MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Eightieth Session
April 18, 2019

The Committee on Taxation was called to order by Chair Dina Neal at 4:08 p.m. on Thursday, April 18, 2019, 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 www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Shea Backus
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Lesley E. Cohen
Assemblyman Chris Edwards
Assemblyman Edgar Flores
Assemblyman Gregory T. Hafen II
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblywoman Heidi Swank

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Melanie Young, Executive Director, Department of Taxation
Shellie Hughes, Chief Deputy Executive Director, Executive Division, Department of Taxation
J. Brin Gibson, General Counsel, Office of the Governor
Marla McDade Williams, representing Strategies 360
Jessica Adair, Chief of Staff, Office of the Attorney General
Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General
Michael Hackett, representing Nevada Public Health Association; and Nevada Tobacco Prevention Coalition

Chair Neal:
[Roll was taken and Committee rules and protocol were reviewed.] We have two bills today: Senate Bill 32 (1st Reprint) and Senate Bill 62. I will open the hearing on S.B. 32 (R1).

Senate Bill 32 (1st Reprint): Revises provisions relating to the confidentiality and privilege of certain records and files of the Department of Taxation. (BDR 32-189)

Melanie Young, Executive Director, Department of Taxation:
With me today is Shellie Hughes, my Chief Deputy Executive Director. We are here to present Senate Bill 32 (1st Reprint), which revises the provisions relating to the confidentiality and privilege of certain records and files within the Department of Taxation.

The Department of Taxation is in collaboration with Governor Sisolak in support of this bill, which seeks to increase transparency in the marijuana licensing process. As the new Directors of the Department of Taxation, we understand the strong desire for more information and transparency that has been clearly articulated from many corners. Under Governor Sisolak's leadership, we now have an opportunity to address this issue.

Under current law, information about marijuana applicants and licensing has been strictly confidential. This is the result of merging two statutory and regulatory structures that deal with highly sensitive information—medical marijuana, which necessarily protects patients and providers; and taxation, which protects the financial and proprietary information of Nevada's businesses. This amendment (Exhibit C) would exempt certain information about the licensing process, and licensed applicants and awardees from those restrictions. Specifically, it would allow the Department of Taxation to disclose the identity of applicants for medical- and adult-use licenses; all actions taken with respect to the applications, including how the Department of Taxation scored and ranked those applications; final scores; and the rank of applicants, as well as the names and jurisdictions of licensees including owners, officers, and board members to whom the Department of Taxation has issued a license.

It is my pleasure and commitment to work with the Governor and this legislative body to ensure and continue to increase transparency around the licensing and regulations in this evolving industry. This amendment is a substantial and critical first step. I will now turn it over to Shellie Hughes. She will walk you through S.B. 32 (R1) and this amendment.

Shellie Hughes, Chief Deputy Executive Director, Executive Division, Department of Taxation:
As Director Young indicated, this bill revises provisions relating to the confidentiality and privilege of the records and files of the Department of Taxation. I will walk you through each section of the bill and provide you with a summary of the changes we are requesting.

Currently *Nevada Revised Statutes* (NRS) 360.255 provides what records and files of the Department [Department of Taxation] are confidential and privileged, but it also provides exceptions to what records and files the Department can release. Senate Bill 32 (1st Reprint) adds to the section regarding what records and files are to be confidential, and also provides when those records and files can be disclosed.

In section 1 of S.B. 32 (R1), subsection 1 adds that the processing of a marijuana establishment application for a registration certificate or license, and the records and files regarding the imposition of a disciplinary action are confidential and privileged. In general those items are confidential; however, there will be times when this same information is not confidential and privileged. That brings us to section 1, subsection 2.

Section 1, subsection 2 provides when the records and files of the Department regarding the imposition of a disciplinary action and the processing of marijuana establishment applications are no longer confidential and privileged. Section 1, subsection 2, paragraph (a) allows for the disclosure of records and files to a grand jury. Section 1, subsection 2, paragraph (d) allows for disclosure to state and local law enforcement agencies, or local regulatory agencies, to use in prosecution or criminal, civil or regulatory investigation. Section 1, subsection 2, paragraph (g) allows for the disclosure of the name and address of a licensee who must file a return with the Department to a public office of a local government.

As mentioned, section 1 allows for the records and files of a disciplinary action to be confidential, but S.B. 32 (R1), under section 1, subsection 2, paragraph (k) allows for the disclosure of the identify of a licensee against whom disciplinary action has been taken and the type of disciplinary action imposed against the licensee at any time after a determination, decision, or order of the Department has become final. A determination, decision, or order of the Department has become final if it has not been appealed within 30 days after it is issued. If the matter is appealed, the disclosure of the identity of the licensee and the type of disciplinary action imposed is no longer confidential when that action is affirmed by the Nevada Tax Commission.

Section 1, subsection (2), paragraph (m), allows for the disclosure of (1) the identity of an applicant for a medical marijuana establishment registration certificate or a recreational marijuana establishment license and (2) all actions taken with respect to any applications received by the Department on or after May 1, 2017. To be clear, the Department does not intend to release the applications for marijuana establishment registration certificates or licenses, but this would allow us to release our scoring and evaluation tools that reveal how applicants were scored and ranked in the process. These tools include the methodology used to score and rank applicants, any documentation showing how the methodology was applied, and the final rankings of all applications. Our intent here is to allow for transparency on how marijuana establishment registration certificates and licenses are awarded; however, we also want to ensure that no confidential information will be released so we added section 1, subsection 2, paragraph (m), subparagraphs (1) through (6), which provide the exceptions of disclosure of the scoring evaluation tools. These exceptions include:

- Investigative materials.
- Records, such as building plans, procedures, policies, and other similar documents related to the security or safety of persons or buildings, or cybersecurity.
- Personal information, as defined in NRS 603A.040.
- Trade secret information, as defined in NRS 600A.030, subsection 5 if properly marked in accordance with NRS 600A.032.
- Financial documentation of the applicant or individual owners, including earnings and revenue.
- Information received from law enforcement sources or confidential informants that were assured to be held in confidence.

To give you an example, if one of the scoring criteria was for building security, we would not disclose scoring information or any documents in relation to building security due to the security and safety of persons or buildings. That information would be redacted.

In section 1, subsection 2, paragraph (n), this allows for the disclosure of the name of the licensee and jurisdiction of that licensee, pursuant to NRS Chapters 453A and 453D and the corresponding regulations. In section 1, subsection 5, paragraphs (a) through (c), we add definitions for applicant, disciplinary action, and licensee.

Section 2 of S.B. 32 (R1) adds NRS 360.255 as an exception to NRS 453A.700, which provides what the Department shall not disclose and what items are confidential and privileged, and removes the provisions that prevent the Department from disclosing the contents of any tool used by the Department to evaluate an applicant or affiliate in subsection 1, paragraph (a) of NRS 453A.700. Section 3 provides that these amendments will become effective upon passage and approval. I will turn it back over to Director Young.

Melanie Young:
I want to note that this bill does not have a fiscal note to the Department. I would like to thank you for your time today. This concludes our presentation and we are available for any questions.

Assemblyman Kramer:
In section 1, subsection 2, paragraph (n), I am not sure what that means. When I look at section 1, subsection 2, paragraph (m) it says disclosure of the identity and then section 1, subsection 2, paragraph (n) says the name of the licensee. Are they not the same?

Shellie Hughes:
An applicant can eventually be a licensee, but it is not necessarily true that an applicant will always be a licensee.

Assemblyman Kramer:
You are just covering your bases.

Shellie Hughes:
Correct.

Assemblywoman Swank:
In section 1, subsection 2, paragraph (m), subparagraph (6), as I am reading it we have information received from law enforcement sources, confidential documents or other information. I wanted to be clear that sources is attached to law enforcement—it is only law enforcement sources but it could be other sources of confidential documents and other sources of information. Is that the correct way to read that? It is very different if we are talking about law enforcement sources, law enforcement confidential documents, and law enforcement other information.

Shellie Hughes:
As I read that, I believe law enforcement sources is separate from the confidential documents or other information disclosed to the Department, based on the assurance that that would be held in confidence. It is three separate.

Assemblywoman Swank:
That is how I am reading it too. So whose confidential documents and whose other information are we looking at that the Department is then able to say they hold it in confidence? I feel that it is giving the Department a lot of latitude to say what is confidential. I am wondering where these documents come from, but also on what criteria is the Department going to be deciding that this should be held in confidence.

Shellie Hughes:
I believe that when it says confidential documents and other information disclosed to the Department based on the assurance that the information would be held in confidence, I think

it would relate to a variety of documents. It could be something that we are working on with litigation, and we are not allowed to release certain information based on those litigation documents. I wish I could answer your question a little bit better.

Assemblywoman Swank:
I have some discomfort there because I do feel like this really throws the doors open pretty wide for what could be held in confidence and treated as confidential. Maybe I am wrong and our Legislative Counsel Bureau (LCB) Legal Division can help out with that. But as I read it, it seems like the Department might be really good actors right now, but in 20 years we do not know who will be there and we want to ensure there is not too much leeway given.

Shellie Hughes:
I also would like to point out that some of this language was taken from gaming and the gaming statutes. That is probably where this language came from.

Assemblywoman Swank:
I would be happy to talk about it more and see if we can tighten it up.

Assemblywoman Backus:
I was trying to clarify between section 1 and section 2, putting it in layman's terms to you, to see if I am understanding it correctly. Section 1 talks about the processing and starting a disciplinary action. At that point, the preliminary stages would be deemed confidential and privileged with the limited exception. The difference between section 1 and section 2, is that section 2 would actually be after the application process is completed and those applicants would then be subject to disclosure in some form or another likewise with respect to any disciplinary actions.

Because I am not familiar with the Department of Taxation, would this information be made available on the Internet or just accessible in your office?

Shellie Hughes:
Your understanding is correct as to your section question. I think our intention initially is to make this available upon a public records request, but in certain instances we would make things available on our website, such as the ranking of the applications and that type of information.

Assemblywoman Spiegel:
When you said a lot of the language was taken from gaming, you reminded me of a situation one of my constituents faced. He had applied for a gaming license, his license was denied, and the Gaming Control Board would never tell him why, saying that it was confidential. I think it has been close to 30 years he has been trying to find out why his license was denied. The reason I bring this up here is I would hate to have a provision like this be put in place where somebody would not be able to find out why their application was denied and they would never have an opportunity to remedy whatever was deficient, or at least know what they were up against. Could you speak to that relative to this section?

Shellie Hughes:
When we deny an application for license, it says in regulation that we are to give a reason for the denial. In addition to that, if this bill passes we are releasing our scoring criteria, so that would provide reasons why the applicant was not scored in the top percentage to receive a license.

Assemblywoman Spiegel:
Nevada Revised Statutes (NRS) trumps regulations. Would you be amendable to something that specifically said the reason for an application being denied could not be deemed confidential to the applicants, or words to that effect, so that provision would actually be in statute?

J. Brin Gibson, General Counsel, Office of the Governor:
The impetus to attempt to amend S.B. 32 (R1) is that there are a number of lawsuits out there resulting from the December award of recreational marijuana certificates. There are seven active cases with many plaintiffs who have been consolidated by the good work of the Attorney General's (AG's) Office, and we need a mechanism by which to release information so that a judge—Judge Elizabeth Gonzalez in this case—can make a ruling as to the quality of the process. That is the bottom line.

With the first attempt at the amendment in the Senate, the definition of applicant went to the name of the entity listed on the license application. That was not sufficient for our purposes because we want the judge to be able to look at individuals who are owners, operators, directors, people who are able to influence the outcome or operations of a marijuana business to be disclosed, especially with the ownership piece, so we can see if one LLC [limited liability company] that is awarded a license—we will call him or her individual X—if that same person happens to be in several different entities. There are monopoly provisions in statute. That may not be a strict violation of the monopoly provisions, but it would be good for the public to understand.

In the Governor's Office with tax, as we look at this arrangement, there is a lot of lack of content with the way it happened, and it is impossible to defend because there is no insight into how it happened. We do not know who got the license, except through anecdote and through its induction. You hear that entity X got a license and you piece together a map of entities that got licenses. We know the total number, but we do not know who those people are who own those entities. That is what we are trying to accomplish here.

The LCB Legal Division drafted the language in this amendment (Exhibit C) fairly quickly. There are some things I think we need to fix. For example, in section 1, subsection 2, paragraph (n), I agree with Assemblyman Kramer. I think disclosure of the name of a licensee and the jurisdiction probably needs to be stricken because we do not want any conflict of language. We want to know who these people are.

In section 1, subsection 2, paragraph (m), subparagraph (4) we may want to better identify what "trade secret information" means. There is a definition in NRS 600A.030, but we want to be more explicit as to the application documentation itself. A lot of people who applied submitted their IRS [Internal Revenue Service] tax returns. It is not fair to release that information, so we would want that to remain confidential. We can specify in that section exactly what we mean.

Assemblywoman Cohen:
I know our gaming people talk to gaming people in other states. If someone is looking for a license in another state, they will communicate if they know something about someone who is seeking a gaming license. Is the same thing happening with marijuana, where if someone is seeking a license in Nevada, are we communicating with other states that have legalized marijuana about that person, if they came from that state, or have businesses in that state?

Brin Gibson:
I can speak to gaming. I was the Chief of the Gaming Division for the AG's Office for four years. I just left that job to be General Counsel to Governor Sisolak. There is lots of information sharing that happens in gaming. It is a very different structure. It is far more robust. There were actions that I brought where I was working together with IRS agents and FinCEN [Financial Crimes Enforcement Network], which is a division of the Department of the Treasury. We collectively brought actions against various licensees, foreign corrupt practices actions, which are SEC [U.S. Securities and Exchange Commission] actions. So there is lots of information sharing that happens in the gaming space. I will let the experts from the Department of Taxation speak to this. They probably do background checks—FBI, NCIC [National Crime Information Center]—just traditional criminal database checks. My guess is that this is a new enough industry; I doubt there is much information sharing.

Melanie Young:
We do communicate with other states, but when it comes to licensing it is based on the merit of the application when we issue a license.

Assemblywoman Cohen:
The way you said that confuses me. You communicate, but it is based on the merit of the license. If something comes back from another state that raises a concern with a person, does that go toward the merit of the license?

Melanie Young:
We do communicate with other states, but when it comes to licensing, we do not. When it comes to the application, we base the application solely on the merit of application and that is outlined in regulation. As Mr. Gibson said, we do background investigations through fingerprint-based background checks to determine the criminal history of the licensees—owners, officers, board members, and key personnel.

Brin Gibson:
Senate Bill 32 (1st Reprint) is legislation that will be statutory if it is passed. I think there are a few tweaks that need to be done to it, but it is not the final product. As General Counsel to the Governor, he has asked me to help put together a Cannabis Compliance Board that would be an independent board structured like gaming. Those kinds of things, like information sharing and agreements between the various jurisdictions, that would evolve over time. Right now, especially with the different constructs you have in different states, information sharing would be fairly difficult. The problem with the entire structure is it is all confidential. We do not know when there is discipline. We do not see it until it is done. I might see a fine that is levied against a licensee, but the whole purpose, and the Cannabis Compliance Board is a separate discussion, would be to make this disciplinary process a public process. The issues with discipline right now, confidentiality and everything else, will hopefully be remedied over time with a new structure that is much more robust—a different type of regulatory structure.

Assemblywoman Benitez-Thompson:
I appreciate what you are saying, that there is a bigger picture and there is more to come on this issue. Depending on how things go, I have never seen an instance where there has been confidentiality awarded and then taken back. I have seen things go into being outside of the public sphere and that is where it lives in perpetuity. That is why there are pieces of this I think we need to be more diligent about, because once it goes into that black hole, nothing ever comes out of there. That has been my experience.

Brin Gibson:
There is a subsection in NRS Chapter 360 of Title 32 - Revenue and Taxation that makes certain tax documents confidential. The primary confidentiality provision is found in regulation. Frankly, under the NPRA [Nevada Public Records Act], NRS Chapter 241 notwithstanding the regulation, the intent of the confidentiality provision was to keep health information confidential. You have heard from the press, from others who have argued that same point. The legal determination about that regulation and the promulgation of that regulation I think were frankly a mistake in the context of, especially, recreational marijuana. Of course the health information needs to be maintained confidential. I do not think there are legitimate legal challenges that will be brought if this information is publicized. We are talking about scoring, privileged licenses; we are talking about things that at the federal level, we still have the CSA [Controlled Substance Act]. So I think there are plenty of defenses against any kind of challenge on that basis.

Assemblyman Flores:
I was going to try to take the dialogue in that direction—the confidentiality component to all of this. We are in such a new area and because there is this constant concern of state versus federal, we realized we have a responsibility to protect those who are investing in such a difficult world where we are not fully in control. In the vetting process of this bill, we have gone down that road of saying we want to ensure we are still able to instill confidence in people who are putting so much of their money and resources into such an unsecure world until we can resolve it at the federal level. I am sure you have done your due diligence,

and I would not suggest that you have not. Could you give us some insight into those conversations, if they have existed, that you are comfortable sharing—to where we are not doing anything today, or after this bill passes, and we have the industry coming to us and saying this is incredibly problematic. Any insight you may have as to that would be helpful.

Brin Gibson:
As the Governor has made clear, and as I have seen and many of you have probably heard, there is a lot of distrust that surrounds this latest award of certificates. We are not going to be able to legitimize that process. We just cannot if we do not have more information. If people in this space want to maintain confidentiality because they are concerned about federal prosecution, even though the memoranda of priorities from the federal government have essentially been revoked, I still think the priority is control. I am not overly concerned about legal marijuana operations in a strongly regulated space. I would say that I do not think you can have it both ways. I think if we are going to, as a state, argue states' rights, we are going to argue that we can legitimately do this. That is our legal argument if we were challenged. I think we have to act like that, and it requires that we not invoke a cloak of confidentiality to protect people and their names from whatever their fear is, while at the same time making the argument that this is a legitimate operation.

Chair Neal:
In section 1, subsection 2, paragraph (m), subparagraph (1), [S.B. 32 (R1)] I know this was discussed and falls under "shall not disclose," but in regard to the statement about disclosure that would likely prejudice the effectiveness of law enforcement operations, what is the balancing test envisioned to be used? I assume it is the Department of Taxation that is going to make that determination. How do you know it is prejudicial—with what category it falls into? It would be the same question related to jeopardizing public safety, which is the continuation under section 1, subsection 2, paragraph (m), subparagraph (2).

Brin Gibson:
I think the information that has been outlined, that will be released—the names of the licensees, including the names of the applicants, names of the owners, officers, and board members—I do not think their scores are prejudicial. I think that would be a very difficult argument that that would prejudice a law enforcement investigation. Assuming that there are such investigations going on, if there were files that were being kept by the Department of Taxation that dealt with unpaid revenue, things like that, that might be information that might fall into that category.

These consolidated cases in front of Clark County District Judge Elizabeth Gonzalez, as she looks at and review the quality and the process of awarding the certificates, I do not think that is material.

Chair Neal:
In section 1, subsection 2, paragraph (m), subparagraph (5)—still under "shall not disclose"—the word finances. I want you to put intent on the record about what you mean to include. Is that any kind of budget document? What is finance in your world, that you are limiting this from disclosure?

Melanie Young:
When we are looking at the finances, a part of the application process was that they have a level of liquid resources to be able to operate in that space. What we do not want to do is disclose the scoring criteria that would identify that information of an applicant.

Chair Neal:
So everything that relates to scoring, you are going to redact that information from public view?

Melanie Young:
That is correct.

Chair Neal:
Section 1, subsection 2, paragraph (m), subparagraph (4), is trade secret information. Since trade secret was not in the application in the way that it reads, how do we allow individuals to go back and say this was a trade secret, but since you never asked me what it was, I did not indicate it on the application because I could not. But now there are some things that maybe you see as trade secrets that I do not.

Brin Gibson:
This came back from the LCB Legal Division in a different form than was submitted. I agree with you. What I am thinking about is the composition of a particular cannabis product—How much CBD [cannabidiol]? How much THC [tetrahydrocannabinol]? I think that is trade secret information. We cannot retroactively require stamping of confidentiality or trade secret onto a document. It should read "Trade secret information, as defined in subsection 5 of NRS 600A.030"—with the rest stricken.

Chair Neal:
Members, are there any additional questions? [There were none.] We will move to those wishing to testify in support of S.B. 32 (R1).

Marla McDade Williams, representing Strategies 360:
We do support the Department of Taxation's bill to disclose the names of applicants, the scores, and the scoring tool. We support the Department in releasing material that is related to the processing of applications, not the components of the applicants. As you discussed, when the applications were submitted we had the understanding the information in them would be kept in confidence because they included components related to the operation of the businesses. Because that information was submitted with that protection of confidentiality, identifying information as a trade secret was not done, as you just discussed.

Although we have full trust in the custodian of the records identified in the measure, we would offer to participate in the review of the information before it is released, or to retroactively identify items as trade secrets if needed. In closing, we support S.B. 32 (R1) and trust that these changes will benefit the Department of Taxation and the state.

Chair Neal:
Members, are there any questions? [There were none.] We will move to those in opposition of S.B. 32 (R1). [There was no one.] Is there anyone who would like to testify as neutral on S.B. 32 (R1)? [There was no one.] There are no closing remarks. I will close the hearing on S.B. 32 (R1) and open the hearing on Senate Bill 62.

Senate Bill 62: Revises provisions relating to manufacturers and wholesale dealers of tobacco products. (BDR 32-424)

Jessica Adair, Chief of Staff, Office of the Attorney General:
I am here to present testimony in support of Senate Bill 62. With me today is Supervising Senior Deputy Attorney General Hillary Bunker, who oversees our tobacco unit. Senate Bill 62 revises *Nevada Revised Statutes* (NRS) Chapter 370, which regulates the manufacture and sale of tobacco products in Nevada. By way of brief introduction, in 1998 Nevada entered into the Tobacco Master Settlement Agreement (MSA), which resolved health-related lawsuits between the nation's largest tobacco manufacturers and fifty-two U.S. states and territories. In exchange for the receipt of annual MSA payments, the state of Nevada must demonstrate diligence in the regulation and enforcement of the manufacture and sale of tobacco products in our state. Senate Bill 62 is brought for your consideration in furtherance of our diligent enforcement efforts. I will turn it over to Ms. Bunker to provide you further background on the MSA and walk you through the particulars of the bill.

Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General:
I have a brief PowerPoint presentation that is an overview of the MSA. As Ms. Adair mentioned, there were several states that sued tobacco manufacturers in the late 1990s to recover Medicaid costs and other damages related to health care [page 2, (Exhibit D)], and 1998 is when the MSA was signed by 46 states; Washington, D.C.; five territories; and various tobacco companies. I have bolded and underlined the question we get asked most frequently: When does the MSA end? There is no end date. There is no sunset provision. As long as traditional cigarettes are sold, the MSA continues.

The terms of the MSA included restrictions placed on tobacco companies where there was a focus on youth smoking. They were prohibited from targeting youth, using cartoons, even brand-name sponsorships at events that were popular with youth; overall advertising and sponsorship limitations. States that signed the MSA in turn agreed they would release the tobacco manufacturers from claims they would have had against them. On the flip side,

the tobacco companies would make yearly payments to the signatory states [page 3, (Exhibit D)]. The original tobacco companies that signed the MSA were Philip Morris, R.J. Reynolds, Lorillard, and Brown and Williamson. Since that 1998 signing, about 40 other manufacturers have signed on to the MSA [page 4, (Exhibit D)].

For Nevada, we get a 0.6 percent share of the MSA, and possibly for the first time ever, while I am testifying, the money came in today. The State Treasurer's Office has confirmed they got the payment. We sit roughly at about $40 million. Per statute, 40 percent of that goes to the Governor Guinn Millennium Scholarship Program and 60 percent goes to the Fund for a Healthy Nevada. The only other costs that are taken out of that are enforcement of the MSA, a few positions at the Attorney General's (AG's) Office, and a couple of positions at the Department of Taxation [page 5, (Exhibit D)].

There are a lot of companies that signed on to the MSA and make these annual payments, but there are also many companies that did not sign on to the MSA that still manufacture cigarettes. These tobacco companies that did not sign the MSA, we refer to as nonparticipating manufacturers (NPMs). They do not make annual payments to the state but do have their activity regulated by statute. They make payments every quarter that are kept in an escrow account that is returned to them [page 6, (Exhibit D)].

There has been recent and ongoing arbitration between states and tobacco companies, and it is reinforced that we must be diligently enforcing the terms of the MSA. If we are found to have not diligently enforced the MSA, then the state can lose up to its entire MSA payment for the year in question [page 7, (Exhibit D)]. Some of the factors that are looked at for diligent enforcement include how well the Department of Taxation and the AG's Office work together; having reliable figures that are submitted by wholesale dealers and NPMs; and the resources allocated to enforcement, legislation, and working with any sort of trade organizations.

Our tobacco enforcement unit and the Department of Taxation's unit enforce the MSA. We make sure all tobacco companies active in the state follow all policies, regulations, and laws. Our unit at the AG's Office also oversees the youth compliance program for Nevada—where the undercover stings are performed on retailers to see if tobacco sales will be made to minors. We regularly work with and represent the Department of Taxation on tobacco-related issues [page 8, (Exhibit D)]. That is it for the MSA background. I have listed my contact information on page 9. I can either answer questions or give testimony on S.B. 62.

Assemblywoman Cohen:
In reading the bill, I am somewhat confused about the escrow account with the money going back to the NPMs. Why are we taking it if we are giving the money back?

Hillary Bunker:
It is meant to level the playing field. You have some manufacturers that make the payments through the MSA—like the ones we received today—and then you have this whole subset of

manufacturers. To ensure that these manufacturers are not selling cigarettes at a far lower cost and dominating the market, what was set out in statute is these tobacco companies open an escrow account. Although we gave up that ability to sue those companies that signed the MSA, we do have that ability to sue an NPM. The money that is in the escrow accounts can be used to satisfy those judgments.

Assemblywoman Spiegel:
My question is about the 0.6 percent share of the MSA we receive. Is that because of our population relative to the overall population at the time the MSA was reached, or is there some other reason?

Hillary Bunker:
The 0.6 percent is set out in the MSA, so whatever percentage every state gets is attached as an exhibit to the MSA that was made in 1998. The biggest factor they looked at was how active your state was and how active your state was in any sort of litigation before the MSA—was your state pursuing judgments against tobacco manufacturers; did you have any pending litigation; and what was your role as the MSA was going on. That amount will not change. It is based more on what the landscape looked like in 1998 and the activities of the states.

Assemblyman Kramer:
I do not understand the complete definition of "style" in this context.

Hillary Bunker:
That has been the biggest question we have gotten on the bill—what does "style" mean. The examples we use are Camel is a brand family of cigarettes, but Camel Silver is a style of cigarettes; Camel Crush is a style of cigarettes. Marlboro is a brand family of cigarettes, but Marlboro Red is a style of cigarettes; Marlboro Black is a style of cigarettes. You have a brand family and then you have the different colors, menthol, nonmenthol—those are all considered styles. It does not pick up any sort of electronic cigarettes. It is not picking up anything outside of the combustible tobacco world. It is just different examples of styles of cigarettes within a brand family.

Chair Neal:
I am confused about the styles of cigarettes having actually changed. Your description is how they have commonly looked. When you look at a cigarette display behind the cashier, you have all these different styles. Why was this not already captured?

Hillary Bunker:
This is a two-part answer. Yes, styles have changed. You used to see light cigarettes, but now you do not. They are not allowed under law, so you would never see light cigarettes. A lot of what the companies have done is gone by style. So it still might be the same cigarettes, but it is going to be captured by color versus the light definition.

Some states are certified by style and some states are certified by brand. What we have found in Nevada is with the different agencies involved in tobacco enforcement, we are doing both. We would like everybody to be on the same page. Currently, to get on our directory to sell cigarettes, we would say all you have to certify would be Marlboro or Camel, but when you look at what the Nevada Fire Marshal is doing, he is looking at every style—ensuring every style actually self-extinguishes when it is tested in a lab. We realized that when we post a tobacco directory, we are showing what can be sold not only by brand family but by brand style, and what has been certified by the Nevada Fire Marshal, when our law just says by brand.

When we started looking at other states, we noticed some are certifying everything and creating a directory that reflects that. What we would like to do is make our directory and our certifications match what we are already doing in practice.

Chair Neal:
I want to go back to your slide on the NPMs [page 6, (Exhibit D)]. If they are not party to the MSA, how are you able to regulate them? In the revisions to the bill, it seems like this part of section 6 is allowing you to impose certain civil penalties. I want you to give us a deeper dive into the NPMs and how you can do that if they are not a party to the MSA.

Hillary Bunker:
Correct. You have a subset of manufacturers that did not sign the MSA. There was model legislation included in the MSA as an exhibit, and I believe at this point all states have adopted that. An example you pointed out in section 6 is civil penalties. What we have the authority to do in Nevada is say NPMs have to certify with us annually. They must establish an escrow account at an appropriate bank that has a certain threshold of savings. We must approve their escrow agreement. They must tell us every quarter what they have sold in cigarettes and make an escrow payment that matches that. What we are enforcing against the NPMs is found in NRS Chapter 370A, so we have set it up in statute. The majority of what we have in statute was adopted from model legislation from the MSA.

Jessica Adair:
Our bill is striking the word "nonparticipating." We already have the statutory authority to regulate NPMs. We are striking that, so it is all manufacturers. Hopefully that is helpful.

Chair Neal:
When did we adopt the model legislation in our state?

Hillary Bunker:
My guess would be shortly after the MSA was signed, so maybe the 1999 Session.

Chair Neal:
What I am hearing you say is the model legislation in 1999 allowed you to pick up these NPMs, so why now, in section 6, in 2019, are we carving them out?

Hillary Bunker:
We potentially made this more confusing than we should have. The way statute reads is that the AG's Office could assess penalties against NPMs, which is something that we use. If they did not file an annual certification, we could assess a penalty against them. We are limited in that we cannot assess the same civil penalty against a participating manufacturer, so anyone who has signed the MSA, if they decided they were going to file their certification 45 days late, we did not have the same penalties we could go after. A less confusing way may have been to remove the word "nonparticipating;" we just use "and participating." We were attempting to capture everyone. I can see when you read that it seems like we are now excluding people when by excluding one we are now including two, but it just does not read that way.

Chair Neal:
I am happy you are the main individual who has been working on this for a series of years and you can explain how you are moving to create equity. Why were you not able to penalize the participants? They were part of the MSA, so technically they were the ones bound under the law versus excluded. Why were they not able to be penalized and their licenses suspended for noncompliance?

Hillary Bunker:
We asked that question sitting in our offices last year about this time: Why were participating manufacturers excluded? We did not receive any opposition in the Senate. We spoke with local lobbyists for the participating manufacturers and there was no opposition presented. I am not sure if it was an oversight in the original law, or if someone thought they were writing something that was clear and down the road it turned out it was not.

Chair Neal:
What have we not asked a question about that you have potentially explained to us?

Hillary Bunker:
I am glancing at my testimony to see if I missed anything. We covered styles and giving examples of what styles were. I explained that the Nevada Fire Marshal certifies by style, and what we are doing throughout the bill is amending multiple sections so we do not just talk about brand families. Again, it just gives us the ability to more accurately monitor all the cigarettes that are being sold in the state. Section 1 is amending a contraband definition to add in style versus brand, with the same thing in sections 2 through 4. We are just breaking it down to that next sublevel. I believe we talked about section 6—the enforcement. That one is not so much styles as all manufacturers, and that is our goal—to pick up all manufacturers so we have the ability to penalize.

Chair Neal:
For the education of the Committee—the individuals who will be here well after me and probably looking at you in 2021—explain the significance of the stamp and how it matters because it drives a penalty. Help the Committee understand what a stamp is and why it matters.

Hillary Bunker:
On cigarettes there is an actual stamp that is applied to the bottom of the pack of cigarettes. It is a $1.80 tax that is paid. You do not have a stamp on cigars, pipe tobacco, or chew. Like you are saying, that is the important part. When wholesale dealers buy these stamps, that is when they are paying the tax. As soon as the stamps come into their possession on a big commercial roll, the tax is paid to the Department of Taxation and there is a physical stamp that is applied to the bottom of every single pack of cigarettes. Any time you see a pack of cigarettes, there will be a stamp on the bottom. Every state has its own stamp. The tribal stamps look different than the nontribal stamps. That is going to imply to you that tax has been paid. Our investigators, or an investigator for the Department of Taxation, would know it is an issue if there is no tax stamp on it. That is a red flag.

Chair Neal:
We will now hear from those who would like to testify in support of S.B. 62.

Michael Hackett, representing Nevada Public Health Association; and Nevada Tobacco Prevention Coalition:
I am here in support of the bill for both organizations. We appreciate the AG's Office and Ms. Bunker's oversight of the Tobacco MSA. As has been mentioned in previous sessions, MSA dollars are the sole funding source for the Fund for a Healthy Nevada, which in turn funds a lot of very important public health programs, including programs for tobacco prevention and control. For those reasons we are here in support of the bill today.

Chair Neal:
Is there anyone else who would like to testify in support of S.B. 62, here or in Las Vegas? [There was no one.] Is there anyone who would like to testify in opposition of S.B. 62? [There was no one.] Is there anyone who would like to testify neutral on S.B. 62? [There was no one.] There are no closing remarks. I will close the hearing on S.B. 62 and open the hearing for public comment. Is anyone here for public comment, either here or in Las Vegas? [There was no one.] We are adjourned [at 5:10 p.m.].

RESPECTFULLY SUBMITTED:

_____
Gina Hall
Committee Secretary

APPROVED BY:

_____
Assemblywoman Dina Neal, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is an amendment to Senate Bill 32 (1st Reprint), dated April 4, 2019, submitted by Melanie Young, Executive Director, Department of Taxation.

Exhibit D is a copy of a PowerPoint presentation titled "Introduction to the Master Settlement Agreement," presented by Hillary A. Bunker, Supervising Senior Deputy Attorney General, Business and Taxation Division, Tobacco Enforcement Unit, Office of the Attorney General.