

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND
MINING
SUBCOMMITTEE**

**Seventy-Third Session
March 28, 2005**

The Committee on Natural Resources, Agriculture, and Mining Subcommittee was called to order at 3:42 p.m., on Monday, March 28, 2005. Chairwoman Genie Ohrenschall presided in Room 3161 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Genie Ohrenschall, Chairwoman
Mr. Pete Goicoechea
Mr. Tom Grady
Mrs. Marilyn Kirkpatrick
Mrs. Debbie Smith

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Heidi Gansert, Assembly District No. 25,
Washoe County

STAFF MEMBERS PRESENT:

Mary Garcia, Committee Attaché
Matthew Mowbray, Committee Assistant

OTHERS PRESENT:

Kaitlin Backlund, Political Director, Nevada Conservation League
John Echeverria, Member, Nevada Trial Lawyers Association
Ray Bacon, Executive Director, Nevada Manufacturers Association

Chairwoman Ohrenschall:

[Meeting called to order. Roll called.] Assemblywoman Gansert, I understand there have been some negotiations on your bill. Would you bring us up to date on what has happened?

Assembly Bill 86: Requires addition of bittering agent to certain antifreeze to render it unpalatable. (BDR 51-999)

Assemblywoman Heidi Gansert, Assembly District No. 25, Washoe County:

Today I am testifying on behalf of A.B. 86. I have been working with trial attorneys and the manufacturers of antifreeze in an attempt to come to some agreement regarding this bill. There was an amendment proposed at our original hearing. I would like to add this amendment (Exhibit B) as originally proposed, but I would like to delete Section 1, subsection 3, in its entirety. With this amendment, we would be limiting the bittering agent to not less than 30 parts per million and not more than 50 parts per million. That limits what is included in the antifreeze to a very narrow range.

Down at the bottom (of Exhibit B) in Section 5, the other language that was added says that no political subdivision or local government municipality shall have authority to establish or continue with something other than what was proposed in the original language. That is to prevent cities and counties from passing legislation in addition to this State legislation. The manufacturers of the antifreeze wanted to make sure the requirements for the bittering agent were consistent throughout the state.

Chairwoman Ohrenschall:

So you're asking the Subcommittee to consider an amendment. Perhaps it is easier to start out with the concept of what you want the amendment to accomplish, and then we'll hear other testimony.

Assemblywoman Gansert:

What I want the amendment to accomplish is to put minimum and maximum limits on the level of denatonium benzoate (DB), the bittering agent, in antifreeze. Some legislation in other states specifies a minimum of 30 parts per million, but we also want to make sure it does not exceed 50 parts per million. That is under Section 1(a). Down at the bottom, in Section 5, we want to ensure that the regulations in this state are consistent regarding antifreeze, and that municipalities do not have separate legislation regarding adding the bittering agent to antifreeze.

Chairwoman Ohrenschall:

What about the immunity sections?

Assemblywoman Gansert:

We would be deleting Section 1.3, which is the immunity for the manufacturers, packers, or sellers if they add this bittering agent.

Kaitlin Backlund, Political Director, Nevada Conservation League:

I would like to offer a couple of things to the Committee. From the research I have done, the addition of DB seems somewhat inconclusive. The information may be out there, but I haven't really been able to find definitive research about the potential impacts to water sources.

However, it is almost moot, since, if there were enough of the agent in the water to cause a problem with bittering, the water would already have been rendered contaminated by the antifreeze in the first place. So I don't know that that really serves as an argument. I am supportive of the amendments that have been offered.

John Echeverria, Member, Nevada Trial Lawyers Association:

I came to this hearing with some conflict in my mind because, as a trial lawyer, I strongly and passionately support the adoption of any kind of safety measures and procedures. At the same time, I strongly oppose immunity for people that allows them to avoid their responsibilities. I came to this bill both favorably and unfavorably. However, I think the amendments Assemblywoman Gansert has just proposed satisfy my concerns and opposition to the bill.

In preparing for this, I spent about 4 hours yesterday on the Internet trying to find some data on the validity of DB. I ran across an article that said New Mexico is considering this legislation right now, and Oregon passed it in 1991, so there is about 13 years of experience in Oregon as to the efficacy. It also included what the scientists call "safety," or, in other words, does advancing one goal create problems in another area, making it less safe for other matters.

I thought, since it has been in effect in Oregon for 13 years, there must be a body of data out there that would tell us how good this is, if it works, and if it has adverse safety consequences. California passed it in 2002, and New Mexico is looking at it now. When New Mexico proposed it, there was an article ([Exhibit C](#)) written by a reporter named Chris Cathcart, who is the president of the Consumer Specialty Products Association. He went through some of the data on it and found a study done that was published in the *Veterinary and Human Toxicology Journal* in June 2004, in which two

scientists, one from Washington and one from Oregon, studied the data from Oregon and concluded the following: "The mandatory addition of DB has produced no measurable reduction in unintentional pediatric toxic alcohol exposures in Oregon." That was the conclusion of the only study I've been able to find analyzing what effects Oregon's law has had on the safety of children. That study does not deal with what safety issues or beneficial effects it has with respect to animals.

Chairwoman Ohrenschall:

Do you have a copy of it?

John Echeverria:

I do not have a copy of the study, but I have a copy of the newspaper article ([Exhibit C](#)), because this gentleman also goes on to deal with other issues. The Consumer Product Safety Commission has not supported this kind of mandatory bittering agent.

From my perspective as a representative of the trial lawyers, to the extent that it is effective, we strongly support it. On the other hand, to the extent that there may be adverse consequences if it got into the water system, for example, and large herds of cattle refused to drink it and died, that would be a serious problem. While we promote some animals not drinking it, it may get in the water and prevent other animals from drinking it, causing adverse consequences.

Chairwoman Ohrenschall:

Anything that compromises the water table is to be looked at very carefully.

John Echeverria:

Correct. My view is that, if the manufacturers, who are in a far better position to know the science behind this product than all of us in this room put together, are willing to stand behind it and to accept any safety risk, as this amendment would require, then I have no difficulty with that. I would think they would not want to put an unsafe product on the market.

Chairwoman Ohrenschall:

You are not opposed to the amendment proposed by the author of the bill?

John Echeverria:

No, we would support the amendment and the change in the legislation taking away all immunities for the manufacturers and distributors of this product.

Assemblyman Grady:

I found the same article and went over it. Whether it is good information or no information, it was put out by the people who are trying to pass it. The article is a fine article, but it didn't really give us any information.

John Echeverria:

Except that it cited the study that was produced in the journal. Actually, it is put out by a person who is opposed to the legislation.

Assemblyman Goicoechea:

The State of Nevada is now going to require, by law, that the manufacturers include this product. I'm asking you, as a trial lawyer, does that then shift the liability to the State of Nevada?

John Echeverria:

It would shift the liability to the State of Nevada if you had an immunity for the manufacturers. Then the citizens of Nevada would have to absorb whatever adverse consequences there were. However, by taking out that immunity, if there were any problems, then the manufacturers would have to stand behind it.

Assemblyman Goicoechea:

Then I guess if I were a manufacturer, I'd get an attorney to argue that the State had forced me to put the additive in, so I should be off the hook. I would argue that the State of Nevada was at fault because they had not done adequate research.

John Echeverria:

That argument sounds good, but I don't believe the courts would accept it. If you're putting out a product that's not safe, somebody—whichever was injured by it—would have to prove that the product was unsafe, so there are still some hurdles to overcome in claiming the product was unsafe. The manufacturers and distributors can choose to market the product or not.

Chairwoman Ohrenschall:

Is that one of those arguments where the court says the State might have forced you to put it in the product, but they didn't force you to sell it in the state of Nevada?

John Echeverria:

I believe so, and I think the more significant thing is that Congress is looking at this issue right now, so they're ultimately going to decide, and they have better capacity for dealing with the science on it than we do.

Ray Bacon, Executive Director, Nevada Manufacturers Association:

There are a couple of issues I'm not sure have been adequately addressed. I have not talked to Dow Chemical or any of those folks, but I believe the manufacturers would be willing to accept the immunity for a new product. However, I think you're going to find that the vast majority of the unintentional poisonings are going to come from boil-overs along the road or improper disposal.

I see absolutely no way you can hold the manufacturer accountable for anyone improperly disposing of it, so, consequently, the immunity becomes a moot issue. If it's a boil-over, since you're not requiring the bittering agent in all new vehicles or bulk sales, where did it come from? You would have to prove that the person who had the boil-over installed replacement antifreeze which should have had the bittering agent. I'm not sure you can get that chain of evidence.

If we're going to do this and do it right, you might as well say it has to apply all the way down the line, including bulk sales and all new vehicles. That would mean it would be imported, because we buy vehicles from overseas. When you get into international trade agreements, I'm not sure the State of Nevada has the power to impose that requirement.

Chairwoman Ohrenschall:

Do you have a proposed amendment to submit to the Subcommittee, or do you wish to work on one?

Ray Bacon:

I'd be willing to work on one, but I'm not sure, given the jurisdiction that the State of Nevada has and the constraints on this, that you can come up with something workable. You can certainly impose this on sales of new replacement product. You can also do bulk sales, the stuff the dealers are using that comes in 55-gallon drums. That's within the jurisdiction of the State of Nevada. As far as the immunity issue, though, the only thing it can really apply to is new product sales within the state of Nevada. Anything else is a pipe dream.

Chairwoman Ohrenschall:

But then the issue itself would become moot if the Subcommittee were to adopt Ms. Gansert's proposed amendment. Ms. Gansert proposed an amendment that removes any reference to immunity at all.

Ray Bacon:

Then we'd be right back where we are. How many of us have changed the antifreeze in our cars within the last year? Typically, even though we are told to

change our antifreeze every year, most people don't. They put it off for two or three years, so, consequently, it's going to come down to the boil-over.

Assemblyman Goicoechea:

We've really been pounding this liability issue, but the bottom line, and the intent of the bill, is to prevent the unintentional poisoning of a child drinking from an opened gallon in the garage. We don't know how many vehicles we're going to get this bittering agent into, but, even if we're dealing with a leaky hose or a boil-over, we might be able to save some pets. Let's move away from the issue of whose fault it is. If we save one child or save somebody's pet, it might be worthwhile.

Assemblywoman Kirkpatrick:

I did a bit of research on this and found out DB is not biodegradable. That bothers me because there are issues of where it's going to go and where it's going to end up. Knowing that, do you still support this bill the way it is?

Kaitlin Backlund:

Yes, because at this point, neither is antifreeze.

Assemblywoman Kirkpatrick:

I am concerned that we might be addressing the big picture in ten years, but federal legislation is coming anyway, so why not wait until it gets here?

Kaitlin Backlund:

You do bring up a valid point, and one for contemplation. I don't throw myself wholeheartedly behind this, but I have to say there is a mixed bag out there. I, too, read the article in the Albuquerque newspaper that demonstrated there is some evidence out there that this has not contributed significantly, but, from our perspective, at this point antifreeze is out there with some regulations. If this can go toward a positive for the public health and safety, then that is a good direction to go.

Chairwoman Ohrenschall:

I will close the hearing on A.B. 86 and bring it back to the Subcommittee. We have a proposed amendment on the floor. Is anyone willing to make a motion?

ASSEMBLYMAN GRADY MOVED TO RECOMMEND THE FULL COMMITTEE AMEND AND DO PASS ASSEMBLY BILL 86 WITH THE AMENDMENT PROPOSED BY ASSEMBLYWOMAN GANSERT WHICH WOULD:

- LIMIT THE AMOUNT OF DENATONIUM BENZOATE ADDITIVE TO A NARROW RANGE,

- PROHIBIT LOCAL GOVERNMENTS FROM REGULATING THE INCLUSION OF A BITTERING AGENT, AND
- DELETE SECTION 3 IN ITS ENTIRETY.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Ohrenschall:

Our business is concluded. Thank you. We are adjourned [at 4:05 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Attaché

APPROVED BY:

Assemblywoman Genie Ohrenschall, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Natural Resources, Agriculture, and Mining

Date: March 28, 2005

Time of Meeting: 3:00 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
AB 86	B	Assemblywoman Heidi Gansert	Proposed Amendment
AB 86	C	John Echeverria	Article: <i>Effectiveness, Safety of Bitter Antifreeze Unknown</i>