

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

**Seventy-Sixth Session  
April 8, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:24 p.m. on Friday, April 8, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/76th2011/committees/](http://www.leg.state.nv.us/76th2011/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 Kelvin Atkinson, Chair  
Assemblyman Marcus Conklin, Vice Chair  
Assemblywoman Irene Bustamante Adams  
Assemblywoman Maggie Carlton  
Assemblyman Richard (Skip) Daly  
Assemblyman John Ellison  
Assemblyman Ed A. Goedhart  
Assemblyman Tom Grady  
Assemblyman Pat Hickey  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Kelly Kite  
Assemblyman John Ocegüera  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Crescent Hardy (excused)  
Assemblyman James Ohrenschall (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Steven J. Brooks, Clark County Assembly District No. 19

Minutes ID: 812

**\*CVB12\***

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Committee Policy Analyst  
Sara Partida, Committee Counsel  
Andrew Diss, Committee Manager  
Earlene Miller, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Debra Gallo, Director, Government and State Regulatory Affairs,  
Southwest Gas Corporation  
Greg Esposito, representing International Association of Heat and Frost  
Insulators and Allied Workers Local 135 in Las Vegas, Nevada;  
Local 16 in San Francisco, California; and Local 69 in  
Salt Lake City, Utah  
Anthony Rogers, representing Bricklayers and Allied Craftworkers  
Local 13 and Building and Construction Trades Council  
John Madole, representing Nevada Association of Mechanical Contractors  
James Wadhams, representing American Insurance Association  
C. Joseph Guild III, representing State Farm Insurance Company  
Lisa Foster, representing Allstate Corporation and American Family  
Insurance Company  
Brett Barratt, Commissioner of Insurance, Division of Insurance,  
Department of Business and Industry  
Damon Burrows, Vice President, Assistant General Counsel, Regulatory,  
Allergan, Irvine, California  
Amber Joiner, representing Nevada State Medical Association  
Liz MacMenamin, representing Retail Association of Nevada  
Neena K. Laxalt, representing Nevada State Board of Veterinary Medical  
Examiners  
George Racz, Founder and Distiller, Las Vegas Distillery, Henderson,  
Nevada  
Alan Hughes, Owner and Founder, Red Shoes Distillery, Las Vegas,  
Nevada  
Jason Ware, Vice President, Sales and Marketing, Tahoe Blü Distillery,  
Reno, Nevada  
Virgil Strong, President, Founder, and CEO, Tahoe Blü Distillery, Reno,  
Nevada  
Thomas Adams, President, Battle Born Distilling, Reno, Nevada  
Jason Dondero, Vice President, Battle Born Distilling, Reno, Nevada  
Jonathan Hensleigh, Co-Owner, Nevada H&C Distilling Company,  
Las Vegas, Nevada

Aaron Chepenik, Co-owner, Nevada H&C Distilling Company, Las Vegas,  
Nevada  
Alfredo Alonso, representing Southern Wine and Spirits and the Nevada  
Beer Wholesalers Association

**Chair Atkinson:**

[The roll was called. A quorum was present.] We will open the hearing on Assembly Bill 441.

**Assembly Bill 441**: Provides a classification of licensing for certain persons who install and maintain thermal system insulation. (BDR 54-1080)

**Assemblyman Steven J. Brooks, Clark County Assembly District No. 19:**

This bill was brought to me by the heat and frost insulators and there was a concern. Whenever we deal with asbestos, there are certain precautions that have to be taken. Sometimes when you are dealing with thermal insulation, there is asbestos tied into the wiring. Because there is no certification process for that, you have individuals dealing with thermal insulation who do not know they are releasing asbestos into the air, harming themselves and others.

The impetus for this bill is to discuss certification so we will have qualified individuals removing this product. Section 1 of this bill requires that the State Contractors' Board adopt, through regulations, a specific classification for licensing people who install or maintain thermal insulation in heating, ventilating, cooling, plumbing, or refrigeration systems. Under this requirement, a person who engages in insulating or maintenance would be licensed under a specific classification and may not be licensed under any other classification. Section 1, subsection 2 defines "thermal system installation" to mean "a product that is used in a heating, ventilating, cooling, plumbing or refrigeration system to insulate any hot or cold surface, including, without limitation, a pipe, duct, valve, boiler, flue or tank, or equipment on or in a building."

Section 2 of the bill requires the Contractors' Board to establish an advisory committee to make recommendations concerning persons having the classification of licensure for the installation and maintenance of thermal system installations, including training and continuing education. A fiscal note of approximately \$2,000 was submitted by the Contractors' Board for establishing an advisory board, but no new expenses are anticipated for the new licensing classification. I understand the Board is currently licensing the people who do this type of work under a more general classification.

There are two other important reasons for creating and requiring a specific classification to licensure to ensure that the people who install or maintain

thermal system insulation are especially well qualified—to protect people from the dangers of asbestos and to promote the state’s energy efficiency policy. Asbestos has been used in thermal insulation, and the dangers of asbestos and asbestos removal are well documented. Anyone working with these materials should be well trained and educated to protect themselves and others from harm. With the state’s increased focus on energy efficiency, we need to ensure the people performing this type of work are truly qualified. This bill will help protect Nevada’s businesses and consumers who are taking positive steps to save money and energy with better insulation. The cheapest and cleanest watt is the one that has never been used. That is called a “negawatt.” We are taking on the “negawatt” concept today.

There is a proposed amendment from Southwest Gas ([Exhibit C](#)) to include people who install or maintain building shell insulation within the new licensure classification. The amendment proposes to define “building shell insulation” to mean “a product that is used as part of the building that insulates a boundary between indoor and outdoor space or conditioned and unconditioned space, including, without limitation, walls, ceilings or floors.”

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Bustamante Adams:**

Did you say that the Contractors’ Board already licenses these individuals, but this bill will go beyond that?

**Assemblyman Brooks:**

Yes. It is more of a general classification. We are looking for a specific licensure so people who are dealing with thermal insulation understand the dangers of asbestos and how to handle it. Currently, that is not being done.

**Assemblywoman Carlton:**

What will the license fee and educational requirements be?

**Assemblyman Brooks:**

In section 2, subsection 3, it addresses the advisory board that will make recommendations on the training, continuing education, and the fees.

**Assemblywoman Carlton:**

Boards are creatures of the Legislature, and we usually set a fee. I would like to know the amount of the fee.

**Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation, Las Vegas, Nevada:**

Southwest Gas has submitted an amendment ([Exhibit C](#)) as presented by Assemblyman Brooks. It is our understanding that the contractors are already being licensed. This would be a different license or a subclassification of a license. I do not know if there will be an additional fee.

**Assemblywoman Carlton:**

Will new people who are not licensed be able to apply for this license?

**Debra Gallo:**

I am not sure what type of license they are getting now.

**Assemblyman Brooks:**

I think it would be a more specific license under that category.

**Assemblyman Ellison:**

Usually the Contractors' Board creates a classification.

**Assemblyman Brooks:**

According to the fiscal note from the State Contractors' Board, the proposed legislation will have an impact on the Board since it will require the formation of an advisory committee and rule making proceedings. The cost to the agency would depend upon the number of meetings of the advisory committee, public workshops, and hearings required to implement the classification and regulation. So in order to proceed, there are going to be some start-up costs. That is why we are bringing it forth here. The costs would include Board member per diems, attorney fees, and staff and court reporting costs. The Board estimated \$2,000 based on one workshop, but the cost could rise if more workshops are required. This would be the first step to be able to bring it to the Board.

**Assemblywoman Carlton:**

Boards are self-sustaining, and I do not believe that it is appropriate for the Board to ask the state for the \$2,000.

**Chair Atkinson:**

I believe that it will require a two-thirds vote for passage.

**Greg Esposito, representing International Association of Heat and Frost Insulators and Allied Workers Local 135 in Las Vegas, Nevada; Local 16 in San Francisco, California; and Local 69 in Salt Lake City, Utah:**

I represent the three unions that cover the State of Nevada. The Heat and Frost Insulators and Southwest Gas Corporation are willing to

each pay half of the fees. So there will be no fiscal loss to the state. It is not hard for anybody to see that it is an employer's market. There are plenty of craftsmen out there who are willing to work and they are willing to take whatever they can earn to provide for their families. The health and safety precautions for the ill-informed installer are a concern. Many materials require knowledge of proper handling for the safety of that individual. So if there is a contractor who is more concerned with his bottom line than the safety of his workers, he may not inform his employees of the proper safety precautions for handling some of these materials.

Assembly Bill 441 ensures that workers in this industry must be licensed and up to date on new materials, the newest systems, and green building demands. This licensing will enable installers and move this industry forward into a positive green industry that truly makes a difference and employs more Nevadans. If this issue is left unchecked, the consumer will be the one to pay in the end. Mechanical systems are in every office building, school, hospital, hotel, and power plant. These systems operate at extreme temperatures. Therefore, the greatest need for insulation is on these systems that offer the greatest energy savings. Many of these systems have not been insulated correctly or at all. As the Legislature looks at the cost of operating schools, imagine the cost savings if trained craftspeople were to properly insulate their heating, ventilating, and air conditioning systems. If you insulate 45 linear feet of 8-inch pipe, it can equate to a savings of about \$13,600 per year, and 70 feet of 3-inch pipe could save over \$4,000 per year. Unless these systems are installed properly, a school or an office building would never realize those savings. The insulation industry can drastically affect the overall carbon footprint and save thousands of dollars in energy costs. If improperly installed, it helps no one and saves little or no energy and money and can cause health problems for the people in the facilities.

Every commercial kitchen and buffet must have its grease ventilation duct insulated for fire protection. Mistakes could be fatal. Plumbing in bathrooms needs to be insulated for Americans with Disabilities Act compliance. Improperly insulated plumbing could be dangerous to people in wheelchairs or with handicaps. Every important industry has training and licensing as its foundation to ensure the job is done safely and correctly. Passing this bill is the first step. I would disagree strongly with those who would say it is too expensive to license the workers. We have training centers that make them better craftsmen and make sure they install piping and insulation properly. To answer an earlier question, it is a one-time fee of \$250 to take the test and get the license in the plumbing industry.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Daly:**

When they are installing new material, does it contain asbestos?

**Greg Esposito:**

The insulation industry uses a lot of different products and has phased asbestos out as much as possible. In some of the older schools and office buildings, there may still be asbestos that needs to be rewrapped or covered. Asbestos is not the only dangerous insulation material. There is carbon silicate and others which have serious health implications.

**Assemblyman Daly:**

There is a current license classification, A-23, for asbestos removal in the *Nevada Administrative Code* (NAC) 624.150. There is also regulation in NAC 624.585 that says a contractor can do an incidental amount of asbestos abatement, which is less than 25 linear feet or 10 square feet, but if it is more he would have to have that license or use a subcontractor.

**Greg Esposito:**

This would expand the licensing and safety programs for asbestos because there are other systems besides the older asbestos systems. It is not meant to replace what is already in place but to make sure that everyone who works on insulation is trained to do the job correctly and realizes the energy savings that is possible.

**Assemblyman Daly:**

We are not trying to create a new license to cover asbestos abatement, which is already covered, but the license is for installation of new materials to phase out hazardous materials as much as possible and the training is to handle the new materials.

**Greg Esposito:**

I cannot speak to the intent of the bill writer. In the bill's language, this is going to go to the Contractors' Board, and their advisory committee will address whether this license is going to encompass the asbestos removal or if the asbestos removal will remain separate.

**Chair Atkinson:**

Are there any other questions from the Committee?

**Debra Gallo:**

I am here today to support A.B. 441. Assemblyman Brooks did a great job of explaining our amendment and I am here to explain why we would have an amendment to this bill. We want to include building shell insulation. It is different from thermal system insulation because building shell insulation goes into the walls, ceilings, attics, and floors. Southwest Gas began an energy efficiency program in Nevada in mid-2010, and we recently completed our 2011 program year. It has been highly successful. We provide rebates for insulation that is installed in duct ceilings, and also ceilings, attics, floors, and walls. We think it is very appropriate for those who are installing these products to be licensed. Improper installation of insulation could be a safety issue. It could block needed ventilation, be a fire hazard, or cause other unsafe conditions. We believe licensing would ensure that the installers are properly instructed on installation and removal and know what the safety issues are.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

Is it correct that there is already an insulation installer's classification through the State Contractors' Board?

**Debra Gallo:**

Not that I am aware of.

**Assemblyman Ellison:**

There is a classification that already covers this, and there is also a classification for asbestos removal. I do not want to create an unnecessary license. If there needs to be a type-rating, I think we would both agree to that. We need to get clarification.

**Greg Esposito:**

If you could tell us where there are current insulation requirements for building shell insulation, I would appreciate that. We have not identified that, and that is why we added the amendment to this bill. We feel there is a need for thermal insulation, and thermal systems particularly, as we are moving towards green energy and efficiency. There may not have been a need for this in the past, but there certainly is now. I do not want you to be confused; we understand that there is a special license for dealing with asbestos, but we are trying to say that installers need to be aware that it is asbestos and know what they are dealing with. We feel a specialized license in this area is appropriate.



**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else to testify in favor of Assembly Bill 441?

**Anthony Rogers, representing Bricklayers and Allied Craftworkers Local 13 and Building and Construction Trades Council:**

I am supportive of the bill. As a 15-year bricklayer in southern Nevada, I have had several jobs. I started as an apprentice and have worked my way up. It is good to work around people who know what they are doing and are trained in their jobs and job safety.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Does anyone else want to get on record in favor of this bill? I see none. Is there anyone in opposition to the bill?

**John Madole, representing Nevada Association of Mechanical Contractors:**

There are several reasons that this is a bad bill. It adds costs for contractors; it increases regulations and makes it tougher for them to get work. We have mechanical contractors in Reno who do this kind of work and subcontract it and they say this is a terrible bill. Occasionally, people do this kind of work. All this would do is create a new classification for people who might occasionally do this, add more costs, add more regulations, and make it a little bit tougher to stay in business. It is unnecessary, and we are opposed to the bill.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to get on the record in opposition? [There was no one.] Is there anyone who wants to testify from a neutral position? [There was no one.]

**Assemblyman Brooks:**

I believe in this bill, and I believe there is a need for thermal insulators. I want to thank the Committee for listening to our concerns and how we are trying to move the state forward in energy efficiency. We feel it is responsible to have qualified people in those positions.

**Chair Atkinson:**

Have you had the opportunity to talk to Mr. Madole before the meeting today?

**Assemblyman Brooks:**

He has never told me that he had a problem with the bill.

**Chair Atkinson:**

I encourage Mr. Madole to speak with the sponsor before we bring the bill back for a work session. I will close the hearing on A.B. 441 and open the hearing on Assembly Bill 458.

**Assembly Bill 458:** Revises provisions governing homeowners' insurance.  
(BDR 57-562)

**Assemblywoman Maggie Carlton, Clark County Assembly District No. 14:**

This is a consumer information bill. One of the biggest investments and one of the most important things we have is our house. You can talk about the structure of your house, but it is really your home. To be a smart shopper and to get the best value, the more information you have about your homeowners' insurance policy, the more information you will have to make a good decision. Last summer, I encountered a problem with my homeowners' insurance. Before the policy expired, I received a notice of increase due to a couple of freak accidents that occurred in my home. I started to shop for insurance and noticed with my previous homeowners' insurance that one year, under the dwelling and expanded replacement costs, I had one amount as the limit they would pay to replace my home and the next year it went up significantly. As I shopped for insurance, I found that I could cut my homeowners' insurance almost in half, and the dwelling coverage was close to \$50,000 less. I called the Insurance Commissioner and asked, "How can I make sure that this amount of insurance will really replace my home?" I do not want to be underinsured or overinsured. It is difficult for a consumer to get that information. There are three companies who make this evaluation on home replacement values, and there is no really good way for me to know if I have the correct number. In order for me to make that decision, I would like to be able to request from my insurance company what this number is based on. How do I make sure that I am getting the correct number?

That is what is in this bill. I have an amendment ([Exhibit D](#)). After rereading the bill, I realized that even if the premium did not change, the coverage could change. How many of us read our homeowners' insurance completely? You may not even realize that you have less insurance. It is an increase in premium because it is a decrease in benefit. I brought this bill so consumers can get more information and be sure they are not underinsured or overinsured.

I will address the amendment. Even if the premium does not change, if the replacement cost changes, the policy holder should be informed 30 days before the expiration date. I know there are some concerns about the requirement that "The insurer shall supply such information within 6 days." If you are thinking about being notified 30 days before your policy changes, and if you need to get

this information, it is going to have to happen quickly, and 6 days is a good portion of those 30 days in which you have to shop, make a decision, and switch policies.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

I think there is a lot of merit to this bill but I am confused about the 6- and 30-day periods.

**Assemblywoman Carlton:**

The 30 days is the notice the insurance company has to give you upon renewal of your homeowners' insurance policy. The six days is the number of days the insurance company has to respond to your inquiries after receipt of a change notice.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to get on the record in favor of A.B. 458? Is there any opposition?

**James Wadhams, representing American Insurance Association:**

The American Insurance Association is a trade association of property and casualty insurers. I oppose this bill and would like to draw the Committee's attention to existing statute in *Nevada Revised Statutes* (NRS) 687B.350 and subsequent section NRS 687B.360. Those sections provide precisely the relief that the sponsor and drafter of this bill are seeking, including the 30-day notice and 6-day response time. We think this bill would duplicate and perhaps cause some confusion. I sensed from Assemblywoman Carlton's testimony that there may be an issue about verification of replacement cost. I think that is a separate issue that is not addressed in the bill or statute. I would be happy to work with her in any respect in that regard. Our opposition is based upon the fact that this requirement is already in the NRS.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

It says, under existing law, an insurer must provide written notice at least 30 days before the expiration of an insurance policy. Do you do that now?

**James Wadhams:**

Yes.

**Assemblyman Ellison:**

For the renewal of a policy, or change in terms or rate, this bill requires the insurance company to provide notification. Do you do that now?

**James Wadhams:**

Under the existing statute, if we change the rate or the terms which would be the coverage, we are required to advise the insured 30 days in advance.

**Assemblyman Ellison:**

Does this bill say the same thing as the statute?

**James Wadhams:**

The existing statute, NRS 687B.350, says that "an insurer shall not renew a policy on different terms, including different rates, unless the insurer notifies the insured in writing of the different terms or rates at least 30 days before the expiration of the policy." Reading section 1, subsection 1 of A.B. 458, I do not see that there is any difference in what it is requiring insurers to do. It uses slightly different words but imposes the same requirement. Our opposition is not to what Assemblywoman Carlton is attempting to achieve, but because I think that requirement already exists in statute.

**Chair Atkinson:**

Are there any other questions from the Committee?

**C. Joseph Guild III, representing State Farm Insurance Company:**

I agree with Mr. Wadhams' analysis and I have reached the same conclusion. It is our intent to clarify, because passage of this bill could create some confusion. Section 1, subsection 2 of the bill, on page 2, line 3, deals with a request for quantitative basis. *Nevada Revised Statutes* 687B.360 is described in the statutes as information about grounds. I will read a pertinent part: "If a notice of cancelation or nonrenewal under [the relevant statutes] does not state with reasonable precision the facts on which the insurer's decision is based, the insurer shall supply that information within 6 days after receipt of a written request by the policyholder." This is another example in this bill where existing language is in the statutes and accomplishes the same thing as this bill intends to do.

**Chair Atkinson:**

Are there any questions from the Committee?

**Lisa Foster, representing Allstate Corporation and American Family Insurance Company:**

One issue of concern in the bill is the possible proprietary nature of the information we purchase from companies pertaining to property values. My clients do not think that insurers can directly release that information. As far as unilaterally increasing or decreasing the value of a property, there have been lawsuits on both sides of the issue. That decision needs to be made very carefully, and I think insurers are doing that.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to speak in opposition? Is there anyone to speak from a neutral position?

**Brett Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:**

I am not convinced that what Assemblywoman Carlton wants to do is already contained in law ([Exhibit E](#)). In NRS 687B.350, that section has to do with renewal of policies that would alter terms. I do not see any provision that requires an insurer to provide the information that is proposed in A.B. 458. Conversely, in NRS 687B.360, that section applies only when you have a notice of cancellation or nonrenewal. When you have a notice of cancellation or nonrenewal, the insured is afforded by law six days to request information from the insurer as to why his policy is not being renewed, and the insurance company has six days to respond to that request. Our office would like to help with that language if it is confusing. From the Insurance Division's standpoint, I do not want or ask for proprietary confidential information. It is not appropriate for the Division to have. They are protected business interests and I do not want them. The intent of the bill appears to be to provide to the consumer the evaluation of his property.

**Chair Atkinson:**

You do not see the issues that were brought up earlier?

**Brett Barratt:**

I do not see them at this time.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Segerblom:**

Could Assemblywoman Carlton address Mr. Wadhams' comments?

**Chair Atkinson:**

Is there anyone else to be heard on this bill?

**Assemblywoman Carlton:**

If the issues in this bill are covered by statute, we have addressed the issue and consumers will be able to get the information they want. We want to be sure they get the appropriate coverage on their dwellings so they are not underinsured. We need to make sure their house is covered for the replacement value. That is the question and the answer I am seeking.

**Chair Atkinson:**

We will close the hearing on A.B. 458 and allow Assemblywoman Carlton to continue to work on it. I will open the hearing on Assembly Bill 537.

**Assembly Bill 537:** Revises provisions governing prohibited acts for certain health care practitioners. (BDR 54-1115)

**Damon Burrows, Vice President, Assistant General Counsel, Regulatory, Allergan, Irvine, California:**

Thank you for allowing me to testify in support of Assembly Bill 537. Allergan is a global multi-specialty health care company with a sales and marketing presence in more than 100 countries. Allergan believes A.B. 537 is a great start in the State of Nevada in addressing legally imported non-Federal Drug Administration (FDA) approved drugs. Even foreign versions of FDA approved drugs are considered unapproved drugs in the United States. Drug diversion is a large and rapidly growing problem in the United States and one that is watched closely by global companies such as Allergan, because it puts our patients' safety at risk. Lifestyle classes of drugs are illegally imported into the state on a regular basis by health care practitioners via the Internet. Additionally, physicians are regularly solicited to purchase these illegally imported products by unauthorized companies that hire a sales force to call on physicians in their offices or through fax blasts.

Companies that call themselves "Canadian pharmacies" solicit business from Nevada-based health care practitioners. These so-called "Canadian pharmacies" are frequently based outside Canada, often in Asia or Africa. Health care practitioners are tempted to purchase the drugs through these illegal outlets due to the difference in pricing from the approved drugs. Purchasing prescription drugs via unapproved outlets often results in contamination of the drug supply or even potential patient injury. Because unapproved drugs are not subject to the FDA's oversight, the FDA has no knowledge of how unapproved drugs are made, what patient information is included with the drug, or what the side effects of the drugs are. As a result, they are more likely to be contaminated,

counterfeit, inherently ineffective, or contain different amounts of the active ingredients from similar drugs that have been approved by the FDA. Health care practitioners who knowingly purchase the drugs they administer to patients online, or through pharmacy solicitations, risk patients' health and injury. There are many tragic stories of unfavorable patient outcomes that support this. Additionally, unscrupulous health care practitioners may feel there is less likelihood of being caught with the unapproved products if the products can be reconstituted outside the presence of a patient. This bill does not target consumers or retail pharmacies.

As you can see from the slide ([Exhibit F](#)) this is a complicated game played outside of the United States. [Read from prepared testimony ([Exhibit G](#)).]

Allergan believes the best way to start ensuring the safety of the health care practitioner drug supply is by passing A.B. 537.

[Chair Atkinson handed over the gavel to Assemblyman Conklin.]

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Hickey:**

You mentioned the FDA has some challenges as it tries to rectify this problem. What is it that we can accomplish in Nevada with this bill?

**Damon Burrows:**

This bill is intended to codify federal statutes at a state level. It is already illegal to do this, but it is a federal statute that is the action. It makes it difficult for states to take their own enforcement action against doctors who they know are engaged in illegal activity. This bill would allow another mechanism for the state to take action even if the federal government is not able to allocate resources.

**Assemblywoman Carlton:**

The licensing boards currently have the authority to remove a practitioner's license if he is acting inappropriately. They have no restrictions regarding who they can accept a complaint from. Has anyone tried to go through the boards to address the illegal practices of the health care professionals?

**Damon Burrows:**

It is very common for complaints to come in and the state authorities to reach out to companies such as Allergan to try to identify whether or not we have lawfully sold product to a practitioner. Unfortunately, because of the supply

chain, it is sometimes difficult to track that down. This bill would provide yet another mechanism to do precisely what the law already does; it is just at the state level.

**Assemblywoman Carlton:**

How would the federal law affect our Canadian prescription program that we have in the State of Nevada? When that bill was being formulated I heard a lot of talk that the FDA did not like it, but we were doing what we thought was right for the state. That program is still operating, is very successful, and has helped a lot of consumers in the state. I am afraid that the unintended consequence of your bill would undo all that good work.

**Damon Burrows:**

Fortunately, this bill was crafted in a way so it would not affect that. This bill is specifically targeted toward health care providers who knowingly purchase illegal product. The consumer piece as well as the pharmacy piece should not be affected. If that is not clear, it would be worth amending to clarify.

**Assemblywoman Carlton:**

As I remember, it was the FDA labeling that was part of the discussion. If a doctor helped an elderly person purchase his medication on the Internet from a Canadian pharmacy and there was no FDA label, that doctor would now be guilty. What is making the product illegal is the label.

**Damon Burrows:**

I am not familiar with the state law to which you are referring, but there is a commitment from our support to not modify that law. If there are specific pharmacies that have been approved, that should be carved out and should not be impacted by this bill.

**Vice Chair Conklin:**

Are there any additional questions from the Committee?

**Assemblyman Goedhart:**

On page 3, line 17 of the bill, it says, "Aiding, assisting, employing or advising," so this is not talking about a health care provider who has actually bought and resold these drugs. It could even apply to a doctor in Nevada who legally and lawfully provides a written form to have access to legal marijuana. We have a legal lawful medical marijuana program in the state.

**Damon Burrows:**

The intent would be not to upset the current framework of legally permissible activities that the state provides. The exception would be a doctor in an office



setting who is administering product. Prescriptions would not be included under this bill.

**Assemblyman Goedhart:**

That is not how I understand the language, and I would defer to Legal to have it reviewed more closely.

**Assemblyman Horne:**

There are legal drug solicitations to our medical providers in the state by Canadian pharmacies by blast faxes to doctors' offices, and the doctors rely on this to place orders.

**Damon Burrows:**

The reality is that we have a very common problem of so-called "Canadian pharmacies" attempting to commercialize product in the United States, arguing that it is perfectly legal, and confusing it with the situations that have been carved out by law. They take product that was never approved for use in the United States and sell it as though it was. In situations like that, if you are a consumer purchasing through a proper channel, it is certainly on the consumer to do that under the law. This bill would say that if you go to the doctor, you would expect the doctor to have only lawful pharmaceuticals. I think this is the case in most doctors' offices. This is not a common problem. There is a small subset of health care providers who do bend the law and try to find illegally imported products. Because it is done behind doors in terms of what they are getting and administering, the consumer is not aware of it. This bill is intended to highlight that fact and make that a separate cause of action for liability.

**Assemblyman Horne:**

How do you envision that our existing boards would be able to regulate that?

**Damon Burrows:**

This kind of an initiative would be very advantageous for a public/private partnership. There are very large associations that are focused on commercial, pharmaceutical, and drug supply integrity that would be very willing to work with the state to try to educate and implement awareness about this, as well as to find ways to identify this as the problem intended by the statute.

**Vice Chair Conklin:**

Are there additional questions from the Committee? I see none. Is there anyone else wishing to testify in support of this bill? Is there anyone wishing to testify in opposition?

**Amber Joiner, representing Nevada State Medical Association:**

We have some concerns with the intent of the bill. We think we could change our position to supporting the bill if the right wording were included. Our main concern is about how it is phrased. We think it is too broad. Our members' interpretations were all over the board. Some of them thought this bill was trying to address on-label versus off-label prescribing. Others thought this was related to the physical label affixed to the drug that is being dispensed. We want to make sure the language is clear. If language can be arrived at that clearly states that we are focusing on drugs that are not FDA approved, then we would be able to support that. Of course, we do not want our patients to have drugs that are not approved by the FDA.

The language we find problematic is on page 3, in section 1, subsection 17: "for which a label . . . is not included." We think this implies that the label has to be on the drug at the time it is dispensed. Here is one scenario this would affect. If you are in a hospital, there may be a large FDA approved bottle of drugs that a physician uses to administer separate doses in a cup in a separate room. That could be in violation because of the way this is worded, because the label is not affixed to the cup that you are handed. Another scenario we heard was that some physicians like to help their elderly patients by portioning out their drugs into daily containers. That may also be in violation because the label is no longer on the drug when it is handed to the patient in that manner. We recommend that some reference to these foreign drugs be included, or the original packaging be referenced, or somehow the language tightened to not include inadvertent practices the doctors use every day.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Goedhart:**

As it relates to the physical labeling, how would it apply to a doctor who has a patient who cannot afford drugs, and he gives the patient samples and then says he will try to find a way to get the patient the drug? Would that apply to this situation?

**Amber Joiner:**

Those samples may not have a full FDA label on them. As to your previous comment about the medical marijuana program and Assemblywoman Carlton's comment about the legal Canadian pharmacy program, we share those concerns and do not want to affect the current legal programs.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

There are companies who are doing drug trials, and the FDA is not allowing the drugs into the country. People go to Mexico to buy drugs because of the cost in the United States. Can you address that?

**Amber Joiner:**

This bill specifically addresses controlled substances, so we are talking about situations where the foreign drug is mimicking something that we have in our controlled substances that are FDA approved. You may be referring to something that is more on the homeopathic side or something that has not been identified yet. I am not sure that this bill would address that, but it may be a place where we need to tighten the language.

**Vice Chair Conklin:**

Are there additional questions?

**Assemblyman Horne:**

I am puzzled by your concerns on the labeling language. I do not see the scenario about dispensing pills in paper cups in the hospital. I do not see a regulatory board being concerned about that. The FDA approved drug has already been established once it has entered the hospital's possession. What I got from the testimony is that we have possible drugs coming in that we do not know about and physicians may be ordering them from these faxes. I would like to hear a tighter response on what problems legitimate pharmaceuticals are going to have if this bill were to pass.

**Amber Joiner:**

If no label is required at the time of dispensing, that may alleviate our concerns. If you piece the language together, a physician could be assisting a person to consume a dangerous drug for which a label is not included. Our concern is when a label needs to be affixed and at what point it can stop.

**Vice Chair Conklin:**

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

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

I have spoken to Allergan and it is willing to work with us on some of our concerns. One major concern we have is that 21 C.F.R. Part 201, which is mentioned in the bill's new language, refers only to the FDA required labeling, not the label applied to a repackaged controlled substance under Nevada state law. The Federal Drug Administration does not regulate prescription labels issued by a pharmacy; any controlled substance prescription packaged by a pharmacy in an amber vial with a pharmacy-generated label would now be

illegal, as we do not include FDA-specified language. That is our concern, and we are willing to work with everyone involved with this bill to alleviate those concerns. The intent of the bill is honorable and I see where it is going. I also had concerns about it interfering with the Canadian prescription program.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Goedhart:**

I would feel more comfortable if the language in section 1, subsection 17 was tightened to reflect what the bill sponsor intended.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to get on the record in opposition? Is there anyone wishing to get on the record as neutral?

**Neena K. Laxalt, representing Nevada State Board of Veterinary Medical Examiners:**

We are not taking a position on this bill but wonder whether it is necessary that veterinarians be included in this.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none. Is there anyone else in opposition?

[Chair Atkinson reassumed the Chair.]

**Chair Atkinson:**

Are there any closing comments?

**Damon Burrows:**

We oppose this bill and will work to clarify the language.

**Chair Atkinson:**

I will close the hearing on A.B. 537 and open the hearing on Assembly Bill 542.

**Assembly Bill 542:** Provides for the licensing and operation of distilleries in Nevada. (BDR 52-649)

**George Racz, Founder and Distiller, Las Vegas Distillery, Henderson, Nevada:**

This bill describes and introduces the distillery category and outlines the limits and privileges of a small distillery in Nevada. Our story is that we moved here

two years ago and wanted a small distillery. We contacted the Department of Taxation and found there was no such licensing category or description of how a small distillery can operate in Nevada. We have worked to put together the legal framework in which small distilleries can operate in our state. There are about 250 small distilleries in the country. It is our opinion that a small distillery has to be part of the community, so that is why we included in the bill that 50 percent of the raw material used in the distillery has to be from Nevada. In southern Nevada we have less agriculture, but almost 90 percent of the produce my distillery uses is from Winnemucca Farms, including all the grains and wheat. We think this is very important. The other element of the bill is that a liquor manufacturing or other type of license can help those businesses that would like to be small distillers. For these limitations we will have the privilege of giving our visitors samples and be able to sell bottles, like brewery pubs and wineries. That is a great privilege for a small distillery. Everything we put in the bill gives our small businesses a great start and the privilege to have small distilleries in Nevada.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Bustamante Adams:**

I appreciate the entrepreneurship of Nevadans. Did you say there were 250 distilleries?

**George Racz:**

There are 250 small, artisan distilleries around the country. Almost every state already has a distillery license category, and Nevada is one of the last states to have one.

**Assemblyman Kite:**

You put limitations on the amount of containers you can sell versus a volume. Is there a reason for that?

**George Racz:**

We have a limitation on the manufacturing size of 10,000 cases per year.

**Assemblyman Kite:**

Is that 10,000 cases of half pints?

**George Racz:**

That is 12 bottles in a case, and the bottles are 750 milliliters.

**Assemblyman Kite:**

Why did you not limit it by volume?

**George Racz:**

I do not know.

**Assemblyman Kite:**

Will this in any way affect the Nevada wine operations?

**George Racz:**

No. We have a very different kind of small business.

**Sara Partida, Committee Counsel:**

It does not affect wine operations. They are two distinct licenses.

**Assemblyman Goedhart:**

The distillery license is completely different from the wine making license, so this has no effect on that. Charlie Frey from the City of Fallon has the Churchill Vineyards and is looking forward to seeing this be passed so he can add a small distillery.

**Chair Atkinson:**

Are there any additional questions from the Committee? I see none. Is there anyone else to testify in favor of A.B. 542?

**Alan Hughes, Owner and Founder, Red Shoes Distillery, Las Vegas, Nevada:**

I am planning to launch an artisan distillery in the City of Las Vegas, Nevada, depending on the outcome of this legislation. I am in support of the legislation and in support of my colleagues. I think the bill could be improved in regard to the production volumes, and I would like to see a category for a distill pub similar to a brew pub included in the legislation. I would also like to see the requirement for using raw materials from the State of Nevada reduced. I have no issue with buying locally but I am concerned it may limit the types of spirits I can make in the future. My last concern is the ability to sell on premises because I know there is a limit of one 1.75-liter bottle per person per day. I was hoping that could be increased. To put it in a little bigger perspective for volumes, the American Distilling Institute defines an artisan or craft distiller as somebody who makes a maximum of 250,000 proof gallons per year. To put 10,000 cases total in perspective, if I were to make vodka, that would equate to 9 percent of what an artisan distillery could make. So an artisan distillery is not comparable to a large manufacturer. I am hoping that could be changed to 10,000 cases per spirit. As artisans, for us to get our product up and running, which currently has no brands or marketing, will take a lot of effort, money, and

operational costs. To have limited production may impact how I get profitable as I prepare to distill my spirits and distribute them across the country.

Also to put it in perspective, Smirnoff is the largest selling vodka in the United States, and in 2008 Smirnoff sold over 8 million 9-liter cases. If I made only vodka, 10,000 cases would be equal to 0.125 percent of Smirnoff's production. When you combine that with other vodkas, we are not anywhere near those major manufacturers. In order to make product and be able to distribute it across the states and maybe into Canada and Europe, I am concerned that 10,000 cases total for all brands may be restrictive. I would like to see that increased to make it more competitive.

The second concern for me is to add the category for a distill pub, which is similar to a brew pub. Distill pubs have been very successful. In Oregon and Washington, McMenamins has 59 locations. They have wine, beer, and distilled product. They also have activities in their distilleries. My business model is to have a distillery that would also have a bar, a speakeasy, or restaurant to make it attract the local community. McMenamins has been very successful because Oregon law allows for brew pubs and distill pubs and does not limit what can be sold or made on the premises. It has allowed them to grow, create jobs, and create tax revenue for the state. It would give a little more flexibility in terms of what we could create in the community and in the State of Nevada.

I submitted remarks electronically ([Exhibit H](#)) and there a couple of errors I need to correct. I used the word "gallon" instead of "cases." I am happy to comply with the requirement to use 50 percent raw materials from the State of Nevada. I am concerned that it may create issues because I may not be able to buy the raw materials needed to distill certain products. If it is as applicable, I am happy to do it, but I am looking for more flexibility to be provided. I would hope that on my premises I would be able to sell more than one 1.75 liter bottle to a customer because it gives him an alternative place to buy. I would certainly go through the distributors and support the three-tiered system in terms of distribution of my product. To gain some kind of market share and brand awareness it would benefit me to have people buy at my establishment. Those are the four areas in the bill which I hope can be improved. I support the efforts of the other distillers, but hope we can be a little more on par with brew pubs.

**Chair Atkinson:**

Are you for this bill?

**Allan Hughes:**

If nothing were changed, I would definitely be for the bill, but I see some areas where it can be improved.

**Chair Atkinson:**

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

**Jason Ware, Vice President, Sales and Marketing, Tahoe Blü Distillery, Reno, Nevada:**

We plan to open a distillery in Reno, Nevada, and I am in support of this bill. It is a new industry and will bring a lot to Reno and Las Vegas. It is a great industry to be a part of.

**Chair Atkinson:**

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

**Virgil Strong, President, Founder, and CEO, Tahoe Blü Distillery, Reno, Nevada:**

I am in support of A.B. 542, as we are developing a new industry in the State of Nevada as craft distillers. We are trying to grow a business that uses consumables grown in the state. We look at it as creating jobs at the distilleries and on the farms. We are working with Winnemucca Farms and feel we can create five jobs within our distillery within the next year and probably five more on the Farms.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Bustamante Adams:**

I am pleased with the part of the bill that talks about buying products in state. Do you have any concerns about the 50 percent restriction?

**Virgil Strong:**

I do not have any concerns about the 50 percent. We have been talking to farmers throughout the state to try to get certain grains grown that are not grown here now. Mr. Hughes' concerns are about rum, brandy, and agave spirit productions. Not many grapes or agave plants are grown in Nevada. We are hopeful that in the future we can get above the limit of 10,000 cases. There are some things such as molasses, agave, and sugarcane that we have to bring into the state. I am trying to find someone to grow sugarcane. These are the constraints that we have.



**Assemblywoman Kirkpatrick:**

Do the ingredients have to be grown fresh, or could they be bought from local distributors? The point in developing a new industry is having ancillary industries to go with it.

**Virgil Strong:**

The concern of the 50 percent is dependent on what we are making. We can use the grains grown in Nevada in most of the white spirits and whiskey. Some of the spices and botanicals used in gin are not grown within the state. We can try to have them grown here, which would create more agricultural business. Those products are miniscule compared to what goes into the actual alcohol content of the spirit. It would be difficult to use a citrus product because they are not grown here. It is the inclusions in the spirit, not the spirit, which are the concern. There is nothing grown in Nevada to make rum. I would have to purchase cane sugar from out of state and transport it to create rum.

**Assemblywoman Kirkpatrick:**

If we are doing something totally new, we need to start small. We see people who want legislation for them and they end up going to another state. I am skeptical but I am willing to start with something, and the 10,000 cases is more than fair to get started in the next two years. As a policy decision, I think we should start small and help you get started. I believe 50 percent of the materials is fair and that people may find more resources in Nevada than they think are available. We can revisit the policy during the next legislative session.

**Virgil Strong:**

I totally agree. We are working to have different products grown. The one concern is the rum. Cane sugar is not grown anywhere in Nevada. We know there is some agave being grown here, but it takes ten years to get to the point that it can be produced for syrup. I am in support of the 50 percent and I know I can make it. I have farmers ready to grow what I need, even the botanicals.

**Assemblyman Ocegüera:**

I agree with everything Assemblywoman Kirkpatrick said.

**Virgil Strong:**

You would be surprised what can be used to produce spirits. We grow a lot of alfalfa in the state and it can be used.

**Assemblyman Ellison:**

I thought there were federal laws about hard liquor because of alcohol poisoning. Is anyone in Nevada making hard liquor?

**Virgil Strong:**

There is only one producer of any spirits in the State of Nevada: Charlie and Colby Frey in Fallon. The different spirits that are made include whiskey, which is a grain spirit that is aged over time in oak barrels. Brandy is usually made from wine, and beer is another way we can make whiskey. You can make beer and wine in your own home. You cannot produce spirits in your own home because you have to have a still, and people are not allowed to do that as hobbyists.

**Assemblyman Ellison:**

To make beer, you have to have hops?

**Virgil Strong:**

We make beer with malt grain, water, and hops.

**Assemblyman Ellison:**

Does that have to be imported?

**Virgil Strong:**

When we produce spirits, we can use enzymes to break down the starch in grains into a fermentable sugar. The malting process is when you sprout grain. That is the natural way to change the grain into fermentable sugars. When you make beer you usually use only malt. They do not usually use enzymes to make beer.

**Chair Atkinson:**

Is there anyone else to speak in favor of this bill?

**Thomas Adams, President, Battle Born Distilling, Reno, Nevada:**

We are a small start-up artisanal distillery with big plans for the south part of the City of Reno. I urge the Committee to support A.B. 542 as written. We like the language very much. In our view, this bill has potential to generate a significant tax base at the local level and it will have a positive impact on Nevada agriculture. We support the 50 percent and would support a higher level if the Committee desired it. If this bill is passed, Battle Born Distilling will create five jobs by the end of 2011 with a small distillery in south Reno. We anticipate having ten employees by the end of 2012. That will be ten good-paying jobs. Our distillery will consume about 63,000 pounds of grain from Fallon, Nevada, in its first year. We anticipate using 150,000 pounds of grain in our second year of business. It will have a big impact on Nevada farmers. We feel the bill will create jobs, stimulate local agriculture, and be an added dimension for tourism in the state.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Hickey:**

I see the bill as written will require a two-thirds majority to pass. Could a fee structure be incorporated to lessen the hill you have to climb to get this bill through the Legislature?

**Thomas Adams:**

Do you mean the licensure fees? They are defined in the bill. Our licensing fee is \$75.

**Chair Atkinson:**

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

**Jason Dondero, Vice President, Battle Born Distilling, Reno, Nevada:**

I am here in support of A.B. 542. This bill will increase the state's tax revenues, and 50 percent of the raw materials will be grown in the State of Nevada. This does support our agriculture and, I believe, will create more jobs and tourism. By supporting this bill, you will be participating in the recovery of our local economies and communities.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else to testify in favor of this bill? Is there any opposition? Does anyone want to speak from a neutral position?

**Jonathan Hensleigh, Co-Owner, Nevada H&C Distilling Company, Las Vegas, Nevada:**

We are willing to pay a great deal more licensing fee per year because we are not a craft distiller. We plan to bring a very large, substantial, significant, national distillery to the State of Nevada. We were informed of the drafted legislation 48 hours ago. My business partner and I own a very successful bar and nightclub in downtown Las Vegas called The Griffin. We took advantage of Las Vegas's new entertainment district that the mayor proposed to open on the east side of Fremont Street. It is a wonderful thing for the city, the downtown, and for us. The Griffin became a destination point. The east side of Las Vegas Boulevard had been a no-man's land and is now completely transformed. The City of Las Vegas has been wonderful for us and we have been good for them.

Because my business partner and I had such a good experience in the retail sale of alcohol, we started to investigate manufacturing alcohol. We learned from

the state that there was no statute since Prohibition that regulated the manufacture of spirits. We got the opinion of an auditor in the Department of Taxation that it would issue us a license, and a compliance letter, in the absence of legislation that explicitly regulated the distilling of spirits. We entered into a long-term lease in downtown Las Vegas on Mesquite Boulevard. The Las Vegas City Council created an entirely new business designation for us, which we received about three months ago. We then heard about this legislation. We had been assured that we could go into production and had planned on sponsoring our own legislation to try to fill the vacuum.

We are neutral on this bill because we support every aspect of this legislation. We are not in competition with the men who presented here today. The problem is that it does not allow for a large scale operation. It allows only for small craft distilleries. There are a number of restrictions, such as the use of 50 percent state product in the legislation, that will not work for us. We will be incapable of initiating a business that we seek to initiate. We would like to sell vodka on a national scale with a large national advertising campaign at a substantial cost. We do not plan to add five jobs in Nevada; we plan on adding several hundred. The legislation for the craft distilleries makes the playing field even because they have to use 50 percent agricultural products from in state. They are limited in production, but they can give tours and sell retail like a bar on site. We do not want to do that. We are urging this Committee to recognize the way other states have two classifications. One is a general distiller's license for large-scale producers and the other is for the smaller craft distillers. We would ask to include a second classification for a large producer.

**Chair Atkinson:**

Are there any questions from the Committee?

**Jonathan Hensleigh:**

I am a professional writer, producer, and director of feature films in the City of Los Angeles. I plan to use my influence there for celebrity endorsements of the products. The products will be based on Nevada.

**Assemblyman Goedhart:**

You seem like the type of entrepreneurs that we need to locate in the State of Nevada.

**Assemblywoman Kirkpatrick:**

How much do you think you are going to sell? We have to start with something, and I think 10,000 cases is fair for the next two years. I am open to having a discussion but we are seven days from the deadline.

**Jonathan Hensleigh:**

I submitted a letter yesterday ([Exhibit I](#)) in which I used the example of Tito's Handmade Vodka, which began about eight years ago in Texas. They are now shipping about 350,000 cases per year and that is expected to increase substantially.

It brought tremendous recognition to the City of Austin and the State of Texas. We are following that business plan. Ten thousand cases under my business plan is nothing. I cannot operate that way. It is not worth our time because we are not a small batch distillery. I am hiring national advertising firms with national advertisements in women's magazines. I hired a national advertising company to design the bottle. The vodka is called Silver Dollar Vodka, and we have trademarked the Morgan Silver Dollar from the federal government that will be imbedded in the glass of the bottle. I cannot do this vodka in New Mexico. I urge you to believe that I am not going to go legislation hunting in other states. I have just signed a long-term lease in downtown Las Vegas. If I am limited to 10,000 cases, I cannot do business.

**Assemblywoman Kirkpatrick:**

When we are entering a new policy in the state, we have to walk before we run. How were you going to do this if you did not know this legislation was going to be heard? Where is your bill?

**Jonathan Hensleigh:**

The reason we were going to wait and sponsor a bill is because the Department of Taxation told us we could do this. I have relied on emails from a state auditor.

**Chair Atkinson:**

This bill may not pertain to you.

**Jonathan Hensleigh:**

When we asked the state how we could open a distillery, we were referred to the Department of Taxation.

**Chair Atkinson:**

This bill has been out for ten days and the Legislative Session moves quickly. We will research this and be sure your concerns are being addressed as we move forward.

**Aaron Chepenik, Co-owner, Nevada H&C Distilling Company, Las Vegas, Nevada:**

I agree with my business partner's opinions. Initially we did not know we needed a bill because we were told that we could operate under an importer's license with a letter of compliance from the State of Nevada to distill spirits. We were never told that we needed anything more than that. The only reason that this seems to be a concern to us is that this would supersede our agreement with the state because the bill calls it a distiller's license and not a craft distiller's license. It seems it would apply to anyone who wanted to distill in the State of Nevada. To clarify, the part of the bill that requires using 50 percent of grain to be grown in the state comes from the State of Washington's craft distiller's license. It came about because there were people with farms who were hobbyist distillers, and they wanted to be considered an agricultural endeavor and be separate from large producers. In every state that has the restrictive craft distiller's license it is a subclass, because there was already an existing distiller's license that had no restrictions but did not allow tastings, on-site sales, and tours. The hobbyists and craft distillers wanted those things.

There was some discussion about the distillation process and malting and whether or not to use enzymes. It is not as simple as that. The malting process is not simple. You have to have a tremendous amount of space to spread the grain out to malt it. Then everything is kiln dried to stop the malting process. The kiln drying gives the grain character and flavor that you do not get when you use enzymes and raw grain. There are no malting houses in the State of Nevada. I do not know of any distilleries in this country who malt their own grain on a large scale. In Nevada, to make bourbon, you could get 50 percent of the corn from in state, but malted corn would have a different flavor characteristic. Some spirits need all malted grain, and you would have to have a large malting facility or not be able to meet the 50 percent restriction on grain.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

I think if this endeavor is unrestricted, there will be problems. This Committee needs to be cautious.

**Chair Atkinson:**

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

**Alfredo Alonso, representing Southern Wine and Spirits and the Nevada Beer Wholesalers Association:**

The observation that this bill does not apply to these gentlemen is accurate. This was never intended to curb large distilleries. We do not have a distillery, so we do not have a designation. He is correct in the sense that the distillery language in the bill and the amendment should read "artisan" or "artisanal" distillery to fix the problem. They can be licensed as a supplier and can make and export as much as they like. This should not be an issue. As far as the bill, we have worked with George Racz and the Las Vegas Distillery people for several months. They want a small distillery in Las Vegas with on-premise tastings. That is what the bill does. My members are pleased that they would include ingredients from Nevada. That is a good thing.

We disagree with parts of the bill and have submitted an amendment ([Exhibit J](#)) with respect to the distillery school, which we believe is a huge step in a different direction. It excludes an excise tax on that product, which we have concerns with. With our amendment and including calling it an artisanal distillery license, we support the bill.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else to speak on A.B. 542? I will close the hearing on A.B. 542. Is there any public comment or business to come before the Committee? [There was none.]

The meeting is adjourned [at 3:54 p.m.].

RESPECTFULLY SUBMITTED:

---

Earlene Miller  
Committee Secretary

APPROVED BY:

---

Assemblyman Kelvin Atkinson, Chair

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



**EXHIBITS**

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

**Date:** April 8, 2011

**Time of Meeting:** 1:24 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 441	C	Assemblyman Brooks	Proposed Amendment from Southwest Gas
A.B. 458	D	Assemblywoman Carlton	Proposed Amendment
A.B. 458	E	Brett Barratt	Testimony
A.B. 537	F	Damon Burrows	Slide
A.B. 537	G	Damon Burrows	Testimony
A.B. 542	H	Alan Hughes	Testimony
A.B. 542	I	Jonathan Hensleigh	Letter of Support
A.B. 542	J	Alfredo Alonso	Proposed Amendment