

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

**Seventy-Seventh Session
March 13, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:45 p.m. on Wednesday, March 13, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. 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:

Assemblyman David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Crescent Hardy
Assemblyman James W. Healey
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)



GUEST LEGISLATORS PRESENT:

Assemblyman Michael Sprinkle, Washoe County Assembly District No. 30

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Leslie Danihel, Committee Manager
Katie Wilson, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Executive Director,
Office of the Attorney General
S. Paul Edwards, General Counsel, State Board of Pharmacy
Liz MacMenamin, Vice President, Government Affairs, Retail Association
of Nevada
Chris Perry, Director, Department of Public Safety
Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Chris Ferrari, representing Consumer Healthcare Products Association
Kevin J. Kraushaar, representing Consumer Healthcare Products
Association
Eric Spratley, Legislative Services, Washoe County Sheriff's Office
Robert Roshak, Executive Director, Nevada Sheriffs' and
Chiefs' Association
Kristin Erickson, Chief Deputy District Attorney, Washoe County
District Attorney's Office
Lawrence P. Matheis, Executive Director, Nevada State
Medical Association
Donald E. Jayne, Administrator, Division of Industrial Relations,
Department of Business and Industry
Rusty McAllister, President, Professional Fire Fighters of Nevada
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
Ronald P. Dreher, Government Affairs Director, Peace Officers
Research Association of Nevada
Omar Saucedo, representing Nevada Self Insurers Association
John Slaughter, Director, Management Services, Washoe County
Yolanda King, Director, Budget and Financial Planning, Department of
Finance, Clark County
Wayne Carlson, Executive Director, Public Agency Risk Management
Services, Inc.

Chairman Bobzien:

[Roll was called, and protocol was explained.]

We will begin today's meeting with Assembly Bill 39.

Assembly Bill 39: Provides restrictions on the retail sale of certain products that are ephedrine and pseudoephedrine based. (BDR 54-218)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

Assembly Bill 39 would authorize the implementation in Nevada of the National Precursor Log Exchange (NPLEx), a real time stop sale electronic tracking system for use by pharmacies and law enforcement to prevent the unlawful sale of nonprescription pseudoephedrine (PSE) for use in the manufacture of methamphetamine. I want to clarify that this bill is unrelated to an alternative proposal that was considered during the previous legislative session to make products containing PSE available by prescription only. [Continued to read from ([Exhibit C](#)).]

In the simplest terms, A.B. 39 will update the process and the safeguards that were put into place by the Legislature in 2007 by authorizing the use of the latest technology to stop unlawful purchases of PSE. [Continued to read from ([Exhibit C](#)).]

Assembly Bill No. 61 of the 76th Session created a permanent Substance Abuse Working Group, which was required to study specific issues relating to substance abuse throughout the state, meet quarterly, and report on its findings and recommendations to each regular session of the Legislature. We have provided a list of its membership ([Exhibit D](#)). The Substance Abuse Working Group has found substantial evidence of continued methamphetamine production and abuse around the state, and has determined that a more effective way to enforce limits on the sale of PSE is necessary. Criminals are coordinating teams that make purchases at multiple stores to bypass the sales restrictions and acquire illegal quantities of PSE to use these precursor drugs to manufacture meth. This is commonly referred to as "smurfing." [Continued to read from ([Exhibit C](#)).]

We have provided a map of the states that currently use the NPLEx system ([Exhibit E](#)). This technology monitors all nonprescription PSE purchases in real time to prevent meth criminals from smurfing to exceed the legal purchase limits. It also tracks purchases among all participating states, so that meth cooks are unable to simply cross state lines to illegally obtain PSE. This technology not only stops illegal sales in real time but also provides law enforcement with an effective way of using the data, which is already required

under state and federal law, to help identify the meth producers. The National Sheriffs Association passed a resolution in 2009 calling for the implementation of this kind of multistate electronic tracking system.

The Consumer Healthcare Products Association, the trade association representing U.S. manufacturers of nonprescription PSE, is working closely with states to support electronic tracking legislation and the adoption of the NPLeX system. [Continued to read from ([Exhibit C](#)).]

We have provided aggregated data for all participating states that shows the number of purchases, in both boxes and grams of PSE, that have been blocked using NPLeX in 2012 and in the first two months of 2013. We have also included the law enforcement usage of the data obtained by NPLeX in each state ([Exhibit F](#)). When you look at the column that identifies grams blocked sales per state, I would like to put those numbers into perspective. The yield of PSE to meth is generally 50 to 75 percent, so one gram of PSE produces approximately a half to three-quarters of a gram of meth. When you look at the numbers of grams stopped, that is a considerable amount of PSE that was diverted from illegal use to create meth.

My office has submitted amendments to the bill ([Exhibit G](#)). [Continued to read from ([Exhibit C](#)).]

S. Paul Edwards, General Counsel, State Board of Pharmacy:

We would like to voice our support for A.B. 39. Mr. Kandt, and the Office of the Attorney General, came to us looking for a place to house NPLeX. They realized that we already have a prescription monitoring program (PMP) in place. While it is not the same program, it is similar to NPLeX. As we examined the new program, it seemed like something we could accept. As Mr. Kandt indicated, on March 4, 2013, we presented NPLeX to our whole board and it was accepted unanimously that the State Pharmacy Board would support A.B. 39.

It works for us because we already have the manpower in place to perform the requirements. The bill would require that the pharmacies have the software in place and are using it. We currently have inspectors who inspect every pharmacy in the state, on an annual basis, and confirming the use of this product would become a line-item on our inspection list. We would not have to add additional inspectors.

We understand there will not be any significant fiscal cost to the Pharmacy Board. The program is web-based and paid for by the manufacturers. We do not see how it could negatively impact us, but we certainly see the benefit. We

are in support of anything that we can do, and anything that helps us fight the illegal production of meth.

Chairman Bobzien:

Are there any questions related to the program itself, from the government side of things? I think it is appropriate to ask questions about the fiscal note, or how this program would interface with the existing program you have and what the costs savings are.

Assemblyman Ohrenschall:

In the states that are using NPLEEx, do you know the success they have had with interdiction? Also, is there any part of the program that helps the users get into treatment programs, or is it just intended to stop the supply?

Brett Kandt:

I would refer you to the data we provided ([Exhibit F](#)), specifically the grams of meth blocked. In 2012 alone, totaled among the states using NPLEEx, 2,369,689 grams of meth were blocked. As I indicated, the production yield from PSE to meth is approximately half to three-quarters. That is a significant amount of PSE sales blocked. This is working under the assumption that the attempted unlawful purchase was for the purpose of manufacturing meth. I would characterize that aspect of the program as preventive. It prevented the potentially illegal purchase of PSE and production of meth. It also prevents economic, social, and environmental costs. It allows law enforcement to try to identify the meth producers through their attempts to unlawfully purchase PSE and, with sufficient evidence, potentially arrest, and prosecute them.

Assemblyman Ohrenschall:

I work in the criminal justice arena and I see a lot of kids caught with marijuana. But I am seeing an increasing number of children using meth and heroin, which is very alarming. There may be aspects of the bill that need to be worked out, but anything we do to make it harder for kids to get the drug is welcomed.

Assemblyman Ellison:

How many grams of PSE are there in a prescription?

Brett Kandt:

I want to clarify again that PSE is a nonprescription drug. This bill would not change that, nor is it our intent to change that. As far as the dosage and grams, there will likely be another testifier who can give you a better answer. The federal limit allows consumers to purchase up to 9 grams every 30 days. It is my understanding that taking the appropriate dosage every day for 30 days

would equate to 7.2 grams. The limit of 9 grams is obviously greater than the recommended dosage by those in the medical profession.

Assemblyman Ellison:

I just cannot fathom how much PSE it takes to make meth. I wonder how many actual pills they would have to purchase before they could begin making meth.

Brett Kandt:

Obviously, the more PSE someone obtains, the more meth they can produce. As mentioned before, one gram of PSE generally yields a half to three-quarters gram of meth.

Chairman Bobzien:

Rather than general, programmatic, or issue-type questions, I would like to only take questions that are specifically about the government side. Otherwise I would like to wait and take further testimony which may be able to answer some of the questions we have.

Assemblyman Livermore:

If you purchase enough medication for a family of four, who are all sick, what would you do when you run out of the 9 grams in the 30 days? Would there be a flag if the same family tried to purchase more?

Brett Kandt:

I want to be careful about engaging in hypotheticals, although your concern is legitimate. The 30-day limit on purchases is per person, so each member of the family could buy up to 9 grams in a 30-day period. I would also like to indicate that there is no age limit, federal or state, on who can purchase PSE products. But there are variety of possibilities in which a family would need PSE products and how they would go about purchasing enough to meet their medical needs without raising any flags.

Chairman Bobzien:

Can you explain how this system relates to the programs you are currently using and your current engagement with retail locations? As I understand it, the aspects of the fiscal note that the Department of Public Safety issued are not as pertinent to the Pharmacy Board.

Paul Edwards:

That is correct. We currently have a PMP system in place that requires all pharmacies to report to the main database. As I understand, the pharmacies will not even have to report. It will automatically be reported at the point of

sale. That will be one less step for us. This program is also web-based, which means we do not have to maintain servers or personnel to operate the program. That was an initial concern of ours, but that service is provided by a third-party vendor, Apriss, and funded by the manufacturers.

When it comes to the retail side, we would need to make sure that pharmacies are using this program. That would be added as a part of our annual inspections to confirm that the pharmacies are complying with regulations. Our inspector would just confirm that the program was working and being used. Similar programs have been incorporated by some of the bigger retail pharmacies. Many of those pharmacies have reported that they do not even notice that they are using the program; it is just integrated in the existing computer systems. This would also allow the different pharmacies' systems to communicate with each other, across the state, and with other states. Right now, you could buy the maximum at a CVS, then walk across the street and buy the maximum at Wal-Mart; their systems are not communicating with each other. This system ties all the information together.

As mentioned, we would not need any new personnel. We have inspectors, both in southern and northern Nevada, who do lengthy and thorough inspections. Frankly, checking to make sure that the NPLeX system is being used would be a very small addition to the work they are already doing.

Liz MacMenamin, Vice President, Government Affairs, Retail Association of Nevada:

As Mr. Kandt and Mr. Edwards stated, NPLeX is a multistate, real-time technology that is working in other states. The Retail Association of Nevada believes this is a big step in stopping the production of meth through the "smurfing" without inconveniencing the consumers who use these medications legally. Pharmacists have had concerns about people who have wanted to purchase medication who are "tweakers."

What we have seen happen within the retail establishment is that many of our members have already implemented this within a closed system in their stores. Wal-Mart and Smith's are using the NPLeX system already. Some other stores, such as CVS and Super Value, have implemented similar systems. They have all found that these types of systems work great. I have talked to pharmacists who are grateful to have these systems.

One of the problems we currently have is that, for example, CVS can only tell what is sold within CVS; Wal-Mart only knows what is sold within a Wal-Mart. With this system, a Wal-Mart pharmacist or tech would automatically be

notified if someone had purchased medication from a CVS or Walgreens, and the sale would not go through.

We believe that this system will allow our stores to communicate, and that is imperative. It has already been implemented in 26 states and has been very successful. This is immediate information for the pharmacist or tech, who is trying to determine if the sale is safe or not.

We understand that the Pharmacy Board has agreed to oversee the implementation of the system, and we will work with them on any regulations. We have already addressed some issues with the Pharmacy Board, like the pharmacist's ability to override a stop sale if she feels she is in imminent danger. We have also been assured that small operations will have time to come up-to-date with any technology required to run the system.

Assemblywoman Carlton:

Is it possible to monitor the NPLEEx system from within the state, instead of having an out-of-state private company monitor the information?

Paul Edwards:

The system will tie into the information from other states. That is one of the benefits of this system; it makes it so that people who would try obtain these products illegally cannot cross states lines to purchase PSE. Currently, California and Utah do not have this system, and it would be easy for someone to cross state lines and purchase the product. A part of the strength of the system is that it communicates with the other states that are part of the program. There is an outside vendor that oversees the information, and I am sure someone can speak about the security of the system. Part of our regulations would make sure that any information obtained by the system would not be open to the public or released to improper commercial channels.

Assemblywoman Carlton:

Am I under the wrong impression that we can just purchase the software to use within the state instead of going through the vendor? I thought the company that sponsors the software will provide it so we can do our own monitoring.

Brett Kandt:

The legislation would just authorize the Pharmacy Board to approve the use of a system. We envisioned the approval of the NPLEEx system because it is a unified system that can communicate with other states—California is currently considering legislation to authorize NPLEEx—and also because it is funded by the manufacturers of PSE products, and it is web-based so law enforcement has access to the data at no cost and pharmacies would not need any new

equipment to run the software. I want to address any concerns about potential misuse of the data. These are records that are already being kept in the current log books; we are just not taking advantage of technology to utilize that data to identify when someone is trying to purchase unlawful quantities. The "smurfers" are taking advantage of the fact that we are only using the paper log books.

Assemblywoman Carlton:

I was under the impression that the system being used was a law enforcement system, not a system that was privately owned and funded by a pharmaceutical company. We have had issues in the past about data mining and following consumer usage. Just last weekend I tried to purchase two boxes of Sudafed, one for myself and one for my husband. I was not allowed to purchase two boxes. I do not think you would describe me as a "tweaker," and I want to know, if and when I come up in the system, what that will mean.

Brett Kandt:

Assemblywoman Carlton, you brought up an attempt you made to purchase PSE. Under *Nevada Revised Statutes* (NRS) 453.355 there is already a limit on the amount that can be purchased in a single day. That is likely what led to the stop sale on your purchase.

Also, while the NPLeX system is funded by the manufacturers of PSE products, it is not owned by the manufacturers of the PSE products. There is a technology vendor that administers the system, and it is overseen by the National Association of Drug Diversion Investigators (NADDI). I believe they are a law enforcement type entity, which is what you may be referring to from our previous discussions. They oversee the use of the system, and any data misuse would be a violation of federal law under the Combat Methamphetamine Epidemic Act of 2005 (CMEA).

Assemblywoman Carlton:

Thank you. You have alleviated some of my concerns.

Chairman Bobzien:

Am I understanding correctly that, because of the federal act, the data compiled in the system is solely for enforcing restrictions on the sale of PSE products and does not permit the use of the data in marketing or other targeting type efforts?

Brett Kandt:

That is correct.

Chairman Bobzien:

As Assemblyman Ohrenschall mentioned earlier, this is an issue that most of the Committee can relate to and understand. This has been a major issue for the Legislature each session since I started in 2007. There are a lot of people who have served in the body who have put in a lot of time and hard work on this issue, and tremendous progress has been made. Can you put this next step into context with all of the previous work done to curb methamphetamine abuse?

Brett Kandt:

By authorizing the use of the latest available technology, this is the next step in our efforts to update the process and the safeguards that were put into place by the Legislature in 2007.

Liz MacMenamin:

In 2007, the technology was not available to the retailers. We believe that the technology is available now, and we have seen these systems working in other states.

Chris Perry, Director, Department of Public Safety:

When Mr. Kandt came to the Department of Public Safety in December to discuss this bill, we thought this was significant enough that we would like to get involved, although there was a lot of work for us and would have cost a significant amount of money. In subsequent discussions with the Attorney General and the Pharmacy Board we agreed that the program belongs with the PMP team of the Pharmacy Board. Because of this we are able to rescind the fiscal note attached to this bill.

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are in support of A.B. 39. Although we have seen a decline in traditional methamphetamine labs, we have seen an increase in methamphetamine use, and criminals have gotten smarter about how to make methamphetamines. They now use a "shake and bake" or "one pot" method that allows them to make meth in a soda bottle. Because of this there has been an increase in smurfing.

Chris Ferrari, representing Consumer Healthcare Products Association:

The Consumer Healthcare Products Association (CHPA) is the trade association for over-the-counter pharmaceutical manufacturers. We would like to thank the Attorney General's Office and the Substance Abuse Working Group for bringing this important issue forward. The goal of my client is to ensure that its product is used in the intended and legal manner, and we believe the NPLeX system will help that.

We have provided a presentation ([Exhibit H](#)) that we hope answers some of the questions previously raised by the Committee. The presentation also provides pictures of meth production methods and meth labs.

The CMEA, as federal law, requires the purchaser of any product containing PSE to give identification and pharmacies to keep paper logs of those purchases. It also limits the amount that can be sold to 3.6 grams per day. The largest box made of over-the-counter medication containing PSE can contain up to 96 small pills or 12 to 24 of the time-release pills, like a 24-hour Claritin D, which contain 3.6 grams of PSE. The average person using the correct dosage of a month's supply of a 24-hour time-release pill would reach 7.2 grams of PSE in 30 days. This is less than the 9 gram limit that may be purchased every 30 days. Essentially, you can buy two boxes of the extended release, or additional amounts of the smaller quantities. The "one pot" method typically yields 2 grams or less and is used in meth labs that are much smaller than traditional labs. A two-liter bottle of cooked meth would provide someone with approximately a daily fix.

Since the passage of the CMEA, log books have been open to inspection by law enforcement, and pharmacies are required to maintain the logs for two years. Unfortunately, using the paper logs does not allow any real use of the data without a considerable amount of labor. You will hear that most of the meth is coming in from Mexico, which is true, but we are trying to make sure that PSE product sold in Nevada is used legally and that smurfing from California is not occurring.

The NPLeX system is very effective because all data is held in one database, which allows for seamless interstate and inter-retailer communication. Also, per federal law, only law enforcement may have comprehensive access to the data acquired on NPLeX. The system is also helpful in preventing accidental over-purchasing by legitimate consumers. Lastly, the system comes at no cost to the State, law enforcement, or retailers.

In the presentation ([Exhibit H](#)), we have provided two maps. One shows the 26 states that currently have electronic tracking systems and also the seven states that are looking at legislation, including California and New Mexico. The other map shows pharmacies that are currently using NPLeX. As Ms. MacMenamin indicted, even though we do not currently have the law in Nevada, there are some large retailers that already have implemented this system.

We have provided a system overview showing what the pharmacist or sales clerk would see while using the system ([Exhibit H](#)). After receiving identification from a customer, the employee would enter the customer's

driver's license number. He would then enter what type of product is being purchased. Each employee would have a username and pin that would allow them to transact the sale. If someone has purchased over the legal quantity, some type of window would pop up, and the employee would inform the customer that he is not able to make the sale. The employee would provide the customer with a website to access or a toll-free number to call if the customer believed the stop sale had been done in error. All data, from every retailer in the system, would be available to law enforcement 24/7 and is live via a web portal. [Examples of law enforcement reports provided in ([Exhibit H](#)).]

There was some concern about how this system would be housed and the fiscal note. Initially, in meeting with the Attorney General's Office and the Department of Public Safety, there was an assumption that there was some sort of physical hardware that may need to be stored or an employee who would have to generate reports on behalf of law enforcement requesting the information. Neither of those concerns are an issue. The system is all real-time and web-based. The reports would come straight from the vendor, which is overseen by NADDI. There is also 24/7 live support and quarterly upgrades to the system, and all at no cost to the State.

Mr. Kandt alluded to some statistics regarding blocked grams of PSE. We have included national statistics showing the grams sold and grams blocked in 2011 and 2012 in states that use the NPLeX system ([Exhibit H](#)). In 2011, more than 2 million grams of PSE were blocked and in 2012 almost 3.5 million grams were blocked. At the 50 percent yield from PSE to meth, these figures would indicate that over 2.5 million grams of meth production was prevented. A heavy user of meth would go through approximately a gram of meth a day. These are very significant numbers.

Appriss is committed to bringing online every retailer in every NPLeX state. We have reached out to independent pharmacies and have assured them that Appriss would be able to assist their point-of-sale system and help them use the technology. There is no charge for any development, training, or implementation. Demonstrations, webinars, and live trainings are available to bring retail employees up to speed, and they provide 24/7/365 support for retailers using the system.

We have provided stories of how law enforcement has been able to use the system to stop purchases and to shut down labs, as well as a document proving how real-time stop-sale technology works ([Exhibit I](#)).

This system has been successful at blocking sales in real time and preventing PSE from being transformed into meth. It allows law enforcement to know

when a purchase has been blocked in near real time, and they can see all purchases to help find clues and trends of smurfing groups. The system is also in partnership with the American Association of Motor Vehicle Administrators, that helps validate forms of identification. Nineteen out of twenty-four states that use the NPLeX system have reported reduced lab numbers in 2011 and 2012.

This system is not a silver bullet. Is our state all of a sudden not going to have a meth epidemic? Absolutely not. But it is a major step in the right direction to help fight this battle in the state.

Kevin J. Kraushaar, representing Consumer Healthcare Products Association:

I have been working on this project for a number of years across the country. We are very supportive of the system, and our members have agreed to pay for the system because we are trying to create the right balance between maintaining access to people who genuinely need the products and providing law enforcement with a valuable tool in investigating illegal PSE purchases and methamphetamine use. What this bill does, as similar bills have done in 26 other states, is take the paper logs that already exist and makes them available electronically so law enforcement, and only law enforcement, can access the information. Retailers will simply receive a message confirming whether or not the sale is legal or illegal. If a stop sale is implemented, the clerk simply gives the customer a toll-free number to call so they can get further information.

We are very supportive of this legislation; it is no cost to the state, law enforcement, or retailers, and it provides the right balance between access and prevention.

Chairman Bobzien:

What does law enforcement do when a sale is blocked, and how would they interface with this system?

Eric Spratley, Legislative Services, Washoe County Sheriff's Office:

We are in support of A.B. 39. While I do not have a detective here to answer your question directly, we will use the system in the method that it has been presented to us at this hearing. Once we have a lead on someone who continues to try to purchase PSE illegally, we will start an investigation if it is warranted at that time. We are not actively hunting people down, but as the information comes to us, we will use it appropriately.

Chairman Bobzien:

Just to clarify, the first time someone gets flagged, you will not just show up at their door. But there will be some sort of protocol in place where, if there are multiple flags or blocks on one person, then you know how to find them.

Eric Spratley:

Correct.

Chuck Callaway:

We would look at the totality of circumstance, and if someone was attempting to make multiple purchases beyond the legal limit, that would be something we would look into.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We support A.B. 39.

Assemblyman Livermore:

Is it common for meth users to find others who are willing to purchase the product for them?

Eric Spratley:

It is not beyond users to do whatever it takes to get meth. They will use kids, friends, and relatives. But this system makes it more difficult for them to use these avenues.

I was also on the Internet to find an answer for Assemblyman Ellison as to how much PSE you need to produce meth. Not only can you find those figures, but you can find the recipes to cook meth and information about the waste these labs produce. For every pound of meth that is made, six pounds of toxic waste is created.

Assemblyman Livermore:

Will you be monitoring the total amount of PSE products sold by a store or just the tracking of individual purchases?

Chuck Callaway:

Our focus is on the buyer, not the seller. The main reason for this is that retailers stock and carry different quantities of the product, and larger retailers will sell more of that product. If a larger meth lab was using smurfers or others to buy products, we would be able to use NPLeX as an investigative tool to identify those people as well as the people running the meth lab.

Paul Edwards:

As far as the Pharmacy Board regulations stand, if we saw a particular store having substantially higher sales, we would look into whether there is a problem or not. If a store is successful or a busier store than some others, we would not necessarily investigate. But if we had any reason to believe that a store was not in compliance with the regulations, we would have the tools to address that.

Assemblyman Livermore:

I was not implying that a store might be out of compliance. I was asking if there were more buyers in a certain region could that be tracked to help law enforcement.

Paul Edwards:

That may be better answered by law enforcement. If there was an indication that a certain region or area had more sales than others, that may assist law enforcement in focusing their efforts.

Chairman Bobzien:

I would like to thank Mr. Spratley for mentioning the toxic byproducts of these sites and the other ancillary problems with meth production.

Assemblyman Ellison:

If a husband and wife both bought a box individually, would their matching address trigger the system? If so, could this be used to combat "tweakers" who are trying to purchase from the same household? Conversely, if a family purchases multiple boxes because the family members are all sick and it sets off the system, is law enforcement going to be wasting time investigating them?

Chuck Callaway:

We will have to take the information that is provided and look for signs of abuse and other red flags. If we are led to believe that someone is exceeding their levels of purchases, by smurfing or other avenues, to make meth, we will look into that. We do not want to investigate every red flag because a family has allergies or colds. We will have to look at the totality of information and the circumstances. There may be cases where we contact someone who has received a red flag to confirm that they had no intentions of taking the product to make meth. It will be a case-by-case basis.

**Kristin Erickson, Chief Deputy District Attorney, Washoe County
District Attorney's Office:**

We are in support of this legislation and view it as a significant step forward in the battle against methamphetamine manufacturing.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association:

From a clinical view we believe this legislation should be supported. We also support the amendment. We had to oppose similar legislation last session because it affected the access by Nevadans who wanted to legally purchase PSE. It also would have made PSE a scheduled drug, which would have made the primary care system more chaotic. This legislation does not add any individual inconvenience but does come down on potential meth producers strongly.

We need to put this in the context of the overall effort to deal with the epidemic of meth addiction. There should be treatment interventions, and I would hope we would look at those needs as we go forward. The Attorney General's Substance Abuse Working Group helped to coordinate a public relations and public information campaign that was very successful. All of these things are going to have to be done together if we are going to reduce the consequences of the meth epidemic. This seems to be a reasonable bill, and it comes down on the right side of the balance.

Chairman Bobzien:

It is important to note that this is just one aspect of this overall issue. We cannot lose sight of the fact that we need treatment, enforcement, and prevention working together.

Are there any others wishing to speak in favor of A.B. 39? [There was no one.] We will now go to those who would like to speak in opposition. [There was no one.] Is there anyone wishing to speak in the neutral position? Seeing none, we will now close the hearing on A.B. 39.

We will now open the hearing on Assembly Bill 11.

Assembly Bill 11: Repeals the provision requiring insurers to report to the Division of Industrial Relations of the Department of Business and Industry certain claims relating to diseases of the heart or lung and occupational diseases that are infectious or relate to cancer. (BDR 53-351)

Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:

We brought this bill forward with the intention of following through with some internal review that we had at the agency ([Exhibit J](#)). We looked through regulations and statutes during the interim and looked to see if we found anything that we felt could be considered for repeal or revision to approve the efficiency of the agency's operations.

The bill we bring forward today addresses a specific portion of *Nevada Revised Statutes* (NRS) 617.357, which was processed back in 2001 and ultimately asked the Division of Industrial Relations to accumulate statistics on claims related to diseases and to create a report. The research by staff seemed to indicate that it could have been intended to be somewhat temporary. We have not received any questions of significance, and there did not seem to be much activity on the topic. Because of this, we felt we would bring the issue forward for a public policy review in consideration of repealing the section. We have a couple of parties who will be coming forward today to recommend keeping the report and modifying it in nature. If it is the public policy of Nevada to move forward with the report, we certainly believe that the amendment ([Exhibit K](#)) is appropriate in narrowing the scope of the report. Our review during the interim indicated that the improved efficiency we would gain from this report would amount to several hundred hours. This would not be enough to make any kind of reduction in staff, but our staff in the Workers' Compensation Section, particularly in the research area, is maxed as it is. We were looking for any opportunity to reduce that load. The impact of this bill might be more appropriately referenced toward the insurance community and companies that ultimately have the obligation, and the burden, of reporting this information to us on an annual basis.

Chairman Bobzien:

Should we introduce and discuss the amendment as well?

Don Jayne:

My staff and I have reviewed the amendment, and if we want to keep the report, we do agree that it is an effective way to limit the scope of the report.

Rusty McAllister, President, Professional Fire Fighters of Nevada:

We are in opposition to the bill because we would like to see this report continue. Back when we brought this to the Legislature, we had two complaints that we were trying to address. One of them was what we considered frivolous denial of claims for heart and lung diseases that by statute are "conclusively presumed" to have risen out of employment. That was the main focus. The second was an attempt to address the fact that insurers and employers were concerned that these benefits were difficult to provide and there would be so many claims that the groups would not be able to afford them and subsequently would go bankrupt. This bill was an attempt to address that and show, in reality, that there were not that many claims being filed on behalf of police officers and firefighters for heart and lung benefits.

When the statute was put in place, our intent was to have the bill purely apply to police officers and firefighters, and only for the provision of the benefits that

we have under NRS Chapter 617 for occupational diseases. The way the bill was ultimately drafted was to require every insurer in the state that had a claim for these occupational diseases to file a report with the Division of Industrial Relations (DIR). That did not accomplish what we wanted to accomplish, which was to highlight what we felt were the issues of frivolous claim denials. When we saw this bill asking for the report to be done away with, we felt this was a good opportunity to offer an amendment ([Exhibit K](#)) to bring back the original intent, which was to report only for police officers and firefighters and only for the diseases that our employers believe are being used excessively. We believe that we will be able to prove that there is an excessive number of frivolous denials for heart and lung benefits under the statutes.

The insurers have found a loophole in the law. The law requires the insurance company to either accept or deny a claim within 30 days of it being filed. They deny claims, stating they have been denied "under medical investigation." This means they get to carry the investigation on for as long as they want. We had a firefighter whose claim for lung disease was filed in March of 2011. His claim was denied pending medical investigation. When the ruling was overturned, on appeal, in his favor, the insurer took him to district court, and his case is just now being heard in March of 2013. I asked him who was paying for his medical bills, and he said that he had to because his medical insurance provider believes this to be a workers' compensation claim. He also has had to hire an attorney, to represent him, who will get a third of the settlement. We believe this is a case of frivolous denial.

These benefits are conclusively presumed. In 1989 that was put in statute, with the advice from legal counsel, who said "conclusively presumed" is about as strong as you can get, and the claims are still being denied. We believe that by continuing this report and narrowing the focus down to police officers and firefighters, for these diseases, it will be helpful.

Assemblywoman Kirkpatrick:

Mr. Jayne, it is interesting to me that you would bring this bill forward when regulations done with the Committee on Local Government Finance were made to put this in place. They would like a report because local governments are required to put this in their budget, and I am concerned that you would want to get rid of it. I am concerned about removing this report. The Committee on Local Government Finance made regulations in September specifically to keep them in place because local governments have to set aside a certain amount of budget capacity to cover liability.

This also hits on a personal note. My son-in-law is an officer who was shot in Las Vegas, and it was very publicized. Despite that, his claims were still

denied. We spent nine months trying to understand how they could deny a claim that was seen across the nation.

Don Jayne:

We have no knowledge of what the Committee on Local Government Finance is attempting to do. Perhaps this report already captures the information they need, although it may not be stratified in a way that would be usable for them. I do not think that it was the intent of the Committee in 2001 to, for example, capture hundreds of needle pricks. What has happened is that now those sorts of things are required to be reported and we are required to summarize them. It appears that the reports are not utilized to the extent they could be, if it is deemed to be an important report.

Assemblywoman Kirkpatrick:

The more we communicate and the better the information is, the greater chance we have to clean up the report and make it more useful. I appreciate that you are in favor of the amendment and willing to go forward, because I believe this bill does serve a purpose.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

In 1989, representatives from the firefighter and police officers came to me with a problem regarding frivolous denial of heart and lung claims. I am the one who put the "conclusive presumption" language in the law, because we asked the legal counsel what was the strongest language we could use. Yet today, these frivolous denials continue. In the case that Mr. McAllister discussed, the claimant will ultimately win his case, but he will have to give 30 percent of his award to an attorney. I support the proposed amendment, but I also served on the DIR board and I understand Mr. Jayne's concerns. A lot of information is being captured in these reports that does not have a lot of value. But I do believe it is important in these cases of frivolous denial that the information is captured.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:

We are in opposition to this bill as written but in support of the amendment. I was confused when I saw this bill come out, because I sat in on the Committee on Local Government Finance meetings, and they spent several months making the temporary regulation. I thought it was ironic. Mr. McAllister and I have discussed the amendment and how it would bring perspective back to why it is needed.

I have also helped a number of law enforcement officers in the state who have been frivolously denied by workers' compensation, even though they were conclusive presumption claims.

Assemblyman Ohrenschall:

You mention officers who put their life on the line and now have these very serious medical conditions but are denied despite having conclusive presumption. How are they surviving and paying their bills?

Ron Dreher:

We send them to attorneys, which are very costly to them, and the attorneys have stated openly that the workers' compensation groups hope that continual denial will discourage the claimant from continuing litigation. We had an officer who dropped his claim because he would rather die than continue to go through the system and the stress associated with it. A larger corporation that will be taking over many of the workers' compensation claims touts on its website the fact that it has reduced workers' compensations claims. I can only suspect that is done by denying claims and hoping that people go away. It is very stressful to go through the process, and some of our officers end up dying before the process is finished.

Omar Saucedo, representing Nevada Self Insurers Association:

The Nevada Self Insurers Association (NSIA) supports the bill with the amendment proposed by the Professional Firefighters of Nevada. The NSIA has an obligation to its public members and its employees, under the law, and we feel it is important to continue to collect this data and plan to the extent of the obligation.

Assemblyman Hansen:

So you represent the insurance side of this?

Omar Saucedo:

We represent a board that deals with self-insurers. Our members include MGM, the City of Henderson, and Stations Casinos. I am happy to provide a complete list for you.

Assemblyman Hansen:

When insurance companies deny claims like this, and ultimately the individual's claims are found to not be frivolous, is there a way to get compensated for attorney's fees and other costs? This sounds like a common practice for the insurer to deny a claim, and I wonder if there is any sort of compensation for those people who may be fighting these cases for years.

Omar Saucedo:

I am not certain but I can follow up.

Chairman Bobzien:

Are there any questions? [There were none.] Is there anyone else who would like to testify in opposition to A.B. 11? [There was no one.] Is there anyone who would like to testify in the neutral position? Seeing none, we will close the hearing on A.B. 11.

We will now open the hearing on Assembly Bill 206.

Assembly Bill 206: Provides that volunteer members of a county search and rescue organization shall be deemed to be employees of the county at a specified wage for purposes of industrial insurance. (BDR 53-959)

Assemblyman Michael Sprinkle, Washoe County Assembly District No. 30:

This bill makes provision for volunteers of county search and rescue teams to receive industrial insurance based on a deemed wage of \$2,000 per month. These are volunteers, and they will not be paid \$2,000 a month. However, when they are activated in an emergency operation, or during training, if they were to be injured or killed while volunteering, the industrial insurance would be based on a \$2,000 per month wage. This is based on similar legislation passed in previous sessions regarding volunteer firefighters. Currently in statute, volunteer firefighters are at the \$2,000 per month deemed wage. [Submitted testimony ([Exhibit L](#)).]

Search and rescue operations are extremely dangerous. A member of the Clark County Search and Rescue Team informed me that during ice rescue training a slab of ice crashed down and killed a member. He was a working member of the team, and not a volunteer, so his benefits were paid. But this shows you that even the trainings are extremely dangerous.

When our volunteers are going out on these types of missions, they are doing a service and a favor to the county they are representing. Last year alone, just for the Washoe County Sheriff's Department, they had over 18,000 hours of volunteer hours logged. This saved Washoe County \$924,400. [Submitted presentation on responses ([Exhibit M](#)).] When these volunteers are out in the field trying to save someone's life, we want them to know that we are going to take care of them if something bad happens to them.

This bill does not address, nor does it intend to award, presumptive benefits, including heart and lung benefits, to volunteers with the sheriff's search and rescue team. It is an important distinction and has been a problem in the past.

Assembly Bill 206 is a good bill. If a volunteer member of a search and rescue team is injured or dies while trying to save the life of another, I strongly believe it is the responsibility of all of us to provide for the volunteer and his or her family. This bill helps to do that and is certainly worth supporting.

Eric Spratley, Legislative Services, Washoe County Sheriff's Office:

We want to clarify that this bill does not propose or intend in any way to pay volunteers any sort of wage. That would change them from volunteers to employees, which is not the intent. The intent is to provide benefits compensation to injured or killed county sheriff search and rescue volunteers. If a paid employee is injured on the job he uses his wage to calculate his compensation. Since volunteers do not get paid, there is no wage to calculate compensation for benefits. There are currently different classes of wage rates in *Nevada Revised Statutes* (NRS) Chapter 616. The language in NRS Chapter 616 views them as volunteer workers in programs for public service and are compensated at a wage rate of \$100 a month. If a volunteer lost a limb, became 100 percent disabled, or died, his family would only receive \$100 a month. We found this inappropriate.

There is a statewide appreciation for volunteerism, and we at the Washoe County Sheriff's Office greatly appreciate all of the volunteers in our organization, from the volunteers pulling staples and sorting mail, to the brave volunteers performing swift-water rescues during floods. We need to recognize that swift-water rescues, mine-shaft recoveries, and technical rope work have a higher probability of injury or death and appropriate benefits compensation should be provided. The Washoe County Sheriff's Office and the Las Vegas Metropolitan Police Department search and rescue units are always available, which is due in part to the several thousand heroic volunteer hours given to the citizens of Nevada every year.

This also equates to millions of dollars saved. The State could not afford to pay to do search and rescue and is indebted to these volunteers. Much like this citizen legislature, our citizen search and rescue units are comprised of everyday people, all with their own unique abilities, volunteering to serve in the communities they live in. They willingly put their lives on the line, for no pay, so their community members may live. They truly appreciate your support of A.B. 206.

Assemblywoman Diaz:

I can personally appreciate the work of search and rescue teams. My two stepsons were unable to climb down from Red Rock Canyon, and it was an incredibly stressful situation for me and my family. Had it not been for the volunteers who came and lifted them out, I do not know that we would have

had our boys come home safely. I understand why we have to take care of these people who put their lives on the line to rescue others who are in danger.

Who usually makes up these volunteer teams?

Eric Spratley:

These are everyday people. They just have a knack to serve in a volunteer capacity. People love cops and firemen, but we get paid to do our jobs, and if we were to get injured or killed in the line of duty, we are compensated appropriately. It is amazing to me that volunteers willingly help. The concept for this bill came from a few of the volunteers who were injured and were faced with only \$100 in compensation. We appreciate that they came forward.

Assemblyman Hansen:

How many injuries do we anticipate could occur? Is there a possibility that this could cause significant insurance costs for counties?

Eric Spratley:

Washoe County has had two incidents over the last couple of years. One was when a volunteer slipped in a canyon while trying to rescue someone, and the other was when a volunteer aircraft pilot severed a finger while trying to close a hangar door during windy conditions. Metro could not come up with any instances over the past several years. Problems are not prevalent, and we are not expecting this to be taken advantage of.

Assemblyman Hansen:

It sounds completely reasonable. I just wanted to make sure this will not have a major effect on insurance.

Assemblyman Sprinkle:

The same member of the Clark County search and rescue team that informed me of the ice rescue training death, which was in fact the death of a paid employee, not a volunteer, was the only accident he could think of in over 10 years, and the Clark County search and rescue team is the biggest in the state.

Assemblyman Grady:

What is the basis for the \$2,000?

Eric Spratley:

In NRS Chapter 616, one of the classes identified is a volunteer firefighter in public service, and they are at the \$2,000 wage rate. We compared the things

that search and rescue volunteers do, like swift-water rescue or fire evacuations, and we thought their duties were similar in nature.

Assemblyman Grady:

I spoke with Assemblyman Sprinkle about an instance in a rural county where they were responsible for paying the retirement of the volunteer firemen. Because the deemed wage was \$2,000, it ended up costing the county money. Is there any way to distinguish that this is for service and the counties are not obligated to pay retirement on the deemed wage?

Assemblyman Sprinkle:

I have not been able to find any information on that. The way I read this bill, that should not be an issue. Deemed wage means that it is not an actual wage being paid.

Eric Spratley:

This bill does not require anyone to pay their volunteers or require them to provide any sort of retirement. This just gives a figure to calculate appropriate disability compensation.

Assemblyman Grady:

I like the bill. I just want to make sure we do not suffer any unintended consequences.

Assemblyman Hardy:

Who provides the workers' compensation insurance?

Eric Spratley:

I believe our insurance is Washoe County self-funded.

Assemblyman Hardy:

Have you had discussions about this bill with the insurance providers?

Eric Spratley:

I contacted our risk management person and was told that because Washoe is self-funded, this bill would not affect our insurance premiums. There was another opinion that the premium would only go up if a claim was filed.

Assemblyman Sprinkle:

I have had broad conversations with industrial insurance providers. Their number one concern, expressed over and over, was the potential for the presumptive heart and lung benefits, and they wanted to confirm that was not a part of this bill.

John Slaughter, Director, Management Services, Washoe County:

I think the previous presenters did a great job of discussing the issues related to this bill. When this was brought to our attention, our initial reaction was to absolutely be in support of the bill.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:

We are also in support of A.B. 206. [Submitted letter of support ([Exhibit N](#)).]

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We are also in support of A.B. 206.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We are also in support of A.B. 206. While the larger agencies are in support, the smaller agencies really need all the assistance the volunteers provide. We greatly appreciate your positive consideration of this bill.

Yolanda King, Director, Budget and Financial Planning, Department of Finance, Clark County:

We are in support of the bill. This would be an insignificant impact to Clark County, and we have only seen about five cases over the last eight years.

Chairman Bobzien:

I am pretty familiar with the Washoe County search and rescue program, but I know very little about Clark County's program. You have had only five cases over the last eight years, and you have a very active and robust volunteer program?

Yolanda King:

That is my understanding.

Chairman Bobzien:

Is there anyone else who would like to testify in favor of this legislation? [There was no one.] Is there anyone who wishes to come to the table in opposition? [There was no one.] Is there anyone who would like to testify as neutral?

Wayne Carlson, Executive Director, Public Agency Risk Management Services, Inc.:

We appreciate the clarification on the heart and lung issue. Our membership is all rural counties, and we found an inconsistency in the way volunteer classifications are being reported to the self-insurers group. Some are at \$100 deemed wages, while others are at \$900. In some cases the sheriff reserves

also do search and rescue, which could potentially cause confusion in the bill. I believe that in the volunteer firefighter service you can accumulate public employee retiree benefits, which has nothing to do with a workers' compensation claim. The rate we charge for this exposure is at \$0.89 for every \$100 for the reserves and \$900 presumed deemed wage. But those figures are not consistent and we would like to correct that for our payroll audits. I am testifying neutral because we have to resolve the potential conflict as to what is the appropriate wage rate for those people who are active reserves and who also serve on search and rescue.

Chairman Bobzien:

Do you have a proposed fix?

Wayne Carlson:

I would just like to discuss the confusion with Assemblyman Sprinkle and make sure that it is made clear. The biggest problem with volunteers is maintaining accurate rosters so you can make sure that you are only paying premiums for those people who are active.

Chairman Bobzien:

We are fine with you speaking with Assemblyman Sprinkle and hope he can help with your concerns.

Is there anyone else who would like to testify on A.B. 206? Seeing none, we will now close the hearing on A.B. 206.

The meeting is adjourned [at 3:40 p.m.].

RESPECTFULLY SUBMITTED:

Katie Wilson
Recording Secretary

RESPECTFULLY SUBMITTED:

Earlene Miller
Transcribing Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 13, 2013

Time of Meeting: 1:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 39	C	Brett Kandt/ Office of the Attorney General	Prepared Testimony
A.B. 39	D	Brett Kandt/ Office of the Attorney General	Substance Abuse Working Group Members
A.B. 39	E	Brett Kandt/ Office of the Attorney General	Map of NPLeX users
A.B. 39	F	Brett Kandt/ Office of the Attorney General	Data
A.B. 39	G	Brett Kandt/ Office of the Attorney General	Proposed Amendments
A.B. 39	H	Chris Ferrari/ Consumer Healthcare Products Association	NPLeX Presentation
A.B. 39	I	Chris Ferrari/ Consumer Healthcare Products Association	Real time, Stop-Sale Technology Works
A.B. 11	J	Donald Jayne / Division of Industrial Relations	Statement of Intent
A.B. 11	K	Rusty McAllister/ Professional Firefighters Association	Proposed Amendment
A.B. 206	L	Assemblyman Mike Sprinkle	Prepared Testimony
A.B. 206	M	Assemblyman Mike Sprinkle	Presentation
A.B. 206	N	Ronald Dreher/ Peace Officers Research Association of Nevada	Statement of Support