

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

**Eightieth Session
February 20, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:34 p.m. on Wednesday, February 20, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel



Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

James P. Kemp, representing Nevada Justice Association
A'Esha Goins, Green Bridge Consulting Group, Las Vegas, Nevada
Robert Cohen, Cohen Medical Centers, Las Vegas, Nevada
Carina Robinson, Compliance Manager, Acres Cannabis, Las Vegas, Nevada
Jagada Chambers, Private Citizen, Las Vegas, Nevada
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association
Brian Wachter, Senior Vice President for Government and Public Affairs, Retail Association of Nevada
Randi Thompson, Nevada State Director, National Federation of Independent Business
Warren Hardy, representing the Associated Builders and Contractors of Nevada; and the Nevada Restaurant Association
Sean Stewart, Chief Executive Officer, Nevada Contractors Association
Hugh Anderson, Managing Director/Partner, Hightower Las Vegas; and Government Affairs Chair, Las Vegas Metro Chamber of Commerce
Lisa de Marigny, President and Chief Executive Officer, Omni Limousine, Las Vegas, Nevada
Shaundell Newsome, Chair, Urban Chamber of Commerce; and Owner, Sumnu Marketing
Jay Barrett, President, JABarrett Company, Las Vegas, Nevada
Andy Donahue, representing Southern Nevada Labor-Employers Cooperation and Education Trust
Noah Jennings, Private Citizen, Carson City, Nevada
Robert C. Hooper, President and Chief Executive Officer, Northern Nevada Development Authority
Ann Silver, Chief Executive Officer, Chamber of Commerce Reno-Sparks
Craig Madole, Chief Executive Officer, Nevada Chapter, Associated General Contractors of America, Inc.
Jessica Ferrato, representing Granite Construction
Andy McKay, Executive Director, Nevada Franchised Auto Dealers Association
Wendy Lang, Human Resources Director, Douglas County
David Cherry, Government Affairs Manager, City of Henderson
Arleen Henderson, Co-owner and Operator, Action Electric Inc., Sparks, Nevada
Eric Milavsky, Human Resources Director, Lyon County
Dru Wells, Chief Compliance Officer, Director of Human Resources, Helix Electric, Las Vegas, Nevada
Chaunsey Chau-Doung, Public Affairs, Las Vegas Valley Water District; and representing Southern Nevada Water Authority
Rich Harvey, Fire Chief, Central Lyon County Fire Protection District
Mark Regan, Fire Marshal, North Lake Tahoe Fire Protection District

Chair Spiegel:

[Roll was taken.] We have an introduction of a bill draft request (BDR). Throughout the session committees are asked to introduce BDRs to begin the bill process, assign a bill number, and get it referred back to the committee. Your vote to introduce a BDR is not an indication of your support. Today we have BDR 57-937.

BDR 57-937—Revises provisions relating to health insurance. (Later introduced as [Assembly Bill 225](#).)

Chair Spiegel:

Is there a motion to introduce BDR 57-937?

ASSEMBLYWOMAN JAUREGUI MOVED FOR COMMITTEE
INTRODUCTION OF BILL DRAFT REQUEST 57-937.

ASSEMBLYWOMAN TOLLES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will open the hearing on [Assembly Bill 132](#).

[Assembly Bill 132](#): Revises provisions governing employment practices. (BDR 53-29)

Assemblywoman Dina Neal, Assembly District No. 7:

I voted no on the ballot question [2016 Question 2] to legalize recreational marijuana. Upon realizing that this was going to happen and individuals who were using this product were going to be seeking employment, I wanted to be sure there was a fair policy in place to deal with prospective employees. This means that when a person applies for a job, he or she is not immediately disqualified due to lawful use of marijuana. I want to be sure we do not create a subclass of individuals who become undesirables and cannot get a job in the state of Nevada. It may create a class of individuals who could not be hired anywhere. [Assembly Bill 132](#) has created confusion. It only deals with the prospective employee when you are considering hiring a person.

Section 2 of the bill is the portion that is causing angst about prospective employees. The ballot question [Question 2] was enacted in 2017. I wonder what employers have been doing since 2017 when a prospective employee submits an application and tells the employer prior to applying that they lawfully use marijuana. Section 2, subsection 1, of the bill says, "It is unlawful for any employer in this State to fail or refuse to hire a prospective employee because the prospective employee submitted to a screening test and the results of the screening test indicate the presence of marijuana." We know that marijuana is not like alcohol. It does not dissipate from your system in three or four days or even a week. Sometimes it may stay in your body for more than 30 days. A person could have lawfully smoked marijuana, put in a job application, been told that he or she would be subject to a prescreen drug test, and failed that test. The prospective employee fails the test for

something he or she did lawfully. I compare that to being screened for eating a Snickers bar, then being tested for eating the candy. When the applicant is tested for Snickers, he or she is disqualified for the job. I want to make sure that if people in my district are using legally, they will be eligible to be hired.

In section 2, subsection 2, the bill says, "It is not unlawful for an employer in this State to require a prospective employee who does not hold a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS." What is this section speaking to? It is not getting involved in the medical marijuana. It is talking about a recreational user who does not hold a valid registry identification card. In this situation, it is not unlawful for an employer to tell the employee that he or she must refrain from using marijuana. The employer can say, if I hire you, you are not going to come to work under the influence. The employer can place a condition of employment upon refraining from using, possessing, or being under the influence in the workplace. That is what this section speaks to. It says if you are a recreational user, the employer can place conditions on you if they hire you. I agree with that. I am not nor would I condone a person arriving at work under the influence of marijuana. I voted against it, but I am seeking equity and fairness for people who want to work, but also legally use marijuana.

Section 3, subsection 1 says, "Except as otherwise provided in this section, it is unlawful for any employer in this State to: (a) Directly or indirectly, require, request, suggest or cause any prospective employee to take or submit to a character assessment." The character assessment does not include an interview. The bill speaks to the prospective employee who is a recreational user of lawful marijuana. Section 3 speaks to the character assessment. This came up because I had a constituent who applied for a retail associate position, a stock person, at Walmart. He was subject to a 50-question character assessment after he filled out the application about what would be his mood if a customer walked up to him and did not say "hi". It was a character assessment which challenged what they knew and their personality. My position on this is that human beings are adaptable. Everyone has a learning curve in a job; people need to be trained. How people interact with customers is a training question. It is not a predisposition of character or personality. This 50-question assessment was trying to get at the nuts and bolts of the human being. In a job, the learning curve is roughly about six months. Employees need to be trained to perform or behave a certain way. It was an issue for me because this constituent had never worked before. He was confused as to how to answer. Also, one of the questions was about how to give proper change.

My goal of getting at the character assessment was for that reason. It is not trying to limit individuals who are involved with vulnerable people. It is not trying to make an exception for people who are police officers, take care of children, or work with psychiatric patients. All of those people are excluded from this character assessment as defined in section 3, subsection 4, paragraph (a). All of the ideas I have heard were trying to get at an overabundance of employer caution to do a personality assessment when they should just offer training and figure out how the employee can adapt as a human being and learn the position.

Section 3, subsection 4, defines what is meant by a character assessment. They include the Myers-Briggs Type Indicator, the Hogan Personality Inventory, and the SHL Occupational Personality Questionnaire. I want to make it clear that there are character assessments for employees who deal with the elderly, vulnerable people, or anyone who suffers from a condition that is physical or mental. That is what the bill does.

This is what the bill does not do. The federal Drug-Free Workplace Act of 1988 requires employers who receive certain federal contracts or grants to provide a drug-free workplace by having a policy that prohibits employees from possessing or using controlled substances in the workplace, and by taking certain actions to discipline employees who violate the policy or who are convicted of certain drug offenses. Assembly Bill 132 does not conflict with the Drug-Free Workplace Act of 1988 because nothing in the bill prevents an employer from having a policy prohibiting the possession or use of marijuana at the workplace or taking disciplinary action against an employee who is convicted of a drug offense.

Section 2, subsection 1, only prohibits an employer from refusing to hire a prospective employee who tests positive for marijuana. This subsection applies to a prospective employee before he or she is hired. Thus, it does not affect any policies that govern an employee after he or she is hired. Section 2, subsection 2, does not conflict with the federal act because it specifically authorizes an employer to have a policy that prohibits an employee from using marijuana recreationally at the workplace. This specific authorization does not apply to an employee who holds a medical marijuana card authorizing him or her to use marijuana for medical purposes. *Nevada Revised Statutes* (NRS) 453A.800 governs those employees and would allow an employer to prohibit an employee from using medical marijuana as long as reasonable accommodations were made by the employer.

I wanted to ensure it is consistent and accurate, and that the bill does not violate the Supremacy Clause [United States Constitution (Article VI, Clause 2)] or usurp federal law in preventing the rights of federal employees. It does not violate the Drug-Free Workplace Act of 1988. The bill is attempting to change the state rules regarding the recreational use before hiring, not on the job or after hiring. With respect to commercial driver's licenses, section 2, states that the provisions of section 2 apply except as otherwise specifically provided by law. Federal regulation 49 CFR § 382.301 has the force and effect of law and requires pre-employment drug testing of certain drivers who have commercial driver's licenses and prohibits employment of a driver unless the driver tests negative for controlled substances. This bill does not usurp that law because the 49 CFR speaks to this issue. Assembly Bill 132 does not supplant or remove it because it cannot deal with a provision of law that is already dealt with in federal law because it has the full force and effect. The state cannot legislate in that area. If a challenge happened, a specific law governing the pre-employment drug testing would prevail over the provisions of A.B. 132. A person who holds a commercial driver's license could be refused employment as a driver pursuant to the federal regulations if he or she tests positive for marijuana.

With respect to collective bargaining agreements that conflict with A.B. 132, if it were to become law, the provisions of the bill would prevail over any provision of a collective

bargaining agreement that was inconsistent with the bill. I could amend this bill to say that any collective bargaining agreement in effect now would not be affected if the bill passes.

I was surprised at the amount of opposition to prospective employees and it made me wonder how many people have been discriminated against since 2017 or have been denied an application because they lawfully smoked marijuana. I did not say I wanted this law—I am trying to protect people in my district who are apparently engaging in lawful marijuana usage.

Chair Spiegel:

If a person fails a drug screening for opioids, is an employer allowed to not hire them?

Assemblywoman Neal:

This bill does not speak to that issue.

Chair Spiegel:

Are there any questions from the Committee?

Assemblyman Kramer:

You named specific character assessment tests. If someone were to have their own list of five questions, would that have the same impact as one of the prepared tests? I wonder how this would apply to other jobs that federal regulations say you cannot have Schedule 1 drugs in your system. How would this apply to those? I have been told there is a reluctance to hire people who use marijuana because there is more turnover with people who use and the employers would rather choose an employee who does not use if they have a choice.

Assemblywoman Neal:

There is a difference in the character assessment that is designed to ask 50 questions which asks the same questions 10 different ways to trip up the person, and the person was only trying to be hired as a stock person. That is subject to debate in regard to the quality and what it is and how it impedes the process. The federal Controlled Substances Act still makes the possession of marijuana a federal crime. It does not require a state to make the same act a crime. I am dealing with the pre-employment process. Your third question deals with the moral conversation about how we have already decided and concluded that a person who uses medical marijuana is somehow less than or not a great employee. That is the quagmire of how the ballot question passed and how our moral conscience has not met the law.

Regardless of what you feel or think morally about a person who uses marijuana, it is now lawful conduct. I need for us to rise to what the law says is now legal and treat those individuals fairly and give them a fair shot at an opportunity. You can choose not to hire them, or if you hire them and then find out they are not a good employee or they come to work under the influence, fire them. Because we created this group of people who can smoke recreational marijuana in their private time, they should be able to apply for a job and not be discriminated against and disqualified. I know it is a struggle because I looked at people who smoked marijuana as people who did not want to do anything valuable with their

life. I have had to recognize that it is not necessarily the case or the truth. They are human beings who are choosing to do this lawfully and I would like to make sure they have a job versus living on the street.

In my district people are getting up at 8:30 a.m. to buy marijuana. That is a problem and it is a problem for me morally. When I see a young woman, or anyone, getting out of her car at that time of the day, I want to make sure that whatever she has going on, she can still pay for her car and go to her job. If she chooses to apply for a job, she is not now looked at like she has a scarlet letter on her chest because she has decided to smoke recreational marijuana. The voters decided it was legal.

We are currently in a space between our moral conscience and what has become the law. People deserve to not be discriminated against because it is now legal. It is as legal as being drunk, but nobody is saying you can go to work drunk. But if you drank last week, you can show up to apply for a job without it being found in your system. It is not the same scenario if you smoke marijuana and we have to figure out how to deal with that. If we wait two years from now and we create a class of people who cannot find a job, what are we saying? Was the ballot question wrong? Were the voters wrong? If that is the case, then put the issue back on the ballot and overturn it.

Assemblyman Kramer:

I agree with much of what you are saying. We have to get past the idea that it is wrong and start to find a way to live with it. If I am hiring people, may I discriminate between people who use and people who do not?

Assemblywoman Neal:

I am not creating a special class of drug users. I am saying that because we created an environment where people can use marijuana, we cannot disqualify them because of our moral beliefs. I want you to choose the best candidate, but I do not want you to automatically disqualify an applicant because the applicant says they recreationally use marijuana. You can fall too closely into that all of the time. Vet the candidates. I am concerned that there is so much opposition when it has been legal since 2017. What have employers been doing since then? How have employers redefined their drug workplace policies? How have they put their bias aside and looked at the candidate for who they are? Is a professional person less viable if they admit to using marijuana recreationally? What does a person look like who is not worthy of being considered as an applicant?

Chair Spiegel:

Are there any other questions from the Committee?

Assemblyman Edgar Flores, Assembly District No. 28:

There is a proposed amendment on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit C](#)). We want to make it abundantly clear what this bill is and what it is not. Every opposition I have heard deals with issues of what happens if I have already hired a person and they are using marijuana? *Nevada Revised Statutes* 613.333 already addresses

that issue. We already have in law what you are supposed to do when you hire a person and there is a question about marijuana. I will read that subsection which is subsection 2. "It is an unlawful employment practice for an employer to: (b) Discharge or otherwise discriminate against any employee concerning the employee's compensation, terms, conditions or privileges of employment, because the employee engages in lawful use in this state of any product outside the premises of the employer during the employee's nonworking hours, if that does not adversely affect the employee's ability to perform his or her job or the safety of other employees." I want to make it clear that once this state decided to legalize recreational marijuana, the issue of what to do about an already-hired employee has already been addressed.

The reason we brought A.B. 132 is to make sure, in the beginning of the process, we are not discriminating against individuals. It is common for an individual to apply for a job who has used recreational marijuana. They should not be disqualified for that. I think the applicant should be given the opportunity to go through the screening process, but the employer can say that once they are hired, we are going to have a requirement about recreational marijuana use. This bill only addresses what happens from the moment the applicant knocks on the door and fills out an application. That is where it stops. Once the person is hired, that is a whole different section of the law and is not addressed in this bill.

Chair Spiegel:

Are there any questions from the Committee?

Assemblyman Yeager:

When does the testing occur in the hiring process? What are employers testing for? Some metabolites stay in your system for a long time. Blood and urine tests will test for different things. We do not want people to go to a job interview when they are impaired.

Assemblywoman Neal:

I do not know. I have read the same research that there is a difference between impairment and use. It would have to be put on record from the individual employers what they do in their prescreening, including when they do it and what they test for. It is very clear there are certain tests that apply.

Assemblyman Flores:

I had an opportunity to speak to different stakeholders. There are some who do not drug test until after they hire. If they drug test after the employee is hired, A.B. 132 does not affect that. At that point NRS 613.333 would be triggered. This is a small window of stakeholders who are forcing applicants to go through a drug test prior to being hired. That is all we are capturing in A.B. 132. This bill does not intend to capture someone who is hired and is then subject to drug testing.

Chair Spiegel:

Is there anyone to testify in support?

James P. Kemp, representing Nevada Justice Association:

We are in favor of A.B. 132 with the amendment ([Exhibit C](#)) which would harmonize the bill with NRS 613.333. This is about economic security for law-abiding Nevada citizens and striking a proper balance between individual liberty and an employer's interests in workplace efficiency and safety. The amendment would harmonize this by saying you cannot be legally terminated for off premises and off work time use of marijuana. If you are in the workplace and under the influence or impaired, you are absolutely going to be fired. We are trying to incorporate the impairment standards under NRS 484C.110, subsection 4. If you have THC [marijuana] in your blood above the levels indicated, it is going to be presumed that you are impaired, a potential safety risk, and not able to perform your job at a level the employer would have the right to expect. To harmonize these two things, you cannot be terminated for having metabolites that may indicate marijuana use 15 days ago, and you are not going to be terminated without that being against the law for the employer to do so. However, if you are tested and have the level of active THC in your blood above the legal limits under NRS 484C.110, subsection 4, you could be terminated. I think this harmonizes the two concerns. You do not want people working who are under the influence, but you do not want to punish people for engaging in activity that the people of Nevada have resoundingly said should be legal.

Chair Spiegel:

Did the sponsor agree to this amendment?

James Kemp:

Yes.

Chair Spiegel:

Are there any others in support?

A'Esha Goins, Green Bridge Consulting Group, Las Vegas, Nevada:

I am testifying in favor of A.B. 132. In 2017, Nevada voted that marijuana would be decriminalized. By voting to decriminalize, it means that people should not be criminalized when applying for employment. As a young black woman, I have been discriminated against for having my hairstyle. I have a great work ethic, show up at the job on time, and go above and beyond. I have been discriminated against for being an advocate and a legal user of marijuana. This is because people know I am a user, not because I have been tested or have been given the opportunity to be tested for marijuana. I would like this bill to be passed on my own behalf, not just for those others who also need the opportunity for employment or need to be treated as an equal in the employment process.

Robert Cohen, Cohen Medical Centers, Las Vegas, Nevada:

We definitely support this bill. It is something that is a long time coming. There are a million reasons why you will not get a job. This should not be one of them. One of the Assemblymen asked earlier if somebody smelled of cannabis when they showed up for an interview, could they be disqualified? I would say probably yes. This is basically telling people that this is a taxed, not legal product and that the people who use cannabis are not

worthy. I will guarantee you more times than not, you will not know the difference. Why should you go into my blood to tell me that I am not worthy of your position when I qualify for it?

Carina Robinson, Compliance Manager, Acres Cannabis, Las Vegas, Nevada:

I am a born and raised Las Vegas native Nevadan. We voted to regulate marijuana like alcohol. Therefore, every person that is choosing to participate in the over-21 age group regulations should be treated exactly the same as those who are consuming an actual chemical that poisons us, which is alcohol. I come from the patient community. I have been a patient legally since 2014 due to a neck surgery. We are some of the hardest, strongest, committed, most passionate, male and female workers you will ever meet. I have not missed a day of work in four years. I lost a job in the corporate world as a credentialing coordinator for over 350 anesthesiologists in 2014, because I came out as a cannabis user to help me after my neck surgery. It was devastating. I do not want to see anybody prevented and/or discriminated against for pre-employment screening. It is the most ridiculous thing I have heard knowing that I was born and raised in this town and I have seen every other chemical used that actually kill people. Hemp and cannabis heal.

I would like to know if the applications ask if the person drinks alcohol. The only reason people accept that is because it has been around and passed prohibition. We are in the last prohibition now and trying to get people to understand that we have laws. Feelings do not belong with the law that has been proposed today. I fully support the bill. Hemp and cannabis are super foods. They are nutrients, vitamins, and medicine. I pray that once this passes, several individuals will seek information through the patient, physician medical card program if we can remove the layers and the jeopardy of employment. I do not want to see a separation of class in my community. This is my home and I have nowhere else to go if we do not get this correct. I plead for the Committee to pass this bill. Please keep it simple and limit it to pre-employment only. As Robert Cohen stated, you will not know the difference most of the time.

Jagada Chambers, Private Citizen, Las Vegas, Nevada:

I am in support of A.B. 132. I think it is hard for us to remove the stigmas we all have. I think our employers should look at marijuana with the same lens as they do alcohol. If you look at it the same as alcohol, it is fairly self-explanatory. Assemblywoman Neal clarified that she is not trying to manage anyone's employment decisions. The community needs to hear support in this issue. Many people who carry the stigma of marijuana use have opportunities for employment that they will not even engage in because of the drug testing. If there was an opportunity for this body to make a statement, I think it would have a ripple effect in people's courage to seek gainful employment. I want to commend the body for taking a chance to walk in the right direction. The state has chased the lucrative bag that marijuana has placed here. We have chased that bag whole heartedly. We have been counting millions of dollars for well over a year. For this to be addressed now is in hindsight, but it is better than not being addressed.

Chair Spiegel:

Are there any others in support? Seeing none, is there any opposition to A.B. 132?

Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:

I appreciate the tension this law has caused in terms of how we deal with marijuana in the workplace. This is something, as a member of the American Transportation Research Institute Research Advisory Committee, I have asked to look at. I told our big companies, can you imagine what would happen if we told truck drivers they could not drink beer anymore and drive a truck? I think the same thing is occurring with marijuana. It is something we need to look at as an industry in terms of how to test for impairment, similar to alcohol. We do not have that test today. We have something that does not test for impairment. We have a high standard for people who drive trucks.

The sponsor is correct about truck drivers who are covered under 49 CFR § 382.301, but that does not cover the entire trucking industry. The Federal Motor Carrier Safety Administration which regulates trucking on a federal level has a multiple choice test to determine if a driver is covered under their regulations. They ask if the driver drives a vehicle which is over 26,001 pounds. Those are big rigs and semitrucks. There is a specific group they regulate. We would be impacted under this law. We want to be able to test pre-employment. We currently test, as required by law, for buses that carry over 16 passengers, and trucks that haul hazardous materials. We hold our truckers and drivers to a higher standard for a reason. Just the presence of alcohol in a truck driver's system at a blood level of 0.02 is a violation. At 0.04 in their personal vehicle, it is considered as a driving under the influence violation. That is not impairment—that is presence. There is a difference and a higher standard for our industry. I appreciate that we have and would like to continue to have the higher standard. That is why we offered an amendment ([Exhibit D](#)). I did not speak with the bill sponsor.

I do not disagree with Assemblywoman Neal that the amendment that talks about "safety-sensitive positions" can be construed broadly. That is not my intent. I want to make sure that our drivers on the roads are responsible for the safety of all of us when we are sharing the roads, and that we have people who are concerned about safety. Safety for our industry is paramount. It is so paramount, that when we look at section 3, we would be impacted.

Another thing that I have been involved in with the American Transportation Research Institute is how we find good young drivers. We have an aging industry. The average age of a truck driver is 50 years old. Trying to find someone who is young and responsible to put behind an 18,000-pound big rig is tough. It is tough because if that person is in an accident that kills someone, it puts all of us at risk. We are trying to develop an assessment tool to look at personality factors that result in what a good driver would be. We use things like impulsivity, because if a person is impulsive, it is associated with risk taking behaviors and an increased crash risk. The last thing we want is somebody behind an 80,000 pound truck to be sensation seeking. Luckily, with young people that usually peaks out in adolescence, but not always. We do not want someone who is aggressive behind the wheel. We look at the character assessment as a tool. We have a tremendous amount of data today—more data than

we have ever had before. We want to take this and apply it to our industry, so we can ensure we operate on a safe level and hopefully get to the goal of zero fatalities.

We are in opposition to this bill, but I am happy to work with the sponsor. I understand there is an issue that these things have been used in the past to discriminate against people and that is the last thing we want. I think about members we have such as tree trimmers who stand in a cherry picker to trim trees. We need to say, if you are in a safety-sensitive position, one that puts people at risk or one that could be inherently dangerous and puts the life of that employee at risk, that they are not impaired or will not do something that will put themselves at risk.

Chair Spiegel:

I will encourage you to work with Assemblywoman Neal. Are there any questions from the Committee?

Assemblywoman Carlton:

With your amendment, will you support the bill?

Paul Enos:

Yes.

Assemblywoman Carlton:

Safety-sensitive position is ambiguous. Would you consider a housekeeper a safety-sensitive position? They get to go into people's rooms and are around people's valuables.

Paul Enos:

I would not consider that a safety-sensitive position.

Assemblywoman Carlton:

I think there would need to be a little more definition as far as safety-sensitive positions. Some employers would use that and declare everyone within their employ as safety-sensitive because they all have access to the cash register or some sharp implement.

Assemblyman Edwards:

Could you be more specific about people who have commercial driver's licenses and other positions that are regulated by the federal government? How will the bill affect them in its current form?

Paul Enos:

I do not believe this bill would impact them on the drug testing side because I believe they are covered under federal law. We have a Supremacy Clause in the *U.S. Constitution*. I do not believe a driver who carries hazardous materials, drives a bus with more than 16 passengers, or a truck that weighs over 26,001 pounds would be affected by the bill. The people in the gap, including people who drive vehicles between 10,000 and 26,000 pounds and passenger vehicles for less than 16 passengers, would be affected by the bill. Section 3

has a potential to have an impact on all of our drivers because we are trying to make sure we are hiring people who take safety seriously.

Assemblyman McCurdy:

We already know the protections under NRS 613.333. In subsection 2 of that statute, it states that "An employee who is discharged or otherwise discriminated against in violation of subsection 1 or a prospective employee who is denied employment because of a violation of subsection 1 may bring a civil action against the employer who violates the provision" It goes on to list what their awards would be. As you testify in opposition, I would like to know for the Committee's information, what is currently happening since we have already opened Pandora's box with the passage of legal marijuana use.

Paul Enos:

For people who do not fall under 49 CFR § 382.301, we are still doing pre-employment drug testing. For us, it is a safety issue. The U.S. Department of Transportation (DOT) has voluminous guide on how to do these tests. I think a lot of companies are adhering to that standard. Even though they do not have to follow the federal rule, they do. That means you have to have a pre-employment 5 Panel DOT Drug Test and it has to have negative results. It has to be verified by an independent medical review officer. That is what is happening now in my industry. It is for our protection from a civil suit if a driver is in an accident and it is determined that the company was negligent. We do it to protect ourselves and everyone with whom we are sharing the highways.

Assemblywoman Hardy:

Have you reached out to insurance companies? Would it be an increase for workers' compensation or liability insurance? I see this as an opening for lawsuits for the employer.

Paul Enos:

Insurance often dictates the practices we have in place for a drug-free workplace. They want to ensure that we are not a risk to them. We are covered by federal law, insurance, and we are trying to cover ourselves. We have a tremendous amount of exposure to people doing crazy things on the road. There are insurance implications for us. We want to make sure we are going above and beyond.

Assemblywoman Hardy:

Even in our small business where we operate slicers, I could see some awful things occurring there.

Chair Spiegel:

Is there further opposition?

Brian Wachter, Senior Vice President for Government and Public Affairs, Retail Association of Nevada:

Retail is a very broad industry representing about one in every five jobs in Nevada. Our members are split on how they are dealing with this. The market seems to be taking care of

the problem itself. There are some employers who have decided to forego this pre-employment screening. There are other companies that have chosen that their particular line of work is not something that they can move in that direction. We have some members who have decided that it is not something they are going to look for. The laws and rules that apply for workers' compensation during the day and for being "high" at work are current law. If the employer has someone show up to work and exhibit those behaviors, it is something the employer has actionable offense to take. We are hesitant to be okay with the policy that mandates what you can or cannot do for a pre-employment screening because we think businesses are the best judge of what kind of employees will work well in their workplace. I think the market will provide an answer as well. That is what I have to say about section 2 of the bill.

Section 3 concerns us and we hope to be able to work with the sponsors going forward. Our concern is that interview-style questions or any questions which might discover behavioral traits or characteristics may be construed to fall under this category. Interview questions asking a hypothetical question are common interview questions. Under section 3, subsection 4, paragraph (a), the definition of character assessment is a bit broad. We would be looking for a way to narrowly define that. We think a business is the best judge of character for the types of employees that they are looking for or the types of employees that fit in. These tests, particularly one that the sponsor mentioned, can be retaken. It is not a one-time failure and you can never apply for the job again. Anyone who has worked in service or retail knows it is a different environment. There are a lot of different constraints that are unique to the retail industry and the service industry in general. For us to get an idea of what kind of personality or strengths a person may have, is important because all of our team members are required to be able to talk to employees and deal with customers at any level. We typically require our members to take these assessments and we believe that is something the company should continue to be allowed to do.

Randi Thompson, Nevada State Director, National Federation of Independent Business: I have submitted testimony which is on the Nevada Electronic Legislative Information System ([Exhibit E](#)). I represent about 2,000 small businesses. Currently, only about 40 percent of small businesses do drug testing post-employment, let alone pre-employment. Small businesses cannot really afford to test because it is a \$30 to \$50 fee per person. A lot of small businesses do not test pre-employment. Post-employment—as Assemblywoman Hardy mentioned, if a person is using a slicer at Port of Subs—you want to make sure that the employee is not under the influence. Post-employment testing is probably more prominent now.

When Nevada legalized recreational marijuana in 2017, we saw a positive workplace marijuana testing increase of 43 percent according to a May 2018 study by Quest Diagnostics. The study also showed that Nevada saw a 39 percent increase in positive marijuana use by federally-mandated, safety-sensitive workers. We are already dealing with it. Forty-three percent of our workforce tested positive for marijuana, but they did not get fired. The reality is that we have roughly 30,000 open positions in Nevada. Employers are

desperate for employees. For a lot of the small business employers, the use of marijuana does not matter as long as you do not bring it to work.

I am more concerned with section 3 of the bill. A character assessment is only one part of a hiring process, and there is evidence that the success and retention of any worker is based on character, personality, and behavior more than their hard skill. According to Gallup, employees will shop around for the organization and jobs which meet their needs and align with their values. Determining that alignment often means they do a character assessment of the company for whom they want to work. Research shows that if an employee is placed in a position that matches his or her personality, it often leads to lower engagement. Lower engagement results in 21 percent lower productivity and 45 percent turnover. That is bad for employees and employers.

I am concerned that this bill says that it is illegal to use a character assessment, but there is no penalty. To me, that says the only way you can prove this is through a civil lawsuit. It concerns me that this will be another way for an employee to sue an employer.

Warren Hardy, representing the Associated Builders and Contractors of Nevada; and the Nevada Restaurant Association:

This is probably the toughest issue I have seen in 30 years in the Legislature. I remember thinking when this bill passed, and I too voted against it, that the unintended consequences of this are going to take us years to sort out. There is a shock factor on this stuff. When people from the business community read a bill like this four years ago, they would have said it was a radically progressive idea. In today's environment this is an issue we are going to have to figure out and work through. It is a radically different issue than may have been considered four years ago.

I think the challenge for us in our industry, and we struggle with it mightily in the restaurant industry, is until we can get some validation of what is in the employee's system, there is going to be an assumption that it is alcohol. As technology moves towards a way to really figure this out so this can be treated much like alcohol in determining impairment, it is going to remain a very difficult issue. The challenge here is balancing the rights of the employee, who now clearly has a legal right to use this substance, with the obligations and responsibility of the business owner who has an obligation and a responsibility to make sure their workplace is safe for their customers and other employees. That is the challenge.

The issue I worked with in the Legislature was the issue of alcohol. We grappled with who was liable if there was an alcohol impairment. This throws another wrench in that until we resolve who is responsible for the liability for impairment. These are the kinds of issues that are now being brought up with regard to marijuana consumption. Do the statutes we have to cover those things really appropriately protect the employee and the employer? I am not sure we ever got that correct and this adds another difficult layer.

Section 2 of this bill is a very reasonable, measured approach to starting this debate. Ultimately the liability resides with the business owners. It does not mean the issue is not

there and the Legislature needs to work toward a resolution. The bill needs section 3 to be better defined. As to Assemblyman McCurdy's question with regard to drug testing, it varies widely, but we are probably not getting it right in striking the balance between the rights of the employees and the rights of the employers.

Assemblyman McCurdy:

I have worked construction and there are dangers. I would not want the person I was working with to be under the influence on the job. I understand that. What happens in the meantime? What progressive steps do you see that we can take as a state to address this issue to be a model for the rest of the country who is looking at this?

Warren Hardy:

We are still going to be talking about it years from now, but we do not have years to solve it. There are lives on the line. We have to start moving in that direction. The balance is between the rights of the employee, who now has the legal right to consume marijuana, and the liability that rests with the employer to make sure of their safety. I do not know what the answer is. This is the toughest issue I have looked at in 30 years because I do not know how to do that. I want to continue to work with the sponsors and others to make whatever incremental steps we can. I think a lot of the reaction you are seeing is we think it is a radical progressive idea to not be able to prescreen an employee for marijuana. It is not; it is a reasonable question in today's environment. It is real and we have to address it. I know we can make positive steps in that direction. I would ask the Committee to be mindful of the obligation that resides with business owners to not only create a safe working environment for their employees and customers, but also the liability that exists if something does happen. That liability resides with the employer. These are small businesses. We want to know how to do it right. We know it is a problem and we have to fix it. We have to get it right without doing damage to either the people who can legally use marijuana or the businesses that employ them.

Sean Stewart, Chief Executive Officer, Nevada Contractors Association:

I echo the comments of Warren Hardy and others. This is a tough issue and we will work with them. I represent a very interesting and dangerous industry. It is a concern of ours that we figure out how to put people out there, working on the roads, working on the fortieth story who are safe. My concern is to not put the contractor in charge of making that decision. With alcohol, we have a standard of impairment. My biggest fear is that we come up with a law that requires us to send someone out to a dangerous project to work and have to make a judgment call on if they are impaired. Either way, we are going to lose as an employer. We are either going to be sued by the employee or someone is going to get hurt and we will be sued because we sent the wrong person out there. I think the problem is that we do not have an impairment test. We do a pre-employment drug screen 24 to 36 hours before someone goes out on a project. That follows the U.S. DOT standards. We test for impairments and if it comes back positive, we do not send them out on a project. We do not want to put them in harm's way. I cannot say that for all contractors I represent, but that would be a general standard in the industry.

Assemblywoman Carlton:

So this is after they are employed.

Sean Stewart:

I am not sure. We have both open shop and union contractors. If we get someone from the union hall, we do not begin paying them until they have passed the drug test.

Assemblywoman Carlton:

That is post-employment. When do you employ that person?

Sean Stewart:

I am not sure. We have always looked at it as a pre-employment drug screen because they are not paid if they do not pass the drug test. If we could be assured it is post-employment, we can deal with it under existing law.

Assemblywoman Carlton:

The initiative said to treat it like alcohol. Is this the same thing you do for alcohol?

Sean Stewart:

With alcohol we have an impairment standard and we can tell whether they are impaired or not. We do not have an impairment standard for marijuana.

Assemblywoman Carlton:

Until the state sets a standard, it is very hard for people to understand what is going on. I have a question about the Quest Diagnostic report. That could have just been metabolites. It may not have been THC. We do not really know, because we do not have the data set and we have not set the point for the data set.

Chair Spiegel:

Is there any other opposition?

Hugh Anderson, Managing Director/Partner, Hightower Las Vegas; and Government Affairs Chair, Las Vegas Metro Chamber of Commerce:

The Las Vegas Metro Chamber of Commerce is opposed to A.B. 132 because of its overly broad language relating to which businesses may use certain drug pre-screening as a condition of employment. While we recognize that Nevada's policy positions are evolving in regard to marijuana usage, we do have members that are concerned with the bill as drafted in regards to safety in the workplace. Currently, federal law requires several industries to conduct drug screening as a condition of employment. Many of our local industries which face federal regulation and scrutiny of their privileged licenses may be made more vulnerable to penalties and interference from federal regulators.

As a chamber of commerce, we represent a broad spectrum of members in transportation, construction, health care, gaming, and other employment sectors that have concerns about these proposed regulations and how they may be viewed by the federal government and how

it impacts their ability to obtain workers' compensation insurance for coverage for their employees. The Chamber is also concerned how this may potentially impact federal grant dollars to state agencies such as Nevada's Department of Transportation. The Chamber recognizes that marijuana consumption is now a legal right in the state and the culture surrounding its use is changing and must be adapted to. However, members have a concern. As written, this bill may potentially place Nevada employers and employees in violation of federal law and in danger of losing jobs and contracts.

The Chamber is more than willing to work with the bill sponsors to address these concerns on behalf of our members.

Lisa de Marigny, President and Chief Executive Officer, Omni Limousine, Las Vegas, Nevada:

I am also a member of the Las Vegas Metro Chamber of Commerce Government Affairs Committee. I agree with a lot of what Paul Enos of the Nevada Trucking Association said regarding our adherence to the federal Motor Carrier Safety Act. I wanted to point out that the Nevada Transportation Authority also has adopted the 49 CFR § 382.301 as part of the *Nevada Administrative Code* 706.247. The Nevada Transportation Authority also requires the transportation industry to provide information to the third party administrator or the medical review officer who monitors our substance abuse program. It is another layer for public safety purposes. Our insurance company requires that we provide and keep a file on all of our drivers regarding their drug testing and their medical card before they will add them to our auto insurance policy. Our workers' compensation insurance carrier requires this, and in addition to that, is also now suggesting that we begin character assessments similar to the situational types of questioning and public safety and driver behavioral type of questioning. I wanted to point out that insurance costs are our second most costly line item behind labor. This bill would definitely impact us negatively as far as insuring drivers and serving the traveling public.

Shaundell Newsome, Chair, Urban Chamber of Commerce; and Owner, Sumnu Marketing:

We were the Nevada Small Business Association Family-Owned Business of the Year in 2015. The Urban Chamber does not have a position on this bill because we are still talking to our members.

Chair Spiegel:

We are taking testimony in opposition at this time. You may email your testimony.

Jay Barrett, President, JABarrett Company, Las Vegas, Nevada:

I am also a member of the Las Vegas Metro Chamber of Commerce on the Governmental Affairs Committee. I have over 40 years of business experience in Nevada and am a citizen who voted in favor of the legalization of marijuana. I do not oppose the testing provisions of the bill. The arguments have been very well articulated. As a member of the Chamber, we are here to work on behalf of all of our business members.

Regarding the character assessment tool, I personally found it to be very effective in attracting, retaining, and developing employees, partners, and associates. I have also found that it is mutual. The employee, partner, and associate also benefit from it. Using it as a tool to make good decisions in the hiring process is very valuable for both parties. I would urge caution in any effort to eliminate it as a hiring tool in that it would weaken the ability for partnerships to develop between employees and employers. The second concern I have ripples beyond the direct relationship between the employer and the employee. It is the message that we, if it were to become law, send to not only the existing businesses in the state, but in our efforts to recruit and develop businesses. For a national company like Walmart who uses character assessments as a national tool, our chilling of this as a tool in hiring could send a very significant message of concern to future investments in Nevada. These are important issues in regards to marijuana. We need to address the right way to protect our employees.

Andy Donahue, representing Southern Nevada Labor-Employers Cooperation and Education Trust:

As written, it is hard for participants in construction or development to support this bill. The concept of working alongside an individual who does not meet the same standards is disconcerting to organized labor whether it is a cannabis screening or otherwise. Reflexively, it is challenging for management and contractors to resolve bonding issues and liability standards without the safeguards of cannabis screenings. For these reasons and the others already expressed, the clearest path toward support of this bill is the amendment presented by Nevada Trucking Association ([Exhibit D](#)).

Assemblywoman Carlton:

With the amendment from the Nevada Trucking Association, would you support the bill?

Andy Donahue:

Yes.

Noah Jennings, Private Citizen, Carson City, Nevada:

I am here as a private citizen to stand in opposition of Assembly Bill 132. Here in Nevada we have made great strides when it comes to eliminating harmful and discriminatory hiring practices. The Nevada Fair Employment Practices Act prohibits hiring practices that discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, or national origin. Section 2 does a lot to close further gaps and is a great idea with those safety exceptions.

My opposition hinges entirely on section 3, where I feel the government has no place in telling a business that it cannot discriminate based on their personality as evaluated by a certain test. Some of the tests commonly used are named in the text of the bill. Several of these tests are based on years of research and development. Their use for hiring can allow an employer to evaluate a candidate pool and find the employee with the right motivations and goals for the position. Once hired, results can be further used by an employer to help with development of the employee as a person and as a worker.

The Caliper Profile was developed over 50 years with a strict focus on compliance with the U.S. Department of Labor and with guidance from the American Psychological Association. Extensive studies were conducted to ensure it would meet the legal requirements of the U.S. Equal Opportunity Employment Commission, where the 4/5ths rule was met for protected classes. The Hogan Personality Inventory was similarly developed over an extended period of time of about 25 years with special considerations to ensure the test is not illegally discriminatory. These tests can often go beyond personality and into the world of integrity, allowing for employers to determine attitudes and values of their potential employees.

I could continue about the merit of these tests, and I could also speak to some of the flaws because no test is perfect in determining employment. With the science of today, we are now able to capture characteristics and data about people that might not be obvious during an interview that will allow employers to make smarter hiring decisions. As I look at this Committee, I see a well-qualified group of individuals with the right experience to make a good decision on this piece of legislation. Most of the members of this Committee own or are employed by small businesses. At least three members have ownership in a small business. At least two are attorneys, a profession with a lot of small businesses that could benefit from character tests.

We live in a world where technology and the sharing of knowledge has opened a brand new age, and businesses are allowed and able to take advantage of the advances in psychology that can provide many advantages in hiring. Eighty-nine of the Fortune 100 companies utilize the Myers-Briggs Type Indicator. I ask that we not place Nevada businesses at a disadvantage by stepping further into the hiring process and not allowing them to screen their employees based on what they would like to see.

Robert C. Hooper, President and Chief Executive Officer, Northern Nevada Development Authority:

I am in opposition to the bill. I agree with Assemblywoman Neal's description of the issue as a conundrum that we have created. For companies that are in the state or are looking to come into the state, workforce is the number one issue that comes up in every conversation. I would really hate to see for the number of people who are using marijuana now in the state to create a subclass that we are going to use for the workforce. That is a bad thing and this needs to be addressed.

One of the issues with section 3 is a lack of definition. Even though we have tests listed in the bill, I want to echo what Assemblyman Kramer said. Employers need to do soft skill analysis and life skill analysis to know if a person can bring value to the organization and communicate properly. How do you define character profile and get away from doing soft skill analysis? There needs to be better definition of what this means.

My real concern is in section 2. When the testimony was provided, federal and state laws were considered. Valid points were made there, however, there is one complexity that is not being addressed in this bill. It makes an assumption that employers, of their own accord, can

make this decision on hiring practices. That is not always the case. Because of national certification standards within industry, employers are required by some of those certifications to do pre-employment drug screenings, particularly in the manufacturing area. I was with a manufacturer this morning and this came up. They are a food manufacturer who is just moving into Carson City. They are required by two of their certification processes to do pre-employment drug screening. We put employers into a position where they can be in business here and follow guidelines of the National Safety Foundation and Current Good Manufacturing Practices requires it. As we move forward on this discussion, I think there is a lot of research that needs to be done as to the multiple industries where employers do not have a choice. We need to make an allowance for them to do what they are required to do by their national certification. If we do not, they will have to leave the state. While we are trying to protect jobs, we may drive jobs away.

Chair Spiegel:

Are there any questions from the Committee?

Assemblyman Kramer:

Do you think an amendment could be written that would include those certifications that could be excluded as we are doing for the trucking industry and perhaps safety issues?

Robert Hooper:

I think the answer is yes.

Assemblyman Kramer:

Would you work with the sponsor to see if we cannot get that included?

Robert Hooper:

Yes I would.

Chair Spiegel:

Would you support the bill if an amendment were put forward with the certifications written out?

Robert Hooper:

When you look at section 3, I do not think it is defined well enough for a soft-skilled analysis. Employers should have the right to screen in that area. In section 2, if we look at all of the various certifications, then yes. I do not want a subclass of people. Economic development is about lifting people up. We should not do anything to put people down. At the same time, we should not encumber employers because we will lose the very jobs which we are trying to protect.

Chair Spiegel:

Please work with Assemblywoman Neal on both sections 2 and 3 to see if your concerns may be addressed.

Robert Hooper:

I would be happy to do that.

Ann Silver, Chief Executive Officer, Chamber of Commerce Reno-Sparks:

The Reno-Sparks Chamber of Commerce is the largest business organization in northern Nevada with 1,600 members who employ over 70,000 individuals. In my capacity as a human resources professional for over 25 years, I often used personality assessments as a guide when hiring. Myers-Briggs, for example, and my results as an INTJ (introverted, intuitive, rational and judgmental) have proven infallible and many employers managed me based on these traits.

Rarely does an employer condition hiring purely on the results of personality testing. Results are frequently used to confirm the interviewer's intuition and to further explore the candidate's personality vis-à-vis the organization and its culture. Due to the cost of administering personality instruments, they are not regularly used nor can most businesses afford to use them. We are at a point where employers are unable to secure adequate references or ask certain questions. Please allow them to use the legal means still available to make appropriate hiring decisions. As a right-to-work state, hiring decisions are the purview of each employer and should not be abridged. At a time when workforce needs are significant in our growing economy, tying the hands of employers does not bode well for business sustainability.

While we have legalized marijuana in Nevada and rely on the revenue it produces, it is the right of an employer to perform pre- and post-screening for drugs and alcohol use. There are significant safety and productivity concerns and an employer should have the right to test for their use. The fact that marijuana is sold legally does not mean an employer must assume the risks for someone who uses it. No employer can be assured that marijuana use will be continued immediately upon hiring. We are a right-to-work state and nothing should prevent an employer from making rightful decisions provided race, creed, color, sex, sexual preference, age, marital status, gender, religion, disability, or veteran status are not determinants to a job. The Reno-Sparks Chamber of Commerce stands ready to engage in constructive dialogue with the bill sponsor to address the proposed legislation and the issues in the proposed bill.

Craig Madole, Chief Executive Officer, Nevada Chapter, Associated General Contractors of America, Inc.:

We have the same issue that we want to ensure our employers who pre-screen for safety requirements are able to do so. If there is some kind of a test to determine impairment we would be supportive of that.

Jessica Ferrato, representing Granite Construction:

All of my comments have already been made. I would like to highlight a few things. Being able to know which employees of ours are impaired at pre-screening is important to us. It is especially important for a union contractor like Granite Construction where we are doing a lot of federal projects. We hire all of our employees in the same process. We do not know

what job we are going to put our employee on or whether it is going to be a federal project or another project. We do pre-employment drug screening as a part of our requirements via federal law. We want to echo the comments made by all of our partners. We understand there needs to be a solution and look forward to being a part of that solution.

Andy McKay, Executive Director, Nevada Franchised Auto Dealers Association:

I agree with 90 percent of the testimony. When you look in the construct of a service department, many garage insurance policies require that there is pre-employment drug testing. We want to make sure everybody has a safe workplace.

Wendy Lang, Human Resources Director, Douglas County:

There is language at the end of NRS 613.333 that states the activities are prohibited unless those activities adversely affect the job performance or safety of others. As an employer, pre-employment drug testing is specific in our organization to those safety-sensitive positions. That language in addressing the safety issue is key to the success of this bill. I would also like to point out that NRS 453D.100 specifically subsection 2 states that "The provisions of this chapter do not prohibit: (a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under this chapter." It has become apparent today that these are issues that need to be addressed. I appreciate the sponsor's proposed revisions, particularly with regard to citing objective limits. I think that is going to be key going forward. It is important to not evaluate this but to have acceptable parameters in which we are evaluating. Section 2 addresses the holders of a medical card. I want to ensure that there is language introduced in this bill that provides employers the ability to regulate or restrict that medical use if such use interferes with the employee's ability to perform the essential function of the job. Similarly, today, if someone is prescribed a narcotic and is using that narcotic legally and in the confines of that prescription, they may still need to be placed on light duty restrictions or on a leave of absence pending their use of that. I want to be sure that is not prohibited in this bill.

In regard to section 3, I want to ensure that we are not inhibiting the right of the employer to select the most qualified candidate based upon factors which are validated to be relevant to the essential functions of the job.

David Cherry, Government Affairs Manager, City of Henderson:

The City of Henderson is still analyzing the two proposed amendments. We engage in limited pre-employment drug and alcohol screening for what are deemed to be safety-sensitive positions. We have some concerns about section 3; we have some concerns about the character assessment language. We feel that it is overly broad and would like to see if the intent is to not allow the personality test to be used. We would like the language to just reflect personality tests and not the issue of character assessment. We would like to be able to get into some questions of character in the interview itself.

Arleen Henderson, Co-owner and Operator, Action Electric Inc., Sparks, Nevada:

I am specifically in opposition to A.B. 132, section 2, subsection 1. Bridging the gap between pre-hire and secured employment seems to be problematic because marijuana stays

in the system for a great length of time. Our company has successfully conducted business in the Reno-Sparks area since 1984 and the major pillar of our success is found in our drug and alcohol statement. This drug and alcohol policy goes deeply into defining illegal drugs, legal drugs, and a definition of a positive drug test for pre-hire, post-hire, and random drug tests. We follow federal testing guidelines set forth in 49 CFR § Part 40 in sampling collection and determination of these positive drug tests. In the event that there is a positive drug result, that individual is considered to be under the influence. I have personally experienced this and been shocked by the cascade effect of an on-the-job incident and what has happened since marijuana use was legalized. Once a positive drug test is established, it sets up a series of legal protocols that we follow, which includes the right not to hire an individual.

Prohibiting employers for screening for marijuana will negatively impact our company's dedication to provide a drug-free workplace. To not be aware of the presence of marijuana in a prospective employee on pre-hire, and then to require that individual to comply with our drug-free workplace when they are hired, is very problematic. Prohibiting employers from screening for marijuana consumption will also leave the employer to carry the burden of conflicting federal and state compliance. The Occupational Safety and Health Administration will proceed with on-the-job injury investigations or fatality investigations and they will require a post-hire drug test. A positive result of that will definitely impact any citations issued. Nevada Department of Motor Vehicles' driving under the influence and driving while intoxicated (DUI) laws still remain intact. We are obligated to comply with those standards. I currently have 34 fleet trucks—34 employees who are all in compliance.

General liability, vehicle liability, and workers' compensation rates will reflect increases for risk management of hiring employees who have not been comprehensively drug screened. Workers' compensation experience modification factors that are based on a company's workers' compensation claims, frequency, and severity will be jeopardized. This rate is paramount to securing quality jobs in the state. General contractor prequalification requirements is currently a very daunting task with all of our current policies and all of our safety programs that are in force. Hiring employees who have not been comprehensively drug screened would negatively impact our company's ability to secure further contracts. I request you not pass this bill, specifically section 2, subsection 1.

Eric Milavsky, Human Resources Director, Lyon County:

We oppose section 2 of this bill for three reasons. It would compromise our ability to operate safely. It would put us in conflict with our grant compliance obligations. We feel an existing law provides a better framework to more adequately balance the interests of the employee to whom we want to be fair, but also the interests of the employer. Lyon County, like many private and public employers across the state, has a large complement of safety-sensitive positions. We define these essentially as employees with job duties that if performed with inattentiveness, compromised dexterity, or errors in judgment could present essentially a real and direct safety consequence for the public, themselves, or their coworkers.

We test these employees before they get on the job for the first day and on a random basis to ensure they are not under the influence of any controlled substances, which might impact

dexterity, judgment, response time, and those types of things. Some of the substances on that list, such as heroin and methamphetamines, are always illegal. Other substances on that list are legal in some circumstances. For example, people with attention-deficit hyperactivity disorder are prescribed Adderall. Similarly, a person recovering from surgery can take certain narcotic medications with a prescription from their medical provider. That does not mean we want to have a carte blanche approach to having those people on safety-sensitive functions on the jobsite. The approach we apply is a case-by-case determination. We require disclosure of the medication up-front and ask how often they take the medication, how much they take, and how long it will be in his or her system. We ask what their physician thinks will be their actual functional limitations arising from taking the medication. We want to know if the medication will cause errors in dexterity, judgment, or other risks. After we get those answers, we apply a case-by-case approach and ask if we can reasonably accommodate this person?

Having a medical card for marijuana is not materially different than someone who holds a prescription for a narcotic medication. The bill with the amendment supplants that case-by-case approach that we already apply, which I believe is a healthy, fair approach for both the employer and the employee with something that requires blood testing for the DUI standard under NRS 484C.100. I think the problem with supplanting that one for the other is twofold. It requires a blood test. We have over 300 full-time employees and we do hundreds of drug tests per year. It is far more invasive to take someone's blood than it is their urine, far more time-consuming, and more costly. When we talk about the language in the proposed amendment from the sponsor ([Exhibit C](#)), it would require us to do blood testing for the presence of marijuana. The threshold to see how much metabolites are in the blood, we do not know if that is legitimately the threshold for impairment or not. When it comes to safety-sensitive things, we err on the side of caution. If it works for DUI, which is a low threshold, and people cannot operate a motor vehicle or a boat in Nevada, then we probably do not want them to operate a bus carrying elderly residents. We probably do not want them operating a firearm, running into a fire, or handling 911 dispatch calls. We would have issues with the safety impacts or the practical implications that would arise from applying the framework that has been proposed.

Lyon County receives over \$10 million of federal funding of which each dollar is tied to an obligation that we enforce the Drug-Free Workplace Act of 1988. The bill sponsor stated that act prohibits the use of controlled substances in the workplace, but does not necessarily speak to being under the influence of controlled substances in the workplace. I would respectfully recommend that we look into that further because that appears to be an anomalous conclusion to me. We are required as a recipient of those federal funds to enforce provisions of the Drug-Free Workplace Act of 1988. Exempting our employees from one of the substances that is referenced in that act would be something that could potentially jeopardize our receipt of federal funding. We oppose the bill but, if it is going to pass, I think there has to be a real consideration of another amendment that would specifically address the federal funding issue.

Chair Spiegel:

Are there any questions from the Committee?

Assemblyman Yeager:

One of the reasons we changed the DUI law last session was because urine tests do not tell you anything about impairment so people were being wrongfully convicted when they were not impaired. Only Mr. Milavsky mentioned what kind of testing is done. I imagine it is urine testing. I have the same concern. Urine testing tells you that somebody used marijuana at some point in time, which could have been 30 days or more ago. It does not tell you the person was impaired when they took the test because urine does not test for active THC or Delta 9 metabolites. Delta 9 metabolite is the impairing metabolite. We made the change to the DUI on an issue of fairness because people were being wrongfully prosecuted. I think some of the same concerns come into play.

Chair Spiegel:

Is there anyone to testify from a neutral position?

Dru Wells, Chief Compliance Officer, Director of Human Resources, Helix Electric, Las Vegas, Nevada:

We are the largest merit shop contractor in the state and the tenth largest in the United States. We agree with the bill in that we do not care if an employee smoked marijuana two weeks ago. We care if the employee comes to work under the influence. We have moved to a saliva-based test. We did that because it would only identify those people who smoked marijuana in the last 24 to 48 hours. If the bill sponsor would consider exempting a positive on a saliva-based test, we would support the bill.

Chaunsey Chau-Doung, Public Affairs, Las Vegas Valley Water District; and representing Southern Nevada Water Authority:

We are neutral on the bill. Our main concern is the possibility of federal agencies conducting an audit of hiring practices if this bill is passed. We understand they do these audits in states like California and Washington which have similar laws. Our real concern is the ability to receive grants if this bill is passed.

Rich Harvey, Fire Chief, Central Lyon County Fire Protection District:

The majority of our employees are paramedics and advanced emergency medical technicians (EMTs) who are licensed under *Nevada Administrative Code* 450B.320. That same section has a requirement that an applicant for licensing has no violation of any federal law regulating the possession or use of a controlled substance. As we move forward with a solution, we want to make sure we do not pass something that allows our people to not get licensed as paramedics and EMTs.

Mark Regan, Fire Marshal, North Lake Tahoe Fire Protection District:

We are neutral on this bill. Our concern is the definition of public safety. We need to make sure that we are exempt from this bill. The way the bill is written, we feel we are not

exempt. We look forward to working with the sponsors. If we are exempt, we will be able to support the bill.

Chair Spiegel:

Are there any closing statements?

Assemblywoman Neal:

This hearing has brought up questions of employee versus employer rights and how we balance that. There is a gap since marijuana use became legal and there is definitely a need to find a balance between these two individual groups. I always position myself to be fair and try to find a balance on issues. I hope we will be able find one. As of November 2018, we have sold \$45 million in retail marijuana. That is a significant dollar amount. We do not know the number of individuals, but we know there has been a significant increase in users. That is a large amount of money which indicates there are a large number of users. I want to make sure we find a way for employers to have the conversation about what they feel they have the right to control and the right of an employee to seek employment. I am one of the strongest advocates for workforce and trying to make sure people have a job. I have been a strong advocate to make sure that all individuals have the ability to work and that I am able to move barriers to employees so everyone is able to have full and free employment.

As we move forward to develop prospective employee screening, which is what I want, we need to remember it is not on-the-job screening nor do we want to affect anybody's federal funding, grant opportunities, or create safety issues. Not everybody is going to get their way. You have to come to the table with a clear balance between an employee and their right to work and an employer. The employer is not all-being in this scenario. It is a legal issue. I heard that the employer has the right to decide and that is not necessarily true. If you place yourself in the position of the individual, how would you feel? How we treat the individual usually rises to the top and affects the collective in some form. The injustice usually is laid out in what someone feels with discriminatory practice or a right because the first question that pops up is, I thought it was legal for me to do this so why can I not get a job? I am very open to find the solution, but the solution needs to lead to someone actually being able to find a way to get a job. I appreciate the opposition.

Assemblyman Flores:

A lot of the questions that were raised concern safety. In no way does this bill change the fact that maybe if you hire a person, there may be a random drug test. In no way does this change the requirement or the skill set an employee must have. This bill is only meant to address that individual who says I did not know that a requirement for your job was that I could not smoke marijuana. I smoked it last month. Allow me to go through the interview process and once we form that employee/employer relationship, if you do not want me to drink, smoke, or anything else, I will do that. I did not know that prior to the interview, so give me the opportunity to stop smoking now or stop any conduct I am disallowed to do, so I can go through the vetting process. Whatever practices the employer has in place now, those are already being addressed by NRS 613.333. This is just a prescreening question that we are addressing here.

Chair Spiegel:

I will close the hearing on A.B. 132. Is there any public comment? [There was none.]

The meeting is adjourned [at 3:55 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 132 presented by Assemblyman Edgar Flores, District No. 28.

[Exhibit D](#) is a proposed amendment to Assembly Bill 132 submitted by Paul J. Enos, Chief Executive Officer, Nevada Trucking Association.

[Exhibit E](#) is written testimony presented by Randi Thompson, Nevada State Director, National Federation of Independent Business, regarding Assembly Bill 132.