

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

**Seventy-Fourth Session  
March 7, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:38 p.m., on Wednesday, March 7, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman John Ocegüera, Chair  
Assemblyman Marcus Conklin, Vice Chair  
Assemblywoman Francis Allen  
Assemblyman Bernie Anderson  
Assemblyman Morse Arberry Jr.  
Assemblywoman Barbara E. Buckley  
Assemblyman Chad Christensen  
Assemblywoman Heidi S. Gansert  
Assemblyman William Horne  
Assemblywoman Marilyn Kirkpatrick  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman David R. Parks  
Assemblyman James Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Assemblyman Joseph M. Hogan, Assembly District No. 10



**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Committee Counsel  
Dave Ziegler, Committee Policy Analyst  
Patricia Blackburn, Committee Secretary  
Gillis Colgan, Committee Assistant

**OTHERS PRESENT:**

Fred Hillerby, representing Regional Transportation Commission, Washoe County  
Judy Stokey, Director, Government Affairs, Nevada Power/Sierra Pacific  
Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation  
Rebecca D. Wagner, Commissioner, State of Nevada, Public Utilities Commission  
Tim Crowley, representing Nevada System of Higher Education  
Barry Gold, Director, Government Relations, American Association of Retired Persons, Nevada  
Douglas Brooks, Assistant General Counsel, Nevada Power/Sierra Pacific  
Douglas R. Ponn, Chairman, Utility Shareholders Association, Inc.  
Scott Craigie, representing Nevada State Medical Association  
Liz MacMenamin, representing Retail Association of Nevada  
John P. Sande, IV, representing Medco Health Solutions, Inc.

[The roll was taken and a quorum was present.]

**Chair Ocegüera:**

We will open the hearing on Assembly Bill 222.

**Assembly Bill 222: Makes various changes relating to energy. (BDR 58-882)**

**Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1:**

This bill has a few key points to it. The first part of the bill addresses energy audits of public buildings. I think it is important in Nevada that we take the lead with regard to conserving energy in public buildings and doing what we can to save all the taxpayer dollars possible. I have spoken with local government this morning trying to work with them. A lot of local governments in our State are already moving in the right direction. We do not, however, have a comprehensive plan. That is the reason for A.B. 222, so that we can work together, as a state, by saving energy. With A. B. No. 3 of the 22nd Special Session passing after last session, we are moving in the right direction.

The other part of the bill is the energy office. Currently, we do not have a staff in place to allow the energy office to promote and educate the public agencies and constituents and to encourage them to move forward with energy savings as well as conservation in plumbing, water, landscaping, et cetera. I would like a little more time to work with local government to bring this all together. More work needs to be done with this bill to address the policy of newer buildings having to come back in six months with an audit, when they have already been held to a higher standard. Maybe we could consider phasing in, starting with the older buildings first. Obviously, those buildings would be the ones that would be the most inefficient when it comes to conserving energy.

I received a phone call yesterday from our federal delegation and they would like to be part of our energy Task Force. I think that would be a great asset for the State of Nevada because it shows that we are moving in the right direction. I think it is important to note that there are some great programs in the State. In White Pine County, they are using pellets so that the school district is not paying for any heating. Clark County School District was able to invest \$600,000 last year to get a net return of \$8.9 million within a one-year time frame. The Community College of Southern Nevada just replaced their lighting. They reduced the wattage and saved \$28,000 last year.

It will enhance our investment in energy to have a comprehensive plan. I believe this bill will be a good start.

**Chair Oceguela:**

In essence this bill does three things. It establishes the Task Force for Renewable Energy, it requires the Director of the Office of Energy to hire a deputy for renewable energy conservation, and then it requires energy audits on existing and new public buildings. The one change you want is to put the federal delegation on the Task Force, and then you still want to work on the third part concerning the energy audits?

**Assemblywoman Kirkpatrick:**

When I was putting this bill together, I did not narrow it down enough on how we do the energy audits. It is important that we do not require buildings that are doing well to have to spend the money on an audit when they have already been held to a higher standard. It is a good bill, but more definition is necessary.

**Chair Oceguela:**

Okay. Since there are people here to speak on the bill, we will go ahead and hear their testimony. Are there any questions for Mrs. Kirkpatrick? I see none.

**Fred Hillerby, representing Regional Transportation Commission, Washoe County:**

I have spoken with Mrs. Kirkpatrick and we have friendly amendments that she has agreed to. I will be providing her with written documentation. There are two areas of concern. If there is a new building built after July 1, 2007, that was built to the Leadership in Energy and Environmental Design (LEED) or be in excess of LEED standards, it should not need an audit. Mrs. Kirkpatrick has agreed to that and language will be provided to her. The other recommendation we have is to eliminate the need for an audit if you have plans to demolish a building before July 2008. You should not have to spend money for an audit. Retrofitting that building would not be scheduled since it was going to be demolished. We have an added protection that if the building is not to be demolished, then the audit would have to be done.

**Chair Ocegüera:**

Are there any questions for Mr. Hillerby? I see none.

**Judy Stokey, Director, Government Affairs, Nevada Power/Sierra Pacific:**

We want to go on record supporting this bill. We believe it is a great start and we would like to work with the sponsor some more and iron out some of the little glitches.

**Chair Ocegüera:**

Are there any questions for Ms. Stokey?

**Assemblywoman Gansert:**

Does the power company provide rebates and incentives to, for instance, the Washoe County School District for energy conservation?

**Judy Stokey:**

Yes. We currently have \$36 million in our budget that we spend annually on rebates and conservation measures.

**Assemblywoman Gansert:**

So would those amounts be available to public entities also?

**Judy Stokey:**

Yes, they are.

**Chair Ocegüera:**

Are there further questions for Ms. Stokey? I do not see any.

**Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation:**

I am here to support A.B. 222. We have been working with the bill's sponsor on expanding the Task Force for Renewable Energy and Energy Conservation to include a representative from the natural gas industry. Mrs. Kirkpatrick is supportive of that and we will be working on some language to include in the bill.

**Chair Ocegüera:**

Are there any questions for Ms. Jacobson? I see none.

**Rebecca D. Wagner, Commissioner, State of Nevada, Public Utilities Commission:**

For the record, the Public Utilities Commission (PUC) is in support of this bill even though it has nothing to do with the Commission. I do want to highlight what the PUC has done in order to reduce our energy consumption and our overall power bills. Our agency administrator, Crystal Jackson, participated in the State's Certified Public Management Program. For her capstone project she developed a program ([Exhibit C](#)) to decrease our overall energy consumption, modify our employee behavior, and increase awareness of energy conservation. We first conducted an energy audit through Sierra Pacific Power Company and identified the parts of the buildings that were using the most energy. They provided recommendations and measures for cost-effective energy improvements and these measures are what I call the no-cost or no-brainers. Those measures include changing our overhead lighting, installing programmable thermostats, installing motion sensor lights in our copy rooms and restrooms, and just changing our computer settings. The results are impressive. During November and December we have saved a total of \$3,000. We also have calculated the carbon dioxide emissions reduction for those two months and we have avoided 33,919 pounds of carbon dioxide emissions. We have a good start and it has cost us virtually nothing, other than some time and effort from our employees. Even though we lease our building, we can do a lot to conserve energy and reduce our power bills. Ms. Jackson could not be here today, but she has developed a blueprint for other state agencies to be able to use our program and I think it will be a good start for Mrs. Kirkpatrick's bill. I do support giving the Task Force a permanent home and not having to worry about reinstatement and the fact that the money would come from General Fund appropriations rather than the PUC reserves.

**Chair Ocegüera:**

Are there any questions for Ms. Wagner? I see none.

**Tim Crowley, representing Nevada System of Higher Education:**

We support A.B. 222. We feel that these audits will provide a good tool for us to measure our energy and cost savings. We have two comments to make on the bill. We were quick to note that there is no funding mechanism in this to conduct those audits and we are hoping you will consider providing some funds for those functions. We would also like to comment on the time frame of the first audit. It requires an audit within 6 or 12 months of the construction of the building. We think that should be changed so that a calendar year could be used to measure the energy savings through the four seasons.

**Assemblyman Conklin:**

Mr. Crowley, you may be aware that the Clark County School District was a finalist in an award last week at the Taxpayers Dinner. They had a savings of approximately \$8.7 million. I think the money they spent in audits and adjustments yielded a return of six to one or seven to one. Do you really think it is necessary to provide funds for that kind of savings, or do you think it is just prudent management?

**Tim Crowley:**

We should just wait to see what the results of the audit are.

**Chair Ocegueda:**

Are there further questions for Mr. Crowley? I see none. Is there anyone wishing to oppose the bill? I see none. Is there anyone neutral about the bill? Mr. Horne, do you have a question?

**Assemblyman Horne:**

I need some clarification from Ms. Jacobson about adding more members to the Task Force and the reference to a representative from public utilities.

**Debra Jacobson:**

Yes, it does say public utilities. It is representative of the electric industry, which is the industry you would normally think of. In the natural gas industry it appears to be the fuel of choice for electric generation, which may not always be the appropriate choice. We believe in total energy efficiency and we would like our voice heard. We think the best way to be heard is to expand the Task Force.

**Chair Ocegueda:**

Are there any more questions? I see none. Mrs. Kirkpatrick, do you feel comfortable continuing to work on this bill?

**Assemblywoman Kirkpatrick:**

I do. I believe that we could bring it back to the Committee by next Friday with all of the amendments so that we can move forward.

**Chair Oceguera:**

Okay. Written testimony has been submitted from Charles Benjamin, Director of Western Resource Advocates ([Exhibit D](#)), to be put into the record and a letter from Kyle Davis, Policy Director of the Nevada Conservation League ([Exhibit E](#)), to be included in the record in support of A.B. 222.

We will close the hearing on A.B. 222.

We will open the hearing on Assembly Bill 7.

**Assembly Bill 7: Provides that certain public utilities have the burden of proving that costs sought to be recovered in deferred accounting proceedings were the result of reasonable and prudent practices and transactions. (BDR 58-280)**

**Assemblywoman Barbara Buckley, Assembly District No. 8:**

I am pleased to be here as the sponsor and to present A.B. 7. This bill deals with ancient history to some of us in this Body. After the utility deregulation issues of the 1990s, A. B. No. 369 of the 71st Legislative Session reintroduced deferred cost accounting for public utilities, among other things. We stopped the sale of the power plants and re-instituted deferred energy accounting as part of that bill and discussion. One of the trade-offs that we requested in exchange for re-instituting deferred energy accounting was statutory language that indicated that the Public Utilities Commission (PUC) "shall" not allow the electric utility to recover any costs for purchased fuel and purchased power that were the result of any practice or transaction that was undertaken, managed, or performed imprudently by the electric utility. For those of you who were not on this Committee at that time, it was a very common sense issue for us to implement at that time. The deferred energy accounting is a mechanism to recover the costs for purchased fuel. The power company has their own power plants, produces its own power, but does not have enough to cover the State, so they buy it. Do you allow the utility to recover the costs? Prior to 2001, when we were moving to deregulation, we were moving the risk onto the utility, so that they would have to bear the costs if they made a wrong choice. Deregulation did not work out very well and the Legislature made some very good choices to put the brakes on it. But, we said, if the rate payers are going to bear the burden of those costs, it has to be done prudently. The rate payers should not be forced to bear that burden.

In November 2001, Nevada Power filed a deferred energy application with the PUC to recover \$922 million in costs from March 2001 through September 2001. After some contested hearings, the PUC allowed recovery of \$485 million of the costs through a rate increase, but denied the remaining \$437 million on the grounds that the costs were imprudently incurred. Nevada Power appealed the PUC decision to a Carson City judge who denied review. The Nevada Supreme Court heard the appeal and they reversed a portion of the \$437 million disallowance, granting Nevada Power an additional \$180 million in recovery on the grounds that "a utility requesting a customer rate increase enjoys a presumption that the expenses reflected in its deferred energy application were prudently incurred and taken in good faith."

Assembly Bill 7 is intended to correct the court's interpretation of our legislative intent. When we reinstated deferred cost accounting, we told the utilities that they could not use this to ask for rate increases unless it was to recover costs resulting from reasonable and prudent business practices. That is what we meant. There is no presumption favoring a public utility when it files a rate change. We do not burden Nevada consumers for mistakes. They must demonstrate that any cost they seek to recover was reasonably and prudently incurred. That is what this bill does.

Since its introduction, I have had many meetings with people about the language contained in this bill; there were some concerns. I pulled everyone together, the Commissioner of the Public Utilities Commission, the power companies, the gas company, the Consumer Advocate, and anyone who had an issue or concern, and we struggled over every word. We debated the Supreme Court's decision, and their view of what we might be doing in this legislation should it be further litigated. Thanks to the hard work and talent of Ms. Erdoes, we have a revised bill which is presented before you ([Exhibit F](#)) that seeks to very clearly set the record straight for all cases that will be considered in the future about the presumption. We tried to set forth our intent, which is in Section 1, where it contains legislative findings and declarations that basically walk through everything I said in my testimony.

The reason we were so precise and went to the trouble of putting legislative declarations and findings in, is because this is such a specialized area of law, utility law, and there will be others arguing over what we meant. We tried to make it very clear what we meant and what costs should be recovered.

That is the intent and that is the bill. I want to thank all the parties including the utility companies, the PUC, and the Consumer Advocate's Office, who worked on the bill with me. I would be happy to answer any questions.



**Chair Oceguera:**

Are there questions from the Committee? I see none. Those wishing to speak in favor of A.B. 7, please come forward.

**Barry Gold, Director, Government Relations, American Association of Retired Persons, Nevada:**

[Spoke from prepared testimony ([Exhibit G](#)).] We are in support of A.B. 7.

**Chair Oceguera:**

Are there questions for Mr. Gold? I see none. Are there others wishing to testify in favor of A.B. 7?

**Douglas Brooks, Assistant General Counsel, Nevada Power/Sierra Pacific:**

The companies are here in support of the bill, as revised by the proposal that Speaker Buckley presented. We very much appreciate the opportunity we were afforded to work with the Speaker and Legislative Counsel and believe that the revised A.B. 7 is an excellent bill that gives fair signals to all participants in the rate-making process, to the Commission itself, and to the courts that may sit in review of future Commission decisions on what burden the utility has in these proceedings, and what requirements are put upon the Commission in making its decision. We agree that the law of Nevada should reflect basic rate-making principles and practices that were embodied in the legislation passed in 2001. We believe that A.B. 7, as revised, will ensure that those principles are protected.

**Chair Oceguera:**

Are there any questions from the Committee? I see none.

**Douglas R. Ponn, Chairman, Utility Shareholders Association, Inc.:**

We also support A.B. 7 as revised. We appreciate the Speaker's efforts to clarify this language.

**Chair Oceguera:**

Are there any questions for Mr. Ponn? I see none.

**Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation:**

We are here to support A.B. 7 as revised. We appreciate the Speaker's willingness to work with all the parties to craft language that supports the intent to ensure consumers do not pay any additional supply-related costs if anything is judged to be incurred imprudently. The proposed language in A.B. 7 expands the applicability of these consumer protections that were adopted for natural gas utilities who file on a quarterly basis. That was

S.B. No. 238 of the 73rd Legislative Session. These quarterly changes have been important to our customers and they have been well accepted. They have minimized the interest costs and the carrying costs and they have also sent timely price signals to our customers, which I believe helps them to make good choices for their household utility costs. The proposed language also underscores the consumer protections and that language is included on pages 5 and 6 of the original bill and it begins on line 33.

This does not directly affect us as we have already been subject to these enhanced consumer protections. We do several things such as filing annual gas procurement reports that detail our gas portfolio analysis and our resource needs, and we meet regularly with the staff of the PUC and the Consumer Advocate to discuss our ongoing gas procurement practices, and we also provide detailed accounting data on all our purchase decisions as part of our annual filing.

**Chair Ocegura:**

Are there any questions for Ms. Jacobson? I see none. Are there others wishing to testify in favor of A.B. 7? I see none. Is there anyone wishing to testify in opposition? I see none. Is there anyone wishing to testify as neutral? I see none.

It seems that everyone on the Committee is on the same page.

**Assemblyman Anderson:**

Will we be able to see the amended version of the bill?

**Chair Ocegura:**

Yes. I would entertain a motion.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS  
AS AMENDED ASSEMBLY BILL 7.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chair Ocegura:**

We will close the hearing on A.B. 7.

We will take a small recess while we await our colleague who will present the next bill.

[There was a five-minute recess.]

**Chair Ocegura:**

We will bring the Committee on Commerce and Labor to order.

We will open the hearing on Assembly Bill 84.

**Assembly Bill 84: Revises provisions relating to the expiration date specified on the label of the container for a prescription drug. (BAR 54-200)**

**Assemblyman Joseph Hogan, Assembly District No. 10:**

I am pleased to bring you A.B. 84 addressing a serious problem that exists in each of our districts, the fast-rising cost of prescription medicines. There is not a single Nevada family that is not impacted by the burden of costly, yet needed, medications, whether it is direct purchase by the patient or through charges from nursing homes, hospitals, clinics, or other providers. Finding a way to reduce these costs, even slightly, is an opportunity to help our constituents. When the problems result from government action, it is even more compelling to address them. Here is the situation. Two years ago this Legislature changed *Nevada Revised Statutes* (NRS) 639.2801 to permit the pharmacy practitioner to substitute an arbitrary one-year expiration date for the manufacturer's expiration date, which generally permits a considerably longer period of use by the patient. There appears to have been no real debate or discussion about this. It was presented as several amendments at the end of the Assembly Committee hearing.

The effect of the change was two-fold. The patient receives an expiration date which has absolutely no basis in science, medical necessity, or product safety, and which is inconsistent with the manufacturer's researched expiration date. The effect on the pharmacist is the convenience of skipping the step of determining the manufacturer's expiration date and simply programming the labeling process to generate a fictitious date. We will address, in a few minutes, whether there is a requirement to look up the manufacturer's date in each case. It is fairly clear that there is, but the practice is the quick and automatic placement of a one-year limit on the effectiveness of the drug.

The other effect is more frequent replacement of the drugs, which will generate additional sales over time. The public has been educated to be careful about their medicines. Cautions range from the compatibility of different drugs, various dosages, and certainly expiration dates. Most of us, not knowing that the pharmacist's expiration dates are artificial, would be inclined to discard remaining pills and to seek a fresh prescription. This request will often cause the physician to require an office visit, though the only patient symptom is the

premature expiration of the medication. This unnecessary cost works its way through the system to create an unnecessary payment by the insurance company or the taxpayer-financed public agency that is providing service or reimbursement.

The cost to the public can also extend to the growing nursing home industry and its patients. An article in a recent American Association of Retired Persons (AARP) Bulletin ([Exhibit H](#)) quotes Armon Neel, Jr., a geriatric pharmacist in Griffin, Georgia, who does medication reviews in nursing homes. It quotes Mr. Neel as saying that it troubles him to sign destruction orders for pills that are still safe and effective. He said "to put them in an incinerator and watch them burn up millions of dollars of drugs does not make any sense."

As legislators we have to decide some close questions. I suggest this is not one of those. While the use of fictitious expiration dates is more convenient and it may save some time in the dispensing process, it adds costs to our already expensive health care system by destroying good drugs, sending people to their doctors for unneeded visits, and adding these costs to the amount to be paid or reimbursed by insurers or taxpayers. It is far too much to pay for anyone's convenience. I urge you to support this bill for the benefit of seniors and for all other prescription drug consumers in Nevada. Returning Nevada law to the 2003 legislation that did not permit artificial expiration dates can be one of our contributions to a reduction in the cost of health care for our constituents this session. I have asked Mr. Barry Gold from AARP to join me and with the Chairman's agreement I would like to ask Mr. Gold to make a statement.

**Chair Oceguela:**

I think we should see if we have some questions first. Mr. Horne?

**Assemblyman Horne:**

I understand the spirit of what you are trying to do with this bill, and we are all in support of helping seniors with their access to medication and their health care issues. All medications are not alike; extending past an expiration date might be insignificant for some drugs, while with others it could be harmful if you use it past the expiration date. I think we should err on the side of caution.

**Assemblyman Hogan:**

The process of creating drugs with long-term stability seems to be one of the successes of the pharmaceutical manufacturing industry. When I first became concerned about this issue, I looked at some drugs that I had at my house. I found one very commonly used drug that had an expiration date in excess of two years. It was in the manufacturer's container, so that was the manufacturer's date. There was also attached a label from the pharmacy that

issued it, and it had the standard one-year date. If there are no special restrictions on the drugs, they generally are good for a very long time and virtually all generally taken medicines have a very lengthy period of safety.

Each medication that I looked at had the same situation. If I was concerned, as many people are, about taking or using drugs after their expiration date, I would have lost a great deal of the available time to use them. There is no additional safety provided by an arbitrary one-year limit if the manufacturer has tested the effectiveness of the drug over time. The shortening of the term does not really add to safety.

**Chair Ocegüera:**

Whether the drug was able to last for two years or ten years, would not the built-in safety be that you should go to your doctor? You would confirm with the doctor that you still needed to be on that drug.

**Assemblyman Hogan:**

There was a general feeling and unwritten rule that people should plan to have a complete annual checkup. While there is some merit to frequent doctor visits, I think that is more a matter that ought to be under the control of the doctor and the patient, instead of generating a large number of contacts between the doctor and patient asking for a new prescription which will cause the doctor to call a person in for a visit and an examination. It generates additional costs rather than letting people respond to the symptoms that may develop.

**Assemblyman Conklin:**

In reviewing my notes from last session on this subject, I note that the debate centered on this particular issue. At what point in time, regardless of whether a medicine is still good or not, should you re-consult with your doctor? You might ask whether the medicine is still good or, if you do not have the symptom anymore, whether you need the medication. Furthermore, I think we all have a bin of excess pharmaceuticals sitting around. I am concerned. I see the need to conserve, but there is also a public safety issue.

**Assemblywoman Kirkpatrick:**

I have a statement and a question. Because I work in the food industry, I would like to compare this issue to that industry so that I can better understand it. In the food industry they are required to include expiration dates because of the origins of where foods come from. For instance, if chocolate is coming from Belgium, it may have to travel. By the time the chocolate sits in the container for 45 days, then sits on a dock, it could actually be six months before the product is even distributed. My question is do you think that the origin of

where a medication is made would affect the expiration date? Do you have any research on that?

**Assemblyman Hogan:**

The Food and Drug Administration (FDA) requires the manufacturer of drugs to determine an expiration date and to label its products in that way. If there are lengthy delays in delivery to the place where it will be dispensed, that would run it past the expiration date and the manufacturer's expiration date would protect the consumer.

The testing required, and the including of provisions to provide stability in the compound that is being made into a medicine, are what we are really relying on and that is part of the calculation as to what that expiration date should be. The other way of looking at it is that a one-year label does not add information of any value except it may cause people to give up on the medicine if they think there is some danger of it being past its expiration date. In most cases, it will not be past its expiration date and the second label, with the artificial date, really does not protect anyone.

**Assemblyman Mabey:**

I agree with the questions and comments so far. One thing I have noticed as a physician, when I prescribe, usually a pharmacist will only give a patient one month's worth or sometimes three month's worth. Because of that, hopefully, they are using the medication as prescribed and certainly that medication has been depleted by the time any expiration date, placed by anyone, would be noted. Except for occasional pills, like for pain or an anxiety medication, most drugs are only given in a certain quantity. The expiration date would have no effect because the medication would have been used by that date.

**Assemblyman Hogan:**

I think with the drugs that are to be taken regularly, we would not usually run into a question about someone feeling they should discard the medicine, but there are quite a few drugs that are provided that have a long expiration date, and they are to be used when necessary. Pain medication is a good example. There are a number of other types of conditions that might be treated with a drug with a long-term effectiveness, but is to be used only when needed. That would be the types of cases where we would most likely run into the problem of lost value to the consumer.

**Assemblywoman Buckley:**

One thing that strikes me during the discussion and the questioning is whether those arguments about revisiting the doctor are true for every type of medication? Perhaps this is micromanaging. With my allergy medication that I

have been on for five years, life is not going to end if I do not go see a doctor within a year. I do anyway, but there are certain types of medications that I think are less urgent for the State to be micromanaging by putting an expiration date on them. We all agree it is good, prudent medical practice to see your doctor, but what is the State's role in that? At what point does the type of medication matter? Are there other states that have looked at this point?

**Assemblyman Hogan:**

I think the effort to permit a quick and easy labeling has been fairly successful nationwide. I think it is permitted quite universally. I also wanted to mention, in connection with your comment on things that are used as needed, many medicines for the control of blood pressure and so on are disbursed in fairly large quantities and they have a very long shelf life. For instance, a successful weight-loss regime may put a person in a position where they no longer have the need for that medication, and the subsequent weight gain might put them back on it. It is quite convenient, if only a few months have passed and you are still within the real time of validity, to be able to resume taking the medicine.

**Assemblyman Settlemeyer:**

My doctor has always told me that the manufacturer puts down certain dates, but also gives him other information stating that it is still acceptable to use within a two-year time frame, and that certain drugs have a safety margin built into them. Although this bill has the right intention, there could be a situation where it would deny people certain drugs because of an arbitrary date that is being set forth. Are you saying if they cannot pick a date of safety based on what the manufacturer told them, that they have to follow what the manufacturer stated on that label? I worry that we might be put in a situation where, perhaps in a rural area, they do not have a large supply of drugs. If they cannot prescribe that drug because of the expiration date, but it could have been utilized by the patient, it does not afford the pharmacist flexibility.

**Assemblyman Hogan:**

I had not thought about an area with a very limited availability of pharmacies. We are looking at a manufacturer's date and the manufacturer is willing to admit that because they were very cautious and conservative in adopting that date, chances are you could use it quite a bit longer. I do not think the State would want to share the risk of that kind of informal extension. The bill that we are looking at here is a change, not to a longer date that would allow more time to take it, but rather an artificial one-year limit that would make that rural patient scramble much earlier to find additional medicines that appear to still have their original validity.

**Assemblyman Mabey:**

I prescribe some medications that, if they are not refrigerated, will expire sooner. So the expiration date might be correct, but if it is not stored correctly then it could damage the medicine and make it less effective. My concern, if we stretch that date out longer, is that there would be more time where the medication may lose its effectiveness. Do you have any thoughts?

**Assemblyman Hogan:**

Yes. If there are additional limitations on the validity or storage conditions that must be observed, then the requirement, both from the FDA and our pharmacy regulations, is that information would have to be made available to the patient. I think it is fair to assume that the manufacturer would elaborate to explain the strict regulations, such as temperature, that might affect the medication. I think the communication of those concerns is required and is outside the scope of what we are looking at today. I hope those conditions are clearly and well communicated so that the patients know that they have to take those precautions. If they fail to do that, it could cause the taking of medicines that are not appropriate or good under those circumstances, with either kind of labeling.

**Assemblyman Anderson:**

I would think in a rural community, the physician and the pharmaceutical provider would be equally knowledgeable about the needs of the community. They also might be utilizing a mail order system, which is becoming the most frequently used to obtain medication.

**Assemblyman Hogan:**

I think the mail order system is very much a part of the market today. Seniors and others have an opportunity to save a considerable amount if the doctor is willing to approve a three-month supply instead of a one-month supply. The mail order system is taken advantage of by many seniors. It makes it important to have correct expiration dates since they are getting larger doses of medicine that might last three months or more. If that is shortened by means of an artificial date, it is more of a problem. There might come a time when you would not need to use it steadily and you would have it available to resume when you need to, but you might then have a date that has been shortened.

**Chair Oceguera:**

We should move to Mr. Gold's testimony.

**Barry Gold, Director, Government Relations, American Association of Retired Persons, Nevada:**

[Spoke from prepared testimony ([Exhibit I](#)).]



Some of the members on this Committee do not receive the AARP Bulletin or member update or magazine and those of you who do not, I would be glad to bring copies for you on a regular basis.

[Continued with prepared statement.]

There is a difference between medicines that might be for athlete's foot or asthma-like conditions or heart attacks or cancer. My son has an asthmatic-like condition. When he gets severe colds, he needs to use this medicine and it is on an ongoing basis. They give us a box of this medication. I have had the situation where the label on the box said it expired in one year, but the actual box had the manufacturer's date, which was a year later. I think the idea of the type of medication is very important. The idea of self-diagnosing a critical condition is something that must be considered.

[Continued with prepared statement.]

If you would like, I could research the answer to Speaker Buckley's question, regarding other states' practices. I would be glad to answer any questions.

**Assemblyman Horne:**

I do not think the concern is the discarding of drugs one day after the expiration date. The concern is someone going to the medicine cabinet six months or a year later and taking that medication regardless of any expiration date. There needs to be some definitive date to give guidelines to the safety of the medication.

**Barry Gold:**

I think the purpose of this bill is to do just that, to use the actual manufacturer's date. That is what we are saying should be put on the label. We are not saying a date other than the manufacturer's date. We want to enforce the manufacturer's date. The intent of this bill is to enforce the manufacturer's date so that consumers know exactly when the manufacturer said this is not good anymore. To use the food analogy, if they said the milk goes bad Wednesday, but they know the milk really does not go bad for two weeks, how much milk is being thrown away when really it is still safe to use? We are not saying people should take medicine after the manufacturer's expiration date, we just want to enforce the date that the manufacturer says the medication is bad.

**Chair Oceguera:**

Mr. Settelmeyer?

**Assemblyman Settlemeyer:**

I think another issue that needs to be brought to the Floor is the reality that the manufacturer's date of expiration applies until the bottle is opened. What we are getting at is once the pharmacy dispenses that drug it can no longer be managed as it could within the pharmacy. When a consumer has it in their possession, outside influences such as temperature could not be regulated. This could change the authenticity of the manufacturer's date. There is some security when a one-year expiration date is given.

**Barry Gold:**

I understand that and I agree that storage conditions are important. On the patient information sheet, I currently see things such as store this medication between this temperature and that temperature. They are informing consumers how the medication is to be stored and when it is safe if stored properly. Patients can and will do whatever they want once they bring it home. But, if you give them the information regarding storage, that is the State's obligation. To go beyond that and say we are going to protect them even more, we are going to micromanage that process because they might not do it correctly. I think the manufacturers have come up with complete protocols on what storage conditions should be.

**Assemblyman Settlemeyer:**

The expiration date on the manufacturer's package is based on the stability of the drug in its original, closed container and once you open it, it changes the data. Their data was based on the original container. If you get a package of medication from the doctor and go home, it is wise to put an overall expiration date on it because you have changed it. It is no longer in the original container from the pharmacy. I think we need a pharmacist to discuss this.

**Assemblyman Hogan:**

It is my understanding that the manufacturers are required to label their containers with the effective date that they have determined and any further conditions. I have never heard that the date is only good until the package is first opened. The date they furnish is the date they are willing to guarantee that the medicine will be usable for the intended purpose. Opening and closing a bottle is not an extraordinary event to happen with medication. I have never seen an indication that the date applies only until the package is opened.

**Barry Gold:**

I think if that were the case, they would have to have two expiration dates; one for the pharmacy if they kept the drugs on their shelf, and another when dispensed. The manufacturer's date does not say good until bottle is opened.

We should discuss this point with the Board of Pharmacy to get that exact answer.

**Chair Oceguera:**

Are there others wishing to testify in favor of the bill? I see none. Are there others wishing to testify in opposition to the bill?

**Scott Craigie, representing Nevada State Medical Association:**

The Nevada State Medical Association is neutral on this bill. We do have a few issues that we would like to bring to your attention. We have had several physicians call the office and talk about this bill. We also have had a call from a pharmacist. There are circumstances where pharmacists will create a drug by combining a group of other drugs together. In many cases the combination of drugs will all have different expiration dates. It is not clear in this bill whether or not these altered effectiveness dates or loss from dilution will be affected by this bill. If you decide to go forward with this bill, someone working in this area should be a part of the discussion to let us know whether or not we are preventing pharmacists from making those combinations. We do not want to handicap someone from doing their job to the detriment of the people who are dispensing prescriptions.

**Chair Oceguera:**

Are there any questions for Mr. Craigie?

**Assemblywoman Buckley:**

The longer I hear people argue against the bill, the more I am becoming an advocate for it. Reading several FDA and other websites on this issue as I sit here, most of the information goes the other way. It is talking about if the manufacturers are using the right expiration date. The drugs probably last longer than that. They speak about new drugs that might come to market and the federal government and military studies that showed we were wasting millions by throwing away medication. None are arguing that the manufacturer's date is wrong. We might be behind the times here. It sounds as if we are becoming a "nanny" state. You cannot have the State saying that you cannot use a drug because it was transported on an airplane.

**Scott Craigie:**

My mother had a theory that makes some sense. When she was younger, the expiration dates on prescription drugs were longer than they were when she got older. She said that people are defensive because of all the lawsuits. The fact is that pharmacists will be confused if we do not determine whether they have the ability to create these mixtures for specialized prescriptions. We want to

make sure that those pharmacies are able to deliver what physicians are prescribing.

**Chair Oceguela:**

Are there further questions for Mr. Craigie? I see none.

**Liz MacMenamin, representing Retail Association of Nevada:**

The language, as it is now written, gives the pharmacist the opportunity to make a decision and determination. This is stating that they "may" use the manufacturer's date or they may use the one-year date for dispensing. Our pharmacists are professionals. They are best suited to decide the expiration date with the information they have, including the date from the manufacturer, and the type of drug they may be dispensing. That is already taken into consideration.

I asked a local pharmacist, who was unable to attend today, what the procedure is at Scolari's. They leave that up to the pharmacist. There are times they use the manufacturer's date. If it is a drug that is an ongoing thing, they will use that date. The language that exists as it does today gives the pharmacist the opportunity to make those choices.

Antibiotics are usually prescribed for a certain limited time and the doctor wants the patient to take those medications for that limited time period. One of our major concerns is the stability of the drugs. Ultimately, the pharmacist's concern plays into their decision on what date to put on the prescription bottle.

**Chair Oceguela:**

Are there any questions for Ms. MacMenamin?

**Assemblyman Settlemeyer:**

In my searching, I found that in Oregon they use the manufacturer's date unless, in the practitioner's professional judgment, a shorter expiration date is warranted.

**Liz MacMenamin:**

As the language is written now, that is how it is. In answer to Speaker Buckley's question earlier, it is my understanding from my national organization that this is the regulation and law within all 50 states. If any states have implemented using the manufacturer's date only, it would be news to me.

**Chair Ocegüera:**

Are there further questions? I see none. Are there others wishing to testify in opposition?

**John P. Sande, representing Medco Health Solutions, Inc.:**

We are also neutral. We do, however, have some other issues that we would like to address and perhaps work through with you. First, as you can see from my proposed amendment ([Exhibit J](#)), I think that everyone is on the same page. One issue that we had is regarding prepackaged medications. Frequently, drug manufacturers will label medicines in the original packaging. This information will typically provide the expiration date of the medicine. As proposed, this bill would require the pharmacy to place an additional expiration date on the label affixed to the container. We would prefer to have some language that would allow the dispenser to forego placing an expiration date on that bottle if it is already supplied by the manufacturer.

Our second concern relates to a portion of the bill that was not addressed earlier. That is regarding Section 1, subsection 8, which states a label must contain the warning: "Caution: Do not use with alcohol or nonprescribed drugs without consulting the prescribing practitioner." I was thinking about this language and I could not help thinking about the "boy who cried wolf." If this warning is on every prescription, regardless of what medication it is, the warning would become ineffective. I was hoping you would entertain the idea of only requiring that label if that medication might adversely react with alcohol. We would be more than willing to work with the Pharmacy Board to come up with a list of medications that would require that warning. We believe that with so many unnecessary labels on each prescription, we are at a point of overalarming everyone and we could be causing more harm than good by placing all those cautions on the bottles, especially if they are not applicable to that medication.

**Chair Ocegüera:**

Mr. Sande, did you have the opportunity to speak with the sponsor of the bill on your proposed amendment?

**John Sande:**

I am sorry, I did not.

**Chair Ocegüera:**

That is the way it works here. It seems like it is a surprise to him and it certainly is a surprise to us. If you wish to offer an amendment to a member's bill, the appropriate process would be to talk to the member first so that he would have an opportunity to agree or disagree with your proposal.

**John Sande:**

I will make sure I do that. Thank you.

**Assemblyman Arberry:**

Are you saying you want them to take all the warning labels off the container that the drugs are in?

**John Sande:**

No, what we are hoping to accomplish is to place those warnings only on the medications that are applicable to those warnings. If it is known that a certain prescription does have a chance of reacting adversely to alcohol, then that prescription would have that warning label. If you are taking a prescription and there is no indication that alcohol would affect an individual's health by taking it, then by placing that warning on that bottle, you are essentially crying wolf and consumers might ignore the label on medication even when it was applicable.

**Assemblyman Arberry:**

I feel that a warning label needs to be there because it is a red flag. When you go to your doctor and he prescribes a drug, he does not let you know that it might have some effect with alcohol. Once you get to the pharmacist, the pharmacist would be the one to bring that to your attention. You needed to talk to the sponsor of this bill. You blindsided the sponsor. Please work with him.

**John Sande:**

I would be more than happy to. Just as a clarification, there are currently some regulations in the *Nevada Administrative Code* that require pharmacists to present those warnings when they fill those prescriptions, so consumers would get the warning at the time they fill their prescription. If that warning was not applicable, the pharmacist would not provide that warning and it would not be on that bottle. Any prescription that had a potential for adverse reaction would have that label. Not affixing this warning would only apply to medications that have no known adverse reaction to alcohol.

**Assemblyman Anderson:**

Mr. Sande, I am concerned because I take several prescriptions. Are we putting an unreasonable requirement on the pharmacist rather than trying to allow him to do his job by warning the patient of the potential hazards of this medication? If just handling the medication could put someone in danger, I would want to know the warnings. I believe the pharmacist is doing me a favor by warning me of all the potential hazards. It does not appear to be the intent of this bill; it only covers expiration dates for drugs.

**John Sande:**

We are asking the pharmacist to do even more of a job by ascertaining which medications need various warnings. I believe that if you overlabel drugs, people might start to ignore the labels. If a label is present it should mean there is a serious potential for adverse reactions.

**Chair Oceguela:**

Is there anyone else wishing to testify? I see none. We will close the hearing on A.B. 84.

There being no further business to come before the meeting, we will adjourn the meeting at 3:15 p.m.

RESPECTFULLY SUBMITTED:

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Patricia Blackburn  
Committee Secretary

APPROVED BY:

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Assemblyman John Oceguela, Chair

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

**EXHIBITS**

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

**Date:** March 7, 2007

**Time of Meeting:** 1:38 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
AB 222	C	Rebecca Wagner, Commissioner, PUCN	Fact Sheet
AB 222	D	Charles Benjamin, Director, Western Resource Advocates	Written testimony
AB 222	E	Kyle Davis , Policy Director, Nevada Conservation League	Written testimony
AB 7	F	Assemblywoman Barbara Buckley	Revised AB 7
AB 7	G	Barry Gold, Director, Government Affairs, AARP	Written testimony
AB 84	H	Assemblyman Joseph Hogan	AARP Bulletin article (April 2006)
AB 84	I	Barry Gold, Director, Government Affairs, AARP	Written testimony
AB 84	J	John Sande, representing Medco Health Solutions, Inc.	Proposed Amendment