SENATE
COMMERCE & LABOR

Minutes of Meeting
Wednesday, April 6, 1977

The meeting of the Commerce and Labor Committee was held on April 6, 1977, in Room 213 at 1:45 P.M.

Senator Thomas Wilson was in the chair.

PRESENT: Senator Wilson
Senator Blakemore
Senator Ashworth
Senator Bryan
Senator Hernstadt
Senator Young
Senator Close

ALSO PRESENT: See Attached List

The Committee considered the following:

S. B. 374 CREATES STATE POWER AUTHORITY (BDR 25-1044)

The first witness was the sponsor, SENATOR WILLIAM HERNSTADT, who stated this is a skeleton form bill. The purpose of this bill is to save money for power. This has been a severe problem in Clark County. Any power plants that might be owned by this Nevada State Power Authority would be exempt from the ad valorem taxes which run at 35% of actual value times 5%. This would basically be a wholesaler situation. Any savings would be passed to the public. The operation of these plants could be leased out to the existing companies so that the State would not have to hire a number of people. His intent in this bill was to create a paper conduit through which long term, tax free financing could be done to benefit our residents.

The next witness was Mr. Joe L. Gremban, President of Sierra Pacific Power Company. See Exhibit A for his testimony.

The next witness was Mr. Gene Matteucci, Nevada Power Company, who told the Committee that to accomplish the intent of the bill as it presently was explained by Senator Hernstadt is a legal impossibility under the law of the United States. To retain the tax exempt status of any bonds issued for the construction of generation facilities, they would have to be classified under the Internal Revenue Code, Section 103C1 as Industrial Development Bonds. The limiting sections thereafter of

that particular section address themselves specifically to this type of thing and provide that when the benefit of the bonds, that is, the product to be produced goes to a non-exempt person, in excess of 25% of the bonds, then the entire bonding issue loses its tax exempt status. Refer to Tape 1 for further details of testimony.

SENATOR HERNSTADT moved to kill S.B. 374. SENATOR YOUNG seconded. Vote - unanimous.

S. B. 415 — LIMITS CERTAIN REQUIREMENTS AND RESTRICTIONS TO PARTICULAR TYPES OF APPLICATIONS BEFORE PUBLIC SERVICE COMMISSION OF NEVADA (BDR h8-1352

Mr. Stan Warren, Nevada Bell, appeared in support of S.B. 415. See Exhibit for Mr. Stan Warren's testimony.

SENATOR NORMAN TY HILBRECHT appeared before the Committee. He advised that he wished to reemphasize that those who had dealt with the measure that resulted in this problem last session had never had their attention called to the problem mentioned by Mr. Warren. He stated he was satisfied after talking with the people at the Public Service Commission, and after reviewing the problem that Nevada Bell has experienced, that this bill was in order.

Tom Case, Central Telephone, stated he was in agreement with Mr. Warren and Senator Hilbrecht's testimony.

Heber Hardy, Commissioner of Public Service Commission, stated they have reviewed the language and have no objection to what they feel is probably an oversight in this particular area. He stated this does not preclude the Commission from suspending the proposed rate for the full amount of time and going to a full blown hearing. He stated all it does is reduce somewhat the requirements for the filing. They would still go into a complete determination as to whether or not the proposed rate for that piece of equipment, whether reclassified or otherwise, is justified and if they felt, after staff review, it was merely replacing one piece of equipment with another at a higher rate without a new piece of equipment, they would probably recommend that this is in fact, a rate increase and would suggest that it go to a full hearing. The only question would be whether or not they could have filed something else while that matter was pending. He thinks they can handle those types of problems by staff review before getting into any particular dilemma.

In response to a question by SENATOR WILSON, Mr. Hardy stated they recommend the bill.

S. B. 392 REMOVES REQUIREMENT FOR WEEKEND CLOSING OF STATE BANKS AND PROHIBITS ADOPTION OF AGENCY REGULATIONS OR LOCAL ORDINANCES WHICH REQUIRE CLOSING OF BUSINESSES ON CERTAIN DAYS OF THE WEEK (BDR 19-1059)

The first witness was SENATOR WILLIAM HERNSTADT who told the Committee the bill is basically an anti-blue law bill. It is to withdraw any requirements for forced closings on Saturdays, or Sundays or specific days of the week for anything.

Mr. Preston E. Tidvall, Superintendent of Banks, testified next. See Exhibit C for his testimony.

Ms. Chris Barainca, National Association of Banking Women, opposed this bill. She stated that she represented 5 banks and over 300 women officers in the Northern Nevada area. Most of the women at the banks spend their weekends washing and cleaning, going to church and spending time with their children. She believes that competition would force the banks to open and lesser position employees will be working. She stated that the security problems would be increased. Many women chose the banking profession because of the good working conditions, having holidays and weekends off. She pointed out that it would be costly to keep the buildings warm or air conditioned.

Ms. Mary Hager, representing the American Institute of Banking, stated their membership is 2,147. She opposed this bill. She said that about 60% of the bank tellers are women and they want the weekends. They have babysitting problems and want to be home on weekends with their husbands. She agreed on the conservation matters of heat, etc. as well as the security problems. She stated religion was a matter of consideration. She felt they would lose a good 50% of the staff if the banks had to stay open for competitive reasons.

Mr. Bill Reuck, American Institute of Banking, spoke against the bill. He stated there would be additional expenses and staffing problems. Costs would be passed on to the consumer. He stated that banking does not satisfy the needs of the tourists. It is designed primarily for the service and convenience of customers and local people. He reiterated problems covered by earlier witnesses against the bill.

Mr. Jordan Crouch gave the history of banking within the State of Nevada. Five day banking has been the most satisfactory they have found thus far. He stated that savings and loan operations are different in nature.

S. B. 404 — PERMITS PRIVATE INSURANCE CARRIERS TO WRITE WORKMENS' COMPENSATION INSURANCE (BDR 53-829)

Mr. Richard Garrod, Farmers Insurance Group, stated his group is interested in the free competitive system of private insurance companies being involved in writing workmens' compensation. He believes there should be an interim study on the workmens' compensation program on states that have the three way system.

Mr. Joe Midmore, representing the Nevada Independent Insurance Agents, told the Committee they had put in a bill draft request and the bill they received was not what they had put in.

Mr. Midmore indicated that he didn't think that any insurance company he knew would come into the State with this type of legislation. Regarding the study, Mr. Midmore suggested that the study be pointed at the three way system rather than a study of the NIC as such. It should direct that the work be done either by or with the close cooperation of an independent actuarial consulting firm. He did not think NIC could be as objective about it.

Mr. George Vargas stated his people would not support this bill. He submitted Exhibits D and E. (Suggested amendment to ACR 19 which is an amendment to study the Commission and a statement to the problems and position regarding a three way system at the present time).

A. B. 307 — PERMITS REBATES OF HEALTH INSURANCE BENEFITS FOR WEEKEND USE OF HOSPITAL FACILITIES (BDR 57-743)

The first witness was Mr. David Brandsness, Administrator of Sunrise Hospital, who was in favor of A.B. 307. See Exhibit F.

The bill is designed to prohibit insurance companies from discriminating against patients and/or a hospital that chooses to develop an incentive program to better utilize the assets of the business. Secondly, the right to reward a patient for making a contribution in the decision making process.

He discussed employee numbers, monies made and patients handled. He stated Sunrise Hospital has made an effort to operate on a 7 day a week basis, over the past two or three years.

SENATOR CLOSE asked if the physicians would be available on the weekends and if the operating rooms would be utilized. Mr. Brandsness stated that operating rooms are not utilized on Sunday. Twelve to fourteen operations are run on Saturday. On Sundays they run GI series and all laboratory services are available and utilized.

He discussed who the 5-1/4% rebate should to to -- the patient or the insurance company. The question of the uninsured patient was discussed.

The next witness was Mr. Seymour Schulman. See Exhibits G, H, and I. He told the Committee that bringing patients in on weekends and not operating until the following Monday ran the cost up -- became a matter of over-utilization. He brought up the matter of who is entitled to the rebate.

Dr. Otto Ravenholt, Health Officer for the Clark County Health District, (see Exhibit J) stated he has great difficulty in understanding why the rebate is so different from the discount. He stated there is no cap on the amount of rebate allowed. He could see this type of mechanism were it to be endorsed by the Legislature, a considerable problem as far as the overall medical cost problems are concerned.

He discussed the insurance coverages and staffing schedules, and reviewed bed situations in various hospitals.

Mr. Milos Terzich, Health Insurance Association of America, submitted statements given before the Assembly on this bill (Exhibit L). His supplemental statement for this Committee is also attached as Exhibit K.

He told the Committee that he believes this bill would require a fiscal note.

Richard Garrod, Farmers Insurance Group, stated that many purchasers of health and accident insurance throughout the state will be contributing to the refund of the few patients who patronize this hospital. Everybody who buys an insurance policy of health and accident

and a no fault automobile insurance or automobile medical insurance will be contributing if the person covered under any of those coverages goes to this hospital during the period of time when there is a refund.

The main thing the insurance industry specifically opposes is the fact that everyone that they sell insurance to is paying to provide a service, but only a few are able to go to a certain hospital in a certain service area. The people in Reno, Elko, and any town, who purchase insurance are paying a base cost, but someone that lives in Clark County gets a rebate. Our insurance policy in relationship to medical payment under the no fault medical expenses and under a standard medical payment of your medical pay on your car, states expenses incurred. Are those expenses sent by the hospital prior to the rebate actually incurred? If not, there is an act of fraud against the insurance company. He was instructed by one company that they will quit writing group insurance in this state if this carries.

Dr. Henry Soloway, Associate Pathologists, discussed two points. (1) How do you, by giving a rebate, encourage the physician to leave his family, friends, church and go to practice medicine on the weekends. The answer that is basically there is no incentive. (2) If you encourage people that are seriously ill to wait to go in for treatment until the rebate is in effect, you are putting these people in jeopardy.

A. B. 455 — REVISES PROCEDURES FOR HEALTH INSPECTIONS OF FOOD AND DRINK ESTABLISHMENTS (BDR 40-1143)

Mr. Douglas Pushard (see Exhibit M), Clark County District Health Department, Clark County District Board of Health opposes the amendments as written. The amendments, they feel, would be misleading to the public if inspections were made and then the grades were not posted on that establishment for three days.

In the existing NRS it says that an inspection will be made within 10 days if it happens to be a Grade C establishment. Our policy has been never to let that 10 days go by.

If there was an objection within the 10 day period and you wanted to change that to 48 hours he feels there would be no objection from their standpoint if they were required to make the inspection within even 24 hours.

He discussed grading procedures with the Committee.

Mr. Rod Welks, Supervisor Sanitarian for State Consumer Health Protection Services, feels that the grading system as it exists gives them leverage in promoting sanitation. To change it as set out by A.B. 455, would make grading largely ineffective. He personally thinks there should be a 10 day period between the request and the reinspection. He felt it would prompt the operator to maintain the sanitation.

Mr. John Gionatti, Harrah's, stated he was concerned about the rate in his establishments. He said he represents the industry. They have asked that the 48 hour provision be placed because they felt the 10 days was much too long to have a "B" or "C" rating sitting in the public when you had corrected the deficiencies that had been called to their attention.

See Exhibit N offered by Mr. Gionatti. He discussed time for cleanups, etc.

Dr. Otto Ravenholt, Clark County Health District, told the Committee that the industry in Southern Nevada and Mr. Cahill had assured him that they were not seeking a change in this from the resort hotel side and were not seeking this bill.

Mr. Gionatti stated from the floor that he had talked to Mr. Cahill and he had told him that he would support it.

Mr. Rod Welks offered an inspection form for Senator Close's study. (See Exhibit O)

S. B. 423 REGULATES TITLE INSURERS (BDR 57-1242)

Dr. Dick Rottman asked the Committee if they would consider hearing, at this meeting, the Title Insurance Bill, S.B. 423. He stated that the industry and the insurance division had worked on this. He discussed his reasons for this request.

SENATOR ASHWORTH discussed the time problems with this bill.

CHAIRMAN WILSON stated that since the bill has not been posted it was not appropriate to consider it at this hearing. He asked the secretary to post it to Monday, April 11th agenda, for consideration.

Dr. Rottman advised that he would make the proper

notifications for the hearing.

S. B. 356 — REGULATES MOTOR VEHICLE DEALERS'FRANCHISE (BDR 43-922)

SENATOR WILSON indicated that he had asked Messrs. Daryl Capurro and Bob Guinn to return to Committee to discuss this bill which had been heard on April 1, 1977.

The Committee discussed the fact that General Motors had not submitted their suggestions and/or amendments by Monday morning as they had indicated they would.

The secretary indicated that upon receipt of the amendments they were distributed to the Committee members immediately.

The Committee reviewed the General Motors suggestions and the bill in general with Messrs. Capurro and Guinn, and jointly worked out questions regarding the bill. Refer to Tape 6 for amendments and discussion. See Exhibit P.

SENATOR ASHWORTH moved to amend and pass the bill. Senator YOUNG seconded.

Vote: Do pass; SENATORS ASHWORTH, CLOSE, WILSON, YOUNG, HERNSTADT.

SENATOR BRYAN absent. SENATOR BLAKEMORE abstained.

ADMINISTRATIVE MEETING

BDR 57-1780 — PROHIBITS BAIL BONDMEN FROM MAKING CAMPAIGN CONTRIBUTIONS FOR OR AGAINST ELECTION OF CANDIDATES FOR CERTAIN PUBLIC OFFICES.

Senator Hernstadt moved for introduction. Seconded by Senator Young. Vote: Unanimous. Senator Bryan absent.

BDR 54-1504 — CHANGES TIME WITHIN WHICH TO FILE RECORD OF LAND SURVEY.

Senator Young moved for introduction. Seconded by Senator Hernstadt. Vote: Unanimous. Senator Bryan absent.

BDR 54-1598 — AUTHORIZES STATE BOARD OF PHARMACY TO ISSUE REGISTRATION CERTIFICATES TO PHYSICIANS' ASSISTANTS FOR POSSESSION, DISPENSING OF CONTROLLED SUBSTANCES, POISONS, DANGEROUS DRUGS AND DEVICES.

Senator Young moved for introduction. Senator Blakemore seconded. Vote: Unanimous. Senator Bryan absent.

BDR 57-1513 — ALLOWS COMMISSIONER OF INSURANCE TO CONDITION CONTINUATION OF CERTAIN LICENSES UPON COMPLETION OF APPROPRIATE COURSES OF STUDY.

Senator Ashworth moved for introduction. Senator Young seconded. Vote: Unanimous. Senator Bryan absent.

BDR 10-1474 — ESTABLISHES REGULATIONS FOR SALE OF CERTAIN LODGING AND RECREATIONAL FACILITIES.

Senator Young moved for introduction. Senator Hernstadt seconded. Vote: Unanimous. Senator Bryan absent.

BDR 54-1103 — REVISES LICENSING REGULATIONS FOR REAL ESTATE BROKERS AND SALESMEN

Introduction motion by Senator Young. Seconded by Senator Hernstadt. Vote: Unanimous. Senator Bryan absent.

BDR 34-1576 — PERMITS DEFERRED COMPENSATION AGREEMENTS BETWEEN TEACHERS AND SCHOOL BOARDS.

Committee did not introduce. Referred for introduction to Senator Schofield of Human Resources Committee.

A. B. 455 — REVISES PROCEDURES FOR HEALTH INSPECTIONS OF FOOD AND DRINK ESTABLISHMENTS (BDR 40-1143).

Motion. Amend and Pass (2 days) Senator Hernstadt. Seconded by Senator Young. Vote: Unanimous - all present but Senator Bryan.

A. B. 307 — PERMITS REBATES OF HEALTH INSURANCE BENEFITS FOR WEEKEND USE OF HOSPITAL FACILITIES (BDR 57-743).

Committee discussed several motions. No action taken on this bill. Senator Young did not participate in discussion regarding the processing of this bill.

S. B. 404 — PERMITS PRIVATE INSURANCE CARRIERS TO WRITE WORKMENS' COMPENSATION INSURANCE (BDR 53-829).

Motion to indefinitely postpone by Senator Close. Seconded by Senator Hernstadt. Vote: Unanimous - all present but Senator Bryan.

S. B. 392 — REMOVES REQUIREMENT FOR WEEKEND CLOSING OF STATE BANKS AND PROHIBITS ADOPTION OF AGENCY REGULATIONS OR LOCAL ORDINANCES WHICH REQUIRE CLOSING OF BUSINESSES ON CERTAIN DAYS OF THE WEEK (BDR 19-1059).

Motion to indefinitely postpone by Senator Ashworth. Seconded by Senator Blakemore. Vote Indefinitely Postpone: Senators Ashworth, Close, Wilson, Blakemore, Young. Senator Hernstadt voted against postponement. Senator Bryan absent.

S. B. 415 — LIMITS CERTAIN REQUIREMENTS AND RESTRICTIONS TO PARTICULAR TYPES OF APPICATIONS BEFORE PUBLIC SERVICE COMMISSION OF NEVADA (BDR 58-1352).

Motion to pass by Senator Blakemore. Seconded by Senator Close. Vote: Unanimous. Senator Bryan absent.

S. B. 356 — REGULATES MOTOR VEHICLE DEALERS'FRANCHISES (BDR 43-922).

Senator Ashworth moved to amend and do pass. Senator Young seconded. Vote: Yes. Senators Ashworth, Close, Wilson, Young and Hernstadt. Senator Blakemore abstained. Senator Bryan absent.

S. B. 383 — REQUIRES NEVADA INDUSTRIAL COMMISSION TO PROVIDE TOLL FREE TELEPHONE SERVICE TO CLAIMANTS (BDR 53-1304).

Motion to do pass by Senator Ashworth. Seconded by Senator Young. Vote: Unanimous. Senator Bryan absent.

S. B. 350 — REPEALS BASIC REPARATIONS PROVISIONS OF AUTOMOBILE INSURANCE (BDR 57-1216).

Motion to Kill S. B. 350 by Senator Ashworth. Seconded by Senator Hernstadt. Vote: Unanimous - Senator Bryan absent.

S. B. 139 — REGULATES PRACTICE OF OSTEOPATHIC MEDICINE AND DEFINES TERMS RELATING TO HEALTH CARE (BDR 54-81).

Senator Young moved that the Committee go with the amendment and if any question can have it taken off the board. Seconded by Senator Blakemore.

Amend and do pass vote unanimous - Senator Bryan absent.

Senate

Meeting adjourned 6:50 P.M.

Respectfully submitted,

Lyndl Payne

Lyndl Lee Payne, Secretary

APPROVED:

Senator Thomas Wilson, Chairman

SENATE

ROOM ~~223~~ 213 DATE 4-6-77

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TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHONE
SB404	Curt Lackey	NIC	515 E Musser	885-527
SB404	Bob McMillan	NIC	515 E. Musser	885-527
SB404	[illegible] M Beckett	NIC-Legal	" "	885-537
NO	[illegible]	NIC	" "	885-57
307 SB404	John [illegible]	NIC	" "	885-52
SB404	[illegible]	[illegible] NIC	Suite 450 1050 East Williams	885-528
?	Wm J. Crowell	NIC-Legal	515 E Musser	885-52
SB415	JOHN HOLMES	NEV. BELL	645 PLUMB LN.	789 664
SB415 ✓	STAN WARREN	NEV BELL	RENO	789-61
SB455 ✓	E. Douglass Pushard	Clark Co. Dist Health Dept.	Las Vegas	385-1291
SB455 ✓	Rod Wilkes	Health Div, State	Carson City	885-4752 883-5346
SB307 ✓	SEYMOUR SCHULMAN	VALLEY HOSPITAL	LAS VEGAS	385-3011
✓	Joe L Gremban	SPPC		
✓	[illegible] Zellhoecht			
✓	Mr. Tidvall	Supt of Banking		
✓	Gordon Crouch			
✓	Richard Garrod			
✓	Joe Midmore			
✓	Milos Terzich			
	John Giovanatti			
	Dick Rottman			
	Daryl Capurro			

1[illegible] [redacted]

SENATE

ROOM 213 ~~303~~ DATE 4-6-77

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TESTI-FYING?	NAME	ORGANIZATION	ADDRESS	PHONE
Yes ✓	Tom Case	Central Tel. Co.	125 LV Blvd Las Vegas	385-5105
NO	ED Bowers	Gaming Ind Assoc	410 S. Carson St.	883-6546
NO	JOHN MADOLE	ASSOC. GEN. CONTR.	300 So. Wells, Reno	329-6116
Yes ✓	M. GENE MATTEUCCI	NEV Power Co.	P.O Box 230, LV 89151	385-5620
No	Charlie Vaughn	" " "	" "	385-5630
YES ✓	HEBER P. HARDY	A.S.C.	C.C.	885-4190
YES ✓	HENRY SOLOWAY	ASSOCIATE PATHOLOGISTS	LAS VEGAS	733-7860
Yes ✓	Preston E. Tidball	Supt. of Banks	215 Carville Circle CC	882-9504
Yes ✓	Bill W. Reuck	A.I.B	917 St. Pool Way CC	882-502
Yes ✓	MARY M. HAGAR	AMERICAN INSTITUTE OF BANKING	844-1 Ridgewood DR SPARKS, NV	359-3286
Yes ✓	Chris Barainca	Natl. Assoc. of Bank Women	12955 So. Hills Dr. Reno, Nev. 89511	825-1255
Yes ✓	Otto Ravenholt	Clark County Health District	Box 4426 LAS VEGAS, Nev 89106	384-8064
NO	Bryce W. Duffield	Washoe Co. Dist Health	P.O. Box 11130 Reno Nev.	785-422
Yes ✓	David Brandsness			

[redacted]

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AGENDA FOR COMMITTEE ON COMMERCE & LABOR

Date Wednesday April 6, 1977 Time 1:30 PM Room 213

R E V I S E D

Bills or Resolutions to be considered	Subject	Counsel requested*
S.B. 374	Creates state power authority (BDR 25-1044)	
S.B. 415	Limits certain requirements and restrictions to particular types of applications before public service commission of Nevada (BDR 58-1352)	
S.B. 392	Removes requirement for weekend closing of state banks and prohibits adoption of agency regulations or local ordinances which require closing of businesses on certain days of the week (BDR 19-1059)	
S.B. 404	Permits private insurance carriers to write workmen's compensation insurance (BDR 53-829)	
A.B. 307	Permits rebates of health insurance benefits for weekend use of hospital facilities (BDR 57-743)	
A.B. 455	Revises procedures for health inspections of food and drink establishments (BDR 40-1143)	

*Please do not ask for counsel unless necessary.

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1822

Exhibit A

PRESENTATION TO THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE

APRIL 6, 1977

MY NAME IS JOE L. GREMBAN AND I AM PRESIDENT OF SIERRA PACIFIC POWER COMPANY.

SIERRA PACIFIC POWER AND THE OTHER ELECTRIC UTILITIES IN NEVADA HAVE DONE AN OUTSTANDING JOB OF PROVIDING THE RELIABLE, ADEQUATE SUPPLY OF POWER REQUIRED TO PRESERVE THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE OF THIS STATE. LONG RANGE CAPACITY PLANNING, AND POWER SYSTEM POOLING HAVE ENABLED THE UTILITIES TO PROVIDE FOR ALL REQUIREMENTS OF ITS CUSTOMERS. WE HAVE HAD NO BROWNOUTS, BLACKOUTS OR POWER SHORTAGES RESULTING FROM A LACK OF CAPACITY. OUR EXPERIENCE AT SIERRA OF A 99.99+% RECORD OF RELIABILITY ATTESTS TO THE FACT THAT A RELIABLE SOURCE OF POWER EXISTS.

IN MY OPINION, POWER HAS BEEN PROVIDED AT A REASONABLE COST TO ALL CONSUMERS. WE ARE NOT THE HIGHEST COST AREA, SUCH AS IS REPRESENTED BY AREAS ON THE EAST COST WHERE RATES HAVE REACHED A PEAK OF 8.78 CENTS PER AVERAGE KILOWATT HOUR SOLD TO A RESIDENTIAL CONSUMER, NOR THE LOWEST AS REPRESENTED BY COMPANIES WITH LOW COST HYDRO POWER AVAILABLE, WITH AVERAGE RESIDENTIAL SALES EQUATING TO 1.62 CENTS PER KILOWATT. SIERRA'S COSTS AVERAGE 4.04 CENTS PER KILOWATT OF RESIDENTIAL SERVICE. THIS HAS BEEN ACCOMPLISHED IN SPITE OF THE FACT THAT SIERRA'S SERVICE AREA HAS VIRTUALLY NO NATURAL ENERGY SUPPLY AVAILABLE. ALL NATURAL GAS, OIL AND COAL

MUST BE IMPORTED AND HYDRO POWER IS VIRTUALLY NON-EXISTENT. SINCE JANUARY 1, 1974, SIERRA HAS INCURRED FUEL, PURCHASED POWER AND NATURAL GAS PURCHASED COST INCREASES OF $41,600,000. ESTABLISHMENT OF A STATE POWER AUTHORITY WOULDN'T HAVE REDUCED THESE COSTS ONE CENT SINCE IT WOULD HAVE NO MORE INFLUENCE OVER THESE COSTS THAN WE HAVE.

THE BILL ASSUMES THAT THE AUTHORITY COULD ISSUE BONDS AT A LOWER RATE OF INTEREST THAN PUBLIC UTILITIES GENERALLY, THEREBY RESULTING IN AN INTEREST SAVING. IN FACT, IT IS DOUBTFUL UNDER CURRENT INTERNAL REVENUE SERVICE RULES THAT THIS COULD IN FACT BE ACCOMPLISHED, AND IF IT COULD, ANY BENEFIT IS OFFSET BY THE INVESTMENT TAX CREDIT OF 10% WHICH IS AVAILABLE TO AN INVESTOR-OWNED UTILITY. IF THE TAX EXEMPT STATUS IS NOT AVAILABLE TO AN AUTHORITY, ITS INTEREST COSTS WOULD IN FACT BE HIGHER THAN THE INVESTOR-OWNED UTILITY.

A FURTHER PROVISION IN THE BILL PROVIDES NOT ONLY FOR THE AUTHORITY TO CONSTRUCT, ACQUIRE, AND PURCHASE NEW FACILITIES FOR GENERATION, TRANSMISSION AND DISTRIBUTION, BUT TO ALSO BY EMINENT DOMAIN TO TAKE PRIVATELY OWNED PUBLIC UTILITY PROPERTY.

THERE IS NO PROVISION FOR JUSTIFICATION STUDIES, NO PROVISION ON REIMBURSEMENT OF CURRENT OWNERS, NO CONTROL OR APPROVAL TO BE OBTAINED FROM ANY INDEPENDENT AGENCY SUCH AS THE PUBLIC SERVICE COMMISSION OR THE STATE FINANCE BOARD. THE AUTHORITY WOULD HAVE VIRTUAL DICTATORIAL AUTHORITY WITHOUT REPORTING TO THE CITIZENS AS TO ACQUISITIONS MADE.

A STUDY WAS MADE BY BLYTH EASTMAN DILLON FOR THE LEGISLATIVE SUB-COMMITTEE STUDYING PUBLIC UTILITIES ON THE COSTS INVOLVED IN

IN ACQUIRING THE PROPERTIES OF NEVADA POWER. IT POINTED OUT THAT TO ACQUIRE JUST THAT ONE UTILITY WOULD REQUIRE FUNDS IN THE AMOUNT OF $1.2 BILLION. 'IT FURTHER POINTED OUT THAT THIS AMOUNT OF FINANCING WOULD GREATLY EXCEED THE CURRENT DEBT LIMITS OF THE STATE. IT ALSO POINTED OUT THAT ONLY 15 STATES IN THE COUNTRY HAVE A TOTAL DEBT OF OVER $1 BILLION AND THAT ONLY 12 STATES HAVE TOTAL STATE AND LOCAL DEBT EXCEEDING $1000 PER CAPITA, YET THIS ONE ACQUISITION ALONE WOULD SKYROCKET NEVADA'S PER CAPITA DEBT TO A NATIONAL HIGH OF $2,857. UTILITY RATES BASED ON SUCH ACQUISITION COSTS WOULD BE SUBSTANTIALLY HIGHER THAN PRESENT RATES. A COPY OF THE REPORT IS INCLUDED FOR YOUR INFORMATION.

THERE IS NO PROVISION FOR CONTROL OF RATES. PUBLIC AUTHORITIES COULD SET THEM AT WILL. NO CONTROL OVER PLANNING OR REVIEW OF OPERATIONS BY ANYONE. THIS CAN ONLY RESULT IN HIGHER RATES. ONE ONLY HAS TO LOOK AT THE POST OFFICE AND THE MEDICAID PROGRAM TO SEE HOW EFFICIENTLY A GOVERNMENTAL ENTITY CAN OPERATE. ANOTHER MAJOR FACTOR TO CONSIDER IS THE LOSS OF PROPERTY TAXES WHICH WOULD HAVE TO BE MADE UP IN SOME MANNER. A POWER AUTHORITY WOULD PAY NO TAXES. SIERRA PRESENTLY PAYS APPROXIMATELY $2.3 MILLION IN PROPERTY TAXES TO THE COUNTIES IN WHICH IT SERVES. THE PROPERTY TAXES APPLICABLE TO THE NEW PROPOSED PLANT AT VALMY, UNIT #1, ONLY WILL PRODUCE UP TO $2 MILLION IN NEW TAXES FOR THE COUNTIES. A NUMBER OF COUNTIES ARE CURRENTLY PUSHING THE $5 STATUTORY LIMIT, PARTICULARLY WASHOE AND CLARK COUNTIES. A NEW SOURCE OF TAX REVENUES WOULD HAVE TO BE DEVELOPED, THE CURRENT RATE OR ASSESS-MENT RAISED, AN INCOME TAX IMPOSED, ETC., A PARTICULARLY UNPOPULAR

APPROACH AT ANY TIME.

I CAN SEE NO WAY IN WHICH A PUBLIC POWER AUTHORITY CAN RESULT IN LOWER RATES TO THE CONSUMER. THIS WOULD ONLY CREATE A NEW PUBLIC BUREAU WITH EXTREME AND UNCONTROLLED POWER. IT COULD SET ITS OWN RATES, SERVICE RULES, CONDEMN PROPERTY, BOND IN THE BILLIONS OF DOLLARS, TO THE DETRIMENT OF THE STATE AND ITS CITIZENS, ALL FREE FROM SUPERVISION OR CONTROL OF ANYONE.

EVEN IN THE STATES WITH THE HIGHEST UTILITY RATES IN THE COUNTRY, MAINE, NEW JERSEY, NEW YORK AND MASSACHUSETTS, THE CITIZENS COULD SEE NO SAVINGS AND REJECTED THE PROPOSALS OF A PUBLIC POWER AUTHORITY.

I STRONGLY RECOMMEND THAT IN THE BEST INTEREST OF THE PEOPLE OF THE STATE OF NEVADA THIS BILL SHOULD BE REJECTED.

BLYTH EASTMAN DILLON & CO.
INCORPORATED
555 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104
415-362-6000

EXHIBIT 1

February 11, 1976

Honorable Daniel J. Demers
Chairman
Utility Study Committee
Nevada Legislature
231 Edelweiss Place
Mt. Charleston
Las Vegas, Nevada 89101

Dear Mr. Chairman:

In response to your request of October 15, 1975, we are pleased to submit the following analysis concerning the Nevada Power Company. Pursuant to your directions, we have limited our discussion to that single Company. However, since any State legislation providing for the acquisition or financing of investor-owned utilities would by necessity have to cover all investor-owned utilities in the State of Nevada, the magnitude of the conclusions reached herein would need to be increased several fold.

A number of issues were raised in your letter concerning Nevada Power Company and the potential public operations of an electric utility. Basically, we have attempted to answer these questions:

1) Could tax-exempt debt be substituted for the Company's existing debt without the credit of the State or with the credit of the State.

2) Could the State acquire the outstanding stock of Nevada Power Company and thereby assume operations of the Company.

3) If the State were to acquire the assets of Nevada Power Company at their replacement cost, what would the price be.

Our answer to the first question is negative on both legal and economic grounds. First of all, there is no State of Nevada Statute which permits such a financing. Even if such a statute existed, the Internal

Revenue Code would prohibit the tax-exempt privilege on such bonds, thereby eliminating the advantage to the refinancing.

Secondly, if the Company's currently outstanding debt was to be refunded on a tax-exempt basis in the present market, the bonds would command an interest rate of at least 9.00%. However, of the $154,000,000 of long-term debt which is outstanding, only $40,000,000 has been issued at a rate of 9.00% or higher and the premium required for redeeming the bonds would make any refunding inordinately expensive.

Finally, if the State was to lend its own credit to a refunding issue, an even lower rate of interest would be available, herein estimated at 7-1/2%. While this would make refinancing far more feasible from an economic standpoint, the legality is dubious. We will advise you in the future as to our specific findings in this area.

Alternatively, the State could enact legislation which would enable it to acquire and operate the Company as a publicly-owned power agency. The issuance of tax-exempt bonds for this purpose is already permitted under federal statute.

In the following tabulation, we show the purchase price of the Company's stock at the market price, plus the estimated cost of paying off all existing debt and preferred stock (i.e. total acquisition). This is an unrealistic number since the price of the stock would immediately rise upon announcement of the acquisition. Therefore, the purchase of stock and all liabilities of the Corporation are also shown at the stock's book value, which somewhat represents the historical investment.

Stock Purchase

	Current Stock Price ($19.75/Share)	Book Value Price ($32.32/Share)
Common Stock (1)	$ 49,748,000	$ 81,411,000
Preferred Stock Series A	9,000,000	10,925,000(2)
Preferred Stock Series B	13,500,000	16,417,000(2)
Preferred Stock Series C	17,006,000	16,056,000(2)
So. Nevada Pwr. Co. Obligations	8,356,000	8,356,000
Long-Term Debt	154,000,000	161,700,000(3)
Short-Term Debt	75,000,000	75,000,000
Total	$326,610,000	$369,865,000

(1) 2,518,902 shares assumed outstanding.
(2) Redemption value per issuing resolution.
(3) Across the board 5% premium added for call and brokerage.

Since it is very logical to assume the Company would resist a State acquisition, a condemnation value must be considered. In California there are three recent condemnations of a private utility by public agencies which indicate the court's attitude in such matters. (For reference see: City of Riverside vs. Southwest Water Company, Alameda County Water District vs. Citizens Utility Company and South Bay Irrigation District vs. Calif-American Water Company.) In two of these cases the replacement cost less depreciation was used by the court in setting the purchase price.

While a detailed report on the replacement cost of the Company's assets would be extremely expensive and time-consuming to prepare, we have made the following preliminary estimate based upon our experience in financing the construction of similar facilities.

Generating plant	$1,133,000,000
Transmission facilities	34,000,000
Distribution facilities	42,000,000
Other miscellaneous equipment	6,000,000
Total	$1,215,000,000

Obviously it is speculative to try and assign a value which a court would put upon the Company's assets. However, if the State were to acquire this utility for the public benefit, it would also have to consider acquiring the State's other major utilities in order to be equitable. These acquisitions certainly would drive the total bonding costs into the billions of dollars.

As you know, this amount of financing would greatly exceed the current debt limits under Nevada's Constitution.

The effect of a billion dollar bond issue on the State of Nevada is hard to imagine. It would most certainly rival the most ambitious plans undertaken by the City of New York. For example, there are only 15 states which currently have total debt in excess of $1 billion and the total state and local debt exceeds $1,000 per capita in only 12 states. The addition of a $1 billion bond issue would skyrocket Nevada's per capita debt to a national high of $2,857, exceeding even that of New York City and the State of New York, a dubious honor.

In two cases (the Power Authority of the State of New York and the Oglethorpe Power Authority in Georgia) tax-exempt bonds have been used to acquire an interest in investor-owned generating plants. However, in each of these instances, there have been public power users available to absorb 75% of the generating capacity so acquired, a condition precedent to obtaining approval of the financing by the Internal Revenue Service. This situation does not exist in the State of Nevada.

We trust that the enclosed material will be of some assistance to your committee's deliberations on this most serious problem which plagues many American communities.

Very truly yours,

BLYTH EASTMAN DILLON & CO.
INCORPORATED

Terrence E. Comerford
Senior Vice President

Enclosure

EXHIBIT 1

BLYTH EASTMAN DILLON & CO.
INCORPORATED
555 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104
415-362-6000

M E M O R A N D U M

TO: Honorable Daniel J. Demers,
Chairman
Utility Study Committee
Nevada Legislature

DATE: February 11, 1976

FROM: Dennis G. Ciocca
Blyth Eastman Dillon & Co.
Incorporated

RE: Nevada Power Company
Financial Studies

The purpose of this memorandum is to serve as supportive data to the conclusions provided in my letter of February 11, 1976. The memorandum is for the use of yourself and members of the committee in understanding some of the conclusions reached. However, since much of this material is technical in nature and could erroneously be quoted out of context, we would appreciate your keeping this memorandum confidential.

In your letter a number of issues have been raised and we will attempt to answer them in the same order. The first inquiry involves the total debt load of the Company (NPC) and how the State or another political subdivision might assume that debt. For purposes of our analysis it is assumed that the intention here is to substitute tax exempt bonds for the Company's existing bonds (i.e. refund the existing debt at municipal rates), thereby enjoying a lower interest rate, but continuing the operation of NPC as a private utility. (See "Debt Assumption".)

The second, third and fourth questions appear related in the fact that they all apply to a State acquisition of the Company. Since they are related questions, dealing with difference and rationale of price, they are jointly answered under the heading "State Acquisition". Please note that your inquiry has been limited to information concerning NPC. However, should the State embark upon a program of acquiring or financing utilities, the additional burden of Sierra Pacific Power Company, Southwest Gas and any other investor-owned utilities in Nevada must be added to our conclusions.

Finally, we are listing some suggestions under the heading "Other Alternatives" which, while not requested, may be worthy of consideration.

DEBT ASSUMPTION: The Company currently has approximately $154,000,000 of long-term debt outstanding, of which $20,000,000 is represented by 25-year pollution control bonds which are tax exempt. These bonds were sold on March 5, 1974 at a net interest cost of 6.44% while the Bond Buyer's Index (the most frequently used barometer of municipal bond prices) stood at 5.26%.

Although these bonds would not be candidates for refinancing at municipal rates (since they are already issued on a tax exempt basis) they provide a useful comparison of the level where bonds might be sold today.

When offered for sale these pollution control bonds were priced at 14% above the existing Bond Buyer's Index. Today's Index is 6.85% and applying the same factor for differential would result in a net interest rate in today's market of 8.00%. However, since these bonds were issued the Company has suffered a decline in credit rating and a higher differential exists. At the present time these bonds are being reoffered in the secondary market at a rate of about 9.00%.

Of the Company's remaining bonds, only $40,000,000 have been issued at a rate of 9.00% or higher as is shown below.

	Coupon	Due	Call Price
$10,000,000 Series J	9 %	1999	109.00
$10,000,000 Series K	9-3/8%	2000	107.44
$20,000,000 Series M	10-7/8%	1984	109.52

From the above, it is not feasible to refund the Company's high coupon debt at the current tax exempt rate, when one includes the call premium and issuing expenses which would be involved. The additional par value to be sold just to pay the redemption premium would be $3,548,000.

The remainder of the Company's debt is callable either at par or at a premium (usually small). However, since the interest rate is lower than the comparable rate at which tax exempt bonds could be sold (some of these bonds bear interest as low as 4.25%), the outstanding debt would have to be acquired at a substantial discount in order to make the refunding feasible.

The above discussion assumes that a refinancing would not include a pledge of the State's own credit. Obviously, if such a pledge was made the interest rate would be lower, in the current market somewhere around 7½%, making such refinancing far more feasible. We are currently investigating the legality of such a financing for several clients and will advise you of our findings as soon as they are available.

In addition to NPC's long-term bonds there is approximately $75,000,000 of short-term debt which will have to be refinanced under a long-term arrangement as soon as possible. No doubt it would benefit the Company if this could be arranged on a tax exempt basis. However, at the present time both State and Federal law prohibit such a financing arrangement.

In a telephone conversation with bond counsel to the State of Nevada, we were advised that there is no current provision in the Nevada statutes for the issuance of tax exempt corporate debt other than for pollution control purposes and certain water facilities. As a member of the Assembly, you could no doubt introduce some form of enabling legislation for such financing.

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More difficult than the local legislation is that on the Federal

the tax exemption privilege to obligations of a "state or local government" with certain exceptions found under Sections 103(c) and (d) for industrial revenue bonds. Unfortunately, none of these exemptions would apply to refinancing the debt of the Nevada Power Company. Furthermore, both the Administration and the Treasury Department would vigorously oppose any amendments which would broadly extend the tax exempt privilege for corporate purposes.

In summary, it does not appear financially nor legally feasible for the State to refinance the Company's existing long-term debt. While it would be financially feasible to refinance the Company's short-term debt over a long-term at municipal interest rates, the legal mechanism to provide such financing does not exist and is not anticipated.

STATE ACQUISITION: In our conversation with bond counsel, the subject of State acquisition of Nevada Power Company was discussed. It was bond counsel's opinion that current State law would need to be amended in order to provide enabling legislation. However, this would not be difficult and in fact has precedent in the acquisition of the Marlette Lake Water Company. The Internal Revenue Code already provides for the issuance of tax exempt bonds for the public acquisition of a private utility, and no amendatory legislation is necessary.

For the purposes of this study, it is assumed that the State would have to acquire all assets of the Company. In two specific instances (the Power Authority of the State of New York and the Oglethorpe Power Authority in Georgia) only a specified interest in the generating facilities was acquired from the investor-owned utilities. However, in each of these cases, there are public agencies prepared to purchase and use or distribute 75% of the output. Such a condition is necessary to obtain IRS approval of the financing. This condition does not exist in the State of Nevada and we have therefore not considered a partial acquisition.

As to the acquisition price we have considered three methods of evaluating the Company. In all probability any state acquisition of a private utility company would be resisted (if not by the company itself then by the industry in general) and the ultimate price decided by the courts. The subject of recent condemnation valuations is considered later in this memorandum.

The three methods of valuations considered herein are as follows:

1) Purchase of common stock at current value plus payment of all preferred stock and debt.

2) Purchase of common stock at book value plus payment of all preferred stock and debt.

3) Replacement cost of the acquired company assets.

The first two valuations are relatively simple to calculate, and are compared as follows:

	Current Stock Price ($19.75/Share)	Book Value Price ($32.32/Share)
Common Stock(1)	$ 49,748,000	$ 81,411,000
Preferred Stock Series A	9,000,000	10,925,000(2)
Preferred Stock Series B	13,500,000	16,417,000(2)
Preferred Stock Series C	17,006,000	16,056,000(2)
So. Nevada Power Co. Obligations	8,356,000	8,356,000
Long-Term Debt	154,000,000	161,700,000(3)
Short-Term Debt	75,000,000	75,000,000
Total	$326,610,000	$369,865,000

(1) 2,518,902 shares assumed outstanding.
(2) Redemption value per issuing resolution.
(3) Across the board 5% premium added for call and brokerage.

Of the above figures, the current market price reflects a value assigned by the stock market at this point in time for securities while the book value more closely reflects the historical cost of the system. Neither figure allows any valuation for the Company as a "going concern" nor has a value (premium) been assigned to the call of preferred stock. In condemnation some additional values would no doubt be assigned to these items.

Determination of a replacement cost is a much more difficult figure to establish. In conversation with engineers qualified in the field, a minimum charge for a most preliminary estimate of the replacement cost would be $100,000 or more. A detailed analysis of the replacement cost would run in the millions of dollars.

However, in order to determine some replacement cost figure for the purposes of this analysis we have attempted to use only the most general numbers. Basically a power supply system may be divided into four categories: generation, transmission, distribution and miscellaneous (offices, etc.). Since generating facilities account for more than 70% of the total original value, and inflation is running highest in this area, we have concentrated our evaluation studies in the power generation area.

Upon completion of the Navajo Unit No. 3 and Reid Gardner Unit No. 3 plants (both coal-fired) in mid-1976, NPC will have total generating capacity of 1,365,000 kw. The Company purchases 106,000 kw from Nevada's

entitlement at Hoover Dam (less than 8% of total capacity) with the balance (1,259,000 kw) being internally produced.

It is reported that the Company's actual cost at the Reid Gardner No. 3 facility will run about $600 per kw upon completion. However, construction on this generator commenced three years ago and costs have risen substantially since that time.

As investment bankers to 20 major investor owned electric utilities as well as 8 public power agencies, we are knowledgeable of the current costs of constructing coal fired generating plants. The costs across the country for such a plant with construction commencing in 1976 ranges between $1,000 and $1,050 per kw. This includes the costs of environmental protective equipment and the use of funds during construction. The costs of constructing a nuclear power plant would be substantially higher than a comparable coal-fired plant.

Therefore, in evaluating the replacement cost of the Nevada Power Company's plant we have used a conservative value of $900 per kw for Company-owned facilities. (No value is assigned to the Hoover Dam capacity.) In addition, we have merely doubled the value of the transmission, distribution and miscellaneous facilities from those values carried on the Company books to arrive at the following total replacement cost.

Generating facilities	$ 1,133,000,000
Transmission facilities (1)	34,000,000
Distribution facilities (1)	42,000,000
Other facilities (1)	6,000,000
Total	$ 1,215,000,000

(1) Double the values as reported in a Company prospectus dated December 5, 1974.

Since no state has condemned a major power utility there is no precedent whereby one may judge the value a court may assign. However, in California there have been some recent decisions on the condemnation of private water utilities by public agencies. In the case of the City of Riverside vs. Southwest Water Company the California Public Utilities Commission assigned a reproduction cost less depreciation to the value of the system in question. During appeal of the decision to the State Supreme

Court the parties settled on an agreed price which was somewhat lower. In the case of the Alameda County Water District vs. Citizens Utility Company the trial court judge instructed the jury that only replacement cost less depreciation could be considered in establishing a valuation, while in the case of the South Bay Irrigation District vs. Calif-American Water Company the value was established from an earnings potential plus a 20% allowance for a "going concern" value. Both of the latter cases are currently on appeal.

With the wide range of values considered herein, and the speculative nature of a condemnation valuation, it would be pure folly to estimate the costs of a State acquisition of the Nevada Power Company. However, if the State is to consider such an action then one must add the costs of acquiring the other major utilities, principally Southwest Gas Co. and Sierra Pacific Utilities. Finally, extensive legal and financing costs must be added, undoubtedly driving the total bonding costs into the billions of dollars.

A review of the Moody's Municipal and Government Manual 1975 showed only 15 states having total debt in excess of one billion dollars while only twelve states had per capita state and local government debt exceeding $1,000. Nationally, the per capita debt was led by Alaska at $2,510 with New York State in second place at $1,839. Nevada is compared to some of its neighboring Western states in the following tabulation:

	Per Capita Debt
Nevada	$ 960
Arizona	665
California	901
Colorado	609
Idaho	247
New Mexico	426
Utah	432

The addition of $1 billion dollars on Nevada's debt load would equal $1,898 per person bringing the total per capita debt to $2,858, by far the highest in the nation and considerably exceeding conditions in either New York City or the State of New York. Such an issue would be most difficult to market and would probably exceed the current constitutional debt limits of the State.

OTHER ALTERNATIVES: Throughout this discussion it is assumed that the intent of the Utility Study Committee is to maintain a high rating on the Company's obligations while at the same time keeping power costs low in order to protect the consumer. To meet these objectives there are certain other alternatives which may be worth consideration other than the State's assuming the debt of NPC or the outright acquisition of the utility.

The most obvious method of improving the Company's position with the principal securities rating agencies would be to allow higher rates of return on its operations. While we recognize that these costs must ultimately be passed through to the consumer, it is possible that some combination of new rates would allow the Company higher earnings while not placing an onerous burden upon any segment of the consumers.

In addition, it should be remembered that if a utility does not receive rate relief its credit rating will fall, and the costs of future financings will increase. These increased financing costs are then passed on to the consumer in the same fashion as an original rate increase would have been. In this regard the New Mexico Public Service Commission is using a unique "indexing plan" which guarantees a proper rate of return subject to quarterly audits.

The Company has no doubt made the State aware of their need for rate relief. However, as a matter of interest I am including a Standard & Poor's stock report on the NPC which I think you will find interesting. In the first paragraph of this impartial analysis it is noted that the Company will "require substantial additional rate relief". On the second page of this report it is pointed out that the average domestic electric rates for NPC are approximately 1.70¢ per kw compared with a national average of around 2.85¢ per kw. This speaks well of the Company's operations.

Another alternative which might be considered is some form of special property tax consideration for Nevada's utilities. Theoretically, through lower property taxes the Company could pass through lower rates on its services. Unfortunately, this alternative has the disadvantage of reducing local revenues for necessary municipal services.

A third and final alternative that the Committee may wish to consider is to support legislation which would amend Section 103 of the Internal Revenue Code allowing for the issuance of industrial revenue bonds for power generation purposes. Congressman Murphy of New York on October 21, 1975 introduced such a bill, HR 10277, which would provide for issuance of such industrial revenue bonds when the fuel to power the generating facilities was "substantially of domestic origin". This would apparently apply to the coal-fired-type plants which service most of Nevada's electric needs. For your information a copy of HR 10277 is also enclosed.

Obviously, there is a great deal happening nationally in the area of utility financing and public involvement. For example, Representative Alan Becker of (Miami) Florida has prefiled a proposed state constitutional amendment which would authorize the state purchase and operation of investor-owned electric utilities. This proposed amendment does not include a financing plan and its future is obviously dubious. In addition, we have been retained as a part of a team in the State of

Michigan to consider various methods of controlling utility costs, including the use of tax-exempt bonds. To date this study has only resulted in the expenditure of about $200,000 and the creation of some 25 "models" for consideration. Obviously, it is impossible to consider every such study and all proposed legislation within this limited memorandum.

However, within these limitations we hope the enclosed material will be of some assistance to you in your deliberations. At your direction we would be most happy to provide any additional assistance or input that the Committee may desire.

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DGC/ms

704.110 # 3

STAN WARREN

NEVADA BELL

Exhibit B

I am appearing before your committee today in support of SB 415. This bill is actually intended to rectify legislative oversight resulting from the passage of SB 267, in the last legislature.

During the 1975 session, five bills were introduced in an attempt to limit the frequency in which Nevada utilities could seek rate relief from the PSCN. Almost without exception these bills were aimed at the gas and electric utilities - not the telephone industry. Nevada Bell has not found it necessary to constantly ask for rate relief. In 1968 we asked the PSCN for a general rate increase and did so again in 1976. In 1971 we underwent a rate decrease.

One of the five bills considered during the 1975 session was SB 267, introduced by Senator Hilbrecht, and this was the bill that passed. Its passage brought about certain restrictions over rate increases for all utilities, not just gas and electric.

At the time SB 267 was being heard, I questioned if the broadness of its language stating "whenever there is filed with the Commission any schedule stating a new or revised individual or joint rate, fare or charge.." would effect the fact that Nevada Bell requests changes in tariffs, and files new ones with the PSCN frequently. All felt that it would not, since that was not the intent of the bill.

Last year the PSCN was challenged on their interpretation of this law, and it was ruled that any application for new or revised tariffs would require the same backup material that normally would accompany a request for a general rate increase, such as the ones in 1968 and 1976. The backup material I refer to is that each application for a tariff change must be accompanied by a statement showing the recorded results for the past 12 months of:

All Company Revenues

All Company Expenses

All Company investments and cost of capital

And, that there can only be one such application pending before the Commission at one time by any one utility.

Since this ruling, we have been spending a great deal of our time and a considerable amount of our money developing backup material for the 35 to 40 requests per year made to the PSCN for new or changed tariffs for such things as:

New data phones that are developed to meet the unique transmission needs of a particular computer.

New connecting arrangements to allow single or multiple station connection arrangements for data transmission.

New cabinets designed to house telecommunications equipment.

A text change to list new locations where disconnected telephone equipment could be returned for credit.

With each of these requests to add a new, or change an old tariff, we had to file the complete same data as you would in a full-blown rate case.

This bill eliminates the words "new or revised" and adds the word "increased", which we believe more fully meets the original intent of SB 267. This change would do nothing for the gas and electric utilities since their requests are usually for increased rates, not new ones, but this change will certainly do a lot for us in reducing our operating costs, that, as you know, will eventually be passed on to the consumer.

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Please keep in mind that the PSCN still has the right to call for more backup data on any request for new or changed tariffs.

I met with Senator Hilbrecht on this because it was his bill that was passed in 1975, and I did not want it to look like I was trying to go around him. He agreed that the intent of 1975's SB 267 was not to place this burden on us, and consequently he agreed to introduce this piece of legislation that you are considering today. I appreciate his cooperation in this matter.

Also, we have met with Chairman Clark and Commissioner Hardy of the PSCN, and they have no objections to the changes that we are requesting.

I thank you for your time and I would appreciate the opportunity to attempt to answer any questions you may have.

Thank you.

STATE OF NEVADA
DEPARTMENT OF COMMERCE
BANKING DIVISION
CAPITOL COMPLEX
NYE BUILDING, ROOM 220
201 SOUTH FALL STREET
CARSON CITY, NEVADA 89710
(702) 885-4260

MIKE O'CALLAGHAN
GOVERNOR

MICHAEL L. MELNER
DIRECTOR

PRESTON E. TIDVALL
SUPERINTENDENT OF BANKS

Exhibit C

S.B. 392

Removes requirement for weekend closing of banks and prohibits adoption of agency regulations or local ordinances which require closing of businesses on certain days of the week.

I have some random comments to make in regard to this proposed Senate Bill 392.

The banks operating in the State of Nevada have been closed on Saturdays and Sundays for the past 20 years. The present 40 hour work week has proven to work successfully in the banking field in Nevada for these many years.

The trend today is toward a four day work week rather than toward a longer work week for many businesses. After the public is educated as to the hours their bank is open for business, there really is no problem. I have had very few complaints from the public regarding the present banking hours in effect in Nevada. Our banks offer Night Depository Facilities, Bank By Mail Facilities, Walk Up and Drive Up windows which are open after normal banking hours. Businesses with unusual cash requirements can avail themselves of armored car services that offer flexibility beyond regular banking hours.

In my opinion a misconception actually exists in the minds of many people not familiar with the internal operations of a bank and that is the idea that when a bank closes everyone immediately goes home. This is certainly not true.

If you will pardon a little reflection from my past banking experience, I can well remember the days when the bank I was working for in Colorado was open from 9:30 A.M. to 12 o'clock Noon on Saturdays. By the time I got my day's work completed it was always 3:00 or 3:30 P.M., and my Saturday was practically over.

This proposed legislation would be termed permissive legislation in that each individual bank could choose to be open or closed on Saturdays and Sundays. The fact of the matter is that if any one bank decided to remain open on Saturdays or Sundays, all the other banks would feel that they must remain open for competitive reasons. This would work a very real hardship on all the personnel of the bank as everyone needs their weekends to take care of household chores and have a few hours to spend with their families.

Last but not least, another area of concern is our present energy crisis. It is obvious that in Nevada with its 121 banks and branches, much more energy would be consumed in keeping these banks open six or seven days a week than would be consumed during a normal five day week.

I would, therefore, recommend that no changes be made which could upset the status quo in banking in Nevada.

Exhibit L

NEVADA INSURANCE ASSOCIATION
RECEIVED
OCT 13 1976

4TH DRAFT

AN ACT declaring the public policy of the people of the State of Nevada to permit competitive underwriting, and self-insurance, of workmen's compensation insurance, effective January 1, 1980, and directing the Legislative Commission to make a comprehensive study of the Nevada Industrial Commission, and the system of insuring workmen's compensation liability in Nevada; and providing other matters properly relating thereto.

WHEREAS, there have been questions raised recently, and criticisms directed, concerning the Nevada Industrial Commission classification, rate determination, and claims administration practices; and

WHEREAS, most other jurisdictions, unlike Nevada, permit employers to provide workmen's compensation benefits to their employees through self-insurance or insurance with private companies; and

WHEREAS, employers and employees in these other jurisdictions thereby benefit from a broad choice of safety plans and programs, multi-state and multi-line insurance coverage and an improved workmen's compensation system streamlined and made more effective by the inate regulation of competition; and

WHEREAS, economic and demographic conditions in the State of Nevada have changed rapidly in recent years and reflect Nevada's growth; and

WHEREAS, the laws regulating the insuring, or self-insuring of liabilities related to workmen's compensation is a complex entity of numerous interlocking and interdependent segments which will should be changed only after determination of the overall impact

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of the change; now, therefore,

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

The Legislature hereby finds and declares that the best interests of the people of the State of Nevada ~~are~~ may be served by permitting employers to provide statutory benefits to their employees under the workmen's compensation laws of this State through choice of insuring such liability with a Nevada state insurance fund, authorized private insurance companies, or by qualified self-insurance.

The Legislature further finds and declares that such a competitive system should be implemented in the State of Nevada as soon as reasonably possible, and to that objective directs the Legislative Commission to commission the following acts and studies, and recommend appropriate legislation to the 60th Regular Session of the Legislature of the State of Nevada so as to implement a competitive workmen's compensation system effective January 1, 1980:

Section 1. The Legislative Commission is hereby directed to:

1. Commission a thorough study by independent consultants possessing national expertise with workmen's compensation, who are not financially or politically self-interested in the Nevada Industrial Commission, the private insurance industry or any state workmen's compensation insurance fund, of the Nevada Industrial Commission and the system of insuring workmen's compensation liability in the State of Nevada, including, but not limited to, the method of determining

the adequacy of the current loss reserves of the NIC, manual classification, the method of determination and actuarial validity of the manual rates, including direct comparison of such rates to rates promulgated by the National Council on Compensation Insurance, the system of delivering benefits to injured Nevada employees, the extraterritorial and reciprocal coverage problems created by Nevada employees working in neighboring states, as well as the employees of neighboring states working in Nevada, the method of determining and amount of reserves for future benefits charged employers as losses, and the method and standards for participation by employers in experience modification, self-rater, dividend, and similar premium cost modification plans.

2. Require that the Nevada Industrial Commission furnish to the independent consultants conducting such study any information requested by the independent consultants in order to enable them to fulfull the purposes of the study.

Further require that such consultants make available to and request from both private insurance carriers and employers who might reasonably be expected to qualify as self-insurers, such information as will enable the consultants to propose legislation which will allow for a truly competitive system of satisfying the workmen's compensation liabilities of Nevada employers.

3. Require that the consultants commissioned for such study publicly report the results of such study by July 1, 1978, and make recommendations to the Legislative Commission

for legislation which will embody, but not be limited to, the following specific points:

A. That any Nevada state insurance fund which will offer workmen's compensation insurance have no legislatively created competitive advantages over private insurance companies offering similar insurance;

B. That all insurance companies, self-insurers, and any Nevada state insurance fund be similarly regulated by the Nevada Insurance Commissioner's Office;

C. That the National Council on Compensation Insurance be the rating bureau with any Nevada state insurance fund, as well as all private insurance companies, members thereof subject to all its rules, rates and regulations.

4. Report the results of such study and make recommendations for necessary legislation to the 60th Session of the Legislature.

Section 2. This Act shall become effective upon passage and approval.

C. That the NIC and private insurance companies be bound by the same statutes regarding rates and regulations.

Exhibit E

AMERICAN INSURANCE ASSOCIATION

WESTERN REGIONAL OFFICE

465 California Street
San Francisco, California 94104
(415) 362-2170

January 26, 1977

Vargas, Bartlett
JAN 27 1977
& Dixon

Mr. George L. Vargas
Vargas, Bartlett & Dixon
201 West Liberty Street
Suite 300
P. O. Box 281
Reno, Nevada 89504

RE: NEVADA WORKMEN'S COMPENSATION - THREE-WAY

Dear George:

Vic has informed me that the agents, with support of the Commissioner, are introducing a three-way bill without the study provisions. I think that it is important that the legislature understands the reservations which private companies have with regard to entering the Nevada workmen's compensation market.

I think two of these points may be made most clearly by quoting from Larry Jones' letter to the Ohio agents regarding the private industry's support for a three-way bill in the state of Ohio. Mr. Jones explains AIA's position as follows:

> "Quite frankly, there is no enthusiasm on the part of our member companies to seek this change at this time. You know that that reaction represents a change in policy on the part of our companies. There are many reasons for this change.
>
> First, the workers' compensation business has not been profitable on a national basis in recent years. The rate regulatory system has not proved adequate to cope with the statutory increase in benefits.
>
> Second, there is a general shortage of capital in the property-casualty insurance industry. We need all the capital we have now for present demands on our companies."

George, there are further reasons for our hesitancy to enter the Nevada workmen's compensation market without a full study of the current workmen's compensation system, rate structure, reserving practices, safety services currently being offered, and the possible penetration that private industry might make vis-a-vis the State Fund and Self Insurance.

First, we know nothing about rate adequacy in the state of Nevada under the Nevada Industrial Commission. It is possible that the Nevada Industrial Commission is under reserved and is charging an inadequate rate for the long term liabilities which may be experienced. While it may be actuarially sound to legislate a rate structure under which the National Council on Compensation Insurance is the rating bureau, the rate change may be significant enough to create employer dissatisfaction with a three-way system if, in fact, the current rates are inequitably applied as among classifications or inadequate in general because of underreserving.

Second, the Nevada Industrial Commission offers minimal safety services. The rate structure which would be adopted by the private industry in competition with the State Fund includes a loading for safety services which may not be welcomed by employer groups even though the long run effect would be to decrease losses and thereby create a safer work environment as well as potentially lower rates. A study would enable us to better determine whether or not increased safety engineering would be acceptable to employers at a trade-off of higher rates.

Third, before the private insurance industry can support a three-way bill in the state of Nevada, it is necessary to determine what type of system will be proposed. Will the State Fund be truly competitive with private insurers or will it continue to receive support from the General Fund in terms of state supplied buildings, automobiles, buying services, or other similar benefits? Will the Nevada Industrial Commission be subject to the same regulatory controls as private insurers? Will private insurers as a price of entering the market in Nevada be required to maintain a Nevada office as is the case in Oregon?

Fourth, private industry needs some idea about the amount of market penetration it may expect under a three-way system. Part of this determination is tied up in determining rate adequacy on a classification by classification basis in that one classification may currently be subsidizing another classification. If such is the case, one employer's rates may go up while another goes down. This would no doubt have

the effect of shaking some business loose from the State Fund, however, it would be nice to know which classifications might be affected. There should be significant requirements regarding solvency and reserve practices for self insurers. A study would determine what levels might be both adequate and acceptable to potential private insureds and to what extent we may anticipate losing premium volume to Self Insurance in the state of Nevada.

I think it is obvious that there is a great deal which might be learned from an appropriate study of the Nevada Industrial Commission and the Nevada workers' compensation system prior to any commitment by private insurers to enter the state. In the absence of such a study and in the face of a bald authorization for three-way in the state of Nevada, it is conceivable that few, if any, private insurers will wish to enter the state. There has been some talk that a study is too expensive for the state of Nevada at this time. I think it might be useful to point out to the legislature that a three-way system may not so easily be achieved without its own cost ramifications. It will be necessary to the smooth functioning of a three-way workers' compensation system to develop a regulatory body separate from the Nevada Industrial Commission or State Fund in order to expedite claims management and insure equitable treatment of workers by all concerned including the State Fund. This is one of the advantages of a three-way system. However, it is not without cost to set up such a body. Without having any concrete way of knowing, I would imagine that the cost of a regulatory commission, including office rent, salaries, administrative expenses,and other related expenses for one year might be more than the total cost of a study. This is especially significant in the event that a three-way bill is adopted and private insurers elect not to participate in the Nevada workmen's compensation market because of rate inadequacies or the surplus situation of the individual companies.

In other words, a study would be a bargain when compared with the potential cost to the Nevada Industrial Commission, private insurers, and employers of a switch to a three-way system in the event the three-way system does not in practice provide the benefits which the proponents have cited. It will only be after a thorough study of the system that anyone will know the true benefits which a three-way system might bring to the state of Nevada.

As I said earlier I feel it is important that the legislators understand the private industry's position with regard to a three-way bill and that we would not guarantee private industry

participation if such a system were adopted in the state. Should you find that my presence would be useful prior to or during legislative consideration of this proposal please do not hesitate to contact me. Further, if you have any questions regarding these remarks or other matters please feel free to give me a call.

With personal regards,

William P. Molmen
Associate Counsel

WPM/ga
cc: Messrs. Flockhart - New York
Stark - Washington, D.C.
Bellerose - Chairman, Western Regional Conference Committee
Richman - Chairman, Workers' Compensation Sub-committee, Western Regional Conf. Com.

[redacted]

[redacted]

4TH DRAFT

AN ACT declaring the public policy of the people of the State of Nevada to permit competitive underwriting, and self-insurance, of workmen's compensation insurance, effective January 1, 1980, and directing the Legislative Commission to make a comprehensive study of the Nevada Industrial Commission, and the system of insuring workmen's compensation liability in Nevada; and providing other matters properly relating thereto.

WHEREAS, there have been questions raised recently, and criticisms directed, concerning the Nevada Industrial Commission classification, rate determination, and claims administration practices; and

WHEREAS, most other jurisdictions, unlike Nevada, permit employers to provide workmen's compensation benefits to their employees through self-insurance or insurance with private companies; and

WHEREAS, employers and employees in these other jurisdictions thereby benefit from a broad choice of safety plans and programs, multi-state and multi-line insurance coverage and an improved workmen's compensation system streamlined and made more effective by the inate regulation of competition; and

WHEREAS, economic and demographic conditions in the State of Nevada have changed rapidly in recent years and reflect Nevada's growth; and

WHEREAS, the laws regulating the insuring, or self-insuring of liabilities related to workmen's compensation is a complex entity of numerous interlocking and interdependent segments which will^should be changed^only after determination of the overall impact

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of the change; now, therefore,

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

The Legislature hereby finds and declares that the best interests of the people of the State of Nevada ~~are~~ may be served by permitting employers to provide statutory benefits to their employees under the workmen's compensation laws of this State through choice of insuring such liability with a Nevada state insurance fund, authorized private insurance companies, or by qualified self-insurance.

The Legislature further finds and declares that such a competitive system should be implemented in the State of Nevada as soon as reasonably possible, and to that objective directs the Legislative Commission to commission the following acts and studies, and recommend appropriate legislation to the 60th Regular Session of the Legislature of the State of Nevada so as to implement a competitive workmen's compensation system effective January 1, 1980:

Section 1. The Legislative Commission is hereby directed to:

1. Commission a thorough study by independent consultants possessing national expertise with workmen's compensation, who are not financially or politically self-interested in the Nevada Industrial Commission, the private insurance industry or any state workmen's compensation insurance fund, of the Nevada Industrial Commission and the system of insuring workmen's compensation liability in the State of Nevada, including, but not limited to, the method of determining

the adequacy of the current loss reserves of the NIC,
manual classification, the method of determination and actuarial validity of the manual rates, including direct comparison of such rates to rates promulgated by the National Council on Compensation Insurance, the system of delivering benefits to injured Nevada employees, the extraterritorial and reciprocal coverage problems created by Nevada employees working in neighboring states, as well as the employees of neighboring states working in Nevada, the method of determining and amount of reserves for future benefits charged employers as losses, and the method and standards for participation by employers in experience modification, self-rater, dividend, and similar premium cost modification plans.

2. Require that the Nevada Industrial Commission furnish to the independent consultants conducting such study any information requested by the independent consultants in order to enable them to fulfull the purposes of the study.

Further require that such consultants make available to and request from both private insurance carriers and employers who might reasonably be expected to qualify as self-insurers, such information as will enable the consultants to propose legislation which will allow for a truly competitive system of satisfying the workmen's compensation liabilities of Nevada employers.

3. Require that the consultants commissioned for such study publicly report the results of such study by July 1, 1978, and make recommendations to the Legislative Commission

for legislation which will embody, but not be limited to, the following specific points:

A. That any Nevada state insurance fund which will offer workmen's compensation insurance have no legislatively created competitive advantages over private insurance companies offering similar insurance;

B. That all insurance companies, self-insurers, and any Nevada state insurance fund be similarly regulated by the Nevada Insurance Commissioner's Office;

C. That the National Council on Compensation Insurance be the rating bureau with any Nevada state insurance fund, as well as all private insurance companies, members thereof subject to all its rules, rates and regulations.

4. Report the results of such study and make recommendations for necessary legislation to the 60th Session of the Legislature.

Section 2. This Act shall become effective upon passage and approval.

C. That the NIC and private insurance companies be bound by the same statutes regarding rates and regulations.

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Exhibit F

American Hospital Association

JOHN ALEXANDER McMAHON
President

September 16, 1976

Dear Mr. Dubay

Thank you for your letter of August 16, 1976 in which you expressed concern with the advertisement of the Sunrise Hospital Medical Center in Las Vegas, Nevada which offers a cash rebate on their total hospital bill to patients admitted on Fridays and Saturdays.

The Sunrise Hospital Medical Center's plan apparently seeks to increase utilization during weekends when fixed costs of operations relative to case load are high. With increased utilization during the weekends, the hospital would find its overall costs decreased. This could, therefore, reduce costs to all who use the hospital including the members of your union.

I do not believe an ethical issue is involved in this matter. The hospital is experimenting with a unique approach in resolving the problems of under-utilization of facilities during weekends, and of effective scheduling for maximum efficiency throughout the week. The use of a financial incentive is not per se, unethical.

The Sunrise Hospital program is not without its risks. In the event that the increase of weekend utilization is not significant, the hospital could experience a loss from this program. If this should be the case, it would be doubtful if the hospital would in fact continue this program.

In summary, this experiment has the potential of benefiting the hospital, its patients, and ultimately, the payors of health care.

840 North Lake Shore Drive • Chicago, Illinois 60611 • 312 645-9400

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I believe experiments such as this should not be opposed since they offer an opportunity to assess different approaches to holding down hospital costs.

Sincerely

J. Alexander McMahon
President

Mr. John R. Dubay
Director
American Postal Workers Union, AFL-CIO
P.O. Box 967
Silver Spring, Maryland 20910

bcc: David Brandness

Exhibit F

SURVEY OF INPATIENT CHARGES

DECEMBER 1976

	SUNRISE HOSPITAL	SO. NEVADA MEMORIAL	DESERT SPRINGS	VALLEY HOSPITAL
ROOM & BOARD				
Private	89.00	96.00	93.00	104.00
Semi-Private	82.00	88.00	84.00	88.00
Intensive Care	211.00	220.00	210.00	181.00
RADIOLOGY				
Chest (1 view)	18.00	20.00	20.00	19.00
Chest (2 views)	26.00	30.50	30.00	37.00
Upper G.I.	60.00	73.00-110.00	65.00	118.50
I.V.P.	60.00	75.50	65.00	113.00
Lumbar Spine(2 view)	26.00	30.50	60.00	38.00
Ankle (3 views)	21.00	29.00	27.00	20.00(2 views)
Barium Enema	68.00	64.00	70.00	67.00
LABORATORY				
Complete Blood Count	12.00	13.00	8.00	13.00
Urinalysis	7.00	7.80	4.70	8.00
Sodium	11.00	9.10	10.00	11.00
Chloride	10.00	9.10	10.00	11.00
Potassium	11.00	9.10	10.00	11.00
Bilirubin-Total & Direct	16.00	15.60	11.00	11.00
CENTRAL SUPPLY				
Suction Catheter	1.35	1.24-2.08	2.50	1.50
I.V. Solutions	11.00	18.00(1000cc) 13.00(500cc)	20.00	15.50(1000cc) 11.50(500cc) 7.50(up to 500cc)
Major Surgery Pack	17.40	28.75	23.00	12.00
Medicut	5.40	4.20	7.00	4.00
Intracath	5.40	5.35	7.00	4.50
E.K.G.				
Interp. & Report	30.00	35.00	40.00	38.00

[redacted]

	SUNRISE HOSPITAL	SO. NEVADA MEMORIAL	DESERT SPRINGS	VALLEY HOSPITAL
E.E.G.				
Interp. - Awake	70.00	72.45	70.00	76.00
PHARMACY				
Valium (1 tab)	.75	.55	.80	.75
Keflin (1 gm)	10.00	10.00	10.00	19.00
Keflin (2 gm)	15.00	20.00	20.00	20.00
Geopen (5 gm)	25.00	30.00	30.00	71.00
Garamycin(inject 2cc)	12.00	15.00	16.00	18.00
PHYSICAL THERAPY				
Total Body Whirlpool	20.00	24.00	24.40	N/A
Ice Massage	9.00	11.00	11.70	11.00
SURGERY				
Major 1st Hour	140.00	155.00	140.00	140.00
each 1/4 hr	36.00	35.00	35.00	64.50
Minor 1st Hour	101.00	115.00	140.00	97.00
each 1/4 hr	25.00	25.00	35.00	40.50

Exhibit F

SUNRISE HOSPITAL

SERVICE AVAILABILITY - ENTIRE 7 DAY WEEK

Cardiovascular

- Electrocardiography
- Vectorcardiography
- Holter Monitoring
- Stress Testing
- Echocardiography
- Cardiac Rehabilitation
- Cardiac Catheterization
- Pacemaker Checks
- Phonocardiography

Central Service

E.E.G.

E.K.G.

Emergency Room

Renal Dialysis

Radiology

- Diagnostic
- Special Procedures
- Nuclear Medicine
- Echoencephlogram
- Computerized Axial Tomography

Pharmacy

Laboratory

- Hematology
- Chemistry
- Bacteriology
- Cytology
- Histology
- Pathology
- Radio Isotopes
- Toxicology
- Immunology
- Immunhematology

Surgery - Scheduled 6 Days
Sundays - Emergencies

Physical Medicine

Pulmonary

- Respiratory Therapy
- Pulmonary Rehabilitation
- Pulmonary Function Lab
- Immunology

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SUNRISE HOSPITAL

SERVICE AVAILABILITY - LIMITED

Radiology

Cobalt Therapy	Available Monday - Friday
Ultrasound Scans	Available Monday - Friday

Exhibit F

Aetna
& CASUALTY

Medicare Claim Administration
4600 Kietze Ln. Bld. F
P. O. Box 3077
Reno, Nevada 89502

Medicare

September 27, 1976

D. R. Brandsness, Administrator
Sunrise Hospital
P.O. Box 14157
Las Vegas, Nevada 89101

Re: Weekend Admissions

Dear Mr. Brandsness:

This letter is in answer to your inquiry regarding Medicare's findings with respect to your weekend admission rebate program.

As we advised you at the onset of this program, all weekend admissions of Medicare beneficiaries to Sunrise Hospital had been closely scrutinized in order to verify that the full range of hospital services was made available on Saturdays and Sundays and to insure that Medicare confinements were not unnecessarily prolonged as a result of weekend admissions.

This procedure was followed until July of this year at which time we advised the Bureau of Health Insurance Regional Office in San Francisco that this intensive review was of very limited value. The percentage of questionable claims identified by this mechanism was in no way remarkable when compared to the percentage of investigations which we routinely perform without regard to day of admission. Essentially, our investigation demonstrated that weekend admissions to Sunrise Hospital are in no way different from any others.

We have recommended to the Bureau of Health Insurance that a post-payment review, conducted on a quarterly basis, involving a sample of 10% of your Medicare weekend admissions would be an adequate monitoring mechanism in light of the above findings. This recommendation has been approved by BHI and we are currently employing it.

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If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

DENNIS HOOVER, Administrator
Medicare Claim Administration

DH/nh

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Exhibit G

PRESENTATION TO SENATE COMMERCE & LABOR COMMITTEE
AB 307 - CARSON CITY - APRIL 6, 1977

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS SEYMOUR SCHULMAN AND I AM THE EXECUTIVE DIRECTOR OF VALLEY HOSPITAL IN LAS VEGAS. I RECEIVED MY MASTERS DEGREE IN HOSPITAL ADMINISTRATION FROM THE UNIVERSITY OF CALIFORNIA AT BERKELEY IN 1952 AND HAVE BEEN A HOSPITAL ADMINISTRATOR FOR THE PAST 24 YEARS. I AM HERE TODAY TO SPEAK AGAINST AB 307, A BILL WHICH I FEEL IS CONTRA TO PUBLIC POLICY AND WHICH I BELIEVE WILL PERMIT HOSPITALS TO DEVISE VARIOUS SCHEMES AND METHODS OF OFFERING REBATES TO PATIENTS THAT I FEEL ARE BASICALLY UNETHICAL IN NATURE AND COULD DRASTICALLY INCREASE THE OVER-ALL COST OF HOSPITAL CARE IN THE STATE OF NEVADA THROUGH OVER-UTILIZATION OF HOSPITAL FACILITIES AND SERVICES. CERTAINLY DURING THESE TIMES OF INFLATIONARY PRESSURE IN OUR NATION AND WITH TALK OF NATIONAL PRICE CONTROLS UPON THE HOSPITAL INDUSTRY, IT WOULD SEEM TO ME THAT LEGISLATION THAT COULD HAVE A TENDENCY TO INCREASE THE COST OF HEALTH CARE SERVICES TO THIRD PARTY PAYERS SHOULD BE AVOIDED RATHER THAN ENCOURAGED.

AB 307 CLEARLY ENCOURAGES PATIENTS, PHYSICIANS AND HOSPITALS TO OVER-UTILIZE HOSPITAL FACILITIES AND SERVICES BECAUSE IT IS CLEARLY TO THE FINANCIAL BENEFIT OF ALL OF THESE PARTIES. LET ME EXPLAIN HOW THE PATIENT, THE PHYSICIAN AND THE HOSPITAL ALL CAN PROFIT FROM THIS LEGISLATION AT THE EXPENSE OF THE THIRD PARTY PAYER OF HOSPITAL BILLS AND EVENTUALLY AT THE EXPENSE, THROUGH INCREASED HEALTH INSURANCE PREMIUMS, OF EMPLOYERS IN GENERAL.

LET US TAKE A TYPICAL CASE OF A PATIENT SCHEDULED FOR ELECTIVE SURGERY THAT IS TO BE PERFORMED ON A MONDAY. THAT PATIENT WOULD NORMALLY ENTER THE HOSPITAL SOME TIME DURING THE EARLY PART OF SUNDAY AFTERNOON. THE PATIENT

WOULD THEN HAVE THE ROUTINE ADMITTING LABORATORY AND X-RAY WORK PERFORMED--BE PREPARED FOR SURGERY SUNDAY EVENING AND BE TAKEN TO SURGERY EARLY MONDAY MORNING. ON AN AVERAGE, THE PATIENT WOULD BE EXPECTED TO STAY A TOTAL OF SIX DAYS AND, THEREFORE, LEAVE THE HOSPITAL BY NOON THE FOLLOWING SATURDAY. THE PATIENT'S BILL WOULD AVERAGE APPROXIMATELY $250 PER DAY AND, THEREFORE, TOTAL APPROXIMATELY $1,500. AS A TYPICAL PATIENT, APPROXIMATELY $1,200 OR 80% OF THE COST OF HOSPITALIZATION WOULD BE PAID BY A THIRD PARTY PAYER--SOMEONE OTHER THAN THE PATIENT--AND THE REMAINING BALANCE OF $300 PAID BY THE PATIENT.

NOW LET US TAKE THE EXAMPLE OF A HYPOTHETICAL HOSPITAL THAT UNDER THE AUSPICES OF AB-307 DECIDES TO OFFER A 5% CASH REBATE TO ANY PATIENT THAT IS ADMITTED TO ITS FACILITY ON A FRIDAY OR A SATURDAY. INITIALLY THIS MAY SOUND LIKE A VERY GOOD DEAL TO A PATIENT WHO HAS TO HAVE AN ELECTIVE SURGICAL PROCEDURE PERFORMED, BECAUSE IT WOULD APPEAR THAT HE PERSONALLY WOULD RECEIVE A CASH REBATE OF APPROXIMATELY $75 WHEN HE LEAVES THE HOSPITAL. THE PATIENT, THEREFORE, REQUESTS THAT HIS DOCTOR ADMIT HIM TO THIS HYPOTHETICAL HOSPITAL ON SATURDAY INSTEAD OF SUNDAY. IN THIS INSTANCE, PATIENT #2 NOW ARRIVES AT THE HOSPITAL SATURDAY AFTERNOON INSTEAD OF SUNDAY, HAS HIS ROUTINE X-RAY AND LAB WORK PERFORMED THAT AFTERNOON AND SINCE ONLY EMERGENCY SURGERY IS PERFORMED ON SUNDAY AT THIS HYPOTHETICAL HOSPITAL, THE PATIENT, BASICALLY, LIES AROUND IN BED THE REST OF SATURDAY AND ALL DAY SUNDAY AND THEN ALSO GOES TO SURGERY EARLY MONDAY MORNING. GIVEN THE SAME UNEVENTFUL AVERAGE STAY AS THE FIRST PATIENT, PATIENT #2 WOULD ALSO LEAVE THE HOSPITAL THE FOLLOWING SATURDAY MORNING. THE

NET RESULT IN THIS CASE, HOWEVER, IS NOW A SEVEN DAY STAY FOR PATIENT #2, AND BASED UPON AN AVERAGE CHARGE OF $250 PER DAY, A HOSPITAL BILL THIS TIME OF $1,750 AS WELL AS A HIGHER DOCTOR'S BILL DUE TO AN ADDITIONAL DAY OF HOSPITALIZATION. THE HOSPITAL BILL INCREASE REPRESENTS A 16-2/3% INCREASE IN REVENUE TO THE HOSPITAL--SMALL WONDER THEN THAT THIS HYPOTHETICAL HOSPITAL WOULD BE WILLING TO PAY OUT A REBATE OF 5% TO THE PATIENT IN ORDER TO ENCOURAGE PATIENTS TO BE HOSPITALIZED EARLIER. THE HOSPITAL WOULD STILL NET ADDITIONAL REVENUES OF 11-2/3% ON THIS ADMISSION LESS, OF COURSE, ANY TV OR NEWSPAPER ADVERTISING EXPENSES THAT THIS HYPOTHETICAL HOSPITAL MAY ELECT TO DO. FOR PATIENT #2, THE THIRD PARTY PAYERS PORTION WILL NOW BE $1,400 INSTEAD OF $1,200 AND THE PATIENT PORTION OF THE BILL WILL BE $350 LESS A REBATE OF $87.50 OR $262.50 AS COMPARED TO THE $300 IN THE FIRST EXAMPLE. THE PATIENT IS THEN AHEAD $37.50 ON THE DEAL BUT THE THIRD PARTY PAYER IS OUT THE ADDITIONAL $200. THIS DOES NOT SEEM TO ME TO BE A VERY LOGICAL WAY TO CONTROL OR REDUCE HOSPITAL CHARGES.

A THIRD EXAMPLE WOULD BE THE PATIENT WHO ENTERS THE HOSPITAL ON FRIDAY FOR THIS SAME ELECTIVE SURGICAL PROCEDURE. THE CHANCES ARE THAT HE WILL STAY IN THE HOSPITAL AN EXTRA TWO DAYS BECAUSE THIS HYPOTHETICAL HOSPITAL ALSO MAINLY DOES ONLY EMERGENCY SURGERY ON SATURDAY. IN SUCH A CASE, CHARGES FOR AN EIGHT DAY STAY COULD TOTAL APPROXIMATELY $2,000 OR A 33-1/3% INCREASE IN REVENUE FOR THE HOSPITAL. THE THIRD PARTY PAYERS PORTION IN THIS INSTANCE WOULD BE $1,600 OR $400 HIGHER THAN FOR THE FIRST PATIENT AND THE PATIENT'S PORTION WOULD BE $400 LESS A $100 REBATE OR $300, THE SAME AMOUNT PAID BY PATIENT #1. THE PATIENT DISCOUNT, THEREFORE, BECOMES ILLUSORY. AS FOR THE HOSPITAL, IT INCREASED ITS AVERAGE REVENUE FROM SUCH A PATIENT BY

APPROXIMATELY 33-1/3% LESS THE 5% REBATE OR 28-1/3%.

NOW AS IT ACTUALLY HAPPENS, ONE HOSPITAL IN LAS VEGAS IMPLEMENTED SUCH A REBATE PROGRAM. BECAUSE OF THE UNUSUAL NATURE OF THIS PROGRAM, IT RECEIVED WIDE NATIONAL MEDIA COVERAGE. TO THE BEST OF MY KNOWLEDGE, NO OTHER HOSPITAL, OF THE 7,156 HOSPITALS IN THE UNITED STATES, INSTITUTED A SIMILAR PATIENT REBATE PROGRAM--NOR HAS ANY OTHER STATE LEGISLATURE IN THE UNITED STATES CONTEMPLATED LEGALIZING THIS QUESTIONABLE TYPE OF A REBATE PROGRAM.

AB 307, IN ITS PRESENT FORM IN SECTION 3, REQUIRES THAT THE INSURANCE COMMISSIONER SHALL, AT THE EXPIRATION OF THE ACT ON JULY 1, 1979, CONDUCT A COMPREHENSIVE STUDY OF REBATE PROGRAMS IN EFFECT AT VARIOUS HOSPITALS IN ORDER TO DETERMINE THE EFFECT THAT THE PROGRAM HAS HAD ON HOSPITAL CHARGES AND LENGTH OF PATIENT STAY.

I SUBMIT THAT THIS INFORMATION IS CURRENTLY AVAILABLE TO THE INSURANCE COMMISSIONER IN FULL, COMPLETE DETAIL AT THE ONE HOSPITAL IN THE UNITED STATES THAT HAS HAD ALMOST ONE YEAR'S EXPERIENCE WITH SUCH A REBATE PROGRAM AND THAT, THEREFORE, THERE IS NO NEED TO WAIT FOR AN ADDITIONAL TWO YEAR PERIOD OF TIME IN ORDER TO DETERMINE THE GOOD OR EVIL OF THIS TYPE OF PROGRAM. I WOULD SUGGEST THAT IF YOUR COMMITTEE FEELS THAT THIS TYPE OF LEGISLATION HAS MERIT, THAT YOU CONSIDER AN AMENDMENT TO THE ACT THAT WOULD EMPOWER THE INSURANCE COMMISSIONER'S OFFICE TO CONDUCT SUCH A STUDY NOW, BASED UPON THE INFORMATION CURRENTLY AVAILABLE AND, THUS, NOT HAVE TO WAIT A TWO YEAR PERIOD IN ORDER TO SEE IF IT HAS BEEN GOOD LEGISLATION OR BAD LEGISLATION. TO ME, THE ACT, IN ITS PRESENT FORM, LOCKS THE BARN DOOR AFTER THE PROVERBIAL HORSE HAS BEEN STOLEN.

[redacted] 1163

ADVOCATES OF THIS BILL HAVE STATED THAT THE AVERAGE STAY OF REBATE PATIENTS HAS BEEN 6.14 DAYS AS COMPARED TO A 6.8 DAY STAY OF AN AVERAGE PATIENT AT THE HOSPITAL THAT HAS HAD A REBATE PROGRAM IN EFFECT. I AM CERTAIN THAT THESE FIGURES ARE CORRECT BUT THE CONCLUSION THAT THE AVERAGE STAY OF REBATE PATIENTS HAS, THEREFORE, BEEN REDUCED BY SEVEN-TENTHS OF A DAY, IS GROSSLY ERRONEOUS. ELECTIVE REBATE PATIENTS--THAT IS PATIENTS WHO CAN SELECT THEIR DAY OF ADMISSION BECAUSE OF THE NATURE OF THEIR ADMITTING DIAGNOSIS, HAVE FAR DIFFERENT DIAGNOSES AND MUCH SHORTER HOSPITALIZATION PERIODS THAN THE NON-ELECTIVE MEDICAL OR EMERGENCY SURGERY ADMISSION. FEW EXAMPLES OF SUCH ELECTIVE ADMISSIONS MIGHT BE RHINOPLASTIES, OR NOSE JOBS, BREAST ENLARGEMENTS OR ABORTIONS. THE ONLY WAY TO DETERMINE IF, IN FACT, THE AVERAGE STAY HAS BEEN EITHER INCREASED OR DECREASED, WOULD BE TO TAKE A SERIES OF NON-REBATE PATIENTS AND A SERIES OF REBATE PATIENTS WITH THE SAME MEDICAL OR SURGICAL DIAGNOSES AND THEN COMPARE THE AVERAGE LENGTH OF STAY OF THE TWO GROUPS.

THE ADVOCATES OF THE BILL HAVE ALSO STATED THAT BECAUSE OF THE INCREASED NUMBER OF FRIDAY AND SATURDAY ADMISSIONS DUE TO THE REBATE PLAN, THE HOSPITAL'S AVERAGE EXPENSE PER ADMISSION WAS LESS DUE TO THE USE OF HOSPITAL EQUIPMENT ON A SEVEN DAY BASIS. THIS, TOO, I WOULD NOT DISPUTE--THE MORE PATIENTS THAT ARE ADMITTED, THE LOWER WILL BE THE AVERAGE HOSPITAL EXPENSE; BUT WHAT THIS REALLY MEANS IS THAT NOW THE HOSPITAL HAS IT TWO WAYS--IT IS ABLE TO LOWER ITS OWN OPERATIONAL EXPENSE AND AT THE SAME TIME INCREASE ITS REVENUE THROUGH OVER-UTILIZATION OF ITS FACILITIES FROM 16-2/3% TO 33-1/3%. THAT IS WHAT I CALL A NEAT TRICK.

LET ME GIVE YOU GENTLEMEN AN IDEA OF THE DOLLARS POTENTIALLY INVOLVED IN THIS PANDORAS BOX THAT WILL BE OPENED THROUGH THIS TYPE OF LEGISLATION,

BECAUSE REMEMBER, THIS BILL PERMITS ALL HOSPITALS TO IMPLEMENT A REBATE PROGRAM, NOT JUST THE ONE THAT HAS TRIED OUT SUCH A PROGRAM.

AT THE PRESENT TIME, THERE ARE TWENTY-THREE HOSPITALS IN THE STATE OF NEVADA LISTED IN THE 1976 EDITION OF THE AMERICAN HOSPITAL ASSOCIATION'S GUIDE TO THE HEALTH CARE FIELD. OF THESE, EIGHTEEN ARE COMMUNITY HOSPITALS THAT HAVE A TOTAL OF 2,428 BEDS. DURING 1975, THE REPORTING PERIOD INDICATED IN THE AMERICAN HOSPITAL ASSOCIATION'S 1976 GUIDE EDITION, THESE HOSPITALS ADMITTED 92,852 PATIENTS AND PROVIDED 605,095 DAYS OF PATIENT CARE, AT A GROSS INPATIENT REVENUE OF $109,677,000; FOR AN AVERAGE GROSS REVENUE PER PATIENT DAY OF $181.26. ACCORDING TO A REVIEW OF OUR OWN HOSPITAL'S ADMISSIONS AS WELL AS THE PUBLISHED ADMISSIONS OF THE HOSPITAL THAT EXPERIMENTED WITH A REBATE PROGRAM, APPROXIMATELY 18% OF THESE PATIENTS WERE ADMITTED ON A FRIDAY OR A SATURDAY. IF ONLY 50% OF THESE PATIENTS OVERUTILIZE THE HOSPITAL BY JUST ONE DAY, HOSPITAL REVENUE, BASED UPON 1975 CHARGES, WOULD INCREASE BY $1,500,000. IF AN ADDITIONAL 25% OVERUTILIZE THE HOSPITAL BY TWO DAYS, YOU WOULD HAVE TO ADD AN ADDITIONAL $1,500,000 TO SUCH REVENUE, FOR A TOTAL OF $3,000,000 ANNUALLY. IF YOU THEN ADDED AN ADDITIONAL 20% FOR INFLATION SINCE 1975, YOU WOULD HAVE A POTENTIAL INCREASE IN HOSPITAL REVENUE DUE TO OVERUTILIZATION OF $3,600,000 ANNUALLY. OUT OF RESPECT FOR MY FELLOW HOSPITAL ADMINISTRATORS, I DO NOT MEAN TO IMPLY THAT THEY WOULD ALL TAKE ADVANTAGE OF THIS POTENTIAL WINDFALL, BUT THE POTENTIAL IS THERE AND THIS BILL WILL HAVE PUT IT THERE. YOU WILL HAVE OPENED UP PANDORAS BOX WITH THIS SORT OF LEGISLATION FOR A MINIMUM TWO YEAR PERIOD. THE POTENTIAL INCREASE IN REVENUE, AS A RESULT OF OVERUTILIZATION DURING THIS TWO YEAR PERIOD, COULD NOW TOTAL APPROXIMATELY $7.2 MILLION DOLLARS.

FRANKLY, I FIND IT IMPOSSIBLE TO BELIEVE THAT THE NEVADA LEGISLATURE

WOULD GO BLINDLY AHEAD WITH THE INTRODUCTION OF SUCH LEGISLATION WITHOUT FIRST FULLY DETERMINING THE POTENTIAL GOOD OR EVIL OF SUCH A PROGRAM WHEN ALL IT HAS TO DO WOULD BE TO HAVE THE INSURANCE COMMISSIONER DO A THOROUGH UTILIZATION REVIEW AUDIT OF THE RECORDS AND INFORMATION CURRENTLY AVAILABLE AT THE ONE HOSPITAL THAT HAS TRIED THIS PROGRAM. TO DO OTHERWISE WOULD INDICATE, I FEEL, A CERTAIN DEGREE OF DISINTEREST TOWARD THE OVER-ALL BEST INTERESTS OF THE PUBLIC AND I AM CONFIDENT ENOUGH IN THIS COMMITTEE TO BELIEVE THAT SUCH DISINTEREST DOES NOT EXIST.

THANK YOU VERY MUCH.

"Man and Medicine"

23 February 1977

Mr. S. Schulman
Administrator
Valley Hospital
620 Shadow Lane
Las Vegas, Nevada 89106

Dear Sy:

I am sorry I cannot join you at the hearing on AB 307. I would like to share some thoughts with you.

1. The hospitals in the U.S.A. establish their charges for services on the basis of average costs. Patient X may need more help to get a chest x-ray done than Patient Y -- but both are charged the same fee. If any group of patients is charged less,* all others -- whether or not covered by insurance or other third party payer -- will be charged more, grossly unfairly.

2. The costs of services during week-ends tends to be higher because of premium wage scales of some employees, on-call or call-back pay of others, and other related factors.

3. While hospital average costs tend to go down with increased volumes, one hospital's increased volume at the expense of the other hospitals, will not decrease total costs for the community.

4. While lowered occupancy figures during weekends are inconvenient in some ways to all hospitals, the problems are much less significant in Las Vegas because of the sizeable weekend tourist population.

5. Attempts to force doctors to work in non-emergency situations on week-ends is patently unfair to them, and will often pit doctor against patient, which is hardly conducive to effective patient-doctor relationship.

Advertising is currently viewed as unethical by hospitals unless if there is an unusual feature about which the public should be informed. It is my belief that Sunrise Hospital's intention to re-introduce the weekend rebate policy is essentially motivated by their wish to advertise.

If Sunrise is allowed this scheme, the other for-profit hospitals are likely to adopt it also. Public not-for-profit hospitals, not being able to offer rebates out of corporate profits, would be unfairly discriminated against, ultimately at the expense of the taxpayers subsidizing the public hospitals.

Best regards.

George

George Riesz, F.A.C.H.A.
Administrator

*for reasons other than the costs of service.

SOUTHERN NEVADA MEMORIAL HOSPITAL
1800 W. Charleston Blvd., Las Vegas, Nevada 89102 (702) 385-2000

VALLEY HOSPITAL
620 SHADOW LANE • LAS VEGAS, NEVADA 89106 • (702) 385-3011

[redacted]ur Schulman, M.P.H.
Ex[redacted]ve Director

March 1, 1977

Mr. Fred Hillerby
Nevada Hospital Association
1450 East Second Street
Reno, Nevada 89502

Dear Fred:

As you know, there has been much concern on the part of a number of hospitals regarding the introduction of Assembly Bill No. 307 which permits the rebate of health insurance benefits to patients. It is the belief of the undersigned that such rebating could lead to the "buying" of patient business by hospitals and to over-utilization of hospital services. It is for these reasons that the undersigned hospitals request that the Nevada Hospital Association take an active part in the defeat of such legislation. It is our feeling that this Bill is against the best interests of all hospitals, their patients and their care.

As you know, as a result of the opposition voiced at the Committee on Commerce hearing on February 23, the matter was referred to a subcommittee chaired by Assemblyman Demers. It is the intention of the undersigned hospitals to actively pursue this matter until its eventual defeat and request that the Nevada Hospital Association join with us in achieving this goal.

Sincerely,

Douglas Dailey, Administrator
Womens Hospital
Las Vegas, Nevada

George Riesz, Administrator
Southern Nevada Memorial Hospital
Las Vegas, Nevada

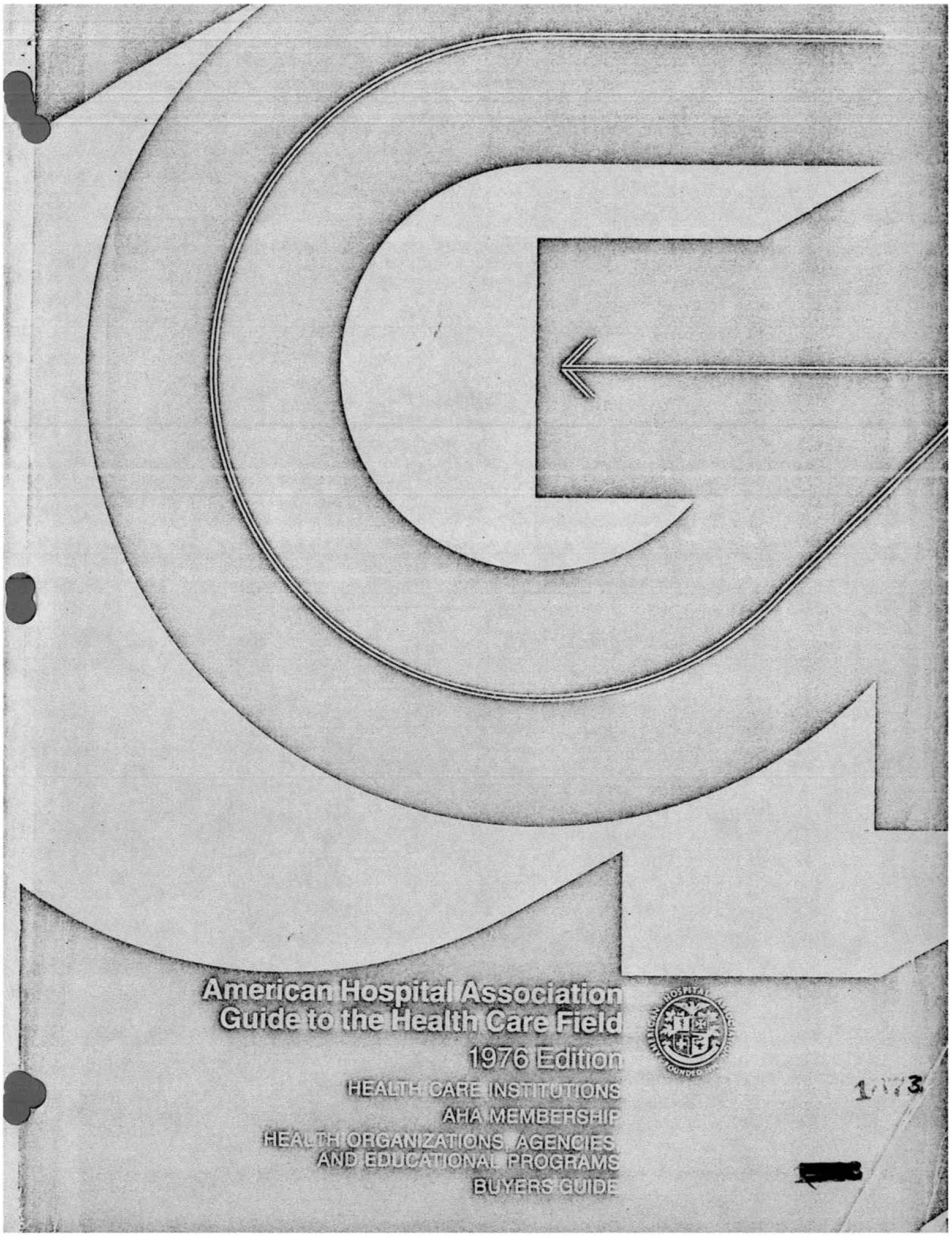
Stanley Pariso, Administrator
Boulder City Hospital
Boulder City, Nevada

Seymour Schulman, Administrator
Valley Hospital
Las Vegas, Nevada

Iqbal Paroo, Administrator
Desert Springs Medical Center
Las Vegas, Nevada

1 of 2

[redacted]



American Hospital Association Guide to the Health Care Field

1976 Edition

HEALTH CARE INSTITUTIONS

AHA MEMBERSHIP

HEALTH ORGANIZATIONS, AGENCIES, AND EDUCATIONAL PROGRAMS

BUYERS GUIDE

1973

Hospital, Address, Telephone, Administrator, Approval and Facility Codes	Classification Codes: Control	Service	Stay	Inpatient Data: Beds	Admissions	Census	Occupancy (percent)	Newborn Data: Bassinets	Births	Expense (thousands of dollars): Total	Payroll	Personnel
* Indicates membership in the American Hospital Association; ⊠ Indicates AHA membership and JCAH accreditation; ☐ Indicates JCAH accreditation; ‡ Indicates membership in the American Osteopathic Hospital Association. Control codes 61, 63, 64, 71, 72, and 73 indicate hospitals listed by the AOHA. Telephone area codes, when available, are shown following the city and county. For definitions and explanation of other codes see page 2												
YORK—York County (402)												
* YORK GENERAL HOSPITAL, 2200 Lincoln Ave., Zip 68467; tel. 362-6671; Dale W. Kamopp, adm. A-9-10 F-1-3-16-23-34-35-41-45	23	10	S	70	2174	37	52.9	8	250	1263	652	96
NEVADA												
BOULDER CITY—Clark County (702)												
⊠ BOULDER CITY HOSPITAL, 901 Adams Blvd., Zip 89005; tel. 293-4111; Stanley B. Pariso, adm. A-1-9-10 F-1-2-3-6-14-16-23-35-39-45-46	23	10	S	38	1667	26	68.4	5	176	1231	571	71
CARSON CITY—Ormsby County (702)												
⊠ CARSON TAHOE HOSPITAL, 1201 N. Mountain St., Zip 89701; tel. 882-1361; John F. Anthony, adm. A-1-9-10 F-1-3-10-12-15-16-17-23-30-35-36-39-44-45-46-47	15	10	S	75	4255	58	77.3	12	378	3652	1822	206
EAST ELY—White Pine County (702)												
⊠ WILLIAM BEE RIRIE HOSPITAL, Box 435, Zip 89315; tel. 289-3001; C. L. Lamoreaux, adm. (Includes 33 beds in long-term unit) A-1-9-10 F-1-3-6-14-15-16-18-19-23-29-35-39-42-45-46	13	10	S	76	1220	42	55.3	10	185	1319	723	104
ELKO—Elko County (702)												
ELKO GENERAL HOSPITAL, 1297 College Ave., Zip 89801; tel. 738-5151; Jon Felker, adm. (Includes 18 beds in long-term unit) A-9-10 F-1-3-6-10-12-15-16-19-23-35-39-45	13	10	S	74	2125	41	55.4	7	273	1607	816	113
FALLON—Churchill County (702)												
⊠ CHURCHILL PUBLIC HOSPITAL, 155 N. Taylor St., Box 391, Zip 89406; tel. 423-3151; W. W. Huffman, adm. A-1-9-10 F-3-23-35-45	13	10	S	42	1294	18	42.9	8	83	895	503	55
HAWTHORNE—Mineral County (702)												
* MOUNT GRANT GENERAL HOSPITAL, Box 1516, Zip 89415; tel. 945-2461; Audrey H. McCracken, adm. (Includes 12 beds in long-term unit) A-9-10 F-6-16-17-19-28-30-32-35-36-37-39-42-45-47-48-49-51	13	10	S	37	516	18	48.6	5	35	691	415	54
HENDERSON—Clark County (702)												
⊠ ST. ROSE DE LIMA HOSPITAL, 102 Lake Mead Dr., Zip 89015; tel. 564-2622; Sr. Georganne Duggan, adm.; W. J. Sthultz, assoc. adm. A-1-2-9 F-1-3-5-8-9-10-11-12-16-17-22-23-35-36-45	21	10	S	80	2291	35	43.8	8	271	2889	1498	166
LAS VEGAS—Clark County (702)												
☐ DESERT SPRINGS HOSPITAL, 2075 E. Flamingo Rd., Zip 89109; Mailing Address Box 19204, Zip 89119; tel. 733-8800; Richard C. Herrmann, adm. A-1-10 F-1-3-5-10-12-14-15-16-23-35-39-40-44-45-46	33	10	S	100	4395	75	75.0	—	—	6791	2204	238
⊠ SOUTHERN NEVADA MEMORIAL HOSPITAL, 1800 W. Charleston Blvd., Zip 89102; tel. 385-2000; George Riesz, adm. A-1-2-3-9-10 F-1-2-3-4-5-7-9-10-11-12-15-16-17-20-21-22-23-24-25-26-27-30-32-34-35-36-39-40-42-44-45-46-47	13	10	S	272	9920	188	68.9	37	1089	15344	—	763
⊠ SUNRISE HOSPITAL, 3186 Maryland Pkwy., Zip 89109; Mailing Address Box 14157, Zip 89114; tel. 732-9011; David R. Brandsness, adm. A-1-9-10 F-1-2-3-4-5-7-8-9-10-11-12-14-15-16-17-20-21-23-26-34-35-36-39-40-45-46-48-49-50-51-52	33	10	S	460	20018	332	72.2	40	1125	23227	10921	1060
U. S. AIR FORCE HOSPITAL, See Nellis Air Force Base												
⊠ VALLEY HOSPITAL, 620 Shadow Lane, Zip 89106; tel. 385-3011; Charles L. Showalter, exec. dir. A-1-10 F-1-3-5-10-12-14-15-16-23-27-28-30-32-33-35-36-45-46-47	32	10	S	177	6260	122	69.7	—	—	8325	3340	361
⊠ WOMENS HOSPITAL, 2025 E. Sahara Ave., Zip 89105; tel. 735-7106; May E. Hanson, adm. A-1-9-10 F-1-5-14-17-39-40-43	33	44	S	41	4157	39	83.0	27	1869	3100	1134	133
LOVELOCK—Pershing County (702)												
⊠ PERSHING GENERAL HOSPITAL, Sixth Ave. & County Rd., Box 661, Zip 89419; tel. 273-2621; Robert J. Moss, adm. (Includes 25 beds in long-term unit) A-1-9-10 F-1-6-19-34-35-45	13	10	S	47	215	15	31.9	6	37	502	295	45
NELLIS AIR FORCE BASE—Clark County (702)												
⊠ U. S. AIR FORCE HOSPITAL, Zip 89191; tel. 643-4077; Maj. John P. VanRysselberge, adm. A-1 F-2-5-23-28-33-34-35-37-42-43-45	41	10	S	35	2951	26	74.3	13	462	—	—	86
NORTH LAS VEGAS—Clark County (702)												
⊠ NORTH LAS VEGAS HOSPITAL, 1409 E. Lake Mead Blvd., Zip 89030; tel. 649-7711; William E. Bennett, adm. A-1-9-10 F-1-2-3-5-10-12-15-16-23-35-42-43-44-45-46	33	10	S	49	1973	30	61.2	—	—	2541	816	120
OWYHEE—Elko County (702)												
* U. S. PUBLIC HEALTH SERVICE INDIAN HOSPITAL, Box 212, Zip 89832; tel. 757-3215; T. L. Welbourne, serv. unit dir. F-15-17-30-32-33-34-35-36-37-41-42	47	10	S	17	207	6	35.3	4	15	942	386	34
RENO—Washoe County (702)												
NEVADA MENTAL HEALTH INSTITUTE, See Sparks												
⊠ ST. MARY'S HOSPITAL, 235 W. Sixth St., Zip 89503; tel. 323-2041; J. L. Reveley, adm. A-1-9-10 F-1-2-3-5-7-9-10-11-12-15-16-17-23-24-35-36-44-45-46	21	10	S	268	11919	204	76.1	22	1262	13137	6638	763
⊠ VETERANS ADMINISTRATION HOSPITAL, 1000 Locust St., Zip 89502; tel. 786-7200; Harry C. Potter, dir. (Includes 22 beds in long-term unit) A-1 F-1-3-5-10-14-16-19-23-24-27-28-32-33-34-36-42-46	45	10	S	199	3260	166	83.4	—	—	9744	5649	434
⊠ WASHOE MEDICAL CENTER, 77 Pringle Way, Zip 89502; tel. 785-4100; Carroll W. Ogren, adm. (Includes 34 beds in long-term unit) A-1-9-10 F-1-2-3-5-7-9-10-11-12-15-16-17-19-20-21-23-24-25-26-27-28-29-30-35-36-39-42-44-45-46	13	10	S	538	18574	365	71.4	28	959	23342	11434	1334
SCHURZ—Mineral County (702)												
* U. S. PUBLIC HEALTH SERVICE INDIAN HOSPITAL, Zip 89427; tel. 773-2345; Reuben T. Howard, adm. off. F-5-14-30-32-33-34-35-36-37-42-45	47	10	S	26	458	9	34.6	5	52	1405	514	44
SPARKS—Washoe County (702)												
⊠ NEVADA MENTAL HEALTH INSTITUTE (Formerly Listed Under Reno), 480 Galletti Way, Zip 89431; Mailing Address Box 2460, Reno, Zip 89505; tel. 322-6961; Thomas A. Piepmeyer, dir. A-1-10 F-3-5-23-24-29-33-36-42-45-46	12	22	L	451	775	289	64.1	—	—	5290	2644	198
WINNEMUCCA—Humboldt County (702)												
* HUMBOLDT GENERAL HOSPITAL (Formerly Humboldt County General Hospital), 118 E. Haskell St., Zip 89445; tel. 623-5222; E. J. Hanssen, adm. (Includes 10 beds in long-term unit) A-9-10 F-1-3-6-14-19-35-42-45	13	10	S	34	793	18	52.9	7	113	885	439	54
YERINGTON—Lyon County (702)												
* LYON HEALTH CENTER, Surprize at Whitacre Ave., Box 940, Zip 89447; tel. 463-2301; Clara M. Barnett RN, adm. (Includes 18 beds in long-term unit) A-9-10 F-2-6-14-23-35-[illegible]46	13	10	S	42	1260	31	73.8	6	131	881	480	51

NEW HAMPSHIRE

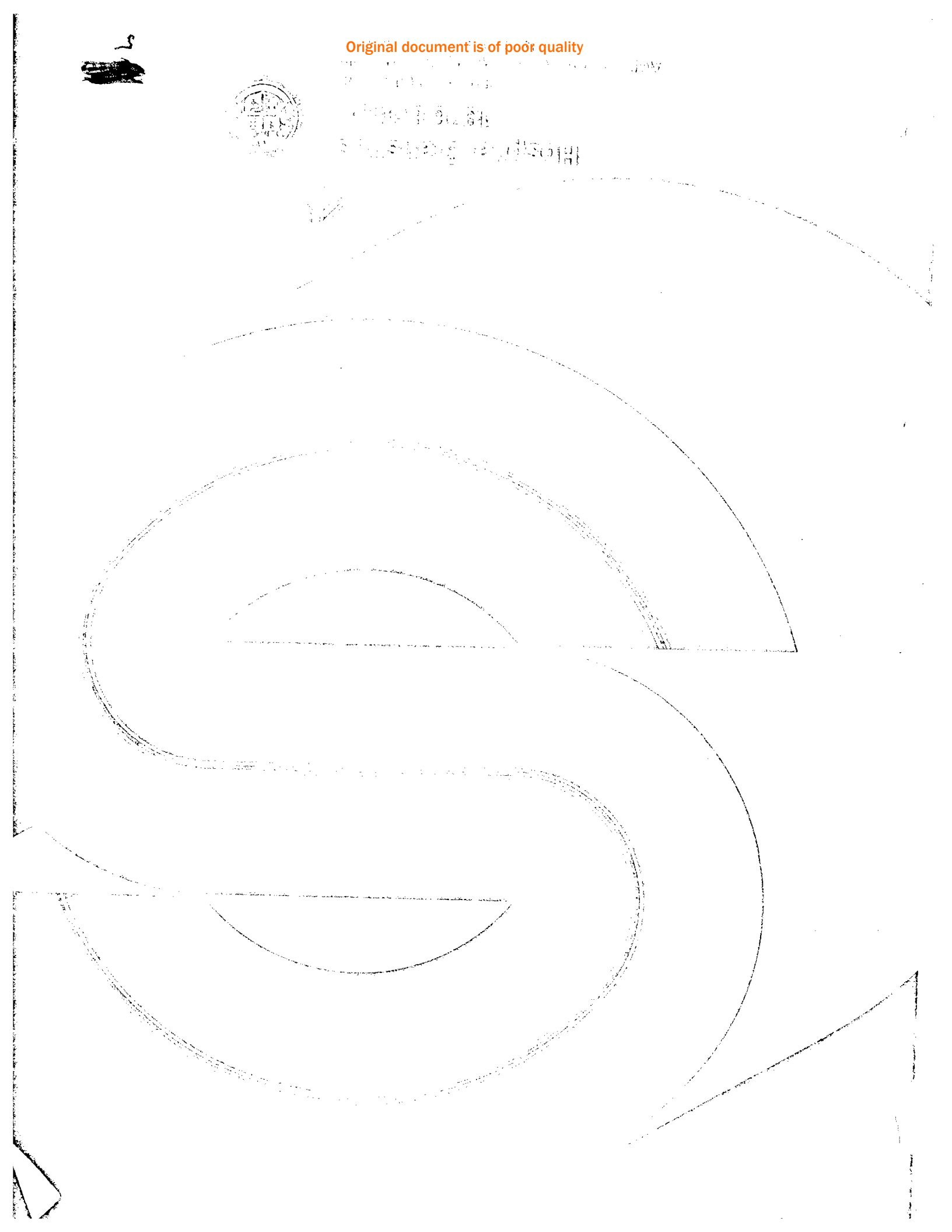


TABLE 5C (Continued)/ NEVADA

CLASSIFICATION	HOSPITALS	BEDS	ADMISSIONS	INPATIENT DAYS	INPATIENT DAY EQUIVALENTS	OCCUPANCY, percent	AVERAGE DAILY CENSUS	ADJUSTED AVERAGE DAILY CENSUS	AVERAGE STAY, days	SURGICAL OPERATIONS	OUTPATIENT VISITS			
											Emergency	Clinic	Referred	Total
NEVADA	23	3,156	100,503	786,033		68.2	2,153			46,641	213,104	229,125	158,457	600,686
6-24 beds	1	17	207	2,236		35.3	6			355	726	6,532	2,073	9,331
25-49	10	397	15,284	84,402		57.9	230			6,147	33,332	115,002	74,567	222,901
50-99	4	305	9,891	64,238		57.7	176			4,400	23,466	0	14,987	38,453
100-199	3	474	13,915	132,504		76.6	363			6,126	17,491	41,764	16,772	76,027
200-299	2	541	21,839	142,895		72.5	392			10,659	55,538	14,559	33,866	103,963
300-399	0	0	0	0		0	0			0	0	0	0	0
400-499	2	911	20,793	226,575		68.2	621			9,517	47,074	38,827	4,470	90,371
500 or more	1	511	18,574	133,183		71.4	365			9,437	35,477	12,441	11,722	59,640
Psychiatric	1	451	775	105,363		64.1	289			0	0	0	0	0
Hospitals	1	451	775	105,363		64.1	289			0	0	0	0	0
Institutions for mentally retarded	0	0	0	0		0	0			0	0	0	0	0
General	21	2,658	95,571	666,465		68.7	1,825			44,240	213,104	229,125	156,176	598,405
Hospitals	21	2,658	95,571	666,465		68.7	1,825			44,240	213,104	229,125	156,176	598,405
Hospital units of institutions	0	0	0	0		0	0			0	0	0	0	0
TB and other respiratory diseases	0	0	0	0		0	0			0	0	0	0	0
Obstetrics and gynecology	1	47	4,157	14,205		83.0	39			2,401	0	0	2,281	2,281
Eye, ear, nose, and throat	0	0	0	0		0	0			0	0	0	0	0
Rehabilitation	0	0	0	0		0	0			0	0	0	0	0
Orthopedic	0	0	0	0		0	0			0	0	0	0	0
Chronic disease	0	0	0	0		0	0			0	0	0	0	0
All other	0	0	0	0		0	0			0	0	0	0	0
Federal	4	277	6,876	75,575		74.7	207			2,601	17,569	160,058	43,242	220,869
Psychiatric	0	0	0	0		0	0			0	0	0	0	0
General and other special	4	277	6,876	75,575		74.7	207			2,601	17,569	160,058	43,242	220,869
Nonfederal	19	2,879	93,627	710,458		67.6	1,946			44,040	195,535	69,067	115,215	379,817
Psychiatric	1	451	775	105,363		64.1	289			0	0	0	0	0
Hospitals	1	451	775	105,363		64.1	289			0	0	0	0	0
Institutions for mentally retarded	0	0	0	0		0	0			0	0	0	0	0
TB and other respiratory diseases	0	0	0	0		0	0			0	0	0	0	0
Long-term general and other special	0	0	0	0		0	0			0	0	0	0	0
Short-term general and other special	18	2,428	92,852	605,095		68.2	1,657			44,040	195,535	69,067	115,215	379,817
Hospital units of institutions	0	0	0	0		0	0			0	0	0	0	0
Community hospitals	18	2,428	92,852	605,095	692,298	68.2	1,657	1,896	6.5	44,040	195,535	69,067	115,215	379,817
6-24 beds	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25-49	8	336	11,875	71,572	87,058	58.0	195	238	6.0	4,976	16,489	3,240	33,398	53,127
50-99	4	305	9,891	64,238	72,488	57.7	176	198	6.5	4,400	23,466	0	14,987	38,453
100-199	2	275	10,655	71,995	83,767	71.6	197	230	6.8	5,051	17,491	0	16,772	34,263
200-299	2	541	21,839	142,895	160,525	72.5	392	440	6.5	10,659	55,538	14,559	33,866	103,963
300-399	0	0	0	0	0	0	0	0	0	0	0	0	0	0
400-499	1	460	20,018	121,212	138,022	72.2	332	378	6.1	9,517	47,074	38,827	4,470	90,371
500 or more	1	511	18,574	133,183	150,438	71.4	365	412	7.2	9,437	35,477	12,441	11,722	59,640
Nongovernment not-for-profit	3	386	15,877	96,618	103,487	68.7	265	283	6.1	9,550	27,359	0	33,044	60,403
Investor-owned (for-profit)	5	831	36,803	218,342	249,944	72.0	598	685	5.9	17,678	72,646	38,827	31,614	143,087
State and local government	10	1,211	40,172	290,135	338,867	65.6	794	928	7.2	16,812	95,530	30,240	50,557	176,327

TABLE 11—REVENUE IN COMMUNITY HOSPITALS

AREA	ALL COMMUNITY HOSPITALS						NONGOVERNMENT NOT-FOR-PROFIT HOSPITALS					
	Inpatient		Outpatient		Net Inpatient Revenue (in thousands)	Net Total Revenue (in thousands)	Inpatient		Outpatient		Net Inpatient Revenue (in thousands)	Net Total Revenue (in thousands)
	Gross Revenue (in thousands)	Per Inpatient Day	Gross Revenue (in thousands)	Per Outpatient Visit			Gross Revenue (in thousands)	Per Inpatient Day	Gross Revenue (in thousands)	Per Outpatient Visit		
UNITED STATES	**$36,579,043**	**$142.00**	**$4,934,720**	**$25.88**	**$36,116,106**	**$39,247,683**	**$27,068,835**	**$145.48**	**$3,506,780**	**$26.68**	**$26,814,373**	**$28,500,888**
6-24 beds	91,667	93.37	19,957	21.82	103,184	116,011	29,771	87.39	4,715	14.87	32,134	35,046
25-49	873,094	101.06	113,697	19.42	908,621	971,327	332,213	100.60	46,037	19.10	345,434	371,957
50-99	2,719,030	108.13	351,107	21.54	2,793,510	2,936,749	1,343,190	109.59	187,060	20.87	1,394,779	1,463,430
100-199	6,406,026	128.24	819,656	23.31	6,421,977	6,795,880	4,081,961	128.41	553,919	23.36	4,156,312	4,345,463
200-299	6,569,795	142.15	852,683	26.02	6,540,575	6,946,871	5,266,625	142.60	664,695	25.68	5,256,779	5,518,005
300-399	5,546,298	149.34	764,328	26.20	5,457,600	5,869,312	4,558,724	149.19	596,574	26.61	4,507,966	4,732,139
400-499	4,525,689	150.99	605,074	27.34	4,500,656	4,822,926	3,847,448	150.08	469,126	27.17	3,819,017	4,024,883
500 or more	9,847,444	165.38	1,408,218	29.11	9,389,963	10,783,607	7,608,903	168.12	984,654	32.33	7,301,952	8,009,965
CENSUS DIVISION 1, NEW ENGLAND	**2,396,485**	**165.64**	**401,725**	**29.03**	**2,418,477**	**2,728,605**	**2,254,321**	**166.98**	**375,677**	**29.25**	**2,262,646**	**2,537,462**
Connecticut	531,320	172.03	83,947	27.04	560,243	585,791	524,493	172.03	81,718	26.61	551,952	575,353
Maine	157,962	125.10	27,187	22.85	167,678	175,608	153,631	125.25	26,389	23.18	162,900	170,616
Massachusetts	1,364,962	179.38	237,862	33.20	1,321,880	1,578,388	1,237,541	182.87	215,720	34.38	1,183,184	1,406,856
New Hampshire	101,839	116.62	15,633	16.74	108,623	114,711	98,254	119.33	14,754	16.14	104,557	110,530
Rhode Island	170,235	162.90	27,440	31.06	186,076	196,122	170,235	162.90	27,440	31.06	186,076	196,122
Vermont	70,167	119.08	9,656	17.18	73,977	77,985	70,167	119.08	9,656	17.18	73,977	77,985
CENSUS DIVISION 2, MIDDLE ATLANTIC	**7,869,925**	**155.86**	**1,173,975**	**25.65**	**7,308,187**	**8,096,394**	**6,561,537**	**157.10**	**987,106**	**27.57**	**6,125,070**	**6,649,222**
New Jersey	1,306,340	149.24	175,458	28.40	1,188,166	1,273,160	1,162,794	151.21	154,248	27.65	1,065,704	1,124,217
New York	4,364,330	166.08	675,637	28.67	4,021,099	4,592,024	3,349,530	170.41	531,999	35.41	3,090,358	3,453,197
Pennsylvania	2,199,255	142.23	322,880	20.14	2,096,922	2,231,210	2,049,213	142.10	300,859	19.80	1,969,008	2,071,808
CENSUS DIVISION 3, SOUTH ATLANTIC	**5,140,342**	**134.62**	**671,748**	**25.10**	**5,046,128**	**5,446,923**	**3,105,868**	**137.24**	**382,254**	**24.87**	**3,059,304**	**3,228,127**
Delaware	83,394	139.59	14,260	23.03	87,874	94,766	83,394	139.59	14,260	23.03	87,874	94,766
District of Columbia	260,788	182.49	40,858	30.93	261,874	299,044	223,834	191.16	35,294	34.31	225,684	255,393
Florida	1,551,885	154.89	158,101	27.25	1,463,264	1,573,576	830,247	157.25	70,953	23.82	782,879	819,172
Georgia	670,182	130.55	93,541	26.52	656,542	732,810	184,041	152.39	16,280	29.30	186,059	197,282
Maryland	635,694	167.49	114,141	30.28	649,904	686,840	535,337	168.08	89,047	30.00	538,425	562,329
North Carolina	654,821	108.12	91,049	22.62	666,014	716,159	414,976	107.89	57,603	23.98	421,340	441,997
South Carolina	310,032	107.47	38,895	22.16	308,080	338,327	166,426	105.52	16,250	17.33	167,824	176,183
Virginia	664,444	121.64	81,825	22.08	649,050	689,932	475,537	117.71	58,353	21.41	459,309	481,587
West Virginia	309,102	110.18	39,078	17.50	303,526	315,469	192,076	111.27	24,214	20.98	189,910	199,418
CENSUS DIVISION 4, EAST NORTH CENTRAL	**7,448,544**	**139.15**	**949,644**	**24.20**	**7,626,871**	**8,056,124**	**6,372,662**	**140.51**	**781,890**	**24.86**	**6,496,624**	**6,769,646**
Illinois	2,297,882	151.36	272,011	24.38	2,323,301	2,484,987	2,078,545	154.55	238,544	25.46	2,096,568	2,202,690
Indiana	749,784	114.87	100,747	20.94	793,166	836,249	531,591	116.58	68,589	21.32	560,039	587,238
Michigan	1,753,470	154.81	270,268	26.78	1,820,959	1,899,932	1,409,520	156.17	213,819	27.57	1,457,702	1,504,608
Ohio	1,916,541	133.53	219,527	22.75	1,922,201	2,042,569	1,695,806	133.11	187,075	23.09	1,698,606	1,772,619
Wisconsin	730,867	119.01	87,091	24.71	767,244	792,447	657,200	117.80	73,863	24.73	681,711	702,491
CENSUS DIVISION 5, EAST SOUTH CENTRAL	**2,015,032**	**116.24**	**188,520**	**21.64**	**1,883,774**	**2,021,871**	**1,041,050**	**121.26**	**90,395**	**20.26**	**995,765**	**1,046,046**
Alabama	588,117	126.58	45,522	23.17	532,184	564,786	240,555	131.13	17,807	19.46	224,948	234,857
Kentucky	432,893	106.56	49,991	22.09	430,395	458,680	296,291	107.14	33,147	22.95	302,386	316,314
Mississippi	289,501	102.60	26,566	19.67	274,239	298,476	101,303	114.48	7,299	21.18	97,059	101,714
Tennessee	704,521	121.38	66,441	21.20	646,956	699,929	402,901	129.96	32,142	18.29	371,372	393,161
CENSUS DIVISION 6, WEST NORTH CENTRAL	**2,805,747**	**113.44**	**279,287**	**22.71**	**2,797,084**	**3,013,449**	**2,187,535**	**117.08**	**194,769**	**24.30**	**2,168,437**	**2,282,382**
Iowa	429,681	102.96	46,899	21.41	447,964	476,341	305,778	107.64	28,431	22.73	314,118	325,614
Kansas	352,849	108.33	36,978	15.65	361,126	383,158	269,029	110.36	26,371	17.55	272,232	282,842
Minnesota	692,612	113.58	67,411	28.60	711,193	760,852	517,981	116.03	42,256	31.02	526,205	548,324
Missouri	886,751	125.93	95,711	23.92	842,482	926,726	709,366	130.85	72,338	25.14	680,337	728,569
Nebraska	250,067	111.60	20,055	22.32	244,628	270,317	201,388	116.61	14,131	24.51	196,101	211,652
North Dakota	108,285	102.22	6,348	28.45	105,134	108,586	107,250	102.32	6,259	28.34	104,042	107,482
South Dakota	85,502	98.97	5,885	22.20	84,557	87,469	76,743	102.98	4,983	22.24	75,402	77,899
CENSUS DIVISION 7, WEST SOUTH CENTRAL	**2,947,725**	**123.80**	**307,262**	**24.32**	**2,811,305**	**3,140,058**	**1,624,291**	**128.25**	**125,789**	**26.72**	**1,581,854**	**1,660,686**
Arkansas	262,694	106.52	23,249	21.71	246,904	263,498	157,190	111.68	11,196	21.55	145,650	152,664
Louisiana	520,509	120.90	55,066	16.89	523,637	608,713	257,971	132.03	21,954	27.86	261,273	274,240
Oklahoma	386,508	129.17	36,693	30.34	370,055	393,737	259,924	134.06	21,811	30.61	249,360	259,958
Texas	1,778,014	126.58	192,254	27.10	1,670,709	1,874,110	949,206	128.89	70,828	26.35	925,571	973,824
CENSUS DIVISION 8, MOUNTAIN	**1,299,348**	**138.31**	**192,121**	**26.17**	**1,343,625**	**1,450,490**	**927,732**	**140.08**	**117,007**	**26.14**	**956,172**	**994,702**
Arizona	337,324	153.70	54,508	31.72	347,745	393,069	272,300	156.98	35,819	37.15	279,573	291,120
Colorado	386,668	141.08	53,363	22.71	386,296	420,329	306,088	141.57	33,278	22.06	306,730	320,160
Idaho	87,983	111.96	14,718	25.05	95,734	99,240	49,548	121.79	8,939	25.91	54,465	55,997
Montana	89,201	103.73	10,688	23.07	93,815	98,364	80,356	108.22	9,480	23.57	84,559	88,087
Nevada	109,677	181.26	15,199	40.02	114,814	117,239	17,601	182.17	1,192	19.73	17,927	18,243
New Mexico	116,746	133.99	16,492	27.83	117,466	123,244	85,055	135.85	10,386	28.45	84,998	88,360
Utah	135,572	134.55	22,501	22.03	150,360	158,268	103,806	139.67	16,368	21.56	114,671	119,227
Wyoming	36,173	105.73	4,652	20.30	37,396	40,797	12,978	116.96	1,545	21.78	13,249	13,508
CENSUS DIVISION 9, PACIFIC	**4,655,897**	**181.55**	**770,438**	**32.01**	**4,682,054**	**5,293,769**	**2,993,839**	**184.09**	**451,893**	**31.53**	**3,168,501**	**3,332,615**
Alaska	35,974	209.24	7,691	32.22	39,915	41,368	32,360	222.63	6,764	34.92	35,533	36,749
California	3,770,505	190.00	649,898	34.26	3,970,395	4,292,337	2,289,190	193.38	361,999	34.15	2,445,834	2,555,663
Hawaii	76,151	122.54	13,746	16.04	84,693	97,639	67,421	138.66	12,126	16.23	74,373	9,745
Oregon	309,500	146.56	38,053	23.24	304,581	351,209	241,719	149.03	29,043	24.95	239,263	21 1,697
Washington	463,767	160.20	61,050	25.80	483,070	511,216	363,149	167.18	41,961	25.80	373,498	388,561

The Valley Times

"Stand with anybody that stands right. Stand with him while he is right, and part with him when he goes wrong." — Abraham Lincoln

Volume 33, Number 6 | Phone: Circulation 642-1231 All other (702) 642-2567 | North Las Vegas, Nevada 89030 | 15 Cents Per Copy | Monday, April 4, 1977

LV hospital chiefs hit rebate

By NED DAY
Times Staff Writer

A controversial bill to permit resumption of Sunrise Hospital's cash rebate program has sparked strong opposition from a group of Las Vegas area hospital administrators.

Five prominent administrators have joined in urging defeat of AB 397 — which, according to one estimate, could generate, a $5.5 million windfall for some hospitals, at the expense of Nevada insurance consumers.

AB 397 has passed the state assembly and is now under consideration by the Senate Commerce Committee. Senate hearings on the bill are scheduled for April 6 in Carson City.

Among the area hospital chiefs objecting to the bill are Douglas Dailey, administrator of Womens Hospital in Las Vegas; Stanley Pariso, administrator of Boulder City Hospital; Igbal Pareo, administrator of Desert Springs Medical Center in Las Vegas; George Riesz, administrator of Southern Nevada Memorial Hospital in Las Vegas; and Seymour Schulman, administrator of Valley Hospital in Las Vegas.

Charging that the bill backed by Sunrise Hospital would lead to "buying of patient business" by hospitals and to "over-utilization" of hospital services, the five administrators called for defeat of the proposal.

Nevada Insurance Commissioner Dick Rottman has also blasted the measure, contending that it would allow for "a massive consumer ripoff."

The bill, introduced by the Assembly Commerce Committee under the guidance of Assemblymen Danny Demers, would allow Sunrise Hospital to reinstate a 5.25 per cent cash rebate program for patients who check in on weekends.

Sunrise's program had been thwarted last year by insurance companies which refused to pass the rebate along to patients. The bill prohibits insurance companies from deducting the rebate from the amount of the coverage they will pay under the terms of a health insurance policy.

Since being forced to curtail the cash rebate program, Sunrise has been offering an opportunity to compete for a free Mediterranean cruise to patients who enter the hospital on weekends.

Valley Hospital boss Schulman says that by luring patients into the hospital on weekends — one or two

Cash rebate plan draws opposition

(Continued from A1)

days before they should logically enter for elective surgery which often is performed on Mondays and Tuesdays — Sunrise revenues would increase by about 16 per cent.

Even with a five per cent rebate, he maintains, Sunrise shows a net gain of 11 per cent, with the insurance companies paying the added freight.

And, Schulman points out, the added costs will eventually be passed along in the form of increased premiums for health insurance.

Womens Hospital Administrator Dailey said, "Sure we're opposed to this bill. There's not another city in the country where this kind of thing would be allowed.

"I just moved to Las Vegas a few months ago. But I've never heard of such a shenanigan."

Dailey said, "If you can kick back five per cent, it means you're making five per cent more than you should."

But Sunrise officials maintain that by utilizing hospital facilities which otherwise might stand idle on weekends, the facility's program results in a net decrease of per unit costs, which then allows for the rebate.

According to David Brandsness, Sunrise administrator, a study conducted for his hospital shows conclusively that the average length of stay decreased during the time the rebate program was in effect.

Brandsness contends that patients who enter on weekends have access to "almost all" hospital facilities and services available on weekdays.

Southern Nevada Memorial chief Riesz, however, called the rebate program "a gimmick" designed to allow Sunrise the opportunity of advertising.

Noting that he spoke only for himself and not his hospital, Riesz said that it "is not normally ethical for hospitals to advertise."

Riesz complimented Brandsness for being "a bright, imaginative and innovative" marketing specialist, but added that he personally felt the rebate plan to be "unwise."

"Also, I don't think its fair for a hospital to stimulate discord between a patient and doctor," he said. "When a patient is induced to force or cajole his doctor to come in and work on weekends, it leads to a bad relationship."

"It's unfair to ask doctors to give up their weekend leisure time."

The Valley Times

"Stand with anybody that stands right. Stand with him while he is right, and part with him when he goes wrong." — Abraham Lincoln

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Nevada hospital rebate bill called 'ripoff'

A legislative proposal to permit cash ebates for hospital patients could lead > a $5.5 million windfall for hospital perators, while Nevada insurance nsumers get stuck with the tab.

According to Nevada Insurance ommissioner Dick Rottman, the ebate plan is "a massive consumer poff," because it encourages "over-tilization" of hospital facilities, thus iving up the cost of health care.

Because insurance companies will ass along the added costs by hiking ealth insurance premiums, Rottman arned, "John Q. Public is going to end > getting it stuck in his ear again."

Sunrise Hospital in Las Vegas of-red a 5.25 per cent rebate program iefly last year, until insurance mpanies balked by deducting the bate from the amount of the verage they would pay.

Under Sunrise's program, a patient entering the facility on a weekend would become eligible for the rebate.

Sunrise lobbyists are now pushing for legislative approval of a bill which would allow the hospital to reinstate the program by prohibiting insurance companies from deducting the rebate from their coverage.

The bill, AB 307, passed the assembly Commerce Committee with a unanimous "do pass" recommendation last week and is now under consideration by the full assembly.

According to one estimate, passage of the bill would increase revenues to Sunrise Hospital by about 16 per cent from patients who take advantage of the rebate program.

A five per cent rebate to these patients would still leave the hospital with an average 11 per cent hike in revenues.

Several Las Vegas hospital administrators have expressed opposition to the bill.

Seymour Schulman, executive director of Valley Hospital, explained that the rebate plan lures patients into the hospital before the time when they should logically enter.

"If a patient has scheduled elective surgery for a Monday morning," Schulman said, "he would normally enter the hospital late Sunday afternoon for preparatory tests.

"On an average, the patient would be expected to stay a total of six days, leaving the hospital by noon the following Saturday."

But under a rebate plan, Schulman said, the hypothetical patient scheduled for Monday surgery would enter the hospital on Saturday — or even Friday — in order to become eligible for the rebate.

"The patient has nothing to lose," he said. "The insurance company pays for the additional days and the patient gets the rebate."

Schulman estimated that the per patient revenues to the hospital would increase by about $500 per hospital stay.

Of the 18 community hospitals in Nevada with a total of 2,428 beds, a review of admissions records showed that the hospitals admitted 92,852 patients in 1975 and provided 605,095 days of patient care at a gross inpatient revenue exceeding $109 million.

About 18 per cent of 16,713 of these patients were admitted on a Friday or a Saturday.

According to Schulman, if only 50 per cent of these patients utilize hospital facilities unnecessarily, hospital revenues would increase by $1.5 million.

If another 25 per cent over utilize by two days, he said, the revenues would increase by $737,350, for a total hike of $2.2 million annually.

"Frankly," Schulman said, "I can't believe that the legislature would go ahead with this proposal to allow a rebate program for two years without fully determining the potential for good or evil of such a program.

"The potential increase in hospital revenue as a result of over utilization could well total over $5.5 million during this two year period. And you can bet that the insurance companies are not going to absorb it."

(Please turn to page A-2)

Hospital rebate bill

(Continued from page A-1)

However, David Brandsness, director of Sunrise Hospital, argues that the rebate program will not lengthen hospital stays. Nor, he said, will it drive up health care costs unnecessarily.

Brandsness said that a study conducted by Sunrise Hospital shows that the length of hospital stays actually decreased last year during the time when the rebate program was in effect.

He said that by luring patients into the hospital on Saturday, "It'll get the doctors off the golf course and into surgery on Sunday."

Brandsness said that it makes economic sense to utilize hospital facilities fully on weekends, rather than letting them stand idle.

The result of the rebate program, he said, will be a net gain for health care consumers because hospital facilities will be utilized fully, thereby decreasing per unit costs.

Exhibit H

VALLEY HOSPITAL

620 SHADOW LANE • LAS VEGAS, NEVADA 89106 • (702) 385-3011

[redacted]ur Schulman, M.P.H.
Ex[redacted]ve Director

March 1, 1977

Mr. Fred Hillerby
Nevada Hospital Association
1450 East Second Street
Reno, Nevada 89502

Dear Fred:

As you know, there has been much concern on the part of a number of hospitals regarding the introduction of Assembly Bill No. 307 which permits the rebate of health insurance benefits to patients. It is the belief of the undersigned that such rebating could lead to the "buying" of patient business by hospitals and to over-utilization of hospital services. It is for these reasons that the undersigned hospitals request that the Nevada Hospital Association take an active part in the defeat of such legislation. It is our feeling that this Bill is against the best interests of all hospitals, their patients and their care.

As you know, as a result of the opposition voiced at the Committee on Commerce hearing on February 23, the matter was referred to a subcommittee chaired by Assemblyman Demers. It is the intention of the undersigned hospitals to actively pursue this matter until its eventual defeat and request that the Nevada Hospital Association join with us in achieving this goal.

Sincerely,

Douglas Dailey, Administrator
Womens Hospital
Las Vegas, Nevada

George Riesz, Administrator
Southern Nevada Memorial Hospital
Las Vegas, Nevada

Stanley Pariso, Administrator
Boulder City Hospital
Boulder City, Nevada

Seymour Schulman, Administrator
Valley Hospital
Las Vegas, Nevada

Iqbal Paroo, Administrator
Desert Springs Medical Center
Las Vegas, Nevada

[redacted]

1190

Exhibit I

"Man and Medicine"

23 February 1977

Mr. S. Schulman
Administrator
Valley Hospital
620 Shadow Lane
Las Vegas, Nevada 89106

Dear Sy:

I am sorry I cannot join you at the hearing on AB 307. I would like to share some thoughts with you.

1. The hospitals in the U.S.A. establish their charges for services on the basis of average costs. Patient X may need more help to get a chest x-ray done than Patient Y -- but both are charged the same fee. If any group of patients is charged less,* all others -- whether or not covered by insurance or other third party payer -- will be charged more, grossly unfairly.

2. The costs of services during week-ends tends to be higher because of premium wage scales of some employees, on-call or call-back pay of others, and other related factors.

3. While hospital average costs tend to go down with increased volumes, one hospital's increased volume at the expense of the other hospitals, will not decrease total costs for the community.

4. While lowered occupancy figures during weekends are inconvenient in some ways to all hospitals, the problems are much less significant in Las Vegas because of the sizeable weekend tourist population.

5. Attempts to force doctors to work in non-emergency situations on week-ends is patently unfair to them, and will often pit doctor against patient, which is hardly conducive to effective patient-doctor relationship.

Advertising is currently viewed as unethical by hospitals unless if there is an unusual feature about which the public should be informed. It is my belief that Sunrise Hospital's intention to re-introduce the weekend rebate policy is essentially motivated by their wish to advertise.

If Sunrise is allowed this scheme, the other for-profit hospitals are likely to adopt it also. Public not-for-profit hospitals, not being able to offer rebates out of corporate profits, would be unfairly discriminated against, ultimately at the expense of the taxpayers subsidizing the public hospitals.

Best regards.

George

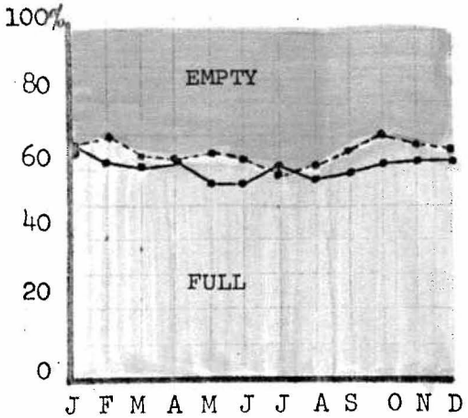
George Riesz, F.A.C.H.A.
Administrator

*for reasons other than the costs of service.

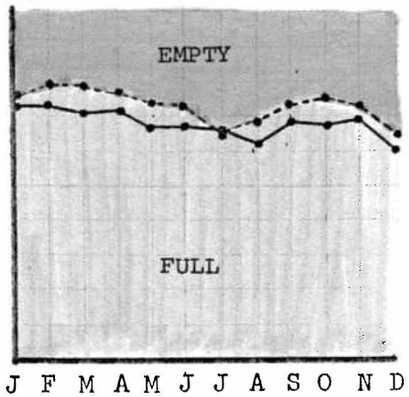
SOUTHERN NEVADA MEMORIAL HOSPITAL
1800 W. Charleston Blvd., Las Vegas, Nevada 89102 (702) 385-2000

[redacted] Exhibit J

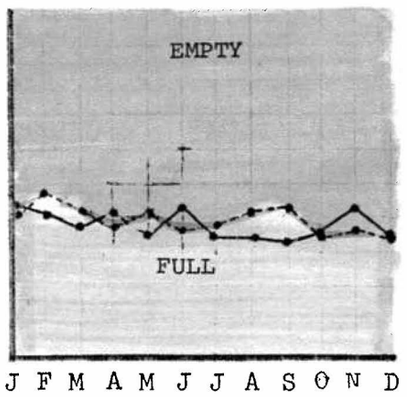
[redacted] So. Nev. Memorial = 278 Beds



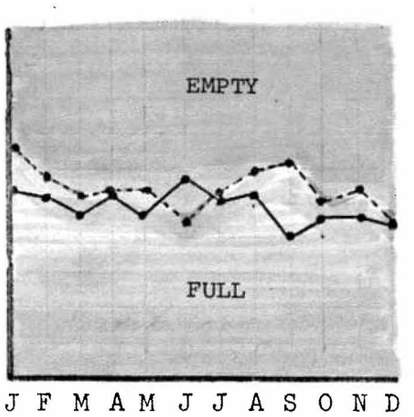
[redacted] Sunrise Hospital = 492 Beds



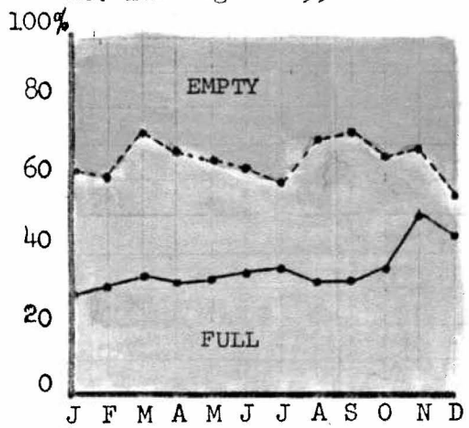
[redacted] Desert Springs = 211 Beds



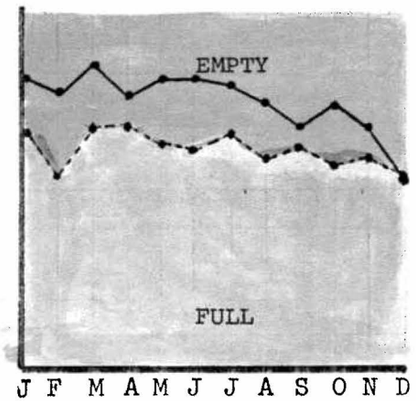
Valley Hospital = 248 Beds



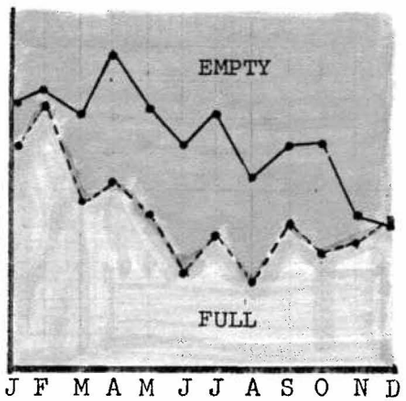
No. Las Vegas = 99 Beds



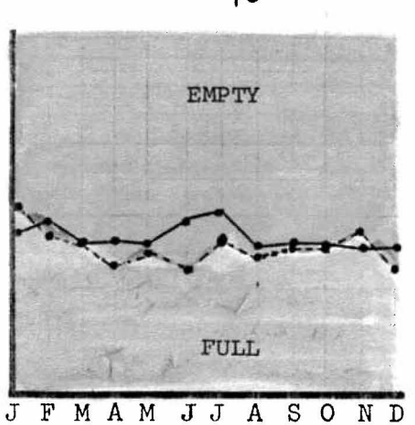
Womens Hospital = 59 Beds



Boulder City = 38 Beds

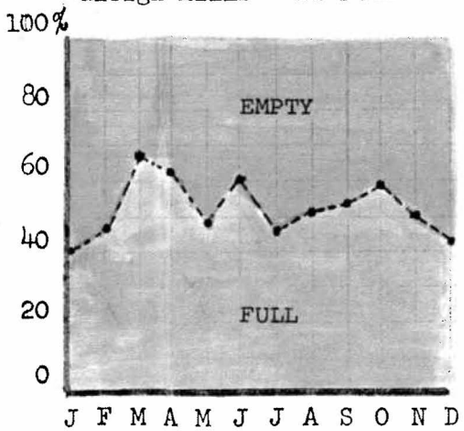


Rose de Lima = 78 Beds

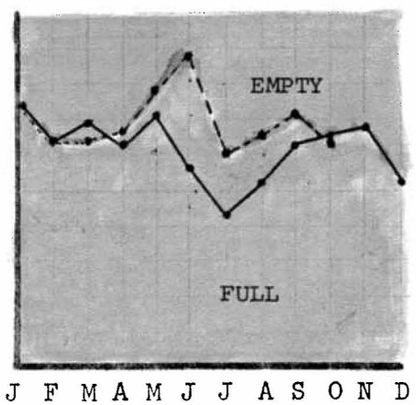


BEDS

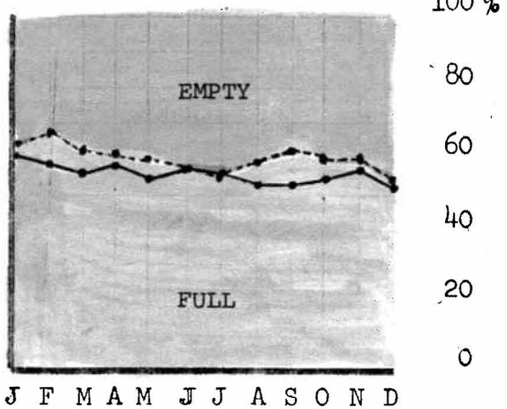
Raleigh Hills = 22 Beds



Nellis AFB = 43 Beds



CLARK COUNTY TOTALS = 1525



1975
1976

HSA

December 1975

Exhibit K

SUPPLEMENTAL STATEMENT BY MILOS TERZICH ON
A.B. 307 (FIRST REPRINT)

This statement supplements the statement prepared and submitted before the Assembly Committee on Commerce on behalf of the Health Insurance Association of America. As this Committee will note, the language of A.B. 307 was substantially changed from its original form, and although the intent appears to be the same, the language is susceptible to gross ambiguities.

Subsection 1 of Section 1 of the First Reprint provides in effect that no insurance policy may be issued in this state if it contains a policy provision which prohibits a person from using hospital services under a refund concept for a bed, room or service when utilized during a certain time of day or day of the week.

Query: 1. Does this mean that if an insurance policy does not have a provision which prohibits a refund under such circumstances, that the insurance company may feel free to deny recognition of the refund, so long as the insurance policy does not prohibit same?

2. Does Subsection 1 mean that the refund shall be solely for the day or days for which the refund is offered? For example, if the hospital, as an inducement for hospital utilization on a weekend, offers a refund if a person enters the hospital on either Friday or Saturday, to what services does the refund apply; the day the patient entered the hospital, the two (2) days upon which the refund is offered, or does it include that particular patient's entire stay in the hospital for five (5) days, a week, two (2) weeks, a month or what?

Turning to Subsection 2 of Section 1, this provides in effect that the policy of insurance may contain a provision

which provides that the insurer is not required to pay for the account of an insured any refund if the insurer is otherwise obligated to pay 95% or more of the usual and customary hospital charges.

Query: 1. What type of insurance policies, contracts or evidence of coverage does this particular provision apply to?

2. Does this provision mean that if the policy does not have a provision providing that the insurer is not required to pay, that any policy of insurance, contract or evidence of coverage which does in fact pay 95% or more of the usual and customary charges, would still have to pay the refund?

3. What do the terms on Lines 8 and 9 mean when it states that "to pay to or for the account of an insured any refund." Does this mean that if the insurer does not put a provision in his policy prohibiting the refund payment, that the insurance company is not only required to pay the 95% of the usual and customary charges, but also in addition to that, is required to pay the refund to the insured? This concept in and of itself would completely abolish the meaning of insurance as the insured would be obtaining much more than he had originally paid for.

Going on to Section 2 of the bill commencing on Line 21 on Page 1 up through Line 5 on Page 2, this appears to provide that the Insurance Commissioner must suspend or revoke an insurance company's authorities to do business in this state if he finds after a hearing that an insurance policy prohibits the utilization of the services of a hospital which offers the refund.

Query: 1. This portion of Section 2 actually conflicts with Subsection 2 of Section 1, which in fact does authorize a prohibition for insurers paying 95% or more of the usual and customary charges.

3. Also, does this language mean that the insurance company must pay the refund to the account of an insured? That appears to be the intent of this bill as well as the original version. If the insurance company is obligated to pay the refund to or for the account of the insured, then the insurance company is being compelled to pay in excess of its legitimate percentage that it originally contracted to provide. This would require the insurance company to pay the 80 or 90% of the total hospital bill and then in addition to pay to the patient or insured the actual amount of the refund. This is completely contrary to the policy of insurance and it will automatically result in the increase of premiums for not only those who utilize the refund services but for all persons concerned who hold health insurance policies.

It is respectfully submitted that the entire language of this bill is completely unintelligible, unworkable and would be declared unconstitutional.

Speaking to Section 3 of the bill, this would compel the Insurance Commissioner to conduct a comprehensive study of exactly how the hospital utilization works and whether or not the public is being served by this refund concept.

It is respectfully submitted that Sunrise Hospital did in fact conduct this refund concept for approximately 10 or 11 months, as we understand, and the Insurance Commissioner should have no problem in reviewing all of those records and determining exactly how successful the rebate program was during its utilization and then reporting back to the legislature in the 1979 session so that it can be determined whether or not this type of legislation is actually needed or is in fact to the benefit of the public.

2. Again, if an insurance policy does not actually prohibit the utilization of the services of a hospital regarding a refund, does this mean that the insurance company may refuse to recognize the refund and pay only upon the basis of the actual charges incurred by the patient? This is certainly not clear.

Looking to Subsection 1 and Subsection 2 of Section 2, appearing at Lines 6 thru 9 on Page 2 of the bill, we have some very interesting language which would compel the Insurance Commissioner to revoke or suspend an insurer's certificate of authority if that insurer refused to pay, or delayed payment to a hospital which offered the refund, and which refused to pay or delayed payment to or for the account of an insured who utilized the services of the hospital.

Query: 1. Does the language in Subsection 1 of Section 2 mean that if an insurer refused to pay a hospital under the patient's insurance policy that the Commissioner would have to revoke or suspend that insurer's certificate of authority? There is absolutely no requirement in the law or in any policy provision which would require an insurance company to pay the benefits of the insurance policy directly to the hospital. The contract is between the patient and the insurance company. Although a blanket policy may provide that the insurer may pay directly to the hospital at the option of the insurer, if the insured requests otherwise, the insured's request must be abided by. (N.R.S. 689B.100) Therefore, if a patient desired to receive the payment himself under the insurance policy, the insurance company would be obligated to make the payment to the insured and not the hospital. Under these circumstances the Insurance Commissioner would be compelled to revoke or suspend that insurance company's certificate of authority.

As to group policies, the policy may provide for direct payment to the hospital. (N.R.S. 689B.040) If the insured does

not desire such a provision he can refuse the policy or require a policy change.

2. Even if both the insurance company and the patient agreed to pay the policy amounts to the hospital, there may be a legitimate dispute between the insurance company and the patient as to whether or not his illness or sickness was covered under the policy. Under these circumstances, the insurance company could refuse or delay payment until such time as it discovered whether or not the sickness or injury was covered by the policy. This does sometimes take time. Under these circumstances, where there is legitimate dispute, the Commissioner of Insurance would be compelled to revoke or suspend that insurance company's certificate of authority. Subsection 1 does not readily define what payment the insurance company is even required to make to a hospital. As stated, to whom the payment is made is a matter of contract provisions between the insurance company and the insured.

It should be noted that Subsections 1 and 2 of Section 2 of the bill are in the conjunctive. However, as applied to the concept of insurance, they are completely and totally incomprehensible.

Query: 1. In Subsection 2 the company appears to be required to pay "to or for the account of an insured who utilizes the services of the hospital." What is the insurance company obligated to pay to the insured or to his account?

2. Who is the insured? Is it the employer under a group policy or is it the patient who belongs to the group policy? There is no way that an insurance company can pay to or for the account of the patient if he is not in fact paying the premium to the company. Under a group concept, the employer pays the premium to the insurance company. Does this mean that the insurance company must hold some type of monies to or for the account of the employer?

It is also respectfully submitted that the bill requires a fiscal note which would allow the Commissioner to conduct the study. The only time reimbursement is provided for is when an independent expert is retained by the Commissioner. If an independent expert is not obtained, the Commissioner's office will be stuck for the expenses. It is obvious that a fiscal note is required.

Wherefore, it is respectfully suggested that there is no need for this bill at this time, especially in its present form.

Respectfully submitted,

Milos Terzich
Representative for
Health Insurance Association
of America

Exhibit L

STATEMENT BY MILOS TERZICH ON A.B. 307

My name is Milos Terzich, representing the Health Insurance Association of America. Initially, I would like to state that we are not opposed to the concept and intent of A.B. 307 and the efforts to attain greater hospital utilization over the weekends are to be commended. However, we are strongly opposed to the mechanics and terminology as expressed in this bill.

I. STATEMENT MADE BY DAVID R. BRANDSNESS, ADMINISTRATOR OF SUNRISE HOSPITAL.

We feel that some comment should be made of the testimony offered before the full committee by David Brandsness, the Administrator of the Sunrise Hospital. Mr. Brandsness made two crucial statements in his testimony in support of this bill. One statement was to the effect that by reason of the rebate program, which was apparently instituted in January of 1976, the patients do not remain in the hospital any longer and in fact their length of stay was down by 2.2%. In this connection, we have attached hereto a letter from Mr. Brandsness dated April 12, 1976 regarding the rebate program. You will note on page 3 of said letter the following statement:

> "As stated in a previous report, we have increased our patient day share of the market by approximately 1% in 1976. The increased length of stay is of some concern. This phenomenon appears to be County wide and not specific to Sunrise Hospital. I do not have any explanation for this. We do not see any indication this increase in length of stay is the result of the weekend rebate program."

EXHIBIT 5

This letter was an attachment to the Nevada Industrial Commission's pleadings in a case commenced in Clark County by Sunrise Hospital against the Nevada Industrial Commission in connection with the rebate program.

The second crucial statement made by Mr. Brandsness was that they have not increased their rates since the beginning of 1976. We are attaching hereto a report made by the Insurance Commissioner, pursuant to his authority by statute, which shows that as of June 1, 1976 the semi-private room rate was $82.00 and as of February 1, 1977 the semi-private room rate was $89.00.

It is also interesting to note that the inpatient charges per day for Sunrise are $253.90 which is the second highest of any other hospital in the state. For example, Washoe Medical Center, which has approximately 70 more beds than does Sunrise, had an inpatient charge per day of $180.94.

Mr. Brandsness also stated that what they do with their own profits is their own business. It should be pointed out that we are not talking about Sunrise's profits. You have to look at the entire transaction on its face. This bill as written, absolutely destroys the deductible factors built into a health insurance policy and also destroys the co-insurance factors. When a rebate is given to the patient, it has to be considered as a rebate against the deductible, a rebate as against the co-insurance factors as written into the insurance policy, or a rebate of the premium.

Section 689B.020 of the Nevada Revised Statutes, refers to the fact that group health policies are generally provided upon an "expense incurred" basis. That is, health insurance policies provide for reimbursement to the insured of a certain percentage of a medical expense and which is based upon an expense incurred basis for the usual and customary charges. Viewing the entire transaction, this law in fact has the effect of impairing the contract of insurance entered into with the

insured.

This is analogous to a situation in which a usurious rate of interest is determined. In that type of case, the court looks at all of the documents and all of the circumstances surrounding the transaction in order to determine whether or not a usurious rate of interest has been charged. Likewise, in the present situation, if one views the entire circumstances surrounding the rebate program, this bill does in fact intefere with and destroy the deductible and co-insurance factors under a health insurance policy.

II. THIS BILL WOULD ENACT A REBATE PROGRAM WHICH IS CONTRARY TO EXISTING INSURANCE LAW.

There have been statements made that such a rebate program as enacted by this bill is not illegal. We would like to point out the following sections of the Nevada Revised Statutes: N.R.S. 686A.110, N.R.S. 686A.130 and N.R.S. 686A.140. These statutes specifically relate to the rebates under the circumstances of this bill. This bill actually gives a hospital the right of control over a rebate program, and which we contend is specifically prohibited by a reading of the above statutes.

For example, Subsection 3 of N.R.S. 686A.130 provides as follows:

> "No insured named in a policy or any employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, advantage, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement."

Any person who violates these rebate laws, is guilty of a misdemeanor.

Thus, A.B. 307 does give the authority to a hospital to give favoritism to certain individuals and any rebate given, can be construed to be a rebate of premium. Under health insurance policies, the insurer is obligated only to pay that certain percentage of the expenses actually incurred by the insured.

When a rebate is given to the insured, the insurance company has paid more than its percentage of the actual expenses incurred.

If the intent of this bill is not only to improve greater hospital utilization over the weekends, but as testified to, that it will reduce health care costs, it is inconceivable that this law will achieve such a purpose. There are absolutely no controls over a hospital, either by way of rate regulations or other controls to assure that the objective will be accomplished.

There is absolutely no prohibition upon a hospital, once this bill passes, to increase its rates and further increase medical health care costs, not only to the patient by reason of hospital rates but also by reason of increase in health insurance premium rates.

If the intent is actually to cut down on medical costs, the hospital could impose a discount of its rates for specific days, which would obligate the insurer to pay the same percentage of the expenses actually incurred. This would also benefit the patient, without interfering or impairing the insurance contract.

III. <u>THE BILL IS DISCRIMINATORY</u>.

There is no question but that this bill is discriminatory not only among those patients who do have health insurance policies, but also discriminatory as against those patients who do not have insurance policies. For example, a patient without any hospitalization coverage, who may desire to and does participate in the rebate program, is obligated to pay the entire bill. From this monies the patient has paid, he should be entitled to receive a rebate, which is in fact receiving his own monies. Looking at the total picture, it results in a pure and simple discount to that patient. The bill does not even discuss a situation such as this, but is obviously pointed toward the insurance companies.

Even among policyholiders, the bill is discriminatory. For example, if a patient has emergency care or elects to go

into the hospital on a day during which the rebate program is not effective, the insurance company pays its percentage of the expenses incurred by that patient and the patient must then pay to the hospital the difference. Contrarywise, if a patient with the same policy has solely elective surgery and does go into the hospital on a rebate day, he is receiving an unfair advantage over the other insurance policyholder. They are both paying the same premium for the same coverage, yet one receives an additional benefit by reason of having an insurance policy and having the opportunity to enter the hospital on a rebate day. That insured is actually paying less for his policy than the other policyholder, which again brings us to N.R.S. 686A.110 through 686A.140, the statutes against discrimination and rebates.

It is respectfully submitted that such discrimination is not only in violation of our laws but also of our constitution and the constitution of the United States.

IV. OTHER PROBLEMS WITH THE BILL.

The wording of the bill itself is ambiguous and completely contrary to the concept of health insurance policies.

The bill in effect states that the reduced rate or rebate shall be held for the account of the insured. It does not define who the insured is in this particular instance. For example, under a group policy situation, the employer can be construed as the insured and the employees as beneficiaries. By a literal interpretation of the language of the bill, the employer as insured could or would receive the benefit of the rebate program and not necessarily the beneficiary, as it is apparently intended.

Further, the bill states in effect that the insurance company must pay within the limits of its policy, the usual and customary charges, plus the insurance company must also pay the difference between the reduced rate and the usual and

customary rate to or for the account of the insured. What this actually does is require the insurance company to not only pay the percentage dictated by its policy, but also requires the insurance company to pay an additional amount over and above the terms of the policy to the insured. Thus, the hospital is not only receiving payment in full from the insurance company and the insured, but also is compelling the insurance company to pay the insured an additional amount, that is whatever the hospital determines to be their discount rate and whenever the hospital determines that it will have the discount rate in effect.

This gives to the hospital the absolute and entire control over how much an insurance company must pay. This would absolutely destroy the contract as entered into between the insurance company and the policyholder or beneficiary.

A further objection to the bill is the fact that it requires an insurance policy to be changed to carry the provisions as specified in the law, rather than enacting a substantive law which need not be provided for in the policy itself. By doing this, you are requiring every insurance company who does business in this state in the health area to revise their insurance contracts, submit them to the Insurance Commissioner for approval and then implement the provisions in their standard policies. Not only does this increase the paperwork of an insurance company, which obviously would tend to increase insurance company's costs, but such changes do take time, from a minimum of 3 months to a maximum of 6 months.

If this bill is in fact to become law, then the bill should be changed to make the provisions a substantive law rather than a policy provision change.

It is respectfully submitted that hospitals have been around for a very long time. Why is there such an urgency to this type of legislation, except for the fact of the publicity

it has received in the past? Why has no other hospital ever attempted such a program? Would it not be better to have a study of the real problem of hospital utilization, and the reduction of health care costs in order to determine whether or not a satisfactory answer is possible? As previously stated, there are absolutely no controls listed in this bill and it could be subject to many, many abuses.

If the legislature does decide to enact this bill, we would submit an amendment to the bill by amending N.R.S. 449.490, which would in fact prohibit any discrimination. A copy of said amendment is submitted herewith.

In conclusion, the bill as it stands needs substantial revision, as hereinabove indicated, including the mandatory language submitted by us, before it can constitutionally stand as a law. In view of the many problems discussed hereinabove, it is respectfully submitted that a more appropriate method of attacking the real problem at issue would be a study bill to determine whether or not such a rebate program is necessary under the circumstances, or whether there is some other alternative to greater hospital utilization and lower health care costs.

Respectfully submitted,

/s/ Milos Terzich
Milos Terzich
Representative for
Health Insurance Association
of America

Sunrise Hospital

Inter-Hospital Correspondence

TO: DISTRIBUTION

FROM: C. E. Lees

DATE: April 12, 1976

SUBJECT: 5.25% Cash Rebate Program

The Cash Rebate program procedures outlined in the hospital memorandum, dated January 26, 1976 are hereby superceded.

The revised procedures which follow are effective immediately for all in-patients admitted 00:01 AM Fridays through 11:59 PM on Saturdays.

1. ADMITTING FUNCTION

To identify those patients who are entitled to a rebate, enter one of the following codes after the patients name.

A. COURTESY CARD ADMISSIONS: Enter "X4".

This code replaces the "X2" entry only for courtesy card admissions on Fridays and Saturdays.

B. ALL OTHER ADMISSIONS: Enter "R6".

This code is used for all non-courtesy card patients admitted on Fridays and Saturdays.

11. DISCHARGE AND CASHIERING FUNCTION

In accordance with hospital policy, cash collections at the time of the patients discharge will continue. CASH REBATE allowances will not be calculated at the time of discharge. The full amount of the patient's balance will continue to be collected.

When collecting patient payments at the time of admission, during the patient's hospitalization, at the time of discharge, and after discharge it is important to explain to the patient and/or guranator the following policy of the CASH REBATE PROGRAM:

A. Actual CASH REBATE allowances can only be determined after all rebate account charges are finalized.

B. CASH REBATE checks will be issued to eligible patients after all rebate account charges have been paid. Payment of rebate account charges inclu hospital reimbursement from both the insurance carrier and the patient.

UNDER NO CIRCUMSTANCES ARE CASH REBATE CHECKS GIVEN TO PATIENTS UNTIL ALL REBATE ACCOUNT CHARGES HAVE BEEN PAID.

Gross revenue is up 14% over budget and 35% over 1975. It must be remembered that we instituted price increases as of January 1, 1976 and since that time we have not increased any prices. At this time, we do not anticipate any price increases prior to January 1, 1977 as per your direction. Revenue deductions are up 43% over budget and 70% over 1975. Two major factors have led to this increase.

1. A higher level of profitability which as caused contractural adjustments to become greater.

2. A percentage increase in the number of Medicare and Medicaid patients.

The weekend rebate program has contributed approximately $190,000. to the increase in revenue deductions. We do not feel that bad debts, employee discounts or courtesy discounts have changed to any significant degree. We are very concerned with the increasing number of cost reimbursement type patients and are instituting two programs designed to reduce this segment of the patient population.

1. early ambulation program

2. establishment of a home health agency

Net revenue is self explanatory.

Operating expenses increased as measured by gross dollars, 8.2% over our budgeted figure. However, on a patient day basis, this increase is seven tenths of one percent. Listed below is a table providing the major elements within operating expenses on a per patient day basis.

	Operating Expenses	
	Actual	Budget
Per Patient Day:		
Operating costs	$ 105	$ 105
Payroll cost	105	102
Depreciation	7	7
Rentals	4	5
Interest	6	6
Amortization	—	—
Total	$ 227	$ 225

Net income describes the outstanding performance of Sunrise Hospital during the first six months of 1976. The growth of net income in both gross dollars and on a per patient day basis, significantly exceeds the growth of net revenue and operating expenses. We expect net income to exceed the 1976 budget by approximately 25% for the twelve month period. This will be an increase over 1975 performance of approximately 50%. We are not aware of any hospital with greater profits than Sunrise Hospital when measuring net income from operations.

As stated in a previous report, we have increased our patient day share of the market by approximately 1% in 1976. The increased length of stay is of some concern. This phenomenon appears to be County wide and not specific to Sunrise Hospital. I do not have any explanation for this. We do not see any indication this increase in length of stay is the result of the weekend rebate program.

The remaining figures are a reiteration of the gross figures on a per patient day basis. They are very interesting but their significance has been previously explained.

Sincerely,

David R. Brandsness
Administrator

m

GH - General Hospital Beds
SNF - Skilled Nursing Facility Beds

LIC - Licensed by the State
RPTD - Reported [redacted] used

Inpatient Charges
Inpatient Days

[redacted]

Type	Hospital		Current No. Licensed Beds	7-1-76 Semi-Private Room Rate	General Occupancy Rate		Inpatient Charges Per Day		Oper. Rev. Minus Oper. Exp.	
R	Battle Mountain	GH	16	$ 62.50	6-75	29.6%	6-75	$ 93.73	6-75	(63,132.00)
R	Boulder City	GH LIC.	38							
		GH RPTD	34	70.00	12-75	70.7	12-75	149.13	12-75	62,694.00
U	Carson Tahoe	GH	77	93.00	6-75	79.6	6-75	167.01	6-75	56,164.00
R	Churchill	GH	42	80.00	6-75	43.0	6-75	126.61	6-75	(20,300.00)
U	Desert Springs	GH	211	82.00	11-75	36.3	11-75	263.14	11-75	123,462.00
R	Elko	GH	56	70.00	6-75	54.5	6-75	131.98	6-75	127,257.00
R	Humboldt	GH	22	85.00	6-75	46.8	6-75	84.60	6-75	(220,753.00)
		SNF	10	42.00						
R	Lincoln	GH	10	60.00	6-75	52.8	6-75	56.88	6-75	(24,599.00)
		SNF	9	35.00						
R	Lyon	GH	24	62.00	6-75	74.9	6-75	59.80	6-75	(8,450.00)
		SNF	18	39.00						
R	Mt. Grant	GH	25	68.00	6-75	31.7	6-75	124.47	6-75	(144,441.00)
		SNF	12	43.00						
U	N. Las Vegas	GH	99	76.00	6-75	26.8	6-75	230.59	6-75	(81,801.00)
CR	Nye	GH	19	80.00						
		SNF	24	45.00	6-75	27.9	6-75	64.73	6-75	(265,319.00)
CR	Pershing	GH	22	82.00						
		SNF	25	40.00	6-75	32.1	6-75	53.60	6-75	(202,431.00)
U	St. Mary's	GH	268	103.00	12-75	80.6	12-75	177.13	12-75	917,600.00
R	St. Rose de Lima	GH	80	80.00	6-75	56.3	6-75	164.81	6-75	(139,109.00)
U	S. Nevada	GH	302	83.00	6-75	71.9	6-75	214.29	6-75	(1,145,333.00)
U	Sunrise	GH LIC	481							
		GH RPTD	486	82.00	12-75	68.6	12-75	253.90	12-75	3,852,349.00
U	Valley	GH LIC	269							
		GH RPTD	126	88.00	12-75	82.9	12-75	216.12	12-75	1,209,246.00
U	Washoe Medical	GH	554	103.00	6-75	73.8	6-75	180.94	6-75	626,710.00
CR	Ririe	GH LIC	44							
		GH RPTD	40	79.00						
		SNF	33	39.00	6-75	38.5	6-75	215.85	6-75	63,505.00
U	Women's	GH	62	76.00	4-75	82.9	4-75	167.30	4-75	563,457.00
	Total (Col. 1)	GH	2721							
		SNF	131							
	Avg.	GH	130	79.26		55.3		152.22		251,751.24
		SNF	6	69.55						
U	Avg. Urban		258	87.33		67.0		207.82		680,206.00
R	Avg. Rural		46	72.50		50.8		133.25		(6,518.00)

INSTITUTION Sunrise Hospital (Private Corp.)

			AS OF (DATE)
1.	Licensed Beds	486	12-31-75
2.	Days Beds Available (1. x 365)	177390	"
3.	Patient Days (Inpatient)	121666	"
4.	Occupancy Rate (3 ÷ 2)	68.6	"
5.	Semi-Private Room Rate	82.00	6-1-76
Sheet G-2-6.	Inpatient Charges (31.8 mil. - 927,865.)	30891591.	12-31-75
7.	Inpatient Charges Per Day (6 ÷ 3)	253.90	12-31-75
8.	Operating Revenue	31819456.	12-31-75
9.	Allowances and Uncollectible ~~Charity~~	3123618.	"
10.	Operating Expenses	24843489.	"
11.	Operating Profit or loss (8-9-10)	3852349.	"
12.	~~American~~ Medicare Charges	600,253.	"
13.	Taxes	1,561,006.	"
14.	Net Income	1,691,090.	"

1900

CHARGES AS OF 2/1/77 (Date) FOR SUNRISE HOSPITAL (INSTITUTION)

1. ROOM RATE PER DAY
   - PRIVATE $96.00
   - SEMI PRIVATE $89.00
   - WARD $82.00
   - OTHER Pediatric Ward $79.00

2. EMERGENCY ROOM
   - BASE CHARGE $ 7.50
   - TIME CHARGE
   - OTHER Physician based on 1969 C.R.V.S.

3. OPERATING ROOM

	Major Surgery	Minor Surgery
BASE CHARGE	$154.00	$115.00
TIME CHARGE	$ 40.00 ea. ½ hr.	$ 29.00 ea. ¼ hr.

   OTHER (MAJOR SET-UP, ETC.)
   Mini-Surgery Examples: Cystoscopy $68.00
   Gastroscopy $100.00
   Therapeutic Abortion $80.00

4. DELIVERY ROOM
   - BASE CHARGE $65.00
   - TIME CHARGE
   - OTHER

5. RECOVERY ROOM
   - ROUTINE Major - $25.00 Minor - $15.00
   - SPECIAL
   - OTHER

6. NURSURY
   - BASE CHARGE $53.00
   - OTHER Neo-Natal ICU $53.00 plus $43.00 per shift.
     Intermediate $53.00 plus $25.00 per shift.

7. CARDIAC CARE
   - BASE CHARGE $89.00
   - OTHER $43.00 per shift

8. INTENSIVE CARE
   - BASE CHARGE $89.00
   - OTHER $43.00 per shift

9. OTHER CATAGORIES
   - PEDIATRICS (13 yrs & under) $84.00 semi-private
     $79.00 ward
   - OBSTETRICS $89.00 semi-private
     $82.00 ward
   - PSYCHIATRIC CARE N/A
   - REHABILITATION $82.00 ward
   - OTHER (SNF, ETC.)

190

AMENDMENTS TO NEVADA TITLE 40, CHAPTER 454, LAWS 1975

NRS449.490, subsection 1,

Amend ~~Section 6.1~~ by adding the following new paragraph (c);

(c) A statement of all applicable charges and rates of charges.

NRS449.490

Amend ~~Section 6~~ by adding the following new paragraph 5;

5. Health care facilities shall not discriminate unfairly in their charges among individual purchasers or classes of purchasers of health care services. Reductions or discounts in charges may be offered to purchasers or classes of purchasers for good and valuable consideration demonstrated to financially relate to or reduce the costs of services, however, any such reduction or discount shall be made available without unfair discrimination or preference to all such purchasers or classes of purchasers for like consideration. Rates or charges to purchasers or classes of purchasers qualifying for a reduction or discount shall not be subsidized by rates or charges to other purchasers or classes of purchasers. For purposes of this Act, purchasers or classes of purchasers means the patients utilizing health care services, insurance companies, nonprofit service plan corporations, health maintenance organizations, self-funded employee health benefit plans, or any other such mechanism through which reimbursement is made or for which prepayment of health care services has been arranged for such services.

Exhibit 19

RESOLUTION NO. 14

CLARK COUNTY DISTRICT BOARD OF HEALTH

WHEREAS, The Clark County District Board of Health has been created and is functioning as the local health authority for the incorporated and unincorporated areas within Clark County, Nevada and has elected members from each City Council and from the County Commission serving on its 11 member board; and

WHEREAS, in that capacity the Clark County District Board of Health enforces the Laws and Regulations Governing the Sanitation of Food Establishments of the State of Nevada and of the State Board of Health; and

WHEREAS, Assembly Bill 455 has been introduced in the 1977 session of the Nevada State Legislature, which bill would amend Chapter 446 of NRS to allow a three day delay before downgrading of a food establishment after the establishment has been found deficient in sanitation and maintenance; and

WHEREAS, the Clark County District Board of Health, recognizing that Southern Nevada has an economy largely based upon tourism, believes that strict, prompt and thorough application of the regulations and conformity to same by food establishments is required for the good protection of the public health, welfare and safety, and

WHEREAS, The Clark County Health District has been able to enforce the existing statutes in the past without undue difficulties, and

WHEREAS, the Clark County District Board of Health is of the opinion that the proposed amendment to the law contained in Assembly Bill 455 would unnecessarily lessen the diligence of owners of food establishments in correcting violations and maintaining an acceptable standard for food establishments,

NOW, therefore, upon motion duly made, seconded, and unanimously carried at the March 24, 1977 meeting of the Clark County District Board of Health:

IT IS RESOLVED that the Clark County District Board of Health hereby conveys to the Nevada State Legislature this Board's opposition to the passage of Assembly Bill 455 and urges its defeat.

Adopted by vote of the
DISTRICT BOARD OF HEALTH

March 24, 1977
(Date)

Signed: _____
Lorin L. Williams, Chairman
District Board of Health

Attest: _____
Otto Ravenholt, M.D.
Chief Health Officer

NEVADA STATE JOURNAL
RENO, NEVADA

MAR 30 1977

Exhibit 41

Relaxed Restaurant Standards Endorsed

By DOUG McMILLAN

Washoe County Commissioners endorsed a proposed bill Tuesday relaxing standards on restaurant A-B-C gradings despite opposition from the county director of consumer health services.

The bill, AB 455, would give restaurant operators three days to "clean up their act" before the health department could change their familiar blue card with white letter ratings to a lower grade.

Presently, if a food establishment operator is caught violating enough of the 118 food-handling practices health inspectors check, his rating is immediately downgraded. AB 455 would give him 72 hours to correct the deficiencies without letting the public know he had chalked up enough "demerit points" to warrant a change.

The bill, introduced by the Assembly Commerce Committee, passed the Assembly Tuesday and now goes to the Senate.

The measure also would cover supermarkets, bars, catering services, bakeries, snack counters and any other business handling food.

County Consumer Health Services Director Gene Clock told commissioners his division likes the law the way it is — with the possibility of immediate downgrading.

Clock said since his seven inspectors last year began quarterly inspection of food establishments, they have been very effective in cutting down on violations.

The most serious failing they find is food sitting out in kitchens without refrigeration for long periods of time, said Clock. This can lead to food poisoning.

Clock said his division aims to keep food services constantly on their toes, not just during inspections. The unannounced visits, with the possibility of an immediate downgrading, have helped accomplish that, he said.

The relaxed version "does not provide that incentive," he told commissioners. "It allows (a restaurant operator) to clean up his act, but it would be less likely to lead to "long-lasting" corrections of hazardous health conditions, said Clock.

However, commissioners voted to do the exact opposite of what the health official recommended.

Commissioners Dick Scott and Bob Rusk led arguments to endorse the weaker inspection standards, but Bill Farr and Dwight Nelson joined in the unanimous vote to lobby for the bill. Commissioner Ken Gaunt, who said last week he favors present strict rules, was absent Tuesday because of a death in the family.

"I don't see how this would hurt anything," said Scott, arguing for AB 455. Quoting Clock, who said that the health department logs problems with only 10 per cent of food service operators, Scott said "We're going to penalize the other 90 prr cent."

Scott, a bakery executive with Rainbo Bread of Nevada, after the meeting said he did not consider his vote a conflict of interest although he sells products to practically all of the supermarkets and many of the restaurants under inspection. He said he acted on complaints he heard — about arbitrary inspections over nit-picking items — from the food industry during the course of his business.

Rusk objected to the present tough inspection procedures on the grounds they are "arbitrary."

An inspector could "get out on the wrong side of bed," downgrade an operator on small items, and "jerk his 'A' rating off the wall." Or the inspector could have a friend in the restaurant business and go easy on him, allowing him to correct his deficiencies without downgrading his 'A' of 'B' sign. "All should be treated equally," said Rusk.

After the meeting Rusk said he was not implying that county inspectors act arbitrarily or favor friends. "But with the existing law, the potential is there," he said. The three-day leeway in the proposed law would ensure that inspectors act equitably, he said.

Clock said in an interview Tuesday that all but 17 of 1,175 establishments under inspection in Washoe County have 'A' ratings now. Currently, there are 14 B's and three C's. The number of B's and C's varies from 10 to 25 he said.

INSPECTION REPORT
FOOD ESTABLISHMENT

NEVADA STATE DIVISION OF HEALTH
BUREAU OF CONSUMER HEALTH PROTECTION SERVICES
Capitol Complex, 505 E. King Street
Carson City, Nevada 89710 Ph. 885-4750

Sample Exhibit
Permit Date..........
Type.......................NSD.......... O

CITY, COUNTY OR DISTRICT	NAME OF ESTABLISHMENT	ADDRESS	OWNER OR OPERATOR

Sir: Based on an inspection this day, the items marked below identify the violation in operation or facilities which must be corrected by the next routine inspection or such shorter period of time as may be specified in writing by the health authority. Failure to comply with this notice may result in immediate suspension of your permit or downgrading of the establishment. An opportunity for an appeal will be provided if a written request for a hearing is filed with the health authority within the period of time established in this notice for the correction of violations.

SECTION B. Food

1. FOOD SUPPLIES

Item		Specify:	Bakery products	Poultry and poultry products	Meat and meat products	Frozen desserts	Shellfish	Milk and milk products	Demerit points
1	Approved source								6
2	Wholesome—not adulterated								6
3	Not misbranded								2
4	Original container; properly identified								2
5	Approved dispenser								
6	Fluid milk and fluid milk products pasteurized								6
7	Low-acid and non-acid foods commercially canned								6

2. FOOD PROTECTION

Item		Preparation	Storage	Display	Service	Transportation	Demerit points
8	Protected from contamination						4
9	Adequate facilities for maintaining food at hot or cold temperatures						2
10	Suitable thermometers properly located						2
11	Perishable food at proper temperature						2
12	Potentially hazardous food at 45° F. or below, or 140° F. or above as required						6
13	Frozen food kept frozen; properly thawed						2
14	Handling of food minimized by use of suitable utensils						4
15	Hollandaise sauce of fresh ingredients; discarded after three hours						6
16	Food cooked to proper temperature						6
17	Fruits and vegetables washed thoroughly						2
18	Containers of food stored off floor on clean surfaces						2
19	No wet storage of packaged food						2
20	Display cases, counter protector devices or cabinets of approved type						2
21	Frozen dessert dippers properly stored						2
22	Sugar in closed dispensers or individual packages						2
23	Unwrapped and potentially hazardous food not re-served						4
24	Poisonous and toxic materials properly identified, colored, stored and used; poisonous polishes not present						6
25	Bactericides, cleaning and other compounds properly stored and non-toxic in use dilutions						

SECTION C. Personnel

1. HEALTH AND DISEASE CONTROL

Item		Demerit points
26	Persons with boils, infected wounds, respiratory infections or other communicable disease properly restricted	6
27	Known or suspected communicable disease cases reported to health authority	6

2. CLEANLINESS

Item		Demerit points
28	Hands washed and clean	6
29	Clean outer garments; proper hair restraints used	2
30	Good hygienic practices	4

SECTION D. Food Equipment and Utensils

1. SANITARY DESIGN, CONSTRUCTION AND INSTALLATION OF EQUIPMENT AND UTENSILS

Item		Good repair; no cracks	No chips, pits or open seams	Cleanable; smooth	Approved material	No corrosion	Proper construction	Accessible for cleaning and inspection	Demerit points
31	Food-contact surfaces of equipment								2
32	Utensils								2
33	Non-food-contact surfaces of equipment								2
34	Single-service articles of non-toxic materials								2
35	Equipment properly installed								2
36	Existing equipment capable of being cleaned, non-toxic, properly installed, and in good repair								2

SECTION D. Food Equipment and Utensils (Continued)

2. CLEANLINESS OF EQUIPMENT AND UTENSILS

Item		Demerit points
37	Tableware clean to sight and touch	4
38	Kitchenware and food-contact surfaces of equipment clean to sight and touch	
39	Grills and similar cooking devices cleaned daily	
40	Non-food-contact surfaces of equipment kept clean	2
41	Detergents and abrasives rinsed off food-contact surfaces	2
42	Clean wiping cloths used; use properly restricted	2
43	Utensils and equipment pre-flushed, scraped or soaked	2
44	Tableware sanitized	4
45	Kitchenware and food-contact surfaces of equipment used for potentially hazardous food sanitized	
46	Facilities for washing and sanitizing equipment and utensils approved, adequate, properly constructed, maintained and operated	4
47	Wash and sanitizing water clean	2
48	Wash water at proper temperature	
49	Dish tables and drain boards provided, properly located and constructed	2
50	Adequate and suitable detergents used	2
51	Approved thermometers provided and used	2
52	Suitable dish baskets provided	
53	Proper gauge cocks provided	
54	Cleaned and cleaned and sanitized utensils and equipment properly stored and handled; utensils air-dried	2
55	Suitable facilities and areas provided for storing utensils and equipment	2
56	Single-service articles properly stored, dispensed and handled	2
57	Single-service articles used only once	6
58	Single-service articles used when approved washing and sanitizing facilities are not provided	

SECTION E. Sanitary Facilities and Controls

1. WATER SUPPLY

Item		Demerit points
59	From approved source; adequate; safe quality	6
60	Hot and cold running water provided	4
61	Transported water handled, stored; dispensed in a sanitary manner	6
62	Ice from approved source; made from potable water	6
63	Ice machines and facilities properly located, installed and maintained	2
64	Ice and ice handling utensils properly handled and stored; block ice rinsed.	2
65	Ice-contact surfaces approved; proper material and construction	

2. SEWAGE DISPOSAL

Item		Demerit points
66	Into public sewer, or approved private facilities	6

3. PLUMBING

Item		Demerit points
67	Properly sized, installed and maintained	2
68	Non-potable water piping identified	1
69	No cross connections	6
70	No back siphonage possible	
71	Equipment properly drained	2

4. TOILET FACILITIES

Item		Demerit points
72	Adequate, conveniently located, and accessible; properly designed and installed	6
73	Toilet rooms completely enclosed, and equipped with self-closing, tight-fitting doors; doors kept closed	2
74	Toilet rooms, fixtures and vestibules kept clean, in good repair, and free from odors	2
75	Toilet tissue and proper waste receptacles provided; waste receptacles emptied as necessary	2

5. HAND-WASHING FACILITIES

Item		Demerit points
76	Lavatories provided, adequate, properly located and installed	6
77	Provided with hot and cold or tempered running water through proper fixtures	4
78	Suitable hand cleanser and sanitary towels or approved hand-drying devices provided	2

SECTION E. Sanitary Facilities and Controls (Continued)

5. HAND-WASHING FACILITIES

Item		Demerit points
79	Waste receptacles provided for disposable towels	2
80	Lavatory facilities clean and in good repair	2

6. GARBAGE AND RUBBISH DISPOSAL

Item		Demerit points
81	Stored in approved containers; adequate in number	2
82	Containers cleaned when empty; brushes provided	2
83	When not in continuous use, covered with tight-fitting lids, or in protective storage inaccessible to vermin	2
84	Storage areas adequate; clean; no nuisances; proper facilities provided	2
85	Disposed of in an approved manner, at an approved frequency	2
86	Garbage rooms or enclosures properly constructed; outside storage at proper height above ground or on concrete slab	2
87	Food waste grinders and incinerators properly installed, constructed and operated; incinerators areas clean	2

7. VERMIN CONTROL

Item		Demerit points
88	Presence of rodents, flies, roaches and vermin minimized	4
89	Outer openings protected against flying insects as required; rodent-proofed	2
90	Harborage and feeding of vermin prevented	2

SECTION F. Other Facilities

1. FLOORS, WALLS AND CEILINGS

Item		Demerit points
91	Floors kept clean; no sawdust used	2
92	Floors easily cleanable construction, in good repair, smooth, non-absorbent; carpeting in good repair	1
93	Floor graded and floor drains, as required	2
94	Exterior walking and driving surfaces clean; drained	2
95	Exterior walking and driving surfaces properly surfaced	1
96	Mats and duck boards cleanable, removable and clean	2
97	Floors and wall junctures properly constructed	2
98	Walls, ceilings and attached equipment clean	2
99	Walls and ceilings properly constructed and in good repair; coverings properly attached	1
100	Walls of light color; washable to level of splash	2

2. LIGHTING

Item			Demerit points
101	20 foot-candles of light on working surfaces		2
102	10 foot-candles of light on food equipment, utensil-washing, hand-washing areas and toilet rooms		
103	5 foot-candles of light 30" from floor in all other areas		
104	Artificial light sources as required		2

3. VENTILATION

Item		Demerit points
105	Rooms reasonably free from steam, condensation, smoke, etc.	2
106	Rooms and equipment vented to outside as required	2
107	Hoods properly designed; filters removable	2
108	Intake air ducts properly designed and maintained	1
109	Systems comply with fire prevention requirements; no nuisance created	2

4. DRESSING ROOMS AND LOCKERS

Item		Demerit points
110	Dressing rooms or areas as required; properly located	1
111	Adequate lockers or other suitable facilities	1
112	Dressing rooms, areas and lockers kept clean	2

5. HOUSEKEEPING

Item		Demerit points
113	Establishment and property clean, and free of litter	2
114	No operations in living or sleeping quarters	2
115	Floors and walls cleaned after closing or between meals by dustless methods	2
116	Laundered clothes and napkins stored in clean place	2
117	Soiled linen and clothing stored in proper containers	1
118	No live birds or animals other than guide dogs	2

*Applicable only where grading form of ordinance is in effect.

Demerit score of the establishment.................... **Grade**.................... **Remarks: (See reverse side)**....................

...., 19..... ....
Acknowledged by Date Health Authority

6354

III. THE STATE STATUTES

INDEX

I. Preliminary matters

§ 1. Introduction

[a] Scope

The franchise agreement between an automobile manufacturer and a dealer has been referred to as a "contract of adhesion."[1] It has been recognized that although a franchise agreement is bilateral in form, it is unilateral in fact, since the terms are dictated by the manufacturer at Detroit and drawn by its counsel with the avowed purpose of protecting the manufacturer to the utmost and granting, if any, few rights to, and the smallest protection of, the dealer.[2] Until relatively recently, the dealer has time and again been denied redress in case of an arbitrary termination or nonrenewal of his franchise, an event which, because of the dealer's substantial and specialized investment of his capital, has been aptly called an "economic death sentence."[3] The traditional concepts of contract law have proved unavailing in the dealer's plight. Most cases involving termination of a franchise have been decided in favor of the manufacturer either on the ground of lack of mutuality of consideration or simply because the manufacturer was immune from liability under the terms of the contract.[4] And even though aware of the dealer's plight, the courts refused to add any requirement of "good faith" to the contract, insisting that since it was "freely entered into" his predicament was of his own making and he could not expect the courts to place in the contract the protection which he himself failed to insert.[5]

As a result of agitation by the dealers, legislation aimed at curbing the "vertical power" of the automobile manufacturer has been enacted in several states since 1937. In 1956, the Federal Government followed suit with the passage of the so-called "Automobile Dealers' Day in Court Act" (15 USC §§ 1221–1225).[6] The last section of this act expressly declares that state statutes are

1. See Kessler, "Automobile Dealer Franchises: Vertical Integration by Contract," 66 Yale LJ 1135, 1156 (1957).

2. Buggs v Ford Motor Co. (1940, CA7 Wis) 113 F2d 618, cert den 311 US 688, 85 L ed 444, 61 S Ct 65.

3. Kessler, "Automobile Dealer Franchises. Vertical Integration by Contract." 66 Yale LJ 1135, 1156 (1957).

4. See Note, 70 Harvard L Rev 1239 (1957).

5. See, for example, Ford Motor Co. v Kirkmyer Motor Co. (1933, CA4 Va) 65 F2d 1001.

6. For some notable law reviews discussing the background and merits of the legislation on the subject, see Kessler, "Automobile Dealer Franchises: Vertical Integration by Contract," 66 Yale LJ 1135, 1156 (1957); Note, 70 Harvard L Rev 1135 (1957); Brown and Conwill, "Automobile-Dealer Legislation," 57 Columbia L Rev 217 (1957); Stran[redacted] French, Jr., "The Automobile Deal[redacted]ise Act: Another Experiment

impaired unless in direct irreconcilable conflict therewith."

This annotation considers the validity and construction of such statutes, federal and state, pertaining to automobile manufacturer-dealer relations.[8]

[b] Related matters

Regulation or licensing of business of selling motor vehicles. 126 ALR 740, 57 ALR2d 1265.

Constitutionality, construction, and application of statutes relating to highway transportation of automobiles for purposes of sale. 110 ALR 622.

Constitutionality, construction, and application of statutes relating to ad valorem or property taxation of motor vehicles. 114 ALR 847.

§ 2. Summary and comment

Section 1222 of the federal Automobile Dealers' Day in Court Act permits an automobile dealer to bring suit against any automobile manufacturer engaged in commerce, in any District Court of the United States in the district where the manufacturer resides, or is found, or has an agent,[9] for damages arising from the failure of the manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise of the dealer.[10] The policy behind the enactment of such act was to establish a balance of power as between manufacturers and dealers in the automobile industry by curtailing the economic advantages of the larger manufacturers and increasing those of the dealer.[11] And the legislative intent seems to be to assure a dealer an opportunity to secure a judicial determination of his cause of action irrespective of contract terms, thus precluding the application of the doctrine of waiver or estoppel in this regard.[12]

The conditions precedent for the cause of action created under the act are the existence of a franchise between a dealer and a manufacturer, as defined therein,[13] and the failure of a manufacturer to act in good faith in performing or complying with any of its terms or provisions, or in terminating, canceling, or not renewing the dealer's franchise. It is also required that the action must be brought within 3 years after the accrual of the cause of action.[14] The lack of good faith on the part of the manufacturer constitutes the core of the dealer's cause of action, and the burden of proving it, or of proving compliance with all the statutory requirements, for that matter, falls on the dealer.[15]

By statutory definition, "good faith" is restricted to a duty to act in a fair and equitable manner so as to guarantee freedom from coercion, intimidation, or threats.[16] And it is also provided that recommendation, indorsement, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.[17] Moreover, the manufacturer is not barred from asserting in defense the failure of the dealer to act in good faith.[18]

As judicially construed, the statutory definition of lack of "good faith" requires that the acts of the manufacturer must be both unfair and coercive.[19] Thus, it has been held that the good-faith requirement does not prevent a manufacturer from terminating a contract with a dealer where the latter has violated, over a long period of time, a valid and material clause of the contract, and has failed with the continuing insistence of the manufacturer upon performance.[20] Similarly, no lack of good faith has been found on the part of the manufacturer where the termination of the dealer's franchise was based on the dealer's failure to measure up to its reasonable market car sales potential and to provide the manufacturer with what in its business judgment it considered as adequate representation.[1] The fact that the manufacturer established a competitive dealer in an area near the aggrieved dealer's has been deemed not to be, by itself, an evidence of bad faith.[2] In other words, the statute does not curtail the manufacturer's right to cancel or not to renew an inefficient or undesirable dealer's franchise, and neither does it freeze present channels or methods of automobile distribution.[3] The manufacturer is entitled to bargain for the protection of its good name, to provide for the trade acceptance of its wares, and to have reasonable expectation that those who are marketing its cars have the facilities for coping with the sales efforts of those who are dealing in the products of its competitors.[4]

In making the decision of the cases turn on the question of the existence or nonexistence of good faith, the courts have avoided the constitutional issues often raised by the manufacturer. One case alone has directly passed upon the constitutionality of the statute and has sustained it against objections of violation of due process under the Fifth Amendment for being vague and indefinite, arbitrary and discriminatory, a restriction of the freedom of contract, and an unlawful taking of property.[5]

The few cases decided under the state statutes, on the other hand, have been concerned mainly with the constitutional issues. The state statutes involved generally require a license for a manufacturer doing business in the state and make an unfair cancellation of a franchise of a dealer without due regard to his equities, or its nonrenewal without just provocation, a ground for denial or revocation of the license, or the imposition of some criminal sanctions.[6] Except in one case,[7] such statutes have been upheld as constitutionally valid.[8] Specifically, such statutes have been held to constitute a legitimate exercise of the police power,[9] notwithstanding that the persons to be benefited by such

in Federal Class Legislation," 25 George Washington L Rev 667 (1957); Comment, "The Automobile Dealer Franchise Act: A 'New Departure' in Federal Legislation." 52 Northwestern UL Rev 253 (1957); Weiss, "The Automobile Dealer Franchise Act of 1956—An Evaluation," 48 Cornell LQ 711 (1963).

7. 15 USC § 1225.

8. This supersedes § 25 of the annotation on the regulation or licensing of selling motor vehicles at 57 ALR2d 1265.

9. § 10, infra. As for the rules governing service of process, see § 11, infra.

10. As to what damages are recoverable, see § 9. Although the act provides only for an action for damages, it has been held that temporary injunctive relief may be available in a proper case. See § 14, infra.

11. § 4, infra.

12. § 13, infra.

13. §§ 5, 6, 7, infra.

14. 15 USC § 1223. See § 15, infra.

15. § 12, infra.

16. 15 USC § 1221(e). See § 8[a], infra.

17. 15 USC § 1221(e).

18. 15 USC § 1222.

19. § 8[b], infra.

20. Woodard v General Motors Corp. (1962, CA5 Tex) 298 F2d 121, infra § 8[a], cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1584.

1. Leach v Ford Motor Co. (1960, DC Cal) 189 F Supp 349, infra § 8[a].

2. Garvin v American Motors Sales Corp. (1963, CA3 Pa) 318 F2d 518, infra § 8[a].

3. See HR No 2850 (1956) US Code Cong & Adm News 4596, 4603.

4. Woodard v General Motors Corp (1962, CA5 Tex) 298 F2d 121, infra § 8[a], cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1584.

5. Blenke Bros. Co. v Ford Motor Co. (1962, DC Ind) 203 F Supp 670, infra § 3.

6. § 16, infra.

7. General Motors Corp. v Blevins (1956, DC Colo) 144 F Supp 381, infra § 17[b].

8. § 17[a], infra.

9. Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (1956, DC Minn) 142 F Supp 4[illegible] Motor Co. v Ford Motor

regulatory measure are confined to one class of citizens (automobile dealers),[10] they have also been held not to be so vague or indefinite as to be unenforceable by reason of the failure to prescribe standards;[11] and furthermore the constitutionality of such statutes has been sustained as against the contention that they violate the equal protection and due process clauses of the Fourteenth Amendment,[12] or that they are repugnant to the constitutional provisions prohibiting the impairment of contracts.[13] However, inasmuch as most state legislation does not give a private right of action to the dealer as does the Federal Automobile Dealers' Day in Court Act, the decisions under the state statutes may be of only limited usefulness in interpreting the federal law.

II. The Federal Automobile Dealers' Day in Court Act (15 USC §§ 1221–1225)

A. In general

§ 3. Validity

Most of the law review discussions of the statute have suggested that there are serious questions as to its constitutionality, the principal ones being that it constitutes class legislation, unduly restricts the right of contract, and rewrites existing contracts, and that its vague and indefinite provisions violate due process and the rule against delegation of powers.[14] No court, however, has declared it unconstitutional. On the contrary, its constitutionality has been sustained in one case.

In Blenke Bros. Co. v Ford Motor Co. (1962, DC Ind) 203 F Supp 670, the court upheld the statute against attacks that it violated the due process clause of the Fifth Amendment for being vague and indefinite, arbitrary and discriminatory, a restriction of the freedom of contract, and an unlawful taking of property. Pointing out that language similar to the definition of "good faith" in the act survived attack before under the vagueness doctrine, and, more important, that the statute provides a civil remedy and not a penal sanction which otherwise would have required a higher standard of certainty, the court concluded that the challenged statutory definition of "good faith" conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. As to the contention that the act restricts the freedom of contract and takes property without due process of law, the court stated that in considering the purposes of the law and the means to accomplish those purposes, the requirement that cancellation or termination be in good faith, that is, not the culmination of unfair and coercive conduct, is not extreme or arbitrary to the point of unconstitutionality. To the extent that the act limits a manufacturer's freedom of contract, the court added, Congress had an adequate reason to do so. Finally, as to the argument that the statute is arbitrary and discriminatory because, in providing that both parties to a franchise agreement must act in good faith, it grants only the dealers the right to enforce such obligations in the courts, the court adverted to the purpose behind the enactment of the statute, which was to "balance the power" between the manufacturer and the dealer. Consequently, the court said, it is reasonable to assume that Congress did not give a manufacturer a right of enforcement, for the simple reason that it felt that a manufacturer cannot be coerced or intimidated by a dealer.

Clearly dictum, it was stated in Garvin v American Motors Sales Corp. (1962, DC Pa) 202 F Supp 667, revd on other grounds (CA3) 318 F2d 518, that the act is constitutional for it is not vague and uncertain and the classification of automobile manufacturers is not so unreasonable that its enforcement constitutes a denial of due process under the Fifth Amendment of the Constitution of the United States. This position, according to the court, is given further credence by the fact that a similar statute was sustained in Kuhl Motor Co. v Ford Motor Co. (1955) 270 Wis 488, 71 NW2d 420, 55 ALR2d 467, infra § 18.

See, however, Glore Motors, Inc. v Studebaker-Packard Corp. (1964, CA3 Pa) 328 F2d 645, where the court, in holding that the lack of good faith which would support a cause of action under the statute requires at least some implicit "coercion, intimidation or threats," hinted that holding otherwise would "perhaps raise serious doubts as to the constitutionality of the statute."

§ 4. Purpose of statute; relation of antitrust laws

It has been repeatedly said that the purpose of the statute, as its title declares, is to balance the power "now heavily weighted in favor of the automobile manufacturers." Bateman v Ford Motor Co. (1962, CA3 Pa) 302 F2d 63; Garvin v American Motors Sales Corp. (1962, DC Pa) 202 F Supp 667, revd on other grounds (CA3) 318 F2d 518; Blenke Bros. Co. v Ford Motor Co. (1962, DC Ind) 203 F Supp 670.

In Barney Motor Sales v Cal Sales, Inc. (1959, DC Cal) 178 F Supp 172, it was stated that the basic evil at which the legislation was aimed was the disparity in bargaining power between the parties to the franchise agreement. Congress has recognized, the court explained, that the power of the manufacturer vis-a-vis the dealer is so great that the terms of any franchise agreement can be dictated virtually in their entirety by the manufacturer, and that the contract could be designed to include exculpatory clauses immunizing the manufacturer from suits based upon bad-faith termination of the agency relationship or it could be framed so vaguely as to be unenforceable in the courts because of indefiniteness of terms. Thus, the purpose of the statute, the court said, is to give the dealer his day in court on an allegation of bad-faith termination, regardless of the legal import of the words used in the contract which he had signed.

In Hoffman Motors Corp. v Alfa Romeo S.p.A. (1965, DC NY) 244 F Supp 70, it was said that the act was passed to protect a dealer, economically feeble compared to the manufacturer, by granting him broad judicial protection from a manufacturer's arbitrary treatment.

And in Woodard v General Motors Corp. (1962, CA5 Tex) 298 F2d 121, cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1584, it was pointed out that one of the principal evils which the statute was designed to remove, in restricting the cause of action to cases involving coercion, was the exertion of

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Co. (1955) 270 Wis 488, 71 NW2d 420, 55 ALR2d 467, both infra § 17[a].

10. Kuhl Motor Co. v Ford Motor Co. (1955) 270 Wis 488, 71 NW2d 420, 55 ALR 2d 467, infra § 17[a].

11. E. L. Bowen & Co. v American Motors Sales Corp., Hudson Motor Div. (1957, DC Va) 153 F Supp 42, infra § 17 [a].

12. E. L. Bowen & Co. v American Motors Sales Corp., Hudson Motor Div. (1957, DC Va) 153 F Supp 42, infra § 17 [a].

13. Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (1956, DC Minn) 142 F Supp 469, infra § 17[a].

14. See all the law review articles previously cited; see also Note, "A Constitutional Evaluation of the Automobile Dealers' Franchise Act," 26 U of Cincinnati L Rev 277 (1957).

within the prescribed time extinguished the cause of action. The court added that the proceeding before the state administrative body where the dealer initially filed a complaint, the conclusion of which took place some 8 weeks before the running of the federal statute, did not toll the latter.

And in Pinney & Topliff v Chrysler Corp. (1959, DC Cal) 176 F Supp 801, the dealer was denied recovery on the ground, among others, that no act of bad faith or consequent loss or damage took place subsequently to August 8, 1956, the effective date of the act, and the action was filed more than 3 years from the date of accrual of the action.

III. The state statutes

§ 16. Generally

There are several existing state laws regulating manufacturer-dealer relations and some of them are more embracing and daring in concept than the federal statute.[7] Typical of most of them is the Wisconsin statute, which requires a yearly license for manufacturers and dealers doing business in the state and provides for its denial, suspension, or revocation in case of a cancellation of the dealer's franchise "without due regard to the equities of the dealer and without just provocation" or any threat to cancel such franchise to "induce or coerce" any automobile dealer to enter into any agreement with such manufacturer or to do any other act unfair to said dealer. Nonrenewal of a franchise without just provocation or cause is declared to be an unfair cancellation. In addition to denial or revocation of the license, the erring manufacturer is made subject to a fine.

§ 17. Validity

[a] Held valid

Like the federal statute, the state laws raise many constitutional questions, including the peculiar problem of whether they impose an undue burden on interstate commerce. The cases, however, indicate a clear trend in the direction of their constitutional validity. So far, only one case, involving a statute more detailed in its prohibitions than the so-called Wisconsin type, has sounded a dissenting note.[8]

In Buggs v Ford Motor Co. (1940, CA7 Wis) 113 F2d 618, cert den 311 US 688, 85 L ed 444, 61 S Ct 65, the court, in holding that the stated Wisconsin statute did not apply to, or affect, existing contracts, impliedly suggested its validity. The court declared that the one-sided franchise affords some support for the wisdom and necessity of legislation which protects the weak against a strong party, and that this cannot be ignored in considering the validity of such legislation.

In Kuhl Motor Co. v Ford Motor Co. (1955) 270 Wis 488, 71 NW2d 420, 55 ALR2d 467, a divided court upheld under the Fourteenth Amendment the same Wisconsin statute. The court rejected the minority view that it was an unconstitutional interference with the

7. The federal Automobile Dealers' Day in Court Act provides that it shall not invalidate any provision of the laws of any state except in case of a direct irreconcilable conflict (15 USC § 1225).

8. See General Motors Corp. v Blevins (1956, DC Colo) 144 F Supp 381, infra § 17[b]. Note, however, that parts of similar state legislation have been declared unconstitutional for denial of the equal protection of the laws because they required the licensing of enfranchised new car dealers but not of nonenfranchised dealers in new cars or used cars, in the following cases:

Ark—Rebsamen Motor Co. v Phillips (1956) 226 Ark 146, 289 SW2d 170, 57 ALR2d 1256.

Neb—Nelsen v Tilley (1939) 137 Neb 327, 289 NW 388, 126 ALR 729.

Va—Joyner v Centre Motor Co. (1951) 192 Va 627, 66 SE2d 469.

right to contract insofar as it restricted the right of a manufacturer to cancel a franchise, by finding that the statute was a legitimate exercise of the police power because it sought to protect automobile dealers who were "economic dependents of the company whose cars they sell"[9] against unfair dealing by manufacturers. The fact that the persons benefited by the statute were confined to one class of citizens, that is, automobile dealers, did not, according to the court, militate against its being a legitimate exercise of the police power.

In E. L. Bowen & Co. v American Motors Sales Corp., Hudson Motor Div. (1957, DC Va) 153 F Supp 42, an action by a dealer against a manufacturer's sales corporation for damages for refusal to renew a franchise, the constitutionality of a Virginia statute, essentially the same as the Wisconsin statute involved in Kuhl Motor Co. v Ford Motor Co. (1955) 270 Wis 488, 71 NW2d 420, 55 ALR2d 467, supra, was upheld against constitutional attacks. The court stated that the statute was not so vague and indefinite as to be unenforceable by reason of the failure to prescribe standards. The words "unfairly, without due regard to the equities of a dealer and without just provocation," as well as "coerce" and "threaten," were considered by the court as apparently designed to permit evidence relating to the course of dealings, the nature of the business, the custom of the trade, the details leading up to a failure to renew the franchise, or a threatened cancellation thereof, and other factors to be considered by the court or jury hearing the case. As to the contention that the statute violated the equal protection and due process clauses of the Fourteenth Amendment, the court rejected it and adverted to the often-quoted rule that the due process clause may not be used to strike down state laws because they are unwise, improvident, or out of harmony with a particular school of thought. Regarding the further contention that the statute was violative of the state constitutional provision prohibiting special or class legislation, the court, in the absence of a controlling state decision and under the present state of the pleadings, refused to hold that it was so arbitrarily discriminatory in favor of the dealer. The court noted that protection from coercive methods, threats, and abrupt cancellation of franchises was afforded under the statute with due regard to the equities of all parties, and that through the power of a franchise, manufacturers may resort to tactics having a serious effect upon the economics of dealers and, in turn, upon the public in general. The court suggested, however, that the constitutionality of the statute be subjected to test, by way of declaratory judgment or otherwise, in the courts of Virginia, and said that it would delay the trial of the case if the proposed action would be instituted promptly.

A Minnesota statute making it unlawful for any manufacturer or distributor of motor vehicles to cancel or refuse to renew the franchise of any retail dealer or any contractual arrangement between them without just cause was upheld under the Minnesota Constitution against attacks of being an ex post facto legislation and an impairment of the obligation of contract in Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (1956, DC Minn) 142 F Supp 469, a case where the notice of cancellation was given prior to the enactment of the statute in question but which cancellation became effective 25 days after said enactment. In holding that the statute did not have any retroactive or ex post facto effect, the court underscored that it was directed at can-

9. Citing Justice Black's dissenting opinion in Ford Motor Co. v United States (1948) 335 US 303, 93 L ed 24, 69 S Ct 93.

tion without just cause, not notice of cancellation, and that the manufacturer had sufficient time after passage of the statute to comply with its terms by a show of just cause, or if that was impossible, to revoke the notice of cancellation. As to the other contention that the statute impaired the manufacturer's contractual obligation because it had the unqualified right under the contract to cancel it with or without cause, the court stated that, admitting that it did, still the statute was a valid exercise of the police power of the state of Minnesota because the underlying public purpose was to alleviate an adverse economic condition directly affecting most of the 1,400 automobile dealers in the state and indirectly affecting thousands of others and a substantial segment of the economy.

In Louisiana Motor Vehicle Com. v Wheeling Frenchman (1958) 235 La 332, 103 So 2d 464, a case not in point on its facts, the Louisiana statute which, among other things, made it unlawful for a manufacturer to "unfairly, without due regard to the equities of said dealer and without just provocation, cancel the franchise of any motor vehicle dealer" or "to attempt to induce or coerce, or to induce or coerce, any motor vehicle dealer to enter into any agreement with such manufacturer . . . or to do any other act unfair to said dealer by threatening to cancel any franchise or any contractual agreement . . . ," was upheld as a whole under the Constitution of the United States and the Louisiana Constitution. Actually, the issue before the reviewing court was the constitutionality of the part of the statute requiring that a dealer in new and unused automobiles be enfranchised by a manufacturer or distributor, the rest of the statute having been found valid in the court below. In reversing the judgment appealed fr[redacted] as it held the assailed section of the statute unconstitutional, the court observed that motor vehicles are economic necessities in modern living and their production, transportation, and marketing are unquestionably a proper subject for regulation by the legislature under its police power.

Upon the authority of Louisiana Motor Vehicle Commission v Wheeling Frenchman, supra, among others, a similar Tennessee statute was sustained under the due process clauses of the Fourteenth Amendment and the Tennessee Constitution in Ford Motor Co. v Pace (1960) 206 Tenn 559, 335 SW2d 360, app dismd 364 US 444, 5 L ed 2d 192, 81 S Ct 235, reh den 364 US 939, 5 L ed 2d 371, 81 S Ct 377. In rejecting the contention that the statute did not provide or furnish any ascertainable standard in respect of such terms as "the act of coercing," "threatening to cancel any franchise," "as unfairly," "without due regard to the equities of said dealer," and "without just provocation," the court stated that the application of the terms objected to can be fairly administered by the motor vehicles commission by applying the ordinary meaning of such terms. As to the other argument that the statute, in protecting the automobile dealers from unfair dealing on the part of the manufacturers, violated the right to contract, the court held that it was clearly within the police power, the exercise of which was determined by the legislature to be necessary to protect the dealers against unfair dealing on the part of automobile manufacturers. The court expressly refused to subscribe to the decision in General Motors Corp. v Blevins (1956, DC Colo) 144 F Supp 381, infra § 17 [b], stating as the reasons therefor, (1) that the case was decided without the benefit of having the court of last resort of Colorado pass on the constitutionality of the statute involved, (2) that the case was not met with muc[redacted] tion, and (3) that the opinion in the case made reference to other cases cited to the contrary merely by brushing them off by stating that other facts were involved, without any attempt to distinguish them otherwise.

✦

In Forest Home Dodge, Inc. v Karns (1965, Wis) 138 NW2d 214, the court sustained the constitutionality of a section of the Wisconsin Automobile Dealership Law requiring denial of a dealership license application of a manufacturer in any community or territory where the presently enfranchised dealer or dealers have complied with agreed requirements of such manufacturer for adequate representation in such community or territory. Although the statute did not apply to a manufacturer who acquires control of an existing dealership or who seeks a license for a replacement dealership, the court refused to hold that the classification by the statute was unreasonable merely because all possible evils were not dealt with at one time. As to the contention that the statute imposed an undue burden on interstate commerce, the court made short shrift of this argument by saying that there was no showing in what manner, if any, the statute was unconstitutional. Neither was the statute, the court said, so vague as to be unconstitutional, since it is the duty of the court to construe the statute in accordance with its legislative intent. Finally, the court concluded that the statute was not invalid as an improper delegation of legislative power, for the reason that the statute, properly construed, clearly set the standards that would authorize the denial of a license.

[b] Held invalid

In General Motors Corp. v Blevins (1956, DC Colo) 144 F Supp 381, the court held invalid various provisions of a Colorado statute attempting to regulate dealings between automobile manufacturers and dealers. Because of the number and relatively diverse nature of the specific holdings made in this case, no citations will be appended to the separate paragraphs in which such holdings are stated.

Thus, sections of the act making it a criminal offense for a manufacturer or distributor to induce or coerce, or attempt to induce or coerce, a motor vehicle dealer to accept delivery of unordered motor vehicles, parts, or accessories, or to induce dealers to order or accept delivery of motor vehicles with special features or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer, were held to create an oppressive and unreasonable burden on interstate commerce, the court pointing out that while the state may protect its people against coercion, inducement is another thing, about which there is nothing illegally wrong, the word "induce" meaning to persuade by legitimate argument or demonstration, and being distinguished from "coerce," which is to compel by threat or other wrongful action. The court said: "Salesmanship is part of the American way of life. The selling of new products requires inducement. If there is no inducement, the public acceptance of the product is minimized. If new products will not sell, there is no incentive to produce them. If there is no incentive to produce, then progress has ended and stagnation has begun."

That part of the act making it a crime for a manufacturer or distributor to refuse to extend to a motor vehicle dealer the privilege of designating which available transportation facility the dealer desired to be used in making delivery of new motor vehicles to him was held invalid, the court stating that it could find no public benefit t[redacted] from anything that ap-

jury.[5] And, as in criminal cases generally,[6] a jury trial, even though guaranteed by a constitutional provision, may be waived by an accused, and it is so provided by statute in some jurisdictions.[7]

In a jury trial of a prosecution for a motor vehicle or traffic offense, the basic rules governing the duty of the court to instruct the jury, including the duty to give or the right to refuse requested instructions, are those which apply in actions and prosecutions generally and which are discussed comprehensively elsewhere in this work.[8] So far as the propriety and accuracy of instructions on the law involved in a prosecution for a motor vehicle or traffic offense is concerned, manifestly a holding that an instruction correctly or incorrectly states the law is a holding as to what the law is or is not, and hence instructions as to such matters, or as to elements of the offense charged, are treated in the earlier parts of this article dealing with those particular matters.

§ 346. Questions of law and fact.

In a prosecution for manslaughter arising out of the unlawful or culpably negligent operation of a motor vehicle, questions whether the defendant was in fact intoxicated at the time when he inflicted the fatal injuries,[9] or whether he was culpably negligent,[10] or whether his unlawful act contributed to, or was the proximate cause of, the death of the decendent,[11] are ordinarily questions of fact for the jury to determine, on the basis of the evidence in the case, under proper instructions from the court. Similarly, in a prosecution for criminal negligence resulting in the death of another, whether the conduct of the defendant was such as to constitute criminal negligence is generally a question for the jury, although under the state of the evidence or the nature of the circumstances in a particular prosecution it may become a question of law for the court.[12] In such prosecutions for homicide, whether there is a sufficient showing of criminal negligence to take the case to the jury is purely a question of law for the court.[13]

In a prosecution for driving a motor vehicle while intoxicated or under the influence of intoxicating liquor, the question whether the defendant was in fact intoxicated or under the influence of intoxicating liquor is one for the jury where there is conflicting evidence in regard thereto,[14] but not where there is no competent evidence of such fact in the record.[15] Where there is evidence but also uncertainty as to whether the defendant or another person

5. In Latimer v Wilson, 103 NJL 159, 134 A 750, wherein the constitutionality of an act prohibiting the operation of a motor vehicle while intoxicated was attacked on the ground that it granted to the court the power to try a criminal offense without a jury, it was held that the objection was not well taken, because the offense was not one which subjected the offender to indictment, and it was only in such cases that the right of trial by jury was guaranteed by the state constitution.

Generally as to the right to a trial by jury for minor offenses and ordinance infractions, see JURY (Rev ed §§ 36, 37).

6. See JURY (Rev ed §§ 48 et seq.).

7. See Hoffman v State, 98 Ohio St 137, [illegible]

[illegible] Am Jur 2d, APPEAL AND ERROR §§ 810 et seq.; TRIAL (1st ed §§ 508 et seq.).

9. State v Budge, 126 Me 223, 137 A 244, 53 ALR 241; Potter v State, 91 Okla Crim 186, 217 P2d 844, 20 ALR2d 1416.

10. Lipsey v State, 154 Fla 32, 16 So 2d 439.

11. State v Budge, 126 Me 223, 137 A 244, 53 ALR 241.

12. People v Williams, 187 Misc 299, 61 NYS2d 252.

13. State v Olsen, 108 Utah 377, 160 P2d 427, 160 ALR 508.

14. Potter v State, 91 Okla Crim 186, 217 P2d 844, 20 ALR2d 1416; Hester v State, 196 Tenn 680, 270 SW2d 321, [illegible] 568.

15. Fielder v State, 150 Neb 80, 33 NW2d 451

was driving the vehicle at the time of the offense charged, a question for the jury to determine is raised.[16]

As a general proposition, what constitutes reckless driving depends upon the circumstances of the particular case[17] and is therefore ordinarily to be determined from the evidence by the trier of fact.[18]

Where the evidence supports the defendant's theory that he drove a borrowed automobile without knowledge that it was equipped with a muffler cutout and under circumstances not showing a want of proper care on his part, it is error not to submit to the jury the issue of mistake of fact, since it would constitute a valid defense in the prosecution for driving without the proper equipment in reference to a cutout.[19]

XVII. AUTOMOBILE DEALERS FRANCHISE ACTS

§ 347. State acts.

A number of states have enacted statutes which make it unlawful for an automobile manufacturer to cancel or refuse to renew the franchise of an automobile dealer without just cause or due regard to the equities of the dealer.[20] The chief objective of such statutes is to promote fair dealing between automobile manufacturers and dealers and to protect the latter because of their economic disadvantage in contracting with manufacturers.[1]

Such statutes have been held to constitute a legitimate exercise of the police power,[2] and the fact that the persons to be benefited by such a regulatory measure are confined to one class of citizens, namely, automobile dealers, does not militate against the same being a legitimate exercise of the police power.[3] Furthermore, such statutes have been held not to be so vague or indefinite as to be unenforceable by reason of the failure to prescribe standards.[4] The

16. Whether one charged with driving an automobile while intoxicated, or his companion, was the driver of the car on the occasion in question, is for the jury to determine where, though there is evidence tending to show that the companion was driving the car, a witness testified that he saw the car drive up and stop and the defendant get out of the driver's seat, and there is testimony that the officer who arrested the defendant said to him that he should have known better than to drive while intoxicated, to which defendant replied: "I am sorry; I have done wrong." State v Coomer, 105 Vt 175, 163 A 585, 94 ALR 1038.

17. §§ 264 et seq., supra.

18. State v Call, 236 NC 333, 72 SE2d 752; Usary v State, 172 Tenn 305, 112 SW2d 7, 114 ALR 1401.
Annotation: 52 ALR2d 1370, § 31.

19. Kellum v State, 110 Tex Crim 260, 7 SW2d 1078.

20. E. L. Bowen & Co. v American Motors Sales Corp. (DC Va) 153 F Supp 42; Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (DC Minn) 142 F Supp 469; Kuhl Motor Co. v Ford Motor Co. 270 Wis 488, 71 NW2d 420, 55 ALR2d 467.

Generally, as to the cancellation of contracts of agency, see 3 Am Jur 2d, AGENCY §§ 46 et seq.

Automobile Dealer Franchises. 66 Yale LJ 1135.

Automobile Manufacturer-Dealer Legislation. 57 Col L Rev 219.

1. Kuhl Motor Co. v Ford Motor Co. 270 Wis 488, 71 NW2d 420, 55 ALR2d 467.

2. Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (DC Minn) 142 F Supp 469; Kuhl Motor Co. v Ford Motor Co. 270 Wis 488, 71 NW2d 420, 55 ALR2d 467.

3. Kuhl Motor Co. v Ford Motor Co., supra.

4. E. L. Bowen & Co. v American Motors Sales Corp. (DC Va) 153 F Supp 42, wherein the court held that the words "unfairly, without due regard to the equities of a dealer and without just provocation," as well as "coerce" and "threaten" as set forth in a Virginia statute, were apparently designed to permit evidence relating to the course of dealings, the nature of the business, the custom of the trade, th[illegible]eading up to a failure to renew th[illegible]e, or a threatened cancellation there[illegible]and other factors to be considered by the court or jury hearing the case.

constitutionality of such statutes has also been upheld as against the contention that they violate the equal protection and due process clauses of the Fourteenth Amendment,[5] or that they are repugnant to the constitutional provisions prohibiting the impairment of contracts.[6]

A contract between an automobile manufacturer and a dealer authorizing cancellation of the franchise by the former without condition except as to notice should be interpreted to permit cancellation, on due notice, upon any ground except one contrary to the provisions of the aforenoted statutes, making it unlawful for a manufacturer to unfairly cancel a dealer's license without provocation and without considering the dealer's equities.[7] In other words, the automobile manufacturer under such a contract can cancel a dealer's franchise only upon a showing of just cause.[8]

§ 348. Federal act.

The Federal Automobile Dealers Franchise Act, which has also been referred to as the "Automobile Dealers' Day in Court Act,"[9] permits an automobile dealer to bring suit against any automobile manufacturer engaged in commerce for damages arising from the failure of the manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise of the dealer.[10] The policy behind the enactment of such act was to establish a balance of power as between manufacturers and dealers in the automobile industry by curtailing the economic advantages of the larger manufacturers and increasing those of the dealer.[11] To effectuate this policy, Congress created this new cause of action permitting a dealer to recover damages from manufacturers for failure to act in good faith in terminating or not renewing the dealer's franchise.[12] The dealer is to be given his day in court on an allegation of bad-faith termination, regardless of the legal import of the words in the contract which he has signed.[13] By statutory definition, "good faith" is restricted to a duty to act in a fair and equitable manner so as to guarantee freedom from coercion, intimidation, or threats.[14] The plain-meaning construction of the definition would give to a dealer a cause of action only if the acts of the manufacturer are not fair and equitable and are coercive.[15] The act also provides that in any such suit the manufacturer shall not be barred from asserting in defense the failure of the dealer to act in good faith.[16]

An automobile manufacturer is not precluded by the Automobile Dealers Franchise Act from including in its contract with dealers requirements that dealers must provide product representation commensurate with the goodwill attached to its tradename and facilitate the proper sale and servicing of its motor vehicles.[17] The manufacturer is entitled to bargain for the protection of its good name, to provide for the trade acceptance of its wares, and to have reasonable expectation that those who are marketing its cars have the facilities for coping with the sales efforts of those who are dealing in the products of competitors.[18] The good-faith requirement of the act does not prevent a manufacturer from terminating a contract with a dealer where the dealer has, over a long period of time, violated a valid and material clause of the contract and has failed to comply with the continuing insistence of the manufacturer upon performance.[19] Nor does the act curtail the manufacturer's right to cancel or not to renew an inefficient or undesirable dealer's franchise, nor does it freeze present channels or methods of automobile distribution.[20]

PART FOUR

LIABILITY FOR INJURIES AND DAMAGE FROM OPERATION OF VEHICLES

XVIII. IN GENERAL

§ 349. Generally.

This part of the article deals with the specific application of the principles of tort and negligence law to civil liability for personal injury, wrongful death, and property damage resulting from the operation of motor and highway vehicles. Matters relating to traffic regulation and control generally, and criminal liability and prosecutions in connection with the violation of particular traffic regulations, are discussed in preceding subdivisions of this article.[1] Other articles in this work deal with the liability of a municipality for the negligent operation of motor vehicles,[2] liabilities for injuries resulting from defective streets and highways,[3] and the liability of railroads for injuries resulting from collisions between motor vehicles and trains.[4]

5. E. L. Bowen & Co. v American Motors Sales Corp., supra.

6. Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (DC Minn) 142 F Supp 469.

7. Kuhl Motor Co. v Ford Motor Co. 270 Wis 488, 71 NW2d 420, 55 ALR2d 467.

8. Willys Motors, Inc. v Northwest Kaiser-Willys, Inc. (DC Minn) 142 F Supp 469.

9. Woodard v General Motors Corp. (CA5 Tex) 298 F2d 121, cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1584.

The Automobile Dealer Franchise Act. 25 Geo Wash L Rev 667.

Automobile Dealer Franchises. 66 Yale LJ 1135.

Automobile Manufacturer-Dealer Legislation. 57 Col L Rev 219.

10. 15 USC § 1222.

Generally, as to the cancellation of contracts of agency, see 3 Am Jur 2d, AGENCY §§ 46 et seq.

11. Woodard v General Motors Corp. (CA5 Tex) 298 F2d 121, cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1584.

12. Woodard v General Motors Corp., supra.

13. Barney Motor Sales v Cal Sales, Inc. (DC Cal) 178 F Supp 172.

14. 15 USC § 1221(e).

15. Woodard v General Motors Corp. (CA5 Tex) 298 F2d 121, cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1584, wherein the court said that it is not strange or shocking that Congress should have restricted the cause of action to cases involving coercion, since one of the principal evils which the act was designed to remove was the exertion of pressures by the dominant automobile manufacturers upon dealers to accept automobiles, parts, accessories, and supplies which they neither needed nor wanted, and which they felt their market would not absorb.

16. 15 USC § 1222.

17. Woodard v General Motors Corp. (CA5 Tex) 298 F2d 121, cert den 369 US 887, 8 L ed 2d 288, 82 S Ct 1161, reh den 370 US 965, 8 L ed 834, 82 S Ct 1584.

18. Woodard v General Motors Corp., supra.

19. Woodard v General Motors Corp., supra, wherein the court said that there was no legislative intent that the prohibited coercion should include a threat of cancellation if there should be a prolonged failure on the part of the dealer to heed the recommendations or yield to the persuasion of the manufacturer that the dealer make a bona fide effort to comply with its undertakings.

20. Staten Island Motors, Inc. v American Motors Sales Corp. (DC NJ) 169 F Supp 378.

1. §§ 168 et seq., 312 et seq., supra.

2. See MUNICIPAL CORPORATIONS, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS (1st ed § 612).

3. See HIGHWAYS, STREETS, AND BRIDGES (1st ed §§ 342 et seq.).

4. See RAILROADS (1st ed §§ 408 et seq.).

two basic issues: the meaning of good faith and the "nature" of the remedy, including the question of damages. In addition, opponents of the bill will probably challenge its constitutionality.

Constitutionality

Typical of the manufacturers' view on the constitutionality of the act are the arguments of the General Counsel of the Ford Motor Company. They [illegible] the traditional sanctity of contracts and prohibition of class legislation [illegible] with attacks on the vagueness of the statutory criteria.

> "We believe that the proposed legislation raises a number of serious constitutional questions . . . These questions include, in addition to those raised by the class aspects of the proposed legislation, the objections that the proposed legislation would:
>
> (1) vitiate the terms of existing contracts, freely arrived at between private parties, and nullify the rights of the parties under them;
>
> (2) restrict the right of private parties to contract freely in the future and to choose with whom they will enter into and continue business relationships;
>
> (3) fail to meet the test of statutory certainty because of the vagueness of its language and the uncertain nature of the duties and obligations that it imposes; and
>
> (4) involve improper delegation of legislative authority by the Congress to the courts because of the generality and ambiguity of its terms and the lack of definiteness of the new statutory duties imposed upon the parties."[271]

Judged by relevant Supreme Court decisions, these arguments are not convincing. The "class aspect" of the act does not present a serious problem of constitutional law since congressional action under the commerce clause is not limited by the equal protection clause.[272] True, federal legislation has to observe the limitations of the due process clause. But a federal statute will withstand attack on this ground absent a showing that it resulted from arbitrary congressional action—an undertaking which in this context seems doomed to failure.[273]

Similarly, the arguments claiming that the requirement of good faith dealing "vitiates the terms of the existing contracts, freely arrived at between private parties . . . nullifies the rights of the parties under them and restricts the right of private parties to contract freely" appear ineffective in light of Supreme Court rulings. The Court has ruled that "federal regulation of future action based upon rights previously acquired by the person regulated is not [illegible]

cases of irreconcilable conflict. 70 STAT. 1126, 15 U.S.C.A. § 1225 (Supp. 1956). For discussion of the problem, see Note, 70 HARV. L. REV. 1239, 1252 (1957).

271. *H.R. Hearings, Dealer Franchises* 283-84.

272. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 401 (1940); [illegible] Iron Works v. United States, 256 U.S. 377, 391-92 (1921).

273. See Currin v. Wallace, 306 U.S. 1, 14 (1939); Steward Machine Co. v. Davis, [illegible] U.S. 548, 584-85 (1937). See also Brown & Conwill, *supra* note 234, at 233.

[illegible] of the Constitution. [illegible] in another opinion, the Court found it "inconceivable" that the exercise of the commerce power "may be hampered or restricted to any extent by contracts previously made between individuals or corporations."[275] The bill also appears to meet the standards of the Fifth Amendment. Regulation designed to protect some public interest can limit the traditional right of freedom of contract. And, over the last two decades, courts almost without exception have accepted the judgment of the legislature on the existence of a public interest.[276] Furthermore, introducing a good faith provision into existing franchises hardly violates the due process requirement, particularly since the dealer is given a cause of action only for those breaches occurring after the act has gone into effect.[277] This conclusion is buttressed by the courts' increasing tendency to read an implied duty of good faith into existing contracts generally.[278] Finally, the challenge of vagueness is equally unconvincing. In distinguishing between coercion, intimidation, or threats of coercion or intimidation on the one hand, and recommendations, enforcement, exposition and persuasion, urging or argument on the other, the statute follows a well-recognized pattern of judicial interpretation.[279]

Good Faith

The good-faith requirement may be challenged as failing to offer a workable means of controlling the dealer-manufacturer relationship. The act's opponents have argued that the franchise has continuously been improved, that the inevitable consequence of the act will be "to encourage the parties to regard themselves as legal antagonists rather than as participants in a business venture" and that the climate of co-operation prevailing until the advent of the new legislation will be replaced by a "litigious atmosphere."[280] Predicting that admini-

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274. Fleming v. Rhodes, 331 U.S. 100, 107 (1947).

275. Louisville & N.R.R. v. Mottley, 219 U.S. 467, 482 (1911).

276. See Daniel v. Family Security Life Ins. Co., 336 U.S. 220 (1949); United States v. Darby, 312 U.S. 100 (1941). Nor is the act's extension of remedy to only the dealer constitutionally objectionable. See NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 46 (1937).

277. See note 266 *supra*.

278. See, *e.g.*, Parev Products Co. v. I. Rokeach & Sons, Inc., 124 F.2d 147 (2d Cir. 1941). *But see* Bushwick-Decatur Motors, Inc. v. Ford Motor Co., 116 F.2d 675 (2d Cir. 1940); Biever Motor Car Co. v. Chrysler Corp., 108 F. Supp. 948 (D. Conn.), *aff'd per curiam*, 199 F. 2d 758 (2d Cir. 1952), *cert. denied*, 345 U.S. 942 (1953). See also Kessler, *Arthur Linton Corbin—A Tribute*, 64 YALE L.J. 164, 167 (1954); Note, 19 CORNELL L.Q. 603 (1934).

279. The pattern is illustrated by Ford Motor Co. v. United States, 335 U.S. 303 (1948). On the constitutionality of the act generally, see Brown & Conwill, *Automobile Manufacturer-Dealer Legislation*, 57 COLUM. L. REV. 219, 228 (1957); Note, 70 HARV. L. REV. 1239, 1250 (1957).

280. *H.R. Hearings, Dealer Franchises* 284 (statement of the Ford Motor Co.). See also the testimony of the general counsel of the Ford Motor Co., *id.* at 376-89. Attempts to insulate the manufacturer from litigation have been introduced into recent franchise agreements. See, *e.g.*, 1957 Ford Sales Agreement §§ 2(g), 25.