

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-First Session
February 16, 2021**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:08 a.m. on Tuesday, February 16, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Jordan Carlson, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Jessica Adair, Chief of Staff, Office of the Attorney General
Hillary A. Bunker, Senior Deputy Attorney General, Tobacco Enforcement Unit,
Office of the Attorney General
Lesley Pittman, representing Juul Labs, Inc.
Thomas McCoy, representing Nevada Tobacco Prevention Coalition
Bradley Mayer, representing Southern Nevada Health District
Caitlin Gatchalian, Nevada Director, Government Relations, American Heart
Association
Jessica Ferrato, representing Preventing Tobacco Addiction Foundation
Peter Krueger, representing Cigar Association of America
Marcos Lopez, representing Americans for Prosperity Nevada
Joelle Gutman Dodson, representing Washoe County Health District
Susan Fisher, representing American Cancer Society Cancer Action Network
Bryan Bedera, representing Nevada Vaping Association
Kyle E.N. George, First Assistant Attorney General, Office of the Attorney General
James Kemp, representing Nevada Justice Association
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Yeager:

[Roll was called and Committee protocol was explained.] The agenda today, as you will note, has two bills on it. They are both going to be presented by the Office of the Attorney General (OAG). I do intend to take them in order. At this time, I am going to open up the hearing on Assembly Bill 59.

I believe as part of this bill presentation, we are going to hear a little bit of background information about the Master Tobacco Settlement Agreement since this bill deals with tobacco. I want to welcome from the OAG, Mr. George, Ms. Adair, and Ms. Hillary Bunker as well, who are joining us. What we will do is give you a chance to make your presentation on the bill. I will let members know before we get started that if you have not had a chance to look at the Nevada Electronic Legislative Information System (NELIS), there is a proposed amendment to a couple of parts of the bill that is on NELIS as well. That amendment comes from the OAG, so I am sure they will go through that in the presentation. When they have finished with their presentation, we will open it up for questions as normal.

Welcome to the Committee, and whoever would like to start first on Assembly Bill 59, please go ahead.

Assembly Bill 59: Revises various provisions relating to tobacco. (BDR 15-420)

Jessica Adair, Chief of Staff, Office of the Attorney General:

I am here on behalf of Attorney General Aaron Ford to present testimony in support of Assembly Bill 59. With me here today is First Assistant Attorney General Kyle George, and joining us from a separate screen is the supervising Senior Deputy Attorney General, Hillary Bunker; Ms. Bunker oversees our Tobacco Enforcement Unit. Here is a brief introduction. In 1998, Nevada introduced the Tobacco Master Settlement Agreement (MSA), which resolved health-related lawsuits between the nation's largest tobacco manufacturers and 52 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 in the sale of tobacco products in our state. Assembly Bill 59 is for your consideration and the furtherance of our diligent enforcement efforts. I will now turn this over to Senior Deputy Attorney General Hillary Bunker, who will provide further background on the MSA and then go through the particulars of the bill.

Hillary A. Bunker, Senior Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General:

As you are all aware, the Office of the Attorney General (OAG) regularly submits bills related to tobacco enforcement. As mentioned, our office is tasked with diligent enforcement of the MSA and the consequences of not diligently enforcing it, which is determined on an annual, ongoing basis. Not having strong enforcement statutes puts our entire MSA payment at risk. Following signature of the MSA in 1998, the tobacco companies arbitrated against these states that had signed on to determine if they had been diligent in their enforcement efforts. As a result of this arbitration, Nevada signed a separate settlement agreement with over 30 other states and various tobacco companies concerning our diligent enforcement for the years 2003 through 2022. By entering into this settlement agreement, the state did not have to participate in arbitration proceedings to determine our diligence in enforcing the MSA for those years. However, this is only for the years referenced and as mentioned, there is no sunset provision for the MSA. So, the questions of diligence have to be determined every year. The term diligent enforcement is not defined in the MSA. But one of the factors considered in determining diligence is whether the state enacts legislation towards strengthening their enforcement efforts. One of the sections is including online sales which is most relevant to this bill.

With that being said, I am going to go ahead and do a recap of each of the sections. The main focus of this bill is to amend various sections of *Nevada Revised Statutes* (NRS) Chapters 202 and 370 to raise the legal sales age of tobacco to 21. It is currently at 18. In December of 2019, federal law changed to raise the legal sales age of all tobacco products to 21. States have three years to enforce Tobacco 21, or "T21" as it is commonly known, or they risk losing up to 10 percent of their federal block grant funding. Currently there are 33 states that have raised their legal sales age to 21 in addition to numerous localities.

Section 1 of Assembly Bill 59 relates to someone selling loose cigarettes or open packages of tobacco products. Currently the penalty is a criminal misdemeanor. This change will allow the penalties to be handled like other violations of NRS Chapter 370. Section 1 contemplates adjusting the notice that retailers must display to account for raising the legal sales age from 18 to 21.

Section 2 updates the provisions related to online or telephonic sales of tobacco products and, again, also raises the legal sales age from 18 to 21. It also eliminates the current criminal penalty provided for in law. Section 2 is also the subject of our amendment [[Exhibit C](#)] and we believe that this is needed for two reasons, the first being so that the tobacco industry is aware of requirements that must be completed and complied with before a non-face-to-face sale is made; and second, so that the state has a clear path for enforcement and penalties if those sales are made and they do not comply with law. As you can see in the amendment, this includes civil penalties as well as categorizing any failure to comply with this law as a deceptive trade practice under NRS Chapter 598. That is the topic of the amendment; it is just for section 2.

Section 3 of our bill provides the state's enforcement authority to conduct inspections and also raises the legal age from 18 to 21. References to the word "child" have been replaced with the word "person" and this accounts for the age change. Sections 4 and 6 are related to delivery sales and they both broaden that definition so that all tobacco products are captured, whereas currently only cigarettes are captured. Additionally, section 6 cross-references NRS Chapter 202, which contains the requirements for selling online through an electronic network. It also contemplates civil penalties for violation of the law. Section 7 removes reference to NRS 370.323, as the statute is repealed in this bill. Similarly, section 9 notes that NRS 370.323 has been repealed, as it actually only contemplated online sales of cigarettes and was in conflict with other provisions of NRS Chapter 202.

Although section 8 is quite extensive, this is the statute that we use primarily for enforcement of not selling tobacco products to minors. Again, the changes are almost exclusively changing the age of sale from 18 to 21. There is a slight change in how a clerk or retailer can contest or pay their penalty; it changes it from the Department of Taxation to the State of Nevada. That will allow for greater flexibility in processing those payments. Currently in Nevada you cannot sell almost any tobacco product to someone under the age of 18. Section 5 amends the definition of "other tobacco products" in NRS Chapter 370 to include products derived from tobacco, which are currently not captured. This is also the section that triggers the two-thirds majority vote, as the subset of products will now be captured under the excise tax requirements.

Lastly, section 10 is the effective date raising the legal sales age to 21 upon passage and allowing until a July 1, 2021, effective date for that provision just discussed, which is taxing products derived from tobacco to allow the industry additional time to capture these products on reports and comply with the law as far as taxation or reporting of them.

Chairman Yeager:

I know I have some questions from members, but I have a couple I want to ask about while they are fresh on my mind. The first one deals with the proposed amended language, which you talked about. I am wondering, for the online sales of tobacco or tobacco-related products to ultimate consumers, who is allowed in the state to sell online? Is that open to everybody or is this really meant to apply to manufacturers? I am trying to get a sense of how broadly this applies and how prolific online sales of tobacco-related products are in the state.

Hillary Bunker:

Anyone can sell into the state of Nevada with the proper licensure from the Department of Taxation and remitting the proper excise taxation. It is meant to capture those who can otherwise legally sell to ensure that they are also doing the age verification side that would go with it, to verify that the consumers are who they say they are.

Chairman Yeager:

As a follow-up to that, you had indicated that anybody can sell into the state of Nevada, but there was some administrative work that they need to do with the Department of Taxation. So if somebody violates these provisions, I am assuming that the state would have jurisdiction to potentially administer civil and criminal penalties because of that agreement that the entity has with the Department of Taxation. Otherwise, I guess, I am a little confused. If someone is in another state and selling into the state of Nevada, are we going to have a jurisdictional issue in trying to hold those people accountable, or do you have agreements with other attorneys general where there are ways to get at those actors?

Hillary Bunker:

That is correct. By the same way that someone would be treated in-state for not remitting taxation or not obtaining a license first, the Department and the state as a whole have the ability to pursue civil penalties for anyone who does not comply with the law. We feel the amendment really gives us a better enforcement opportunity. We have talked to other states and we have also been in touch with our own Bureau of Consumer Protection within the OAG to see how they are handling some of the issues that may be analogous to this with out-of-state players. In speaking with other states and our own internal unit, that is what feels like the best bet is going to be, if we can capture this as a deceptive trade practice. If you have someone who is not verifying age and not complying with the law, then it is a different enforcement mechanism that would have more teeth than the issuance of civil penalties.

Chairman Yeager:

The last question I have before I open it up for others is section 7, which you highlighted. I know that a lot of this is existing language, but the category C felony obviously piqued my interest. I wondered if you have any information about that section 7 charge. Has that been used against folks in the state as long as you have been in this role? Or is this not something that happens on a regular basis, but we want to have the penalty there just in case?

Hillary Bunker:

I have not seen the category C felony be issued. Traditionally, the Department or the OAG is going to start with a civil penalty first before there is discussion of a felony charge.

Chairman Yeager:

We are going to start with Assemblywoman Bilbray-Axelrod and then Assemblyman Wheeler, and I am sure we will have more after that, so please go ahead.

Assemblywoman Bilbray-Axelrod:

Section 1 outlines that punishment is provided in NRS Chapter 370. I did go to NRS Chapter 370 and I was having a difficult time trying to find where that laid out exactly what the punishment would be. I was wondering if you could give us an idea of what that would do exactly.

Hillary Bunker:

There are two separate civil penalty provisions that either the Department of Taxation or the OAG relies on. One is found in NRS 370.696 and one is found in NRS 370.523. Both of those are monetary violations with \$1,000 being the initial civil penalty.

Assemblywoman Bilbray-Axelrod:

I want to make sure I get this right. So, \$1,000 would be the minimum. If someone were caught giving a cigarette to someone under 21 or selling a single cigarette to someone under 21, the minimum fine is \$1,000?

Hillary Bunker:

It could be captured for people under 21 but it could also be captured for people over 21. I would categorize section 1 as a focus on selling open cigarettes as opposed to an age focus. The civil penalties for selling to a minor, or if this is amended to someone under 21, are handled in a slightly different fashion.

Assemblywoman Bilbray-Axelrod:

Could you explain that difference?

Hillary Bunker:

The ones that we rely on traditionally in the penalty structure—and it is in our bill—would be found in section 8, which is NRS 370.521. That penalty structure is not changing from what was adopted in the 2019 Session, and specifically it is in section 8, subsection 4. For a clerk, the civil penalty starts at \$100 and goes up to \$500 if multiple sales are made in two years. Similarly, for a retailer, they receive two warnings for the first two sales and then their penalty starts at \$500.

Assemblywoman Bilbray-Axelrod:

I want to make sure that I am clear. Selling a single cigarette or giving away a single cigarette to someone who is not a minor is a \$1,000 fine. But selling to a minor is a \$100 fine? I am sure my wires are crossed here, so if you could just explain that.

Hillary Bunker:

No, that is the correct penalty structure.

Jessica Adair:

If I may follow up, in 2019 we did an extensive restructuring of these penalties to remove criminal penalties for clerks who had previously suffered criminal penalties for selling to folks who were underage. We felt that was an inappropriate use of the criminal justice system and so we changed that to a civil penalty structure. Additionally, the warning to the retailers was that new addition in the bill that we passed last session. Previously retailers did not have any penalties. The penalty only went to the clerk of the retail store. We felt like that did not appropriately address a larger issue of training at the retail establishment. I just wanted to give the background on that structure, as it has changed recently.

Assemblyman Wheeler:

Let me preface by saying that both Assemblywoman Hardy and I put a similar bill forward in the last session. It just did not quite make it due to time constraints. Overall, I think the purpose of this bill is good. But I see some things in here that I just do not get, such as someone being guilty of a category C felony for selling cigarettes and then having a felony record for the rest of their life. But even beyond that, my question is on section 8, subsection 3. The way I read that is, say someone works in a store and they are under 21 years old; they would not be able to legally sell cigarettes over the counter to someone who is 60 or 70 years old. Is that correct?

Hillary Bunker:

No, that is not correct. The correct reading is so that someone can work in a convenience store, can handle cigarettes over the course of their employment, even if they are under 21. Currently we have that exception for people under the age of 18, and what we have done is raise that so people under the age of 21 can continue to work and handle those products over the course of their employment.

Assemblyman Wheeler:

Okay, so I am reading it backwards. I will start from section 9 and read back to section 8 next time.

Jessica Adair:

Just to clarify Assemblyman Wheeler's first remark about the category C felony: that is existing law, that is not what we are proposing to add in this bill. I just wanted to make sure that was on the record.

Assemblywoman Cohen:

I hope I did not miss this because I was wrapped up in reading through the amendment during the presentation. What are we going to do to help those already legal smokers who are 18, 19, and 20 who may have been smoking for years but legally smoking for only several months? What are we doing to help them, because now we have taken something that they are addicted to and are making it illegal.

Hillary Bunker:

Unfortunately, I would say that this is outside my wheelhouse in terms of handling and working with adult smokers who are looking to quit. Unfortunately, I do not have an answer for you on that. I know there are programs available at the county and state levels, but I do not have enough information to speak to that.

Jessica Adair:

While Ms. Bunker is correct that our office does not run any cessation programs, I would note that federal law has already put those smokers in an uncomfortable position. Additionally, the MSA payments that our state receives go partly to our office for enforcement efforts, but also to the Department of Health and Human Services for programs for public health, for cessation of tobacco. While those are not run by our office, I am happy to reach out to the Department of Health and Human Services for more information.

Assemblywoman Cohen:

I appreciate that because while I do not want them smoking and I feel like this is a good opportunity for them to stop and hopefully save their lives in the future, I do not like turning them into doing something illegal that they have been doing legally until now.

Chairman Yeager:

Are there other questions?

Assemblywoman Hansen:

My question is that the bill makes it illegal to sell products to minors via the Internet. How will you enforce that? How is that done at all?

Hillary Bunker:

What we envision with this, and again, the way the amendment is structured, is that we have an investigations unit through our office that has the ability to perform online stings and make sure that these requirements are complied with. The intention is that minors, or anyone under 21, will not have access to these products online. We can verify this by having someone over the age of 21 attempt to purchase these products online to see if there actually is an age verification check. We would be looking for an actual age certification that should have been sent when the investigator placed the order. In the same way that it should be for someone over 21, it should also apply to someone under 21. We envision working this through our tobacco investigations unit, which has the ability to perform any sort of online purchase.

Assemblywoman Hansen:

Does Nevada conduct law enforcement on e-commerce for those under 18 and how is that going, if we do?

Hillary Bunker:

The online stings and Internet purchases that our investigators are making currently are for people over the age of 18. One of the issues we see with the way the current law is written is that it is against the law to sell online to someone under 18, but there is not a penalty provision written into that statute. It is very unclear and more difficult to enforce where there is not a penalty written in. There is an age verification portion, but there is no penalty if you do not comply with it. That is one of the changes we are making this session; that is to leave the foundation of what was accomplished in 2019 but add in an actual penalty provision so that it is clear both for industry selling into the state and then on the state side, on what the enforcement and penalty would be.

Assemblywoman Kasama:

I am curious about the online sellers. Are they requiring that a person upload a driver's license? How do they do that?

Hillary Bunker:

The way the statute is written right now, it would either require someone to create an account and put in their name, address, and social security number; or upload a copy of a government ID. The way this is going to be changed is to simply make it to where the seller has to attain the name, date of birth, address, and perform the age verification. We have removed allowing an online seller to say they are doing something if they are not. It is through an independent, third-party age verification system. It is my understanding that people in the industry are very familiar with this and use these if they are in an online marketplace. This is something that is common practice to verify that who you are selling to is who actually placed the order.

Assemblyman Miller:

My question is a follow-up to Assemblywoman Cohen's question about the young people who are in the in-between stage, those between 18 and 21, who would essentially be breaking the law once this is passed. Is there the ability to incorporate some type of amnesty into the bill to cover these young people during this transition?

Hillary Bunker:

That is a great question. Before December 2019, which is when the federal law changed, we saw states doing things like putting in grandfather provisions for 18-, 19-, and 20-year-olds or making exceptions for military members or tribal members. I would say all that changed when the federal law changed because when that passed, there was no grandfather status built in for 18-, 19-, and 20-year-olds and there were no exceptions for military or tribal members. We are coming in line with what the federal government has passed for their Tobacco 21, which is just that you must be 21 to be able to have these products sold to you. While it may have been in some state laws years ago, because Nevada is not a Tobacco 21 state, our goal is to get to Tobacco 21 without any sort of exceptions or anything that may hold us up or cause us not to be enforcing a true Tobacco 21 law.

Assemblyman Miller:

I understand the goal to be in compliance as quickly as possible, but we are going to have young people who are addicted and who are not going to stop purchasing cigarettes and breaking whatever new rules we put in place. I do not know how this is possible because I am new to lawmaking and the judiciary process, but how do we avoid putting these young people in this position? Are we able to incorporate some kind of amnesty or forgiveness for these young people, as well as the retailers and individuals who will probably still buy things for these young people because they are addicted? We know that addiction does not end because we changed the law. Are there any suggestions as to how we can move forward to being a Tobacco 21 state, but also get these young people through this period of time without criminalizing it?

Hillary Bunker:

I think now is a good time to point out that our law is based on selling. Our law is not based on purchasing. That is a question that comes up frequently. It is not on the people who are purchasing the cigarettes and whether they are 15, 16, or 17; it is on the people selling them cigarettes or tobacco products. I will note that localities have the ability to add in what would be known as a purchase ordinance on their own, but as a whole, the state law is against those selling to people, not the people who are purchasing. Again, there are some states that have grandfathered in 18-, 19-, and 20-year-olds and that is something states have seen and thought would be a way to transition people who are current users before they get to a Tobacco 21 status. But as I mentioned, if you are not enforcing a Tobacco 21 law, then you run the risk of losing block grant funding for health and human services. If you were to allow for a grandfathered status for, say, 18-, 19-, and 20-year-olds, you would run into issues with your enforcement mechanisms. I feel that it complicates things, and it is something the federal government looked at and opted not to put in their statute.

Chairman Yeager:

Do we have any other questions from Committee members? [There were none.] I want to thank you for the presentation of the bill. We are now going to open up for testimony in support. At this time let us go to our phone line and I believe we have some callers in support of the measure.

Lesley Pittman, representing Juul Labs, Inc.:

Juul Labs has submitted written testimony [[Exhibit D](#)] in support of A.B. 59. We would like to also emphasize that Tobacco 21 laws have proven to be an effective, evidence-based policy to combat underage use of tobacco and vapor products. For that reason, Juul strongly supports A.B. 59 as drafted.

Chairman Yeager:

Thank you, Ms. Pittman. I will let members of the Committee and members of the public know there is a letter in support from Juul Labs as referenced. That can be found on NELIS under exhibits. Do we have any other callers in support? [There was no one.]

Chairman Yeager:

Seeing no additional testimony in support, I will close support. At this point we will go to opposition testimony. I do not think we have anybody on the Zoom who is going to testify in opposition, but I do believe we have some individuals on the phone.

Thomas McCoy, representing Nevada Tobacco Prevention Coalition:

The Nevada Tobacco Prevention Coalition is a statewide collaboration of public health and partner organizations. For more than two decades our mission has been to improve the health of Nevadans by reducing the burden of tobacco use and nicotine addiction and to clear Nevada's indoor air from secondhand smoke. Tobacco 21 has been effectively law since December 2019. Assembly Bill 59 seeks to change out conflicting NRS verbiage to align with the federal law. The Nevada Tobacco Prevention Coalition is in opposition to A.B. 59 not for what it does, but for what we feel it needs to do. The title of the bill fails to identify the legislation as a minimum legal sales age bill which, as a federal law, it is supposed to be. Instead, the title reads that the bill increases the age to purchase tobacco products. Similarly, the Legislative Counsel's Digest uses the word "purchase" instead of "sales" in summarizing the bill. However, the bill's contents speak to sales with the enforcement burden on the retailer, not the purchaser. But that burden, from an enforcement perspective, will not be changed by A.B. 59. The bill's necessity to clean up existing legislation, we feel, provides a great opportunity to enhance T21 enforcement and also youth tobacco control and prevention as a bonus. The youth vaping epidemic is still with us in Nevada. Our tobacco prevention and control community believes there should be at least one required annual surprise visit for every tobacco products retailer. It just makes sense, and it is not unreasonable. Our hope would be to arrive at a more comprehensively enforceable A.B. 59 so that we can be in full support of passing the needed legislation. Thank you.

Bradley Mayer, representing Southern Nevada Health District:

We are not in a position to support this bill at this time. We would like to see some enhancements to the bill, specifically: enhanced enforcement of a minimum of one compliance check a year—ideally two—but at least one a year; automatic follow-up after noncompliance with a tiered fine structure in place for multiple noncompliance offenses; adding the possibility of a suspension or revocation of a tobacco retailer's license; and finally, a comprehensive definition of tobacco products that is broad enough to cover future unknown products. We know there is some language to add a broad definition into the bill, but we would like to see that go further. One thing I would point out in closing is the health districts lost their funding from Senate Bill 263 of the 80th Session, and so enforcement plays a critical role here in not going backwards in terms of our tobacco policies in the state of Nevada and in keeping Nevada in federal compliance. We do appreciate the bill sponsor for bringing this forward. We hope to work with them to strengthen the bill as it moves through the process. But, as I mentioned, we are not in support at this time.

Caitlin Gatchalian, Nevada Director, Government Relations, American Heart Association:

The American Heart Association is the nation's oldest and largest voluntary organization dedicated to building healthier lives free of cardiovascular diseases and stroke. Our mission is imperative as these diseases remain our nation's number one and number five causes of mortality, while stroke is the leading cause of disability. Further, we know that tobacco is the leading cause of preventable death from heart disease and stroke. The American Heart Association stands in respectful opposition to A.B. 59. As written, it does not include the necessary provisions to be considered an effective policy. For Tobacco 21 laws to be effective, they must cover all products and include strong enforcement mechanisms based on national best practices. This bill will not reduce tobacco use because the bill does not enhance enforcement. It also lacks the necessary measures to adequately enforce the Tobacco 21 law. Effective Tobacco 21 laws require that retailers of tobacco products be held accountable for selling to those who are underage. Additionally, there need to be penalties for selling harmful products to underage youths. These penalties for repeated sales to those under the legal sales age should include suspension and ultimately revocation. We know, based on evidence from other communities that have tobacco retail licensing, that the threat of suspension and revocation is the incentive for retailers to comply with the legal sales age. We should prioritize protecting Nevada youth by amending A.B. 59 with strong enforcement and retail penalties. Thank you.

Jessica Ferrato, representing Preventing Tobacco Addiction Foundation:

For more than two decades, the Preventing Tobacco Addiction Foundation has worked nationwide to raise the minimum legal sales age for all tobacco and nicotine products to 21. When properly enforced, Tobacco 21 policies prevent retailers from selling addictive nicotine products to vulnerable teens. Along with our many health care partners, we strongly oppose A.B. 59 because this bill lacks enforcement and compliance provisions. For Tobacco 21 laws to be effective, they should cover all products and include strong enforcement mechanisms based on national best practices. We would like to identify two key challenges with the bill as currently written. First, enforcement is critical to achieve the law's intended purpose. The language in this bill does not address compliance checks or how the new bill will be enforced. While we know most retailers will comply, some will not. And it is essential that those retailers are adequately penalized to deter this behavior and to incentivize retailer compliance. Second, strong penalties for selling to underage youth must be in place to deter retailers from selling these harmful products. In order to incentivize retailer compliance, penalties for multiple violations need to result in license suspension and revocation. Monetary fines are not enough, and nationwide data shows that only the possibility of license suspension changes the behavior of repeated offenders. Without strengthening A.B. 59, the law will not work to protect Nevada's youth from initiating the deadly use of tobacco and nicotine products. It will instead protect retailer profits by not requiring them to undergo compliance checks or impose penalties that incentivize compliance.

Peter Krueger, representing Cigar Association of America:

We support the age-21 change. However, we are opposed to the section 2 amendment for the reasons I am going to outline. It looks to me that the federal Prevent All Cigarette Trafficking (PACT) Act which expressly prohibits remote sales of cigarettes and other tobacco products, is really just being duplicated here. It has been enforced since 2009. Regarding premium cigars, before the pandemic more than 50 percent were sold online. Now that number is closer to 70 percent. We as a manufacturer's association follow PACT, along with strict internal controls that prevent the online sale of cigars to persons currently under the age of 21. The data shows that youth seldom attempt to buy expensive cigars and pipe tobacco from our mail-order companies. And even if they did try, we use a third-party age verification company such as Veratad, which would, under their current provisions, reject and cancel any sale to a person who is under the age of 21. Our biggest concern with this amendment is that it requires customers, which in our case are cigar manufacturers, to upload personal information of the seller and to retain it for three years. This is putting the seller at great risk, we believe, for a violation of other statutes which prevent this, and it would bring harm to those sellers if that information were somehow divulged or released. We are talking social security numbers; we are talking about all sorts of personal information. We think this is way overkill and there are other ways, such as the third-party verification, to prevent underage sales. Also, we are troubled by an attempt by Nevada to use deceptive trade practice statutes, which is a very significant enforcement tool. And we believe there will be many unintended consequences if that provision in the amendment were to stand.

Basically, we want to continue to work with Ms. Bunker as we have in the past. That is how we got to an agreement early on the T21. But we believe there are plenty of current laws, and we are happy to explore other ways that would at least satisfy, as Ms. Bunker said, the need for additional penalties. We believe this amendment as outlined and offered this morning is overkill and there are other provisions we can use.

Marcos Lopez, representing Americans for Prosperity Nevada:

I am here to testify in opposition to A.B. 59 [\[Exhibit E\]](#). Our opposition mainly comes from the fact that we have a problem with overcriminalization in America. Assembly Bill 59 is a classic case of imposing criminal penalties for something that does not actually impact public safety. It comes as no surprise that we have the largest prison population in the world when our legislative bodies use a heavy-handed approach to solve social ills. Legislation like A.B. 59 diverts attention and resources from serious personal property crimes to lower-level offenses. The case of Eric Garner, who was choked to death when police detained him for selling loose cigarettes, shows how the enforcement of low-level, public order offenses can negatively affect our communities by leading to problematic interactions between the police and the communities they serve. For far too long we have used criminal law as a one-size-fits-all approach to the problems we face in society. We need to address the overcriminalization and put a halt to the unnecessary growth of our penal codes. In fact, we should be working to reduce them. We do not have to put the people at risk of losing their life, liberty, and property to promote or achieve our public health goals. That is why I am asking you to oppose A.B. 59.

Joelle Gutman Dodson, representing Washoe County Health District:

We are here today in opposition with the hopes that we can soon support this bill. As Bradley Mayer of the Southern Nevada Health District said, we are opposing today but we hope we can work with the bill sponsor and get this bill where it needs to be. In order for us to be able to support the bill, we need enhanced enforcement, including a minimum compliance check of one to two times a year, automatic follow-up after noncompliance with a fine structure in place, and a comprehensive definition of tobacco products. I am just reiterating Southern Nevada Health District's statement, but it is important to note that the health districts lost all their Senate Bill 263 of the 80th session funding that was set up in the last legislative session for prevention and education dollars. Without prevention and education dollars, we really need to up the enforcement. That is why we are here today in opposition.

Susan Fisher, representing American Cancer Society Cancer Action Network:

I have advised the OAG of our concerns in opposition to the bill as written. The amendment that was presented is not yet available on NELIS, so I am testifying in opposition to A.B. 59 as written and introduced. I will reach out to the Committee on our position after further review, but we do oppose for the reasons mentioned by the other callers, so I am not going to repeat all of them. While the American Cancer Society appreciates Nevada enacting legislation to get Nevada in line with federal legislation and raising the legal sales age of all tobacco products, including other tobacco products, it still maintains the status quo with regards to penalties for sales to minors. In addition, we would like increased taxes on tobacco products to help fund tobacco cessation programs and to help those who are already addicted, as mentioned by your Committee members, as well as education programs for youth.

Assemblywoman Cohen:

Ms. Fisher, does your organization have any information about the black market, when prices or taxation become so high that people turn to the black market on cigarettes? If so, could you provide that information if your organization does have that?

Susan Fisher:

I do not have information specifically on black market sales. But I do have information on what each dollar of increase in taxes does in cessation, historically. I can send that to you.

Bryan Bedera, representing Nevada Vaping Association:

We support T21 laws in general. And we specifically support this bill without the amendment. We have some brief concerns about the amendment to section 2, specifically the recordkeeping requirement that exceeds federal requirements for record keeping, as well as some concerns about the definition of an ultimate consumer retail sale. We believe the lack of clarity in these two provisions is going to make enforcement more difficult and limit the state of Nevada's ability to enforce the T21 restrictions on out-of-state e-commerce. In general, we support what the OAG is trying to do both in the bill and the amendment. But we think some technical changes are going to need to happen in order to create an enforceable bill that industry can both comply with and support.

Chairman Yeager:

Can we confirm that there is no one else in opposition? [There was no one.] I will now open for neutral testimony. [There was no one.] I am going to close neutral testimony. At this time, I am going to go back to our presenters from the Office of the Attorney General and give them a chance to make any concluding remarks they would like on A.B. 59.

Jessica Adair:

I am particularly disheartened to hear some of this opposition testimony today. Attorney General Ford has a very important philosophy when it comes to our legislation. It is critical to him that we gather robust stakeholder feedback as early in the process as possible, and that we incorporate as much feedback as we can because it simply makes a better bill. In this instance, as you probably heard on the record even from those opposing this bill, Senior Deputy Attorney General Hillary Bunker has been reaching out to stakeholders since this summer and has continued in dialogue with them for months. We were told last night before an 8 a.m. hearing, that those who had previously indicated they would be testifying in neutral were going to change their testimony to opposition for specific reasons that they had not provided in an amendment to us in advance. In terms of both process and substance, I am disappointed. In terms of the substance of some of the opposition testimony, one caller noted that the title and legislative digest were not reflective of the text of the bill. As you know, we do not draft the title or the legislative digest of this bill.

There were also many comments about the lack of enforcement and accountability for retailers. This office sponsored a bill last legislative session that brought accountability to retailers for the first time in this state. We had initially proposed a stronger regulatory scheme and penalty process for retailers. That legislation did not pass. However, we did bring to this state accountability for retailers who sell to minors. I also want to specifically address the caller from Americans for Prosperity who mentioned that this bill added criminal penalties. That is incorrect. Nothing in this bill adds criminal penalties that do not already exist. In fact, in the bill that we sponsored last session, we actually moved from criminal penalties of individual clerks who work at retail stores, who were previously being arrested for misdemeanor and felony crimes, to civil penalties because of the reason that caller identified. Also, as Hillary Bunker has previously testified, underage possession of tobacco products in the state of Nevada is not a crime. If a locality chooses to change that, they can. But that is not a state law and that is not what we are proposing in this bill.

What is at stake here if we do not pass a T21 bill? It is not only losing block grant funding—the current block grant we do receive is \$16 million—but we also endanger the funding that we get from the MSA, which is millions on millions of dollars that directly go to enforcement and public health cessation programs. I want to reiterate, while I understand this is a policy and not a money committee, in terms of some of the questions the legislators had and some of the statements that commenters made in opposition, that not passing this bill endangers the goals we are all seeking here, those goals being that we reduce underage smoking, we promote public health, and we diligently enforce the MSA so we continue bringing in the money that allows us to promote public health. Thank you for your indulgence, Chair, and we do look forward to working with stakeholders as we continue to

improve this bill to ensure that we are able to bring the state into federal compliance and continue to diligently enforce the MSA and promote public health.

Chairman Yeager:

Before I close the hearing, I did want to go to Assemblyman Wheeler who wanted to make a comment.

Assemblyman Wheeler:

Speaking from experience having started smoking when I was 13—and now I am 67—we need to do something here, and we need to get this bill passed. I am willing to work with the Office of the Attorney General, with our caucus, with the Democratic caucus, the Chairman, and anybody else to get this into a form where anybody can say, Maybe it is not great, but it works. I would like to offer those services, and if anyone has any questions, come to me. I know that quitting smoking is easy because I have done it hundreds of times. And I do not want to see our kids start smoking at their most vulnerable age. Let us get this thing together and get it passed.

[[Exhibit F](#) and [Exhibit G](#) were submitted but not discussed and will become part of the record.]

Chairman Yeager:

With that, I will close the hearing on [A.B. 59](#), give everyone a moment to take a deep breath and get ready for our second bill on the agenda, which I do not believe is going to have as much testimony as [A.B. 59](#) did. At this time, I am going to open the hearing on [Assembly Bill 60](#).

We welcome the Attorney General's staff back to the Committee to present this bill. We will give you an opportunity to give your presentation and then I am sure we will have some questions. Mr. George or Ms. Adair, whoever would like to present, please begin your presentation.

[Assembly Bill 60](#): Makes certain provisions of a contract or settlement agreement void and unenforceable. (BDR 4-422)

Kyle E.N. George, First Assistant Attorney General, Office of the Attorney General:

Last session, this Legislature passed [Assembly Bill 248 of the 80th Session](#), which provided that settlement agreements could not include provisions that restricted a settling party from disclosing factual information in an administrative or judicial proceeding. [Speaking from written testimony, [Exhibit H](#).] This specific restriction applied only when the underlying behavior protected by the agreement constituted either criminal sexual conduct or sex-based discrimination. Since the passage of that bill, we became aware of a glaring loophole in the statute. Specifically, we first became aware of this loophole when a state board attempted to investigate allegations against a licensee. As described in the complaint we received, the allegations being investigated could have resulted in the suspension of the subject's license but did not quite amount to the parameters set forth in [A.B. 248 of the 80th Session](#).

In this matter, the key witnesses central to the investigation were subject to settlement agreements that included both nondisclosure provisions and massive liquidated damage clauses. The witnesses were therefore put in an untenable position of either (1) defying the board's subpoenas and facing contempt charges, or (2) complying with the lawful command of the board and facing financial consequences for breach of the nondisclosure provisions and liquidated damages that they could not possibly have paid off in their lifetime. Stated more directly, the purported victims of the problematic behavior were denied the opportunity to assist those seeking justice on their behalf. The silencing of witnesses is always concerning. While we do encourage parties to resolve issues without state involvement whenever possible, our system of justice does not condone permitting the accused to silence witnesses so as to avoid consequences. This is anathema to justice itself.

This bill seeks to address the issue by expanding the framework established by A.B. 248 of the 80th Session to additionally encompass sexual harassment that may fall short of criminal, sex-based discrimination or sex-based retaliation. Assembly Bill 60 provides that any nondisclosure provision of a settlement agreement is unenforceable if a party that is a signatory to that agreement is compelled to testify about the subject matter of that agreement pursuant to lawful judicial or administrative process. This provision will only be applicable when the underlying agreement pertains to criminal activity, sexual harassment, or discrimination on the basis of sex. We stand ready to answer any questions you may have.

Chairman Yeager:

Members of this Committee who were here last session will of course remember the referenced bill, Assembly Bill 248 of the 80th Session, which was sponsored by Speaker Frierson. We heard that bill and processed that bill out of this Committee last session. And as Mr. George said, I think this is an area that bill did not capture, so we appreciate your recognizing that and bringing this forward for the Committee's consideration.

Assemblywoman Bilbray-Axelrod:

I was wondering who exactly this included. It is based on sex, so is that how someone identifies? I am actually thinking of our transgender community, so would this cover them as well?

Kyle George:

It does include all gender identities. The major addition to this bill that was not included in A.B. 248 of the 80th Session is the addition of sexual harassment. We tried to keep it substantively identical as possible. I know it does look like a more sizable bill, but the most substantive addition is in the addition of harassment beyond criminal sexual activity.

Assemblywoman Summers-Armstrong:

Settlement agreements often require silence. Mr. George, would there be any other instances besides discrimination based on sex or sexual orientation where you would need someone to testify and they could not because of a settlement agreement? This is pretty restrictive, but would there be any other instances where you think there could possibly be a problem?

Kyle George:

Yes, this is a rather restrictive bill and it is by design. I do not believe we fully appreciate all the possible scenarios that could arise. I know that in the last Legislature, the genesis of A.B. 248 of the 80th Session was based on the climate of the time. We were aware of many instances of sexual harassment and misconduct that were problematic. As you will recall in that time period, the Me Too movement was quite visible and prominent. And I think this bill was narrowly focused to that, to the largest extent possible. At this point, I cannot identify any other circumstances where this might be necessary, but we do recognize that going too far might hinder the ability of parties to reach settlements. So we wanted to make this as narrowly tailored as possible while still making sure that the judicial and administrative processes can proceed when necessary.

Assemblywoman Summers-Armstrong:

I apologize if I am asking a redundant question, but I can see an instance where maybe someone had to settle because of racial or age discrimination and they enter into an agreement that requires their silence but that is also involving a criminal act. Is there another statute that covers those instances where you might need someone to testify and they have an agreement to be silent?

Kyle George:

I do not know of any statute off the top of my head, that would address the race-based scenario you described. I can do research and get back to you with that, but off the top of my head I am not aware of anything. I do not know if my colleague has any additional information on that.

Jessica Adair, Chief of Staff, Office of the Attorney General:

When we were circulating this bill with stakeholders, that was something that was brought up. You are absolutely correct that there would be instances, and likely have been, that we will never know about because they are under the settlement agreements. However, we kept this bill narrow to build upon A.B. 248 of the 80th Session that was limited to just sexual harassment and sexual discrimination or criminal sex acts. But should this Legislature have a different philosophy, we would be interested in working with you on that. We did want to keep this bill narrowly tailored, as Mr. George mentioned, to the spirit and the letter of A.B. 248 of the 80th Session.

I will say that in our short experience here in the Office of the Attorney General (OAG), this type of behavior is what we do see more commonly in terms of the need to proceed against license holders. Additionally, it was the focus of the Governor's Task Force on Sexual Harassment and Discrimination. That task force looked at policies and procedures for state employees, but also privileged license holders. That would not incorporate all the occupational licensing boards in the state of Nevada that could proceed in an administrative hearing against someone's license, but the privileged license holders, the Cannabis Compliance Board, and the Nevada Gaming Control Board, are also based upon that task force. They are encouraged to have policies against sexual harassment and discrimination for those license holders, which also gives us an additional mechanism if they are violating their

own policies, that the administrative board can take action. It is a lot of information that does not necessarily answer your question, but that is why we are keeping it in just that realm.

Assemblywoman Summers-Armstrong:

The expansion of your explanation and the purpose of the original bill is helpful for me to understand, and I think I understand why you have it so narrowly tailored. I respect that. But I also think we need to be aware that there are others in the workplace who might be affected by unscrupulous behavior, and we need to make sure they also have a way to help hold these special license holders accountable. We do not want any group of people feeling like they are kept out of this. I do understand how you came up with this and I appreciate the expanded explanation.

Chairman Yeager:

Do any other members have questions on A.B. 60? [There was no one.] Thank you, Mr. George and Ms. Adair, for presenting. We will come back to you with wrap-up comments when appropriate. For now, we are going to open it up for testimony in support for A.B. 60.

James Kemp, representing Nevada Justice Association:

We are in support of A.B. 60. I am also an employment lawyer who litigates sexual harassment cases, and A.B. 60 will provide much-needed protection for victims of sexual harassment who wish, and are required, to come forward to provide information and testimony with regard to their former employers and harassers. Universally, settlement agreements in this area contain confidentiality agreements that are often very restrictive. Some even try to forbid the disclosure that an agreement even exists. As Mr. George mentioned, they often include liquidated damages clauses. They also usually have something called a "nondisparagement clause" and that purports to prevent not only false and defamatory statements, but also truthful statements that a victim who is settling agrees not to say anything unfavorable about a whole host of people, including the harasser, the company, shareholders of the company, officers of the company, other employees of the company, and a whole litany of people. All the people are included in the release that is contained within a settlement agreement.

Assembly Bill 60 is really going to help protect and address these concerns where victims want to come forward or are being compelled to come forward and testify in court under a subpoena or if they have been requested to testify in front of an administrative agency. They can be assured, with A.B. 60 in place, that they can participate in those processes without having put themselves in jeopardy for liquidated damages or some other kind of provision. I will say that often these contracts do provide that people can report things to administrative agencies or testify, but they usually do require that if a person is subpoenaed, they inform their former adversary or employer that they have been subpoenaed so the employer has the opportunity to go in and challenge the subpoena. They can be quite onerous. I think A.B. 60 will help alleviate some of those problems. And I do want to echo the sentiments of Assemblywoman Summers-Armstrong that these protections are needed for other protected classifications. But Assembly Bill 60 as written, we are in full support of.

Chairman Yeager:

Is there anybody else in support? [There was no one.] Thank you; we will close supportive testimony. I will now open up for opposition testimony. [There was none.] I will close opposition testimony and I will now open neutral testimony.

Tonja Brown, Private Citizen, Carson City, Nevada:

I would like to know how this bill will prevent what happened to me and other individuals in a settlement agreement and a breach of that agreement. I will quickly run down the facts. As an advocate, I was asked to become the administrator of an inmate's estate. It was legally set up through an attorney who sometimes does pro bono work for inmates. As part of my duty, I would send the inmate quarterly reports to the Department of Corrections (NDOC). The Department of Corrections did not give the inmate the information nor did they notify him about the information, nor return that information to me. The inmate became concerned, rightly so, and an investigation was conducted by the inspector general's office. During the investigation another inmate, who had given the name of this attorney to that inmate who wanted to have a trust set up, was then transferred to another institution while undergoing medical treatment. This inmate filed suit against the NDOC for retaliation. It was assigned to a federal magistrate judge. Not too long after that, the inmate who was transferred, his health declined and eventually he died from lack of medical care. Hence, a wrongful death suit was filed and I became the administrator of that estate. During the discovery proceedings, I had discovered that a certain deputy attorney general had withheld exculpatory evidence in the inmate's case on retaliation against NDOC. It affected me and other people.

Chairman Yeager:

Ms. Brown, I do not think this bill has anything to do with the topic that you are discussing. I would just ask that you call in on the regular comment line, but this bill is about sexual harassment and settlement agreements. I want to hear your testimony, but I do not think it is appropriate for this bill, so please call back in the public comment section. Do we have anybody else in the neutral position on A.B. 60? [There was no one.] I will close neutral testimony on A.B. 60 and I will give our presenters from the OAG a chance to make any concluding remarks on A.B. 60.

Kyle George:

We have no concluding remarks. Thank you for your time and thank you to this Committee for their time and attention to our bills today.

Chairman Yeager:

With that, I will formally close the hearing on Assembly Bill 60. We will now go to our public comment portion of the agenda.

Tonja Brown, Private Citizen, Carson City, Nevada:

Anyway, during the wrongful death suit, during the discovery process, I discovered that the deputy attorney general (DAG) in the first suit filed by the inmate for retaliation happened to be the same DAG in the wrongful death suit. I discovered that there was a document in there that was conducted by the Office of the Attorney General that concluded that no criminal activity existed and that everyone dealing with the trust was exonerated. However, it was withheld from the magistrate judge in the first lawsuit. He provided everything in camera with the exception of that exoneration letter. It became part of the settlement agreement in the wrongful death suit that I could take that document to wherever I wanted to clear our names. When I went and moved forward, I took it to the Board of State Prison Commissioners. The same DAG came to that meeting and informed them that was confidential, and it was part of a settlement agreement that we just had. That was not true. Ultimately, he had everything I said stricken from the record. The magistrate judge then called my attorney, who then called us all back into court because we had so many days to sign the settlement agreement. It was at that point that the magistrate judge stated that everything dealing with this trust was not to be confidential; I could do whatever I wanted to it. I filed suit as the administrator for a breach of settlement agreement. I made it all the way to trial. The OAG filed a motion to dismiss and I lost it on a technicality. But I did make it as far as a trial date. I was curious. I do not see anything in confidentiality that pertains to the OAG who breached the settlement agreement. I think, for the protection of the inmates and true justice and what is fair, this should be included in this bill somewhere.

Chairman Yeager:

Is there anybody else on the public comment line? [There was no one.] We will close public comment. Before we talk about the rest of the week, is there anything else from members of the Committee this morning? [There was nothing.] Members, I want to thank you again for being here on time and for engaging on these issues. We heard quite a bit of testimony on our Assembly bills today. I imagine we will be getting a lot of bills of that nature with a lot of interest and testimony in the future days.

Just a reminder, the next two days we are going to be starting at 9 a.m. rather than 8 a.m., so take advantage of that extra hour in the morning in whatever way you find appropriate. The next two days we will be hearing bills dealing with incompetent defendants and the procedure for how to address incompetent defendants. For those of you who are new to the Committee or new to criminal law practice, if you have questions when reviewing those bills today, feel free to reach out to me. Vice Chairwoman Nguyen has done a lot of this work as well, and Assemblywoman Cohen and Assemblyman Wheeler have been on the Committee for a lot of years, so feel free to ask some of those background questions today or tomorrow in the meeting.

As a reminder, on Monday we will be starting at 8 a.m., when I will have the pleasure of presenting a couple of bills to the Committee. I think that is it for this week. When we get towards the end of the week, I will give you the lay of the land for next week, but we are still working on developing those agendas to see what we are going to be doing next week. With all that behind us, thank you again for your diligence and attention this morning. We will see you tomorrow morning at 9 a.m.

This meeting is adjourned [at 9:40 a.m.].

RESPECTFULLY SUBMITTED:

Jordan Carlson
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to [Assembly Bill 59](#) submitted and presented by Hillary A. Bunker, Senior Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General.

[Exhibit D](#) is written testimony dated February 16, 2021, submitted by Kenton Stanhope, Senior Manager, Government Affairs, Juul Labs, Inc., in support of [Assembly Bill 59](#).

[Exhibit E](#) is written testimony dated February 15, 2021, submitted by Marcos Lopez, representing Americans for Prosperity, Nevada, in opposition to [Assembly Bill 59](#).

[Exhibit F](#) is a letter to the Assembly Committee on Judiciary, submitted by Alex Mazzola, President, Nevada Vaping Association, in support of [Assembly Bill 59](#).

[Exhibit G](#) is a letter dated February 16, 2021, submitted by Leann McAllister, Executive Director, Nevada Chapter of the American Academy of Pediatrics, in neutral on [Assembly Bill 59](#).

[Exhibit H](#) is a written testimony submitted by Kyle E.N. George, First Assistant Attorney General, Office of the Attorney General, in support of [Assembly Bill 60](#).