MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON HUMAN RESOURCES AND FACILITIES

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 24, 1981

The Senate Committee on Human Resources and Facilities was called to order by Chairman Joe Neal at 9:03 a.m., Friday, April 24, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Joe Neal, Chairman
Senator James N. Kosinski, Vice Chairman
Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator Virgil M. Getto
Senator James H. Bilbray

STAFF MEMBERS PRESENT:

Connie S. Richards, Committee Secretary

SENATE BILL NUMBER 315 (EXHIBIT C)

Mr. Marvyn Moss, Administrative Assistant, Curriculum, Washoe County School District spoke in support of Senate Bill No. 315. He provided the committee with figures relative to the cost of the driver education and training program in Washoe County School District (see Exhibit D).

ASSEMBLY BILL NUMBER 53

Mr. Joe Midmore, Nevada State Board of Pharmacy spoke in support of Assembly Bill No. 53. He told the committee that some doctors are not registered to administer controlled substances and therefore may not posess those controlled substances in their offices. Some doctors do not wish to have the controlled substances in the office at all (e.g. an anesthesiologist who may use such substances in the hospital but have no use for them in the office). Some doctors have had their licenses to prescribe controlled substances revoked. Such physicians are not registered

to posess or prescribe those controlled substances. He said it is ridiculous to have manufacturers of drugs give away free samples when they have not been requested. In instances in which drugs have been requested the appropriate records are kept of the drug received, the amount received, and the doctor receiving such drugs.

Mr. Richard C. Mehornay, Government Affairs Area Manager, Merrell Dow Pharmeceuticals also representing the Pharmeceuticals Manufacturers Associaiton spoke in opposition to the inclusion of lines 31-34, page 4 of the First Reprint in the current version of the bill. He said they feel it is overreaching necessary controls. Sample portions of drugs that are given to doctors are drugs that have valid accepted medical use. There are no samples of Schedule I substances (illicit drugs) given away, nor does any legitimate manufacturer make those substances. Schedule II substances are tightly controlled and require an original prescription each time; there are no samples of Schedule II substances. For anyone to obtain drugs from Schedule II, he or she must first fill out a special drug enforcement administration form both in ordering as well as transferring, even between the wholesaler and the retailer. (See Exhibit E).

Senator Kosinski asked Mr. Mehornay whether he would have any objection to limiting the bill to Schedule II substances.

Mr. Mehornay said he would have no objection.

Mr. Rick Pugh, Nevada State Medical Association spoke in support of Assembly Bill No. 53, but opposed the amendment suggested by the State Pharmacy Board. (See Exhibit F).

Mr. Ed Johnson, Southwest Vice President, National Congress of American Indians representing the Indian people of Nevada, Arizona, and Utah requested a bill to provide exemption from NRS 392.010 for American Indian Reservations that extend into more than one county. (See Exhibit G). The exemption would allow school children living within the reservation to attend school in a different county than the one in which they reside.

Senator Blakemore moved to draft the request. (S.B. 611)

Senator Getto seconded the motion.

The motion carried unanimously.

Senator Bilbray requested a bill draft request to amend NRS 432A.071 and 432A.073 (see Exhibit H) (S.B. 651)

Senator Faiss moved to draft the request.

Senator Blakemore seconded the motion.

The motion carried unanimously.

SENATE BILL NUMBER 423

Mr. Joe Midmore presented suggested amendments to the committee for Senate Bill No. 423. (See Exhibit I).

The Chairman said decision on Senate Bill No. 423 would be postponed until Thursday, April 30, 1981 when a work session will be held on the bill.

SENATE BILL NUMBER 315 (EXHIBIT C)

Senator Kosinski moved to "Amend and Do Pass" Senate Bill No. 315 by setting a cap on the amount of the lab fee for the driver training and education program at $80.

Senator Bilbray seconed the motion.

The motion carried. (Senator Faiss was not present for the vote.)

ASSEMBLY BILL NUMBER 148 (EXHIBIT J)

The Chairman presented a copy of the legal opinion on the constitutionality of Assembly Bill No. 148 as provided by Mr. Frank Daykin, Legislative Counsel. (See Exhibit K).

Senator Blakemore moved to "Do Pass" Assembly Bill No. 148.

Senator Getto seconded the motion.

The motion carried. (Senator Faiss was not present for the vote.)

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES
APRIL 24, 1981

SENATE BILL NUMBER 503

Senator Kosinski reviewed the amendment for Senate Bill No. 503 with the committee. The members of the committee agreed that the amendment was fine as written and should be sent to the Senate Floor.

SENATE BILL NUMBER 406 (EXHIBIT L)

The committee reviewed the amendment to Senate Bill No. 406.

Senator Blakemore moved to "Amend and Do Pass" Senate Bill No. 406.

Senator Kosinski seconded the motion.

The motion carried. (Senator Faiss was not present for the vote.)

There being no further business, the meeting adjourned at 11:55 a.m.

Respectfully submitted:

Connie S. Richards, Committee Secretary

APPROVED BY:

Senator Joe Neal, Chairman

DATE: April 24 1981

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Human Resources and Facilities, Room 323.

Day Friday, Date April 24, Time 9:00 a.m.

S. B. No. 315--Relaxes restrictions on school districts in financing of automobile driver education programs.

ATTENDANCE ROSTER FO[illegible] COM[illegible]TEE MEETINGS

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

DATE: April 24, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
John Hawkins	Nev. School Boards Assoc.	
Marvin Moss	Washoe County School Dist.	
Marshall Darnell	Clark County School Dist	736-5481
[illegible]	[illegible]	
Richard C. Mehorney	Merrell-Dow Pharmaceuticals	(801) 543-3x00 x4554
		1211

EXHIBIT C

S. B. 315

SENATE BILL NO. 315—SENATOR BILBRAY

FEBRUARY 26, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Relaxes restrictions on school districts in financing of automobile driver education programs. (BDR 34-1027)

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 public schools; revising provisions on automobile driver education programs; removing certain restrictions on school districts with respect to the financing of such programs; 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 389.085 is hereby amended to read as follows:

389.085 1. The automobile driver education program is hereby established for the purpose of assisting school districts in this state which establish and maintain automobile driver education classes. Money for the automobile driver education program [shall] *must* be provided by direct legislative appropriation.

2. The state board of education may direct the superintendent of public instruction to make semiannual apportionments, payable on or before February 1 and July 1 of each year, to the several school districts. The semiannual apportionment made on or before February 1 [shall] *must* be made on the basis of $15 times the number of estimated pupil completions in the district during the current school year, which [shall] *must* be estimated by the superintendent. The semiannual apportionment made on or before July 1 [shall] *must* be made on the basis of $35 times the actual number of pupil completions in the district during the current year, less any amount previously apportioned to the district for estimated pupil completions during the current school year.

3. If the money available for the automobile driver education program is not sufficient to make full current school year apportionments, so determined under subsection 2, apportionment payments to the various school districts [shall] *must* be prorated so that each school district is apportioned the same amount per pupil completion, such amount to be derived by dividing the total money available by the total number of completions during the current school year.

[4. Money received by school districts for the automobile driver education program must not be expended for the purchase or repair of motor vehicles or the purchase or repair of automobile driver education training equipment.]

SEC. 2. NRS 389.100 is hereby amended to read as follows:

389.100 1. The legislature finds as facts:

(a) That the successful completion of an approved automobile driver education course by a pupil offers a direct financial benefit to his parents or other responsible adult through the reduction of insurance premiums.

(b) That the imposition of a *laboratory* fee [, not in excess of the actual cost of providing the special equipment required,] as a prerequisite to an elective course in driver education [,] does not violate the requirements of article 11 of the constitution of the State of Nevada.

2. The board of trustees of any school district may establish a laboratory fee to be charged each pupil enrolling for an automobile driver education course. [, which must not exceed the difference per pupil between the actual cost of providing the course and the amount anticipated under NRS 389.085, or $35, whichever is less.]

CURRICULUM DIVISION

M E M O R A N D U M

EXHIBIT D

April 6, 1981

TO: Richard Wright, Director of Instructional Services

FR: Marvin Moss, Administrative Assistant, Curriculum

RE: Cost of Driver Training Program 1980-81 School Year

The major reason for the high cost of driver education and training program is directly related to the pupil-teacher ratio necessary to carry out all phases of the program, which include:

1. Classroom time
2. Twelve (12) hours in a simulator
3. Three (3) hours behind the wheel training

We expect a teacher to handle between 125 and 155 pupils per day, depending on the nature of the class. Driver training teachers, in Washoe County, average 63 to 70 pupils per day. The teacher cost for driver training is approximately twice that of the regular classroom.

In addition to the teacher cost, there is the added cost for an automobile, automobile maintenance, fuel, and equipping the car with special braking devices. It has become increasingly difficult to have the dealers supply the automobiles free of charge for the program. This year the District has had to provide three cars for inclusion in the program.

Listed below is the estimated cost of driver training for the 1980-81 school year.

11.5 teachers @ $16,500		=	$189,750
fringe	20%	=	37,950
			$227,700

Cost of car, fuel, insurance, and maintenance

1,536 students @ $79.00	=	$121,344
Reimbursement from the State		
1,536 students @ $35.00	=	53,760-
Unreimbursed Cost		$ 67,584

EXHIBIT D

Teacher Cost	$227,700
Car Costs (unreimbursed)	67,584
	$295,284

There has been no charge included here for textbooks, simulators or classroom maintenance.

At the start of this memo there was an indication that the classroom teachers, who were teaching driver training, handle about 55 percent fewer students than the other classroom teachers. This might be translated into dollars in this way:

A teacher who is paid $20,000, including fringe benefits, and is teaching a regular daily class load of 140 students, has a cost of $142.86 per student.

$20,000 salary ÷ 140 students = $142.86 per student

A driver training teacher receiving the same $20,000 salary handles 65 students per teaching day. The cost for each driver training student is $307.69.

$20,000 salary ÷ 65 students = $307.69 per student

MM:ce

cc: Rod Smith

EXHIBIT D

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

MARCH 12, 1981

TESTIFYING FOR SENATE BILL 315
Ralph Cadwallader, Associate Superintendent
Division of Secondary Education
Clark County School District

ADDENDUM REPORT

Equipment purchases made by the Clark County School District since August 1975 have included classroom driver simulators, driver education vehicles and special equipment, such as right side vehicle brakes, visible signs for vehicle identifications, and special education support equipment.

In testimony presented to the Senate Committee on Human Resources and Facilities delivered on March 6, 1981, it was reported that the combined costs for such equipment exceeded $300,000. By dividing this sum by the students who completed the total driver education program from 1976 to the first half of the 1980-81 school year, it was reported that a minimum figure of $28.36 was being expended per pupil on instructional equipment needs. A major percentage (67.3) of the monies were not reflected in the financial statement because these equipment items were purchased from general or special fund categories.

It has been the interpretation that NRS 389.100 1 (b) would allow the Clark County School District to use the student laboratory fee (only) to secure the special equipment required to adequately conduct this instructional program. The thirty-five (35) dollar fee imposed has then allowed for acquisition of special need items.

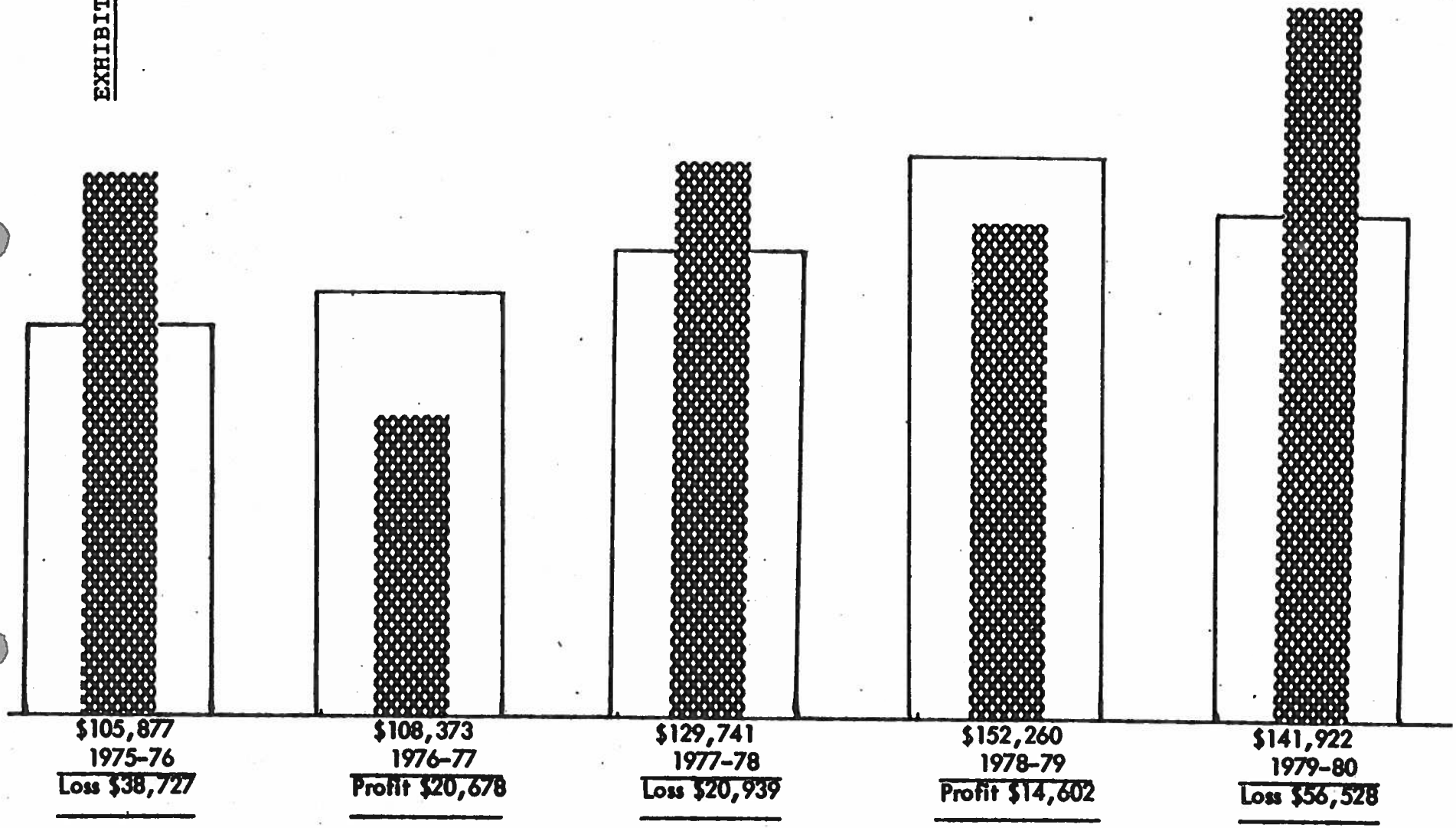
SUMMARY

The line item budget presented to this committee does not reflect any general fund expenditures for equipment. The average equipment cost for each student completion considered encumbrances from both the general school district fund and the driver education fund.

Right side brakes, special education student driving controls, visible signs, and support equipment are examples of expenditures made as a result of the understanding the District has enjoyed with respect to NRS 389.100.

CLARK COUNTY SCHOOL DISTRICT
DRIVER EDUCATION PROGRAM
RECEIPT-EXPENDITURE ANALYSIS
1975-1980

EXHIBIT D



DRIVER EDUCATION PROGRAM
UNIT COST ANALYSIS

EXHIBIT D

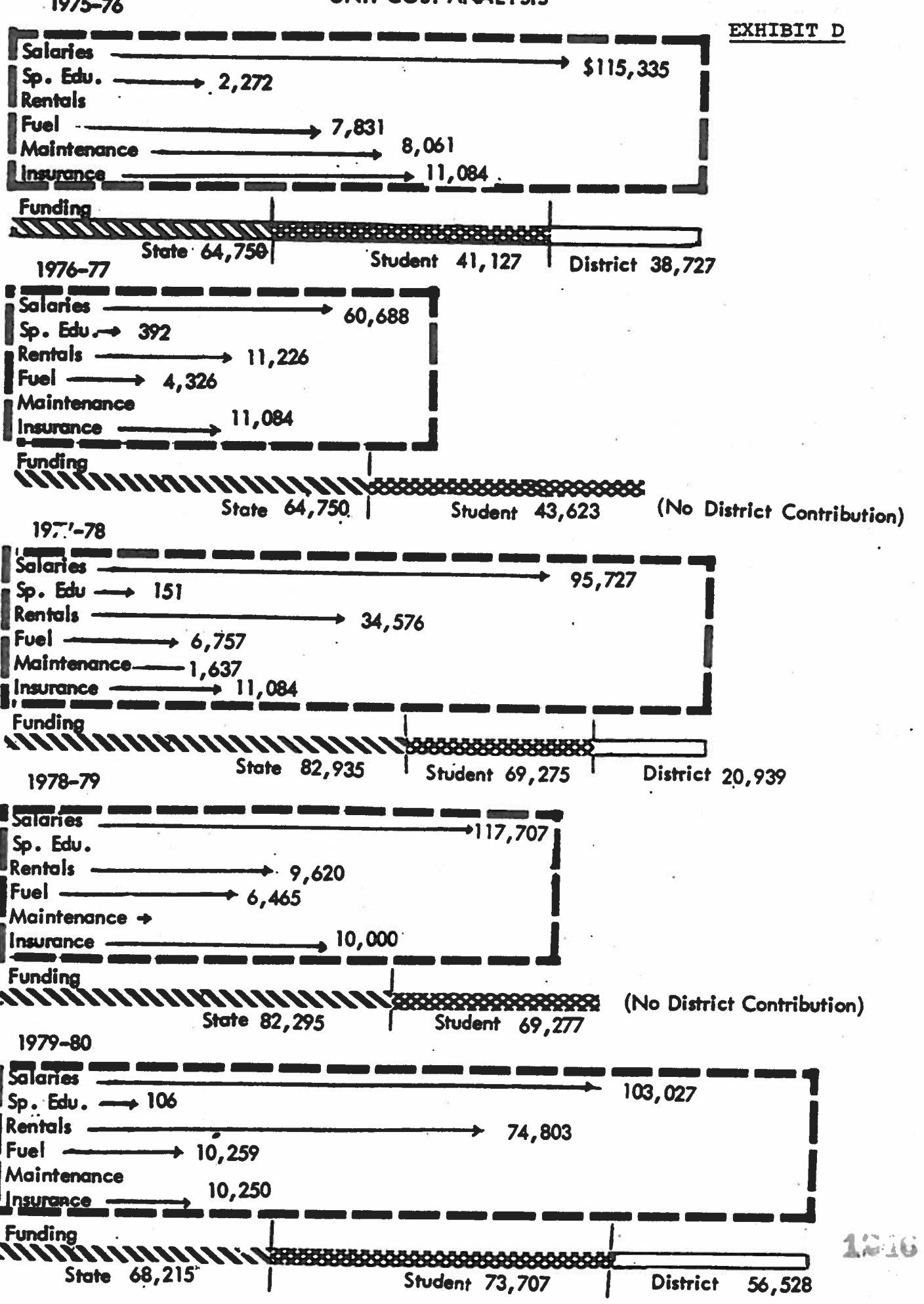


EXHIBIT D

PUBLIC AND PRIVATE SCHOOL COST ANALYSIS

1981

SCHOOL A
Clark County Nevada
$32 per hour
1. 5-6 Hours Behind Wheel Instruction
2. No Formal Classroom Training
3. No Simulation Training

→ Approximate Minimum Cost → $160

SCHOOL B
Clark County Nevada
$16 per half hour
1. 12 Sessions Behind Wheel Training
2. No Formal Classroom Training
3. Unresponsive to Simulation Question

→ Approximate Minimum Cost → $192

CLARK COUNTY SCHOOL DISTRICT
$70 Program Cost
1. 30+ Hours Classroom Training
2. 16+ Hours Simulator Training
3. 4+ Hours Behind Wheel Training

$9.11 District Allocation Per Student

→ Approximate Clark County School District Costs → $79.11

EXHIBIT E

STATEMENT OF THE
PHARMACEUTICAL MANUFACTURERS ASSOCIATION
CONCERNING A.B. 53
COMMITTEE ON JUDICIARY
NEVADA ASSEMBLY

March 31, 1981

While PMA has supported federal and state legislation to control prescription drug sampling, we strongly oppose Section 5 of A.B. 53 because it would do away with the sampling of controlled substance drugs completely. Many pharmaceutical companies make complimentary samples of their products available to physicians to facilitate individual clinical evaluation of particular drugs and ensure prompt inauguration of patient drug therapy. PMA believes that the benefits of responsible sampling practices are significant for the physician and the patient.

The practice of sampling is obviously useful to pharmaceutical companies in marketing their products. It also improves physicians' knowledge about the drug products they use in treatment. Physicians utilize samples in the following ways:

-- Samples allow physicians to make a personal clinical evaluation upon prescribing a new drug or an established drug to a patient. Physicians are able to evaluate a specific product to see if the patient tolerates it and if it has the desired effect before a prescription is filled at the patient's expense.

-- Samples allow the physician to begin therapy immediately. Often it is medically desirable for the patient to receive medication as soon as possible -- even in the physician's office. Also, many times patients may not be able to have prescriptions filled at once because of the unavailability of a pharmacy because of late hours, weekends, holidays, or distance.

EXHIBIT E

Drug therapy, especially for certain ailments, may require considerable trial and observation by both the doctor and patient. Samples provide a convenient and less costly way to achieve the best available therapy, without the patient's having to pay for drugs until their value and efficacy in individual cases is demonstrated.

Onerous sampling restrictions adversely affect competition. Under restrictive laws or regulations, pharmaceutical firms marketing new drugs would suffer a disadvantage in the marketplace. New products might prove more desirable and less costly than the more well-known older products for many patients. It will be much more difficult for them to achieve wide-spread acceptance if unnecessarily restrictive rules are adopted.

While samples serve a useful medical purpose and are a benefit to the patient and the doctor, there have been some instances when unwanted samples have posed a problem. Studies have been published that showed some physicians had legitimate complaints about sampling, particularly concerning types of drugs the physicians don't use in their particular specialty, drugs from unknown companies, and samples that are difficult to store.

Most responsible pharmaceutical firms have developed voluntary limitations on sampling practices. Samples are carefully inventoried several times a year. Samples presented to doctors are accompanied by a written receipt or request form with a signature and the quantity noted. This is done on each physician call. Mailed samples are sent only on a signed physician request and mailing lists are updated regularly.

Controlled Substances Sampling

Existing federal law closely regulates the distribution of samples of

EXHIBIT E

controlled substances by representatives of pharmaceutical companies. Distribution of such samples may be made only upon prior written request, for the legitimate medical need of patients of the practitioner and in reasonable quantities. Federal regulations also specify the form of the request and require that detailed records be kept of all requests for samples of controlled substances. In addition, pharmaceutical companies must keep accurate inventories of all controlled substances, including those in the possession of detailmen, and must keep records of the distribution of all controlled substances, whether samples or not.

Significantly, in July 1977 the Drug Enforcement Administration of the Department of Justice withdrew a proposed rule that would have prohibited drug manufacturers and distributors from providing complimentary samples of controlled substances. The Administrator of DEA concluded that "significant diversion has not been demonstrated which would compel (DEA) to prohibit nonpractitioner registrants from distributing controlled substances in Schedules II-V as complimentary samples."

In considering this rule the DEA relied heavily upon the comments of the National Institute for Drug Abuse (NIDA). Dr. Robert E. Willette, Chief of the Research Technology Branch, Division of Research stated that in order to support the prohibition "a substantial potential for diversion or evidence of diversion must exist . . .the present written request system and accountability of samples distribution for Schedule II drugs appear to offer adequate safeguards against diversion."

The major benefits of sampling for the doctor and the patient should not be withheld entirely as the provisions of A.B. 53 would do, in order to correct some instances of sampling abuse. We appreciate and share the commitment of Nevada State officials to deal effectively with drug abuse and misuse. But we believe the tool that is needed is enforcement, not new legislation. For

EXHIBIT E

any instance that may be cited where drug samples have been inappropriately used or disposed of, an existing state or federal law can be cited which has been broken. It is a question of enforcing existing controls and laws on samples, not passing new ones which eliminate the major benefits of samples for both patients and physicians in Nevada.

In conclusion, we urge the Committee to delete provisions 6 and 7 of Section 5. We also want the numbers of the Committee and other officials of the state to know that we stand willing and ready to be of whatever assistance we can in dealing with any problem involving a particular drug or manufacturer.

We want to thank you for your time and consideration.

EXHIBIT B

trant. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

(c) The registrant shall notify the Regional Office of the Administration in his region of any theft of significant loss of any controlled substances upon discovery of such theft or loss. The supplier shall be responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to § 1301.74(e), upon discovery of such theft or loss. The registrant shall also complete DEA Form 106 regarding such theft or loss. Thefts must be reported whether or not the controlled substances are subsequently recovered and/or the responsible parties are identified and action taken against them.

(d) The registrant shall not distribute any controlled substance listed in Schedules II through V as a complimentary sample to any potential or current customer (1) without the prior written request of the customer, (2) to be used only for satisfying the legitimate medical needs of patients of the customer, and (3) only in reasonable quantities. Such request must contain the name, address, and registration number of the customer and the name and quantity of the specific controlled substance desired. The request shall be preserved by the registrant with other records of distribution of controlled substances. In addition, the requirements of Part 1305 of the chapter shall be complied with for any distribution of a controlled substance listed in Schedule II. For purposes of this paragraph, the term 'customer' includes a person to whom a complimentary sample of a substance is given in order to encourage the prescribing or recommending of the substance by the person.

(e) When shipping controlled substances, a registrant is responsible for selecting common or contract carriers which provide adequate security to guard against in-transit losses. When storing controlled substances in a public warehouse, a registrant is responsible for selecting a warehouseman which will provide adequate security to guard against storage losses; wherever possible, the registrant shall store controlled substances in a public warehouse which complies with the requirements set forth in § 1301.72. In addition, the registrant shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against storage or in-transit losses.

(f) When distributing controlled substances through agents (e.g., detailmen), a registrant is responsible for providing and requiring adequate security to guard against theft and diversion while the substances are being stored or handled by the agent or agents.

(g) Before the initial distribution of etorphine hydrochloride and/or diprenorphine to any person, the registrant must verify that the person is authorized to handle the substances(s) by contacting the Drug Enforcement Administration.

(h) The acceptance of delivery of narcotic substances by a narcotic treatment program shall be made only by a licensed practitioner employed at the facility or other authorized individuals designated in writing. At the time of delivery, the licensed practitioner or other authorized individual designated in writing (excluding persons currently or previously dependent on narcotic drugs), shall sign for the narcotics and place his specific title (if any) on any invoice. Copies of these signed invoices shall be kept by the distributor.

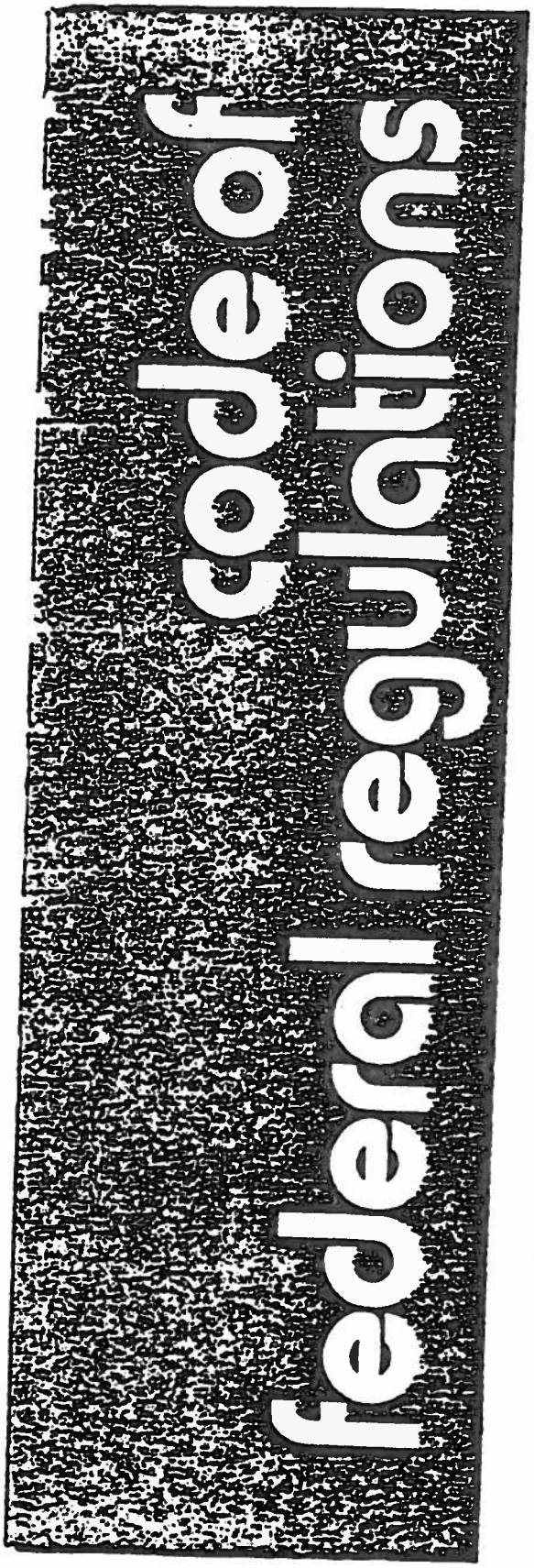
(i) Narcotics dispensed or administered at a narcotic treatment program will be dispensed or administered directly to the patient by either (1) the licensed practitioner, (2) a registered nurse under the direction of the licensed practitioner, (3) a licensed practical nurse under the direction of the licensed practitioner, or (4) a pharmacist under the direction of the licensed practitioner.

(j) Persons enrolled in a narcotic treatment program will be required to wait in an area physically separated from the narcotic storage and dispensing area. This requirement will be enforced by the program physician and employees.

Assembly Judiciary Committee
Tuesday, 31 March 1981

1252

EXHIBIT E



21

Food and Drugs

PART 1300 TO END

Revised as of April 1, 1980

EXHIBIT F

Nevada State Medical Association
Assembly Bill No. 53
April 24, 1981

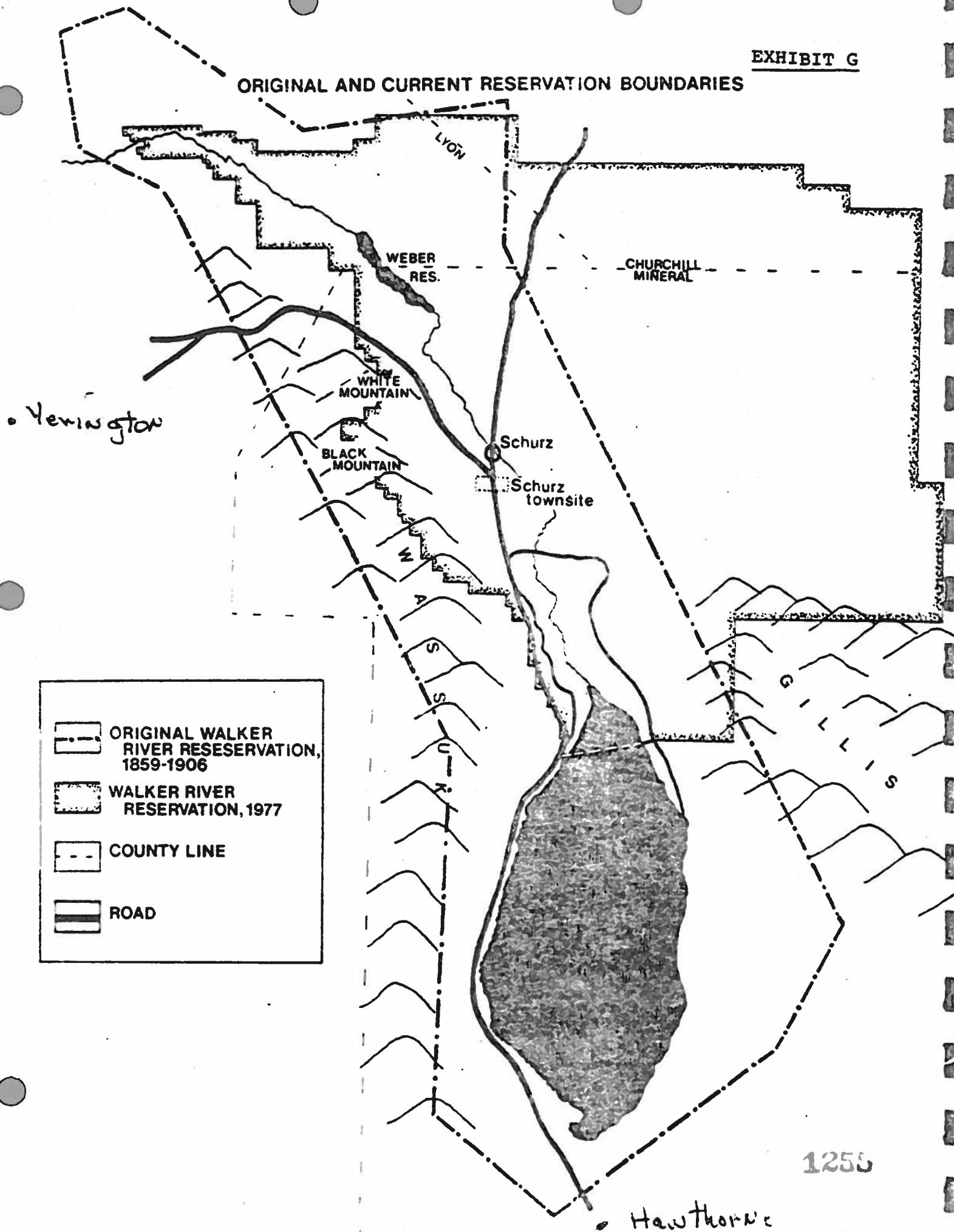
The Nevada State Medical Association supports Assembly Bill No. 53 as it was processed by the Assembly and we have no problem with the amendment proposed by the Hospital Association.

Nevada physicians strongly object to the amendment proposed by the Nevada Pharmacy Board: that language which would prohibit physicians from "sampling" drugs to their patients.

This act of receiving from drug manufacturers samples of prescription drugs and then giving them to patients is a tradition in Nevada that has helped patients, particularly poor patients. Medicare - as you know - is not reimburse its recipients for drugs. Most physiciants gladly give these persons samples of their prescribed medication. There are many other examples.

The pharmacy board and the narcotics division has not proved its case that this activity is a major source of drug diversion. They have not shown that "sampling" contributes to a flood of dangerous drugs on the streets of Nevada cities. They could not persuade the Assembly Judiciary Committee and I would hope they cannot persuade the Senate Committee on Human Resources and Facilities.

EXHIBIT G



1255

EXHIBIT H

Request for a bill draft to amend NRS 432A.071 and 432A.073

material in [] is to be omitted. Underlined material is new.

432A.071 Board for child care: Creation; composition.

1. The board for child care is hereby created.

2. The board consists of [three] five members appointed by the administrator of the youth services division of the department with the concurrence of the director.

(Added to NRS by 1979, 884)

432A.073 Board for child care: Qualifications of members.

1. Of the members of the board appointed:

(a) One member must be licensed to practice a profession in the field of health care;

(b) [One] Three member s may be selected from a list of nominees submitted by an organization which represents consumers or educators; and

(c) One member may be selected from a list of nominees submitted by an organization which represents persons who provide child care services.

(1) Two members shall be representatives of child care facilities licensed to handle a minimum of 20 children at any given time.

(2) One member shall be a representative of child care facilities licensed to handle less than 20 children.

2. All members must be selected on the basis of their experience and interest in child care services or programs.

3. Members of the board serve at the pleasure of the administrator, but no appointment may extend beyond 3 years from the date of expiration of the preceding appointment.

(Added to NRS by 1979, 884)

Nevada State Board of Pharmacy

1281 TERMINAL WAY • SUITE 217 • RENO, NEVADA 89502 • (702) 322-0691

EXHIBIT I

SB 423 New Amendments:

page 3, line 6 - add"and distribute" after possess

lines 9 & 10 on line 9 after the word "registered" delete manufacturer, distributor or

page 10 line 34 - delete pursuant

line 35 - delete to this chapter

line 34 - add the wording " with the board" in place of the "pursuant to this chapter" just deleted.

page 15, line 45 change "strength" to " name and strength"

EXHIBIT J

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A. B. 148

ASSEMBLY BILL NO. 148—ASSEMBLYMEN STEWART, KOVACS, SADER, CRADDOCK, BENNETT, MALONE, BRADY, MARVEL, HAYES, BEYER, SCHOFIELD, THOMPSON, HORN, BANNER AND HAM

FEBRUARY 11, 1981

Referred to Committee on Judiciary

SUMMARY—Prohibits manufacture, sale, delivery or advertisement of drug paraphernalia. (BDR 40-650)

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 drug paraphernalia; prohibiting the manufacture, sale, delivery or advertisement of drug paraphernalia; 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 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

SEC. 2. *As used in sections 3 to 8, inclusive, of this act, unless the context otherwise requires:*

"Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing or preparing controlled substances;

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marihuana;

8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

11. Objects used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) Water pipes;

(c) Smoking masks;

(d) Roach clips, which are objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; or

(e) Cocaine spoons and cocaine vials.

(f) Carburetor pipes and carburetion tubes and devices;

(g) Chamber pipes;

(h) Electric pipes;

(i) Air-driven pipes;

(j) Chillums;

(k) Bongs; and

(l) Ice pipes or chillers.

SEC. 3. *In determining whether an object is an item of drug paraphernalia, a court or other authority, as the case may be, shall consider, in addition to all other logically relevant factors, the following:*

1. Statements by an owner or by anyone in control of the object concerning its use;

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

3. The proximity of the object, in time and space, to a direct violation of this chapter;

4. The proximity of the object to controlled substances;

5. The existence of any residue of controlled substances on the object;

6. Direct or circumstantial evidence of the intent of any owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter;

7. Instructions, oral or written, provided with the object concerning its use;

8. Descriptive materials accompanying the object which explain or depict its use;

9. National and local advertising concerning its use;

10. The manner in which the object is displayed for sale;

11. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise; and

12. Expert testimony concerning its use.

The innocence of an owner or of anyone in control of the object as to a direct violation of this chapter does not prevent a finding that the object is intended for use or designed for use as an item of drug paraphernalia.

SEC. 4. *Any person who uses, or possesses with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this chapter is guilty of a misdemeanor.*

SEC. 5. *Any person who delivers or sells, possesses with intent to deliver or sell, or manufactures with intent to deliver or sell any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this chapter shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than $5,000 or by both fine and imprisonment.*

SEC. 6. *Any person 18 years of age or over who violates section 5 of this act by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, and may be further punished by a fine of not more than $10,000.*

SEC. 7. *Any person who places in any printed publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia is guilty of a misdemeanor.*

SEC. 8. *The district attorney or city attorney of any county or city, respectively, in which there is drug paraphernalia, may file a complaint in the district court seeking to enjoin the possessor and owner of the drug paraphernalia from delivering or selling, or possessing with intent to deliver or sell, any drug paraphernalia.*

SEC. 9. NRS 453.301 is hereby amended to read as follows:

453.301 The following are subject to forfeiture:

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.551, inclusive.

2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive.

3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2.

4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use in violation of the provisions of NRS 453.011 to 453.551, inclusive.

5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, possession for sale or receipt of property described in subsections 1 or 2, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the provisions of NRS 453.011 to 453.551, inclusive;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(c) A conveyance is not subject to forfeiture for a violation of NRS 453.336 unless more than 1 kilogram of marihuana was in the conveyance;

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omissions. If a conveyance is forfeited the appropriate law enforcement agency may pay off the existing balance and retain the conveyance for official use.

No person, other than the holder of a community property interest whose name or interest does not appear on the certificate of registration or title for the conveyance is a proper party to any forfeiture proceeding pursuant to this subsection.

6. All drug paraphernalia as defined by section 2 of this act which are used in violation of section 4, 5 or 6 of this act or of an injunction issued pursuant to section 8 of this act.

(30)

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April 22, 1981

EXHIBIT K

Senator Joe Neal
Chairman
Human Resources and Facilities
Legislative Counsel Bureau
Carson City, Nevada 89710

Dear Senator Neal:

You have requested a legal opinion concerning the constitutionality of A.B. 148 and the effect, if any, that the recent decision by the United States Court of Appeals, Sixth Circuit, in the case of Record Revolution No. 6, Inc. v. City of Parma, 638 F.2d 916 (1980), may have on the constitutional validity of that bill.

A.B. 148 is based, with minor modifications, on the Model Drug Paraphernalia Act drafted by the Drug Enforcement Administration of the United States Department of Justice. Variations of the Act have been enacted by numerous local and state governments.

In the City of Parma case, the Sixth Circuit Court of Appeals found the ordinances based on the Model Act to be unconstitutional in three ways. First, the court found that the phrase "designed for use' in the definition of paraphernalia (subsec. 11 of sec. 2 of A.B. 148, p.2, l.20) was vague and overbroad because it would require the inclusion as paraphernalia of many items which have predominately legitimate uses.

Second, in considering a provision which prohibits the delivery or manufacture of drug paraphernalia by one "knowing, or under circumstances where one should reasonably know" that the item will be used with a controlled substance (sec. 7, p.3, l. 27-28), the court held that the "reason to know" standard was vague and susceptible of misapplication.

Last, the court found a prohibition against advertising the sale of drug paraphernalia (sec. 7, p.3, l.40) to be an infringement of rights guaranteed under the First Amendment concerning protected commercial speech.

EXHIBIT K

Other courts which have examined these issues have arrived at opposite conclusions on each point and have found the ordinances or statutes based on the Model Act to be constitutional.

The phrase "designed for use" in the definition of paraphernalia has been upheld by other courts when viewed in light of the section of the Model Act which provides several factors to be considered in determining whether or not an item is paraphernalia (sec. 3, p.2, l.39). This section requires a judge or jury to consider the context in which the item is found when determining whether a person "designed" the item as drug paraphernalia. The emphasis is not on the design or physical structure of the item but the intent of the person selling or delivering it, as inferred from the circumstances of the sale or delivery, including instructions on or illustrations of its use, the manner in which it is displayed and so forth.

The courts which have upheld the model act have found the provision containing th phrase "reason to know" not to be a vague or obscure standard of negligence but a permissible standard of constructive knowledge. Mid-Atlantic Accessories Trade Association v. State of Maryland, 500 F. Supp. 834 (1980).

Finally, courts which have upheld the Model Act's ban on the advertising of drug paraphernalia distinguish the advertising of paraphernalia from the advertising of information "pertaining to constitutional interests" which has been held to be protected commercial speech Bigelow V. Virginia, 421 U.S. 809 (1975). These courts simply declare that there is no "constitutional interest" in the possession of drug paraphernalia and that a person may not advertise criminal activity. Casbah, Inc. v. Charles Shane, Civ. N. 80-0-271 (D. Neb. 1980).

In summary, the constitutionality of the Model Act has been tested many times in federal district courts. Eight of those district courts in seven states have either held the Act to be constitutional in its entirety or in substantial part. The two district courts which have found a constitutional defect in the act have differed as to what the defect might be.

Five of those cases have been appealed from the district courts to the Federal Appellate Courts. As noted, the Sixth Circuit Court of Appeals in City of Parma found the Model Act to be unconstitutional.

EXHIBIT K

In contrast, the Third Circuit Court of Appeals dismissed the appeal in World Imports v. Woodbridge Township, 3d Cir. 1980, (Civ. 80-1851), thereby upholding the Model Act. The other three appeals are not yet decided. None of these decisions constitute controlling authority in this state. The issue of the Model Act's constitutionality will not be settled in this state until there is a final decision by either the Nevada supreme court or the United States Supreme Court.

If A.B. 148 were enacted, there would be a strong presumption of its constitutionality, a presumption which can only be overcome by a clear showing that the statute is vague, overbroad or that it violates some other constitutionally guaranteed right. The great majority of the courts which have reviewed the Model Act have found it to be constitutional.

For the above reasons, it is the opinion of this office that A.B. 148, if enacted, would be constitutional.

Very truly yours,

Frank W. Daykin
Legislative Counsel

By James T. Spencer
James T. Spencer
Deputy

JTS:kb

EXHIBIT L

S. B. 406

SENATE BILL NO. 406—SENATOR BILBRAY

MARCH 12, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Makes various changes in licensing for emergency medical services and establishes intermediate level of emergency medical technicians. (BDR 40-1100)

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 emergency medical services; establishing an intermediate class of emergency medical technicians-ambulance; revising provisions on expiration and renewal of certificates; extending certain limitations on liability; 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 450B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

SEC. 2. *1. A person who is qualified as an emergency medical technician may be certified by the state health officer as an intermediate emergency medical technician-ambulance if he completes an additional training program which consists of at least 80 hours of training, including 40 hours of didactic and 40 hours of clinical instruction.*

2. The holder of a certificate as an intermediate emergency technician-ambulance may:

(a) Perform rescues, first aid and resuscitation; and

(b) Where voice communication is established and maintained with a physician or with a registered nurse supervised by a physician, and upon order of that physician or nurse, perform such procedures as he is authorized to perform within the limits of his individual certification. These procedures may include:

(1) Administering intravenous solutions;

(2) Performing an intubation into the airway by an esophageal tube; and

(3) Applying of pneumatic trousers to control shock.

3. A person shall not represent himself to be an intermediate emergency medical technician-ambulance unless he has on file with the health division a certificate evidencing his successful completion of the training program required by subsection 1.

4. To maintain his certificate as an intermediate emergency medical technician-ambulance, the holder must complete at least 20 more hours of training in the effective period of his certificate before each renewal than the holder of a certificate as an emergency medical technician is required to complete in order to maintain his certification.

SEC. 3. *1. The board shall by regulation determine the effective periods of the certificates of emergency medical technicians, intermediate emergency medical technicians-ambulance and advanced emergency medical technicians-ambulance, but the effective periods of these certificates must not exceed 3 years. For administrative convenience, the expiration dates of these certificates may be arranged so that the dates are distributed between odd-numbered and even-numbered years or coincide with the expiration dates of the permits for operation of the ambulance or air ambulance services which employ the holders of these certificates.*

2. A holder of one of these certificates may renew his certificate if he has completed the additional training required to maintain it and meets the applicable qualifications established by the board.

SEC. 4. NRS 450B.130 is hereby amended to read as follows:

450B.130 The board [shall] *may* adopt regulations establishing reasonable minimum standards for:

1. [Qualifications and training for] *Training and qualification of* attendants [which it] *if the board* determines *that such regulations* are necessary in addition to the statutory requirements for licensing [:] *attendants;*

2. Sanitation [requirements for] *in* ambulances and air ambulances;

3. Medical and nonmedical equipment and supplies to be carried in ambulances and air ambulances;

4. Interior configuration, design and dimensions of ambulances placed in service after July 1, 1979;

5. Permits for operation of ambulance services and air ambulance services; [and]

6. Records to be maintained by all ambulance services and air ambulance services [.] *;*

7. Treatment of patients who are critically ill or in urgent need of treatment; and

8. Determination of the priority of need and proper place of treatment for such patients.

SEC. 5. NRS 450B.160 is hereby amended to read as follows:

450B.160 1. The health division may issue licenses to attendants.

2. [Each license must be evidenced by a card issued to the license holder.

3. The health division shall charge no fee for a license.

4. Each license is valid for a period not to exceed 3 years, and is renewable.

5.] To obtain a license, [under the provisions of this chapter,] *as* an attendant [shall] *, an applicant must* file with the health division:

(a) A current, valid certificate evidencing his successful completion of a training program or course in advanced first aid equivalent to the programs or courses in advanced first aid offered by:

(1) The American Red Cross;
(2) The United States Bureau of Mines;
(3) The Armed Forces of the United States (to medical corpsmen); or
(4) Any other rescue or emergency first aid organization recognized by the board.

(b) A signed statement showing his:
(1) Name and address;
(2) Employer's name and address; and
(3) Job description.

(c) Such other certificates for training and such other items as the board may specify.

[6.] *3.* An [attendant] *applicant* who is not a volunteer [shall] *must* file with the health division, in addition to the items specified in subsection [5, a] *2:*

(a) A current, valid certificate *designating him* as an emergency medical technician [.] *; or*

(b) Evidence that he holds a license as a nurse or a certificate as a physician's assistant.

4. The health division shall issue a card to each person it licenses as an attendant to evidence his license.

5. The license of an attendant expires on December 31:

(a) Of the odd-numbered year next following the date on which his license was issued if he is employed by an ambulance or air ambulance service whose name begins with a letter from A to L, inclusive.

(b) Of the even-numbered year next following the date on which his license was issued if he is employed by an ambulance or air ambulance service whose name begins with a letter from M to Z, inclusive.

[7.] *6.* The board shall adopt such regulations as it determines are necessary for the issuance, suspension, revocation and renewal of licenses.

[8.] *7.* Each ambulance service and air ambulance service shall annually file with the health division a complete list of *the* licensed attendants [of such] *in its* service.

[9.] *8.* Licensed physicians [and nurses] may serve as attendants without being licensed as ambulance attendants.

SEC. 6. NRS 450B.180 is hereby amended to read as follows:

450B.180 1. Any person desiring certification as an emergency medical technician [shall] *must* apply to the health division using forms prescribed by the health division.

2. [The health division shall charge no fee for an emergency medical technician certificate.

3.] The health division, under regulations and procedures adopted by the board, shall make a determination of the applicant's qualifications *to be certified* as an emergency medical technician, and shall issue *a certificate as* an emergency medical technician [certificate] to each qualified applicant.

[4. An emergency medical technician certificate shall be valid for a period not exceeding 2 years and may be renewed if the holder meets the qualifications set forth in the regulations and standards established by the board pursuant to this chapter.

5.] *3.* The health division may suspend or revoke *the certificate of* an emergency medical technician [certificate] if it [is determined] *finds* that the holder no longer meets the prescribed qualifications. The holder has the right of appeal to the board [.

6.] *from such an action.*

4. The board shall determine the procedures and techniques which may be performed by an emergency medical technician and by those who qualify to give advanced emergency care pursuant to [the provisions of] subsection [7.

7.] *5.*

5. The board shall determine *the* training and other [requirements] *prerequisites* for the [delivery] *performance* of advanced emergency care, including but not limited to defibrillation and administration of parenteral injections. No attendant may give [,] and no ambulance service may offer [, such] advanced emergency care without fulfilling the requirements established by the board.

SEC. 7. NRS 450B.195 is hereby amended to read as follows:

450B.195 1. A training program for advanced emergency medical technicians-ambulance must include at least 500 hours of training, including but not limited to 300 hours of didactic and 200 hours of clinical instruction. The program must include cardiac care and emergency vehicle experience.

2. [A certified] *Each holder of a certificate as an* advanced emergency medical technician-ambulance must [undergo at least 40 hours of further or refresher training yearly] *complete at least 80 hours of additional training in the effective period of his certificate before each renewal* in order to maintain his certification, and *he* is subject to reexamination [every 2 years] by the state health officer [.] *before each renewal.*

3. A person shall not represent himself to be an advanced emergency medical technician-ambulance unless he has on file with the health division [of the department of human resources] a currently valid certificate [demonstrating] *evidencing his* successful completion of the training program required by this section.

SEC. 8. NRS 450B.197 is hereby amended to read as follows:

450B.197 An advanced emergency medical technician-ambulance may:

1. [Render rescue, first-aid] *Perform rescues, first aid* and resuscitation. [services.]

2. During training at a hospital and while caring for patients in a hospital, administer parenteral medications under the direct supervision of a physician or a registered nurse.

3. Perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient.

4. Where voice [contact or a telemetered electrocardiogram is monitored by] *communication is established and maintained with* a physician or *with* a registered nurse supervised by a physician [, and direct communication is maintained,] *and, if appropriate, a telemetered electrocardiogram of the patient is observed by the physician or nurse,* upon order of [such] *the* physician or nurse, perform such procedures and

administer such drugs as are approved by the state board of health, which may include but are not limited to:

(a) [Administer] *Administering* intravenous saline or glucose solutions.

(b) [Perform] *Performing* gastric suction by intubation.

(c) [Administer airway] *Performing an* intubation [by] *into the airway by an* esophageal [tube] or endotracheal tube.

(d) [Perform] *Performing a* needle aspiration of the chest.

(e) [Perform] *Performing* surgical exposure of a vein or artery.

(f) [Perform] *Performing* a phlebotomy or [draw] *drawing* blood specimens for analysis.

(g) [Administer] *Administering* drugs of the following classes:

(1) Antiarrhythmic agents.
(2) Vagolytic agents.
(3) Chronotropic agents.
(4) Analgesic agents.
(5) Alkalizing agents.
(6) Vasopressor agents.
(7) Diuretics.
(8) Narcotic antiagents.
(9) Anticonvulsive agent.
(10) Volume expanding agents.
(11) Topical ophthalmic solution.
(12) Intravenous glucose.
(13) Antihistiminic.
(14) Steroids.
(15) Bronchodilators.

5. Where voice communication is not established and maintained with a physician or with a registered nurse supervised by a physician, perform the following procedures in accordance with written standing orders of the state health officer or a local health officer:

(a) Perform an intubation into the airway by an esophageal or endotracheal tube.

(b) Initiate intravenous therapy using specified solutions.

(c) Perform any other procedure described in subsection 4 if a written standing order has been issued for performance of that procedure.

SEC. 9. NRS 41.505 is hereby amended to read as follows:

41.505 1. Any physician or registered nurse who in good faith gives instruction to an advanced emergency medical technician-ambulance, as defined by NRS 450B.193 [, at] *:*

(a) At the scene of an emergency, and the advance emergency medical technician-ambulance who obeys [such] *that* instruction [, shall] *must* not be held liable for any civil damages as a result of any act or omission [,] not amounting to gross negligence [, by such person] *by the technician* in rendering [such] *the* emergency care.

(b) During clinical training, and the advanced emergency medical technician-ambulance who obeys that instruction must not be held liable for any civil damages as a result of any act or omission not amounting to gross negligence by the technician in providing care during that training.

2. Any person licensed under the provisions of chapter 630, 632 or 633 of NRS, who renders emergency care or assistance in an emergency, gratuitously and in good faith, shall not be held liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by such licensed person in rendering the emergency care or assistance or as a result of any failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured or ill person. This section does not excuse a physician or nurse from liability for damages resulting from his acts or omissions which occur in a licensed health care facility relative to any person with whom there is a preexisting patient relationship.