Page 3

misunderstand the allocations of the taxes due to the wording in this statement. I have asked for help in drafting a bill to assist taxpayers to understand these services. Also on page 2 are the four sections of the bill which we took from the *Nevada Revised Statute* (NRS) 361.

SENATOR COFFIN:

In section 3, page 2, [Exhibit C](#), you are requesting the type size be increased from 8 point to 10 point. What would be the cost attached to this since the printing will be 20-percent larger?

AL KRAMER (Treasurer, Carson City):

Carson City already has tax statements in a 10-point type, so I do not believe it will be a significant increase in cost to Clark County.

CHAIR MCGINNESS:

Assemblywoman Weber, have the amendments from the Assembly taken care of the fiscal notes? I see there is approximately \$900,000 from Clark County and \$500,000 for Washoe County.

ASSEMBLYWOMAN WEBER:

I have not heard any opposition from the counties.

CHAIR MCGINNESS:

Maybe they will testify later on the fiscal notes.

ASSEMBLYWOMAN WEBER:

There is an amendment in section 3. Mr. Kramer will address this to clean up the language and probably address some of the fiscal concern.

MR. KRAMER:

I have given you a copy of our proposed amendment ([Exhibit D](#)). Section 3, subsection 1, paragraph (f) in the bill lists the things published on May 5 in the newspaper. The bill states we will identify the statutory authority, if approved by the voter, the year first collected and the year in which the authority to tax expires, if any. The amendment changes this to read we must publish a phone number and Web site address in the May 5 letter where taxpayers can call to ask questions or look it up on the Web site. They will have access for an entire

year instead of just having it printed in the paper for a day. We can refer individuals to the Web site over the phone or mail information to them. We are trying to give these taxpayers more information than we can possibly communicate over the phone.

As a treasurer, I take many calls a day answering questions and giving explanations. This will take some calls off our desks by placing the information on the Internet. This got confused in the Assembly, and this amendment resolves any confusion and reduces the fiscal impact.

SENATOR TIFFANY:

Will the information posted on the Web site be a printable page?

MR. KRAMER:

We want it printable so when somebody calls our office and asks for this, we can send them exactly what appears on the Web site. Section 1 required the Department of Taxation to have some of this information on the Web site. It is the intent of the county treasurers, in conjunction with the Department of Taxation, to add the other information needed so it is one Web site. If we cannot work something out, each county would be required to have a Web site with this information and a link to more information on the State Web site.

ASSEMBLYWOMAN WEBER:

I get a simple tax bill in the mail, and I hope to see something printed on the bottom of the bill showing a Web site for further information or explanation. It would have all the different taxing districts and all I would do is click on the right county. That is how I envision this.

CHAIR MCGINNESS:

Amendment No. 596 states, "Each county assessor and county treasurer shall, to the extent feasible," so if it is a smaller county that cannot afford a Web site, it would not be mandatory. Is that correct?

ASSEMBLYWOMAN WEBER:

Yes, the way the bill was originally written the burden would have been on every county, but as we learned, not every county in our State has its own Web site. That is available as they bring them online. This information will be made available to all taxpayers through the Department of Taxation's Web site.

CAROLE VILARDO (Nevada Taxpayers Association):

I am speaking in support of A.B. 128. Anytime you can provide clearer information for the taxpayer, it benefits not only you as elected officials, but provides for a better informed public. In light of the capping mechanism we have this year, it is going to be particularly important for people to understand their taxes. We have already volunteered to provide links to our publication to any of the treasurers or assessors. This may help them understand Nevada's property tax system.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce)

We echo the comments of the Nevada Taxpayers Association and certainly believe this is a bill in the spirit of transparency, benefiting the public. This will allow them to understand exactly how their tax dollars are utilized. We are supportive of Assemblywoman Weber's bill.

CHAIR MCGINNESS:

I had a question about the fiscal note and not all counties responded. We had some hefty fiscal notes. With the amendment of the bill, are those fiscal notes still valid?

ANDREW LIST (Nevada Association of Counties):

Clark County had a substantial fiscal note on this bill. I cannot speak to their fiscal number on that, but somebody from Clark County might address this issue. The way I read this bill is, if a county does not have a Web site, I do not believe they are required to put one on the Internet and maintain it for the sake of this bill. On the bottom of page 2, line 26 and the last few lines on page 6, line 17, it is more permissive if they have the Web site to include this information and keep it updated. The county people I work with appreciate and maintain their Web sites. There should be no problems with this bill. Again, to Clark County's fiscal note, I would ask them independently.

MR. KRAMER:

The original language in this bill indicated the assessor would give the information when the assessment notices went out in the mail, and the treasurers would give this information when the original tax bill was mailed out. This would have required additional pages in many cases for this information to go out with those two mailings.

Senate Committee on Taxation  
May 12, 2005  
Page 6

Changing this to a Web site or a phone number to acquire the information alleviates the fiscal note in the first bill. That is where the fiscal note for Clark County came from. I could be corrected by someone from Clark County, but that is my understanding of where the fiscal bill originated. It was for the additional cost of pages mailed for both the assessor and treasurer.

CHAIR MCGINNESS:

We will close the hearing on A.B. 128 and open the hearing on A.B. 145.

ASSEMBLY BILL 145: Revises provision concerning disabled veterans' exemption from property tax. (BDR 32-384)

CHARLES (CHUCK) W. FULKERSON (Executive Director, Office of Executive Director for Veterans' Services, Office of Veterans' Services):

Assembly Bill 145 changes subsection 7 of the NRS 361.091. I have given you prepared testimony ([Exhibit E](#)). Following along with me, you will hear testimony about how this bill affects veterans with disabilities or multiple disabilities and how they are rated.

The fiscal note prepared by the Department of Taxation is based on the worst possible disability. We have no idea how many veterans have been affected by this in the past, but this is something that can and should be fixed. Thank you for your consideration to our fellow citizens who will carry the scars and disabilities of war to their graves.

SENATOR LEE:

Does this bill state anything about being a resident of the State of Nevada?

MR. FULKERSON:

I had not considered that in this particular instance. I assumed if they owned property in this State, they are a resident. To my knowledge, that has never been addressed.

SENATOR LEE:

If someone was a resident for a long amount of time and helped build this State, this would be a way to say thank you to them.

Senate Committee on Taxation  
May 12, 2005  
Page 7

MR. FULKERSON:

The maximum exemption at 100 percent is only \$20,000 of the assessed value, so the property does not come off the tax rolls.

DAVE DAWLEY (Assessor's Office, Carson City):

The statute states they have to be a bonafide resident of the State of Nevada. As long as they have a Nevada driver's license, they are considered a resident. If they do not have a Nevada driver's license or Nevada identification card, we have to check. They must have six months actual residency in the State. This is verified by bringing in utility bills mailed to the property location address. That is how we verify their residency.

SENATOR CARE:

Mr. Fulkerson, do you have situations involving veterans' disability ratings from different agencies which do not match up and one is higher than the other? For example, the higher rating is from the service and the lower one is from the Department of Veterans Affairs (VA) which makes the veteran ineligible for the exemption through the VA, but not through the service disability rating.

MR. FULKERSON:

I have not run into that situation. It is my assumption that a member of the armed forces with a medical disability discharge from active duty is ineligible to get benefits from the VA. I could be wrong because I do not have any experience with that situation.

CHAIR MCGINNESS:

We will close the hearing on A.B. 145 and open the hearing on A.B. 553.

[ASSEMBLY BILL 553 \(2nd Reprint\)](#): Makes various changes relating to intoxicating liquors. (BDR 32-1314)

ALFREDO ALONSO (Southern Wine and Spirits; Nevada Beer Wholesalers Association c/o Bonanza Beverage):

Assembly Bill 553 is actually a simple bill. The genesis goes back several years. As Nevada has grown, we have found the need and necessity to include more significant licensing procedures with respect to liquor. Because we are so small, our wholesalers were the first and last line of defense. They are the ones who

paid the taxes and got audited when there was a discrepancy in terms of what alcohol was coming into the State. That made Nevada one of the most efficient delivery systems in the country.

The three-tier system is an important part of that distribution system. It acts as a check and balance between the suppliers and manufacturers on the first tier, the distributors/wholesalers on the second tier and the third tier which is the retailer. The tax collection is an integral part of this because the wholesaler collects the tax. They have an issue with respect to which tax is collected; what beer, liquor or wine is brought into the State and auditing the beer, wine or liquor wholesaler. This has been an efficient and inexpensive manner of collecting taxes for the State. Last Session, the Department of Taxation had two individuals investigate these chapters of the *Nevada Revised Statutes* (NRS), which says a lot for this State and our system. The cost to the taxpayer is minimal.

This bill evolved out of our State's growth. As we grow and individuals move into this State looking for ways to make money, oftentimes they try to work around the laws. Assembly Bill 553 defines a rectifier. A rectifier can be something as simple as a company which mixes a flavoring agent with an existing finished product or it could be as complicated as an establishment which receives or imports dozens of containers of a mixture that is distilled, bottled and labeled. That is a manufacturer and there is no way around it. The Internal Revenue Service defines a rectifier as an individual who bottles, packages, blends or colors alcohol. This is not a new item. A law already in place, NRS 597.140 defines a supplier who is considered a rectifier. That first tier is covered in existing law.

MR. ALONSO:

We are not doing anything out of the ordinary. We are clarifying an existing law. It is great we may have some rectifiers come into our State. This bill separates the tiers and that is all. It licenses a rectifier, and we have included a supplier's license because all we have had in the past is a certificate. Section 6 deals with local liquor ordinances. Section 7 makes certain a rectifier is a rectifier and not a wholesaler.

*Nevada Revised Statute* 597.210 clearly states that a person engaged in the business of manufacturing, blending or bottling alcoholic beverages shall not engage in the business of importing, wholesaling or retailing alcoholic



beverages. We are simply clarifying existing law and making certain this type of business can exist. There are companies interested in moving to this State and the only concern of the Nevada Beer Wholesalers Association is they live within the law.

I have heard of amendments which may grandfather individuals into this, but I do not know how you can grandfather an individual who would destroy a three-tier system. Again, we want to preserve the three-tier system and A.B. 553 does that.

MR. ALONSO:

I will close on the limitation of vertical competitions with a statement of legislative policy:

It is the policy of the Legislature to insure the orderly distribution and marketing of alcoholic beverages in this state in order to protect locally owned and operated business enterprises and those residents whose livelihoods and investments are dependent on their freedom to manage their businesses without economic and coercive control by nonresident suppliers of alcoholic beverages.

MR. ALONSO:

That is exactly about what we are talking. If somebody comes into this State and takes out two tiers of that system, nobody will be able to compete with them. If that is the case, I am sure my wholesalers would love to add a retail component to their business. Again, it is not good policy. The system we have is an efficient one. It is good for the taxpayers and protects the consumer.

SENATOR CARE:

You speak of this as clarification of current law and it is almost as though you are creating an addition to the three tiers set in place. You explain the rectifier is set aside and apart from this system, but under existing law, arguably he is or he is not. What do other states do in this instance, since it most likely has occurred in other states?

MR. ALONSO:

In every state I have looked at, it is a similar system. The reason is because these rectifiers have to import these materials. We address that in this bill because, under Nevada law, if you are an importer, you can also wholesale

liquor. Section 12, subsection 2, paragraph (c) allows the individuals to import materials. We do not want a situation whereby they must buy materials from another importer. This is what some other states have done. They allow the importing by the rectifier, allowing them to bring in their own materials so they would be considered a tier and a half.

SENATOR CARE:

Is your intent to clarify a rectifier as a rectifier exclusively?

MR. ALONSO:

In this bill, the answer would be yes. The supplier language will not change and the rectifier is still a supplier. The first tier would not change. The only thing we have changed is making sure they are licensed. They cannot jump up a tier and be a wholesaler; more importantly, we are giving them the opportunity to import their own materials to cut costs. This, in our view, is only fair.

SENATOR CARE:

Section 4, states, "... means an establishment other than a rectifier ... ." Are you telling us a rectifier can also be a supplier?

MR. ALONSO:

In the NRS 597, supplier includes rectifier. The goal is to differentiate the regular out-of-state supplier who simply sends their product in from a rectifier. We have never had anyone actually manufacture in this State. This is a fairly new issue for the State of Nevada. We have had no manufacturers move into this State, other than the Pahrump Valley Winery. We welcome this and feel if these companies want to move into Storey County and manufacture liquor, it is a positive thing. I simply contend they cannot take two tiers of the system.

SENATOR TIFFANY:

Is this bill going to affect the hobbyists at all? Will they have to get the two licenses?

MR. ALONSO:

There are already exemptions in the law for personal use. Now there will be an additional exemption to the law because of Senator Schneider's bill which allows individuals to make a barrel of wine a year with the instructional schools. The personal use portion of this will not be changed. This only deals with the manufacturing/rectifying of liquor on the retail, wholesale and supplier level.

SENATOR TIFFANY:

The two tiers are a manufacturer and supplier. Is that correct?

MR. ALONSO:

No, that is one tier.

SENATOR TIFFANY:

What are the three tiers?

MR. ALONSO:

The manufacturer, supplier and rectifier are all the same thing. Anyone who makes, blends or colors the liquor is in the first tier. The second tier is the wholesaler or distributor and the third tier is the retailer. The middle level is extremely important because they are the individuals everything goes through. Either a State agency or wholesale environment can be audited and taxed. These individuals pay the excise tax.

SENATOR CARE:

Section 7, subsection 5 states the Department shall not issue a liquor license to an individual who holds a rectifier's license. Additional language states a rectifier's license shall not be issued to any person who has a financial interest in any entity who holds a wholesale wine, beer and liquor license. The bill continues "... a trustee, director or officer of an entity ... holds a loan, mortgage or lien on any property owned by an entity that holds a wholesale license ... ." What is that language in the bill all about? I understand the difference in rectifier, supplier and wholesaler, but this language confuses me.

MR. ALONSO:

This language is already in the law, but we are mimicking it with respect to the rectifier. The purpose is so there will not be any large liquor manufacturer moving into this State, making liquor here and selling it as a wholesaler. There were suppliers that came into Nevada and held all three levels of the tier system. They would manufacture the product, distribute the product and then at the retail level, they owned the pubs. The purpose of the three-tier system is to separate these entities. It was difficult to collect taxes and this State would be at a huge disadvantage.

Senate Committee on Taxation  
May 12, 2005  
Page 12

SENATOR CARE:

This prohibitive language indicates they cannot own any portion. Is that correct?

MR. ALONSO:

That is correct, and it is in the existing law today.

ANTHONY F. SANCHEZ (DeLuca Liquor and Wine, Limited):

As our State grows in population, this is purely clarification to the Department of Taxation and other entities that agree with us. We are in full support of this bill.

GARY E. MILLIKEN (Distilled Spirits Council of the United States):

We are in favor of the bill. Specifically, I would like to address section 9 on page 4 of the bill. You have in front of you a two-page summary ([Exhibit F](#)) of what I will discuss. This refers to a party toy known as Alcohol Without Liquid (AWOL). On the second page, there is a picture of a portable machine. There are larger machines used in bars and other areas. The Distilled Spirits Council of the United States believes in reasonable consumption of alcohol. This machine allows an individual to inhale a mixture of alcohol and oxygen. This will go straight into your lungs and the manufacturers of the machine claim it will not create a hangover the next morning. Law enforcement is concerned about these machines. The portable machine can be used in a car if you plug it into the lighter for a power source. This could be inhaled as you drive. There are currently 16 state legislatures banning AWOL machines. Mr. Alonso allowed me to establish an amendment to this bill to ban the AWOL machines.

SENATOR TIFFANY:

Is this an amendment on the bill?

MR. MILLIKEN:

Originally, it was an amendment to this bill.

SCOTT M. CRAIGIE (Frank-Lin Distillers Products, Limited):

I want to make it clear we are not here in staunch opposition of the bill. We are willing to work with what is here, but we want to go through the bill with you. We have some amendments we will offer.

This bill is about a company in California who wants to pick up and move its entire headquarters and operation into Nevada. Anthony DeMaria is the chief

financial officer of this company and he should be the one to tell you what they are looking and hoping for. They have spent a couple of years here to do due diligence work. They worked on the Assembly side with this bill.

ANTHONY M. (TONY) DEMARIA (Chief Financial Officer, Frank-Lin Distillers Products, Limited):

Our company has existed since the end of Prohibition and operated in San Jose, California, under the current ownership for the last 40 years. In California, we are a rectifier, an importer and a wholesaler of beer, wine and spirits. We are licensed under all those headings in the State of California. We were hoping to move our entire operation to a location that would better serve our purposes. We started looking at relocating our operation about three years ago when we were informed by Santa Clara Valley Transit Authority that we would be losing rail service. The rights-of-way of Union Pacific Railroad had been sold to the Valley Transit Authority for the Bay Area Rapid Transit Extension. We are not looking to relocate on just a whim. We are forced into it. As we were looking at our options, we based our decision on our major markets which are the 12 western states, primarily California. We need to be on a rail line, we need to be on major trucking thoroughfares, and we need a good, solid water source. Our company cuts the alcohol and then we blend and bottle it. We do not create alcohol, we are not a manufacturer. In California, we are licensed to do all activities in the second tier.

We began looking three years ago for a site. Two years ago, we began working with representatives of the Economic Development Authority of Western Nevada (EDAWN), looking at sites in northern Nevada. We also made inquiries in 2003 of the Nevada Department of Taxation because of our concern regarding this State's statutes. At that time, we received favorable feedback that what we were already doing in California would be allowed in Nevada. Accordingly, we proceeded, planned and negotiated for a site at the Tahoe-Reno Industrial Center in Storey County where we had planned to build a 330,000- to 400,000-square-foot facility that would house our production operation, main distribution operation and corporate headquarters. Our understanding was what we wanted to do was legal, allowable and licensable without any issue. It was not until two weeks ago we found out about A.B. 553. As nonresidents working with people in the area, we were introduced to Michael Pagni, attorney for the McDonald Carano Wilson law firm, who is acting on our behalf. He was soliciting some opinions from the Department of Taxation, and through this involvement, we became aware of this bill.

MR. DEMARIA:

Assembly Bill 553 as currently written lacks only the name Frank-Lin Distillers because it is clearly a bill which will stop us from moving into the State of Nevada. I want to make one comment as to the competitive landscape of Nevada. We have operated as an importer, rectifier and wholesaler in the State of California for 40 years. Since 1969, Southern Wine and Spirits has operated as a wholesaler in the State of California. Southern Wine and Spirits is 20 times the size of our company. I am not even on their radar screen.

MR. CRAIGIE:

I would like to address parts of the bill and what we would like to propose as an amendment. We have a written proposal ([Exhibit G](#), original is on file at the Research Library) to go over with this Committee.

SENATOR CARE:

I want to disclose the firm I work for has done some work for DeLuca Distillers, though I have not personally done any work for them. I will consult with the Legal Division of the Legislative Council Bureau in order to find out the status between my firm and anybody who is involved in the liquor industry before we process this bill.

Having said this, let me go back to two years ago. We had no bill like this two years ago. Somebody must have become aware of DeLuca Distillers looking at or buying the land. This is interesting because Mr. Alonso was talking about clarifying the law, but he also stated the law already has this in place. Mr. DeMaria, did anybody approach you prior to this Legislative Session about this complication?

MR. DEMARIA:

No, our communications with the Department of Taxation have always been in a favorable light. As a matter of fact, the materials I was provided by that Department in 2003 had some ambiguities in the statutes. When I inquired, the Department of Taxation told me they were not ambiguities and the sections of NRS 597 really pertained to nonresident companies. As a resident company applying for licenses, it would not apply to me.

MR. CRAIGIE:

I would now ask the Committee members to follow along with me on the handout in front of you, [Exhibit G](#). You will see the description of the three-tier

distribution system in yellow. This explains the nation's regulatory framework for the production, distribution and retail sales of wine, beer and spirits in the three-tier distribution system.

In the next yellow area, there is a description of distillers, vintners and brewers, all people who make alcohol, and they are collectively known as the first tier. Wholesalers and distributors are the second tier. The individual chains and retailers are the third tier. This system was put in place as we came out of Prohibition. When Prohibition ended, it was important to have this three-tier distribution system in place to make sure nobody had market dominance and controlled all the alcohol.

The next few pages describe why the three-tier distribution system was put into effect after Prohibition. Nevada, along with all other states, modeled the same approach.

In the next section, we explain manufacturer versus rectifier. The tier-one manufacturer is the only entity in the entire three-tier system that produces alcohol. They control the first stage of the manufacturing process. These manufacturers are known as distillers, vintners and brewers. Distillation condenses alcohol to a higher potency; vintners crush grapes, ferment them, filter out the skins and let the wine age; and the brewers mix hops and malt in tanks, introduce yeast and allow it to ferment.

On the other side, a rectifier does not create alcohol. A rectifier cannot and does not ever create alcohol. Rectifiers do not distill and never produce alcohol, make wine or brew beer. They buy these products from distillers, vintners and brewers. Rectifiers cannot even intensify an alcoholic beverage because they cannot increase the alcohol content.

The next section under Tab 3 of this exhibit is the most difficult part of the concept in this bill. *Nevada Revised Statute* 369.111 defines "supplier" as in the law today. Paragraph 1 of Tab 3 states, "outside the United States." Paragraph 2 of Tab 3 states, "within the United States but outside this state." Suppliers, by Nevada law, are not companies within Nevada. They are, by law, companies outside the State. I refer to them as nonresident suppliers. In NRS 597.140, it defines "supplier" as any person who is a manufacturer, distiller or rectifier, but this refers specifically to a supplier which is an

out-of-state entity. The definition shows a rectifier as a supplier only when the rectifier is out of state.

Importers are defined in the second tier. They are the individuals who are the first to pick up the products from outside the State and the first in possession when the product is brought into the State after the completion of importation. Once this person picks up the product and brings it across the border, he is the first in possession and completes the act of importation. The importer actually takes ownership to bring it across the border. By definition, that person is in the second tier.

The NRS 597.190 is a statement of legislative policy:

It is the policy of the Legislature to insure the orderly distribution and marketing of alcoholic beverages in this state in order to protect locally owned and operated business enterprises ... without economic and coercive control by nonresident suppliers of alcoholic beverages.

Page 12 of [Exhibit G](#) shows minutes from the Assembly Commerce Committee hearing, Nevada State Legislature on April 14, 1975, which addresses this issue.

MR. DEMARIA:

I want to reiterate to the Committee members my correspondence with the Department of Taxation regarding the ambiguities in the statutes which resulted in them faxing me this set of minutes from the 1975 Legislative Session. This was their explanation, there was no ambiguity, and the NRS 597 did pertain to nonresident rectifiers or suppliers in general; therefore, it did not apply to me.

MR. CRAIGIE:

The second paragraph highlighted in yellow on page 12 of [Exhibit G](#) shows Pat Clark speaking. There is no way this is Pat Clark speaking in this section because it states, " ... can compete with a manufacturer or a distiller who has control of the distiller's price and the wholesaler's price when all the local companies have is the wholesaler's price." If this is true, that individual could own the market. To separate the distiller from the wholesaler is the key point here. On page 11 at the top, they are trying to separate the dealer's price and



the wholesaler's price. The red area states the control by the distiller can only be stopped when there is a fully competitive market of sellers and buyers.

Tab 4 in [Exhibit G](#) shows a heading, Intoxicating Liquor: Licenses and Taxes. This section defines the importer as the first person having possession of the alcohol in the State of Nevada. The importer in the three-tier distribution system is the second tier, along with the wholesaler. Proposing the rectifier be a tier-one person getting their material from a tier-two person does not make any sense. The retailer is then mentioned as the third tier. The top of page 15 shows the importer/wholesaler as a single license and application.

If my client is asked to be in the tier with an importer, but cannot be associated with wholesalers, it does not make sense their applications are one and the same. It is possible the State could separate those two and make them into two separate licenses. That would be an option we would be willing to consider. If we do that, a number of individuals licensed as importer/wholesalers and we would have to do some serious review. That may impact the contracts which already exist.

I am concerned about the impact this bill would have on Frank-Lin if it were to pass without some amendments. We are here to work with the Committee and make the right amendments so it will work for everybody. As written right now, this bill destroys any opportunity for my clients to do any commerce on any level.

MR. CRAIGIE:

Assembly Bill 553 eliminates any opportunity for a Nevada rectifier to serve, make money or do business and commerce in any one of these three areas. Section 12 of the bill eliminates the opportunity to wholesale or retail. This section of the bill states, "within or without this State" in the blue letters. Once you add the rectifier, it states, "...shall not engage in the business of importing, wholesaling or retailing ...," but later on it does allow importing under certain circumstances. But, wholesaling and retailing are permanently eliminated as opportunities for a rectifier in Nevada. At the bottom of the page we crossed off wholesaler and retailer which is what this bill will prevent us from doing here in Nevada.

At the top of the next page, taken from the bill, the new language states, "'Supplier' means someone other than a rectifier." If the rectifier cannot be part

of the supplier, he cannot do the supplier part of the business, so we have removed supplier from our list. Next, section 4, subsection 9, paragraph (d), states, "'Supplier' means an establishment other than ... exporters of liquors from the State." They have now completely eliminated us from all three tiers of this business. Frank-Lin can move here, they just cannot do any business here under this law.

Going to Tab 6, the bottom line is the market consequences of the tier-one assignment. They have taken a huge bite out of the bottom line for this company. This is what happens in the market. This is an area we need to be conscious of and concerned about. The way this bill is written, the three-tier distribution system divides up as supplier in the first tier; the importer is the only one the rectifier can associate with, assuming you can get past everything I just showed you in the second tier. The importer/rectifier is supposed to be in the first tier even though importers are second tier. We will have to deal with that somehow. The wholesaler is next and then the retailer. What happens here is the rectifier becomes part of a four-tier process. We are not the suppliers, and we are not allowed to be suppliers; therefore, we are stuck in the importer/rectifiers category.

MR. CRAIGIE:

Every company that touches a product adds their margin of profit to that product. Everyone has to make money or they cannot pay their employees, and they cannot invest in their business. Everyone takes a margin off this product as it moves through the system. The way this bill is written, it makes it a four-tier system instead of three tiers where everyone takes 20 percent each. With 4 tiers in place at 20 percent each, all Frank-Lin products become noncompetitive with those in the 3-tier system. They are left at a competitive disadvantage after having moved their entire company to this State. They produce approximately 4 million cases of product a year of which 50,000 cases come to Nevada.

Frank-Lin employs approximately 130 high-salary employees. Their plans are to set up a \$15-million to \$20-million investment level operation in the State of Nevada and diversify the economy. Now we are going to stop them because out of 4 million packages, they are going to send 50,000 around this State. They compete comfortably with the other companies in this State. My client makes lower-end liquor than their counterpart in southern Nevada. They make a good living on this product, and they want to bring that living to Nevada.

MICHAEL A.T. PAGNI (McDonald Carano Wilson):

I am compelled to make some corrections about what the current law is in the State of Nevada. To understand their bill and our amendments, you need to understand the laws right now.

Under current law, rectifiers are importer/wholesalers which are part of tier two. They have been there since 1965. This has been the law of this State for 40 years, and they are squarely within tier two. The reason for that is because they buy liquor from tier-one suppliers just like every other importer/wholesaler. And just like every other importer/wholesaler, they are granted franchise rights to import and wholesale. In fact, Nevada law mandates a supplier grant a rectifier a franchise to wholesale the liquor. A rectifier cannot import liquor into this State unless granted a franchise to wholesale. It is part of tier two and always has been.

Assembly Bill 553 represents a radical departure from existing law. Trying to create an artificial segregation between a wholesaler and a rectifier is wrong, since under current law, they are one and the same. This is what the policy of Nevada and other states, including California, have been for years. This is how Frank-Lin has operated for decades.

This has nothing to do with growth; it has everything to do with stopping this one company from moving into this State. If you are going to address the rights and obligations of rectifiers, it makes more sense to make some simple clarifications to existing law rather than reverse the policy of this State as it has existed for the past 40 years.

Our amendments do three things: (1) We narrow the definition of rectifier to exclude suppliers. We severely limit who qualifies to be a rectifier and make sure only people in tier two can operate as rectifiers. (2) If you are going to create a rectifier's license, it must contain a clarification of the limits of that license. (3) We correct some original drafting errors created in 1975 in NRS 597.210 to clarify this only applies to nonresident suppliers.

In Section 3 of A.B. 553 is their definition of rectifier, and to be blunt, their definition is a terrible definition. It is factually inaccurate. The conduct it describes is not conduct befitting a rectifier. A rectifier is somebody who distills spirits by distillation, and rectifiers do not do that. The definition of a rectifier in this bill does not include a rectifier. It does not make any sense. What makes it

worse is the definition includes somebody who bottles products they distilled, which means it includes suppliers. Under that definition, a rectifier is a supplier, but a rectifier is not a rectifier. It makes more sense to me to have a definition actually relate to what a rectifier does. That is what our amendment accomplishes.

We suggest the following description be put in place in the bill to define a rectifier: "As used in this Chapter, a rectifier means a person who cuts, blends, mixes, colors, flavors or rectifies neutral or distilled spirits or wine purchased from a supplier." Including the phrase, "purchased from a supplier" is a critical distinction. We would like to add the following description: "And whether cut, blended, mixed, flavored or colored by him or any other persons who bottle, package or label such products."

This definition is better for several reasons. First, it is factually accurate, and it defines a rectifier as someone who is actually engaged in the business of rectifying. Secondly, it protects the three-tier system because it narrowly defines a rectifier and makes sure only the people in tier two, the individuals who have to buy liquor from suppliers, can engage in the business of a rectifier. That preserves the demarcation line between tier-one suppliers and tier-two importer/wholesalers. Third, it eliminates all the ambiguity and confusion their definition will create since their definition, by its very language, includes a supplier which is defined separately in the statutes.

MR. PAGNI:

In section 4, our amendments clean up some drafting errors. In subsection 4, we delete the phrase, "and wines" because the word liquor, as defined in current law, includes wine. In subsection 5, we delete the phrase, "of distilled spirits" because a rectifier can do more than just rectify distilled spirits. If you are going to create a rectifier's license, it makes sense to have it apply to all rectifiers. We also delete paragraph (d) of subsection 9, their definition of supplier, and we do this for a number of reasons. First, it is unnecessary. There is already a definition of supplier in the current law, and this definition is materially different which will cause confusion. There will be one definition for purposes of licensing a supplier and a completely different definition for all other regulatory purposes in the statutes. Second, it is internally inconsistent with their bill. You heard Mr. Alonso state under their bill, section 3 defines a rectifier as a supplier. In section 4, they define a supplier as somebody other than a rectifier. Which one is it? Third, the last sentence states a supplier includes

someone who acts as an agent of a rectifier for purposes of sales to wholesalers. Under Nevada law, which is unaltered by this bill, only an importer/wholesaler can act as an agent for a rectifier. Now there is a definition of supplier that also includes importer/wholesaler. We clean up all these problems by some simple deletions and get rid of the ambiguities.

Section 7 of the bill is the crux of the dispute between Frank-Lin and the proponents of A.B. 553. This dispute stems from the fundamental misunderstanding of what a rectifier does and what the current scheme of the law is in Nevada. This section completely reverses existing policy. Chapter 369 of NRS is interdependent with the others. All these statutes refer back and forth to each other, and they are all reliant upon each other. If you pull out one of the cards, the whole thing will tumble down. That is what they do in section 7. They completely reverse the policy of recognizing a rectifier as tier two and try to shoehorn it into tier one without any regard for the consequences of how this will fall out in the other provisions in the chapter.

I want to give you some examples of the ramifications of this bill. Under section 7, a rectifier cannot be a wholesaler, but it can still be an importer. Under NRS 369.390, a law unchanged by this bill, all importers are wholesalers. We are left with a scheme whereby section 7 states rectifiers cannot be wholesalers; existing law, NRS 369.390, states all rectifiers are wholesalers. Which law is the Department supposed to enforce?

Another problem in the section 7 language is where it states a rectifier is an importer and NRS 369.386, again, unchanged by the bill, states a supplier can only sell liquor to an importer if it gives that importer the wholesale franchise to distribute. In summary, under section 7 of this bill, a rectifier can only bring liquor into the State if it does not wholesale it, but under NRS 369.386, a rectifier can only bring liquor into the State if it does wholesale. Again, which one is the Department going to enforce?

Their bill is even internally inconsistent. Section 7 of their bill states a rectifier is an importer, but if you turn to section 12 of their bill, it states a rectifier cannot be an importer. Which one of these do we enforce? Rather than completely reverse the policy of the State, clarify the existing law. This is what happens when you try to do something radical, there are all kinds of fallout and consequences from these actions. It is clear right now what a rectifier can do, but statutes can always be improved.

MR. PAGNI:

We have some suggestions for improvements. In section 7, subsection 1, the current law in Nevada states a rectifier is an importer and a rectifier must have an importer's license. We want to leave this as is. We will add some clarification, though. If a rectifier is acting as a wholesaler, make him get a wholesaler's license as well. This is already clear under Nevada law. It may be redundant, but if we are going to have some clarity, let us make it absolutely explicit. In section 3, if you are going to create a rectifier's license, let us have the statute state what is permissible with this license. Subsection 4 is grammatical cleanup. If you compare our section 7 with theirs, you will see ours looks clean and simple. The reason is it is consistent with existing law. Their section 7 completely changes the law. It takes a lot more words and effort, but they ignore the consequences.

Section 12 of their bill is an amendment to NRS 597.210. This statute was the product of a 1975 bill and, as they have said, that bill prevented vertical competition by nonresident suppliers. In existing law, a declaration of legislative policy says the purpose of that statute is to prevent "economic and coercive control by nonresident suppliers." The testimony pointed out by Mr. Craigie supported that same interpretation. The purpose of the bill was to prevent nonresident suppliers from competing against Nevada businesses. Remember, rectifiers are in tier two. They have to buy that liquor from a tier-one supplier, and they are subject to the exact same vulnerability as every other importer/wholesaler from coercive conduct by nonresident suppliers. *Nevada Revised Statute* 597.210 was put in place to protect rectifiers, and now they are trying to punish the rectifiers. It makes more sense for us to clean up the drafting errors from 1975. We replace the word "person" with "nonresident supplier." That was the way the bill was intended when it was passed, and that is what the declaration of policy supports. It is simple and clean.

If you pass A.B. 553 today as written, you will have a statute, NRS 597.210, which completely contradicts the legislative declaration of policy in NRS 597.190. This is internally inconsistent by stating a rectifier cannot import when other statutes state they can import. Given the fact all rectifiers have to have a wholesaler's franchise, it is most likely unconstitutional due to impairing contractual rights of rectifiers to have franchise rights to wholesale liquor.

The final two additions to our amendment are simple. In section 13, we have a clarification of language making sure suppliers do not include rectifiers. We

want to preserve that demarcation between tier one and tier two. We are making it absolutely clear no supplier can act as a tier-two rectifier. It is already implicit in the law, but by adding it, we will make it clear to protect the three-tier system. In section 14, we have more language cleanup. We are preserving the integrity of the three-tier system by making it clear that rectifiers, part of tier two, can only buy liquor from tier-one suppliers. Again, that is already implicit in the law because rectifiers are importers, but clarification will preserve the integrity of the three-tier system.

In short, our amendments do the following: They protect the rights of importer/wholesalers to continue selling their franchise brands as they have for the past 40 years and like Frank-Lin is doing in California today. There is no competitive harm whatsoever from what they do. They have to have a franchise to sell their liquor, which means nobody else has that franchise. If another wholesaler in this State today has the franchise to Jack Daniels, Frank-Lin cannot step in and rectify a bottle and sell that product. Somebody already has the right to do this. Conversely, whatever rights Frank-Lin has, nobody in Nevada has that right today. It is no different than if somebody comes in off the street for a new wholesaler's license. There is no adverse competitive harm. The second thing we accomplish with this amendment is prevent unlawful vertical competition from tier-one suppliers. These amendments are good because they make the demarcation clear between tier one and tier two. This makes sure only individuals in tier two can act as rectifiers. It eliminates all confusion, ambiguity and conflicting terms in A.B. 553 through some simple fixes, and we provide clarification for the Department. Quite frankly, I do not know how they would ever enforce this law if it were enacted.

The Committee has two options. You can either kill this bill or amend it. If you choose to amend it, we have provided some good options, consistent with Nevada law policy for the past 40 years. That will preserve and protect the three-tier system.

SEAN GAMBLE (Storey County):

We oppose this bill simply because it does seem to have a bull's-eye on Frank-Lin. Storey County has been trying to get this company to move into their industrial park; EDAWN has been working to bring this company to northern Nevada for two years as well. They project this would be an annual economic impact to the region of nearly \$40 million. This would be lost if this bill passes and Frank-Lin is prevented from moving their operation into our county.

If we pass this law, it is aimed specifically at companies moving to Storey County in the future. This is a negative message to any companies that may be looking at our area to start up operations. We have a three-tier system that works. Mr. Alonso stated it is in the current law, and there are no loopholes in the law, so why would we want to make any changes? The three-tier system was designed to protect the consumers from monopolies. This bill would protect consumers from any type of competitive market in this arena.

Assembly Bill 553 is generating more revenue for the State at the same time the Governor is trying to give \$300 million back to residents of the State. If the Department of Taxation had seen any problems in this area before, they would have come before this Committee with a bill themselves.

GREG HESS (Chairman, Board of Commissioners, Storey County):

We have been working with Frank-Lin for a couple of years, trying to get them to move their operations into Storey County. We have been told there is a three-tier system, and they fall within those guidelines. We are here to oppose this bill. If there is already a three-tier system in place, why do we need a lot of clarification other than the fact there may be a need for some amendments for the Frank-Lin group to feel more comfortable? We would support that as well.

MR. LIST:

I was approached by Storey County to oppose this bill. I discussed this bill with some of my board members, and we oppose it simply because it does seem to be aimed at one particular entity and have an anticompetitive spirit. We are hoping A.B. 553 can be amended to clarify the three-tier system and allow Frank-Lin Industries to move into Storey County and occupy the land they have worked so hard to develop.

Our objection is not based on the section of the bill which would preclude use or possession of the AWOL device. Our objection is based on the bill as originally drafted.

RAYMOND BACON (Nevada Manufacturers Association):

As a point of clarification, Nevada is the only state since 2000 that has seen a growth in manufacturing jobs. Manufacturing is going through, and is still under, the wraps of a recession in this country. With the changes in productivity, other states have come back in their manufacturing section, but no state is above the level they were in 2000 with the exception of Nevada. When



we send a message that we are targeting one particular industry, it sends a message to other industries that they are not welcome here. When 49 states are upside down in manufacturing and we are successful, we do not want to send the message that we have closed the doors in any sense.

By default, the soft drink industry is also a three-tier system. Coca Cola only makes syrup. They do not can or bottle the product. They make the syrup and sell it to distributors which are independent bottling operations, much like rectifiers. They mix it, blend it with water and do the bottling. These bottling plants have never been a member of the Nevada Manufacturers Association, yet we were deeply involved about two years ago when Coca Cola was considering moving their syrup manufacturing facility from southern California to southern Nevada. As it turned out, they decided not to move here. Our only similar operation member is the Ocean Spray plant in Henderson. They are a member because Ocean Spray owns that bottling operation. I have as much contact with the Ocean Spray headquarters in Massachusetts as I do with the plant in Henderson. They are a member of this Association strictly because they are a manufacturer.

What Mr. Craigie and the Frank-Lin individuals are representing is in line with what we have consistently done in this State and what is done within the industry. With that said, we support their position.

TIM RUBALD (Director, Business Development, Division of Economic Development, Commission on Economic Development:

We rise in opposition of the bill as currently presented. We do encourage the Committee to look strongly at the case made by Frank-Lin and their representatives today to amend the bill. The Commission on Economic Development (CED) took a formal vote on this issue yesterday at our regular monthly meeting to support the company in its request and pursuit to move to Nevada. The CED approved incentives for this company with the assistance of EDAWN, Northern Nevada Development Authority and the expressed written and formal approval of the Storey County commission.

There is a tremendous amount of support to help move this company to Nevada. This company will generate 130 primary jobs with an average wage of \$16.49 per hour, well over the State's average. Also, the \$40 million mentioned earlier is per year. This will continue to be a positive economic impact. That would be a regional impact and does not take into account the statewide and

State revenue generated by the rectification process and the sale of the alcohol itself. The \$40 million will probably increase at least an additional 10 percent. That would be on an annual basis.

I personally have worked with this company for over two and a half years. I can tell you they are one of the finer companies with which I have worked. My experience with Mr. DeMaria, his superiors and the owners is all positive and good. They have been somewhat blindsided by this situation. As Mr. Bacon pointed out, this is a bit of a small world, particularly as it comes to recruiting and working with companies and trying to get companies to stay in Nevada. It is an extremely competitive world and one in which word travels fast. I urge the Committee to strongly consider the amendments put forth today.

RONALD J. WEISINGER (Executive Director, Northern Nevada Development Authority):

I am opposed to this bill as currently written. Part of our responsibility is to work with Storey County and EDAWN in order to help diversify the economy in northern Nevada. All of us have been working diligently to do that. One of the things we do not understand is that it appears this is an anticompetitive bill. We are all trying to work to make this a better economy and do not understand why it has to be anticompetitive. This is a state where we all thrive on competition. One of the nice things about this company is the fact they are bringing in over 130 primary jobs. To deny this company the ability to move here and provide those jobs does not make sense. These are primary jobs paying well over \$18 per hour. It is helping the overall economy and not hurting any other company. Again, as the bill is currently written, without any amendments, we are against it.

STAN OLSEN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):

When we first looked at this bill, we had no clue what a rectifier was, and when we learned what it was, we became concerned. We spoke with our scientific people who are charged with finding out how much alcohol is in somebody's system when they have been arrested for driving under the influence, involved in an accident or killed somebody. They told us they are not certain they can address this issue in the same way we normally do. This bill, from a law enforcement and public safety perspective, is one of the worst ideas I have seen come down the pike in a long time.

Senate Committee on Taxation  
May 12, 2005  
Page 27

SENATOR COFFIN:

Are you addressing the section with regard to the rectifier or vaporizer?

MR. OLSEN:

I am referring to the vaporizer or inhaler referred to in this bill. We have grave concerns about this. You inhale it, and it goes into your system instantly.

CHAIR MCGINNESS:

Mr. Olsen is only speaking in opposition to section 9 of this bill. Did you read the rest of the bill or are you only concerned with this section?

MR. OLSEN:

We are only concerned with this part where you breathe it in. It is outrageous. We do not care about the importing, distributing or any of the rest of the bill.

CHAIR MCGINNESS:

We will close the hearing on A.B. 553. We will open the hearing on Senate Bill (S.B.) 509.

[SENATE BILL 509](#): Revises provisions governing property taxes. (BDR 32-1452)

CHAIR MCGINNESS:

Assemblyman Pete Goicoechea, Assembly District No. 35, and Assemblyman John C. Carpenter, Assembly District No. 33, proposed a few amendments to this bill ([Exhibit H](#) and [Exhibit I](#)).

SENATOR TIFFANY MOVED TO DO PASS S.B. 509.

SENATOR LEE SECONDED THE MOTION.

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

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Senate Committee on Taxation  
May 12, 2005  
Page 28

CHAIR MCGINNESS:

We received a letter from the Elko County Board of Commissioners ([Exhibit J](#)) encouraging us to include the amendment provided by Assemblyman Goicoechea. It is my understanding there is going to be another trailer bill, and I would like to include that. It is an important piece of the puzzle for rural Nevada, and I would like to see A.B. 509 move along now.

There being no other issues before us today, the Senate Committee on Taxation is officially adjourned at 4:01 p.m.

RESPECTFULLY SUBMITTED:

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Tanya Morrison,  
Committee Secretary

APPROVED BY:

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Senator Mike McGinness, Chair

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