

**MINUTES OF THE 2015-2016 INTERIM
LEGISLATIVE COMMISSION'S
SUBCOMMITTEE TO REVIEW REGULATIONS**

March 10, 2016

The meeting of the Legislative Commission's Subcommittee to Review Regulations was called to order by Chair James A. Settlemeyer at 10:02 a.m. at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada and via videoconference to the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Senator James A. Settlemeyer, Senatorial District No. 17, Chair
Senator Aaron D. Ford, Senatorial District No. 11
Senator Pete Goicoechea, Senatorial District No. 19

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Assemblywoman Irene Bustamante Adams, Assembly District No. 42
Assemblyman Stephen H. Silberkraus, Assembly District No. 29
Assemblyman Tyrone Thompson, Assembly District No. 17

STAFF MEMBERS PRESENT (LAS VEGAS):

Bryan Fernley, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

STAFF MEMBERS PRESENT (CARSON CITY):

Brenda Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Linda Hiller, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Adrian Ruiz, DDS, Member, Las Vegas Dental Association
Andrea Smith
Scott Brooksby, DDS, President, Las Vegas Dental Association
Robert Little, Administrator, Plant Industry Division, State Department of Agriculture
Robert Leavitt, Pest Control Office Licensing & Enforcement Program Manager, State Department of Agriculture

Scott Cichowlaz, Continuing Education Coordinator, State Department of Agriculture
William Striejewski, Senior Petroleum Chemist, State Department of Agriculture

Chair Settlemeyer:

I will open the meeting of the Legislative Commission's Subcommittee to Review Regulations with Item II, public comment.

Adrian Ruiz, DDS (Member, Las Vegas Dental Association):

I am a licensed dentist in the State of Nevada and one of many dentists who feel our current environment of overregulation is raising the cost of dental care and causing some of our dentists and dental hygienists to leave the State. I myself have been extorted by regulations in *Nevada Revised Statutes* (NRS) Chapter 631 and *Nevada Administrative Code* (NAC) Chapter 631, what we call the Nevada Dental Practice Act.

I am here in possession of signed letters from dentists and dental hygienists who feel as I do. We are concerned that our State has allowed a board's private attorney, such as the Board of Dental Examiners of Nevada (Dental Board) attorney, John Hunt, to write ambiguous regulations to circumvent NRS 233B, which already provides a disciplinary process for boards to follow. Such ambiguous regulations have permitted the Dental Board's private attorney to benefit financially from their implementation.

In my case, there was a healthcare practitioner with the same last name as mine who was writing controlled medications that were mistakenly attributed to my U.S. Drug Enforcement Agency (DEA) report. When I protested to the Dental Board that I had not written these prescriptions, the Board's private attorney told me to either pay the \$14,000 "to make it go away," or I would have to pay more than \$40,000 for a hearing. I was coerced into signing a stipulation agreement when I had done nothing worthy of discipline and for which I should not have been required to pay "fees and costs" for the Board's private attorney. Add to this cost the \$60,000 I also had to pay in legal defense fees. Why should it cost a healthcare provider over \$100,000 to merely be given the opportunity to tell his side of the story with his licensing board?

Finally, 7 years later, I received a letter from the Nevada State Board of Pharmacy admitting the mistake in identity and that I had, in fact, not written the prescriptions for controlled medications as the Dental Board had accused me of doing ([Exhibit C](#)). Such treatment of our healthcare practitioners is unethical and unlawful. Something needs to be done to correct current regulations that allow for a board's private attorney to profit from Nevada healthcare providers.

I am asking this Subcommittee to consider recommending to the Legislative Commission that a Medical Licensing Bureau be created to supervise the complaint process of our healthcare boards. A similar type of centralized agency has already been created in 33 other states. Such an agency would collaborate with healthcare boards to balance regulations with the administration of justice and ensure that healthcare laws

are enforced in a fair, equitable and timely manner. This proposed Medical Licensing Bureau would also reduce fees and costs by making dispute resolution available to healthcare providers and also protect due process rights of healthcare practitioners by eliminating coercion tactics. Finally, the proposed Medical Licensing Bureau would require healthcare boards to pay practitioners' fees and costs when they prevail in a hearing.

I have submitted my written testimony ([Exhibit D](#)). I have also submitted written and signed complaints from other dentists and dental hygienists ([Exhibit E](#)), personal stories ([Exhibit F](#)) and signed extortion letters ([Exhibit G](#)) from other dentists and dental hygienists, and 77 petitions signed on Change.org, an online petition site, ([Exhibit H](#)).

Chair Settlemeyer:

For everybody's information, the Legislative Commission did request by a vote of 5 to 1, an audit of the legal fees of the Board of Dental Examiners of Nevada to investigate that particular issue.

Andrea Smith:

I am a dental assistant and have been working for roughly 1 year. I was prosecuted by the Dental Board. I had been working for 4 months and the Board read a statute differently than we had. The law was vague and could be interpreted two different ways. I was unaware I was doing anything improper. The Dental Board came in without informing me that I was violating any rules or statutes and sued me civilly instead of going through the dentist I worked for. I now have a \$30,000 judgement against my name for doing something I never knew was wrong and was never given the chance to change.

We would like rules to be written so these types of things cannot happen. At every other place I have worked, if I was doing something improper according to the employer, I was given a warning to change. If that did not work, I was given a written notice and then action was taken. I have never had action taken against me right off the bat. We would like the Legislative Commission to address this issue. I have submitted some details of my case ([Exhibit I](#)).

Scott Brooksby, DDS (President, Las Vegas Dental Association):

Current Nevada law allows each professional board to hire a private attorney to represent that board and all actions before the board. If someone complains to the board, current Nevada law allows the board attorney to expand the investigation into any area they want. Often the professional does not know the extent of the investigation until they are brought into an informal hearing. Usually they are only given notice for the initial complaint. Once in the informal hearing, the private attorney and designated screening officers for the board can then spring all the other complaints on the professional. Under threat of losing his or her license, the professional can be coerced into signing stipulations or face higher attorney's fees and the possible loss of his or her

license to practice. The only professionals licensed in the State of Nevada that do not have this happen to them are members of the State Bar.

In my case, there have been two instances where complaints have been filed against me by a patient. The evidence I provided was ignored and the only evidence ever considered was provided by the Dental Board attorney. The current case did not even stem from a complaint, but from an undercover sting operation, which is in violation of the Nevada Dental Practice Act, which requires a written complaint before any investigation may be initiated. The results of the most recent actions by the Board have resulted in me being charged for the Board's legal cost of over \$40,000 for the first action and near that amount for the second action. I have submitted paperwork from my case ([Exhibit J](#)).

When all the material related to these actions was presented to the State of Washington Dental Board, as required by law, they conducted their own investigation and had their attorneys and board review it. Their conclusion was that my actions were of such low risk and unlikely to reoccur that no further action was taken ([Exhibit K](#)). The cost to me for this investigation was nothing. For these same actions, the Nevada Dental Board is proposing a 90-day suspension of my license and an additional \$15,000 in investigative costs. This will triple if I go to a hearing before the full Board. To date, no one has had the Board decide against the Board's attorney. The burden of proof is so low that criminals have more rights than professionals in the State of Nevada.

We have proposed changes to the Nevada Dental Practice Act that will make the Board much more dentist friendly and better protect our rights ([Exhibit L](#)). One change is, if there is a problem, the Board is required to contact you first to give you an opportunity to understand the Board's position and change or correct the action before they proceed against you in a more punitive fashion. Once we found out that we had interpreted the regulations differently from the Board and that we were in violation, we immediately complied with the Board's interpretation. Still, they want to take away my license and they are hitting me with tremendous amounts of financial penalties. We hope you would alter the current regulations to provide all licensed professionals the same rights and protections provided to members of the State Bar. At the very least, we would request that the laws be changed so a board may only charge attorney's fees for cases that actually go to the courts, but not for anything before the boards since the attorneys are already paid over \$100,000 to represent the boards.

It does not make sense to go before a board and have to pay simply to tell your side of the story. It is just wrong. We thank you for doing the financial audit, but it needs to go beyond that. A nurse friend of mine said that if they ever have anything go before the nursing board, they are going to lose their license. It always happens that way. Other doctors, medical doctors and veterinarians all feel the exact same way. Most dentists are afraid to come talk to the Legislature, because if they do, there will be a target on their back that will end up costing them thousands of dollars, like what happened to me.

I have been trying for 3 years to get the laws changed and to act as an expert witness for other dentists to help protect them. That puts me at odds with the Dental Board attorney because I am affecting his ability to make money. He has said, "If you are going to come after my ability to make money, I am going to go after yours." Hence, he is trying to run me out of the State. I have submitted my written testimony ([Exhibit M](#)).

Chair Settlemeyer:

Seeing no more people wanting to make public comment, I will close Item II. For those of you here for discussions on the Dental Board issue, that is going through the Sunset Subcommittee of the Legislative Commission. We are waiting until we get information back from the Legislative Auditor on that before we proceed.

I will open Item III, approval of the minutes from our last meeting on December 30, 2015 ([Exhibit O](#)).

SENATOR GOICOECHEA MOVED TO APPROVE THE DECEMBER 30, 2015 MINUTES OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW REGULATIONS.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

Chair Settlemeyer:

I will now open Item IV, the review of administrative regulations submitted pursuant to NRS 233B.067. These five regulations being considered today are timely, so we are hearing all the regulations from the State Department of Agriculture to make it easier for all concerned. Two regulations, RO93-15 and RO94-15, have been requested to be pulled for discussion.

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

I would like to request that regulation RO85-15 be pulled for discussion.

ASSEMBLYMAN SILBERKRAUS MOVED TO PASS REGULATIONS R086-15 FROM THE STATE DEPARTMENT OF AGRICULTURE AND R107-15 FROM THE STATE SEALER OF CONSUMER EQUITY.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

Chair Settlemeyer:

I will open discussion on regulation R085-15 from the Department of Agriculture, which pertains to establishing provisions for certification and registration of sites used for growing and cultivating industrial hemp.

Robert Little (Administrator, Plant Industry Division, State Department of Agriculture):

Thank you for hearing this regulation today. It will be a big deal to some of Nevada's farmers and will enable them to catch this growing season if it passes. The 2014 U.S. Farm Bill gave states the ability and authority to develop and conduct industrial hemp research projects. Pursuant to Senate Bill 305, these regulations were drafted by the State Department of Agriculture (NDA), modeling the language after other states that had drafted their own regulations pursuant to the Farm Bill.

SENATE BILL 305: Authorizes industrial hemp farming in this State under certain circumstances. (BDR 49-656)

For background, we talked to officials in Kentucky, Tennessee and Colorado to see how the regulations worked in those states, since they were able to get out a year ahead of us due to their annual legislative sessions. We are pushing to get these regulations done in a timely fashion, because we believe industrial hemp could potentially be economically viable for several Nevada agriculture producers.

Assemblywoman Bustamante Adams:

What is the growing season?

Mr. Little:

It depends on where you are in Nevada. It is a 90-day crop, and the growing season will vary depending on location. In the southern part of the State, it would start earlier than up north.

Assemblywoman Bustamante Adams:

You mentioned economic viability for some growers. Can you expand on that?

Mr. Little:

This crop has not been grown in the U.S. recently. Historically, it was grown here, but then it was deemed a Class I narcotic many years ago by the U.S. Drug Enforcement Agency (DEA). Now, through the Farm Bill, we have the opportunity to do research projects. There are a lot of products that can be made with industrial hemp, including oils, cosmetics, paper, fabric and more. There are thousands of uses for hemp. We think it can be a viable crop in Nevada, depending on the research, and it may be a great alternative crop for farmers to have a different type of crop to grow.

Assemblywoman Bustamante Adams:

How many applicants do you anticipate?

Mr. Little:

When we went through the workshop and hearing process, we heard from a wide number of potential growers. I get calls every day from people wanting to know how they can start growing hemp in Nevada. When we had our hearing last month on these regulations, we had around 25 growers who expressed interest in getting a research project started. We developed an application form that we handed out at that hearing. We have already been sent five applications from people who are ready to start growing. If the seed could be ordered in a timely fashion, we hope to get up to 20 projects started this year.

Assemblywoman Bustamante Adams:

Would these be individuals in businesses conducting research trials? Once that research is done, where does that data go?

Mr. Little:

We will collect data from the research projects, including the water needs of the crop. This is a plant that can grow up to 20 feet tall with a big stalk that can be up to 4 inches in diameter. There are a lot of different ways people are thinking of growing it. Some are even thinking of growing it as a forage crop, where it would only grow to about 18 inches tall, which would drastically reduce the amount of water needed if you were able to cut it several times per season. We will also collect data on potential markets the growers could sell to.

Assemblywoman Bustamante Adams:

What are the fees you will be charging to cover administrative costs?

Mr. Little:

The NDA did not get money to conduct this program. The application fee to engage in the research project is \$500. That will cover personnel review of the applications and maintenance of the paperwork and documentation. This program is very closely monitored by the DEA because the viable hemp seed is a Class I narcotic. For that reason, we have a lot of documents we have to maintain to ensure the chains of custody are monitored. Our facility has to be inspected, which has happened already. We also have to go into the field and watch the seed being put into the soil to make sure the chain of custody is correctly maintained.

We are charging \$1 for every pound of seed purchased. We have to do the purchase, since a DEA permit is necessary to import hemp seed into the U.S. We will also be charging \$1 per acre for the pre-harvest inspection, which includes us taking a sample of the crop and examining it in our laboratory to make sure the plant does not test over

0.3 percent Tetrahydrocannabinol (THC). If it is above 0.3 percent THC, it is considered marijuana. This same thing happens in other states running this program.

Assemblywoman Bustamante Adams:

What is the estimated starting cost for this research trial?

Mr. Little:

That would depend on acreage being planted. A typical planting would be 25 to 30 pounds of seed per acre. If someone was planting 5 acres, the cost would be the \$500 application fee, the \$1 per pound for seed and the \$1 per acre for inspection. The seed is roughly between \$3 and \$5 per pound currently. So you could multiply those numbers out to however many acres are being planted.

Assemblywoman Bustamante Adams:

Will you need any additional personnel?

Mr. Little:

Yes, but we do not anticipate needing more than one extra person for this.

Senator Goicoechea (Senatorial District No. 19):

Did you say you have 10 to 15 applications already?

Mr. Little:

No, right now we have 4 to 5 applications that have been submitted, but we have not accepted them at this time. We anticipate getting more.

Senator Goicoechea:

What kind of acreage is involved?

Mr. Little:

From the applications we received, the acreage so far was all less than 25 acres.

Senator Goicoechea:

The only other concern I have is the \$250 civil penalty for a first offense violation. I am assuming it would be a violation if the grower failed to comply with any portion of this project, including failing to have the crop analyzed. If I have 20 acres of hemp and I grow it right and fail to have it checked to see if it is over 0.3 percent and then I harvest the seed, I could probably do a lot better by selling it than the \$250 fine would cost me. I am concerned. This is a pilot project, and we need to make sure we do not mess it up at the start. If someone wanted to sell the product in a 3 by 4 bale and it is over 0.3 percent THC and full of seeds, it is probably worth more than \$250. Enforcement is going to be the key.

Mr. Little:

I agree. Because this is a research project, we will be working very closely with participants, monitoring and following up with them. If someone did not contact us to have their crop tested before harvest and they had seed, we would have to turn them over to the DEA. Obtaining viable seed is a federal offense, unless you have a permit to hold it. We would take action.

Senator Goicoechea:

They always say it takes a pinto horse to catch one. I can see a few holes in this one.

Assemblyman Tyrone Thompson (Assembly District No. 17):

You mentioned that the DEA would monitor and audit the project. If there is noncompliance with the State, what would be the magnitude of fines to the State if we are not properly monitoring?

Mr. Little:

I am not aware if there would be a monetary fine for the State or if it would be a loss of our permit through the DEA. If the percentage of THC did go above 0.3 during the pre-harvest testing, it is up to us to determine how to destroy that crop. We would follow guidelines from the DEA.

Assemblyman Thompson:

If we lost our permit, then how would that affect the State? How would we regain that permit?

Mr. Little:

The permit we get is to import seed. When the 2014 U.S. Farm Bill was passed, it gave the states the right to conduct these research projects. No permits or special licenses were required. It deemed that the departments of agriculture or institutions of higher learning in each state could conduct research projects. We then applied for the importing permit for the hemp project. I believe that all we would lose is our importing permit if we did not comply. I am not sure if it would be anything more. I would have to look into that.

Chair Settlemeyer:

There were some people who were thinking about having a report back to the Legislative Commission prior to the 2017 Legislative Session on the progress of this pilot program.

ASSEMBLYWOMAN BUSTAMANTE ADAMS MOVED TO PASS REGULATION R085-15 FROM THE STATE DEPARTMENT OF AGRICULTURE (NDA) WITH THE REQUEST FOR A REPORT FROM THE NDA AT THE LAST MEETING OF THE 2015-2016 INTERIM LEGISLATIVE COMMISSION PRIOR TO THE 2017 LEGISLATIVE SESSION.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

Chair Settlemeyer:

I will now open discussion on regulation R093-15, also from the DOA. One of the concerns I have with this regulation is to clarify that the licensing required in this regulation pertains to individuals who are acting commercially or on behalf of the government. It is not for individuals who are just out on a farm or ranch. Those people can still buy some Roundup weed killer at Home Depot and use it on their property. Is that correct?

Robert Leavitt (Pest Control Office Licensing & Enforcement Program Manager, State Department of Agriculture):

The pest control licensing program is directed at people who do pest control for hire, which generally pertains to people doing it commercially. Urban homeowners who buy pesticides in stores do not fall under these licensing requirements. General farmers using pesticides on their own private land have to get a private certification, which is not a pesticide license. The licensing program itself is for people who do pest control for hire.

Chair Settlemeyer:

We have a local weed district in Douglas County. Would this only require the main supervisor to acquire all these licenses, not everyone in the department?

Mr. Leavitt:

Government agencies are not currently required to be licensed, unless they are competing with the private industry or could be construed to be competing with the private industry. Under the new proposed regulation, we would be asking them to be licensed in the same way as the private industry. Douglas County is an example of a government agency that does work on its own behalf as well as on behalf of private individuals.

Chair Settlemeyer:

Will everyone in the department then be required to get this licensure, or will only one overseeing supervisor need to have it?

Mr. Leavitt:

In Nevada, the supervisor is called the primary principal. The person supervising in the field has to be licensed, but the people doing the applications, as long as they are properly supervised by a licensed operator, do not need licenses. It could be more than one individual needing a license, but it is not all individuals.

Senator Goicoechea:

To clarify, if you are a private individual, you have to be a licensed applicator to purchase the herbicide or insecticide. Is that correct?

Scott Cichowlaz (Continuing Education Coordinator, State Department of Agriculture):

Certification is for restricted use pesticides, which are federally restricted or state-restricted products. If private applicators are not using those chemicals, they do not have to be certified or licensed in Nevada.

Senator Goicoechea:

One rodenticide used significantly is strychnine, which is restricted and requires the applicator to be licensed. Would this regulation require another level of licensing for the private landowner, even though the chemical is being applied on private property and not for hire?

Mr. Cichowlaz:

That is not currently part of the regulations that are being changed. We did not touch certification. A government applicator who is doing pest control and competing with a private company would need to be licensed in the rodenticide category. If they were using strychnine or another restricted use pesticide, the primary principal applicator would be the one automatically certified. It would not impact the applicators, ranchers or farmers.

Senator Goicoechea:

Where I live, there is Diamond Valley Weed and Rodent Control, which is a government entity. All they do is ensure that pesticides or herbicides are available and then deliver them to their members. Under this regulation, would that entity be required to be licensed?

Mr. Little:

No, because they are not doing the application. If they are just providing the strychnine to the actual farmer doing the application, only the farmer would need to have his restricted use pesticides certification, the same as it is now.

Senator Goicoechea:

In some years, depending on the problems and the amount of funding available, Diamond Valley Weed and Rodent Control sometimes hires a person.

Mr. Little:

If Diamond Valley Weed and Rodent Control hired someone to do the application, the people they are hiring would have to be certified, but not Diamond Valley Weed and Rodent Control itself.

Senator Goicoechea:

But that person would be an employee of Diamond Valley Weed and Rodent Control.

Mr. Cichowlaz:

Unless Diamond Valley Weed and Rodent Control is competing in the open market, they would not need a governmental license because they would be doing it for the Diamond Valley Weed and Rodent Control, not competing against a private company.

Senator Goicoechea:

I am glad we got that on the record. As long as they are only doing it to service their membership and not hanging a shingle to be in competition with the private sector, they do not need licensure through this regulation.

Assemblyman Thompson:

On the commercial end, do you have a guestimate of how many employees this will affect by requiring them to be licensed?

Mr. Leavitt:

In these proposed regulations, there is very little that will impact new people, except for perhaps Douglas County Weed Control and a few others who might be doing things that compete with private industry. Otherwise, we are not really extending licensing to many people. Basically we are changing some of the minor requirements for licensing, but we are not impacting less than a dozen people, I would say.

Assemblyman Thompson:

The way I am reading it is that anyone who does pesticide consulting has to go through the licensing process. Is this the person who comes to your door to sign you up for pesticide control?

Mr. Leavitt:

Currently, people who go door to door have to be licensed. They are called agents. The consulting part is people who work for dealers who directly impact the pesticides used by customers. It does not include people in university, or who come from out of state from a large chemical company.

Assemblyman Thompson:

The regulation lists late fees, including an assessment of \$125. Would this be a fee to the State? Are there additional fees if it is a county or municipal business getting licensed?

Mr. Leavitt:

That \$125 is a late fee. Every year, the pesticide companies have to be licensed, which is twice that amount. If they get their licensing packet in late, the \$125 late fee would go

to the State. To my knowledge, there are no subdivisions of the State that require licensing for pest control.

Chair Settelmeyer:

Nevada law dictates that if you do not spray your weeds, your municipality has the legal authority to come spray your weeds and bill you. I do not think that person is hanging out a shingle to compete, because we are being forced to pay them. I want to make sure the local municipalities can ensure they have one person trained to do this, even though they do it for hire. In our communities, they are doing it for hire because no one else will. There is no competition because no one else wants to try that trade for a few short months, so the weed district has taken it over. Individuals with what we call "ranchettes," which are 20 acres or less, utilize that service because they do not necessarily know how to apply these chemicals. In that situation, do we still have the ability for one person to be licensed and then supervise three or four crews going out in the field and spraying weeds? Is that still possible with this regulation?

Mr. Leavitt:

We fully support the activity that Douglas County Weed Control does. They do a great job and weeds do have to be sprayed because they are a threat to the State and to the State's farming and ranching interests. We are not trying in any way to prevent or hobble any weed district. I am a weed person and have a PhD in weed control, so nobody supports those efforts more than I do.

That said, current Nevada statute requires that anyone doing pest control for hire should be licensed. Under these proposed regulations, we are just trying to clarify that if someone working for a county or any other subdivision is working under the taxing authority of the State and getting money through some sort of tax, then they are working not for hire but as a government person. If, however, they are charging a fee and a private person could compete for that fee—for example, if an individual grower in Douglas County or somewhere else hires them to control weeds—then they need the same licensing that any commercial entity would be required to obtain. Currently, that consists of one primary principal and operators in the field who can control and supervise what is going on in the field to ensure that the pesticides are being applied safely to protect the environment in an efficacious manner. The actual applicators, as long as they are properly supervised, do not have to be licensed.

SENATOR GOICOECHEA MOVED TO PASS REGULATION R093-15 FROM
THE STATE DEPARTMENT OF AGRICULTURE.

ASSEMBLYMAN THOMPSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

Chair Settlemeyer:

I will now open discussion on regulation R094-15 from the State Board of Agriculture relating to the Nevada Petroleum Products Inspection Act.

Senator Goicoechea:

I have always had some issues with the 38th degree of north latitude and 117th degree of west longitude. In the wintertime, I do not fuel south of Alamo, because if you do, when you get back to Ely your fuel is going to gel, especially with diesel fuel.

When I looked at these new regulations, it says you have to have 87 octane and that 85 octane would not be valid north of the 38th parallel. Section 7(3) states that "gasoline and any blend of gasoline and ethanol that is sold outside the area of this State which is east of the 117th degree of west longitude and north of the 38th degree of north latitude must have an octane rating number of 87 or more." I can drive all over Carson City today and find 85 octane stations. This regulation would now require them to be 87 octane, is that correct?

William Striejewski (Senior Petroleum Chemist, State Department of Agriculture):

The DOA adopts specifications from the American Society of the International Association for Testing and Materials (ASTM) for fuel. In the ASTM gasoline specification, part of it deals with the Intermountain West, which includes the Rocky Mountains and further west. Because of the altitudes, octane can be de-rated from regular fuel, which is 87 octane, to 85 octane. Part of the affected area includes the area just west of Battle Mountain all the way to the Utah border and the 38th parallel and above.

In the past, there have been a couple of gas stations on the periphery of the border that have sold 85 octane gas, but it was not an issue. More recently, there has been some creep, with more in the north outside of that quarter of the State selling 85 octane. Not only is it what they should be selling, but from a marketplace issue both for consumers and for the competition, it became a fairness issue. If you look on gasbuddy.com or listen to the television news telling the cheapest regular gasoline in an area, that might be at a station selling 85 octane, not 87 octane. What we are trying to do is close the loophole.

Senator Goicoechea:

One of the reasons I have taken exception to the 117 parallel and 38th parallel cutoffs is that this technically limits the ability of Utah fuel coming from Salt Lake City refineries to come west of Battle Mountain or south of Alamo. It limits the market and says you shall use California fuel. When you use California fuel, which is coming up the current pipeline or being transported over Donner Pass right out of the tank farm in Reno, it makes it a limited market. That is why I have always had a problem with this regulation. Technically, it would not impact Carson City or Dayton. I can go out right here and get 85 octane gas, but they are west of the 117th parallel, so technically they do not have to

sell 87 octane. But it says anything that comes out of Utah and those Salt Lake refineries will be 87 octane and those trucks cannot deliver west of Battle Mountain. Is that correct?

Mr. Striejewski:

I suppose that is correct. The Utah refiners do also make an 87 octane gas. I am not sure how much they are selling beyond Battle Mountain.

Senator Goicoechea:

It just limits the market, and that is my concern. I cannot call a Reno tank farm and order a load of 85 octane fuel and have it delivered to Eureka County where I live.

Mr. Striejewski:

That is correct. I will say emphatically that ASTM is looking at this issue. The auto makers say the percentage of the fleet that is affected by the high elevation—cars that are still carbureted—in this area is so small that they would like to do away with this derating, so it would be 87 octane minimum everywhere. Refiners would rather they have as many products to sell as possible. It is a stalemate at the moment. If that changes, we will address that issue.

Senator Goicoechea:

We went through this about three legislative sessions ago with the car dealers and the anti-knock, hard start issues. Southern Nevada was pressing to move farther north, and I come out of the rurals to the east and say we should do away with these artificial boundaries. What the heck does the 38th parallel have to do with it? The guy driving down the road does not know he crossed the line. I am concerned about this for truckers. I would like to see something a little more standard when it comes to winterizing fuel. You can fuel up in the wrong place and strand yourself in northern Nevada. Recently, I left Las Vegas, where it was 70 degrees, and when I got home to Eureka it was 20 below zero. If you do not have the right fuel, you will not be able to start your vehicle the next morning. We were not required to have 85 octane east of Battle Mountain prior to this regulation. Is that correct?

Mr. Striejewski:

To clarify, you can have 87 octane also. This is a restriction outside of the northeast part of the State. You cannot have 85 outside of that area. Technically, this was always on the books, but we are emphasizing it now to try to shut down the creep.

Senator Goicoechea:

As I read section 7(3) of the R094-15 regulation, it says gasoline sold outside the area which is east of the 117th parallel and north of the 38th must have an 87 octane rating. So no one in northeast Nevada can sell 85 octane gasoline, even though it would be cheaper.

Mr. Striejewski:

It is exactly the opposite. I know it is confusing, but in that northeast Nevada quadrant area, 85 octane is legal to sell. Outside of it, any gas has to have a minimum of 87 octane.

Senator Goicoechea:

Then the people in Carson City should be nervous, because I can find 85 octane gas in a dozen gas stations here. I prefer to run 87 octane, but I see 85 octane all the time.

Mr. Striejewski:

That is true, and I hope it is not as widespread as you are reporting. Or records do not show this. It will not be in the future.

Chair Settlemeyer:

Are you saying the 85 octane will no longer be allowed?

Mr. Striejewski:

Yes, that is correct.

Chair Settlemeyer:

Has that always been the rule and it was not enforced? Why now?

Mr. Striejewski:

Yes, until recently it was not an issue, but lately there has been the creep farther west and throughout northern Nevada.

Chair Settlemeyer:

Did you have any public outcry during your hearings?

Mr. Striejewski:

The automakers were in full support. There were no attendees who wanted to retain 85 octane throughout the State.

Chair Settlemeyer:

It is interesting that there was not much public outcry. I have not heard anything from the Nevada Motor Transport Association or any other entity reaching out to us. I have seen gas stations with 85 octane. Not very many of them, though. Most are an ethanol blend. Is that still allowed?

Mr. Striejewski:

Those are two different animals. The 85 octane product is a regular conventional engine fuel, whereas E85 is an alternative fuel allowed only in flex fuel vehicles. It would still be allowed.

Chair Settlemeyer:

I think the only 85 octanes I have seen were E85 fuels.

Mr. Striejewski:

I believe there is at least one station in Douglas County selling 85 octane. The issue came down to marketplace concerns. People would see an attractive price and they would pull in, and it would be 85 octane and the 87 octane would be more expensive. If there was an intersection with competing gas stations, it was not fair.

Chair Settlemeyer:

Is there a motion to pass this regulation? Would we like more time?

ASSEMBLYMAN SILBERKRAUS MOVED TO DEFER ACTION ON
REGULATION R094-15 FROM THE STATE DEPARTMENT OF AGRICULTURE
TO THE NEXT MEETING OF THE LEGISLATIVE COMMISSION.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Settlemeyer:

I will open Item V, public comment. Seeing no one wishing to speak, we are adjourned at 11:07 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller, Interim Secretary

APPROVED BY:

James A. Settlemeyer, Chair

Date: _____

| Exhibit | Witness / Agency | Description |
|----------------|----------------------------------|--------------------------------------------------------------------------|
| A | | Agenda |
| B | | Attendance Roster |
| C | Adrian Ruiz, DDS | Nevada State Board of Pharmacy Letter and Document |
| D | Adrian Ruiz, DDS | Written Testimony |
| E | Adrian Ruiz, DDS | Written and Signed Complaint |
| F | Adrian Ruiz, DDS | Personal Stories |
| G | Adrian Ruiz, DDS | Signed Extortion Letters |
| H | Adrian Ruiz, DDS | 77 Petitions Signed on Change.org |
| I | Andrea Smith | Request to the Nevada Board of Dental Examiners by Andrea L. Smith |
| J | Scott Brooksby, DDS | Nevada State Board of Dental Examiners Hearing Documents |
| K | Scott Brooksby, DDS | State of Washington Department of Health letter |
| L | Scott Brooksby, DDS | Proposed Changes to NRS 631, Dental Practice Act |
| M | Scott Brooksby, DDS | Written Testimony |
| N | Scott Brooksby, DDS | Correspondence Between Scott Brooksby, DDS, and Daniel Royal |
| O | Linder Hiller, Interim Secretary | Draft Minutes from the December 30, 2015 meeting |