

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Sixth Session
May 23, 2011**

The Committee on Ways and Means was called to order by Chairwoman Debbie Smith at 8:14 a.m. on Monday, May 23, 2011, in Room 3137 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Debbie Smith, Chairwoman
Assemblyman Marcus Conklin, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman David P. Bobzien
Assemblywoman Maggie Carlton
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman John Hambrick
Assemblyman Crescent Hardy
Assemblyman Joseph M. Hogan
Assemblyman Randy Kirner
Assemblywoman April Mastroluca

COMMITTEE MEMBERS EXCUSED:

Assemblyman Pat Hickey
Assemblyman John Ocegüera

STAFF MEMBERS PRESENT:

Carol Thomsen, Committee Secretary
Cynthia Wyett, Committee Assistant

Chairwoman Smith welcomed persons to the meeting and opened the hearing regarding Assembly Bill 571.

Assembly Bill 571: Revises provisions governing prohibitions on smoking tobacco. (BDR 15-1294)

Sean Higgins with Gordon Silver Attorneys and Counselors at Law, thanked the Committee for the opportunity to comment on an issue that had, at times, been confusing and frustrating to all involved parties—the Nevada Clean Indoor Air Act (Act). Mr. Higgins believed that Assembly Bill 571 would provide clarity and align the mandates of the Act with the original intent of the initiative. Mr. Higgins said he was also present to represent a coalition of slot route operators and tavern owners that included the Nevada Tavern Owners Association; Herbst Gaming, Inc.; United Coin Machine Company; Golden Gaming Inc.; and the Village Pub Management Group. Collectively, the group operated over 90 percent of all taverns in Nevada.

Mr. Higgins introduced Blake Sartini, Chief Executive Officer of Golden Gaming Inc., and Roger Sachs, President, Nevada Tavern Owner's Association, who would testify from Las Vegas in support of A.B. 571. Additionally, said Mr. Higgins, present in Carson City was Jo Sonner from Bully's Tavern group, and Jeremy Aguero from Applied Analysis, who would also testify in support of the bill.

Mr. Higgins stated he was in a very unique position to discuss the issue of the Nevada Clean Indoor Air Act, because he had been general counsel for Herbst Gaming, Inc. for over 17 years and had owned and operated two taverns in the Las Vegas area for over 10 years. Mr. Higgins said he knew first hand the effects of the Act on the tavern businesses.

Mr. Higgins indicated that A.B. 571 would not expand upon the locations or types of businesses where smoking was permitted today. He read a portion of the initiative petition for the Nevada Clean Indoor Air Act into the record as follows:

Section 1: This Act shall be known, cited, and referred to as the 'Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, excluding stand-alone bars and gaming areas of casinos.'

Section 3: Smoking tobacco is *not* prohibited in (b) Stand-alone bars, taverns, and saloons.

Clearly, said Mr. Higgins, even the drafters of the initiative petition intended to continue to allow smoking in taverns. However, the language was somewhat confusing regarding the definition of "incidental food service or sales." After using that term as a definition, it was used nowhere else in the Act. Mr. Higgins said that Section 9(m) of the Act stated, "'Incidental food service or sales' means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels, or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870."

Mr. Higgins explained that the definition of a stand-alone tavern was, ". . . in which food service is incidental to its operation . . .," a term that was defined nowhere within the Act. As a lawyer, said Mr. Higgins, the argument clearly could be made that because the drafters actually defined the term and then failed to use that term within statute meant that the words could have other meanings, such as food service could not be the primary source of revenue from sales. Additionally, said Mr. Higgins, nowhere in the Nevada Clean Indoor Air Act was the consumption of food prohibited, only the service and sales of food.

Mr. Higgins said that left the state with a law that was almost impossible to enforce, was confusing, and attempted to somehow tie the consumption or sales of food to smoking. Mr. Higgins said that smoking was legal in taverns, and some taverns had outside food items delivered because that was not deemed food service under the Act. It appeared that some taverns had completely ceased serving food, while others ignored the Act and continued to serve food and continued to allow smoking.

In southern Nevada, said Mr. Higgins, the Southern Nevada Health District had issued very few citations in the beginning, but now had inspectors actually threatening tavern-owned locations with demerits should those locations allow tobacco use to continue in their taverns. Mr. Higgins said he had received emails from two tavern owners over the past week that stated if a smoker refused to stop smoking, the taverns were to call the Las Vegas Metropolitan Police Department. If the tavern owner failed to take that action, the owner

would receive five demerits on their food inspection score. Mr. Higgins stated that *Nevada Revised Statutes* (NRS) did not give the Southern Nevada Health District that power over tavern owners, and tavern owners were not liable if people smoked and ignored the ban.

Mr. Higgins said the Nevada Clean Indoor Air Act had led to lower gaming revenues in taverns, to the layoff of kitchen employees when the kitchens at numerous taverns closed, and to the closure of taverns themselves. With the multiple effects of the recession that had occurred on the heels of the smoking ban, many tavern locations had received a "double hit."

Mr. Higgins stated that section 1, subsection 3, paragraph (b) of A.B. 571 would add the new category of "age-restricted stand-alone bars, taverns and saloons" in which smoking would not be prohibited. These were defined in section 1, subsection 9, paragraph (a):

§ 'Age-restricted stand-alone bar, tavern or saloon' means an establishment:

- 1) Devoted primarily to the sale of alcoholic beverages to be consumed on premises;
- 2) In which food service or sales may or may not be incidental food service or sales, in the discretion of the operator of the establishment; and
- 3) In which patrons under 21 years of age are prohibited at all times from entering the premises.

Mr. Higgins said that was the sum and substance of the proposed changes to statute pertaining to taverns, and the bill used the term "incidental food service or sales." The proposed changes to statute would not expand locations where smoking could occur, but rather would allow food service in areas where smoking was currently legal. Ms. Higgins further explained that even though there were claims to the contrary, the proposed changes to statute would not expand smoking in establishments such as Applebee's restaurants or other family restaurants.

The proposed amendments to statute, said Mr. Higgins, also made sense. The law currently allowed people to smoke and drink in a tavern, but "heaven help them if they wanted to order a hamburger." Food service made sense in locations where patrons were consuming alcohol. Mr. Higgins emphasized that A.B. 571 would continue to protect children from the effects of secondhand smoke, which was the stated purpose of the Nevada Clean Indoor Air Act.

However, smoking remained a legal activity engaged in by adults, and no one in the coalition advocated underage smoking.

Mr. Higgins said the bill would allow taverns that had closed their kitchens to reopen the facilities and rehire their kitchen staff. It would also allow adults to choose whether they wanted to enter a smoking or nonsmoking facility. For example, said Mr. Higgins, on the corner of Charleston Boulevard and Rampart in Las Vegas there were 18 smoke-free restaurants, and one tavern that included a smoke-free restaurant. The choices were not limited, as the opposition to the bill might state, and as a matter of fact said Mr. Higgins, there were very few establishments that allowed smoking.

Mr. Higgins said he would like read into the record a copy of a letter dated May 18, 2011, ([Exhibit C](#)), which had been sent to Committee members and had been signed by over 60 tavern owners:

This letter is written to express the support of the proposed amendment to the Nevada Clean Indoor Air Act, NRS 202.2483 (NCIAA), which is currently before you this session.

In 2006 when the NCIAA was voted on by the general public, the petition on which the ballot question was based stated, 'This Act shall be known, cited and referred to as the Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, *excluding stand-alone bars* and gaming areas of casinos.' In the preamble to the Act itself it states that smoking is allowed in bars.

What the Act did was to eliminate food from the smoking areas of taverns. We would argue that the majority of people voting in favor did not understand that consequence. The bill before you today simply seeks to reinstate food service in areas of bars where smoking is already legal and was approved by the voters as such in 2006.

The affect of the smoking ban, coupled with the recession close on its heels, has devastated the Nevada tavern industry. This proposed legislation will attempt to help out the small business owners who operate the majority of taverns in Nevada. It will also allow us to put Nevadans back to work, by allowing locations which chose to close their kitchens rather than have their patrons stop smoking, to reopen those kitchens and bring additional staff on.

The undersigned would urge you to pass the proposed amendment to the NCIAA, which continues to protect children from secondhand smoke, helps create jobs, and does not expand smoking beyond areas which it is already allowed.

Sincerely,
/s/ Roger Sachs, President
Nevada Tavern Owners Association

Mr. Higgins encouraged the Committee to take a positive step by passing A.B. 571, which would clarify a poorly conceived portion of the initiative petition that, by its own stated purpose, was to protect children rather than keep adults from having appetizers while smoking a cigarette in a tavern.

Testifying next before the Committee was Michael Alonso with the law firm of Jones Vargas, who stated he was present on behalf of the Las Vegas Convention and Visitors Authority (LVCVA). Mr. Alonso referred to the language in section 1, subsection 3, paragraph (f) of A.B. 571, which would be eliminated from statute upon passage of the bill. That language read:

The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:

1. Is not open to the public;
2. Is being produced or organized by a business relating to tobacco or a professional association for convenience stores;
and
3. Involves the display of tobacco products.

He explained that Assembly Bill No. 309 of the 75th Session (2009) had added that language to the Nevada Clean Indoor Air Act. Upon passage of A.B. No. 309 of the 75th Session, the American Cancer Society had filed a lawsuit against the LVCVA and the Legislature. The basis for the lawsuit was that the bill was unconstitutional because it violated the single-subject rule, because the aforementioned language had been amended into the bill at the end of the 2009 Legislative Session.

Mr. Alonso said the language was currently in the law, and the district court had ruled in favor of LVCVA and the Legislature; however, the case was being appealed to the Supreme Court. The LVCVA wanted to ensure that the language in statute related to convention centers was clear and constitutional, and would not be challenged before the Supreme Court.

Mr. Alonso stated that section 1, subsection 3, paragraph (f) of A.B. 571 would eliminate the current convention center language, which would become effective upon passage and approval. Section 2, subsection 2, paragraph (e) reinstated identical language pertaining to a convention facility that would become effective one minute after passage and approval. Mr. Alonso explained that was how the bill had been drafted by the Legal Division of the Legislative Counsel Bureau because the existing law had to be eliminated before the new language could become part of statute.

The original language had been added to A.B. No. 309 of the 75th Session by the 2009 Legislature, said Mr. Alonso, in response to the Las Vegas Convention and Visitors Authority (LVCVA) losing trade shows to other large cities such as Orlando and New Orleans, which had exemptions in their convention center acts that allowed smoking for specific shows.

Mr. Alonso said that language pertained to closed shows related to tobacco products. Several trade shows had returned to the Las Vegas area because of the change in statute in 2009: the Retail Tobacco Dealers of America trade show was scheduled at LVCVA for July 2011 and the National Association of Convenience Stores would hold its show in Las Vegas in October 2012. Mr. Alonso said there was also an annual show at the Las Vegas Sands entitled, "The Big Smoke." The Retail Tobacco Dealers of America expected 5,500 delegates for an economic impact of approximately \$6 million; the National Association of Convenience Stores expected 30,000 delegates with an estimated economic impact of \$31 million.

Mr. Alonso said there were also approximately 11 other tobacco shows that had relocated to other cities because of the changes in Nevada's law, and LVCVA believed they could convince some of those shows to return to Las Vegas after their contracts with other cities had expired.

Assemblyman Grady asked whether the language of A.B. 571 would also pertain to the Reno Convention Center. Mr. Alonso stated that was correct.

Testifying next was Blake Sartini, Chairman and Chief Executive Officer (CEO) of Golden Gaming Inc. Along with unrestricted casino operations in both Nevada and Colorado, Golden Gaming was also the largest tavern operator in Nevada, as well as the third largest slot route operator. Mr. Sartini said he was present to testify about the effect of the Nevada Clean Indoor Air Act on restricted gaming operations that involved Golden Gaming's wholly owned taverns and its third-party, slot route partners.

Mr. Sartini stated that he did not support any expansion of businesses or locations where smoking was prohibited today. Assembly Bill 571, which he supported, would not expand smoking in public places or businesses in which the act of smoking was currently prohibited. Mr. Sartini said he continued to read and hear on local news channels that persons in the community were fostering the message that A.B. 571 would affect the current Act, and smoking would again be allowed in restaurants. Mr. Sartini emphasized that was not the case; he reiterated that he did not advocate reintroducing smoking at any traditional restaurant in which smoking was currently prohibited.

Mr. Sartini said that PT's Tavern group, along with the Sierra Gold Taverns of Nevada made up the largest traditional tavern operation in the state. Those businesses catered to an adults-only, 21-and-older clientele who preferred a smaller, quieter, and more convenient form of entertainment than the larger, unrestricted resort facilities. Those properties had been designed and marketed prior to passage of the Act to be a unique and inviting experience, which promoted the one-of-a-kind experience of a Nevada tavern and which included video gaming.

Prior to the Act, said Mr. Sartini, adults were making their own choices about which facilities to patronize and where to spend their money. It was clearly accepted that the choice for a nonsmoker would be not to patronize a Nevada tavern. The fact was that approximately 23 percent of Nevadans smoked, which equated to more than one in five persons. According to Mr. Sartini, prior to 2007, both smokers and nonsmokers had choices of local entertainment facilities to patronize. The taverns in Las Vegas, as well as those across the state, clearly catered to smokers as well as nonsmokers. Mr. Sartini explained that taverns were not traditional restaurants, were not movie theaters, were not childcare facilities, but rather were a unique business that existed only in Nevada, and smoking customers were a necessary component to a healthy tavern business.

Mr. Sartini stated that in 2007, as a lifelong Nevada entrepreneur, his choice had been taken away upon passage of the Nevada Clean Indoor Air Act. After spending tens of millions of dollars and employing thousands of people, he no longer had a choice to cater to smokers, which meant there was the possibility that he could no longer cater or serve food to approximately 23 percent of the population. Obviously, said Mr. Sartini, no business could survive that, so there were choices that had to be made. He was not an academic, nor was he a consultant that produced information tailored to supporting a specific issue or initiative, but rather he was a businessman.

Mr. Sartini said his testimony today came from the perspective of a businessman. As a result of the Nevada Clean Indoor Air Act in 2007, Golden Gaming immediately began staff layoffs. Dozens of hardworking, working-class persons were laid off when Golden Gaming closed kitchens, some of which had recently been remodeled and built-out. The company was also forced to spend over \$1 million to retrofit the majority of its other establishments to accommodate the new law. However, the damage had been done and business began to suffer immediately because smokers no longer felt welcome and went elsewhere, and nonsmokers had not filled the void because traditional Nevada taverns were not establishments where most people chose to go for a dining night out.

Traditional Nevada taverns were a unique experience, said Mr. Sartini, and those taverns that did not have the financial capability to survive and retrofit their properties after passage of the Act had simply vanished. Golden Gaming's Nevada slot routes had continued to see closures of taverns on a monthly basis related to the Act and the businesses' ability to survive on minimal revenues.

Mr. Sartini said make no mistake, Golden Gaming and countless other entities had been severely affected by the enactment of the Nevada Clean Indoor Air Act in 2007. Those businesses had been thrown into a confusing law that purported to protect Nevada's children. Taverns were "lumped in" with child care facilities, movie theaters, grocery stores, drug stores, and traditional restaurants. Taverns were the obvious "orange" within the "apple" basket. Mr. Sartini said it was wrong then and it was wrong now, and A.B. 571 would do nothing but strengthen and clarify the existing law. If the current Act was, as represented by various constituencies, good for the Nevada tavern business, then why had the industry put forth such an effort to clarify and correct the language of the Act.

Mr. Sartini said Nevada taverns that catered to adults age 21 and over should be allowed to serve food in the establishments that already allowed smoking. By enacting A.B. 571, Mr. Sartini said his businesses and others would open kitchens again, which meant more jobs and more tax revenue for local municipalities and the state. He emphasized that A.B. 571 was a good bill—it was good for Nevada, it was good for the existing Nevada Clean Indoor Air Act and its effort to protect the state's children from secondhand smoke, it was good for Nevada's economy because it was legislation that was sure to create more jobs and initiate commerce among food and beverage providers, and finally, it was good because it would simply allow food to be served in establishments in which smoking was currently allowed.

Chairwoman Smith asked Mr. Sartini to address the issue of where smoking customers who no longer frequented taverns were going for entertainment. Mr. Sartini said there were several options available for smokers, such as the category of taverns with unrestricted gaming licenses that had been "grandfathered" in and were not subject to the Nevada Clean Indoor Air Act. Those unrestricted taverns usually offered between 25 and 190 gaming machines. Also, said Mr. Sartini, there was a controversial new tavern model in Nevada that had been expanding rapidly, and those taverns had picked up a significant portion of smoker's business. Mr. Sartini said he was not aware of other establishments selected by smokers, but the revenue at traditional taverns had been negatively affected by the loss of smoking customers.

Assemblywoman Carlton asked how many people had been laid off because of kitchen closures in taverns. Mr. Sartini believed that between 24 and 50 people had been laid off.

Testifying next before the Committee was Roger Sachs, President, Nevada Tavern Owners Association (Association), who stated he was present to represent 105 tavern locations statewide, but predominately located in southern Nevada. At its peak, the Association had over 300 member locations when the Nevada Clean Indoor Air Act passed. Many locations had to choose between serving food and allowing patrons to smoke, said Mr. Sachs, and both options were "losers" for taverns because many clients wanted both options.

Mr. Sachs said that in several taverns, up to ten servers, cooks, and dishwashers lost their jobs when the Act went into effect, which represented approximately 750 jobs lost in January 2007. The members of the Association had indicated they would reopen their kitchens if A.B. 571 passed. Mr. Sachs noted that in January 2007 when the Act went into effect, there had been much confusion, and the antismoking groups indicated that the bars would be filled by nonsmokers and business would not decline. Mr. Sachs said that was a fallacy because the empty seats had not been filled by nonsmokers, and smokers had chosen other options where smoking was allowed.

Mr. Sachs said he had conducted a personal study of his three tavern locations, and seven of the top ten players in each of the three locations were smokers, which equated to over 70 percent of the top players generating 50 percent of the revenue received by the tavern on a weekly basis. He opined that he could not replace the top gamers who left the taverns.

Mr. Sachs stated that receipts for the taverns within the Association had decreased by over 30 percent within the first six months of 2007. The number of employees in Mr. Sachs' three businesses had decreased from 52 employees

to approximately 38 employees at each location. The Association membership that had been lost because taverns could not allow smoking could not be replaced, and membership had dropped from 300 to approximately 105 because most of the taverns could not afford to be members.

Mr. Sachs stated that tavern businesses had been battered over the years, first by enacting the Nevada Clean Indoor Air Act when approximately 30 percent of business was lost, and second by the recession when business dropped by another 20 percent. Also, when the Act went into effect, minimum wage was raised and continued to increase, which added an additional burden on tavern businesses. Food and beverage prices had soared another 20 percent, so while owners were facing a decline in revenue, they were also paying out more, which had caused the closures of many taverns.

Mr. Sachs said he was personally not a smoker, but he had worked in the tavern business for over 30 years by choice. The employees in the tavern business were not concerned with the effects of secondhand smoke, and 60 percent to 70 percent of restaurant employees were smokers. Mr. Sachs said 90 percent of those employees would prefer the higher tip revenues from gamers who were also smokers.

Chairwoman Smith asked whether there were 300 taverns when the initiative passed and currently there were only 105. Mr. Sachs said the membership of the Association was 300 when the initiative passed and over 100 bars had actually closed in Las Vegas. There were probably at least 100 more that had not renewed their membership since the smoking ban went into effect.

Testifying next before the Committee was Jo Sonner, President, Bully's Sports Bar and Grill. Ms. Sonner said that Bully's currently had 11 locations that offered gaming, 7 of which were nonsmoking and 4 of which were smoking locations that did not serve food.

In 1994, said Ms. Sonner, Bully's opened with a business model for a gaming and family-oriented restaurant and sports bar. In 2007 when the Nevada Clean Indoor Air Act went into effect, Bully's lost a tremendous amount of revenue and customers when 7 of its locations became nonsmoking.

Ms. Sonner indicated that Bully's had changed its business model and had opened locations near the original Bully's to accommodate its smoking patrons. The loss of revenue from the Act and the recession had caused Bully's to enter into Chapter 11 Bankruptcy. Bully's was attempting to reorganize, and Ms. Sonner said she did not plan to change the current business model and would not allow smoking in family-oriented locations. Ms. Sonner said she was

testifying on behalf of other businesses that should have the right to serve food in adult-only establishments.

Chairwoman Smith asked about the cost for Bully's to open other locations to accommodate smoking patrons and whether Bully's was able to employ the same number of people.

Ms. Sonner replied that there had been a number of layoffs because of the loss of revenue. It had taken some time to open the smoking locations, which meant that some employees had been laid off. Bully's was able to slowly rehire some of those employees; she noted there had been a tremendous cost involved in opening the smoking locations. Ms. Sonner stated that once business had been lost, it was difficult to build it up again.

Chairwoman Smith asked whether there had been a balance in business receipts from nonsmokers. Ms. Sonner said if there was a gain, it was very slight. When Bully's was a smoking location she had heard from some patrons that they would prefer a nonsmoking location, but business had dropped considerably, by approximately 20 percent to 30 percent, when smoking was banned.

Chairwoman Smith opined that it must have been difficult for businesses because right after the smoking ban was initiated, the recession occurred, which made it difficult to determine what had caused the decline in business.

Assemblywoman Carlton said there were some bars in Las Vegas that had an unfair advantage because they were unrestricted and the smoking ban had no effect on those businesses. She asked whether there were businesses close to the Bully's locations that gained an advantage because they were not required to comply with the smoking ban. Ms. Sonner said she was not aware of any such businesses.

Testifying next was Jeremy Aguero, Principal Analyst, Applied Analysis, who indicated that Applied Analysis had been retained to take a broader look at the effects of the Nevada Clean Indoor Air Act relative to the various tavern coalition members.

Mr. Aguero referred to [Exhibit D](#), "Impact of the Nevada Clean Indoor Air Act," which had been provided to members and was available to the public via the Nevada Electronic Legislative Information System (NELIS). He indicated that slot route operators and tavern owners had provided information regarding the number of units, the number of employees, and revenue figures, and Applied Analysis had compiled that information and used it to make estimates.

Mr. Aguero believed the report provided a very good overview of what had happened and how it had happened over time in the tavern business.

Mr. Aguero said the analysis was monthly regarding employment, revenue, and the effect over time from the point when the Act was approved in December 2006 until the recession began in December 2007, and attempted to separate the effects of the smoking ban from the broader economic downturn.

Page 2 of the exhibit, said Mr. Aguero, summarized the findings, and he pointed out that the pace of revenue decline experienced by restricted licensees was 17 percent in the post-Act period, far outpacing the broader movement within the economy. Mr. Aguero said that between 2006 when the Act became effective and 2007 when the recession began, the economy in Nevada was flat. During that same period, tavern and bar operators suffered a 17 percent decline in revenues.

Mr. Aguero noted that during the first full year after passage of the Nevada Clean Indoor Air Act, midrange estimates of both revenue decline and decline in employment indicated that approximately \$114 million in revenue had been lost and approximately 358 jobs had been lost.

Page 3 of [Exhibit D](#) depicted the magnitude of the differentials between restricted licensee revenue that decreased from \$858 million in 2006 to \$716 million in 2007 for a loss of \$142 million, and a reduction in employment from 4,409 jobs to 3,962 jobs for a loss of 447 jobs.

Continuing his presentation, Mr. Aguero stated that page 4 of the exhibit provided a series of comparisons that reviewed the affect 1 month, 3 months, 6 months, 9 months, 12 months, and 24 months after the Act was put into place. He explained the chart and indicated that the recession had not officially commenced until December 2007, so the chart depicted the 12 months between the time the Act went into effect and the start of the recession. He noted that total employment was down 17 percent, full-time equivalent employees were down 10 percent, and the number of gaming units was slightly up by 1 percent.

Mr. Aguero explained that the leading economic indicators throughout the state had remained flat. Taxable retail sales, which were a broad measure of consumer spending remained at zero, gross gaming revenue was up 2 percent, total establishment-based employment was up by 1 percent, food services and drinking employment was up by 4 percent, and casino hotel and gaming employment was off by 2 percent.

Page 5 of the exhibit, said Mr. Aguero, depicted the range of industry losses attributable to the Nevada Clean Indoor Air Act. Page 9 of the exhibit depicted the year-over-year growth, and Mr. Aguero believed those charts demonstrated the trend with additional clarity. The chart depicted the comparison between the Nevada leading economic indicator index versus total tavern revenue between January 2007 and October 2009. The chart also indicated that when the Act became effective, the tavern industry experienced a dramatic decline with an average loss of 17 percent during that period. Mr. Aguero noted that during the recession, the tavern industry suffered additional declines in business.

Mr. Aguero continued his discussion of the exhibit and the differentials between the tavern industry and the economy as a whole, as depicted on page 10 of the exhibit. The trend appeared to worsen over time with revenue off by 21 percent at the end of December 2007. Page 11 of the exhibit depicted a similar chart for taxable retail sales, which also indicated that the tavern industry's total revenue was down by 17 percent on average.

Continuing his presentation, Mr. Aguero explained that the charts on pages 13 through 15 of the exhibit depicted Nevada employment versus tavern full-time equivalent employees, Nevada leisure and hospitality employment versus tavern full-time employees, and restricted revenues versus number of gaming devices. All charts demonstrated the clear trend relative to the effect of the Nevada Clean Indoor Air Act on the operations of taverns.

The balance of the exhibit, pages 16 through 23, looked at month-by-month trends for a number of key economic series, said Mr. Aguero, demonstrating in almost every case that between 2006 and 2007 the state's economy was flat, a period in which tavern owners felt the full-force of the Act through reduced jobs, lost revenue, and declines in aggregate productivity.

Vice Chair Conklin asked whether Mr. Aguero thought the numbers were perhaps skewed in a positive manner after the beginning of the recession. He indicated that the historic trend was that alcohol consumption across the country tended to be cyclical, and as the economy worsened alcohol consumption increased.

Vice Chair Conklin noted that the charts depicted in the exhibit depicted a spike in January 2008, which would indicate a countercyclical trend. It appeared that the situation was improving slightly, and without adding the recession, the numbers would still continue to decline. That would result in a positive skewing of the percentages so the situation would appear better than it was.

Mr. Aguero said that was an interesting point. Certainly, the underlying premise of Vice Chair Conklin's analysis was accurate. However, the spiking depicted in the charts contained in the exhibit remained below zero. In comparing January 2008 with January 2009, a period in which there had been as much as a 20 percent decline, there had been an additional decline of between 5 percent and 8 percent. Mr. Aguero indicated that he did not have an answer for the ebb and flow of the percentages and the underlying premise suggested by Vice Chair Conklin was probably part of that ebb and flow. The tavern business had been hit by the effects of the Act, and when the recession began and fully took hold, tavern business had been unable to recover and had declined even further.

Assemblyman Aizley said it was very difficult to link cause and effect in many studies, and it was also difficult to determine whether the effects suffered by the tavern industry were from the loss of food service or the downturn in gaming because of the economy. He asked whether or not the analysis considered the fact that slot machine payoffs were much lower than in the past and whether that had an effect on the decrease in business.

Sean Higgins with Gordon Silver Attorneys and Counselors at Law, said that he had worked in the business for the past 20 years and the gaming device payoff was theoretically 5 percent to 6 percent in tavern locations, and that percentage had not changed over the past 15 years. Assemblyman Aizley said he would disagree with that statement. Mr. Higgins said he would be happy to provide information from the slot operators regarding gaming machine payoffs.

Testifying next was Morgan Baumgartner, representing the Nevada Resort Association, who stated that the Association supported A.B. 571. The Association believed the amended language added clarity to the Nevada Indoor Clean Air Act regarding permissible activities within adult-only establishments. Ms. Baumgartner said the Association believed that clarity had been long needed and that the amended language was consistent with the original intention of the Act to prevent families and children from being exposed to secondhand smoke. The language of A.B. 571 was consistent with the long-held position of the Association that supported an individual's right to choose whether to patronize smoking or nonsmoking establishments.

Assemblywoman Carlton said she had received emails from persons that indicated the smoking policy would be changed in some restaurants and coffee shops if the bill were to pass. However, the language of the bill indicated that the policy would not change, and she asked for clarification.

Ms. Baumgartner stated that was correct, the language would not change the policy of nonsmoking in restaurants and coffee shops.

Vice Chair Conklin asked whether there was further testimony to come before the Committee in support of A.B. 571, and there being none, he opened testimony in opposition to the bill.

Michael Hackett, representing the American Cancer Society – Cancer Action Network, the Nevada State Medical Society, the Nevada Tobacco Prevention Coalition, and Smoke-free Gaming of America, introduced himself to the Committee. While representatives from those organizations would provide additional testimony, he wanted to lend his voice to the hundreds of thousands of Nevadans who did not want the Nevada Clean Indoor Air Act weakened.

Mr. Hackett said he was testifying in opposition to A.B. 571 and thanked the Committee for holding the hearing. Last minute legislation that dealt with policy was always a cause for concern, and he appreciated the opportunity to present testimony.

Ms. Hackett said just as in 2009 with Senate Bill No. 372 of the 75th Session, he was once again defending the Nevada Clean Indoor Air Act. In 2006, the proponents of A.B. 571 were also proponents of an initiative petition entitled “Responsibly Protect Nevadans from Secondhand Smoke.” That became question 4 on the General Election ballot while the Nevada Clean Indoor Air Act was question 5 on the ballot. Mr. Hackett said the problem with question 4 was that it would have done little to protect Nevadans from secondhand smoke and, in fact, would have made smoking more permissive, going so far as to allow smoking in child care facilities.

Mr. Hackett said question 4 had been a “smoke screen” designed to confuse voters and ultimately cause the defeat of the Nevada Clean Indoor Air Act. Fortunately, question 4 had not been successful, and question 5 was passed by the voters. The same “smoke screen” was again occurring with A.B. 571.

Mr. Hackett said he would like to address the issues within the bill beginning with page 2, section 1, subsection 3, paragraph (b), which proponents indicated would create a new exemption for age-restricted stand-alone bars, taverns, and saloons. However, the new exemption did not matter because the real purpose of A.B. 571 could be found on page 4 of the bill where the current definition of a stand-alone bar, tavern, or saloon was amended. In section 1, subsection 9, paragraph (n), subparagraph (1) a stand-alone bar, tavern, or saloon was defined as an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises.

Mr. Hackett said in section 1, subsection 9, paragraph (n), subparagraph (2) the definition of a stand-alone bar, tavern, or saloon was amended to add "In which food service or sales may or may not be incidental food service or sales, in the discretion of the operator of the establishment." That meant the new exemption proposed for age-restricted, stand-alone bars, taverns, or saloons was simply a ruse and was unnecessary and irrelevant. Mr. Hackett indicated that under the new definition for a stand-alone bar, tavern, or saloon, any stand-alone bar, tavern, or saloon in Nevada could serve food and alcohol and could allow smoking regardless of the age of the clientele.

Mr. Hackett said why bother creating an age-restricted, stand-alone bar, tavern, or saloon for the purpose of creating a new exemption when it would serve no purpose. Despite the claims to the contrary by proponents of A.B. 571, the provision and amendment of the existing definition of a stand-alone bar, tavern, or saloon would, indeed, expand the scope of where smoking was currently allowed.

One additional problem, said Mr. Hackett, was that if the bill passed with that language it would be nearly impossible to distinguish a bar or tavern from a restaurant when trying to enforce the no smoking laws. It would be virtually impossible to enforce the law in the places that Nevadans frequented most where food and alcohol were served. Ultimately, said Mr. Hackett, enforcement would be a nightmare at best and nonexistent at worst.

The second issue that caused concern was in section 1, subsection (3), paragraph (f) that would be eliminated regarding convention facilities and tobacco-related trade shows. Mr. Hackett said he appreciated Mr. Alonso's clarification of the issue and the reason the language was deleted in one section and added to another, but his preference would be for the court to finish its job and decide that issue.

Mr. Hackett stated that section 3 called for a study regarding the implementation of the Nevada Clean Indoor Air Act and would appropriate \$15,000 from the General Fund to conduct the study. If there was concern by the proponents over how the Act had been implemented, why not call for the study first rather than attempting to dismantle the Act once again with A.B. 571. Mr. Hackett stated that he was not sure what type of meaningful study could be completed for \$15,000, and he opined that was simply another "smoke screen."

Mr. Hackett said most people would agree that the recession was responsible for the closure of businesses and job loss across all industries in Nevada, including those where smoking was still permitted. However, Nevada was

recovering and unemployment had dropped from its high of almost 15 percent to under 13 percent. Taxable revenue from bars and restaurants had been steadily increasing, said Mr. Hackett, and permits for new bars and restaurants in Washoe County had increased in each year since before the Nevada Clean Indoor Air Act became law. In Clark County, permits issued for new restaurants, restaurants with take-out, and drinking establishments had also increased in each year since the Act became law.

Mr. Hackett stated that during that time, the Nevada Clean Indoor Air Act had remained unchanged, and it was neither the problem nor the ultimate solution for what was ailing Nevada. Finally, said Mr. Hackett, it was important to understand exactly what the more than 310,000 Nevadans voted for in 2006. Question 5 asked voters whether Chapter 202 of the *Nevada Revised Statutes* (NRS) should be amended to prohibit smoking in certain public places and all bars with a food handling license, but excluded gaming areas of casinos and certain other locations.

Mr. Hackett said A.B. 571 undeniably went against what Nevadans had voted for. Beginning in 2002 with advisory questions in Washoe and Clark Counties, through the 2011 poll by the American Lung Association, Nevadans were very clear and knew exactly what they wanted.

When discussing A.B. 571 with a member of the Senate, Mr. Hackett said he was asked why the Legislature was bothering with that bill when there were so many more important issues to be considered. On behalf of those organizations that he represented, Mr. Hackett, respectfully asked that the Committee also “not bother” with A.B. 571.

Vice Chair Conklin said he believed that under the current law smoking was permitted in taverns. Mr. Hackett stated that smoking was allowed in stand-alone bars, taverns, and saloons, provided that the only food service was prepackaged or incidental food; those were the only conditions under which smoking was allowed currently in a stand-alone bar, tavern, or saloon.

Vice Chair Conklin asked why Mr. Hackett had voiced opposition to section 3, subsection 1, rather than section 1, subsection 9, paragraph (a). Mr. Hackett said the reason he had focused on the issue of section 1, subsection 9, paragraph (n), subparagraph (2), was because that was the more encompassing of the issues being presented. Why would there be a proposed amendment for an age-specific bar, tavern, or saloon when the existing definition was already being amended to allow any stand-alone bar in the state the opportunity to serve food and alcohol, and allow smoking. The other amendment that created

the age-restricted, stand-alone bar, tavern, or saloon, was irrelevant and meant nothing.

Assemblyman Atkinson wondered about the correlation or nexus that tied the struggles within the tavern business to either smoking or nonsmoking in the establishments, along with the loss of revenue and employees. Assemblyman Atkinson believed that most businesses had tied recent struggles to the decline in the economy, but the struggle for taverns was being tied to the inability of patrons to smoke and be served food within the establishments.

Mr. Hackett said he could not answer regarding how the industry was able to make the connection and correlation between the loss of business and the Nevada Clean Indoor Air Act, and separate that loss from the overall economic conditions of the state during that time frame. Mr. Hackett agreed that there did not appear to be a correlation between the inability of patrons to smoke and be served food in a tavern with the decrease in revenue and loss of jobs in tavern businesses. His personal feeling was that job losses, business closures, and the loss of disposable income, on which the tavern industry relied, had come about primarily because of the recession. Mr. Hackett said without that disposable income, people would not frequent such establishments as taverns.

Assemblyman Atkinson believed that the same response would apply to the gaming aspect of the tavern business. He believed that most of the customers who gambled in tavern establishments were locals who were, and still are, experiencing economic difficulties. The downturn in gaming revenue appeared to be caused by struggling Nevadans paying bills rather than spending their dollars in local taverns.

Mr. Hackett agreed and said from his experience in Washoe County, the market for locals had been greatly affected by the downturn in the economy. Many of the casinos that catered to locals in northern Nevada had closed, and he did not believe those closures were specific to the Nevada Clean Indoor Air Act, because smoking had been allowed in the gaming areas of those establishments.

Assemblywoman Carlton said she was aware of the hazards of smoking and had lost her mother to chronic obstructive pulmonary disease (COPD). However, what appeared to have backfired regarding question 5 was that it was tied to food service. Assemblywoman Carlton said the taverns were given a choice, and if they served food then patrons could not smoke, which made absolutely no sense. Not allowing persons to smoke in an establishment so that families and children were not exposed to secondhand smoke had nothing to do with the ability to purchase food at that establishment. The tavern owners had

determined that the gaming customers who smoked were worth more than keeping their kitchens open to serve food. Assemblywoman Carlton opined that question 5 caused some kitchen workers to be laid off because taverns no longer served food. Now patrons were sitting in bars, drinking and playing video poker, and there was no food available unless it was prepackaged or shipped into the establishment.

Assemblywoman Carlton stated that she could not determine whether or not question 5 had been effective because people were still smoking, and the Nevada Clean Indoor Air Act had not changed the actual act of smoking. The goal of the antismoking groups was to get people to quit smoking so that others would not be exposed to secondhand smoke. Testimony from proponents of the bill indicated that A.B. 571 would simply allow food to be served in establishments where patrons could smoke, and Assemblywoman Carlton said she could not see a problem with that.

Mr. Hackett said the purpose of the Nevada Clean Indoor Air Act was to reduce the public's exposure to secondhand smoke. Obviously, there were studies that showed that the reduction of a person's exposure to secondhand smoke was beneficial, particularly for persons who were trying to quit smoking. Mr. Hackett believed that the Act had been very successful in terms of reducing exposure to secondhand smoke. He believed the Washoe County Health Department would agree that the Act had been very successful.

Assemblywoman Carlton said that within the tavern industry, businesses had simply closed their kitchens to allow patrons to continue to smoke. She opined that the Nevada Clean Indoor Air Act had not been successful in southern Nevada, and it had actually given some businesses a greater advantage because those businesses had been "grandfathered in" and were allowed to continue serving food while allowing patrons to smoke. Assemblywoman Carlton commented that at the time the Act went into effect, her husband was still smoking and they made choices regarding which establishments to frequent for dinner based on the establishment's smoking policy. Assemblywoman Carlton reiterated that the Act had simply eliminated food service while continuing to allow smoking in bars and taverns.

Mr. Hackett claimed that the Act had been successful in northern Nevada, and if it was not working in southern Nevada that was not an issue with the Act itself. The Act was designed to protect people from secondhand smoke, so persons could enter an establishment such as Bully's Sports Bar where food was served and children were allowed on the premises and those children would be protected from secondhand smoke. Mr. Hackett said the Act also protected adults and other vulnerable populations from secondhand smoke and provided

an environment where persons could be served food and drinks without exposure to secondhand smoke.

Mr. Hackett said establishments had made choices about whether to serve food and prohibit smoking, or not serve food and allow smoking, and many bars and taverns in northern Nevada had been very successful since passage of the Nevada Clean Indoor Air Act.

Testifying next before the Committee was Tom McCoy, Nevada Government Relations Director, American Cancer Society – Cancer Action Network, who stated that A.B. 571 dealt with two issues that the American Cancer Society was quite concerned about.

Mr. McCoy explained that Assembly Bill No. 309 of the 75th Session had been passed on the last day of the 2009 Legislative Session without public hearing, and the American Cancer Society had challenged the move by the Las Vegas Convention and Visitors Authority (LVCVA) to tack a modification or amendment of the Nevada Clean Indoor Air Act that dealt with smoking at certain trade shows onto a very popular antistalking bill. Mr. McCoy said the American Cancer Society challenged that action because it determined that the Legislature had violated the *Nevada Constitution* regarding the one-subject rule, and the American Cancer Society had ultimately taken that challenge to the Supreme Court, which was currently considering the case.

Mr. McCoy said it appeared that what was now being attempted by the proponents of A.B. 571 was to “hedge their bet” about whether the Supreme Court would rule in favor of the American Cancer Society that the Legislature had acted improperly in passage of A.B. No. 309 of the 75th Session (2009). Therefore, A.B. 571 removed the language from law in section 1, subsection 3, paragraph (f), and one minute later, the language would go back into effect as depicted in section 1, subsection 9, paragraph (a).

Mr. McCoy said the reason the language had originally been challenged and the reason for the concern regarding A.B. 571 was the issue of secondhand smoke. There had been articles and studies about the dangers of secondhand smoke, said Mr. McCoy, and the issue was not just cancer, but also heart disease.

Mr. McCoy said the *Nevada Revised Statutes* (NRS) [202.2483] stated, “Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment . . . ,” which described adults because not many children worked in government buildings and public places or malls and retail establishments. Mr. McCoy stated that the Nevada Clean Indoor Air Act was to protect adults as well as children and families.

Mr. McCoy stated that the American Cancer Society's concern with A.B. 571 was that additional employees would be exposed to secondhand smoke. A person who currently accepted employment at a casino was required to sign a waiver assuming the risk of being exposed to secondhand smoke.

According to Mr. McCoy, secondhand smoke was a problem, and studies indicated that Las Vegas was the number one city in the nation for cases of lung cancer in adult women, the cause of which was attributed to occupation. At some point, Nevada would recognize secondhand smoke as an occupational disease. Mr. McCoy submitted Exhibit E from the American Cancer Society—Cancer Action Network for the Committee's review.

Testifying next before the Committee was Caroline Moassessi, President, Northern Nevada Asthma and Food Allergy Parent Education Group, who stated that she was the parent of two asthmatic children. Ms. Moassessi explained that her two children suffered from severe asthma, and if they breathed in a whiff of smoke, their lungs would become inflamed and they would have trouble breathing. She opposed the bill out of concern for the patrons and employees in the establishments currently under discussion who were unaware of their lung health.

Ms. Moassessi stated that her children were attending Washoe County public schools where there had been budget cuts and parents were working very hard to tighten their belts and help the school districts. She objected to section 3 of A.B. 571 that requested \$15,000 to conduct a study regarding the implementation of the Nevada Clean Indoor Air Act. Also, the bill would encourage smoking at a time when Nevada spent over \$560 million on tobacco-related healthcare issues.

Ms. Moassessi asked that the Committee respect and honor the choice of the voters in 2006 to adopt the Nevada Clean Indoor Air Act.

Testifying next was Amy Beaulieu, Director of Tobacco Control Policies for the American Lung Association of Nevada. Ms. Beaulieu said the American Lung Association was trying to protect individuals from the toxic air that secondhand smoke left behind. The scientific fact and the experience of nearly half the states in the United States indicated loud and clear that there had to be a comprehensive smoke-free air law in Nevada to protect Nevada's citizens from secondhand smoke.

Ms. Beaulieu said the Nevada Clean Indoor Air Act had been passed by voter ballot initiative in 2006. The voters knew what they wanted then and they knew what they wanted now. The American Lung Association in Nevada

conducted a statewide survey of 802 registered voters at the end of February 2011, and more than four in five Nevada voters supported current laws that prevented smoking in public places and believed that all Nevada workers should be protected from secondhand smoke in their workplace and in all other public places.

Ms. Beaulieu stated that support for the 2006 Nevada Clean Indoor Air Act was extremely strong, even stronger than it had been when the law was first passed with a total of 82 percent of voters supporting the Act. Similarly, 86 percent of Nevada voters believed it was important to have a smoke-free environment in all workplaces and indoor public places. Ms. Beaulieu said that 83 percent agreed that Nevada workers should be protected from secondhand smoke in their workplace, and by a nearly 8-to-1 margin, more Nevada voters believed the rights of customers and employees to breathe clean air in restaurants and bars outweighed the rights of smokers to smoke in those places.

Ms. Beaulieu indicated that only 4 percent of voters believed that outings in Nevada had become less enjoyable because restaurants, bars, and other social establishments had become smoke-free. Every breath of secondhand smoke contained 69 known carcinogens and thousands of chemicals and workers deserved protection. The U.S. Surgeon General had made it clear that there was no safe level of exposure to secondhand smoke. Ms. Beaulieu said without a strong smoke-free law, Nevada citizens would be exposed to secondhand smoke, particularly restaurant and bar employees. Blue-collar workers were often the youngest members of Nevada's workforce, and African Americans and Hispanics were particularly at risk. Ms. Beaulieu said many workers in blue collar or food service jobs were more likely to be exposed to secondhand smoke.

Ms. Beaulieu said over 76 percent of white-collar workers were covered by smoke-free policies, but only 52 percent of blue-collar workers were covered, and only 42 percent of food service workers benefitted from that protection. No one should be required to risk their health to earn a paycheck or enjoy a night out in a restaurant or bar. Without a clean air law, restaurant and bar employees and patrons would be exposed to potentially lethal secondhand smoke. Ms. Beaulieu stated there was growing bipartisan momentum across the country and the world to protect everyone's right to breathe healthy air, and Nevada would be the first state in the nation to roll back its clean air mandates with passage of A.B. 571.

Testifying next was Christopher Roller with the American Heart Association, who stated he also represented the Nevada Tobacco Prevention Coalition. Mr. Roller asked the Committee not to support A.B. 571 and, thereby, protect the rights of citizens in Nevada to breathe clean air.

Mr. Roller did not believe the bill would strengthen the Nevada Clean Indoor Air Act, but rather would weaken the Act by allowing smoking in additional establishments. The effects of the bill would be increased exposure to secondhand smoke, which was a matter of life and death and the cause of rising health costs. Mr. Roller pointed out that the majority of deaths during structural fires were caused by smoke inhalation because the lungs, brain, and vascular system were designed to breathe in clean air, not smoke. It was against the biology of the human body to breathe in secondhand smoke, and increased exposure would lead to increased risk for various medical conditions.

Mr. Roller said recent reports indicated that 600,000 people died worldwide annually because of exposure to secondhand smoke. A study had recently been released by the University of Nevada, Reno (UNR) that pointed to a reduced number of heart attacks and strokes in Nevada because of the Nevada Clean Indoor Air Act. Mr. Roller said that was the reason the developed world was moving toward clean air laws for every public building and place of employment.

Mr. Roller said currently about 65 percent of the population throughout the country was covered by comprehensive workplace smoke-free laws, which included restaurants and bars. That trend had been growing rapidly over the past decade, and the vast majority of the population were now covered by smoke-free laws. The Centers for Disease Control and Prevention (CDC) indicated that by 2020 there would be very few areas in the country without smoke-free laws.

Mr. Roller said A.B. 571 would create increased exposure to secondhand smoke, which would buck that national trend of increased protection. He stated that secondhand smoke had caused the death of his grandparents—his grandfather from lung cancer and his grandmother from heart failure brought on by complications of emphysema because of exposure to secondhand smoke. Mr. Roller believed the law was a matter of life and death.

Mr. Roller stated that family protection had not been mentioned in earlier testimony, but along with children, the Act also protected families from secondhand smoke, which included workers and patrons at bars and restaurants. He noted that there had been previous discussion about the loss of trade show business because of the Nevada Clean Indoor Air Act. There were also dozens of national organizations that had signed on to hold conventions

only in cities with smoke-free laws in place. Mr. Roller countered that some of the convention business for nonsmoking companies might also be lost because of secondhand smoke.

Mr. Roller said he was one of dozens of people he knew that would not go to an establishment in Las Vegas because those businesses ignored the Nevada Clean Indoor Air Act and allowed smoking.

Testifying next was Chandra Mayer, who said she was testifying on behalf of herself, her friends, and other mothers who were somewhat confused as to why the Legislature was considering A.B. 571. The voters had approved the Nevada Clean Indoor Air Act and were not sure why it was being considered again without being sent back to the people for consideration of the proposed changes. Ms. Mayer said it appeared somewhat underhanded and she would like answers.

Vice Chair Conklin suggested that Ms. Mayer contact her elected representative within the Legislature for answers about the process, or he would be happy to discuss the matter with her after the hearing.

Assemblywoman Mastroluca asked how Ms. Mayer perceived that A.B. 571 would weaken the Nevada Clean Indoor Air Act. Ms. Mayer said the Act had been voted on by the voters and the bill would change the mandates of the Act regarding bars and taverns. She wondered about the "gray area" regarding the definition of a tavern, which she believed would be up to the discretion of the owner.

Assemblywoman Mastroluca said it was always up to the discretion of the owner to choose whether to allow smoking and not serve food, or serve food and not allow smoking. Ms. Mayer said the bill would change the type of food that could be served in taverns and bars from prepackaged food to full food service and would allow tavern owners to again open their kitchens. That would lead to smoking sections and exposing children to secondhand smoke. Ms. Mayer believed that the bill would change the law and allow smoking at the owner's discretion.

Assemblywoman Mastroluca pointed out that Ms. Mayer would not take her children into places that allowed smoking, and she wondered how passage of A.B. 571 would change Ms. Mayer's lifestyle.

Ms. Mayer opined that passage of the bill might change her taxes because health issues brought on by smoking were expensive to the state and its citizens. She opined that passage of the bill would weaken the Nevada Clean Indoor Air Act.

Testifying next was Robert Sack, Division Director, Environmental Health Services Division, for the Washoe County District Health Department. He stated he was present to represent the agency charged with enforcing the current Nevada Indoor Clean Air Act. The Washoe County District Health Department had three concerns regarding A.B. 571. The first was that from an enforcement standpoint, the bill would add a second category of "age-restricted" stand-alone bar, which apparently would not have to meet the same construction standards as a stand-alone bar that was not "age-restricted." Mr. Sack said that meant smoke could migrate into other areas where smoking was not allowed.

The second concern, said Mr. Sack, was related to food service. The Washoe County District Health Department was prepared to permit food service in that type of establishment. However, from an enforcement standpoint, the current stand-alone bars were gray areas because of lack of agreement and compliance issues. Mr. Sack believed that simply adding food service to stand-alone bars would not pose a problem for the Health Department.

Mr. Sack stated that the final piece regarding enforcement was that when the Act was established, it included criminal provisions that allowed various law enforcement and health districts to issue criminal citations. Mr. Sack said there had been 98 percent compliance in Washoe County; however, the Supreme Court ruled that the criminal provisions be stricken from the law, which basically removed the enforcement ability of the Washoe County Health Department. Currently, the Act was essentially unenforceable, and if the Committee were to consider passage of A.B. 571, the Health Department would like to offer some suggested enforcement language.

Vice Chair Conklin believed Mr. Sack had hit on a very important aspect of the Act. He commented that there was little, if any, enforcement of the Nevada Clean Indoor Air Act in southern Nevada.

Mr. Sack stated that there were also establishments in northern Nevada that were "thumbing their nose" at the Washoe County Health Department, and there was no mechanism to bring those establishments into compliance with the Act.

Testifying next was Dr. Lawrence Sands, Chief Health Officer for the Southern Nevada Health District (Health District), who said he was present to testify in opposition to A.B. 571. He wanted to address the various comments about the lack of enforcement of the Nevada Clean Indoor Air Act in southern Nevada. Dr. Sands said the Health District had employed a multiple enforcement strategy, but it was also important to recognize that the vast majority of establishments in southern Nevada that were covered under the Act were compliant with the law. Dr. Sands said that using a few high profile challenges to the law to justify weakening or changing the Nevada Clean Indoor Air Act would do a great disservice to the public that continued to support smoke-free environments.

Dr. Sands indicated that the first component of the Health District's initial enforcement strategy centered on educating the affected establishments of the requirements of law and their responsibilities. The Health District's goal was to assist establishments in becoming compliant with the law. Dr. Sands said that had been accomplished through the distribution of information, including fact sheets that detailed the specific businesses that were required to become smoke-free.

Not long after the law took effect, said Dr. Sands, the Nevada Clean Indoor Air Act was challenged in the Eighth Judicial District Court, and the judge's decision regarding criminal enforcement left the Health District with the responsibility of enforcing the Act in southern Nevada. Dr. Sands stated that the Health District had issued compliance letters to businesses that defined the letter of the law, which had proven to be an effective strategy and method at that time. The Health District had been able to enter into compliance agreements with many establishments.

In conjunction with the strategy of compliance letters, the Health District had also explored options related to one of the enforcement mechanisms allowed under the Act, said Dr. Sands, which was the issuance of individual citations. That was new territory for the Health District because its environmental health specialists were not law enforcement officers and were not trained in confronting individuals to issue citations. Dr. Sands stated that after considering the available options, the Health District determined that a more effective and efficient approach to enforcement could be accomplished by using the Health District's current infrastructure and regulatory authority.

Dr. Sands explained that the Health District currently had a comprehensive enforcement program in place through food establishment regulations. Noncompliance with the Act was a critical violation that would result in demerits, and continued noncompliance could result in a supervisory conference

and the suspension of permits. Additionally, said Dr. Sands, the Health District investigated complaints and could charge a verified complaint fee for noncompliance with the Nevada Clean Indoor Air Act and other provisions of food regulations.

Dr. Sands said that since the Health District's regulations had taken effect on November 1, 2010, the strategy had been successful, and over one dozen verified complaints had been assessed related to violations of the Act. The methods had proven effective with the majority of establishments. However, said Dr. Sands, a few cases had advanced through the legal system and the Health District continued to litigate cases where its compliance strategies had been challenged.

The bottom line, said Dr. Sands, was that the Nevada Clean Indoor Air Act had proven to be an effective public health initiative and was in keeping with the growing demand for protection from secondhand smoke by the majority of citizens on the local, national, and international level. While Nevada trailed much of the nation and many international destinations in those efforts, the current success could not be denied. Dr. Sands said there was no denying that Clark County had faced some unique enforcement challenges, but the Health District had seen a return on its efforts in the improved health of the community.

Dr. Sands said the latest report from the U.S. Surgeon General had reaffirmed the Health District's long-standing position that there were no safe levels of exposure to secondhand smoke. The Health District was committed to making continued progress with its enforcement efforts, said Dr. Sands, along with its efforts to improve the public health status of the community, by ensuring that as many people as possible were protected from the harmful effects of secondhand smoke.

Dr. Sands suggested that the best solution regarding enforcement would be to strengthen the enforcement language within the law, and the Southern Nevada Health District had worked with the Washoe County District Health Department on the proposed language.

Vice Chair Conklin asked whether there were further questions or testimony to come before the Committee regarding A.B. 571, and there being none, the Vice Chair closed the hearing.

Vice Chair Conklin encouraged persons in the audience to submit written testimony to the Committee to be included as part of the record.

Vice Chair Conklin opened public comment, and there being none, the Vice Chair declared the hearing adjourned at 10:06 a.m.

RESPECTFULLY SUBMITTED:


Carol Thomsen
Committee Secretary

APPROVED BY:



Assemblywoman Debbie Smith, Chairwoman

DATE: _____



Assemblyman Marcus Conklin, Vice Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: May 23, 2011

Time of Meeting: 8:14 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 571	C	Sean Higgins	Letter dated May 18, 2011
A.B. 571	D	Jeremy Aguero, Applied Analysis	Impact of the Nevada Clean Indoor Air Act
A.B. 571	E	Tom McCoy, American Cancer Society	"Please Vote No on AB 571"