COMMERCE AND LABOR COMMITTEE

February 18, 1975

The meeting was called to order in Room #213 at 2:45 p.m., on Tuesday, February 18, 1975.

Senator Gene Echols was in the chair.

PRESENT: Senator Gene Echols
Senator Warren Monroe
Senator Richard Blakemore
Senator Bill Raggio
Senator Richard Bryan

~~ALSO PRESENT:~~ ~~Mike Melner, Dept.~~ of Commerce
Pete Kelley, Nevada Retail Association
Nancy Sawyer, CPE
Harry E. Gallaway, Nevada Dept. of Agriculture
Jack E. Hampton, Nevada Dept. of Agriculture
E. L. Newton, Nevada Tax Association
Robert F. Guinn, Nevada Franchised Auto Dealers
Daryl E. Capurro, Nevada Franchised Auto Dealers
Gino Del Carlo
Joe Lawler, Consumer Affairs Division
Fred Davis, Nevada Chamber of Commerce
Milos Terzich, American Life Insurance Assoc.
Gene Milligan, Nevada Association of Realtors

Senator Echols introduced each committee member.

S.B. 79: Revises and expands definitions and remedies under deceptive trade practices law. Fiscal Note: No. (BDR 52-230).

Mr. Mike Melner, Department of Commerce, Consumer Affairs Division, testified in favor of S.B. 79. He indicated this bill was prepared by Rex Lundberg, Commissioner of Consumer Affairs in Las Vegas.

Mr. Joe Lawler, Consumer Affairs Division, testified in favor of S.B. 79. Mr. Lawler said that Rex Lundberg had spoken to Senator Echols regarding S.B. 79, and Senator Echols said that he had received material from Mr. Lundberg and was having it reproduced for the members of the Committee.

Senator Monroe said that he intends to submit an amendment to Section 9 of the bill, Subsection 2. The amendment will read: "Provide that regulation must be approved by legislative commission before that can become effective."

Mike Melner said that Mr. Lundberg's needs at this time were to sharpen the tools that the last legislature had given him. He said part of the problem was the removal of the word "knowingly." He did say that the change in the language will aid in prosecution. Section 9, paragraph 2 had been added because of the rapidly changing method of consumer fraud.

Senator Raggio asked where the language in Section 6 came from and Mr. Melner said that he thought it was from model legislation, but Mr.

Lawler said it was in the material submitted to Senator Echols. Senator Raggio then asked where the material was from and Mr. Lawler said he thought it was from the Book of Consumer Law. 82

Senator Raggio asked about the criminal penalties. Mr. Melner said there were criminal penalties under the statute but they were not trying to increase the penalties. Senator Raggio said that he wanted them to know the reason for taking out the word "knowingly" was to substitute "causes likelihood of confusion or misunderstanding." Mr. Melner said that it was his understanding that proof of guilty knowledge was quite difficult in these cases. SEnator Raggio and Mr. Melner discussed the criminal proceedings and how to prove guilt.

Senator Echols asked Senator Raggio how you prove guilt in court, and Senator Raggio replied that you had to prove willfullness or knowledge. ~~He said this was part of the bill that~~ troubled him because the measure deals with civil remedies as well as criminal penalties. Mr. Melner said this part also troubled him because the change in the language might be making prosecution more difficult. Senator Raggio asked again where the information came from and Mr. Melner said he thought it was the Consumer Law Report, but couldn't be sure. Mr. Melner told the committee that they deliberately didn't staff lawyers because they look at things differently in these matters. He also said that he felt they might be making prosecution harder instead of easier.

Senator Raggio said that since there are criminal penalties, he is concerned with the 18 areas of deceptive trade practice. He said 19 was a general catch-all and questioned, with the criminal penalties passed, whether the people would have proper notice of what constitutes a deceptive trade practice. Mr. Melner said that the Federal Trade Commission and the rules developed under the act. Senator Raggio said somebody would have to go a long way to determine what's illegal.

Senator Bryan came in at this time and Senator Echols explained what had been discussed to that point. Senator Bryan then asked Senator Raggio if his concern was the elemination of the scienter requirement. Senator Raggio said yes.

Senator Bryan asked Mr. Melner if the problems that prompted the changes were burden of proof type of problems. Mr. Melner said it was his understanding that the prosecutors that the cases were brought to, had great difficulty in proving "knowingly" factor of the cases. The question of scienter was discussed by Mr. Melner, Senator Raggio, and Senator Bryan.

Senator Bryan said that in anticipation of the hearing, he had talked with Shirley Kaat and asked her to suggest some language that would be an improvement over the other. Senator Bryan said that even a negligent act you would not want to prosecute this way, and Mr. Melner said this would not be the intention here. Senator Bryan asked Mr. Melner if he would find out about the common law concerning scienter, and Mr. Melner indicated that he would.

Mr. Pete Kelley, Nevada Retailers Association, spoke in opposition to the bill. He said that he has talked to Mike Melner about the bill and it is their feeling that the bill has only been on the books less than two years and they are concerned about whether it has had a reasonable

chance to operate. They also are wondering if there is evidence that the law has not worked well since 1973. They also objected to the word "knowingly" being removed, because they feel the people in business should be aware of what they are violating. Mr. Kelley felt a public information program should be instituted so the public and the consumer could be aware of the laws Nevada now has. He also felt that the three new paragraphs added on page three are too broad.

Ernest Newton, Nevada Taxpayer's Association, spoke about the experience of the bill since it came on the books two years ago. He felt there are two problems with the bill. He felt information should be available as to just what the experience of the bill has been, and he would be interested in knowing if any of the prepared cases has ever gone to trial. He is also having trouble with the concept of bill because he felt that it is an attempt to relieve buyers of any responsibility of every kind for their own stupidity. He also felt that there was not a problem to the extent it required legislation to solve them. He also spoke of insolvent people and how hard it is to prosecute them. Mr. Melner said that he would provide statistics on the cases mentioned above.

Mr. Gene Milligan, Nevada Association of Realtors, testified against S.B. 79. He submitted his recommendation for the bill. In Section 2, Page 1 of S.B. 79, he would like "real property" to be excluded from this act for the following reason: the section goes on to say you can recover $200 or actual damages. He said that some of the law that governs the conduct of real estate salesmen has evolved over the last 50 years. Through that evolution they have established a recovery fund of $10,000. They feel the consumer is amply protected by this recovery fund and also by Chapter 645 which governs the conduct of real estate brokers and salesmen. He spoke of the 19 "thou shalt nots" and a copy is attached for the record. He also named various other chapters of the law that governs real estate people. He felt that they are over regulated, not under regulated. With these laws in mind, he again proposed to delete the word "real" from Line 4, Page 1 and just limit it to "personal property." He also proposed that Line 7, Page 4, after sub-paragraph C, that language be introduced which would exclude real estate sales, as regulated under NRS 278, 119, and 645. Senator Raggio said he really didn't read that language that it was directed just at real estate sales; the wording could apply to anyone. Senator Raggio felt Mr. Milligan was over reaching.

Senator Raggio asked about the criminal penalties and wanted to know whether they were misdemeanors or merely grounds for disciplinary action. This act, if it were extended to include real estate salesmen, would extend the criminal penalties under the provision of 598. He asked if there was a question about whether these constitute misdemeanors, and Mr. Milligan said there had been no question in his mind. Senator Raggio said that if this were enacted, it wouldn't implicitly specify real estate people. Mr. Milligan said that it didn't say that, and they would request that it be made clear that licensed real estate brokers and salesmen are excluded as they are regulated under other sections of the law. Mr. Milligan said that if the exclusion could be made, he would withdraw his request to delete "real". Senator Bryan asked if there was conduct which involved the particular language if the bill is passed, the real estate brokers should be subject to criminal sanctions as well. Mr.

Milligan thought the object of the law was to protect the public, not regulate the public. He feels they are well protected because of the recovery fund and the other laws; and indicated that if the word "real" was left in, it would cover the incidents that Senator Raggio and Senator Bryan were talking about.

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Senator Echols asked Mr, Milligan about the wording in Line 4 and Mr. Milligan said he had changed his mind about the word "real". Senator Raggio said that the reason he was bringing this up was because as far as he could see, none of the 19 deceptive trade practices would really apply to real estate. Mr. Milligan said it had been his experience in attending these committee meetings, that the bill would not affect real estate, but somewhere down the line it always does.

~~Mr. Robert Guinn, Nevada Franchised Auto~~ Dealers, testified in opposition to S.B. 79. He spoke about the right to bring suit and also wanted to get rid of the nuisance suits. He said the way the bill is worded now, it implies that even if you are damaged $1, you could bring suit and at lease put the defender to the cost of defending himself. He suggested that the existing language in the law, the word "knowingly" be left in. He also called the committee's attention to Subparagraph 18, page three, and said that this part he did not understand. He emphasized the point that Senator Monroe made about developing an agency to carry out the intent of the legislation. He said he had been dealing with Mr. Lundberg and Mr. Melner and had been trying to cooperate with them and felt they had had some success. He said that unless there is some crying need for further legislation, that they be given a chance to survive out of the regulations they are surrounded with at all levels.

Gene Milligan stood from the audience and read Chapter 645.850.

The committee discussed whether to hold S.B. 79 until February 27, 1975, when Mr. Rex Lundberg could testify. It was decided to continue S.B. 79 on February 27, 1975, at 1:00 p.m.

S.B. 87: Authorized state sealer of weights and measures to adopt emergency specifications for gasoline and clarifies provision on types of motor oils subject to S.A.E. specifications. Fiscal Note: No. (BDR 51-176).

Mr. Harry Galloway, Nevada Department of Agriculture, testified in favor of S.B. 87. This piece of legislation is recommended by the Department to clarify two areas of problems that have developed in the last two years. He spoke of the amendment on Page 2, Line 4. He spoke about the octane ratings and proposed to be able to adopt emergency specifications. The second amendment is a recommendation relating to labeling motor oil used in two cycle engines. The change now in the bill simply added the words "in the crank case" in Page 2, Line 10.

Mr. Galloway said that the people in the industry had suggested that instead of inserting the words "in the crank case" as it shows on Line 10 and the deletion of Section 3 as it shows on line 33, that the provision be amended with the following words:

"3. The provisions of this section and the provisions of

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Section 1 of NRS 590.040 shall not apply to any oil labeled 'pre-diluted' or intended only for mixture with gasoline or other motor fuel in a two cycle engine."

Mr. Galloway said the wording from the industry was very acceptable to the Department.

Senator Monroe asked Mr. Galloway about the typing error in Section 2, Subsection 2. Mr. Galloway said that it was simply a typing error and they were changing the word from"cut" to "cup"

Senator Monroe said amend and do pass on S.B. 87.
Senator Raggio seconded the motion.
Motion carried as amended.

~~There being no further business, the meeting~~ adjourned at 3:10 p.m.

Respectfully submitted:

Kristine Zohner
Secretary

APPROVED BY:

Gene Echols, Chairman

S. B. 79

SENATE BILL NO. 79—COMMITTEE ON COMMERCE AND LABOR

JANUARY 29, 1975

Referred to Committee on Commerce and Labor

SUMMARY—Revises and expands definitions and remedies under deceptive trade practices law. Fiscal Note: No. (BDR 52-230)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to deceptive trade practices; expanding definitions; clarifying and adding remedies; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

SEC. 2. *1. A purchaser or lessee of goods or services who suffers an ascertainable loss of money or property, real or personal, as a result of a deceptive trade practice may bring an action to recover actual damages or $200, whichever is greater. In cases of willful violation, the jury or, if the action is tried without a jury, the judge may award up to three times actual damages. In all cases the court may provide such equitable relief as it deems proper.*

2. The court may award reasonable attorney fees and costs in any action brought under this section.

3. Upon commencement of an action under this section, the clerk of the court shall mail a copy of the complaint to the commissioner and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the commissioner.

SEC. 3. *It shall be an affirmative defense to any action brought under NRS 598.640 or section 2 of this act, other than an action to recover damages, that the defendant's act occurred as a result of a bona fide error and despite his exercise of reasonable care.*

SEC. 4. NRS 232.250 is hereby amended to read as follows:

232.250 The director shall:

1. Appoint, with the consent of the governor, a chief of each of the divisions of the department. In making such appointments, the director shall obtain lists of nominees from recognized professional organizations, if any, in the appropriate professions and shall make such appointments

"THOU SHALT NOTS"

1. Making any substantial misrepresenation.

2. Making any false promises of a character likely to influence, persuade or induce.

3. Pursuing a continued and flagrant course of misrepresenation or making of false promises through agents or salesmen or advertising or otherwise.

4. Acting for more than one party in a transaction without the knowledge of all parties for whom he acts.

5. Accepting a commission or valuable consideration as a real estate salesman for the performance for any of the acts specified in this chapter from any person except his employer who must be a licensed real estate broker.

6. Representing or attempting to represent a real estate broker other than the employer without the express knowledge and consent of the employer.

7. Failing within a reasonable time to account for or to remit any monies coming into his possession which belongs to others.

8. Willfully using the term realtor or any other trade name or insignia of membership in any real estate organization of which the licensee is not a member without the legal right to do so.

9. Disregarding or violating any of the provisions of this chapter or of any rules or regulations promulgated there under.

10. Obtaining or receiving any rebate, profit, compensation, or commission in violation of the chapter.

11. Inducing any party to contract, sell or lease to break contract for the purpose of substituting in leiu thereof a new contract with the same principle or a different principle where such substitution is motivated by the personal gain of the licensee.

12. Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, theft, fraud, conspiracy, a crime involving moral interpitude or other like offense, whether rising from a real estate transaction or not, and has been convicted thereof in a court of compentent jurisdiction.

13. Guaranteeing or having authorized or permitted any person to guarantee future profits which may result in the resale of real property.

14. Negligence or failure to disclose or to ascertain and disclose to any person which whom such licensee is dealing any material fact, or data or information concerning or relating to the property with which such licensee is dealing with which such licensee knew.

15. The practice of claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement, authorization or authorzing or employing a licensee to buy, sell, or exchange real estate for compensation or commission where such agreement does not contain a definite specified date of final and complete termination.

16. The claiming or taking by licensee any secret or undisclosed amount of compensation, commission, etc.

17. The use by licensee of any provision allowing the licensee an option to purchase in any agreement, authorizing or employing such licensee to sell, buy, exchange real estate for compensation or commission.

18. Being unworthy or incompentent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public.

19. Any other conduct whether the same or different character from that herein specified which constitutes improper, dishones or fraudulent dealing.

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

S. B. 87

SENATE BILL NO. 87—COMMITTEE ON COMMERCE AND LABOR

JANUARY 29, 1975

Referred to Committee on Commerce and Labor

SUMMARY—Authorizes state sealer of weights and measures to adopt emergency specifications for gasoline and clarifies provision on types of motor oil subject to S.A.E. specifications. Fiscal Note: No. (BDR 51-176)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to gasoline and lubricating oil specifications; authorizing the state sealer of weights and measures to adopt emergency specifications for gasoline; clarifying provisions of motor oils subject to Society of Automotive Engineers specifications; exempting certain oils from labeling requirements; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 590.040 is hereby amended to read as follows:

590.040 1. It is unlawful for any person, or any officer, agent or employee thereof, to sell, offer for sale or assist in the sale of or permit to be sold or offered for sale any gasoline, distillate or oil represented as lubricating oil for internal combustion engines, unless there shall be firmly attached to or painted at or as near as practicable to the point of outlet of the container from which or into which the gasoline, distillate, or oil represented as lubricating oil or motor oil for internal combustion engines is drawn or poured out for sale or delivery a sign or label consisting of the word or words, in letters not less than one-half inch in height, comprising the brand or trade name of the petroleum product followed by the word or words, in letters not less than one-half inch in height, "Gasoline," "Distillate," "Lubricating Oil" or "Motor Oil," as the case may be. All containers and dispensers of lubricating and motor oil shall also be labeled in the same manner with the S.A.E. grade classification number. If a lubricating or motor oil has more than one S.A.E. grade classification number, each S.A.E. grade classification number shall be included in the label. When such sign or label is attached to the faucet or valve of a tank truck or tank wagon, the letters shall be not less than one-half of an inch in height. *The provisions of this subsection do not*

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and that there be substituted in place thereof the following:

> "3. The provisions of this section and the provisions of Section 1 of NRS 590.040 shall not apply to any oil labeled 'pre-diluted' or intended only for mixture with ~~gasoline or other~~ motor fuel in a two cycle engine."

I believe I have previously listed with your office the oil companies which my office represents, but against the possibility that you do not have a current list, we represent the following oil companies: Shell, Union, Phillips, Gulf, Exxon, AtlanticRichfield, Mobil, Texaco, and Standard of California.

As I advised you on November 8th last, I submitted your suggestion to all of our clients. Shell Oil Company felt that the addition of the words: "in the crankcase of" to NRS 590.080 perhaps might not be entirely satisfactory, since two-stroke oils are in fact crankcase oils. I am advised that although they are not poured directly into the crankcase and are introduced either with the gasoline or by metering pump, they perform the same function as a crankcase oil, and they therefore suggest that it would be more satisfactory to exempt pre-diluted, two-stroke engine oils.

Standard has agreed to the proposal, provided there is nothing in the present or amended law that would require the use of the term "motor oil" on the label or package of this product. For that reason, I have included within the proposed exemption subsection 1 of NRS 590.040, so it will be clear that Nevada law does not require a misleading sign or label. As you have indicated, Standard, for instance, makes every effort to assure that there will be no misconception by using a plastic bottle container for its pre-diluted, two-cycle

Employment Standards Digest

Jan.-Feb., 1975
Vol. 2 No. 1

A digest of activities and actions involving the Employment Standards Administration, U. S. Department of Labor, Washington, D.C. 20210

A MESSAGE FROM THE ASSISTANT SECRETARY

Accountability is a key word in the Employment Standards Administration. The American people increasingly expect and rightfully demand that their tax dollars bring quality programs and services. They want to know how government spends their money and whether government spends it well.

In order to ensure first-rate delivery of public service and hold our employees accountable for their actions, we have established a system of accountability in ESA. It functions within the realm of our Office of Program Development and Accountability which reports to my office, and works through a systematic network of checks and audits.

Accountability in ESA begins with planning our program goals and priorities on national and regional levels. Once we have committed ourselves to attaining certain goals for a fiscal year, our accountability staff checks, both on scheduled and periodic bases, to determine if we have met these goals. If we have not, the accountability team makes certain recommendations to obtain management improvements.

Ongoing program review and analysis, and management by objectives, helps ESA allocate and use its resources in the public interest as wisely as possible. Only by being accountable for our actions can we confront the nation's needs in the workplace in terms of better budgeting of the taxpayer's money, continuing internal integrity, and high performance of service to the people.

We maintain a small but highly competent staff in Washington, and one accountability officer stationed in each of our 10 regional offices. These officials help the regions plan and develop the vital programs which can best serve the needs of the people within the respective regions.

Although our accountability system has been in operation only one year, we already have seen improvements in our overall management of the resources entrusted to us by the American people.

A true system of accountability is essential in safeguarding against waste, duplication of effort, and irresponsibility. Accountability is one of the best tools we have within government for measuring efficiency and effectiveness. It is a tool which can only make us better workers for you.

Bernard E. DeLury

Minimum Wage Goes Up For Most Workers

The minimum wage went up on January 1, entitling most of the 58 million covered workers to at least $2.10 an hour.

By January 1, 1978, all covered employees will have to be paid at least $2.30 an hour.

Nearly 38.5 million nonfarm workers covered under the FLSA prior to February 1, 1967 are now entitled to the $2.10 an hour rate. This will increase to $2.30 on January 1, 1976.

More than 18.6 million employees who came under the act's coverage in 1967 or later must now get at least $2.00 an hour, to be raised to $2.20 an hour next January 1 and to $2.30 in January, 1977.

About 587,000 agricultural workers previously entitled to $1.60 an hour must now be paid at least $1.80. This minimum will increase to $2.00 next January 1, to $2.20 in January, 1977, and to $2.30 in January, 1978.

More than 1.5 million domestic service workers, who were brought under the act's coverage last May 1 at $1.90 an hour minimum wage, were entitled to a $2.00-an-hour minimum starting January 1, 1975. Their minimum will increase to $2.20 on January 1, 1976, and $2.30 on January 1, 1977, putting them on a par with most other FLSA-covered employees.

* * * *

Labor Law Protecting Migrant Workers Strengthened By New Amendments

Migrant farm workers have greater job protection under recent amendments to the Farm Labor Contractor Registration Act (FLCRA).

The new provisions, signed into law on December 7, 1974, place stricter controls on farm labor contractors (crew leaders) who provide migrant labor.

Major points in the new legislation include the following:

-- The term "farm labor contractor" is broadened to include any person who recruits, solicits, furnishes, or transports any migrant worker for agricultural employment, either within a state or across state lines. (Before amended, the law applied only to crew leaders recruiting 10 or more workers);

-- Contractors must meet more stringent requirements before being issued a registration certificate, provide more detailed information to workers regarding their working conditions, and provide detailed payroll information to persons for whom the contractor provides labor;

-- Persons engaging a contractor's services must also keep detailed payroll records and must make sure the contractor's certificate is in order;

-- Peonage is added to the list of punishable crimes for which the contractor is liable;

-- The Secretary of Labor now has authority to obtain injunctive relief through the U.S. District Court which has jurisdiction where the alleged violation occurred. He may also assess civil money penalties of up to $1,000 for each violation.

Willful criminal violation by a contractor may now result in a one-year jail sentence, as well as the former $500 fine. Each subsequent criminal violation may result in a three-year prison term and up to a $10,000 fine.

The amendments increase the Department's investigatory powers, allow migrants to bring civil suits against contractors, and prohibit retaliatory action by contractors against workers who file complaints or suits.

* * * *

Philadelphia Minority Employment Plan is Extended 6 Months

The Philadelphia Plan for increasing minority employment in federally involved construction work has been extended six months so a plan providing for more comprehensive coverage of the industry can be developed.

During this time, the Department of Labor will conduct a fact-finding hearing to determine the extent of underutilization of minorities throughout the Philadelphia area construction industry and to consider the need for broadening the plan to cover more crafts.

The date of the hearing has not been set. The Plan was to expire on December 31, 1974, but is now effective through June 30, 1975.

Imposed in July, 1969, the Philadelphia Plan covers six crafts -- electrical workers, elevator constructors, ironworkers, plumbers/pipefitters, steamfitters and sheetmetal workers. It was established under Executive Order 11246 which prohibits employment discrimination by federal and federally-assisted contractors and subcontractors because of race, color, religion, sex or national origin and requires affirmative action to ensure equal employment opportunity. The order is administered by ESA's Office of Federal Contract Compliance.

The most recent compliance check on the Philadelphia Plan, made last July, showed that while there had been a substantial decrease in the number of employed construction workers, the number of minority workers had increased 4.4 percentage points from two years ago.

* * * *

Radio and TV Announcements Keep Workers and Employers Informed

A major force in informing workers and employers about the employment standards laws and programs has been the thousands of radio and television announcements broadcast as a public service. More than 1,000 radio and TV stations and the three major networks have been carrying messages over the last four years about minimum wage increases, equal pay, age discrimination, federal contract compliance, farm labor contractor registration, child labor laws and black lung benefits.

The results: (1) More people find out about laws that protect their rights on the job; (2) More people take action to get their job rights; (3) More back wages are returned to workers; and (4) More employers comply voluntarily with the laws.

Public service messages are carried free by the radio and television stations.

* * * *

Appeals Court Upholds Employee Right of Action Under CCPA

An employee discharged for garnishment of his earnings for any one indebtedness has the implied right of action under the Consumer Credit Protection Act to bring suit against the employer for reinstatement. Such a ruling was made recently by the U. S. Court of Appeals for the Ninth Circuit (San Francisco).

The Act prohibits an employer from discharging any employee because earnings have been subjected to garnishment for any one indebtedness. Whoever willfully violates the discharge provisions of this law may be prosecuted criminally and fined up to $1,000, or imprisoned for not more than one year, or both. This law is enforced by the Secretary of Labor, acting through the Wage and Hour Division, Employment Standards Administration.

John H. Stewart, an employee, was discharged by Travelers Insurance Company in January 1971. Stewart instituted an action against the employer for discharge in violation of the Act, requesting reinstatement and back pay. The federal district court dismissed the complaint on the grounds that Congress did not intend such private actions for civil relief to be available under the Act.

Stewart took the case to the U.S. Court of Appeals, which held that there is an implied right of private civil remedies for violation of the discharge provisions of Title III of the Consumer Credit Protection Act. The case was returned to the district court for trial on the merits.

* * * *

Rules Proposed on Civil Money Penalties for Child Labor Law Violations

New regulations have been proposed to assess civil money penalties against violators of child labor provisions of the Fair Labor Standards Act (FLSA).

The new proposal is based on FLSA 1974 amendments which call for a fine of up to $1,000 for each employer violation of the law. Published in the Federal Register December 26, 1974, the proposed regulations:

- describe violations for which civil money penalties may be imposed;
- establish rules for issuing notices of penalty assessments against employers;
- describe factors to be considered by the Labor Department in determining the amount of the penalty;
- provide for filing of exceptions by individuals charged with violations;
- contain rules on administrative proceedings to be followed when exceptions are filed; and
- outline methods by which the Labor Department may collect fines.

* * * *

Appeals Court Upholds FLSA Complainants' Right To Anonymity

Workers complaining of Fair Labor Standards Act (FLSA) violations have a right to remain anonymous, a U.S. court of appeals has decided.

The U.S. Court of Appeals for the Eighth Circuit (St. Louis) overturned a district court order which had dismissed an equal pay suit because Secretary of Labor Peter J. Brennan refused to give the employer the names and statements of the complaining employees and Labor Department investigative reports.

The three-judge appeals court declared that "employees have an absolute right to complain of the law's violations, and it is the court's duty to assure that they are protected in the exercise of that right."

The court said, however, that the Secretary's privilege to keep the names of complainants confidential is limited. A court may decide that an employer's need for such information, to prepare a defense, outweighs the public interest served by keeping the information confidential.

Engineered Products, Inc., of Hazelwood, Mo., sought the information after the Labor Department brought suit in federal district court charging the firm with paying its male production employees at higher wage rates than female employees doing the same work.

The plastics manufacturer claimed it needed the confidential information to prepare its defense. However, theEighthCircuit said the firm had not proven "substantial need" for the material.

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Employment Standards Administration
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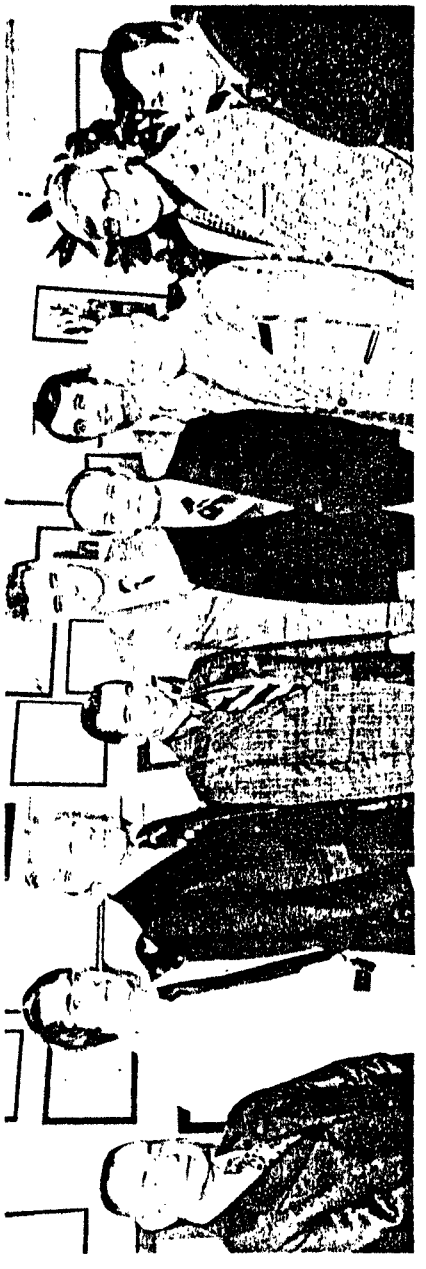

A group of top-ranking State government labor officials, representing the International Association of Governmental Labor Officials, held a day-long conference recently with Assistant Secretary Bernard E. DeLury. Purpose of the session was to further cooperation between the State and federal labor departments. Left to right: Paul H. Bachman, Commissioner, Dept. of Labor and Statistics, Wyoming; Charles McCoy, Director for Labor Standards, Kentucky; Bartlett R. Brown, Commissioner, Dept. of Labor, Idaho; Assistant Secretary DeLury; Edgar L. McGowan, Commissioner, Dept. of Labor, South Carolina; William C. Jacobs, Director, Dept. of Labor and Industries, Washington, and president of the association; Jerry L. Addy, Commissioner, Bureau of Labor, Iowa; Orville W. Hagen, Commissioner, Dept. of Labor, North Dakota; Dennis W. Finch, Commissioner, Dept. of Labor and Management Relations, South Dakota; and James Yocom, Commissioner, Dept. of Labor, Kentucky. Gerald E. Dunn, Executive Deputy Industrial Commissioner for the State of New York, and Ben Tuccinardi, Senior Labor Standards Specialist, N. Y. Dept. of Labor, also attended the conference.

* * * *

Peter J. Brennan, Secretary of Labor
Bernard E. DeLury, Assistant Secretary of Labor for Employment Standards
Robert A. Cuccia, Director, Office of Information, ESA
Ledford H. Day, Editor
Contributors: Marian Nelson, Heidi Halter, Emily Wadlow

The Secretary of Labor has determined that the publication of this periodical is necessary in the transaction of the public business required by law of this Department. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through January 30, 1976.

GPO 886-205