

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

**Seventy-fourth Session
March 1, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8 a.m. on Thursday, March 1, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Lynn Hendricks, Committee Secretary
Wil Keane, Committee Counsel
Adam Thomas, Intern to Senator Michael A. Schneider
Scott Young, Committee Policy Analyst
Lori Johnson, Committee Secretary

OTHERS PRESENT:

Captain P.K. O'Neill, Chief, Record and Technology Division, Central Repository
for Nevada Records of Criminal History, Department of Public Safety
Jon Bauman, Chairman, Truth in Music
Mary Wilson
Donald Riggio
Charles Sonny Turner
Robert A. Ostrovsky, Nevada Resort Association
Larry L. Pinson, Executive Secretary, State Board of Pharmacy
Fred L. Hillerby, Nevada State Board of Pharmacy

Janine Hansen, Nevada Eagle Forum

CHAIR TOWNSEND:

This committee has jurisdiction over professional boards and trade commissions whose numerous members are required by the *Nevada Revised Statutes* (NRS) to be fingerprinted and to obtain background checks. We have asked Captain O'Neill to give us an overall understanding of that process. We would like to know how many requests, types, numbers and processing time are involved so we can help them achieve their goals.

SENATOR CARLTON:

I need to disclose that my husband is employed by Department of Public Safety.

CAPTAIN P.K. O'NEILL (Chief, Record and Technology Division, Central Repository for Nevada Records of Criminal History, Department of Public Safety):

This presentation ([Exhibit C](#), original is on file in the Research Library) outlines responsibilities and future needs of this Division. The Division's core mandate is to act as a filing cabinet for the criminal justice community and the State of Nevada as a whole. This filing cabinet system is called the Nevada Criminal Justice Information System (NCJIS). For the purpose of this presentation, I will focus only on the processes for the civil-applicant fingerprint unit.

Fingerprinting is the most reliable form of identification. Due to market demand, background checks for civil applicants outnumber requests for criminal processing by two-to-one. Currently, we maintain a four-week processing turnaround time for manually submitted fingerprints. That is a reduction from the previous time frame of 12 weeks. If fingerprints are electronically submitted, the time is reduced to approximately two and a half weeks. My goal, by the 2009 Session, is to achieve a one-week turnaround time for noncriminal background checks.

SENATOR CARLTON:

What percentages of service workers, those not associated with gaming, are clogging the fingerprinting system? I think we can agree that food servers and maids working in a casino do not need to be run through the same system as casino gaming employees.

CAPTAIN O'NEILL:

That is a question I cannot answer, since we are not the requesting agency, just the repository. The job requirement for fingerprinting and background checks is set forth by the hiring employer, many of whom require that record check by statute. Recently, I noticed a television advertisement for cleaning services that now offer bonded and fingerprinted employees to assure customers that they are safe to work in your home. This is a market-driven demand.

SENATOR CARLTON:

I was fingerprinted by my employer as part of the hiring process. Since the process was done and clear, how do I opt out of the system?

CAPTAIN O'NEILL:

Civil applicants are not maintained in the NCJIS; those civil records are processed and destroyed later. If you work for a school, you stay in the NCJIS. For civil applications, once we destroy the actual prints, we maintain records for demographics and fee-setting purposes. People who have a permit to carry a concealed weapon are in the system. Most service workers, as you mentioned, are only processed for a name check and the reply is instantaneous. It is not as accurate as a set of fingerprints, and it is not unusual to get multiple hits on a name. Casinos use this civil-name process to get a cursory check and expedite their hiring process.

SENATOR CARLTON:

Could I get a list of what type of check is done for each type of worker?

CAPTAIN O'NEILL:

I have that information to give you ([Exhibit D](#)).

SENATOR HECK:

Everyone who gets an occupational license is under the jurisdiction of this Committee. This will probably not be a surprise to you, but we get a lot of complaints from constituents who say your Division is the reason for the holdup on their licensing. Now that we understand your process and timetables, it looks like your Division is not the one causing the problem. Possibly, the licensing board is the reason for the delay. Does your fee cover your costs?

CAPTAIN O'NEILL:

Yes, and I am including the cost of our system infrastructure. We are a fee-funded division; our product is our income. We do not need to use general allocations or highway funds. Our Division does require constant maintenance and upgrades to our technology-support systems which is an expensive endeavor. To achieve our goal of a five-day turnaround, we will continue to need increased space and enhanced technology.

SENATOR HECK:

You are requesting eight additional full-time employees. Will that increased staff still be funded through your fee income?

MR. O'NEILL:

Yes, there will be no impact to the General Fund at all, Sir.

SENATOR HECK:

When you get the fingerprints, do you run a central-depository check?

CAPTAIN O'NEILL:

We require two sets of fingerprints. One set goes immediately to the Federal Bureau of Investigation (FBI) for a national check. We keep the second set to run a state-criminal check, as we only have control over Nevada criminal history. Two different checks are required because some state arrests are not forwarded to the FBI database.

SENATOR HECK:

Do the time frames you indicated earlier include the FBI process? If you get a prospective license application and you have done your minor state check, do you wait for the FBI's answer, or does the FBI respond directly back to the requesting agency?

CAPTAIN O'NEILL:

Excellent question; the answer is an unequivocal yes and no. Statutory requirements determine what each agency needs. Sometimes, we wait for both checks before we contact the licensing agency. Some agencies need the FBI response directly. The FBI has been fairly consistent with a four-week or less turnaround time. There are many variables in timing, such as mail delivery.

SENATOR HECK:

There seems to be a growing demand for background checks by entities not statutorily required to do so. Have you considered a two-tiered fee scale? Charge one fee for those statutorily required and another fee for those that are not, to offset your expenses.

CAPTAIN O'NEILL:

Good suggestion, we can consider that idea.

SENATOR CARLTON:

We need to clarify that most of time the employee pays the cost for the fingerprints and background check in order to qualify for the position.

SENATOR SCHNEIDER:

The businesses in the state are frustrated by the delays for licensure. I am associated with the real estate profession and those people are telling me that these background checks are taking up to six months. These people cannot afford to wait that long to start making an income. Since the bureaucracy seems to move so slowly, can you make a recommendation? Should we call U.S. Senator Reid and attack it from the federal regulation end?

CAPTAIN O'NEILL

I appreciate your frustration. When I first came to this position, I worked directly with the real estate licensing boards that you mentioned. We worked through different issues in order to maintain the statutory requirement of no more than 30 days for completion. There are just so many variables that can slow down the process. I invited all licensing boards to call me directly to track down specific cases, and we identified several problem areas on both sides. We are trying to be as responsive to their needs as possible.

SENATOR SCHNEIDER:

Could the answer be a provisional or temporary license, until the results come back? We would support that possible solution and talk with the chairman of the Finance Committee to get you the money to start that process.

CHAIR TOWNSEND:

We will open the hearing on Senator Heck's bill, Senate Bill (S.B.) 53.

SENATE BILL 53: Provides that advertising or conducting a live musical performance or production through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group constitutes a deceptive trade practice. (BDR 52-220)

SENATOR HECK:

I am pleased to sponsor S.B. 53, along with Senator Horsford. He could not be here today. I would like to introduce Mary Wilson from The Supremes and Jon Bauman, formerly of Sha Na Na. Mary talked with me about their coalition "Truth in Music" and the bill they have asked us to support. I have an amendment to offer ([Exhibit E](#)).

JON BAUMAN (CHAIRMAN, TRUTH IN MUSIC):

I am the Chairman of the Truth in Music Committee from the Vocal Group Hall of Fame. I am an entertainer and a former member of the Sha Na Na performing group. We are here in support of S.B. 53. This bill is about imposter groups who practice deception by taking our hard-earned consumer entertainment dollars and cheating the pioneers of the rock music industry out of their rightful legacy. These imposters need to get a job.

This deception has been happening nationwide and to a particularly alarming extent here in Nevada. I describe this deception as a sophisticated form of identity theft. Unscrupulous promoters make specious claims to names of famous groups, sell multiple underpriced units and net huge amounts of money based on a sham and then dare anyone to try to stop them. Unfortunately, existing laws have failed miserably in making these promoters back up their claims of association to the so-indicated musical group. Our bill, S.B. 53, shifts the burden to the imposters to either back up their claim of association to these groups or to stop duping the public. We have passed similar bills in nine states: Illinois, Pennsylvania, Connecticut, Michigan, Massachusetts, New Jersey, South Dakota, Virginia and South Carolina. We have pending bills in 12 more states including California, Florida, New York and of course, Nevada.

We expect to have passed this type of legislation in over half of the states by the end of 2007. With me today are several artists who have suffered from the imposter problem for years. We also have a spokesperson representing the most significantly damaged constituency, the public consumer.

MARY WILSON:

Hello to all of you, and let me sing: "stop in the name of love, before you break my heart." This bill was put together not only to protect the original recording group's integrity, but the consumer as well. Being an entertainer and one of the original Supremes, we dared to dream an impossible dream. Our first song, "Where Did Our Love Go," was recorded in 1964, the same year the Civil Rights Act was passed. We worked in an era that did not recognize blacks; we entertained in hotels where we, as black people, were not allowed to stay overnight. I mention this not as a black and white racial issue but to remind everyone that it took years and much heartache to build and perfect our art. Now we find out that anyone can use our name without fear of prosecution. I have spent millions of dollars trying to prosecute six different imposters to protect my name.

When we started this coalition back in the 1990s, we did not understand that we needed a law behind us to get protection. As performers, The Supremes, The Coasters, The Drifters and The Platters provided many people with years of happiness listening to our music. I like to think of us as American ambassadors because we were so popular around the world. I know there are more important issues pending for Americans, like homelessness and poverty, but as pioneer entertainers, we feel we have a right to protect our hard-earned legacies.

MR. BAUMAN:

First, I would like to point out that this bill is written to protect consumers. We chose not to approach this issue as a violation of the intellectual-property laws. The consumer is the one whose is damaged. These people who spend their hard-earned entertainment dollars in the hope of seeing their favorite entertainers complain to us all the time that they are being ripped off by imposter groups.

DONALD RIGGIO:

I am here on behalf of the "Truth in Music" bill and as an avid fan of rock and roll. As a teenager in the Bronx during the mid-1960s, my love of this music made me curious to find this music's roots. I discovered the early pioneers of rhythm and blues including The Coasters, The Platters and the Drifters. These performers and their songs formed the sound track of my life. To this day, I try to see them whenever and wherever I can. There exists today an unscrupulous group of promoters and producers that seek to perpetrate fraud upon the unsuspecting public. These imposter groups are perpetrating a deliberate hoax

by passing themselves off as the authentic performers. I take it as a personal insult to have these groups heaped upon me. They should have to be called what they are, a review or tribute performing group. This "Truth in Music" bill will remedy the situation by requiring that the performing act contain at least one of the original or former members of the recording group. I urge the Legislature to pass this bill and set the record straight.

MS. WILSON:

Many of the artists from the 1950s were not visually known since at that time album covers did not feature black artists. This makes it easier for these imposter groups to practice their deception. The group must have a legitimate claim as one of the actual or original recorders to be allowed to perform as that group.

MR. BAUMAN:

Today's artist has more protection because of music videos, but I have still seen modern instances of imposter groups.

CHARLES SONNY TURNER:

It is an honor to be able to speak to you. I am one of three living performers of the original recording group known as The Platters. In our heyday, we sold more music than any one group until the Beatles came along. It is of extreme importance that these tactics of deception be stopped and this bill is passed. We are still viable performers who have been pushed out of the market by these imposter groups. Besides me, Zola Taylor and Herb Reed of the original Platters are still living and performing. I am a resident of southern Nevada and perform here and in Reno. I will have the honor of performing at Hot August Nights for the fifth consecutive year in 2007. The public has a right to hear the original performers. The consumer does not deserve to be confused by numerous performers across the country, that associate their performance with a recording group they were never a part of.

MARY WILSON:

We are at a time in history when we are losing some of our greatest older performers, who are in their twilight years. They need to be able to die with dignity and know that their legacy and history is still intact.

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MR. BAUMAN:

Many of these performers' later lives have been consumed with trying to litigate against these pretenders. Our goal is to obtain this protection for them before they die.

MAXINE PORTER:

I have been a resident of Nevada since the early 1970s. I am here representing Bill Pinkney, one of the original Drifters who is now 81 years old. For the record, it was my personal request to Senator Horsford to get this bill written for Nevada. To give you a brief overview of our Truth in Music quest, our intention is to effectively address the dilution of the entertainment market by these imposters who bask in reflected glory of the original performers for their own gain. These carnival imitators are using the goodwill and the likenesses created by these legendary artists, underbidding for engagements plus misrepresenting affiliations in advertising their performances. These imposters are what I call the "ifsters" meaning, if they had their own legacy, they would not have to steal the Drifters' legacy. These types of generic acts are perpetrating consumer fraud. They should be required to bill themselves as a salute, tribute, or review band to avoid the public inference that original and or recording artists are actually performing. Some of these groups allude to having "rerecorded" a song or "one of our hits" in the advertisement of their performance.

Mr. Pinkney is a former Negro Baseball League pitcher and a pioneer award recipient of the Rhythm and Blues Foundation. He is a member of the Rock and Roll Hall of Fame. He is the recipient of a Presidential Citation for valor in World War II and received five Bronze Stars for fighting in the battles of Normandy and Bastogne under General Patton. He deserves better in the autumn of his life. There are so many "drifters" performing now that we refer to them as "drifters' du jour." Everyone should revere the significant contribution the original and or recording artist has made. These contributions are acknowledged and documented by personal induction into the Rock and Roll Hall of Fame or some kind of respected musical award. We encourage and appreciate your support of the performers who created the golden music.

SENATOR HARDY:

I think we can all relate to this music being soundtracks of our lives. I am stunned that Nevada has not been in the forefront of this movement. I have a question about ([Exhibit E](#)), regarding the terminology of section 1, subsection 3, paragraph (c), line 15, "Recording group ... without having abandoned the name

or affiliation with the group." Is "abandoned" a term of art from your industry that is fairly well-defined?

MR. BAUMAN:

"Abandoned" is a reiteration of the definition of a "recording group." We want to be careful not to be in conflict with trademark law. Groups who have federally registered trademarks are therefore "legal" within this bill; see exception as noted in S.B. 53, section 1, subsection 2, paragraph (a). Our purpose with this bill is consumer protection. The trademarked groups, who we feel are also fraudulent, will be dealt with separately in a federal court, there being no statute of limitations to start that action. I have personally met with Lynne Beresford, Acting Commissioner for Trademarks for the U. S. Patent and Trademark Office, who confirmed that we are correctly pursuing this issue separate of this State action.

MS. WILSON:

There are many different issues within the practice of deceptive trade. We are tackling them one at a time. The passage of S.B. 53 will help us in other actions in the future.

SENATOR HARDY:

I am leery of creating any confusion. We want to make the language as standard as possible.

MR. BAUMAN:

Not everyone in our community has the "pure" rights to use their group's name. Our purpose with this bill is not to upset standard business practice. As an example, I left Sha Na Na in 1983, so when I perform I use "Bowzer, formerly of Sha Na Na" or "Bowzer's Rock n' Roll Party." I make it a point to clarify my former association and make sure that the public is aware of my current interest. Our purpose, today, is to clear the field completely of phony groups that have never been associated with the recording artist they advertise.

SENATOR SCHNEIDER:

I have seen some public broadcasting television of fund-raisers that promote the old groups, and it is obvious there are some younger people replacing members who have passed away. When I saw the Beach Boys perform, I believe there was only one actual original Beach Boy still performing. Is this what you are advocating?

MS. WILSON:

Our basic premise within this bill, is that at least one original member would constitute an authentic recording group. As an example, Diana Ross left The Supremes in 1970 to perform solo. I then hired several replacements and continued to perform for seven more years as The Supremes because I was an original member of that group.

MR. BAUMAN:

There are exceptions to the one performer still making a group, as indicated in S.B. 53. There are situations where all the original members have passed on and a business decision is made to continue the trademarked name legally. For instance, there is still a Glenn Miller Orchestra that is administered in the name of the family trust, who operates it with due care and quality control as required under trademark law.

SENATOR HECK:

We modeled the change in the mock-up of the amendment to S.B. 53 to legislation in Pennsylvania. See section 1, subsection 2, paragraph (c), starting at line 18 as marked in green. We wanted to eliminate any confusion about the same name being used as both the original and the tribute group.

ROBERT A. OSTROVSKY (NEVADA RESORT ASSOCIATION):

I am representing the Nevada Resort Association (NRA) and I would like to thank Senator Heck and the proponents of this bill for clarifying the intent of this bill. The bill is intended to stop promoters, agencies, managers and those types of individuals that are perpetrating this type of public deception and fraud. The NRA would not be able to support the bill if the intent was to go after the venues where these groups might be performing. Of course, if the venues actually had the ownership rights and were producing the show, they would then be liable for fraudulent use of the recording artist's name. We agreed on the amended language in section 1, subsection 3, paragraph (d) definition of "person" ([Exhibit F](#)). This clarification relieves the venues of responsibility to ascertain legal use of the recording artist's name. If a fraud is being perpetrated, then the attorney general's office can pursue it with the actual group or agent of the group. With this amendment, the NRA would be in agreement with S.B. 53.

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MR. BAUMAN:

This was a necessary amendment because 99.99 percent of the time the venue is a victim as well as the consumer.

CHAIR TOWNSEND:

We will close the hearing on S.B. 53.

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 53.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR TOWNSEND:

I think this is a very important occasion and we thank you for the gift of your music. We appreciate your being here and for bringing a face to this industry. Hopefully, this bill will be moved along to final passage.

SENATOR TOWNSEND:

I will call a recess at 9:41 a.m.

We will reopen the hearing at 9:49 a.m. to hear S.B. 98.

SENATE BILL 98: Abolishes the State Board of Pharmacy and transfers its powers and duties to the Board of Medical Examiners. (BDR 54-60)

SENATOR SCHNEIDER:

This bill has been construed as something other than what was intended. Last year, I made comments of outrage because the State Board of Pharmacy apparently thought that it was their option to choose whether or not to obey a law that had been passed in the 2005 Legislature and signed by the Governor. This Board voiced their opinions as if they had the prerogative of following this law.

My opinion is the State Board of Pharmacy is a creation of this legislative body and their only charge is to enforce laws as passed by this body. The fact that this board would question our actions in regard to the Canadian drug bill S.B. No. 5 of the 22nd Special Session of the Legislature is still very objectionable to me. All of us signed a petition to take before this Board to show them we were serious about this bill. If anyone wants to change a law that is in effect, the only option is to argue that in front of the Nevada Supreme Court. It is not an option for any board to question the actions of this Legislature.

SENATOR CARLTON:

I feel that we need to get a few things on the record. I would like to get a response on the record from the State Board of Pharmacy.

FRED L. HILLERBY (Nevada State Board of Pharmacy):

For the record, I am representing the State Board of Pharmacy. I have also brought with me for distribution, the Nevada State Board of Pharmacy's "Biennial Report" dated August 5, 2004-November 16, 2006 ([Exhibit G](#)).

SENATOR CARLTON:

We all have been receiving an unusual number of e-mails and phone calls regarding protecting the conscience clause, in respect to religious conscience, that some feel is contained within this regulation and S.B. 98. Mr. Pinson, very succinctly, and with short answers, does the Pharmacy Board and the regulation that you promulgated under the *Nevada Administrative Code* (NAC) 639.753, bestow upon any pharmacist the right to the "conscience clause?"

LARRY L. PINSON (Executive Secretary, State Board of Pharmacy):

No. There is no conscience clause within the NAC regulation.

SENATOR CARLTON:

Thank you for clarifying that no clause, as such, exists within this Statute.

JANINE HANSEN (NEVADA EAGLE FORUM):

I have an exhibit to be put into the record ([Exhibit H](#)).

SENATOR CARLTON:

To restate, all the mail that we have been receiving that urged us to protect this clause is a clause that does not even exist, with respect to this bill. Thank you gentlemen, you have just popped the balloon.

SENATOR SCHNEIDER:

I asked my intern, Adam Thomas, who is now a senior at the University of Nevada, Reno and a graduate of Bishop Gorman High School in Las Vegas, to put a presentation together regarding a news program I heard, which stated that by the year, 2025, the entire federal budget would be devoted to health care with no other monies available for the military or any other programs that the government usually funds. I was concerned that the escalating sale price of pharmaceutical drugs was a big reason for this possible health crisis. Adam has spent some time dealing with this issue and would like to present some information and an amendment concerning costs of prescription drugs.

ADAM THOMAS (Intern to Senator Schneider):

I am here to propose an amendment. My testimony ([Exhibit I](#)) will show that the State of Nevada should prohibit direct-to-consumer advertising (DTCA). It is my contention that this direct advertising is an obstruction to the health care process as well as a primary economic driver of the increasing costs of prescription drugs.

SENATOR SCHNEIDER:

I think we should keep copies of Adam's testimony available for everyone to read. Thank you, Adam; you did a good job on the research and presentation. The amendment presented would replace most of the language in S.B. 98. We are comfortable now that the State Board of Pharmacy is back on course.

Mr. THOMAS:

The actual amendment ([Exhibit J](#)) proposes to have the Consumer Protection Board monitor DTCA. If a company is found to be in violation, fines of twice the cost of their advertising would be levied. Fines would be based on money spent to advertise the prescribed drug ([Exhibit K](#)).

SENATOR SCHNEIDER:

We are proposing that these fines would not go into the General Fund but to servicing children who do not have insurance. Brenda Erdoes, our Legislative Counsel, has told us that the amendment as written is unconstitutional. I have asked Adam to go back and rewrite for legal constitutionality.

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SENATOR CARLTON:

Adam, take a look at how we were able to ban cigarette ads. I would like to know how they were able to accomplish that ban. Possibly use that research and compare it to what we are trying to do here.

SENATOR TOWNSEND:

I will close the hearing on S.B. 98 and move back to S.B. 53.

SENATOR HECK:

We need to add an effective date to S.B. 53. I would like the effective date to be upon passage and approval.

SENATOR HECK MOVED TO RECONSIDER THE ACTION WHEREBY
S.B. 53 WAS AMENDED AND DO PASSED.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 53 WITH
EFFECTIVE DATE UPON PASSAGE AND APPROVAL.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

I have a bill draft request (BDR) to introduce BDR 34-301.

BILL DRAFT REQUEST 34-301 Revises the eligibility requirement for a Governor
Guinn Millennium Scholarship. (Later introduced as [Senate Bill 370](#).)

SENATOR CARLTON:

Does it limit who can apply or just what monies can be used?

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SENATOR TOWNSEND:

Anyone can apply. It just limits the fields of studies.

SENATOR HARDY MOVED TO INTRODUCE BDR 34-301.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

SENATOR TOWNSEND:

The hearing of the Senate Committee on Commerce and Labor is now closed at 10:19 a.m.

RESPECTFULLY SUBMITTED:

Lori Johnson,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____