Senate

COMMERCE AND LABOR COMMITTEE

April 29, 1975

The meeting was called to order in Room #131 on Tuesday, April 29, 1975, at 5:00 p.m. with Senator Gene Echols in the chair.

PRESENT: Senator Gene Echols
Senator Margie Foote
Senator Gary Sheerin
Senator Richard Bryan
Senator Warren Monroe
Senator Richard Blakemore
Senator William Raggio

OTHERS PRESENT: See Exhibit A

A.B. 364: Revises certain provisions of the Nevada Industrial Insurance Act and Nevada Occupational Diseases Act.

John Reiser, Nevada Industrial Commission, testified in favor of the bill. Mr. Reiser said this was discussed in the first joint hearing held on the NIC package. This bill provides for a $24,000 payroll limit which is designed to put them in a comparable situation with surrounding states who generally have unlimited payroll. This bill will allow them as benefits escalate for the payroll to escalate with it. This includes elected as well as appointed positions. It also excludes athletic or social events. He said it would allow for a stable rate. He said if they don't have this kind of bill the rates will have to be increased. This will allow the rates to remain more stable, with no additional rate increase.

When asked if there would be a fiscal impact, Mr. Reiser said the cost would be reflected in a rate increase. He said you either have rates or payroll that has to give. He did said there would be no implication to the employer if A.B. 364 is passed. Mr. Reiser said they are going to have to collect the same dollar amounts. Senator Sheerin asked if there was another bill that raises the rates. Mr. Reiser said they calculate the rates on the assumption that this bill will pass. He said they needed a decision made one way or the other so they can calculate their rates.

Senator Sheerin asked if an employee has two employers and is paid $10,000 by each employer, would both employers have to pay the same NIC benefit. Mr. Reiser said that depended on the occupation. Each employer would have to pay for the exposure. Senator Monroe asked if he got double benefits. Mr. Reiser said no he wouldn't get double benefits, but he would have a higher considered wage. Senator Raggio said that whatever the limit, payments are made beyond the limit if he works for more than one employer. He said there was just no equity in paying more than the maximum because he has worked for more than one employer. Mr. Reiser said each employer, in order to have an equitable system, has to pay for each $100 unit he has. He said it would compound the inequity if the second employer paid nothing. Senator Raggio asked what if they put it on a weekly maximum. Mr. Reiser said that 20 states have tried this and are moving away from it. In other states the rates are the thing they are looking at. He said a good example is you take an employer that pays is employee $10 and works them 60 hours a week compared with an employer that pays $2 and works them 30 hours a week. Under the weekly concept they pay the same premium where one employee has double exposure. He said the trend was away from this for equity purposes. He said in Nevada there isn't that added burden because they are paying for the exposure. Mr. Reiser said that on a weekly basis there would be considerable abuse and discussed this briefly. He also said there would be a terrific auditing problem.

A.B. 366: Removes sex distinction from provisions of Nevada Industrial Insurance Act establishing conclusive presumption of total dependence of spouse upon an injured or deceased employee.

John Reiser, Nevada Industrial Commission, testified in favor of the bill. He said this bill simply clarifies a provision that was missed in 1973 and establishes total dependence of spouse on deceased employee. He said it makes no distinction between husband and wife.

A.B. 368: Increases workmen's compensation benefits for burial expenses and extends period compensation will be paid to surviving children if enrolled in vocational or educational institution.

John Reiser, Nevada Industrial Commission, testified in favor of the bill. He said this bill increases burial expenses. There is a fiscal impact of one tenth of one percent. He said this was an equitable change to pay for the current cost. The increase to survivors is two tenths of one percent. It also extends the age from 18 to 22 if the

child is enrolled in an educational institution.

A.B. 371: Permits employee to elect compensation under the provisions of chapters 616 or 617 when his employer has failed to provide mandatory coverage.

John Reiser, Nevada Industrial Commission, testified in favor of the bill. He stated this bill permits the employee to elect compensation when the employer has failed to provide mandatory coverage. Nevada Industrial Commission is there to police employers. 1973 statutes gave them the authority to prevent employers from continuing to do business if they refused to provide mandatory coverage. This bill allows them to pay benefits and take legal action to recover any benefits paid. The employer would lose his common law defenses.

A.B. 403: Makes certain changes in Nevada Occupational Safety and Health Act.

Ralph Langley, Nevada Industrial Commission, testified in favor of the bill. The amendments to the bill were discussed with a handout which will be labeled EXHIBIT D. The amendments bring the bill into conformance with A.B. 360, if it is passed. Basically the changes involve the inspector of mines provision. In 618 they delete the inspector of mines provision, but in A.B. 360 it is included. After talking to the bill drafter, they made those changes.

Mr. Langley stated that some of the changes in A.B. 403 were made by the Assembly Commerce Committee. The addition of Section 31 and 32 were made by that committee.

A.B. 419: Places time limitation on employer for reporting an industrial injury to commission.

John Reiser, Nevada Industrial Commission, testified. He stated this places a time limitation for reporting industrial injuries to the Commission from the employer. OSHA requirement is six days for reporting. In the record keeping they must report within six days of their knowledge of the injury. They are trying to correct a problem that about 35 percent of their claims are reported after 10 after the injury.

A.B. 426: Provides for forfeiture of industrial insurance benefits obtained by false statements and provides for penalties for employers' failure to provide compensation.

John Reiser, Nevada Industrial Commission, testified. This will allow certain injured employees to elect lump sum award payments. The 1973 statutes provided for a 54 percent increase for Permanent Partial Disability benefits. There are still a number of people that have requested a lump sum payment. This would provide for either present working lifetime benefits or lump sum payment that would be calculated on a basis similar to what they had done in the past.

A.B. 428: Revises definition of average monthly wage and extends use of other definitions.

John Reiser, Nevada Industrial Commission, testified. This would revise the definition of average monthly wage. See EXHIBIT B, page 2. The maximum considered wage would be $1,140. The individual receiving that wage would still receive the same two-thirds of his salary or a maximum benefit of $760. Everyon will receive two-thirds of their wages up to the maximum considered wage. The anticipated state average monthly wage will be $760.

Senator Raggio asked how they compute the average monthly wage. Mr. Reiser explained this was done once a year and the figures were obtained from the Employment Security Division. Mr. Reiser also explained the formula used to obtain the maximum monthly wage and how the benefits are determined at two-thirds the wages. Mr. Reiser also explained how some benefits are paid on a deemed wage when there are no actual wages earned.

Senator Sheerin asked if the increased benefits were going to be funded by the increases called for in A.B. 364. Mr. Reiser said no, 10.9 percent would be the over all average rate increase. The higher payrolls are going to be affected the most. He said they would go through every classification and check the payroll groups over $760 per month. He stated that 10.9 percent is an average that covers all classifications, but some will have less and some will have an actual rate reduction because of a good experience rating. Senator Sheerin asked where they were going to get the money to fund this. Mr. Reiser said the 10.9 percent is an increase in premiums that will be collected from employers that pay premiums. Senator Sheerin asked if that increase was in addition to A.B. 364. Mr. Reiser said that would be based upon passage of A.B. 364. Discussion followed.

Roland Oakes, Associated General Contractors, testified. He stated that many years ago the employer felt that under NIC they had no ceiling on earnings. One member of the Assembly worked very diligently over the years and go a ceiling put on. What happened over the years is the ceiling was set at $15,600 and as wages went up, the leveling-out

process eroded. This hurt the small employer. It was the thought of the employers that setting this up to $24,000 would equal it out. In doing this, the employee who is receiving the larger salary should get an increase in benefits.

Glen Taylor, Federated Employers, testified. Mr. Taylor handed out an exhibit which he explained. It is attached and will be labeled EXHIBIT E. The Federated Employers would support the following bills: A.B. 50, A.B. 366, A.B. 371, A.B. 419, A.B. 427. They would oppose the following bills: A.B. 364, A.B. 368 - the feel the cost is too high, and A.B. 428. They are neutral on the following bills: A.B. 315, A.B. 403, A.B. 219 - they feel there should be some amendments, but they could live with it as it is. A.B. 287 they are happy with the amendments that came out of the Assembly. They oppose A.B. 4 because they feel there should be some restriction on how far a person can go to obtain their own physician and they thought the Commission should have some control.

Senator Raggio asked Mr. Reiser to explain the controls they have now on obtaining physicians. Mr. Reiser said what this bill referred to was x-medical policy holders who provide the medical for their employees. The language in A.B. 4 simply clarifies the present AB4 policy of the Commission that the doctor bills are paid by the employer. If the employee objects to the doctor, he has the right to request a change of doctor. The x-medicals do have the responsibility to get the claimant to the proper specialists. He stated there is a requirement thatthe claimant see a physician that is on the list of doctors in good standing.

Glen Taylor said they opposed A.B. 364 because they haven't been convinced the base should be raised. He stated the economic conditions are beyond their control and these bills increase cost to people doing business. Mr. Taylor said they couldn't stand many more increases. Senator Raggio said he understood the rate was going to be set to compensate for whatever benefits came out of the legislature. Mr. Reiser said that was right. Senator Raggio said broadening the base isn't necessarily going to increase the cost to the employer. Mr. Reiser said that was right. Further discussion followed. Senator Raggio said if he understood correctly, the smaller employers would actually have lower rates. Mr. Taylor said he didn't think so because the rates are based on salaries. Mr. Reiser said there would be little or no affect on classifications such as agriculture. Discussion followed.

Senator Bryan asked what the anticipatd fiscal impact was on this particular bill. Mr. Taylor said they didn't try to estimate and said he couldn't answer that question. Senator Sheerin said assume A.B. 364 passes. He asked what the percentage or amount of the increase of rates would be to pay for all the benefits put forth in the Labor and Management Package. Mr. Reiser said 15.2 percent rate increase. Senator Sheerin asked what the 15.2 percent was. Mr. Reiser said that was the over all rate increase. Mr. Reiser also said that some of the states that had gone to limited payroll had a 2.6 percent reduction in rate adjustment. He discussed this briefly.

Jack Kenny, Southern Nevada Home Builders, spoke. He said if you are going from $15,600 to $24,000, that is a jump of 65 percent. He said they would each pay a proportion. He said the problem when you report on NIC is that you do not report by individual names. It is a lump sum total. All the information NIC gets, they have to go over to Employment Security Division to find out what pay brackets these people are in. Mr. Reiser said that depends on how many people are going to be eligible. He said they do keep records of how many claims in each category. He stated this would have a greater affect on Mr. Kenny's industry as far as holding rates down.

Mr. Taylor continued with his testimony. He said he is opposed to A.B. 368. He said the figures given to him do not exceed $700 for burial expenses. On the provision for the child support, he can see the reason for it. However, he felt the age should be 18. Regarding A.B. 428, Mr. Taylor said there are a lot of construction employers in the Federated Employers Association that this would increase their costs. That cost would automatically be passed on to the consumers. Regarding S.B. 20, Mr. Taylor said he could support this bill.

AB4 Assemblyman Jim Banner testified on A.B. 4. Mr. Banner said this bill concerns itself with those employers who have the X-med agreements. He explained that an X-med agreement with NIC is where they are able to make an agreement with the employer for coverage for the compensation only and the employer pays for the medical coverage. The employer would be required to have medical facilities approved by NIC.

Mr. Banner stated that all this bill does is say that the employee may disregard that type of benefit and go back to NRS 616.342 and that goes back to the medical panel. Mr. Banner felt that the employee is at a disadvantage when they have this service and are treated by a company doctor who is getting pad by the employer. Mr. Banner said he saw a loss of the doctor-patient relationship.

Senator Monroe said the employee can go to any doctor provided that doctor is on the list approved by NIC. Mr. Banner said that was right. Senator Monroe asked if that included chiropractors and Chinese doctors. Mr. Banner said yes. He explained also how a person goes about changing doctors.

Mr. Banner discussed A.B. 554 briefly. This bill has not yet reached the Senate, however, it is Mr. Banner's bill. He explained that it improves the hearing officer procedure.

Mary Leisek, representing Southern Nevada Home Builders, testified. They are opposed to AB 364. She stated if you correlate A.B. 364 and A.B. 428, there is no way the benefits can exceed $760, regardless of whether premiums were paid on $24,000 or $50,000. They don't feel this is equitable because it places a burden on the employer who has a highly qualified personnel staff and he pays them more.

Mrs. Leisek said A.B. 428 calls for a 10.9 percent increase and, as has been pointed out, there is a 65 percent increase in the broadening of the base in A.B. 364. She suggested a weekly maximum per employee. Mrs. Leisek said they acknowledge the fact that benefits have to be increased, but they do now acknowledge the fact that the base should be broadened up to $24,000. The yearly maximum would be divided by 52. Mrs. Leisek said it might possible cause an auditing problem with NIC. Senator Monroe asked how they justified one employer paying the full amount to NIC. Mrs. Leisek said that under present law there is a maximum of $15,600 per employee not employer. The NIC is collecting premiums from all employers regardless of how many employers an employee has. Now they are trying to say each should pay the maximum. She said that if $24,000 is paid in the first six months, theoretically this premium is paid for the year. Mrs. Leisek said that cost should be spread over all the employers and by the end of the year you would have reached $24,000. She said you could make the payroll reports monthly the same as they do to the unions. Further discussion followed between Mrs. Leisek and Senator Monroe.

Senator Echols asked Mrs. Leisek if she had gotten together with NIC or any of the administration to have these things explained to her. Mrs. Leisek said no, she had not been invited to do so. Mr. Reiser said they would be very happy to sit down with her after the hearing or any time to explain.

Senator Echols asked Mr. Reiser if the Commission can adjust the rates. Mr. Reiser said the NIC does set the rates and there are controls and limist on this. He said the rates are reviewed by independent actuaries. Senator Raggio said of the 10.9 percent projected rate increase, what is the highest anticipated rate increase. Mr. Reiser said that combined with their accident experience, some could go as high as 50 percent. He said on the other hand, some will be decreased. Discussion of this followed.

Mr. Reiser said he would estimate the increase for the home builders would be from 7 to 10 percent less if A.B. 364 is passed. Mr. Reiser said in order to pay $150,000 in claims, you have to collect $150,000 in premiums. Mrs. Leisek made the comment that their only recourse when they have complaints about their premiums is the Legislature.

Mrs. Leisek, Mr. Reiser and others from the audience discussed the weekly maximum and other matters pertainirg to this package. Questions were also answered by Mr. Reiser, which were addressed to him from Mrs. Leisek and the committee members.

Ed Greer, Business Manager for Clark County School District, spoke. He stated that he had sent letters to Senator Echols and Assemblyman Banner estimating the cost of these bills. He asked the accounting department of cost out the bills and they feel the rates are justified. They are, however, concerned about the total cost. The figures Mr. Greer gave them would be higher than what Mr. Reiser indicated. After discussion, it was determined that Mr. Greer had costed out every bill in the package plus those that were not included in the bills that NIC had presented. He agreed that their costs would be about equal on that basis.

Dorothy Bracket, 2880 North Truckett Lane, Sparks, testified regarding A.B. 428. Mrs. Bracket's husband is on a pension with permanent total disability. She wanted to know if this bill would include her husband. Mr. Reiser said that A.B. 428 would go into affect on July 1, 1975, and would apply only to accidents that took place on or after July 1, 1975. Mrs. Bracket understood that there was another bill that would apply to her husband. Mr. Reiser said he would be affected by the 20 percent increase in S.B. 330, if that bill is given favorable consideration. S.B. 330 is in the Senate Finance Committee. Mrs. Bracket then asked if this would bring them up to the bracket that those in A.B. 428 would be. Mr. Reiser replied no. Mr. Reiser explained to Mrs. Bracket why her husband would not come up to this level.

SB 330

Mr. Reiser stated there are 460 people that would be affected by S.B. 330's passage, and it would cost 3.2 million dollars to award this increase. Senator Echols asked if there were any reason to adjust the rate to address itself to people in Mrs. Bracket's position. Mr. Reiser said A.B. 5 is an alterntive bill, which is estimated to have about a 40 percent impact. Senator Foote asked if this bill was in the package. Mr. Reiser said no, S.B. 330 was passed. Further discussion of this problem ensued between Mrs. Bracket and members of the committee.

Senator Sheerin asked Mr. Reiser if he could make a chart on the assumption that the premiums were to be paid weekly. The chart would include number of rate of increase and total dollars needed to fund this.

Senator Echols at this time said that a subcommittee would be appointed to allow Mr. Reiser to answer questions from persons in the audience. He appointed Senators Sheerin, Monroe and Blakemore to that committee.

At this time there was a break for dinner. The meeting began again at 9:10 p.m.

A.B. 219: Makes certain provisions on wages, hours and working conditions apply uniformly to employees without regard to sex.

Assemblyman Jean Ford testified. Her statement is attached and will be labeled ATTACHMENT I.

Stan Jones, Nevada State Labor Commissioner testified. Mr. Jones stated that he has considered A.B. 219 for approximately six years, through prior legislation. He said at the outset they must all agree that they want to make some extensions of the protective labor laws of the State of Nevada. He also said that the AFL-CIO, who has endorsed the extension of protective labor laws to all employees, may not have needed to do this, but they did.

Mr. Jones said the state work force today is approximately 260,000 employees. Out of those, 95,000 are female who have enjoyed the protective labor laws as specified in Chapter 609. Mr. Jones said that A.B. 219, in its third form, has been so emasculated that is has excluded 15,000 people out of 16,000. He also said that A.B. 219 would cover 900 retail establishments which are already covered by the Fair Labor Standards Act. Mr. Jones said that A.B. 219 in its third reprint satisfied 99 percent of management's objections. He said they were still not satisfied and want 100 percent.

Mr. Jones said that A.B. 219 is not any extension of any benefit that 50 percent of the work force in the state is not already receiving by law. He said the amendments to A.B. 219 are a total hoax on the Nevada worker. Mr. Jones said that A.B. 219 when first introduced, did enlarge on the peramiter of protective labor laws.

Senator Bryan asked Mr. Jones if A.B. 219 in its third reprint effectively met the challenge in the court action which has been filed. Mr. Jones said yes. Senator Raggio asked what the present law was in regard to overtime. Mr. Jones said it was time and one half. Senator Raggio asked if Mr. Jones saw the necessity to extend the coffee break and lunch hour under the law. Mr. Jones said yes, because if you don't, you are denying the work force of their privilege. Senator Raggio asked if he saw the need for it to be in the law. Mr. Jones said yes. Further discussion of this point followed. Mr. Jones did say they put this in as a result of Chapter 609. Senator Sheerin asked if the break period was consistent with all the industries in the State. Mr. Jones said it would be with all covered places of employment. Senator Sheerin said he was thinking in terms of the people that work in gaming that are on 40 minutes and off 20. Mr. Jones said they would satisfy the requirments to apply for an exemption. Senator Sheerin asked about the 30 minute lunch periods. Mr. Jones said that would not satisfy the uninterrupted period for lunch.

Senator Monroe asked if the 15,000 exemptions came from the retail establishments. Mr. Jones said yes. Discussion followed. Senator Sheerin asked if Page 3, Subparagraph 5 is the exemption that would apply to the gaming industry. Mr. Jones said yes and that it would apply to any covered employer. Senator Sheerin said that could cure gaming problem.

Senator Echols asked what the difference was between $250,000 and $500,000 in Section 2, subparagraph m. Mr. Jones said that was the compromise reached. Jean Ford explained this in further detail to the committee.

Lou Paley, AFL-CIO, testified. He told the committee to look at the Assembly Daily History and to notice that this bill was removed from the general file six times. He didn't think this bill was very good at all. He suggested the Senate Committee appoint a subcommittee. He said the subcommittee appointed in the Assembly was strictly management. Mr. Paley said the $500,000 exemption should read $10,000. Discussion of the minimum wage laws were also discussed. Mr. Paley also explained what a "show-up" provision was. Further discussion followed between committee members, Jean Ford and Mr. Paley.

Roland Oakes, Associated General Contractors, testified. He said that Page 3, line 18 was in violation of the right to work law. He suggested that they comply with the provisions on Page 5. Mr. Oakes said that if the committee would pass just the language on Lines 7 through 10, they would be in compliance with what the court is seeking. Mr. Oakes referred to Page 3, Line 8. He stated that many workers do not get coffee breaks today. See EXHIBIT G for the amendment Mr. Oakes suggested. Further discussion of the coffee break provision followed between Mr. Oakes and committee members.

Bob Alkire, Kennecott Copper and Nevada Mining Association, testified. Mr. Alkire said

Mr. Alkire said that in all the discussion of A.B. 219 he had heard that the state is concerned with people in private enterprise. He said he had never heard this before but was sure that management would not object.

EXHIBIT H was a phone message from Vern Meiser in opposition to the bill.

Mr. Alkire said he went on to say that he thought all the problems with the bill had been solved in the Assembly. He also discussed the Fair Labor Standards Act, a copy of which is attached and labeled EXHIBIT I. Senator Echols asked who enforces that act. Mr. Alkire said the Department of Labor.

Bob Guinn, Nevada Franchised Auto Dealers, testified. Mr. Guinn discussed Page 1, Line 9, the definition of a professional. He also discussed the Federal Act and passed out a copy to each member of the committee. It is attached and will be labeled EXHIBIT J.

Jack Kenney Southern Nevada Home Builders, testified. Mr. Kenney felt the language on Page 3 Section 8 could be improved. He felt the existing language was too vague. He discussed other portions of the bill that he agreed with.

John Gionatti, Vice President of Harrah's Club, testified. Mr. Gionatti was concerned about the hotel being in violation if this bill is passed. He stated their dealers work 20 minutes and are off 20 minutes. He discussed this briefly with the committee.

A.B. 287: Gives labor commissioner authority to conduct hearings under labor laws.

Senator Raggio moved to reconsider.
Senator Foote seconded the motion.
The vote was unanimous with Senator Monroe absent.

Senator Raggio wished the record to reflect this action was taken because the Senate Finance Committee was opposed to the addition of the independent hearing officer.

Senator Foote then moved to do pass.
Senator Raggio seconded the motion.
The vote was unanimous with Senator Monroe was absent.

A.B. 315: Requires employers to furnish wage information to employees periodically.

Stan Jones, Nevada State Labor Commissioners, testified. He was in favor of the bill. Mr. Jones said that employers were required to give employees only the information as stated in the Federal Fair Labor Standards Act. He said it was difficult for employees that are not provided this information. Mr. Jones said the Assembly had worked on the bill considerably and the bill is now in its third reprint. He said all the objections have been directed out of the bill.

Senator Bryan asked if they were filling a jurisdictional void. Mr. Jones said yes. He said that employees who are not provided any wage data would be under this bill.

Senator Bryan moved do pass.
Senator Foote seconded the motion.
The vote was unanimous with all members present and voting.

Senator Bryan reported to the committee on S.B. 372. He had the amendment for the committee to look at. Discussion of the bill took place.

A.B. 554: Makes various changes in Nevada Industrial Insurance Act and Nevada Occupational Diseases Act.

Richard Bortolin, Nevada Industrial Commission Hearing Officer, testified. He stated that this bill is the appeals officer bill to the NIC. It is a bill which he wrote to get the minimum requirements administratively for the appeals officer.

Section 16 of the bill is repealed and this was explained by Mr. Bortolin. Mr. Bortolin went through the bill section by section and explained.

Section 3, subsection 1, is an attempt to provide for affidavits which would preclude doctors from having to be called in to the hearing. Mr. Bortolin and Senator Bryan discussed this briefly.

Section 4 is a provision picked up in effect in certain jurisdictions and worth putting in because it might discourage claims that were not meretorious.

Sections 6 and 7 are policing type sections which give the appeals officer the same rights of subpeona that NIC has.

Section 8 is important because it would allow the taking of interogatories and depositions between parties

It would be useful in getting various statements from doctors, etc. that are necessary.

Section 9 gives the appeals officer the same rights as NIC as to transcripts.

Section 10 gives the appeals officer the same rights as NIC to have doctors appear before the appeals officer.

Section 11 gives the appeals officer the same right as NIC with respect to medical exemptions.

Section 12 gives the appeals officer the same right as NIC with regard to an appeal before the medical board.

Section 13 had a great deal of discussion because it removes the provision that the appeals officer will serve at the pleasure of the Governor. Mr. Bortolin said this is a full time job and said the four years suggested could be amended to two years.

Senator Monroe said most lawyers wouldn't want to give up their practice for two years to take that job. Mr. Bortolin said that would depend on the lawyer. Senator Raggio asked Mr. Bortolin if he had a private practice. Mr. Bortolin said yes, but it is very limited.

After further discussion of the bill, the following action was taken:

Senator Monroe moved to do pass.
Senator Foote seconded the motion.

After the motion there was discussion about the salary increase and also the people that work for Mr. Bortolin.

The vote on the motion was unanimous with Senator Raggio absent.

Senator Bryan stated he reserved the right to offer amendments on the floor of the Senate.

S.B. 544 was discussed. Amendments had been obtained by Senator Bryan and he had discussed them with Renny Ashleman and Jim Joyce. It was decided they would get all the amendments and bring them back for the committee to study.

Also discussed were S.B. 543, S.B. 449, S.B. 78, and A.B. 375. On A.B. 375, Senator Bryan stated the amendments had been distributed to the interested parties and they are very close in their thinking.

There being no further business, the meeting was adjourned at 11:25 p.m.

Respectfully submitted:
Kristine Zohner
Kristine Zohner, Committee Secretary

APPROVED BY:

Gene Echols, (KZ)
Gene Echols, Committee Chairman

Exhibit A

SENATE Commerce & Labor COMMITTEE

ROOM # 213
DAY Tuesday DATE April 29, 1975

684

NAME	ORGANIZATION	ADDRESS	PHONE NUMBER
*NOTE: PLEASE PRINT ALL THE INFORMATION CLEARLY.			
RALPH LANGLEY	N.I.C.	C.C.	885-5240
JOHN REISER	N I C	C C	885-5284
Bob ALKire	Kennecott Copper Corp.	McGILL	235-7741
Glen Taylor	B.M.I. & Federated Employees	HENDERSON	565-6487
Mary Lesiek	SNHB	LV	648-4113
ROBERT F. PETERSON	NEVADA PSYKHOLOGICAL ASSOC.	RENO	784-6668
ED GREER	CLARK CO. SCHOOL D.	L.V.	736-5445
Wm R Gibbons	The Gibbons Co, Inc	Reno	786-6743
Ernest Newton		Carson	219
Robert F Guinn - Nev. Financial Auto Dealers -			219
Rowland Oakes	Associated Gen Contr		219
Margaret Selover - All American Van & Stg - LV -			384-6551
J. F. PIERCE	PIERCE GLASS		384-3100

Exhibit B

SUMMARY OF NEVADA INDUSTRIAL COMMISSION LEGISLATION
RECOMMENDED BY THE GOVERNOR'S NIC LABOR-MANAGEMENT ADVISORY BOARD

(1) AB 364 Revises certain provisions of Nevada Industrial Insurance Act and Nevada Occupational Diseases Act.

(2) AB 366 Removes sex distinction from provision of Nevada Industrial Insurance Act establishing conclusive presumption of total dependence of spouse upon an injured or deceased employee.

(3) AB 368 Increases workmen's compensation benefits for burial expenses and extends period compensation will be paid to surviving children if enrolled in vocational or educational institution.

(4) AB 371 Permits employee to elect compensation under the provisions of chapters 616 and 617 of NRS when his employer has failed to provide mandatory coverage.

(5) AB 403 Makes certain changes in Nevada Occupational Safety and Health Act.

(6) AB 419 Places time limitation on employer for reporting an industrial injury to commission.

(7) AB 427 Allows certain injured employees to elect lump sum payment of industrial compensation benefits.

(8) AB 428 Revises definition of average monthly wage and extends use of other definitions.

LEGISLATIVE COUNSEL BUREAU
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CARSON CITY, NEVADA 89701

ARTHUR J. PALMER, *Director*

LAWRENCE E. JACOBSEN, Assemblyman, *Chairman*
INTERIM FINANCE COMMITTEE
FLOYD R. LAMB, Senator, *Chairman*

PERRY P. BURNETT, *Legislative Counsel*
EARL T. OLIVER, *Legislative Auditor*
ARTHUR J. PALMER, *Research Director*

April 17, 1975

The Honorable Joseph E. Dini
Assemblyman

The Honorable Virgil Getto
Assemblyman

Gentlemen:

AB 428 redefines Average Monthly Wage. The calculation for determining the industrial insurance benefits remains the same, i.e., 66.7% times the State Average Monthly Wage. What AB 428 does is to increase the ceiling.

The State Average Monthly Wage is $728. Presently benefits are calculated at 66.7% of the employees' wages or the State Average Monthly Wage whichever is lower. For example:

Actual Wage	Calculation Wage	Percentage	Monthly Benefit
$ 400	$ 400	66.7%	$ 266
728	728	66.7%	485
900	728	66.7%	485

It is anticipated that the State Average Monthly Wage will increase to $760. Coupling the effect of AB 428 with this is illustrated in the following schedule:

Actual Wage	Calculation Wage	Percentage	Monthly Benefit
$ 400	$ 400	66.7%	$ 266
728	728	66.7%	485
760	760	66.7%	506
900	900	66.7%	600
1,200	1,140(760x150%)	66.7%	760

As can be seen, higher benefits will be paid to people earning a monthly wage above the State Average Monthly Wage. The funding for this, if AB 428 is adopted, would be paid by the employers. The fiscal note dated January 3, 1975, calls for an average increase in costs to the employers of 10.9%. This does not mean that each employer's rate would be increased by 10.9%, but rather that in the calculation of future rates the review of the employer's experience would include a factor for possible losses based on 150% of the State Average Monthly Wage rather than on 100%. We did not attempt to determine the effect that AB 428 will have on any employer's rate.

The fiscal note states that $5,243,000 in premiums will have to be collected in 1975-76 fiscal year. If AB 428 is adopted and everything remains constant, approximately $5 million would be collected annually to finance the increased benefits that would be payable as a result of AB 428.

We reviewed, without making a detailed test of the calculations, the determination of the 10.9% average overall increase in costs to the employers. It is based on what the Temporary Total Disability (TTD) benefit payments were for 1974, which were actuarially computed as are all of their benefit payments.

The following schedule illustrates how the Industrial Commission determined the estimated overall rate increase:

Benefit	Total Benefits as % of Total NIC Costs	Estimated Increase in Cost of Benefits (AB 428	Estimated Overal Rate Increase
Temporary Total Disability	20.5%	21.0%	4.3%
Permanent Partial Disability	20.0%	20.4%	4.1%
Permanent Total Disability	10.0%	16.4%	1.6%
Survivor's Benefits	5.0%	16.4%	.9%
			10.9%

The 10.9% was calculated by determining what the present payments might have been, on an average basis, as if AB 428 was in effect now. They also estimated that, according to their historic data, Permanent Partial Disability benefit costs equal the cost of Temporary Total Disability.

The determination of the 10.9% did not take into consideration any estimated increases or decreases in wages, size of wage force, medical costs, etc. These factors will be considered in the rate making process.

We are available to discuss this with you at your convenience.

Sincerely yours,

EARL T. OLIVER, C.P.A.
LEGISLATIVE AUDITOR

By _____
John R. Crossley, C.P.A.
Chief Deputy Legislative Auditor

ETO:JRC:mn

cc: Keith Ashworth, Speaker of the Assembly

Exhibit C

688

ASSEMBLY AMENDMENT BLANK

Amendments to Assembly Bill

No. 403 (BDR 53-1014)

Proposed by _____

_____

AMENDMENT NO.

Amend section 7, page 3, line 24 and 26 by deleting brackets and changing to read as follows:

(b) The inspector of mines under the provisions of chapter [518] 512 of NRS;

(c)

Amend line 29 by returning paragraph designation back to (d)

Amend section 25, page 10, line 5, as directed in S.B. 358, page 7, line 44, deleting $30 and inserting $40.

SECTION	PARAGRAPH	WHY/WHAT CHANGED	WHY/WHO REQUIRED CHANGE
1	618.095	Clarifying definition of "employer".	Federal legislative review letter
2	618.135	Housekeeping-"and health"	
3	618.145	Adds "public agency" to definition of person considered an employer.	Federal legislative review letter
4	618.195	Housekeeping-[on or before July 1, 1974].	Bill drafter update.
5	618.255	Housekeeping-"safety and health representative".	State Personnel Division wants "consultant" used only for contra positions.
6	618.295	Establishing six month time limit for temporary standards.	Agreed to in final review prior to approval of State Plan.
7	618.315	Delete reference to inspector of mines to allow for intra-NIC coordination of safety and health activities.	Check A.B. 360, change to 618.315
8	618.325	Housekeeping-delete "as consultants or representatives".	
None	618.335	If A.B. 360 is acted upon favorably (See page 11, line 47) this section will be deleted.	See NRS 616.181-Chapter 41.031-.0
9	618.345	Establishes time period for reporting of fatal or catastrophic accidents to DOSH.	Agreed to in final review prior to approval of State Plan.
10	618.365	Add language to review board procedures to protect confiendeitality of trade secrets.	Requirement to meet Indices of 19 & Fed. legislative review letter.
11	618.375	Housekeeping-"and health".	
12	618.385	Housekeeping-"and/or healthful".	
13	618.395	Amended to include lessor as responsible person.	
14	618.425	Add language to advise employees when department	Federal legislative reivew letter
15	618.435	Housekeeping-replace "director" with "department".	

Exhibit D

16	618.445	Strengthened to include language for protection of employees discriminated against for filing a complaint and spells procedures to be followed.	Federal legislative review lette
17	618.465	Housekeeping-change "he shall" to "the department shall".	Bill drafter update.
18	618.475	Housekeeping-replace "director" with "department".	
19	618.485	DELETE THIS SECTION	Federal legislative review lette
20	618.535	Housekeeping-"and health".	
21	618.545	Housekeeping-delete "an inspector" add "a department representative".	Federal legislative review lette
22	618.555	Add reference to Section 545.	
23	618.575	Housekeeping-update of review board language.	Bill drafter update.
24	618.585	" " "	" "
25	618.595	" " "	" "
26	618.605	Housekeeping-change "appeal" to "appeal or contest" and "commission" to "review board". Also delete reference to 618.485.	
27	618.615	Housekeeping-update of review board language.	Bill drafter update.
28	618.625	Housekeeping-change "commission" to "department".	
XXX 30-31-32	618.???	Entitles employee access to records of exposure to toxic materials or harmful physical agents. Also stipulates that employers must notify employees that they have been or are being exposed to toxic materials at levels exceeding prescribed standards and employer to advise employee of action being taken to correct the condition.	Federal legislative review lette

Exhibit E.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CARSON CITY, NEVADA 89701

LEGISLATIVE COMMISSION
LAWRENCE E. JACOBSEN, Assemblyman, Chairman
INTERIM FINANCE COMMITTEE
FLOYD R. LAMB, Senator, Chairman

691

ARTHUR J. PALMER, Director

PERRY P. BURNETT, Legislative Counsel
EARL T. OLIVER, Legislative Auditor
ARTHUR J. PALMER, Research Director

April 17, 1975

The Honorable Joseph E. Dini
Assemblyman

The Honorable Virgil Getto
Assemblyman

Gentlemen:

AB 428 redefines Average Monthly Wage. The calculation for determining the industrial insurance benefits remains the same, i.e., 66.7% times the State Average Monthly Wage. What AB 428 does is to increase the ceiling.

The State Average Monthly Wage is $728. Presently benefits are calculated at 66.7% of the employees' wages or the State Average Monthly Wage whichever is lower. For example:

Actual Wage	Calculation Wage	Percentage	Monthly Benefit
$ 400	$ 400	66.7%	$ 266
728	728	66.7%	485
900	728	66.7%	485

It is anticipated that the State Average Monthly Wage will increase to $760. Coupling the effect of AB 428 with this is illustrated in the following schedule:

Actual Wage	Calculation Wage	Percentage	Monthly Benefit
$ 400	$ 400	66.7%	$ 266
728	728	66.7%	485
760	760	66.7%	506
900	900	66.7%	600
1,200	1,140(760x150%)	66.7%	760

As can be seen, higher benefits will be paid to people earning a monthly wage above the State Average Monthly Wage. The funding for this, if AB 428 is adopted, would be paid by the employers. The fiscal note dated January 3, 1975, calls for an average increase in costs to the employers of 10.9%. This does not mean that each employer's rate would be increased by 10.9%, but rather that in the calculation of future rates the review of the employer's experience would include a factor for possible losses based on 150% of the State Average Monthly Wage rather than on 100%. We did not attempt to determine the effect that AB 428 will have on any employer's rate.

The fiscal note states that $5,243,000 in premiums will have to be collected in 1975-76 fiscal year. If AB 428 is adopted and everything remains constant, approximately $5 million would be collected annually to finance the increased benefits that would be payable as a result of AB 428.

We reviewed, without making a detailed test of the calculations, the determination of the 10.9% average overall increase in costs to the employers. It is based on what the Temporary Total Disability (TTD) benefit payments were for 1974, which were actuarially computed as are all of their benefit payments.

The following schedule illustrates how the Industrial Commission determined the estimated overall rate increase:

Benefit	Total Benefits as % of Total NIC Costs	Estimated Increase in Cost of Benefits (AB 428	Estimated Overall Rate Increase
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Permanent Total Disability	10.0%	16.4%	1.6%
Survivor's Benefits	5.0%	16.4%	.9%
			10.9%

The 10.9% was calculated by determining what the present payments might have been, on an average basis, as if AB 428 was in effect now. They also estimated that, according to their historic data, Permanent Partial Disability benefit costs equal the cost of Temporary Total Disability.

The determination of the 10.9% did not take into consideration any estimated increases or decreases in wages, size of wage force, medical costs, etc. These factors will be considered in the rate making process.

We are available to discuss this with you at your convenience.

Sincerely yours,

EARL T. OLIVER, C.P.A.
LEGISLATIVE AUDITOR

By _____
John R. Crossley, C.P.A.
Chief Deputy Legislative Auditor

ETO:JRC:mn

cc: Keith Ashworth, Speaker of the Assembly

BDR
A.B. 428
S.B 693

FISCAL NOTE

AMENDMENTS:
Assembly: First Reading
Second Reading
Third Reading
Senate: First Reading
Second Reading
Third Reading

ate transmitted January 3, 1975

gency submitting Nevada Industrial Commission Date prepared January 3, 1974

Summary	Fiscal Year 1974-75	Fiscal Year 1975-76	Fiscal Year 1976-77	Continuing
Revise definition of "average monthly wage". NRS 616.027				
o				

PLANATION (use continuation sheets if required):

he proposed revision to the definition of the "average monthly wage" has the effect of ncreasing the maximum monthly disability benefit by 50%, from an amount equal to 66 2/3% of he state average monthly wage, to an amount equal to 100% of the state average monthly wage xcept for permanent partial disability compensation. The maximum permanent partial dis- bility compensation would also be increased by 50% from a base of 50% of the average monthly age to 75% of the average monthly wage. This change would align Nevada's workmen's compensa- ion disability benefit levels with the recommendations of the National Commission on Workmen's ompensation Laws and with the provisions of proposed federal legislation which would establish standards against which state workmen's compensation programs would be measured. If the ederal legislation is enacted, state programs which did not meet federal standards would be reempted by the federal government - U. S. Department of Labor.

(Next page)

Signature John R Reiser
John Reiser
Title Chairman

eviewed by Department of Administration
o nts by Department of Administration:

During 1974, 53.1% of the disabled workers in Nevada received less than the maximum average monthly wage upon which disability compensation is based. This group would not receive any additional benefit if the proposed revision in the definition of "average monthly wage" is adopted.

The remaining 46.9 percent of the disabled workmen received wages in excess of the maximum average monthly wage considered for compensation. This group would receive increased compensation benefits.

There are 5 categories of disability compensation which would increase in cost.

Temporary Total Disability Compensation would increase by 21%.
Permanent Partial Disability Compensation would increase by 20.4%.
Permanent Total Disability Compensation would increase by 16.4%.
Survivor's Benefits (fatal accidents/diseases) would increase by 16.4%.
Temporary Partial Disability Compensation would increase by 21%.

The effect of these increases in cost on the overall cost of workmen's compensation to the employers insured by NIC would be 10.9%.

Fiscal year 1974 premium paid by insured employers amounted to $43,630,000.

Assuming an annual 5% increase in premium income, the cost of the increased benefits as a result of the revised definition of average monthly wage in fiscal 1975 would be $5,243,000.

Federated Employees

NIC/EMPLOYMENT SECURITY/STATE LABOR LAW ANALYSIS 4/24/75

695

BILL NO.	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-4	Enlarges right of employees to be treated by physician of choice under Nevada Industrial Insurance Act. Assemblyman Banner.	Labor-Management Committee	1. Oppose 2. Lines 25-26, 2-3 amount to be duplication of medical services paid by the employer without permitting the employer and/or the Commission to adequately control the initial examination and charges for the accident.
A.B.-5	Provides for increase in industrial insurance benefits previously awarded persons permanently and totally disabled. Assemblyman Banner.	Labor-Management Committee	1. Oppose. 2. James Lorrigan, Employer Commissioner NIC. It is purported that the increased cost of this proposal would amount to $22,300,00 annually or a 14% increase in the Employers average contribution. If enacted this bill would never enable the Commission to close any settlement or compensation and since term payments usually exceed lump sum payments by two to three times. We feel that adequate escalation has already been provided.
A.B.-50	Permits sole proprietor or partner to elect workmen's compensation coverage. Assemblymen Jeffrey, Banner, Polish, Demers, Craddock, Mann, Sena, Moody, Harmon, Schofield, Ford, Heaney, Lowman, Vergiels, Young, Dini, Price, Murphy, May, Robinson, Benkovich, Coulter, Christensen, Ashworth, Wittenberg, Glover, Mello, Howard, Bennett, Weise, Hayes, Hickey, Bremner.	Labor-Management Committee	Endorsed by FEN Legislative Action Committee.

April 24, 1975
ANALYSIS - RECAP

BILL NO.	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-219	Makes certain provisions on wages, hours, and working conditions. Apply uniformly to employees without regard to sex. Assemblymen Ford, Banner, Benkovich, Jeffrey, Mann, Moody, Hayes, Lowman, Price, Wagner, Barengo,	Labor-Management Committee	***

*** Analysis - Third Reprint

1. Support with the following consideration:

2. The following areas would create a serious economic hardship on small Nevada employers:

Sec. 7.-1.(b) Requires time and one-half for hours worked in excess of 8 hours per day (except allowing 4- ten-hour days).

Sec. 7 - 2.(b) Employees who receive time and one-half the statuatory minimum rate (apparently for all hours worked) are exempt from daily overtime as proposed in Sec. 7.1.(b) above.

Sec. 7.(e) White collar exemption as established under Fair Labor Standards Act only applicable if such executive, administrative or professional employees consent to perform work beyond normal periods (subject to whose definition?).

Sec. 7.(f) Employees covered by union contracts (discrimination against non-union employers and employees).

Sec. 7.(c) Outside buyers - fails to incorporate outside salesmen as defined under F.L.S.A. Regulation 541.5.

Sec. 8.(3) Exemption where only one person is employed at a particular place of employment creates difficult area for employer to understand in multi-department operations.

Recommendation:

Amendment to read that the provisons of this bill shall not apply to employers subject to the provisons of the Fair Labor Standards Act.

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-287	Gives labor commissioner authority to conduct hearings under labor laws. Benkovich, Banner, Moody & Hayes.	Labor-Management Committee	This bill as amended in second reprint cleared up earlier objections. Therefore, if necessary, we would not oppose this bill.
A.B.-315	This bill pertains to salaries and wages in private employment, and it provides that every employer shall establish & maintain wage information records for the benefit of his employees, showing for each pay period (1) gross wage, salary or compensation; (2) deductions; (3) net wage, salary, or compensation; (4) total hours employed in the pay period, noting the number of overtime hours whenever applicable; and (5) the date of payment. Such wage information shall be furnished to each employee on each payday, and wage information records shall be maintained for a two-year period following the entry of information in the record. The aforesaid provisions do not apply to utility companies under the jurisdiction of the Public Service Commission of Nevada. Christensen, Jeffrey, Price, Mann & Polish.	Labor-Management Committee	The third reprint of this bill clears up objectionable provisions of the original bill. Therefore, if necessary, we will not oppose the bill.
A.B.-364	This bill pertains to workmen's compensation under provisions of both the Nevada Industrial Insurance Act, & the Nevada Occupational Diseases Act. It increases the maximum pay from $15,600 to $24,000 deemed to be received by certain corporate officers, and it eliminates compulsory coverage for a working member of a partnership. Then, the meaning of the word "employee" is expanded to include members of county and local departments, boards, commissions, agencies, and bureaus who receive less than $250 per month compensation. Lastly the bill	Labor-Management Committee	1. Oppose. 2. The bill fails to recognize the necessity of each employer making contributions on the maximum weekly earnings as we proposed in Assembly hearings. Further, raising the base from $15,600 to $24,000 is an excessive increase under present economic conditions. Since there were no amendments considered by the proponents of this bill, we urge the defeat of this proposal

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-364 Continued	provides that any injury sustained by an employee while engaging in an athletic or social event sponsored by the employer, shall be deemed not to have arisen out of or in the course of employment, unless the employee received remuneration for participation in such event.		
A.B.-366	This bill pertains to industrial insurance and it removes the sex distinction from a provision establishing conclusive presumption of total dependence of a spouse upon an injured or deceased employee	Labor-Management Committee	1. Support.
A.B.-367	This bill pertains to industrial insurance, and it eliminates the time limitation of 100 months on temporary total disability benefits.	Labor-Management Committee	1. Support.
A.B.-368	This bill pertains to industrial insurance and first it increases burial benefits from $650 to $1,200. Then, the bill extends the period that compensation will be paid to surviving children, if they are enrolled full-time in a vocational or educational institution. A child who survives a widow or widower, is entitled to compensation if he is over 18 years and incapable of self-support, until such time as he becomes capable of self-support; or he is over 18 years and enrolled as a full-time student in an accredited vocational or educational institution; until he reaches the age of 22 years. In cases where there are surviving children under the age of 18 years, but no surviving spouse, each child	Labor-Management Committee	1. Oppose. 2. A complete package for funeral expenses, lot and so forth, does not exceed $700.00. 3. The provision for child support beyond the age of 18 is an open and improper charge of the account. 4. In spite of testimony in adverse to this bill, no attempt was made to make this bill acceptable by the proponents. Therefore, we oppose this bill.

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-368 Continued	is entitled to his proportionate share of 66-2/3 percent of the average monthly wage for his support until he reaches the age of 18 years or, if enrolled full-time in an accredited vocational or educational institution, until he reaches the age of 22 years.		
A.B.-371	This bill pertains to workmen's compensation under provisions of both the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act. It provides that if an employee who has been hired, or who is regularly employed in this state, suffers an accident or injury arising out of and in the course of his employment, and his employer has failed to provide mandatory industrial insurance or occupational disease coverage, the employee may elect and receive compensation by filing a written notice of his election with the Nevada Industrial Commission and making an irrevocable assignment to the Commission of his right of action against the uninsured employer. Any employer who has failed to provide mandatory coverage, shall not escape liability in any action brought by the employee or the Commission by asserting any of the defenses provided by law, and the presumption of negligence set forth in the law is applicable.	Labor-Management Committee	1. Support. 2. This bill as amended in first reprint appears to meet the more objectionable provisions of the original bill. Although adequate civil recourse is available, we will not oppose this bill.

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-403	This bill makes certain changes in Nevada Occupational Safety and Health Act. Referred to Committee on Labor and Management.	Labor-Management Committee	1. No specific opposition to this bill, although we do not see the necessity for its passage.
A.B.-404	Removes office building restriction from type of buildings that Nevada Industrial Commission may purchase. Referred to concurrent Committees on Labor and Management and Government Affairs.	Labor-Management Committee	No Opposition.
A.B.-419	This bill pertains to industrial insurance and to the duties of the employer when an employee is injured. It provides that the employer, or his agent, shall within 6 working days following receipt of knowledge of injury to an employee, notify the Nevada Industrial Commission in writing of the accident. Any employer who fails to comply with this provisision, shall be fined not more than $100 for each such failure. Committee on Labor and Management.	Labor-Management Committee	No specific opposition.
A.B.-427	This bill pertains to industrial insurance and to permanent-partial disabilities and it provides that a claimant injured on or after July 1, 1973, and incurring a disability that does not exceed 12 percent, may elect to receive his compensation in a lump sum payment calculated at 50% of the average monthly wage for each one percent of disability benefits already received. Committee on Labor & Management.	Labor-Management Committee	Support--since this bill would result in a savings on administrative costs.

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-428	This bill pertains to industrial insurance and occupational diseases, and it revises the definition of "average monthly wage." It provides that "average monthly wage" means the lesser of (1) the monthly wage actually received, or deemed to have been received, by the employee on the date of the accident or injury to the employee, excluding remuneration from employment not subject to the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act, employment in interstate commerce or employment covered by private disability and death benefit plans, employment for which coverage is elective but has not been elected; or (2) one hundred fifty percent of the state average weekly wage as most recently computed by the Employment Security Department during the fiscal year preceding the date of the injury or accident, multiplied by 4.33. Committee on Labor & Management.	Labor-Management Committee	1. Oppose. 2. Increases the weekly compensation from state average weekly wage to 150% without any justification for the cost increase costing $5,200,000 annually resulting in 10.9% increase in employers contribution rates. 3. Strong opposition has been expressed by Southern Nevada employers against this bill, specifically the increased costs on the NIC premium. However, in spite of such opposition, no attempts were made in the Assembly to consider the cost of this bill together with the other proposed and existing cost increases of NIC benefits. Since Nevada employers are paying the entire costs of providing NIC benefits, they urge that this bill be defeated in Committee.
A.B.-440	This bill permits sole proprietors to elect coverage under Nevada Industrial Insurance Act & Nevada Occupational Diseases Act and extends compulsory coverage under such acts to employers with only one employee. Commerce & Labor.	Labor-Management Committee	1. Oppose. 2. Companion bill to A.B.-50 which we support, however, A.B.-440 extends compulsory coverage to employers with only one employer.

APRIL 24, 1975
ANALYSIS - RECAP

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-473	This bill pertains to unemployment compensation and, first, it provides, if he has within his base period been paid wages from employers equal to or exceeding one and one-half times his total wages for employment by employers during the quarter of his base period in which such total wages were highest. He is disqualified for benefits if he has not earned at least five times his weekly benefit amount following the work immediately preceding his most recent work. The total benefit amount during his current benefit year, shall be reduced by an amount equal to the number of weeks for which he is disqualified, multiplied by his weekly benefit amount, provided no benefit amount shall be reduced by more than one-half the amount to which such individual is otherwise entitled. Beginning on the 1st day of the first calendar quarter after Dec. 31, 1974, wages do not include that part of remuneration paid with respect to employment to an individual by an employer during any calendar year which exceeds 66-23% of the average annual wage, rounded to the nearest $100 for the precending calendar year, unless that part of the remuneration is subject to attack under a federal law imposing the tax against which credit may be taken for contributions paid under this law. On or before July 1, commencing with 1974, the total wages reported for the preceding calendar year by employers shall be divided by the average of the 12 mid-month totals of all workers in employment for employers as	Recommended by the Labor-Management Advisory Council To Committee on Commerce	Supported as first submitted to the Assembly

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-473 Continued:	reported in such year. If the Executive Director of the Employment Security Department finds on November 30 that the balance in the Unemployment Compensation Fund is less than the potential maximum annual benefits payable, a 0.5% solvency assessment shall be added to the contribution rate of each class of employers, and to the contribution rate of the employers. Committee on Commerce.		
A.B.-474	This bill pertains to unemployment compensation and it creates a presumption that a claimant has left his employment without good cause, when he fails to give notice to his employer. Committee on Commerce	Committee on Commerce.	No opposition.
A.B.-475	This bill pertains to unemployment compensation and it proposes to change the name of the State Farm Labor Advisory Council to Rural Manpower Services Advisory Council, and at least one member shall represent the ranch and farm workers. The Council may request the services of consultants to appear at meetings or conduct research, providing the funds to pay such consultants are made available by the Employment Security Department upon approval by the Director. Committee on Commerce.	Committee on Commerce.	No opposition.

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-476	This bill pertains to unemployment compensation and it authorizes the Employment Security Department to participate in the Federal Comprehensive Employment and Training Act of 1973.	Committee on Commerce	No opposition.
A.B.-477	This bill pertains to unemployment compensation and it provides that standards for determining extended benefits shall not be effective for weeks of employment beginning at any time during the period commencing January 1, 1975, and ending December 31, 1976.	Committee on Commerce	Support.
A.B.-478	This bill pertains to unemployment compensation and it provides that an appeal to the Board of Review in the Employment Security Department by any shall be allowed as a matter of right, if the appeal tribunal's decision reversed or modified the Executive Director's determination. In all other cases, further review shall be at the discretion of the Board of Review. Then, the bill authorizes the Board of Review to destroy certain records, and it increases the compensation of Board members from $25 to $50 per day. Committee on Commerce.		
A.B.-479	This bill pertains to the Employment Security Department, and it provides that money appropriated for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation, and, upon requisition, shall be deposited in the Unemployment Compensation Administration Fund, from which such payments shall be	Concurrent Committee on Commerce and Ways and Means	No opposition.

BILL NO.:	DESCRIPTION AND INTRODUCING LEGISLATOR(S):	STATUS:	COMMENTS:
A.B.-479 Continued:	made. the Executive Director shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund, and, if it will not be expended, shall be returned promptly to the account of this state in the Federal Unemployment Trust Fund. Committee on Commerce.		

(Exhibit 1-

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

706

RECEIVED
MAR 25 1975
Office of the Attorney General

Address Reply to the Division Indicated and Refer to Initials and Number

Ford

JSP:RSU:msp
DJ 170-46-10

MAR 19 1975

RECEIVED
MAR 20 1975
LABOR COMMISSIONER

Honorable Bruce R. Thompson
United States District Judge
United States Courthouse
300 Booth Street
Reno, Nevada 89502

Re: United States v. State of Nevada
Civil Action No. R-2989-BRT

Dear Judge Thompson:

At the conclusion of oral argument on December 5, 1974, the Court stated that it would take the Government's motion for Summary Judgment under submission on or about March 1, 1975. In delaying consideration of the matter, the Court acquiesced to the State's request that the Legislature be given reasonable opportunity to take corrective action.

The Nevada Legislature has been in session since January, 1975, and to the best of our knowledge, has not enacted remedial legislation. Since March 1, 1975 has passed without affirmative State action, the United States respectfully requests that the Court take the subject matter under submission.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: Richard S. Ugelow
RICHARD S. UGELOW
Attorney
Employment Section

cc: D. G. Menchetti

Exhibit G

PROPOSED AMENDMENT TO AB 219 (Third Reprint)

Amend Section 8, page 3 by deleting subsection 2, lines 8 through 15.

Exhibit H

APRIL 29, 1975

708

708

TO: ALL MEMBERS OF THE COMMERCE AND LABOR COMMITTEE

Mr. Vern Meiser, Meiser Enterprises, Inc., Reno and Sparks, called to oppose A.B. 219. He is opposing on the grounds that it is another unnecessary interference with the perogative of small business management and it is another wedge against the state's right to work law.

(This message was taken by the secretary of the Commerce and Labor Committee)

Exhibit J

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delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution. [*Subsection (a) as amended by Public Law 393, approved October 26, 1949, effective January 24, 1950.*]

[¶21,012(b)] **[Investigations and Actions]**

(b) The Chief of the Children's Bureau in the Department of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 11 (a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

[¶21,012(c)] **[Oppressive Child Labor Prohibited]**

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce. [*Subsection(c) added by Public Law 393, approved October 26, 1949, effective January 24, 1950, and as amended by Public Law 87-30, approved May 5, 1961, effective September 3, 1961.*]

[¶21,012(d)] **Child Labor**

(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age. [*Subsection (d) added by Public Law 93-259, approved April 8, 1974, effective May 1, 1974.*]

[¶21,013]

SECTION 13. EXEMPTIONS

(a) The provisions of sections 6 and 7 shall not apply with respect to

[¶21,013(a)(1)] **[Executive, Administrative, Professional, Teachers, Local Retailing, and Outside Salesmen]**

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except than an employee of a retail or service establishment shall not

be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities; or

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[¶21,013(a)(2)] [Retail or Service Establishments]

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than $225,000 (exclusive of excise taxes at the retail level which are separately stated).

A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

[¶21,013(a)(3)] [Amusement or Recreational Establishments]

(3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year; or

[¶21,013(a)(4)] [Processing in Retail Establishments]

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

[¶21,013(a)(5)] [Harvesting and Processing Employees]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

[¶21,013(a)(6)] [Agricultural Employees]

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

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[¶21,013(a)(7)]

[Learners, Apprentices, Students, and Handicapped Workers]

(7) Any employee to the extent that such employee is exempted by regulations, order, or certificate of the Administrator issued under section 14; or

[¶21,013(a)(8)] [Certain Newspaper Employees]

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

[¶21.013(a)(9)] [Motion Picture Theater Employees]

(9) [*Repealed by Public Law 93-259, appraved April 8, 1974, effective May 1, 1974.*]

[¶21,013(a)(10)] [Certain Telephone Switchboard Operators]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

[¶21,013(a)(11)] [Certain Telegraph Employees]

(11) [*Repealed by Public Law 93-259, approved April 8, 1974, effective May 1, 1974.*]

[¶21,013(a)(12)] [Seamen]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

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[¶21,013(a)(13)] [Certain Forestry or Lumbering Employees]

(13) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or

[¶21,013(a)(14)] [Tobacco Agricultural Employees]

(14) [*Repealed by Public Law 93-259, approved April 8, 1974, effective May 1, 1974.*]

[¶21,013(a)(15)] Domestic Service Workers

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

[*Subsection (a) as amended by Public Law 393, approved October 26, 1949, effective January 24, 1950; Public Law 87-30, approved May 5, 1961, effective September 3, 1961; and by Public Law 93-259, approved April 8, 1974; effective May 1, 1974.*]

[¶21,013(b)]

(b) The provisions of section 7 shall not apply with respect to—

[¶21,013(b)(1)] [Employees under Jurisdiction of Department of Transportation—Motor Carriers]

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

[¶21,013(b)(2)] [Employees under Jurisdiction of I.C.C.—Railroad]

(2) any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of Part I of the Interstate Commerce Act; of

[¶21,013(b)(3)] [Employees of Air Carriers]

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

[¶21,013(b)(4)] [Employees Engaged in Processing Seafoods]

(4) any employee who is employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by product thereof, and who receives compensation for employment in excess of forty-eight hours in

any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

[¶21,013(b)(5)] [Outside Buyers of Dairy Products]

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

[¶21,013(b)(6)] [Seamen]

(6) any employee employed as a seaman; or

[¶21,013(b)(7)] [Local Transit Employees]

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

[¶21,013(b)(8)] [Hotel and Restaurant Employees]

(8)(A) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is employed by an establishment which is a hotel, motel, or restaurant; and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(B) any employee of a hotel or motel who performs maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

[¶21,013(b)(9)] [Radio and Television Employees]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

[¶21,013(b)(10)] [Automobile Sales and Servicing Employees]

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanu-

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facturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats or aircraft to ultimate purchasers; or

[¶21,013(b)(11)] [Local Delivery Employees]

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7 (a); or

[¶21,013(b)(12)] [Agricultural or Irrigation Employees]

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

[¶21,013(b)(13)] [Farmers]

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a) (1); or

[¶21,013(b)(14)] [Country Elevator Employees]

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operation; or

[¶21,013(b)(15)] [Cotton Ginning Employees]

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

[¶21,013(b)(16)] [Employees Engaged in Transportation of Fruits or Vegetables From Farm to Market]

(16) any employees engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from

the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any points within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

[¶21,013(b)(17)] [Taxicab Operators]

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

[¶21,013(b)(18)] [Restaurant or Catering Employees]

(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed ; or

[¶21,013(b)(19)] [Bowling Employees]

(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

[¶21,013(b)(20)] Federal and State Employees

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

[¶21,013(b)(21)] Domestic Service Workers

(21) any employee who is employed in domestic service in a household and who resides in such household; or

[¶21,013(b)(22)] Tobacco Employees

(22) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or

[¶21,013(b)(23)] Telegraph Agency Employees

(23) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a)

with respect to whom the provisions of sections 6 and 7 would not otherwise apply, who is engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month, and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

[¶21,013(b)(24)] Substitute Parents for Institutionalized Children

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children —

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

[¶21,013(b)(25)] Cotton Ginning and Sugar Processing Employees

(25) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of —

(A) sixty-six hours in any workweek for not more than six workweeks in a year,

(B) sixty hours in any workweek for not more than four workweeks in that year,

(C) fifty hours in any workweek for not more than two workweeks in that year,

(D) forty-six hours in any workweek for not more than two work weeks in that year, and

(E) forty-four hours in any other workweek in that year,

[¶21,013(b)(26)] Cotton Ginning and Sugar Processing Employees

(26) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or surgarcane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of —

(A) seventy-two hours in any workweek for not more than six workweeks in a year,

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(B) sixty hours in any workweek for not more than four weekweeks in that year,

(C) fifty hours in any workweek for not more than two workweeks in that year,

(D) forty-six hours in any workweek for not more than two workweeks in that year, and

(E) forty-four hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or

[¶21,013(b)(27)] **Other Exemptions**

(27) any employee employed by an establishment which is a motion picture theater; or

[¶21,013(b)(28)] **Other Exemptions**

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

[*Subsection (b) as amended by Public Law 393, approved October 26, 1949, effective January 24, 1950; Public Law 87-30, approved May 5, 1961, effective September 3, 1961; Public Law 89-601, approved September 23, 1966, effective February 1, 1967; Public Law 89-670, approved October 15, 1966; and Public Law 93-259, approved April 8, 1974, and effective May 1, 1974.*]

[¶21,013(c)(1)] **[Child Labor—Agricultural Employees; Actors]**

(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee —

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employent is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of Section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

[*Subsection (c) amended by Public Law 393, approved October 26, 1949, effective January 24, 1950; Public Law 89-601, approved September 23, 1966, effective February 1, 1967; and by Public Law 93-259, approved April 8, 1974, effective May 1, 1974.*]

[¶21,013(d)] [Newspaper Delivery Boys; Wreath Makers]

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths). [*Subsection (d) added by Public Law 393, approved October 26, 1949, effective January 24, 1950; and amended by Public Law 87-30, approved May 5, 1961, effective September 3, 1961.*]

[¶21,013(e)]

(e) [Relates to exemption of employees in American Samoa from provisions of Section 7 Omitted by A.T.A.]

[¶21,013(f)] [Employees in Foreign Countries]

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Alaska; Hawaii; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone. [*Subsection (f) added by Public Law 87-231, approved August 30, 1957, effective November 29, 1957; and amended by Public Law 89-601, approved September 23, 1966, effective January 1, 1967.*]

Exhibit J

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e–12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, Part 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Sec.

AUTHORITY: The provisions of this Part 1604 issued under sec. 713(b), 78 Stat. 265, 42 U.S.C. sec. 2000e–12.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this Part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A Seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703 (e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Effective date. This revision shall become effective on the date of its publication in the FEDERAL REGISTER (4–5–72).

Signed at Washington, D.C., this the 31st day of March 1972.

WILLIAM H. BROWN III,
Chairman.

[FR Doc.72–5213 Filed 3–31–72;4:30 pm]

Attachment I

Issued by Assemblyman Jean Ford and Assemblyman James Banner

721

FACT SHEET AND BACKGROUND INFORMATION ON A.B. No. 219

Summary: Making certain provisions on wages, hours and working conditions apply uniformly to employees in private employment without regard to sex.

In 1964, Congress passed the Civil Rights Act including Title VII prohibiting discrimination in employment on account of race, color, religion, national origin, and sex.

In 1965, the Nevada Legislature passed NRS 613 prohibiting discrimination in employment practices (including compensation, hiring, firing, working conditions) on account of an individual's race, color, religion, sex, age, physical or visual handicap, national origin.

In 1969, the Nevada Legislature passed NRS 609.280 prohibiting wage discrimination in private employment on account of sex and clearly adopting a policy of "equal pay for equal work."

In spite of the passage of these and other similar acts, there has remained in Nevada law a set of conflicting statutes contained in Chapter 609 regarding wages, hours, and working conditions of female employees. These are similar to laws passed in many states in the 1930's in reaction to situations where women were being subjected to particularly low wages, long hours, and hazardous working conditions. With the passage of the above-mentioned laws and general improvement in minimum working standards for all employees, special legislation for women only is no longer necessary and in fact is in direct violation of this body of law passed in recent years.

Also in 1969, the Equal Employment Opportunity Commission of the U.S. Department of Labor, which is charged with the enforcement of Title VII, stated its Guidelines: ". . .State laws and regulations

(such as NRS 609), although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect."

The Commission declared that since state protective labor laws conflict with Title VII, they cannot be used as a defense in refusing full employment rights to women.

In the 1970-1972 Biennial Report of the Nevada Labor Commission, it was reported that the U.S. Department of Justice had advised the State that our retention of Chapter 609 could be construed as a "pattern of practice of resistance" to compliance with Title VII. Labor Commissioner Stan Jones at that time recommended legislation to make the provisions of NRS 609 applicable to all employees saying: "The Nevada Legislature must recognize that all employees require the same employment conditions within the protective framework of our Labor and Industrial Relations Laws. Failure to meet this acknowledgment will hasten the federal-state confrontation in courts . . ."

The 1970 Report of the Governor's Commission on the Status of Women in Nevada also recognized the conflicts in our law and recommended extension of benefits in Chapter 609 to men.

In 1971, the Senate Labor Committee introduced S.B. 360 to carry out Mr. Jones' recommendations. However, the bill died in committee.

In the 1973 Legislative Session, S.B. 270, with the same proposal, was introduced by Senator Helen Herr and 14 additional senators. However, the final action was to amend out of the bill

all provisions except an increase and equalization in the minimum wage, leaving the discriminatory provisions on hours and working conditions intact, as well as a probationary period of 90 days when a woman may be paid less than the minimum wage.

In December 1973, the U.S. Department of Justice filed a complaint against the State of Nevada (U.S. -v- Nevada) alleging that certain Nevada statutes (in Chapter 609) require employers doing business in the State to establish and observe conditions of employment for females which are not required for males, and impose an obligation on employers. The U.S. claims that these requirements of law are in direct conflict with Title VII of the Civil Rights Act of 1964 and, therefore, should be declared legally unenforceable. At a hearing in December, 1974, a state deputy attorney general stated that legislation would be submitted at the 1975 session to remove those sections of NRS 609 which refer solely to females and to incorporate into Chapter 608 certain sections of 609 in order to extend benefits equally to men and women. Judge Thompson in Reno ruled that he would withhold judgment in the case until March 1, 1975. Presumably, his decision will depend upon what legislative action is taken by that time.

Explanation of Bill

This measure is designed to remove the inequities listed in the Federal suit against the State of Nevada as well as other sections of law not involved in legal action.

Its goal is to humanize working conditions for all and provide a minimum standard of decency particularly for those who are not represented by collective bargaining.

The specifics of the original bill have been developed under the

principles laid down by the EEOC Guidlines, last revised in April, 1972, which state that state laws which prohibit or limit the employment of women--in certain occupations, for more than a specified number of hours per day or week, etc.--conflict with and are superseded by Title VII. Accordingly, these "protective" labor laws cannot be used as a reason for refusing to employ women.

The guidelines state that where State laws require minimum wage and overtime pay for women only, an employer not only may not refuse to hire female applicants to avoid this payment, but must provide the same benefits for male emplcyees. Similar provisions apply to rest and meal periods and physical facilities.

This bill makes certain minimum working conditions regarding meal periods, rest periods, seats, and uniforms applicable to both men and women. It provides for payment of time and one-half for overtime work in excess of 8 hours in one day or 40 hours in one week with certain exceptions. It repeals prohibitions on working over a certain number of hours a day and the less-than-minimum wage probationary period. All violations by employers are a misdemeanor.

What has happened in other states with similar "protective laws?" In 1964, 40 states and the District of Columbia had maximum daily or weekly hours laws for women in specified occupations or industries. By 1973 all states but one (Nevada) had repealed the law or modified enforcement in light of Title VII of the Civil Rights Act of 1964. Laws were repealed by state legislatures in 15 states and greatly modified in 3 others. In 22 states administrative rulings or attorney general opinions have stated that laws are superseded by Title VII. In 8 states, federal courts or state supreme courts have

ruled similarly. Working conditions have been treated a variety of ways, with some states repealing certain provisions and extending others or providing for exemptions in certain areas.

What will happen if existing inequities in Nevada law are not resolved this Legislative Session? History of legal action in other states shows that, in general, the courts are hesitant to extend a law originally passed to "protect" females since this would be judicial legislation. It is more likely that the Court would consider eliminating or nullifying the laws found to be in conflict with Title VII.

The Legislature does not have the limitations of the Court which can only look at the narrow and specific questions brought before it. The Legislature has the opportunity and responsibility to carefully examine as many aspects of our law as it feels necessary in this instance and repeal some, extend others and provide limiting conditions where felt to be reasonable and desirable as long as they are not applied solely to those of one sex.

It is clear that the Nevada Legislature is in a much better position to resolve this legal question than the Federal courts and we hope that this proposed change in Nevada law is the vehicle for its solution.

NEVADA LEGISLATIVE COUNSEL BUREAU
OFFICE OF RESEARCH BACKGROUND PAPER

1975 No. 6

WOMEN AND PROTECTIVE LABOR LAWS

Background

In the late 1960's and the 1970's a controversy has arisen over laws which were originally designed to protect women in the labor force from exploitation by employers. Laws establishing minimum wages, maximum hours and special working conditions for women were passed in the spirit of the progressive movement in the early part of the twentieth century in reaction to turn of the century factories and shops where women were subjected to low wages, long hours and hazardous working conditions. In 1908, the U.S. Supreme Court upheld a state law limiting women's working hours to 10 per day. Hailed as a landmark case for the use of sociological data (known as the Brandeis Brief), Muller v Oregon opened the door for additional state legislation to protect the working woman. Almost 70 years later, the same kinds of laws once upheld as progressive are now being attacked as discriminatory.

Arguments--Pro and Con

Those people who favor repealing laws which establish certain conditions of work for women argue that employers may use requirements such as overtime pay laws as an excuse not to hire women. It is claimed that these laws require employers to make stereotyped judgments about women as a class instead of appraising each female employee on her own merits. Frequently, jobs which call for weightlifting or call-ups during the night are denied to all women, regardless of individual abilities and preferences. Finally, those persons opposed to "protective" labor laws for women point out that anytime employment of women is made more burdensome to employers, female job opportunities will be limited.

Women who wish to retain protective labor laws argue that the women who need them most cannot fight for better conditions for themselves since they are not represented by labor unions. They state that most women want to work short hours on schedules because these conditions also meet their needs as wives and mothers. In their view, eliminating laws regulating working

hours and other conditions for women would force women to work overtime and consequently endanger their health and disrupt the family relationship.

Federal Civil Rights and State Protective Labor Laws

Title VII of the Civil Rights Act of 1964 as amended in 1969 and 1972 prohibits discrimination in employment on the grounds of race, color, religion, national origin and sex. The Title VII provision makes unlawful such things as firing or refusing to hire on the basis of sex, discrimination by labor unions on the basis of sex, refusal by employment agencies to refer for employment on the basis of sex, publishing advertisements which indicate a preference for employment on the basis of sex, or discriminating in training or apprenticeship programs on the basis of sex. An exception is made for occupations where sex is a bona fide occupational qualification, such as actor or actress. The law covers private employers with 15 or more employees, as well as state and local governments. Excluded from this civil rights act are the federal government (whose employees are protected against sexual discrimination by an executive order), U.S. government-owned corporations, certain District of Columbia employees, Indian tribes and bona fide private membership clubs.

Obviously, there is a basic conflict between Title VII of the Civil Rights Act of 1964 and state protective labor legislation for women. In 1969 the Equal Employment Opportunity Commission, which administers Title VII, revised its guidelines pursuant to the law stating that: "The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect." The commission declared that since state protective labor laws conflict with Title VII, they cannot be used as a defense for refusing full employment rights to women.

Thus the way has been paved for overturning or modifying state protective labor laws primarily on the grounds of conflict with the federal civil rights law. In fact, federal courts or state supreme courts in eight states have ruled that their state laws conflict with Title VII. Twenty-two states have issued administrative rulings or attorney general opinions that state hours laws for women do not apply to employers covered under Title VII. Encouraged in some instances by court action, state legislatures in 15 states (including Arizona, Colorado, Montana and Oregon) repealed their maximum hours law for women. Texas and Utah modified their laws by making extended overtime hours for women

voluntary. North Carolina made the state's limit on working hours equally applicable to men and women not covered under the Fair Labor Standards Act. California and Washington empowered their industrial welfare commissions to set hours and working conditions for all employees, not just women and minors.

Nevada Protective Labor Law

The Women's Bureau of the U.S. Department of Labor cites Nevada as the only state which continues to enforce the law setting maximum hours of work for women and overtime payment after an 8-hour day or a 48-hour week. Four other states (Illinois, Kentucky, Michigan and Ohio) continue to enforce state laws providing for maximum hours for women in those cases where Title VII does not apply (employers with 14 or fewer workers).

Chapter 609 of the Nevada Revised Statutes deals with working conditions for women and minors and in most instances is typical of protective labor law. It does not apply to state or local government workers, agricultural or domestic workers. The intention of the law is set forth in NRS 609.030, section 1, which states that ". . . it is the sense of the legislature that the health and welfare of female persons required to earn their livings by their own endeavors require certain safeguards as to hours of service and compensation therefor." NRS sections 609.010 to 609.180 protect women in the labor force in the following ways: limiting female workers to an 8-hour day and a 6-day week, and in certain temporary instances where overtime is permitted requiring time and a half overtime pay; requiring a meal period and two 10 minute rest periods during the day; requiring employers to provide suitable seats for female employees; requiring an employer to furnish all special uniforms; and requiring an abstract of the minimum wage/maximum hour law to be posted wherever females are employed. It should be noted that some items of chapter 609 such as minimum wage levels are the same as provisions for men set out in NRS Chapter 608;* most provisions, however, do not afford the same protections for men as for women.

At the end of 1973, the United States Government filed a complaint against the State of Nevada (U.S. v Nevada) alleging that certain Nevada statutes require employers doing business in the state to establish and observe conditions of employment for females which are not required for males and impose an obligation on employers. The U.S. claims that these requirements of law

*Further note that wage discrimination on the basis of sex is prohibited by NRS 609.280.

are in direct conflict with Title VII of the Civil Rights Act of 1964 and, therefore, should be declared legally unenforceable. Filing statements in Nevada's defense, a state deputy attorney general pointed out that both the attorney general's office and the state department of labor enforce certain provisions of the law in question equally, regardless of the actual text of the law. He further stated that legislation would be submitted at the next session of the legislature which would remove those sections of NRS Chapter 609 which refer solely to females and to incorporate into chapter 608 certain sections of chapter 609 in order to extend benefits equally to men and women. In 1974, the federal district judge in Reno ruled that he would withhold judgment in the case until March, 1975. Presumably, his decision will depend on what legislative action is taken by that time.

Some Alternatives to Protective Labor Laws for Women

In response to the belief that concerns still exist about questions of fatigue, health, family responsibilities and personal needs for both working men and women, the Women's Bureau of the U.S. Department of Labor offers the following suggestions:

1) Require premium pay for overtime for women and men as one way of deterring excessive hours of work (19 states have laws to this effect).

2) Set hours limits for men and women (North Carolina does by law and California and Washington empower their industrial welfare commissions to do so).

3) Make overtime voluntary.

SUGGESTED READING
(Available in Research Library)

Women's Bureau of the U.S. Department of Labor. A Working Woman's Guide to Her Job Rights, Washington, 1974.

Women's Bureau of the U.S. Department of Labor. Laws on Sex Discrimination in Employment, Washington, D.C., 1973.

Women's Bureau of the U.S. Department of Labor. "State Hours Laws for Women: Changes in Status Since the Civil Rights Act of 1964," Washington, D.C., 1974.

See attached Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex.

MLL/ 1-15-75

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WOMEN'S BUREAU
WASHINGTON, D.C. 20210

STATE HOURS LAWS FOR WOMEN: CHANGES IN STATUS SINCE THE CIVIL RIGHTS ACT OF 1964

In 1964, 40 States and the District of Columbia had maximum daily or weekly hours laws for women in specified occupations or industries.1/ By 1973 all States but one had repealed the law or modified enforcement in light of title VII of the Civil Rights Act of 1964. This development is part of a broad shift from State labor laws exclusively for women toward equal employment opportunity laws for women and men.

Background

Primarily to alleviate the poor working conditions and long hours to which working women were subject at the turn of the century, States enacted a number of laws that provided special benefits or restrictions for women. Some of these laws set minimum wage rates for women, prohibited their employment in certain occupations considered hazardous, restricted the weight of objects they could be required to lift or carry at work, or required meal and rest periods. Others restricted hours of employment; that is, prohibited work at night and set maximum daily and weekly hours and maximum days per week.

With the passage of Title VII—Equal Employment Opportunity, of the Civil Rights Act of 1964, the status of labor laws for women began to change. It became increasingly apparent that some women workers did not want, for example, the maximum hours restrictions or other limitations on equal employment opportunity. On the other hand, some men workers demanded benefits which State laws required employers to grant only to women workers. Very rapidly States enacted fair employment practices laws or amended existing ones to prohibit sex discrimination; some States, however, provided in their FEP laws for retention of the protective laws for women.

1/ Ten States and Puerto Rico had no such laws exclusively for women in 1964. The States were: Alabama, Alaska, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, West Virginia, and Wyoming.

In August 1969 the Equal Employment Opportunity Commission (EEOC), which administers title VII, amended its "Guidelines on Discrimination Because of Sex." The guidelines declared that certain State prohibitions or limitations on the employment of females--although originally intended to protect females--tended to discriminate since they did not take into account individual preferences and abilities. Accordingly, the Commission concluded they conflicted with title VII and would not be considered a defense for refusing full employment rights to women. In April 1972 the EEOC amended its guidelines, clearly distinguishing between State laws that restrict on the basis of sex and those that require such benefits as minimum wage and premium pay for overtime for one sex. Some State overtime provisions are in the hours laws. In such cases the EEOC considers the hours maximum superseded by title VII, while the overtime provision is not in conflict with title VII because an employer can comply with both State and Federal law by paying overtime to men as well as women.

When the EEOC guidelines have been challenged in the courts, they have usually been upheld. Moreover, the Supreme Court has said in a title VII case that "the administrative interpretation of the Act by the enforcing agency is entitled to great deference."

During the years since 1964, many States have acted to lessen employment restrictions for women. The trend is perhaps best illustrated by the changes in status of hours laws. In the following State-by-State review, it is evident that often repeal of an hours law was the final action after earlier amendment or court action or an opinion by the State attorney general declaring the law invalid for all women covered under title VII.

Legislative Actions

Repeals.--The following States repealed their maximum hours laws for women:

Arizona--1970
Colorado--1971
Connecticut--1973
Delaware--1965
Maryland--1972
Missouri--1972
Montana--1971
Nebraska--1969
New Jersey--1971
New York--1970
North Dakota--1973
Oregon--1971
South Carolina--1972
South Dakota--1973
Vermont--1970

Amendments re voluntary overtime.--The following States amended their hours laws to provide for extended hours for women on a voluntary basis:

Texas--1971
Utah--1973

(See also New Hampshire, Rhode Island, and Washington rulings under Attorney General Opinions, page 4.)

Amendments re FLSA coverage.--The following States exempted from their hours laws all employees who are assured premium pay for overtime under the provisions of the Federal Fair Labor Standards Act (FLSA):

North Carolina--1967
Tennessee--1969
Virginia--1966

Labor department staff in the latter two States report that the laws are no longer enforced.

Amendments re maximum hours for men.--In 1973 North Carolina removed some industry exemptions in its hours laws and made the limit on working hours generally applicable to both men and women not covered by the FLSA. At the same time, several sections of the law that discriminated on the basis of sex were deleted. California and Washington legislatures recently empowered their industrial welfare commissions to set hours and working conditions for employees (no longer just women and minors); public hearings must be held before existing provisions can be extended or modified. (Although hours laws for men and women are not a total innovation, in the past they have applied primarily in very hazardous industries or in occupations affecting public safety, such as transportation. A very few States have such laws for men only, but officials responsible for enforcement report that the provisions would also apply to women.)

Court Decisions

Federal courts and a State supreme court have held that the State hours laws conflict with title VII in the following States:

California--1971
Illinois--1970
Kentucky--1971
Louisiana--1971
Massachusetts--1971
*Missouri--1971
Ohio--1972 (Ohio Supreme Court)
Pennsylvania--1971

Of these only Illinois, Kentucky, and Ohio continue enforcement for employers not covered by title VII.

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* Law later repealed (see page 2).

Attorney General Opinions

The following jurisdictions have had attorney general opinions or administrative rulings stating that their hours laws are not applicable to employers covered under title VII or modifying the status of the laws even more extensively:

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Arkansas--5/31/73, 6/7/73
California--6/24/71
*Connecticut--9/27/72
District of Columbia--3/25/70 (by Corporation Counsel)
Illinois--10/2/70, 9/6/73
Kansas--1969 (by Commissioner of Labor)
Kentucky--6/5/72
Maine--8/13/73, 8/31/73
Massachusetts--9/30/70, 3/5/71
Michigan--12/30/69
Minnesota--1972 (by Department of Labor and Industry)
Mississippi--6/11/69
*Missouri--11/11/71
New Hampshire--1971 (by Commissioner of Labor)
New Mexico--5/3/72
*North Dakota--4/18/69
Oklahoma--12/5/69
Pennsylvania--11/14/69
Rhode Island--6/18/70
*South Dakota--2/27/69
Washington--5/26/70, 12/20/71
Wisconsin--7/27/70

In New Hampshire and Rhode Island the rulings provide that the hours laws cannot be used by an employer to limit employment opportunity of women, but neither can an employer require a women to work in excess of limitations; that is, the hours laws are being applied as voluntary overtime.

In other States, attorneys general and labor departments vary in the extent to which they require enforcement of the hours laws for employers with 14 or fewer employees, those not covered by title VII:

> In Illinois, Kentucky, and Michigan enforcement continues for employers not covered by title VII.
>
> In Washington women not covered by title VII may work beyond the maximum hours but may not be required to do so (voluntary overtime).
>
> In the District of Columbia, Kansas, Minnesota, Mississippi, New Mexico, Oklahoma, and Wisconsin, labor department staff report hours limitations are not enforced.

* Law later repealed (see page 2).

In Arkansas the hours limitation is not enforced, but the provision in the hours law requiring premium pay for daily and weekly overtime for women remains in force because a Federal court held that an employer can comply with both the State law and title VII by paying the overtime rate to both men and women. Potlatch Forests, Inc., v. Hays, et al., 318 F. Supp. 1368, aff'd. 465 F. 2d. 1081 (8th Cir. 1972).

In California the attorney general and the Department of Industrial Welfare made a joint announcement that the law would not be enforced.

The Massachusetts law was declared null and void.

In Pennsylvania and Maine hours laws are not enforced because the State human rights acts have been interpreted as implied repeals.

Hours Laws in Effect

Nevada continues to enforce a law setting 12 hours a day and 56 hours a week as absolute maximums for women, and requiring overtime pay after 8 hours a day and 48 hours a week.

Thus in total one State reports enforcement of an hours maximum for women only. Four others--Illinois, Kentucky, Michigan, and Ohio--enforce the provisions for employers of 14 or fewer workers.

Alternatives to Hours Limits for Women: Better Standards for Men and Women

Recent history clearly demonstrates that hours laws exclusively for women are not a live option in the 70's, yet the concerns that gave rise to hours laws have not disappeared--concerns about fatigue, health, personal needs, and family responsibilities. These are important to both men and women.

The requirement of premium pay for overtime has been one attempt to deter excessive hours of work. Since 1964 the number of States that have laws requiring premium pay for overtime for both men and women has more than doubled, now totaling 19. (The Federal minimum wage law (FLSA) requires overtime pay for men and women, but State laws benefit some employees not covered by the Federal act.)

As noted above, in 1973 one State set hours limits for men and women, and two States empowered industrial welfare commissions to do so.

Now men are pressing as vigorously as women for collective bargaining agreements or legislation for voluntary overtime. At least two major unions have recently won contract provisions requiring the employees' consent for extended overtime. One State law requires that overtime for handicapped men and women and those 66 years of age and over be voluntary. Other States have considered legislation for voluntary overtime, but no State has such a law of general application. More flexibility in work schedules and increased opportunities for part-time employment are also the subject of experimentation and proposed legislation.

New proposals for a healthful and productive workday or workweek must take into account the different preferences and capabilities of individual men and women.

Note.--Data are as of December 31, 1973.

RECAP OF STATE HOURS LAWS FOR WOMEN
1964 - 1973

State	No Law 1964	LEGISLATIVE DEVELOPMENTS: Repeal	Voluntary Overtime (Women)	FLSA Employees Exempt	Court Case	Attorney General Opinion or Administrative Decision	Law Enforced For 14 or Fewer Employees	Law Remains With No Major Exclusions or Change in Status
ALABAMA								
ALASKA								
ARIZONA		1970						
ARKANSAS						1973		
CALIFORNIA					1971	1971		
COLORADO		1971						
CONNECTICUT		1973				1972		
DELAWARE		1965						
DISTRICT OF COLUMBIA						1970		
FLORIDA								
GEORGIA								
HAWAII								
IDAHO								
ILLINOIS					1970	1970,1973		
INDIANA								
IOWA								
KANSAS						1969		
KENTUCKY					1971	1972		
LOUISIANA					1971			
MAINE						1973		
MARYLAND		1972						
MASSACHUSETTS					1971	1970,1971		
MICHIGAN						1969		
MINNESOTA						1972		
MISSISSIPPI						1969		
MISSOURI		1972			1971	1971		
MONTANA		1971						
NEBRASKA		1969						
NEVADA								
NEW HAMPSHIRE			*			1971*		
NEW JERSEY		1971						
NEW MEXICO						1972		
NEW YORK		1970						
NORTH CAROLINA		1973**		1967				
NORTH DAKOTA		1973				1969		
OHIO					1972			
OKLAHOMA						1969		
OREGON		1971						
PENNSYLVANIA					1971	1969		
PUERTO RICO								
RHODE ISLAND			*			1970*		
SOUTH CAROLINA		1972						
SOUTH DAKOTA		1973				1969		
TENNESSEE				1969				
TEXAS			1971					
UTAH			1973					
VERMONT		1970						
VIRGINIA				1966				
WASHINGTON			*			1970,1971		
WEST VIRGINIA								
WISCONSIN						1970		
WYOMING								

Footnotes

*Administrative rulings provide that the employer may permit but not require women to work beyond the maximum limitation (voluntary overtime hours)
See pp 3 & 4.)

**Law amended to repeal limits for women only and extend coverage of limits for men and women
(See p. 3.)

GPO 874-937