MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON COMMERCE AND LABOR

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
MAY 1, 1981

The Senate Committee on Commerce and Labor was called to order by Chairman Thomas R. C. Wilson, at 1:55 p.m., on Friday, May 1, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R. C. Wilson, Chairman
Senator Richard Blakemore, Vice Chairman
Senator Melvin Close
Senator Don Ashworth
Senator William Hernstadt
Senator William Raggio
Senator Clifford McCorkle

GUEST LEGISLATORS PRESENT:

Assemblyman John E. Jeffrey
Assemblyman James J. Banner
Assemblyman Paul V. Prengaman

STAFF MEMBERS PRESENT:

Donald Rhodes, Deputy Research Director, Legislative Counsel Bureau
Betty Steele, Committee Secretary

After the meeting was convened, Chairman Wilson announced the items on today's agenda would be taken up in the order in which they appear.

SENATE BILL NO. 547--Provides that term "employment" for purposes of unemployment compensation does not include services performed for profitable enterprise under certain circumstances.

Senator Clifford McCorkle introduced and explained the bill. He gave some background and cited the case which prompted the bill.

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Mr. Alan Beers, owner of Promotional Services Company, Reno, Nevada explained sales promotion by telephone and gave the background of the different type of groups utilizing the telephone promotional services. He re-stated Senator McCorkle's thesis that "the way to get businesses to help people, it to make it profitable" for them to do so. Those persons who work for telephone sales promotion generally work on commission or are not looking for full time employment. Mr. Beers explained his coupon book industry and how it benefits the businesses who "sponsor" it. Senator McCorkle remarked about the necessity for not penalizing the employer who hires those who may be "low producers".

Senator Wilson asked how Mr. Beers could afford to have a business that could donate 80 percent of it annual net profit. Mr. Beers responded that it depended on how high the net profit actually was.

Extensive discussion, questioning and cross-questioning of Mr. Beers and Senator McCorkle followed regarding the legalities involved in Senate Bill No. 547. Clarification of issues and differentiation of goals in regard to the basic thrust of the bill were brought out by the discussion.

Senator Wilson voiced the policy question of exempting the business man performing services to a non-profit corporation, wherein he deals with his employees on a commission rather than a salary basis and wondered how he can be justifiably exempted if he is providing services by contract to another entity.

Senator Don Ashworth submitted that there was no difference as far as for whom the business was making money; the business itself was still a profit-making business--a profit organization--and therefore not exempt. He said all the business is doing is supplying the service to the non-profit organization.

The difference between the charitable organization whose purpose is cause and not profit and who would hire the senior citizen and handicapped person by commission and a business which happens to be providing services to charitable organizations, was defined and discussed by the proponents of the bill and the committee.

Senator McCorkle stated the problem lay with the definition of a profit-making business. The intent, as he related it to Senate Bill No. 547, would be to expand the definition of an independent contractor who works for commission, only under certain circumstances--even if the person is working for a profitable business.

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With reference to Senate Bill No. 547, Senator Don Ashworth brought out the difference between "donation" and the "split of a commission".

Mr. James Hunting, executive director of the Voluntary Action Center of Washoe County and also speaking in behalf of Manuel Wedge of the Washoe Association for Retarded Citizens, spoke in favor of the bill. Mr. Hunting stated the bill would be very valuable for non-profit organizations; as all of them of which he was aware are searching for ways to raise funds. Most of them do not have the facilities or expertise to raise those funds themselves. If they could join forces with a profit-making organization that could help them, many would use that option.

Mr. Larry McCracken, executive director, and Mr. Jim Gibbs, chief of contributions, both of the department of employment security also testified on Senate Bill No. 547. Mr. McCracken stated he and Mr. Gibbs had met with Senator McCorkle and Mr. Beers and ascertained the primary purpose of the organization was to give an incentive to employers whereby non-profit organizations could be assisted in their fund raising by looking toward the time when local non-profit organizations could become self-supporting.

Mr. Gibbs clarified certain portions of the bill and read some pertinent sections from NRS. He also made recommendations for changes which might cover the situation existing if this bill were to be passed. (See Exhibit C.)

Senator Don Ashworth made it clear to Mr. Beers that, under Senate Bill No. 547, it would be mandatory for him and any similar businessmen, to give 80 percent of the net profit to a given charitable organization, over and above the original percentage. Mr. Beers protested that was not his understanding of the bill.

There was further discussion and attempts at clarification of the bill. With no further testimony, Chairman Wilson closed the hearing on Senate Bill No. 547.

ASSEMBLY BILL NO. 295--Makes various administrative changes to the law governing unemployment compensation.

Mr. McCracken, executive director, employment security department, and speaking for Assemblyman Banner, per Mr. Banner, stated this bill brings about several changes, which were approved by the Employment Security Advisory Council. Mr. McCracken read the proposed changes to the committee. (See Exhibit D.) One was pertinent

to turning over certain types of hearings and Mr. McCracken was responsible for its inclusion. He stated the responsibility would be on the appeal referees instead of him; which was a better situation and not so apt to be a conflict of interest. His recommendation was that the appeals be taken from his purview.

He continued another change was the department's desire for permission to utilize microphotographed records rather than hard copy. Currently they have several warehouses, full of cumbersome records and the storage problem has been accelerating.

There was no further testimony so Chairman Wilson closed the hearing on Assembly Bill No. 295.

ASSEMBLY BILL NO. 313--Restricts payment of certain benefits as unemployment compensation.

Assemblyman James Banner gave a brief introduction and explanation of his sponsorship of this bill. He then deferred to Mr. McCracken for further detailed explanations of the bill.

Mr. McCracken said the bill was a result of the federal government's requirement of a change in the law. The present requirement is when a person files for extended benefits and then moves to another state, two states have to be "triggered on" extended benefits for the person to be able to draw provisions under that statute. Currently, under the extended benefits statute, (13 weeks following the first 26 weeks of eligibility) the first 26 weeks are paid out of state funds. State and federal share the cost 50/50. Nevada is now triggered on and are paying extended benefits. Prior to this bill, if a claimant moved to Nevada from California they could draw extended benefits in Nevada even if California were not triggered on. (See Exhibit E.)

Responding to Senator Don Ashworth's question as to how one state can be "triggered on" and the other one not, Mr. McCracken explained there are currently two ways of triggering additional benefits; one is the national trigger when all states are triggered on by the national unemployment rate, and the other is by and within the state itself with a rise in unemployment.

In answer to Senator Hernstadt's question, Mr. McCracken replied that California was the state to have the most claimants where such action is effective and they are at this time on extended benefits.

There was not further testimony and Chairman Wilson closed the hearing on Assembly Bill No. 313.

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ASSEMBLY BILL NO. 368--Makes various changes in provision regarding compensation, wages and hours of labor.

Mr. Edmond McGoldrick, labor commissioner, introduced Mr. Glenn Taylor, mediation officer, and Ms. Pam Bugge, legal counsel to the labor commission from the attorney general's office.

Mr. McGoldrick gave the committee the basic information on Assembly Bill No. 368. He explained it increases the minimum wage from $2.75 to $3.45 to conform with the prevailing federal wage. There are stipulations restricting minors to 85 percent of the minimum wage. The bill provides, starting January 1, 1983, for $3.60, restrictive to any increase in the federal wage. He commented on other areas of the bill and suggested Mr. Taylor continue the explanations. (See Exhibit F.)

Senator Hernstadt wanted to know how it is determined whether the federal or the state minimum wage law applies to a particular situation. Considerable discussion followed between Mr. Taylor and Senator Wilson, Senator Hernstadt and Senator Don Ashworth, regarding the limits of jurisdiction.

Mr. Claude Evans, executive secretary treasurer, AFL-CIO, stated Assembly Bill No. 368 has the support of that organization.

Chairman Wilson closed the hearing on Assembly Bill No. 368.

ASSEMBLY BILL NO. 407--Provides certain increases in compensation under industrial insurance for permanent partial disability.

Mr. Evans stated this bill had generated more discussion than any other in the industrial commission advisory board meetings. A great deal of work was done on it. Mr. Evans explained the basic inequity the bill was designed to correct, which had to do with the percentage of disability and the amount of compensation paid therefor.

Mr. Joe Nusbaum, chairman, Nevada industrial commission, read his remarks from his prepared testimony, submitted to the committee, in favor of the bill (see Exhibit G).

Mr. Bob Gibb, general legal counsel for NIC, expanded on some of the legal aspects of Assembly Bill No. 407.

Mr. Chuck King, appearing in behalf of Nevada's self-insurers, stated those he represented believe the level of industrial

benefits should be kept current with the pace of inflation. This benefit is tied to the state average wage and increases with increases in the state average wage. He said he had been asked to recommend elimination of the increase to 2/3 of 1 percent in Assembly Bill No. 407.

Senator Hernstadt questioned Mr. King about the location of various items in the bill and these were discussed. Discussion of brackets in regard to compensation benefits was brought up.

Mr. Norman Anthonison, personnel services manager for Summa Corporation, testified in regard to an analysis made on the amounts of money received by an individual in the various states for numerous types of injuries. He said the Nevada individual would receive a partial disability award, at 1/2 of 1 percent, which would rank between 5th and 11th in the United States. Mr. Anthonison went on to present more facts and figures to bolster his opposition to Assembly Bill No. 407.

He indicated that benefits were tied to "current" wages rather than to the wages received at the time of injury but corrected his statement when Senator Hernstadt pointed out his error.

A general discussion followed with Senator Raggio and Senator Wilson questioning Mr. Anthonison regarding various facets of his testimony. Senator Wilson remarked the basic consideration should be to find the reasonable compensation level for the percentage of disability suffered by an individual.

Mr. Tom Stuart, representing the Gibbons Company, an employer oriented organization, gave testimony regarding the statutes as they apply to the injured worker and his rights. Mr. Stuart addressed the section dealing with the increase and regarding permanent partial disability awards.

Senator Blakemore and Senator Hernstadt both asked questions on behalf of the injured and disabled workers. Mr. Stuart responded that, although the amount of worker's compensation is small, the amount paid by employers into the fund also must encompass retraining expenses as well as medical fees.

Mr. Nusbaum returned to the witness table and responded to the questions of the committee. Senator Raggio brought up the questions as to what other legislation might be pending which might increase benefits to workers, including the injured and/or permanently partially disabled worker. Mr. Nusbaum responded that he hoped this bill would not be enacted in its present form.

Mr. Evans responded to Mr. Nusbaum's remarks and concurred with him on some points. He also commented on Mr. Anthonison's remarks regarding increased premiums and stated he did not agree with Mr. Anthonison's conclusions in that regard.

Mr. Nusbaum then discussed his "tips memo", which is attached (see Exhibit H), the subject being amendments 694 and 695 to Senate Bill No. 243 (see Exhibit I). Mr. Anthonison became quite agitated during the discussion regarding said "tips" bill.

Chairman Wilson closed the hearing on Assembly Bill No. 407.

ASSEMBLY BILL NO. 25--Revises provisions regulating persons who manufacture, sell, install, and service mobile homes and similar vehicles.

Assemblyman Paul Prengaman gave the committee a brief summary of the bill, stating it was basically the result of legislative subcommittee interim studies, and he referred to "Summary of the Provisions of A.B. 25" (see Exhibit J). Senator Raggio questioned Assemblyman Prengaman regarding the six-month clause.

Mr. Wayne Tetrault, manufactured housing division, department of commerce, responded to various questions from committee members.

Mr. Don Rhodes, deputy research director, legislative counsel bureau, who prepared the summary presented by Assemblyman Prengaman, presented addditional background material and responded to questions from the committee as well as participating in further discussion.

Senator Wilson indicated the committee would work with the bill drafter, Mr. Gerald Lopez, to work out the amendments informally during a work session. Mr. Rhodes agreed to convey that information to Mr. Lopez. Hearing was closed on Assembly Bill No. 407.

ASSEMBLY BILL NO. 191--Requires insurers to offer coverage for full replacement value of mobile homes.

Assemblyman John Jeffrey introduced and gave a brief explanation of the background of the bill and indicated the need for such coverage for the mobile home owner.

Chairman Wilson closed the hearing on Assembly Bill No. 191.

Chairman Wilson then brought up the subject of the technical amendment to the consumer advocate bill and reorganization of the public service commission.

Chairman Wilson also stated the committee members had decided not to concur on the Assembly amendments to Senate Bill No. 191, the NIC appeals officer legislation.

SENATE BILL NO. 202--Increases fine for violation of certain laws by contractors.

The committee did not concur in the Assembly amendments to Senate Bill No. 202, but agreed to take it to conference committee.

A gentleman came forward from the audience and stated his interest in this bill and was invited by Chairman Wilson to state his views. Mr. Fred Swanson, a subcontractor from Carson City, said he was concerned with the large licensing fee for contractors. He stated that not in all cases does the state contractor's board even investigate to see whether a person is really qualified. He questioned the board's qualifications to judge a contractor's ability even though they do give out the license numbers. Mr. Swanson also pointed out that the State of Nevada does not recognize contractors licensed by the state contractors' board. They still have to be bonded to do work for the state. He also questioned raising the licensing fee and wanted to know what services will be received to justify the raise.

SENATE BILL NO. 547

Senator Don Ashworth and Senator Clifford McCorkle agreed, and the committee concurred, to work out some amendments on this bill.

ASSEMBLY BILL NO. 191

Not enough committee members had heard testimony on this bill, so it was agreed to hold the bill and take no action at this time.

ASSEMBLY BILL NO. 295 (Exhibit K.)

Senator Blakemore moved "Do Pass" Assembly Bill No. 295.

Senator McCorkle seconded the motion.

The motion carried unanimously.

* * * *

ASSEMBLY BILL NO. 368

No action was taken. The bill was held.

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ASSEMBLY BILL NO. 407

No action was taken on the bill.

ASSEMBLY BILL NO. 25

No action was taken on the bill.

ASSEMBLY BILL NO.313 (Exhibit L.)

Senator Blakemore explained this was "conforming legislation" for those out-of-state residents drawing unemployment benefits (extended benefits) from the state they had left.

Senator Blakemore moved "Do Pass" Assembly Bill No. 313.

Senator McCorkle seconded the motion.

The motion carried unanimously.

There was a large group of BDR's which Chairman Wilson instructed the committee secretary to check with Joseph Sevigny, banking commissioner, for "level of importance" to be re-submitted, if necessary, on Monday, May 4.

As there was no further business, the meeting was adjourned by Chairman Wilson at 5:00 p.m.

Respectfully submitted,

Betty Steele, Committee Secretary

APPROVED:

Senator Thomas R. C. Wilson, Chairman

DATE: June 11, 1981

EXHIBITS - MEETING - MAY 1, 1981

Exhibit A is the Meeting Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the statement of effects of S.B. No. 547, submitted by Mr. Gibbs.

Exhibit D is memorandum on changes to Nevada unemployment compensation laws, submitted by Mr. McCracken.

Exhibit E is memorandum on conformity with federal unemployment compensation regulations, submitted by Mr. McCracken.

Exhibit F is the Justification for A.B. 368, submitted by Mr. McGoldrick.

Exhibit G is the statement on A.B. 407, submitted by Mr. Nusbaum.

Exhibit H is the "Tips Memo" referenced by Mr. Nusbaum.

Exhibit I is I-1, Amendment 684 to Senate Bill No. 242.
I-2, Amendment 694 to Senate Bill No. 243.

Exhibit J is the Summary of Provisions of A.B. 25, submitted by Assemblyman Prengaman.

Exhibit K is copy of Assembly Bill No. 295.

Exhibit L is copy of Assembly Bill No. 313.

EXHIBIT A

REVISED

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Commerce and Labor, Room 213.

Day Friday, Date May 1, 1981, Time 1:30 p.m.

S.B. No. 547--Provides that term "employment" for purposes of unemployment compensation does not include services perfomed for profitable enterprise under certain circumstances.

A.B. No. 295--Makes various administrative changes to the law governing unemployment compensation.

A.B. No. 313--Restricts payment of certain benefits as unemployment compensation.

A.B. No. 368--Makes various changes in provisions regarding compensation, wages and hours of labor.

A.B. No. 407--Provides certain increases in compensation under the industrial insurance for permanent partial disability.

A.B. No. 25--Revises provisions regulating persons who manufacture, sell, install and service mobile homes and similar vehicles.

A.B. No. 191--Requires insurers to offer coverage for full replacement value of mobile homes.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON COMMERCE AND LABOR

DATE: Friday, May 1, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
H. Rodham	ESD	4500
J. GIBBS		
Glenn Taylor	Labor Commission	4850
Ed McGoldrick	Labor Commissioner	4850
R. Lucas	ESD	4510
Pat Bugge	Attorney Advisor to Labor Commission	4170
TERRY RANKIN	Atty - Smith + GAMBLE	883-3300
Alan Beers	Promotional Services Co.	329-6083
Heidi Anders	Action Entertainment Newspaper	329-6083
James Hunting	Voluntary Action Center of Washoe	329-4630
Bob Evans	Insurance Division	885 4270
GEORGE TACKETT	NEVADA BELL	789-8496
CHUCK KING	CEN TEL	383-5501
Wayne Pettrone	Manufactured Housing Division	885-4298

SB 547

EXHIBIT C

The effect of SB 547 would be to exclude from covered employment some employees that are under present law considered as being in covered employment. This exclusion would mean that the individuals involved would not be eligible for unemployment insurance benefits and employers would not have to pay contributions on wages paid to those people. The Department does not take a position either in favor of or opposed to the concept of the bill. The Department has no estimate of the impact of the bill because there is no way of knowing how many employers meet the criteria contained in the bill.

The Department does, however, wish to bring up some points for clarification so that if passed it can be administered with uniformity and equity.

1.- On page 1 line 5 it appears that the exclusion is to apply to people in a sales capacity. If so, the fact that the services are to be performed by a salesperson should be indicated. An alternative would be to amend line 6 to read, ". . . commission and do not include the manufacture or delivery of merchandise or services which are sold;". If this were not done the exclusion would be broadened and exclude more people from covered employment. For example, under the current language people that assemble promotional pens and are paid on the basis of a commission for each pen sold would be excluded from "employment" as well as the people actually selling the pens.

2.- Page 1 line 8 indicates that the employer must donate 80 percent of its annual net profit for the exclusion to apply. The word annual is interpreted to mean calendar year but it could be interpreted to mean fiscal year or some other type of year. Even if the bill should be interpreted to mean whatever business year is established by the individual employer, the following problem would occur. Page 1 line 9 indicates that the employer's annual net profit must be at least $2,000. It would not be possible to determine 80% of an employer's net profit until close of the year. The exclusion could not be granted until after the fact and the employer would already have reported those people and paid contributions on them. It is recommended that language be included to permit the exclusion for the calendar year following the year in which the employer experienced a net profit of at least $2,000 and donated 80% of the net profit to an organization as defined in paragraph 2. This would prevent employers from having to do a special statement to conform to a calendar year basis. It would also prevent them the expense of reporting throughout the year only to later request a refund.

3.- Section 4 beginning on page 1 line 21 creates a loophole whereby the original for-profit employer can receive back all of his donation to the non-profit organization. This seems against the intent of the bill. The loophole is created because a non-profit organization receiving the donation may use that donation to establish a for-profit business that donates 80% of its net profit to an organization exempt under subsection 2. There is no requirement however that the for-profit business established show a net profit. All of the earnings of the business could be paid in salary to the owner who could be the owner of the business that initially donated to the non-profit organization. The company could show no net profit yet comply with the statute by donating 80% of nothing to an organization exempt under subsection 2.

4.- The term "net profit" is used on page 1 line 8 and on page 2 line 1. The Department interprets this term to mean net profit after payment of taxes as opposed to net profit before payment of taxes. As it is possible that still other interpretations of the term "net profit" are available, it is reasonable to assume that a difference in interpretation of the term will have to be resolved at some future time. A definition of the term "net profit" would prevent this difference and possible litigation.

5.- As a matter of information the Department feels obligated to make the committee aware of Nevada Revised Statute 612.070 subsection 5. This statute requires that in addition to any other provisions, if service is required to be covered under the Federal Unemployment Tax Act (FUTA) it must be covered under Nevada Unemployment Compensation Law. The effect of this provision is to negate any exclusion of services made under State law when those services are in covered employment under FUTA.

PREPARED BY NEVADA EMPLOYMENT SECURITY DEPARTMENT
APRIL 24, 1981

MEMORANDUM

STATE OF NEVADA
EMPLOYMENT SECURITY DEPARTMENT

TO Senator Thomas R. C. Wilson, Chairman and Members, Committee on Commerce and Labor

DATE May 1, 1981 EXHIBIT D

FROM Larry McCracken, Executive Director

SUBJECT AB 295

This Bill contains eight changes to NRS Chapter 612, Nevada's Unemployment Compensation Laws. They were all drafted at the request of the Nevada Employment Security Council which also recommends their approval. A brief explanation of each change follows:

1. NRS 612.245 presently provides that the Executive Director will hold an administrative hearing for any employer who does not believe that his business should be subject to coverage under the State's Unemployment Compensation Law. This first change, which quotes this section beginning on line 1, page 1, and ending on line 6, page 2, would allow these hearings to be conducted by the appeal referees in the same manner as is now done in the case of appeals on eligibility for unemployment benefits. This change would greatly facilitate this process and result in cost savings. Presently it is necessary when these hearings are held for several people to travel to the hearing site which, more often than not, is in Las Vegas where there is a permanent, full-time staff of appeal referees. There are, on the average, only three or four such hearings each year, but the number is slowly increasing.

2. NRS 612.250 provides for an administrative hearing by the Executive Director for employers who believe that benefits may have been incorrectly or improperly charged to their account. The change in this section found on page 2, beginning on line 7, and ending on line 25, would provide for the appeal referees to hold these hearings instead of the Executive Director. Such hearings are held very infrequently, usually less than one per year, but in those cases where a hearing was necessary, this change would have the same advantages cited above in change 1.

3. NRS 612.260 generally provides for the retention of department records for four years. By adding the language to this section found on page 2, lines 46 through 50, the department would be authorized to destroy original records at any time after they were microphotographed in compliance with appropriate standards. This change would have obvious advantages in reducing storage space needs and increasing record accessibility.

4. This is a very minor technical change requested by the Solicitor General for the U.S. Department of Labor. It is found on page 3, line 6, where the word "in" is deleted and substituted by the word "for." This change is intended to make more clear that the exception for benefits provided in this section would apply to a person who worked for any educational institution, whether or not the work was actually performed in the institution. This change would have no known impact in benefit payout.

5. NRS 612.475 generally provides for employer notice that a claim for unemployment benefits has been filed. The change to this section, which is included on page 3, lines 22 through 47, would merely provide that the next-to-last employer receive this notice, as well as the last employer in those cases where the next-to-last employer could protest the payment of benefits. This is merely a housekeeping change because it is in keeping with current department practice. This section of the law should have been so amended in 1977. On page 4, lines 40 and 41, there is added language that merely cross-references this change to certain notice requirements found in NRS 612.495.

6. NRS 612.480 generally provides that the department may make a redetermination in certain cases where new or additional information becomes available. It has always been department practice not to do this in any case once a formal appeal has been entered. In recent months this has been challenged by attorneys who have insisted that the department can make redeterminations in cases even though an appeal has been heard and a decision rendered by the appeal referee. Although the department has successfully resisted these efforts so far, they represent a very serious threat to the administrative appeals process. The purpose of the new language in this section found on page 4, lines 24 and 25, is to preclude any possibility of that happening.

7. On page 4, line 50, NRS 612.315 and 320 are repealed. The repeal of these two sections would have the effect of abolishing the Rural Manpower Services Advisory Council. This Council has become inactive in recent years and it is believed that any purpose that would be served by its continuation could just as well be assumed by the Employment Security Council.

8. On page 4, line 50, NRS 612.353 is repealed. This section of the law no longer has any applicability because its purpose was to cover the initial transition period for newly covered workers, mainly state and local government employees, which became effective January 1, 1978.

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MEMORANDUM

STATE OF NEVADA
EMPLOYMENT SECURITY DEPARTMENT

EXHIBIT E

TO Senator Thomas R. C. Wilson, Chairman and Members, Committee on Commerce and Labor

DATE May 1, 1981

FROM Larry McCracken, Executive Director

SUBJECT AB 313

New language found in this Bill on page 1, lines 3 through 10, and on page 1, line 21, constitutes a change required in all state unemployment insurance laws to conform to a federal law change found in section 416 of Public Law 96-364.

This change simply provides that when a person files an interstate claim for unemployment benefits, an extended benefit period must be in effect in both the state where the claim is filed and the paying, or liable, state, otherwise eligibility would end after two weeks. As an example, under current law, a person may establish a new claim for extended benefits in Nevada and then leave this state and continue to file a claim in another state whether or not extended benefits are payable in the second state until all benefit eligibility is exhausted. Under this new federal requirement, any eligibility for extended benefits would end two weeks after the claimant left Nevada unless extended benefits were payable both in Nevada and in the state where the claim was filed.

The new administration in Washington has proposed additional changes to the federal-state extended benefits program which will significantly reduce benefit payout. In view of this and the fact that only half of the cost of extended benefits are reimbursable in federal funds, the impact of this change on Nevada's Trust Fund is estimated to be insignificant, although it will reduce payout somewhat.

Finally, this law change should be effective upon passage and approval, but not later than June 1, 1981 according to federal statute, and has been so amended prior to approval in the Assembly.

bam

JUSTIFICATIONS FOR ASSEMBLY BILL 368

NRS 608.018(3)(D)

EXHIBIT F

The overtime provisions do not apply on retail commission salespersons if their regular rate is more than one and one-half the minimum wage, and more than one-half their compensation comes from commissions.

The words regular rate should be changed to read total compensation. As written, regular rate seems to mean base pay without commissions.

NRS 608.115(1)(D)

NRS 608.018 calls for overtime pay to non-exempt employees who work (a) more than 40 hours in any scheduled workweek; (b) more than 8 hours in any workday, unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled workweek.

However, 608.115, in specifying wage information requirements does not require a record of daily hours being maintained in wage information records. Because of this lack, the listing only of total hours for the pay period can mask unpaid overtime and it cannot be detected in many cases.

For example: An employee works a scheduled workweek of Monday through Sunday -

Monday	10 hours
Tuesday	12 hours
Wednesday	8 hours
Thursday	6 hours
Friday	4 hours
	40 hours total for week

This weekly total of hours without daily hours records would appear not to qualify for overtime, whereas 6 hours of overtime would, in fact, be due the employee. There is no method to accurately audit for overtime as called for in 608.018, unless records of daily hours are required.

NRS 608.250

This amendment will correct the discrepancy between federal minimum wage and state minimum wage for employees 18 years or older.

As now exists, the federal minimum wage, which applies to many large Nevada businesses, is $3.35 an hour. The state minimum wage is $2.75.

In the course of our minimum wage audits, we will detect employers paying employees less than the $3.35 amount, but because the difference in the state and federal minimum wage, we are unable to take action on the wage violation.

This amendment will enable employees to obtain stability with a monetary amount as considered reasonable by the federal law.

With 18 percent inflation and the spiraling cost of living, it is necessary to bring the state minimum wage into line with the federal minimum wage figure.

By setting the ceiling at $3.60, an amount that is anticipated to be in line with the Federal Minimum Wage, the labor commissioner would be able to set the minimum wage to any amount up to $3.60.

G.

EXHIBIT G

APPEARANCE ON AB 407

JOE E. NUSBAUM, CHAIRMAN

NEVADA INDUSTRIAL COMMISSION

MAY 1, 1981

One of the major areas of study of the Advisory Board of Review for NIC was Nevada's system of payments for permanent partial disability. The Advisory Board reached the following conclusions, all of which are concurred in by the Nevada Industrial Commission:

1. Nevada's impairment-rehabilitation system with lifetime reopening is a basically sound, efficient system that encourages the return to work of injured workers. The Advisory Board recommended no change in this basic system.

2. Though the total value of Nevada's permanent partial disability awards are generally good, considering the longer duration of the awards (to age 65) as compared with many other states, the Advisory Board did recommend a change in the formula to increase the factor applied to the wage and the percentage of disability from 50% to 66-2/3% in order to give claimants a more adequate level of monthly benefits.

3. In order to remove inconsistencies in the present law regarding lump-sum payments and to recognize the temporary financial hardship that may occur following an injury, the Advisory Board recommended

that statutory provisions regarding lump-sum payments be modified to allow an election of a lump-sum of 25% of the award or up to $10,000 of the present value of the award, whichever is greater.

4. Recognizing that new medical procedures in the treatment of injured workers occur between publications of the American Medical Association's "Guides to the Evaluation of Permanent Impairment". the Advisory Board recommended legislation to permit the Commission and the Commissioner of Insurance to supplement the AMA Guides by adopting joint regulations for such supplemental guides.

AB 407 will implement the recommendations of the Advisory Board of Review and of the Nevada Industrial Commission.

In effect the present statutory formula for computing permanent partial disability monthly payments is to multiply the claimant's monthly wage (but not to exceed the statewide average wage) times his degree of disability times 50%. Let's take a common example of a worker who injures his back and has an operation for a herniated disc. He commonly is awarded 5% for the herniated disc and 5% for loss of range of motion since he can only bend half as much as before. So, if a claimant has a disability of 10% on a body basis and if his wage is $900 per month, he would receive $900 times 10% times 50% or $45 per month for his disability. Under the change in AB 407 he would receive $900 times 10% times 66-2/3% or $60, an increase of $15 per month. Since most disabilities are 10% or less, it is obvious that the monthly payments, even under AB 407, will be modest.

There are eleven states that have permanent partial disability to age 65, for life or for duration of the disability and use two-thirds of wages in their computation formula. Compared to the remaining states the total values of most Nevada permanent partial disability awards appear good because they continue to age 65. If a claimant is 39, the average age of PPD claimants, he will receive payments for 26 years. Many states use a better formula for computing the permanent partial disability monthly payments but terminate payments after a stated period. Thus, a partially disabled young worker in Nevada may be better off in total value of his award than he would be in most states except the 11 that already have the benefits proposed in this bill. Of course, at a higher age, the Nevada worker loses any advantage and is penalized by the 50% factor in Nevada's formula.

If comparisons of statutory formulas with other states gives a mixed result with only 11 states definitely better than Nevada, what are the arguments for improving Nevada's PPD awards?

1. The disability percentage that goes into Nevada's computation is a medically determined impairment under the AMA Guides. In many other states additional factors go into the disability determination which increase the percentage of disability. NIC has evidence that its disability determinations were one-third higher when it used other factors prior to 1973.

A 10% impairment rating in Nevada for a low back injury could easily be a 15% to 20% disability rating in another state because most states take into account in one way or another loss of earning capacity by including other factors such as age, occupation, education, experience and retrainability in their disability percentage. It is nearly impossible to compare total PPD dollar amounts going to any individual injury since states have such different rating and evaluation systems. What can be said is that Nevada's rating system is very restrictive as compared to other states.

2. Under Nevada's system a person is compensated for the loss of body capacity for the remainder of his working life. Even with a two-thirds factor, he is not receiving full compensation for his loss. Also, for many workers who have to take a lower paying job after his disability, today's low monthly payments fall short of his actual wage loss.

3. All other Nevada formulas (temporary and permanent total awards) use a two-thirds factor times wages.

4. Nevada's <u>monthly</u> payments are low and are a source of great dissatisfaction. For example, assuming a $1,000 monthly wage of the injured worker, a 10% impairment (a majority of ratings are 10% or less) produces an award of only $50 per month. For more major impairments in the range of 11% to 25%, the monthly benefit ranges

from $55 to $125 per month. For very serious impairments in the range of 26% to 50% (almost all impairments over 50% become permanent total awards), the range of benefits is from $130 to $250 per month.

The lump-sum provisions of AB 407, when combined with the benefit improvement discussed above, will make about one-half of all permanent partial disability awards subject to lump-sum payments if requested by the claimant. An injured worker can request the total value of his permanent partial disability but not exceeding $10,000. He also has the option of requesting 25% of the value of his award so that if he has a large current value, the amount that he can collect immediately can exceed $10,000.

In summary, for an award with a present value of less than $10,000 the claimant can receive the full amount in lump sum. For awards with present values of $10,000 to $40,000, the claimant can receive $10,000 immediately. For awards of present values of over $40,000, the claimant can receive one-quarter of that amount in immediate payments.

The Advisory Board and the Commission believe these lump-sum provisions maintain the principle of periodic payments for more seriously disabled persons to supplement what might otherwise be reduced earning capacity while recognizing that many injured workers need some larger immediate cash payments to get them through a temporary period of financial hardship.

Because the American Medical Association's Guides to Impairment are updated every five years or so, it is necessary to authorize supplements to the Guides during the intervening periods in order to recognize new forms of impairment that are not reflected in the most recent issue of the AMA's Guides.

NEVADA INDUSTRIAL COMMISSION
OFFICE OF
THE COMMISSIONERS

"Tips"

EXHIBIT H

MEMORANDUM

TO: SENATOR THOMAS R.C. WILSON

FROM: JOE E. NUSBAUM, CHAIRMAN

SUBJECT: AMENDMENTS 694 AND 695 TO SB 243

DATE: APRIL 30, 1981

Amendment 694

Present IRS regulations require the employer to record cash tips reported by the employee in the employee's earning record if the tips amount to $20 per month or more. The employer then reports the tip information to IRS. Therefore, the machinery should already be in place for the collection of the tip information.

There are some problems with the requirement that tips be reported for 3 months in order to qualify tips for NIC purposes.

NIC, in determining the employee's average monthly wage, considers all earnings for the past 3 months. The employee may have worked for more than one employer during that period. It would appear that tips would be considered only if the employee worked for the same employer for at least 3 months.

Another problem; tips are considered only if the "employer has paid the required premiums for 3 months." It is difficult to tie employee's earnings to employer's premium payments. Example: Employers may pay premiums on a monthly, quarterly, semi-annual or annual payment schedule. Employers may be delinquent in their premium payments.

Under these conditions, even if the employee had reported tips for 3 months, he would not be eligible for compensation based on the tips because either (1) the employer's premium payment was not yet due; or, (2) the employer was delinquent in making his payment.

Finally, from a policy standpoint, we wonder if a 3-month rule is necessary for workers' compensation. A person cannot anticipate an industrial accident. Further, even if fraud is planned, the accident must be one serious enough to involve a considerable period of disability to make excessive tip reporting worthwhile. Also, the excessive reporting must be done for sometime to bring the person's average wage up (we use a 3-month average).

We have no basis on which to estimate the total additional premiums that will have to be paid if SB 243 passes. The primary reason, of course, is that we have no way of knowing how individual employers will view tip reporting for workers' compensation purposes. We have the subjective feeling that the income tax effect of reporting will have a much greater weight than workers' compensation. Unfortunately, it probably is true that most workers have little interest in workers' compensation until they have a serious injury.

To the extent that tips are reported for workers' compensation purposes, the following are some of the manual rates (before experience modifications) per $100 of tips reported for classifications that we assume involve the receiving of regular tips.

Classification	Description	Rate per $100 of Payroll
9601	Gaming/Dealers	$1.18
9317	Restaurant/Waiters/Waitresses	3.95
8701	Bar/Bartenders/Cocktail waitresses	2.97
4007	Taxicab drivers	6.57
7903/7904	Barbers & Beauticians	0.70

Amendment 695

The above comments apply to amendment 695, too.

Perhaps it should be pointed out that the increased cost of including tips as wages will be almost exclusively in the compensation paid to claimants for temporary or permanent disability which are based on the wage rate. Medical costs and rehabilitation costs (other than rehabilitation maintenance) are not affected by the wage rate and are now fully paid by employer premiums. However, if the employee pays the same premium rate as the employer, he not only will be paying for the added compensation cost but will be paying a portion of the medical cost and rehabilitation cost now paid by the employer. Over time, this would have the effect of reducing the premium rate compared to what it otherwise would be.

The only way we see to avoid the above effect would be to have a separate premium rate for the employee to cover only the added compensation cost. However, this would be administratively costly considering the premium dollars likely to be involved.

JEN:dn

1981 REGULAR SESSION (61st) EXHIBIT I-1

ASSEMBLY ACTION		SENATE ACTION		Senate AMENDMENT BLANK
Adopted	☐	Adopted	☐	AMENDMENTS to Senate
Lost	☐	Lost	☐	Bill No. 242 ~~Joint Resolution No.~~
Date:		Date:		
Initial:		Initial:		BDR 53-411
Concurred in	☐	Concurred in	☐	Proposed by Committee on Commerce and Labor
Not concurred in	☐	Not concurred in	☐	
Date:		Date:		
Initial:		Initial:		

Amendment Nº 684

Replaces Amendment No. 508

Conflicts with Amendment No. 685

Amend section 1, page 1, by deleting lines 3 through 21, and inserting:

"1. An employee may report the amount he receives as tips to his employer at least once each month, or more frequently as required by the employer. If an employee elects to report his tips, he must report the same amount of tips as he reports to the United States Internal Revenue Service, and in signing the report he must affirm under oath that the contents of the report are true. An employee who reports his tips is not eligible to receive increased benefits based on those tips until he has reported tips and his employer has paid the required contributions for 5 quarters.

2. The employer shall:

(a) Give the employee a receipt for the report; and

(b) Pay the department the contribution for the reported tips at the same rate as he pays on regular wages.

3. The executive director may adopt regulations specifying the forms and procedures for reporting tips, and with the approval of the Nevada industrial commission may provide for a form on which tips may be reported for purposes of both industrial insurance and employment security.

4. The department shall calculate benefits for a former employee on the basis of wages paid by the former employer which include the amount of tips reported for which the former employer has paid the required contributions, after the former employee has become eligible for increased benefits based on tips by having reported them

To: E & E
LCB File
Journal
Engrossment
Bill

Drafted by [illegible] Date 4-16-81

for 5 quarters."

Amend sec. 2, page 2, line 4, by deleting "reported by an employee" and inserting "which an employee has elected to report".

Amend sec. 2, page 2, line 5, by deleting "premiums." and inserting "contributions."

1981 REGULAR SESSION (61st) EXHIBIT I-2

ASSEMBLY ACTION		SENATE ACTION		Senate AMENDMENT BLANK
Adopted	☐	Adopted	☐	AMENDMENTS to Senate
Lost		Lost		Bill No. 243 ~~Joint Resolution No.~~
Date:		Date:		
Initial:		Initial:		BDR 53-412
Concurred in	☐	Concurred in	☐	
Not concurred in		Not concurred in		Proposed by Committee on Commerce and Labor
Date:		Date:		
Initial:		Initial:		

Amendment No. 694

Replaces Amendment No. 509.

Conflicts with Amendment No. 695.

Amend the bill as a whole by adding a new section designated as section 1, to read as follows:

"Section 1. Chapter 616 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. An employee may report the amount he receives as tips to his employer at least once each month, or more frequently as required by the employer. If an employee elects to report his tips, he must report the same amount as he reports to the United States Internal Revenue Service, and in signing the report he must affirm under oath that the contents of the report are true. An employee who reports his tips is not eligible to receive increased compensation based on those tips until he has reported tips and his employer has paid the required premiums for 3 months.

2. The employer shall:

(a) Give the employee a receipt for the report; and

(b) Pay the commission the premium for the reported tips at the same rate as he pays on regular wages.

3. The commission may adopt regulations specifying the forms and procedures for reporting tips, and with the approval of the employment security department may provide for a form on which tips may be reported by an employee for purposes of both industrial insurance and employment security.

To: E & E
LCB File
Journal
Engrossment
Bill

Drafted by [illegible] Date 4-18-81

4. The commission shall calculate compensation for an employee on the basis of wages paid by the employer which include the amount of tips reported for which the employer has paid the required premiums, after the employee has become eligible for increased compensation based on tips by having reported them for 3 months."

Amend the bill as a whole by renumbering sections 1 and 2 as sections 2 and 3.

Amend sec. 2, page 2, by deleting line 4 and inserting:

"the month [; and] , including cash tips reported to him by".

Amend sec. 2, page 2, line 5, after "employee" by inserting:

"who has elected to report his tips and".

EXHIBIT J

SUMMARY OF THE PROVISIONS OF A.B. 25

Assembly bill 25 contains several proposals for legislative action recommended by the legislation commission's subcommittee which studied the problems of owners and renters of mobile homes during the recent legislative interim.

These recommendations relate to (1) the definition of servicemen who work on mobile homes; (2) more stringent standards for mobile home dealer's, manufacturer's, rebuilder's, serviceman's, installer's and salesman's licenses including background information about applicants for such licenses and examinations; (3) a mobile home dealer's recovery fund; (4) a receivership procedure for mobile home dealers in financial difficulty; and (5) prohibiting dealers from paying entrance or exit fees to mobile home park landlords.

Several of the presentations made to the subcommittee addressed changes needed in the licensing requirements for mobile home dealers, manufacturers, rebuilders, servicemen, salesmen and installers; problems caused by insolvent mobile home dealers and problems caused by fradulent practices of a few mobile home dealers. This summary addresses the subcommittee's suggested remedies to deal with those issues and problems and identifies the sections in A.B. 25 where these recommendations are contained.

1. The Definition of Servicemen Who Work on Mobile Homes

Under chapter 489 of NRS certain persons who repair mobile homes must obtain licenses from the manufactured housing division. Section 7 of senate bill 464 (chapter 573, Statutes of Nevada 1977) added the definition of servicemen to chapter 489 of NRS. It said:

> * * * "Serviceman" means a person who installs or repairs skirting, awnings, fixtures or appliances on or in mobile homes or commercial coaches, except:
> 1. Any person employed by a licensed manufacturer; and
> 2. The purchaser of a mobile home or commercial coach.

In 1979, S.B. 173 (chapter 592, Statutes of Nevada 1979) which is codified as NRS 489.145, modified the definition of serviceman. The definition now reads:

> * * * "Serviceman" means a person who owns or is the responsible managing employee of a business which installs or repairs electrical or plumbing fixtures, devices or appliances on or in mobile homes or commercial coaches, except:
> 1. Any person employed by a licensed manufacturer; and
> 2. The owner or purchaser of a mobile home or commercial coach.

According to James I. Barnes, chief deputy attorney general, this change narrowed the definition of serviceman to only those persons who perform electrical or plumbing work in or on a mobile home.

Witnesses appearing before the subcommittee, including the administrator of the manufactured housing division, advised that a preponderance of the problems arising from repairs made to mobile homes relates to repairs to awnings and skirtings and other fixtures. The subcommittee believed NRS 489.145 should be amended to require a person who performs such work to obtain a license from the manufactured housing division. It therefore recommended:

> The definition of serviceman contained in NRS chapter 489 be revised to include those who install or repair awnings, roofing, skirting, or other fixtures, on or in mobile homes or commercial coaches except (1) any person employed by a licensed manufacturer, or (2) the owner or purchaser of a mobile home or commercial coach.

<u>This recommendation is contained on page 4, section 15, of A.B. 25.</u>

2. More Stringent Standards for Mobile Home Dealer's, Manufacturer's, Rebuilder's, Serviceman's, Installer's and Salesman's License

During the subcommittee's hearings it was pointed out on several occasions that most mobile home dealers and other persons licensed under the provisions of chapter 489 of NRS are honest, legitimate businessmen who fill a substantial need in Nevada's communities. The misdeeds of a few, however, cause severe financial hardships to unsuspecting consumers and tend to discredit the mobile home industry. Witnesses appearing before the subcommittee made several suggestions to deal with these problems. The subcommittee thought the following had the most merit.

a. Information About Applicant's Character, Honesty, Integrity, Fitness and Reputation

According to the chief of the consumer fraud unit of the Clark County district attorney's office, many of the mobile home licensees who become involved in unlawful or unscrupuous activities have past histories of such activities in other states. He, and other witnesses, appearing before the interim subcommittee, felt that background investigations need to be improved to screen out persons with histories of poor business practices or criminal records. In this regard, the administrator of the manufactured housing division advised that an investigation is made of potential licensees but that because of federal regulations he cannot obtain records of criminal activity which occurred in other states. This situation was substantiated to the subcommittee by a letter to Barton Jacka, director of the department of motor vehicles from Nick F. Stames, assistant director of the Indentification Division, Federal Bureau of Investigation (FBI), U.S. Department of Justice. (Portions of the letter are contained on page 7 of LCB bulletin 81-9.)

NRS 489.311 requires the division to, "investigate any applicant for a license and complete an investigation report on a form provided by the division." The subcommittee believed that to remedy the situations mentioned above, the scope of the investigation needs to be made specific and

authorization for the division to obtain records of criminal histories from the FBI needs to be placed in the law. The subcommittee therefore recommended:

1) Every applicant who applies for a manufacturer's, dealer's, rebuilder's, serviceman's, installer's, or salesman's license under NRS chapter 489 be required to provide the manufactured housing division with information about the applicant's character, honesty, integrity, fitness and reputation.

2) Upon receipt of an application for a license which is accompanied by the appropriate fee, the division, within 120 days, make a thorough investigation of the information contained in the application. Such investigation must include a review of the applicant's state and national records of criminal history obtained from a repository of Nevada records of criminal history and from the Federal Bureau of Investigation's National Crime Information Center.

3) Each applicant be fingerprinted.

These recommendations are contained, beginning on page 5, in sections 17, 18 and 19 of A.B. 25. As can be seen, the administrator of the manufactured housing division is permitted to issue a provisional license pending receipt of information from the Federal Bureau of Investigation. (See page 7 of the bill.)

b. Examinations for Dealer's, Installer's, Salesman's and Serviceman's License

A review of Title 54 of NRS "Professions, Occupations and Businesses" reveals that most occupations require licensees to have specified background, training or education and that applicants must successfully pass an examination. For example, in providing for the examination of real estate salesmen, subsection 1 of NRS 645.460 says:

> * * * In addition to the proof of honesty, truthfulness and good reputation required of any applicant for a real estate license, the division shall ascertain by written examination that the applicant has an appropriate knowledge and understanding of those subjects which commonly and customariy apply to the real estate business.

The manufactured housing division, under NRS 489.351, is permitted to require oral or written examinations of the applicants for an installer's, salesman's, or serviceman's license. Dealers are not mentioned. The administrator of the division advised the interim subcommittee that no examinations are required for any person licensed under chapter 489 of NRS.

The subcommittee believed that considering the current cost of a mobile home, which can exceed $50,000 for a doublewide and averages approximately $35,000, that persons who sell or repair mobile homes should be able to demonstrate their knowledge and technical skills to perform their occupation.

California has determined this need. California West's Annotated Vehicle Code section 11704.5 requires dealers and salesmen to take either a written or oral examination covering topics such as, "subjects relating to mobile homes, laws relating to contracts for the sale of vehicles, laws covering truth in lending and division and warranty requirements."

The subcommittee believed licensees under chapter 489 of NRS should be tested. It therefore recommended:

> NRS 489.351 be amended to require that the manufactured housing division require a written or oral examination of each applicant for a dealer's, or responsible management employee's, installer's, salesman's or serviceman's license. Current licensees should be required to pass the appropriate examination as a condition of license renewal; but no licensee should be required to complete successfully more than one examination for a specific license.

This recommendation is contained on pages 8 and 9 in sections 20 and 22 of the bill. The bill does not contain reference to "responsible management employee."

3. Mobile Home Dealers' Recovery Fund

Several persons, including the administrator of the manufactured housing division, told the interim subcommittee that additional remedies need to be added to the law to ameliorate the difficulties of persons who are financially injured by mobile home dealers.

Under existing law [see paragraph (d) of subsection 1 of NRS 489.321] licensed mobile home manufacturers, dealers and rebuilders must furnish surety bonds of $10,000 or other specified security. The bond must be conditioned on the conduct of business by the applicant without fraud or fraudulent misrepresentation and without violation of any provision of chapter 489 of NRS, including fraud or violation by salesmen of dealers and rebuilders acting within the scope of employment, and must provide that any person injured by an action of the dealer, rebuilder, manufacturer or salesman may bring an action on the bond.

The subcommittee felt, with current cost of mobile homes, that a $10,000 bond is insufficient. Additional safeguards suggested to the subcommittee were increasing the bond level or providing for a mobile home recovery fund. Because of the similarity between the sale of conventional homes and mobile homes, the subcommittee looked to the statutory provisions relating to real estate brokers and salesmen for the answer. NRS 645.841 to 645.8494, inclusive, contain provisions for a real estate education, research and recovery fund. The law specifies the creation, use, balances and procedures for recovery from the fund.

The subcommittee believed similar remedies should be available for the purchasers of mobile homes and therefore recommended:

> A fund for recovery be created as a special revenue fund for the purpose of satisfying claims against persons licensed under chapter 489 of NRS.

Language relating to this recommendaton is contained on pages 1, 2, 3 and 9 of A.B. 25. The bill addresses, among other things, revenue from fees for the fund (see section 2), recovery from the fund, maximum amount of judgments (see section 4), multiple claims (see section 6), payment when the money deposited in the fund is insufficient (see section 6), and various duties of the administrator of the manufactured housing division. Section 23 of the bill appropriates, from the manufactured housing fund created by NRS 489.491 to the fund for education and recovery created in section 2 of A.B. 25, the sum of $130,000.

4

4. Receivership Procedure for Mobile Home Dealers in Financial Difficulty

According to the administrator of the manufactured housing division, over the last 3 years seven mobile home dealers have become financially insolvent or delinquent causing approximately $1 million in financial injury to mobile home purchasers. These losses have come from lost cash deposits for mobile home purchases and from lost funds relating to prepaid service contracts.

The administrator of the manufactured housing division believes a receivership procedure is needed in the mobile home law to cover delinquency proceedings for mobile home dealers and suggested several grounds for conservation or rehabilitation to the subcommittee. (They are contained on page 10 of LCB bulletin 81-9.)

Based on several presentations, the subcommittee concurred with the administrator's contention that a receivership procedure is needed and therefore recommended:

> A receivership procedure be established in the law for insolvent mobile home dealers.

This recommendation is contained on page 4, sections 13 and 14, of A.B. 25. As can be seen, the administrator of the manufactured housing division is given authority to take possession of all the property, business and assets of any dealer whose assets or capital is impaired or whose affairs

are in an unsafe condition. Duties are imposed on the administrator, and the attorney general's office. A dealer is permitted, within 60 days from the date when the administrator takes possession of his property, to make good any deficit which may exist or to remedy the unsafe condition of his affairs.

5. Dealers Prohibited from Paying Entrance or Exit Fees to Mobile Home Park Landlords

The 1979 legislature, through assembly bill 784 (chapter 692, Statutes of Nevada 1979) made it illegal for mobile home park landlords to charge or receive entrance or exit fees to tenants assuming or leaving occupancy of a mobile home lot. [See paragraph (a) of subsection 1 of NRS 118.270.] Under NRS 118.340, any landlord who charges such fees is subject to misdemeanor penalties for the first offense, gross misdemeanor penalties for the second offense, and imprisonment for 1-6 years or a fine or not more than $5,000 or both for a third of subsequent offense. In passing the entrance and exit fee provisions, the legislature attempted to dissuade unscupulous mobile home landlords from taking advantage of the limited number of mobile home spaces, in certain of Nevada's communities, for their personal gain.

According to the information given to the interim subcommittee by representatives of the Nevada Manufactured Housing Association, dealers, not tenants, usually pay the entrance or exit fees if such transactions occur. Moreover, because of mobile home dealers' bookkeeping requirements and practices, the payment of an entrance or exit fee could be isolated and identified in their records. Such may not be the case with mobile home park landlords' records.

The subcommittee was advised that if mobile home dealers were made criminally liable for paying entrance or exit fees, the practice would stop or be greatly reduced. The subcommittee therefore recommended:

It be unlawful for a mobile home dealer, or his authorized agent, to pay the entrance or exit fees specified in paragraph (a) of subsection 2 of NRS 118.270.

This recommendation is contained on page 8, section 20, of the bill. As can be seen, the bill drafter believes the recommendation can be carried out by amending NRS 118.270 to expand the prohibition against the landlord to include entrance or exit fees received not just from a tenant but from anyone. By doing this, the dealer or anyone paying the fee can be charged as an accessory to the landlord's crime.

Research Division
February 1981

EXHIBIT K

A. B. 295

ASSEMBLY BILL NO. 295—ASSEMBLYMEN ROBINSON AND BANNER

MARCH 5, 1981

Referred to Committee on Labor and Management

SUMMARY—Makes various administrative changes to the law governing unemployment compensation. (BDR 53-166)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to unemployment compensation; revising the procedure for appealing certain determinations; authorizing the destruction of certain records after they are microphotographed; abolishing the rural manpower services advisory council; repealing an obsolete provision; and providing other matters properly relating thereto.

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

SECTION 1. NRS 612.245 is hereby amended to read as follows:

612.245 1. The executive director may, upon his own motion or upon application of an employing unit, and after notice and opportunity for [hearing, make findings of fact and, on the basis thereof,] *the employing unit to submit facts, make* determinations with respect to whether an employing unit constitutes an employer and whether services performed for or in connection with the business of an employing unit constitute employment for [such] *that* employing unit.

2. Appeal from any such determination may be taken [to the district court in and for Carson City or to the district court of the county wherein the central office of the employment security department may be located, within 15 days after the mailing or delivery of notice of such findings and determination to the employing unit.] *in the manner prescribed by this chapter for the appeal of determinations respecting benefits.*

3. [If supported by substantial evidence and in the absence of fraud, a determination of the executive director, in the absence of an appeal, shall be conclusive as to all matters except as to errors of law, except as hereinafter provided, and, together with the record, shall be admissible in any subsequent judicial proceeding involving liability for contributions.

4.] A determination of the executive director which has not been

appealed, or of *the appeal tribunal, the board of review or* the district court on appeal, together with the record, may be introduced in any proceeding involving a claim for benefits, and [shall be] *is* conclusive as to the facts and the determination, unless the claimant [shall introduce] *introduces* substantial evidence controverting a material fact so found.

SEC. 2. NRS 612.250 is hereby amended to read as follows:

612.250 1. The executive director, [may,] upon his own motion or upon application of an employer made within 15 days after notice of benefits charged to his experience rating record or of the establishment of his contribution rate, [hold a hearing and make findings of fact and, on the basis thereof,] *may, after notice and opportunity for the employer to submit facts, make* determinations with respect to all matters pertinent to the establishment of a rate of contribution based upon experience; but no employer [shall] *may* be permitted to contest under this section the chargeability of benefits based on a determination made pursuant to NRS 612.450 to 612.530, inclusive, except for the reason that services included in the determination were not performed for the employer or that there is error in the amount of wages included therein.

2. Appeal from any such determination may be taken [to the district court in and for Carson City, or to the district court of the county wherein the central office of the employment security department may be located, within the same time and subject to the same conditions and effect as provided in NRS 612.245.] *in the manner prescribed by this chapter for the appeal of determinations respecting benefits.*

SEC. 3. NRS 612.260 is hereby amended to read as follows:

612.260 1. Each employing unit shall keep true and accurate work records, containing such information as the executive director may prescribe. Such records [shall] *must* be open to inspection and [shall be subject to being] *may be* copied by the executive director or his authorized representatives at any reasonable time and as often as may be necessary.

2. The executive director, the board of review, or any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which he or the board of review deems necessary for the effective administration of this chapter.

3. [The] *Except as limited by this subsection, the* executive director may [destroy] *:*

(a) Destroy any letter of the unemployment compensation service or employment service and any form, benefit determination or redetermination, ruling, employer's status or contribution report, wage slip report, claim record, wage list or any auxiliary computer file related thereto at the expiration of 4 years after [such] *the* record was originated or filed with [such] *the* service; [but this] *or*

(b) Destroy such records at any time after having microphotographed them in the manner and on film or paper that complies with the minimum standards of quality approved for such photographic records by the American National Standards Institute. The microphotographed records must be retained for not less than 4 years.

This subsection [shall] *does* not apply to records pertaining to grants, accounts or expenditures for administration, or to the records of the unemployment compensation administration fund.

SEC. 4. NRS 612.434 is hereby amended to read as follows:

612.434 1. Benefits based on service in an instructional, research or principal administrative capacity [in] *for* any educational institution [shall] *must* be denied to any person for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the person's contract, if that person performs the service in the first of such academic years or terms and there is a contract or reasonable assurance that he will be provided employment in any such capacity for an educational institution in the next academic year or term.

2. Benefits based on service in any other capacity for any educational institution, except an institution of higher education, [shall] *must* be denied to any person for any week of unemployment which begins during the period between two successive academic years or terms if the person performed the service in the first of such academic years or terms and there is reasonable assurance that the person will be provided employment to perform [such] *that* service in the next academic year or term.

SEC. 5. NRS 612.475 is hereby amended to read as follows:

612.475 1. The [most recent] *last* employing unit of any unemployed claimant [shall] *and the next to last employing unit of an unemployed claimant who has not earned remuneration with his last covered employer equal to or exceeding his weekly benefit amount in each of 16 weeks, must* be notified of the [first] claim filed by the unemployed claimant following his separation.

2. The notice of [claim filing shall] *the filing of a claim must* contain the claimant's name and social security account number and may contain the reason for separation *from the employing unit affected* as given by the claimant, the date of separation, and such other information as is deemed proper.

3. Upon receipt of a notice of [claim filing] *the filing of a claim,* the employing unit [by whom the claimant was last employed] shall within 10 days of the date of mailing of the notice [of claim filing] submit to the employment security department any facts which may affect the [individual's] *claimant's* rights to benefits.

4. Any employing unit that receives [such] a notice of [claim filing shall be permitted to] *the filing of a claim may* protest payment of benefits to the unemployed claimant, [provided such] *if the* protest is filed within 10 days [of] *after* the notice [of claim filing.] *is filed.*

5. Any employing unit which has filed a protest in accordance with the provisions of this section [shall] *must* be notified in writing of the determination arrived at by the executive director or his deputy and [such notice shall] *the notice must* contain a statement setting forth the right of appeal.

SEC. 6. NRS 612.480 is hereby amended to read as follows:

612.480 1. *Except as provided in subsection 3:*

(a) The executive director or a representative [duly] authorized to

act in his behalf may at any time within 1 year from the date of an initial determination that [an individual] *a person* is an insured worker reopen [any] *the* determination on the grounds of nondisclosure or misrepresentation of material fact, error, mistake or additional information, and may make a redetermination denying all or part of any benefits previously allowed or allowing all or part of any benefits previously denied.

[2.] *(b)* At any time within 1 year from the end of any week with respect to which a determination allowing or denying benefits has been made, the executive director or a representative [duly] authorized to act in his behalf may reopen [any such] *the* determination on the grounds of error, mistake or additional information and make a redetermination denying all or part of any benefits previously allowed or allowing all or part of any benefits previously denied.

[3.] *(c)* At any time within 2 years from the end of any week with respect to which a determination allowing or denying benefits has been made, the executive director or a representative [duly] authorized to act in his behalf may reopen [any such] *the* determination on the grounds of nondisclosure or misrepresentation of a material fact and make a redetermination denying all or part of any benefits previously allowed or allowing all or part of any benefits previously denied.

[4.] *2.* Notice of any redetermination [shall] *must* be promptly furnished to the claimant and any other [person] *party* entitled to receive the original determination.

3. No determination described in subsection 1 may be reopened if an appeal tribunal has rendered a decision respecting that determination.

SEC. 7. NRS 612.495 is hereby amended to read as follows:

612.495 1. Any person entitled to a notice of determination or redetermination may file an appeal from the determination with an appeal tribunal, and the executive director shall be a party respondent thereto. The appeal must be filed within 10 days of the date of mailing or personal service of the notice of determination or redetermination. The 10-day period may be extended for good cause shown. Any employing unit whose rights may be adversely affected may be permitted by the appeal tribunal to intervene as a party respondent to the appeal.

2. An appeal is deemed to be filed on the date it is delivered to the employment security department, or, if it is mailed, on the postmarked date appearing on the envelope in which it was mailed, if postage is prepaid and the envelope is properly addressed to the office of the employment security department that mailed notice of the person's claim for benefits to [his last employer pursuant to] *each employer entitled to notice under* NRS 612.475.

3. The 10-day period provided for in this section [shall] *must* be computed by excluding the day the determination was mailed or personally served, and including the last day of the 10-day period, unless the last day is a Saturday, Sunday or holiday, in which case that day [shall] *must* also be excluded.

4. The appeal tribunal may permit the withdrawal of the appeal by the appellant at the appellant's request if there is no coercion or fraud involved in the withdrawal.

SEC. 8. NRS 612.315, 612.320 and 612.353 are hereby repealed.

EXHIBIT L

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A. B. 313

ASSEMBLY BILL NO. 313—ASSEMBLYMEN BANNER AND ROBINSON

MARCH 11, 1981

Referred to Committee on Labor and Management

SUMMARY—Restricts payment of certain benefits as unemployment compensation. (BDR 53-1299)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to unemployment compensation; restricting the payment of extended benefits; and providing other matters properly relating thereto.

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

SECTION 1. Chapter 612 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Except as provided in subsection 2, a person is not eligible for extended benefits for any week in which:

(a) Extended benefits are payable pursuant to a claim filed under the interstate benefit payment plan; and

(b) An extended benefit period is not in effect.

2. The provisions of subsection 1 do not apply to the first 2 weeks for which extended benefits are payable pursuant to a claim filed under the interstate benefit payment plan.

SEC. 2. NRS 612.3774 is hereby amended to read as follows:

612.3774 [An individual] *A person* is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the executive director finds that with respect to such week:

1. He is an "exhaustee" as defined in subsection 11 of NRS 612.377; and

2. He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to [individuals] *persons* claiming extended benefits. [, including not being subject to a disqualification for the receipt of benefits.]

3. He is not subject to disqualification for the receipt of any benefits.

SEC. 3. This act shall become effective upon passage and approval.