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Office of the Governor

June 9, 2017

The Honorable Barbara Cegavske
Nevada Secretary of State
101 North Carson Street
Carson City, NV 89701

RE: Assembly Bill 175 of the 79th Legislative Session

Dear Secretary of State Cegavske:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 175 ("AB 175"), which is entitled:

AN ACT relating to employment; prescribing certain requirements for health benefits for the purpose of determining the minimum wage paid to employees in private employment in this State; and providing other matters properly relating thereto.

AB 175 purports to add statutory clarity to constitutional language. The bill defines "health benefits," as used in Article 15, Section 16(A) of the Nevada Constitution, as a health insurance plan that meets certain statutorily minimum requirements, including requiring the insurance plan to cover at least sixty percent of costs. None of these statutory requirements are in the Nevada Constitution. On the contrary, these requirements go far beyond what is constitutionally mandated (and possibly even constitutionally allowed), exceeding what Nevada voters likely intended when they amended the Nevada Constitution in 2006 to include Article 15, Section 16(A). As such, AB 175 is constitutionally suspect. It will also potentially harm both Nevada's small businesses and its low-wage workers. Therefore, I cannot support the bill.

Article 15, Section 16(A) of the Nevada Constitution establishes the provisions governing payment of a minimum wage to employees. Currently, Nevada's employers must pay their employees not less than \$8.25 per hour worked if the employer does not provide health benefits, and not less than \$7.25 per hour worked if the employer does provide health benefits. Essentially, AB 175 imports the standards for a "bronze level" insurance plan under the Affordable Care Act into the Nevada Constitution's language regarding "health benefits." However, the Nevada Constitution, as recently interpreted by the Nevada Supreme Court, already defines these "health benefits."

Only three months ago, the Nevada Supreme Court clarified the issue presented in AB 175. According to the Court, “‘health benefits’ is defined in the text of [Article 15, Section 16] as ‘making health insurance available to the employee for the employee and the employee’s dependents at a total cost to the employee for premiums of not more than 10 percent of the employee’s gross taxable income from the employer.’” *Western Cab Co. v. Eighth Judicial District Ct.*, 390 P.3d 662 (March 16, 2017); see also *Tyus v. Wendy’s of Las Vegas, Inc.*, 2017 WL 1650009 (D. Nev., May 1, 2017) (Noting that the Nevada Supreme Court issued controlling authority in *Western Cab* on the question as to “[w]hat constitutes ‘health benefits’ offered by an employer for the purposes of paying below the upper-tier minimum hourly wage rate under Nev. Cont. art XV, sec 16(A)?” *Id.*)

Imposing a rigid, statutory definition on constitutionally required “health benefits” not only conflicts with the flexible approach called for in the Nevada Constitution, but it also risks upsetting the careful, incentive-based balance that Nevada’s voters approved in 2006. That balance seeks to encourage employers to offer health insurance by allowing them to pay a lower minimum wage. If AB 175 becomes law, the costs of the new insurance plans may exceed the costs of paying an additional \$1.00 in hourly wages creating a perverse incentive that might force employers to discontinue offering insurance all together. Employees may gain slightly higher wages—assuming such wage increases do not lead to fewer hours and greater job losses—at the cost of losing their health insurance. Such a result, though not intended, would leave some Nevadans without health coverage.

Furthermore, the proponents of AB 175 provided no evidence of how many employers, if any, are currently offering insurance plans that would be prohibited under the new requirements of the bill. When asked such questions during the Senate hearing on AB 175, no answers were given. Such information is critical to understanding the effect that AB 175 would have on both the job market and the insurance market. It would be unwise to wade into the delicate territory of minimum wages and minimal insurance without a stronger factual record on the consequences—intended or otherwise—of the proposed legislation.

As mentioned in the recent veto on Senate Bill 106, which sought to increase the minimum wage in Nevada, extending higher wages is commendable. But these higher wages would also place a significant burden on the State’s small businesses at a time when they are emerging from a downturn that cost hundreds of thousands of jobs and closed the doors of businesses across the State. Moreover, the negative consequences—less hours, fewer jobs, less health insurance—of AB 175 would likely be shouldered by Nevada’s most vulnerable workers.

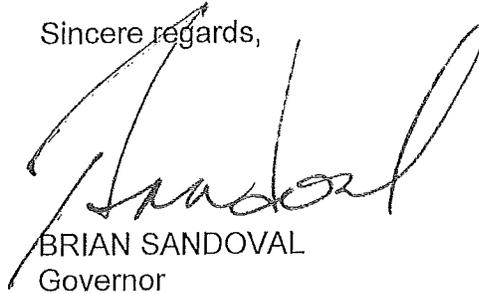
Nevada is currently a national leader for economic growth. With a growing and diversifying economy, more than 600,000 small business jobs have been created since the recession, and average weekly wage levels in Nevada are at an all-time high. AB 175 could jeopardize the substantial economic progress Nevada has made, at a time when small businesses have finally turned the corner from the Great Recession.

All of the above concerns led the Las Vegas Metro Chamber of Commerce, the Reno Sparks Chamber of Commerce, the Henderson Chamber of Commerce, the Latin Chamber of

Commerce, the Nevada Resort Association, the Retail Association of Nevada, and the National Federation of Independent Business to oppose the bill.

For these reasons, I veto Assembly Bill 175 and return it without my signature or approval.

Sincere regards,

A handwritten signature in black ink, appearing to read "B. Sandoval", is written over the typed name and title. The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

BRIAN SANDOVAL
Governor

Enclosure

cc: *The Honorable Mark Hutchison, President of the Senate (without enclosure)*
The Honorable Jason Frierson, Speaker of the Assembly (without enclosure)
The Honorable Aaron Ford, Senate Majority Leader (without enclosure)
Claire J. Clift, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)