

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON REVENUE**

**Eighty-Second Session
February 21, 2023**

The Committee on Revenue was called to order by Chair Shea Backus at 4:03 p.m. on Tuesday, February 21, 2023, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [[Exhibit A](#)], the Attendance Roster [[Exhibit B](#)], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Shea Backus, Chair
Assemblywoman Venicia Considine, Vice Chair
Assemblywoman Natha C. Anderson
Assemblywoman Lesley E. Cohen
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblyman Gregory T. Hafen II
Assemblywoman Erica Mosca
Assemblyman Duy Nguyen
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Michael Nakamoto, Chief Principal Deputy Fiscal Analyst
Susanna Powers, Deputy Fiscal Analyst
Nick Christie, Committee Manager
Gina Hall, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General
Mark J. Krueger, Chief Deputy Attorney General, Bureau of Consumer Protection,
Office of the Attorney General
Elizabeth Hickman, Senior Deputy Attorney General, Tobacco Enforcement Unit,
Office of the Attorney General
Stacey L. Williams, Deputy Attorney General, Tobacco Enforcement Unit, Office of
the Attorney General
Bradley Mayer, representing Southern Nevada Health District
Joelle Gutman Dodson, Government Affairs Liaison, Washoe County Health District
Cari Herington, Executive Director, Nevada Cancer Coalition
Charlie Moses, representing Parents Against Vaping e-Cigarettes
Mark Hackmann, representing Nevada Petroleum Marketers & Convenience Store
Association
Bryan Wachter, Senior Vice President, Government and Public Affairs, Retail
Association of Nevada
Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada
Leann D. McAllister, Executive Director, Nevada Chapter of the American Academy
of Pediatrics
Megan A. Boelter, Public Health Law Attorney, Western Regional Director,
Preventing Tobacco Addiction Foundation, Tobacco 21
Nicki Aaker, Director, Carson City Health and Human Services
Ralph Keyes, Chairman, Board of Commissioners, Esmeralda County

Chair Backus:

[Roll was taken, and Committee rules and protocol were reviewed.] We have a presentation by the Attorney General's Office this evening on various structured settlements. We will be taking our bills out of order this evening and hearing Assembly Bill 53 before we hear Assembly Bill 1. Will the representatives from the Attorney General's Office come to the table? Please feel free to begin whenever you are ready.

Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General:

I want to extend Attorney General Ford's regrets for not being here. He had planned to be here but is presently in virtual court. Mark Krueger just came from virtual court. He will give his presentation on opioids, then return to the hearing.

Thank you for having the Attorney General's Office here and for the opportunity to introduce you to the good work the Attorney General's Office does. The Office [Office of the Attorney General] consists of nearly 350 dedicated, hardworking individuals, committed to enforcing Nevada law and upholding justice for the protection and benefit of our citizens. I want to give you a quick overview of the office before we delve into the presentations on opioid settlement funding and the Tobacco Master Settlement Agreement.

Attorney General Ford really believes that his job is to ensure justice for all Nevadans [page 2, [Exhibit C](#)] and he directs all employees within the Office to approach the work in the same vein. He has a motto, "Our job is justice." At any time, if you walk into the Office with any employee and you ask what is our job, they are going to look at you and say, "Our job is justice." To support the Office's mission of justice, Attorney General Ford has adopted five Cs—constitutional rights, criminal justice and reform, consumer protection, client services, and community engagement. Each one of these five Cs serves as a moral compass to guide the ways in which the Office of the Attorney General can serve Nevadans.

Attorney General Ford is the state's chief law enforcement officer, and he represents the people of Nevada. He represents the people's best interests before state and federal trial, appellate court, and in criminal and civil matters. The Office also serves as legal counsel to state officers, state departments, and most state boards and commissions. Additionally, the Office works with local, state, and federal law enforcement partners to protect the public. We invite you all to read our 2020 to 2022 Biennial Report, which can be found at our website at ag.nv.gov. We would have printed it, but it is a pretty substantial report. Multiply that by 25 as copies for the public, and it gets to be pretty hefty and hard to carry over in a snowstorm. It is a public document, and you can find it easily at our website.

Knowing you are busy people, we just want to highlight some of the accomplishments from the Office [page 3]. First, we aggressively defended tort claims, saving the state more than \$1.3 billion in taxpayer dollars. We processed 18,454 constituent complaints and 39,069 constituent inquiries for information and services. We prosecuted elder abuse and provided support to enforcement agencies across the state to do the same and attended more than 500 guardianship hearings for elder and vulnerable Nevadans. As we will be talking more about today, we obtained \$330 million in funding to combat the opioid epidemic.

At the request of Chair Backus, the Assembly Committee on Revenue will be receiving two presentations relevant to this Committee's jurisdiction [page 4]. First, a presentation on opioid settlement dollars [[Exhibit D](#)] inclusive of allocation of recovered dollars through the One Nevada Agreement [[Exhibit E](#)], of which you all have a copy. We are extremely proud of the meaningful recoveries that have been made through this Office, and we still continue in a lot of that work. Second, you will learn about the Tobacco Master Settlement [[Exhibit F](#)], which was the largest civil litigation settlement in the United States when it was signed in 1998. The funds flowing into Nevada from this settlement are vitally important to the Millennium Scholarship and to the Fund for a Healthy Nevada. Lastly, the Committee is

going to hear a presentation on Assembly Bill 53 [[Exhibit G](#)], which is seeking to create a better balance in the enforcement of Nevada's underage youth smoking laws. The state will be better off for it, for sure, with the enactment of A.B. 53, but we just want to acknowledge at the outset we have many well-intended stakeholders who are still coming to agreement on the final version of this language. With that being said, I am going to allow Mr. Krueger to begin.

**Mark J. Krueger, Chief Deputy Attorney General, Bureau of Consumer Protection,
Office of the Attorney General:**

I have a short presentation for you all, and I can certainly take questions during the presentation or at the end, whatever your pleasure. As an opioids litigation update [page 2, [Exhibit D](#)], as I am sure all of you know, the purpose of the litigation is the state of Nevada seeks to hold accountable those individuals, the named defendants, for their contributions to creating the opioids epidemic here in Nevada. As we all know, the epidemic is a national one, and Nevada has unfortunately been one of the hardest-hit states. The lawsuit was filed by an amended complaint on June 27, 2019, in the Eighth Judicial District Court. As Ms. Benitez-Thompson just mentioned, we have ongoing hearings; however, it is important to note that the discovery phase of the litigation is closed, and we have a trial date of May 1, 2023. We are going to go to a jury trial. We anticipate it taking several months to get through that trial.

It should be noted that some of the litigation is currently stayed by federal bankruptcy courts, in particular Purdue Pharma, as well as the individuals who own that company, the Sacklers. There was also a recovery, of which I will get into a little later, through a bankruptcy court—it was Mallinckrodt. I did include a link to our website, where you can find the documents that are relevant to the case, including the One Nevada Agreement [[Exhibit E](#)], which I am going to talk about here in a few minutes, as well as the complaint itself, which is voluminous.

Where do the recoveries go? The important thing was first getting recoveries [page 3]. In order to do that, in very Nevada fashion we came together with our counties and litigating cities and were able to create a document that we refer to as the One Nevada Agreement. The actual title is the One Nevada Agreement on Allocation of Opioid Recoveries [[Exhibit E](#)]. What this document did was allow us the ability to negotiate on behalf of all the signatories to the agreement in order to get recoveries and settlements. We maximized the number of recoveries by having all our litigating subdivisions in a settlement. It is a very good document. We put some protections in place to ensure the recoveries go to abatement, because if we do not abate this epidemic, it is not going to go away and we are going to be right back where we are, with hundreds and thousands of people dying and other overdoses. The mechanism itself is a way to share costs. Costs of these litigations can be expensive and by sharing them among all of us it reduces the amount of cost. It is also a way for us to require that the local governments, who receive part of the share of this, have an annual reporting requirement on what the use is, so we can ensure the use is to abate the epidemic,

consistent with most of the agreements, as well as recent legislation passed last session, Senate Bill 390 of the 81st Session, which requires use of this money, the State's portion, to be used for abatement.

That legislation also created a fund called the Fund for a Resilient Nevada [page 4]. The Fund for a Resilient Nevada does not revert to the General Fund but requires that the Department of Health and Human Services use the recoveries from any litigation related to opioids, that the state's portion be deposited into this fund for abatement. That legislation also contains a reporting requirement to the Legislature every year on the use of the money [*Nevada Revised Statutes* (NRS) 433.734]. The Department of Health and Human Services is responsible for the use of the money, and I will not delve into to what they have done, other than they have created what we call a "state plan," which is based upon a needs assessment they created on how they are going to fund priority services and programs to actually accomplish the abatement.

This is just another way of explaining everything I just talked about [page 5, [Exhibit D](#)]. Some people are visual and like charts so I decided I would include one, in case you want to follow how the process goes. I compiled the next chart [page 6], which represents the actual and estimated settlement dollars that will be coming in. These are all settlements that have been entered into by the state of Nevada and the signatories to the One Nevada Agreement. I tried to be as transparent as possible—showing the money coming in, the cost and the fees, and the net amounts to be distributed. Unfortunately, it is a little bit small on the screen [page 7] because it has a lot of lines. If you have any questions, I would be happy to answer them. The bottom-line numbers are a little bit bigger, and the gross amount that we have gotten to date, or will be getting because some of these are paid over time, is \$320,768,972.54. There are some costs that have been taken off of that, as well as some fees, and then the total allocation after fees is still \$265,717,333.92. As you can see, the bulk of those have or will be paid through 2023, and then there will be several payments through the distributors payment which are coming in through July 2038.

The next chart we created was important because it breaks down the actual dollar amounts that are being deposited into the Fund for a Resilient Nevada [page 8]. The chart itself represents the one recovery we had that was prior to the One Nevada Agreement, which is the first one [page 9], and then all other portions of the recoveries that go to the state of Nevada, for a total of \$165,467,858.51. The net recoveries are \$136,700,214.70. I want to note three things about both of these charts. The first is that they assume there are no defaults in these payments, and we do not anticipate that there will be. The second is it also does not deduct any CMS [Centers for Medicare & Medicaid Services] Medicaid match costs that might need to be deducted. So far, we have not had any. The third is that it assumes no administrative fees for court-appointed administrators. Third-party administrators have been removed. We are hopeful and to date the third-party administrator fees have been paid off of the interest before the actual allocations. We are hopeful that will continue, there will not be any additional deductions, and we will see the numbers that are represented in these two charts coming in exactly as anticipated. If you have any questions [page 10]. I promised I would keep it brief and I did.

Chair Backus:

Thank you, Mr. Krueger, as I understand you probably need to get back to the court matter. I am going to break this up and hope Ms. Benitez-Thompson does not mind my doing that. We do have some questions for you regarding the settlement. I will start with Assemblywoman Anderson.

Assemblywoman Anderson:

Thank you for the work you are doing on this. It is very important for us to do this work. There has also been work done at the federal level, the National Association of Attorney Generals, or as a coalition. Are we involved in that coalition at all, using that court case as a way to help us in some of our arguments, or is this court case only for Nevada, working separately?

Mark Krueger:

The case we are talking about, the State's litigation and the corresponding One Nevada Agreement which has individual litigation by the different counties and litigating cities, is a state-only case and not involved at a national level. When you refer to the national level there is a multidistrict litigation that has been ongoing, where there are probably some 3,000 different cases throughout the country that have been transferred to that particular federal court. We call them MDLs [multidistrict litigations]. The MDLs are in generally a stage status, unless they have a bellwether case go forward. We are not involved in that at all.

Assemblywoman Anderson:

I am not sure how far the questioning should go because of the case coming up. I know there was another case that just recently ended. I believe it was the Juul case, where we now also have the storage of those e-cigarettes or vaping items. Has there been a discussion about us, as a state, having to do something with holding on to these opioids and/or destroying them on our own? I do not want to overstep the legal questions as you are preparing for this case. I do not know if that is something that can be answered.

Mark Krueger:

You are talking about two different things. One, the opioids litigation is state litigation. As part of the state's work to abate the epidemic they have done different things, such as several years ago installing some incinerators so they can help destroy the Take Back Programs drugs, or anybody who has opioids in their home who wants to bring them to a sheriff's office can deliver them safely and have them safely destroyed. That is one piece of it. When we talk about the Juul multistate litigation, several states got together and were looking at Juul Laboratories for deceptive trade practices, specifically deceptive advertising conduct. Nonetheless, that was settled independently of the opioid litigation. That particular matter is not related at all to opioids and the funding goes a statutory route. The opioids funding goes a different statutory route. I hope that answers your question.

Assemblywoman Anderson:

It does. I knew they were two different things. It has more to do with the storage and the destroying of the products I was really trying to get to. You answered that with the other work the state has done in the past few years.

Chair Backus:

I would like some clarification on the first chart [page 7, [Exhibit D](#)] that had the settlements post the One Nevada Agreement. The total allocation after the fees that would have been distributed pursuant to the One Nevada Agreement, is that \$265 million? It looks like it is inclusive of all of the counties and cities, so of that portion the State would get pursuant to the One Nevada Agreement 43.86 percent of that total, or is that the total that is going to the state?

Mark Krueger:

You actually reminded me that I should have mentioned something else about the One Nevada Agreement. In order to get the maximum amount under some of these settlements you had to have the majority, if not all, of your specific counties and local governments that have specific populations included in these settlements. We, as I said, in typical Nevada fashion came together and did so. I am really proud of all our signatories of the One Nevada Agreement because we did come together and included all counties, whether they were litigating or nonlitigating, so they are all receiving something, because frankly this opioids epidemic does not care about county lines or city lines. It just kills. When we did that, we also included all litigating subdivisions which were litigating within the state. That way our state as a whole, through the One Nevada Agreement, was covered. When we talk about the recoveries in chart one [page 7], we are talking about all recoveries that go to all the signatories to the One Nevada Agreement, as I explained. In chart two [page 9] is the amount that is actually allocated to the State. If you go to the One Nevada Agreement [\[Exhibit E\]](#) you will see the 43.86 percent. That amount comes out of chart one and is reflected in chart two. I hope that answers your question.

Chair Backus:

It now raises another question. If it goes to chart two, are we then paying fees again on the state's portion of recovery? That is what it looks like to me when I am looking at chart two.

Mark Krueger:

No. Let me clarify that. Chart two is summarized into chart one, so it is a little backwards. I apologize for that. This is a total of fees that would have been paid out by any particular signatory to the agreement. Remember, the fees are sometimes a little bit different rates. That totals all the fees that would be paid out. The fees that are reflected in chart two are inclusive of the fees in chart one, so it is not separate and above.

Assemblywoman Cohen:

You touched on the drug Take Back Programs. I see on slide 4 [page 4] it says the Fund for a Resilient Nevada requires the funds to be used to abate the opioid epidemic through evidence-based programs and services. Does that allow for funds to go for drug Take Back Programs?

Mark Krueger:

The list of Take Back Programs is actually in the Nevada State Plan, which was created by the Department of Health and Human Services. It is extensive. Do not quote me on this, but I believe that it is a program and service that is included in that list. If you go to the Department of Health and Human Services website, you can find the state plan and needs assessment, or I can forward it to the Committee if that makes it easier. It is very accessible online and is very inclusive. They did a fantastic job putting it together.

Assemblyman O'Neill:

Going back to chart one [page 7, [Exhibit D](#)], the \$46 million in attorney fees. You used house counsel, correct? You did not go outside?

Mark Krueger:

There are costs that come off first, and then there are fees. The State did engage outside contingency fee counsel, pursuant to NRS 228.111. I believe Ms. Benitez-Thompson provided you all a copy of that contingency fee contract [[Exhibit H](#)].

Assemblyman O'Neill:

I may not have looked at it. Yesterday I heard how the Attorney General's Office is the largest law firm in the state of Nevada and handles all kinds of cases—intricate cases, important cases, Supreme Court cases, and district court cases. Can you explain why they are unable to handle these cases? Why did we have to pay out \$46 million to outside counsel?

Mark Krueger:

I can let you know that the Governor and the Attorney General, pursuant to NRS 228.111 and following statutes, entered into a declaration that declared a need to have assistance of outside counsel because of the complexity of the case and the issues. That statutory process was followed and, pursuant to that statutory process, we engaged outside counsel on this particular thing. As an example, at one point in this case we had over 70 attorneys reviewing documents. You can see, by that sheer volume of document review, the need to engage outside counsel. In the Attorney General's Office, we simply do not have 70 extra attorneys who are not already working on important matters, as you have identified. So, yes, there absolutely was a need.

Chair Backus:

Are there any further questions from the members of the Committee? [There were none.] Thank you, Mr. Krueger. I know you need to get back. We will close the discussion on this settlement and will move to the discussion of the tobacco settlement.

Teresa Benitez-Thompson:

Just to note, we usually get asked about that fee piece. Attorney General Ford and the Office is absolutely transparent in those. We did provide our contingency report [[Exhibit H](#)], which is provided annually to the Legislature. It is a public document. We provided it in advance that we would have questions on it. The Committee staff will be sure to get it to you, and it will be posted as an exhibit as well.

Chair Backus:

I know I have seen it. We did get quite a few exhibits from your office this morning to each of the Committee members.

Teresa Benitez-Thompson:

We were just getting it updated. As you can see, it is still a work in progress. We wanted you to have the most accurate information, so we did not get that to you until today.

Chair Backus:

We did get two—the agreement [[Exhibit E](#)] and the 2023 Annual Report for Contingent Fee Contract for Legal Services [[Exhibit H](#)]. We have those in front of us right now, but it also came by email.

**Elizabeth Hickman, Senior Deputy Attorney General, Tobacco Enforcement Unit,
Office of the Attorney General:**

I am here today with my colleague Stacey Williams, Deputy Attorney in the Tobacco Enforcement Unit. I appreciate the opportunity to share some information with you about the Master Settlement Agreement (MSA) [page 2, [Exhibit F](#)]. After decades of deception and misinformation, by the mid- to late 1990s the harms caused by cigarettes were known, and many states began litigating against the tobacco companies for costs incurred by their Medicaid systems for the diseases these cigarettes caused. As a result of these civil actions, 46 states, the District of Columbia, and five territories signed the Master Settlement Agreement in 1998. There were four major tobacco companies at that time that made up 96 percent of the cigarette market. Those were Philip Morris, R.J. Reynolds, Lorillard, and Brown & Williamson. Those four original participating manufacturers were the signatories to the settlement at the time it was signed, but since that time more than 40 other manufacturers have signed on to the Master Settlement Agreement.

The Master Settlement Agreement released the participating manufacturers from future and past claims for state-incurred health care costs attributed to cigarettes. In exchange for this release of liability, the state gets very significant annual payments in perpetuity, based on nationwide sales volumes. Additionally, there were significant restrictions placed on tobacco advertising and promotional activities. This included things like outdoor billboards, using cartoons to advertise cigarettes, sports sponsorships, and as a term of the MSA, the American Legacy Foundation, which is now the Truth Initiative, was formed. This is a national public health organization dedicated to ending tobacco use in young adults and youth.

The MSA was the largest civil litigation settlement in U.S. history when it was signed in 1998 [page 4]. The 1999 MSA payment to the states totaled nearly \$4 billion, and from 1999 to 2022 nearly \$153 billion has been paid out in MSA funds. Nevada has a 0.6 percent allocable share of the MSA payment. This was based on the proportion of nationwide cigarettes in Nevada at the time the MSA was signed. In total, dating back to 1999, the State of Nevada has received \$975 million. Our 2022 MSA payment totaled almost \$45 million. Per statute, the MSA payment is divided between the Fund for a Healthy Nevada and the Millennium Scholarship, with 60 percent going to the Fund for Healthy Nevada and 40 percent going the Millennium Scholarship.

When the MSA was signed the parties acknowledged that because the participating manufacturers would be making such significant monetary payments to the states, they would have to increase the price of their cigarettes [page 5]. This was consistent with the objectives of the MSA, which was to reduce youth use of cigarettes. They are a price-sensitive category of consumers, so raising the price of the cigarettes was consistent with the goals of the MSA. The parties acknowledged that the manufacturers that were not signatories to the MSA would be able to undercut the market, and there was a fear that they would essentially overtake the market with cheap cigarettes, rendering the objectives useless. To mitigate that risk, the State of Nevada and other settling states imposed an escrow obligation on the nonparticipating manufacturers. This is in Chapter 370A of NRS, and the nonparticipating manufacturers are required to make quarterly payments that are less than, but substantial, such that the undercutting of the market would not occur.

The MSA payment our State receives is subject to a number of adjustments annually like an inflation adjustment, some volume adjustments, but the most significant adjustment at risk to our payment is called the NPM [non-participating manufacturer] adjustment. This adjustment occurs if the participating manufacturers have suffered a market loss since the MSA was signed, and in all of those years dating back to 1998 an independent auditor has determined their market share of the cigarette market has gone down. The independent auditor has determined that the cause of that decrease in market share was the MSA; that is the triggering mechanism of whether this NPM adjustment could apply. If the NPM adjustment applies, only states that did not diligently enforce their escrow statutes against non-participating manufacturers are subject to the adjustment. This means the collection of the quarterly escrow payments by companies that did not sign the MSA. Nevada, as well as 36 other states, has settled the issue of the NPM adjustment through 2022. If a state is found to not diligently enforce their escrow statutes, they can lose up to the entirety of their MSA payment, even though our allocable share is only 0.6 percent, because whatever state is not diligent incurs the portions of the NPM adjustment attributable to the states that are diligent. It just builds on itself, up to the entirety of the payment.

In addition to the MSA matters, the Attorney General's Office Tobacco Enforcement Unit enforces the state laws that prohibit the sale of tobacco and vapor products to underage consumers [page 6]. This portion of our Office involves two law enforcement officers and six underage inspectors. These inspectors work throughout the state to check retail establishments for underage sales, and if our sales rate exceeds 20 percent there is a different

pot of money, separate from the MSA, that could be reduced. This is called the Nevada Substance Abuse Prevention and Treatment Block Grant. For federal fiscal year (FFY) 2023 this is an \$18 million grant, and it can be reduced by 10 percent if the state's retailer violation rate exceeds 20 percent. My colleague is going to talk to you about Assembly Bill 53, and the money that it is relevant to is the second pot of money, the substance abuse block grant, rather than the MSA funds. I am happy to take any questions.

Chair Backus:

Go ahead and move along to the bill. We will ask any questions that may be representative of your presentation and the bill.

**Assembly Bill 53: Revises provisions relating to sales of tobacco products.
(BDR 32-421)**

Stacey L. Williams, Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General:

I, along with Senior Deputy Attorney General Elizabeth Hickman, am here to present for your consideration Assembly Bill 53, which proposes changes to NRS 370.521 with respect to the prohibited sale and distribution of tobacco products to persons under 21 years of age [[Exhibit G](#)]. The purpose of the bill is to create a better balance in enforcement of NRS 370.521, with three areas of main focus. The paramount focus is to keep tobacco and tobacco-related products from being sold to youths and persons under the age of 21. The second important area focuses to lower the youth sales violation rate, in particular our Synar violation rate that Senior Deputy Attorney General Elizabeth Hickman shared with you a little while ago, to make that rate well below the 20 percent threshold, so that our great state does not find itself in danger of jeopardizing our federal block grant funding. The final area of focus is to strengthen the accountability of licensees and to encourage them to take stronger measures to ensure the cessation of the sale of tobacco and tobacco-related products to underage consumers.

Assembly Bill 53 seeks to modify portions of section 7(a) through (c) [subsection 7, paragraphs (a) through (c)] of NRS 370.521, and to strike the language of section 7(d) [subsection 7, paragraph (d)] to add civil penalties and suspension periods for licensees who violate the section [page 2]. As it exists now, NRS 370.521 only imposes civil penalties for first-time violations on the persons actually making the tobacco product sales, so that would be the salesclerks, with increasing penalties for every subsequent sale within a 24-month period. Section 7 [subsection 7] only issues warnings to the licensees for first and second violations, and civil penalties are not imposed until the third violation within a 24-month period at the same premises. The proposed changes will edit section 7(a) [subsection 7, paragraph (a)] to impose a civil penalty on the licensee of \$500 for the first violation of subsection 1 of NRS 370.521. Section 7(b) [subsection 7, paragraph (b)] would be modified to impose a civil penalty of \$1,000, as well as suspension of the tobacco and/or other tobacco products license of the licensee for a period of 30 days for a second violation within that 24-month period and at the same premises. Section 7(c) [subsection 7, paragraph (c)] would

be modified to impose a civil penalty of \$2,500, as well as suspension of the tobacco or other tobacco products license of the licensee for a period of not more than 180 days for the third and subsequent violations within a 24-month period at the same premises.

These proposed changes are particularly important because the overall health of Nevada's youth and Nevadans in general is at stake [page 3]. Statistics show that the instance of high school students in Nevada who report that they smoke or use e-cigarettes is much higher than the national average of all high school students, despite the fact that we have strict laws already in place in Nevada to prohibit the sale of tobacco and tobacco-related products to persons under the age of 21. Despite the passing of Nevada's Tobacco 21 law, Nevada's youth tobacco sales violation rate is consistently higher than 20 percent.

Our Synar violation rate [page 4] must get to and remain below 20 percent in order for the state to avoid being penalized up to 10 percent of the Nevada Substance Abuse Treatment and Prevention Block Grant, which could mean a loss of 10 percent of more than \$18 million in federal funding to our State. As of the 2020 Synar reporting period, Nevada's violation rate was above 25 percent. The 2022 reporting showed Nevada at a violation rate that remained above 25 percent. To make matters worse, Nevada was the only state above the 20 percent threshold for the 2020 annual Synar reporting period, which put our state on a national platform for noncompliance.

In considering the proposed modifications outlined in [Assembly Bill 53](#), we reviewed tobacco-related statutes in several other states with consistently lower Synar retail violation rates [page 5, [Exhibit G](#)]. Our research revealed similar, and in some cases more stringent, practices to the ones that we propose here, with respect to penalties issued to retailers for violation of statutes prohibiting the sale of tobacco products to minors. Washington State issues escalating civil penalties to the licensee on the first and second violations, as well as escalating tobacco license suspensions for the third and fourth violations within a 36-month period [page 6]. For a fifth violation the licensee's tobacco license is revoked, with no possibility of reinstatement for a period of five years.

We also looked at Wyoming [page 7]. Wyoming has escalating civil penalties that are imposed on both the clerk and the retailer for the first and second violations. For the third and subsequent violations within a 24-month period, the retailer is issued a civil penalty of \$750 and up to a 180-day injunction prohibiting the sale of nicotine products. Wyoming does allow a waiver of the retailer's fine, but only for that first offense and only if that retailer can show that it has an established training program for its employees and established disciplinary sanctions for employees who fail to comply.

We also looked at Arkansas [page 8]. In Arkansas, the clerks and owners can receive fines of up to \$100 per violation of the Arkansas Code § 5-27-227 but, in addition to that, the state created the Arkansas Tobacco Control Board in July 2019, and that board may directly assess penalties on the licensee for violations of the same statute of up to \$250 for the first violation. For licensees who are subsequently found in violation within a 48-month period of the first violation, the fines escalate and the component of license suspension

is introduced. A second violation carries a fine of up to \$500 and up to a two-day license suspension. A third violation carries a fine of up to \$1,000 and up to a seven-day license suspension. A fourth violation carries a fine of up to \$2,000 and up to a 14-day license suspension. A fifth violation carries a fine of up to \$2,000 and revocation of the tobacco license. Just to put it in perspective, Arkansas' Synar violation rate has been consistently below 8.8 percent.

Delaware also assesses the penalty against the licensee for a first violation but shortens the window for subsequent violations to within 12 months of the first violation for escalating fines [page 9]. The component of license suspension occurs on the second violation and is for a period of up to six months. Delaware does also have an established affirmative defense for retailers, which is embedded in their statute. It is specifically for retailers who have adopted and enforced written policies that inform their employees of the prohibition against the sale of tobacco products to individuals under the age of 21. They also have a requirement that those employees sign an acknowledgement of that policy, that they have age verification, and that they also must have disciplinary measures in place for noncompliance. They have the ability to avoid their penalty for failure of one of its employees; however, there is a caveat to that, that the affirmative defense exception can only be used once per location within a 36-month period. Delaware's Synar violation rate has consistently been below 9.1 percent.

We looked at one of the stricter states [page 10, [Exhibit G](#)]. New Mexico's Synar violation rate had consistently been below 11 percent, but as the state's rate began to trend upwards, New Mexico passed stricter laws with respect to retailer violations. As of the passage of their new law, as of January 1, 2021, New Mexico not only assesses penalties against the licensees for violations at a higher threshold than any of the previous states mentioned, but the introduction of license suspension occurs on the first violation in that state. Under their administrative code it is the Alcohol Beverage Control Division of the Regulation and Licensing Department that covers tobacco sales to minors, but that first violation carries a \$1,000 penalty, with a one-day permit suspension. Subsequent violations within a three-year period of that first violation allow the fines to escalate upwards of \$10,000 and ultimate permanent revocation of the license. The division may also require their retailers to use identification verification software for a designated period of time as a penalty.

The final state we looked at was Utah [page 11]. Utah assesses penalties for the first violation, with stricter penalties in place if the actual violator is the store owner. Utah has a graduated scale for subsequent offenses. If the retailer employee sells a tobacco product to a minor, the retailer is subject to escalating fines for the first and second offenses within a one-year period. For a third offense within two years of the first, the retailer is subject to a fine of \$2,000 or a 30-day permit suspension. A fourth violation within two years of that first violation carries a \$2,000 fine and permit revocation. Utah also makes a special distinction. It distinguishes its penalty structure based on who is actually making the sale, and if the actual store owner is the person that sells to the minor, then the fines are escalated quicker. There is a \$2,000 fine assessed to the retailer for the first offense. If the store owner is found in violation a second time within one year of that first violation, the retailer is

subject to a \$5,000 fine and a permit revocation. They also have an additional distinction that is called Tobacco Specialty Business, for retailers where tobacco products constitute more than 35 percent of the business's gross receipts, or that take up 20 percent of their retail floor space or if the business is engaged in the sale of any flavored e-cigarettes. That makes them fall into that Tobacco Specialty Business distinction. For that distinction, if those businesses have violations and sell products to those who are under the age of 21, the first violation carries a \$5,000 fine and 30-day license suspension. If there is a second violation within two years of the first for a Tobacco Specialty Business, then the fine is \$10,000 and the permit will be revoked. Vape shops would be covered in that distinction.

The commonality among the highlighted states is the issuance of penalties against the retailer for the first offense [page 12] and Synar violation rates that are consistently well below the 20 percent threshold. As you are considering [Assembly Bill 53](#), you may be wondering how our new tobacco age verification law that went into effect on January 1, 2023, is impacting our state Synar rate, and if that impact alone lessens the necessity to make the statutory modifications we are proposing now. I want to give you a bit of history about that. In December 2019 the President signed into law legislation raising the federal minimum age for the sale of tobacco products from 18 to 21. At that time our state Synar rate was well above 22 percent. As a result of the heightened sensitivity to that new federal law, we did experience a significant decrease in our Synar violation rate; however, within one month of that drastic decline our violation rate began to trend upward, and within two months our Synar violation rate was approaching 18 percent.

Looking at our rates for the latter months of 2021 [page 13, [Exhibit G](#)], Nevada's Synar violation rate remained consistently above 20 percent, reaching thresholds as high as 32 percent, which brings us to our current rate [page 14]. As the focus of the new law was top of mind for our retailers, we did see a drastic decline in our violation rate for January 2023. Prior to that we were above 20 percent and then we saw the numbers trend down to the 7 percent mark, which is exactly where we want to be. As of February 14, 2023, our rate was already back up to 11 percent, and as of today's date was hovering around that rate. As you can see, we are trending upwards again. If history does repeat itself, as focused on the new age verification law wanes, our violation rate will continue to trend upwards, and as such Nevada cannot wait until a later legislative session to take action. Therefore, in an effort to lower Nevada's instances of youth tobacco sales, to decrease our Synar violation rate and hold retailers accountable in those efforts, we propose that NRS 370.521 be modified to reflect the issuance of civil penalties against the retailer beginning with that first violation, and that the components of the tobacco retail license suspension be added beginning with the second violation at the same premises within 24 months of the first violation.

Chair Backus:

Thank you for your presentation. We do have some questions from Committee members. We will start with Assemblyman Hafen.

Assemblyman Hafen:

As many of you know, I have been passionate about this subject. I was the one who carried Assembly Bill 360 of the 81st Session from our last legislative cycle. I want to thank the Attorney General's Office for working with me to bring that forward because, as you presented today, it has actually been a great success story. I did not know those numbers until today, so I am really excited. I am excited to see that we are at 11 percent, we are within compliance, and we are continuing to hover around there. I am very thankful for all the hard work and effort that has been put into this, even though I know some people would like to just ban smoking altogether. I do not know if I agree or disagree.

You mentioned if history repeats itself we are going to see an increase, but the compliance rate we have to meet is below 20 percent, correct? We can almost double where we are now and still be within compliance, and we have only seen what looks like about a 4 percent increase. Do you really think that this is going to be a problem? I know it has only been two months since the implementation of A.B. 360 of the 81st Session; will we be able to stay within compliance?

Stacey Williams:

We are just looking at what happened before. Our numbers went down significantly within that first couple of months, but as it was no longer top of mind, people just stopped doing what was necessary to make sure the sales to youth and those under the age of 21 ceased. The fear is that as soon as our new age verification statute is no longer top of mind, we will find ourselves back in the same predicament. If you look at the numbers from right after the 2019 [federal] law went into effect, we went from very low numbers, to 11 [percent], to 17 in the next month, and there on. We are afraid to allow several months to continue to pass and then find ourselves in the same predicament that we are now.

Assemblyman Hafen:

I know Chief of Staff Benitez-Thompson will appreciate my not going on the record sharing the emails and voicemails I received after the implementation of A.B. 360 of the 81st Session because I shared them with her, and I appreciated her assistance in clarifying some of that, as people are upset when they now have to present their ID [identification] and actually scan it in. They feel they should just be able to buy tobacco at any age. I personally think that it is working. We are doing a good job. Your Office is doing a great job now, so I am going to respectfully disagree with you on what I think we are going to see because we are now using the technology we have at our fingertips to protect our youth and say, "We are going to scan your ID."

I will give the one instance I shared with the former Majority Leader [Teresa Benitez-Thompson]. A senior citizen was complaining that she is 65 years old and has to scan her ID to purchase alcohol. Stores are going over and above to ensure they have adopted policies that everyone now has to scan IDs. I am not sure that this level of change . . . though I would agree that we might want to do something just to continue having a further conversation. I do not think we are going to have the growth we saw after 2019.

Teresa Benitez-Thompson:

I think that we are hearing the point. You are saying the numbers are in a better place than they have been, but it is also February, and the law has been in place for two months. If we had predictive capabilities to know where we would land after one year's worth of data, we could write legislation tailor-made to that. We do not, so we will definitely advocate for what we think is going to be the best policy to keep us in compliance and where we need to be. I think that is the point of the public policy conversation right now and the public policy question before you all.

Assemblywoman Mosca:

Help me with context. I see that there were 800 random Synar inspections, then the data was compared to the other states. Is it standardized how many inspections are done to get those numbers, or do we do 800 and that is what we have come up with? Does that make sense?

Beth Hickman:

It is not standardized. Each state has a Synar sample they are required to inspect, and it is based on things like the number of retailers in their own state and their current retailer violation rate. The Synar requirements take into account the retailer violation rate and assume that fewer inspections need to be conducted in states where the inspection rate is already low. States do perform inspections outside of that Synar sample sometimes though.

Assemblyman Gray:

One of the questions on my mind is why are we not taking a two-pronged approach? We are going after the sellers. Why are we not also going after the buyers? What are the current penalties for youth and possession? They are the ones driving the market. It is inevitable that somebody is going to violate it at some point if they keep hitting them.

Teresa Benitez-Thompson:

The Attorney General's Office is charged with the enforcement of the law, so we will enforce the public policies that this body passes. That is a determination for you folks to make. It does not exist right now. I think you might hear from other people in the room about best practices, about different avenues to get to this, but it is just not what the status quo is.

Assemblywoman Considine:

I am hearing a lot of the same things as Assemblyman Hafen, saying when the new law went into effect, especially for people over 50 and with the ID. I have explained the balance and the reason why we are doing it, but I am searching for a balance now that we have a new system that will take a few months, six months or so, to see what that average is, and if some of these violations may be going too far when we are just getting that balance. Looking at some states where their second violation is a one-day or one-week suspension of sales, as opposed to ours, the third violation within two years is six months of losing the right to sell that tobacco. What worries me and the people I represent is the impact on the jobs in the convenience stores if they lose that tremendous number of sales that convenience stores have

for that. I do not know if these are the final numbers or if there is some way to put in a waiver or find more of a balance for shorter periods in the first few times the unlawful sale is caught just to expand that time period where we can find what our middle ground would be.

Teresa Benitez-Thompson:

If you have specific recommendations, we can talk with you. It was said at the beginning of the presentation today, this is a good example where we have lots of friends with lots of different ideas of how to approach this. We imagine some folks are going to be talking about amendments. We are not taking a stance on any of those today because, quite frankly, we want to see how they might all play together. If you have specific timeframes you would like to suggest, we will be sure to look at them. I think that what staff has wanted to make sure we impressed upon you was the due diligence and the research aspect for why we thought we were presenting what looks to be good policy and definitely policy that is reflected in other states, to mirror states that have really great rates that we would like to get to.

Assemblywoman Cohen:

I pulled up NRS Chapter 370 to try to answer this myself, but "license" is mentioned 262 times, so I have not figured it out. Can the license holder hold licenses for multiple locations, or does each location have its own license, so if you have a convenience store owner who has multiple convenience stores and they have the 180 days of suspended license does it impact all of the convenience stores or just the one where the incidents have been happening?

Stacey Williams:

The 24-month period is for violations at the same location. There are licensees who have both. They may have multiple locations and separate licenses for each of those locations, but there also are a subset of retailers who have one license for multiple locations. It would be location-specific.

Assemblywoman Gallant:

I was looking at your chart where we are seeing pretty low violation rates for 2016, 2017, 2018, and then in 2019 we implement this law and all of a sudden it skyrockets to 13, 30 and 20 [page 4, [Exhibit G](#)]. Other than implementing more regulation, have you had any other explanations as to why we are seeing such an increase in violations that could explain this better, so we could understand how to attack it better?

Beth Hickman:

We have not identified anything specific that explains that increase. The vaping epidemic is consistent with the timeline that our slope has gone up, although we did go up more significantly than other states. There was no change in our sampling methodology for Synar or anything specific that we can point to that explains that jump though.

Assemblyman O'Neill:

If I were on my third violation, where you have shut me down for 180 days, what happens to my product? Am I allowed to sell it to another retailer? As I understand it, cigarettes do go stale. You have penalized me, now what do I do with the product? Am I penalized twice with just throwing it in the trash?

Teresa Benitez-Thompson:

We would hope your first or second violation was enough of a warning that you value your inventory enough to safeguard it and make the necessary changes as a licensee, now that we have the ability through this bill to fine you as a license holder. Our hope is that you do not get to that third one, but if you did, I would say, make a contingency plan. If you are asking the legal question, can you just sell it to another person, the answer is no.

Assemblyman O'Neill:

I am a little confused. If I have hired new employees and I have tried over and over again, then you hit me a third time, and I have \$10,000 worth of cigarettes, I am getting penalized twice when I am not allowed any other disposal of it. That is what I am trying to get clarification of.

Teresa Benitez-Thompson:

We have no one who is at their third violation right now. In the past year, and we can go back further in our data, we have not gotten to a third violation. I realize you are asking a hypothetical question of what if, but it does seem to be that we do not get to that third violation with retailers frequently, and nothing in the past 24 months.

Assemblyman O'Neill:

I just think we should have a plan for it, because it can happen. You have it in statute. I appreciate it, and we will talk some more.

Assemblywoman Anderson:

I will be combining my question with the language presented today, as well as Senior Deputy Attorney General Hickman's information. On the presentation you gave, Ms. Hickman, I think you stated around slide 6 [page 6, [Exhibit F](#)] that when it comes to the enforcement of the state law, there are two law enforcement officers and six underage inspectors. Is that statewide? Is that in specific counties? Is that all we have at this time, or is it also working with counties in the attempt to catch the bad actors? I do not think this is an us versus them situation where you are doing something, but instead it is following the law to make sure that children are not buying cigarettes.

Beth Hickman:

It is statewide, two law enforcement officers employed by the Attorney General's Office who are charged with enforcing NRS 370.521.

Assemblywoman Anderson:

With that state law, if we were to utilize the money that is possibly being utilized for the fines, is there a way for us to possibly attempt to increase the number of investigators? This is a very large state, and there are numerous convenience stores. Quite frankly, eight people is pretty small. Is there the intention of possibly utilizing this fee to help us pay for more inspectors, or do these inspectors come from other areas of the budget?

Beth Hickman:

Our underage tobacco inspectors are partially funded through a block grant with Health and Human Services because the Synar money belongs to Health and Human Services. The block grant partially funds the investigations program and MSA also funds our investigators.

Assemblywoman Anderson:

I totally understand about the change of violation numbers under the language on page 3 of the bill, lines 9 through 14, but why was the decision made to decrease that first fine from \$1,250 down to \$1,000, instead of keeping it at the \$1,250 level? Quite frankly I do understand where people are coming from, but individuals are selling to the youth, which is why I think these fees should be a little bit higher. How was the decision made as to landing on \$1,000 instead of keeping it what it currently is in statute?

Beth Hickman:

There was not a decrease because the way it was previously written is there were two warnings, and then it was not until the third violation that there was \$500; so that fourth violation is now being reflected down there.

Assemblywoman Anderson:

Thank you for that clarification.

Chair Backus:

I know you said there was the risk of losing the \$18 million in federal funding. Looking at year 2020 where the violations exceeded 20 percent, did we ever lose funding, or does it have to be in so many consecutive years? I am wanting some further explanation on that if possible.

Beth Hickman:

There is no requirement that there be multiple years out of compliance in a row. Each year is viewed for penalty purposes independently. We were out of compliance in 2019, and of course COVID-19 hit right when a penalty would have been expected to be imposed, so that is actually still unresolved. There was a three-year waiver period after the federal change in age. There were three years after December 2019 where there was no penalty, so that is the last three years. The Synar report that will be filed at the end of this year will be back in a potential penalty territory should our rate exceed 20 percent.

Chair Backus:

Thank you for that clarification. We will move on to testimony in support of the bill.

Bradley Mayer, representing Southern Nevada Health District:

We are testifying in support today. Tobacco use is really one of the leading causes of chronic disease. One of the best ways to prevent that is to stop youth from beginning to smoke in the first place. Assembly Bill 360 of the 81st Session, as Assemblyman Hafen mentioned, requires electronic age verification of scanning IDs before purchasing tobacco products. That was an important step on the path to preventing underage sales when it took effect on January 1, 2023. We thank Assemblyman Hafen for bringing that forward. As we mentioned with regard to noncompliance of tobacco retailer sales to minors, Nevada has and continues to be above 20 percent. Last session we talked about this issue in detail, and at that time the noncompliance rate was close to 30 percent. Since that time, in some months we have seen the rate as high as 41 percent, so it does have the tendency to jump around at times. In the final 2023 report which will be made to the federal government, the rate is going to be close to 28 percent. I believe strengthening the penalty structure on retailers incentivizes them to comply with the electronic age verification law as well and is a critical piece to bringing our violation rate below 20 percent, so the money that is allocated for this goes to prevention services, and is not put at risk.

Joelle Gutman Dodson, Government Affairs Liaison, Washoe County Health District:

We are here in support today for A.B. 53. We want to thank the Attorney General's Office for their work on this bill. I was going to explain Synar, but you got a pretty good explanation. Continued noncompliance leaves Nevada in violation of the Synar Act. It is a federal requirement prohibiting the sale of tobacco to individuals under 21. Compliance to Synar is tied to our portion of the Substance Abuse Block Grant (SABG), and that is roughly \$17 million annually. That money funds 27 organizations across the state. Ten of those are nonprofit coalitions, and 17 of those are substance abuse treatment organizations, SOF [special operations forces] centers, and providers.

Under Synar we have a responsibility to enact and enforce laws that prohibit sales and distribution to minors and develop a sampling methodology to conduct random unannounced compliance checks throughout the state. Then after that, we submit our report. Right now, we are out of federal compliance, and we are on an action plan. Penalties will not be enforced until December 2023, and right now we do not know what those penalties are. As the Attorney General's Office said, that could be up to 10 percent of our states SABG. As Nevadans, we all know our behavioral health and treatment facilities are grossly underfunded and we cannot afford to lose those dollars. We feel if we are following the law this should not be a problem for retailers. We think this is the next step from last session's efforts to get us back into compliance.

Cari Herington, Executive Director, Nevada Cancer Coalition:

The Nevada Tobacco Control and Smoke Free Coalition consists of partners across the state. We are all working together to improve the health of Nevada, not only by reducing commercial tobacco use, but more importantly by protecting our children from even starting to use cigarettes and vaping products. The Nevada Legislature has already made some great

progress in working to address youth access to tobacco products, as you have heard, by increasing the minimum sales age to 21 years and requiring mandatory identification checking technology; however, more can and must be done to address this issue.

At the retail sales level, the source of tobacco products for our youth, we know increasing the frequency of compliance checks and strengthening the penalty structure for tobacco retailers are proven strategies that work. This bill begins to address these strategies. The Tobacco Coalition appreciates the work of the Attorney General's Office in addressing Nevada's high tobacco retailer violation rate. We support A.B. 53 at a minimum to address this issue, also understanding the Attorney General's Office faces some challenges in strengthening compliance further at this time. We look forward to continuing to work together with the Attorney General's Office in the coming years, so that Nevada can actually adopt even stronger policy that meets the best practice standards already in place in other states across the nation. Strengthening tobacco retailer laws decreases tobacco sales to our youth and will go a long way in helping to curb the youth vaping epidemic that is here in Nevada and across the nation.

Chair Backus:

Do we have anyone else in Carson City to give testimony in support of the bill? [There was no one.] We will go to Las Vegas now. Is there anyone there wishing to give testimony in support of A.B. 53? [There was no one.] Next, we will go to the phone lines. Is there anyone who would like to give testimony in support of A.B. 53?

Charlie Moses, representing Parents Against Vaping e-Cigarettes:

I am a doctoral student researching the public health impacts of youth substance use. I am here on behalf of Parents Against Vaping e-Cigarettes (PAVe). We are a national organization with Nevada members and supporters who prioritize the health and well-being of youth. We are in support of A.B. 53. We need to make sure that these addictive products stay out of the hands of kids. It is necessary to have comprehensive enforcement and accountability for tobacco, nicotine, and vape retailers, to decrease youth access to these products. The numbers reflect tobacco and nicotine vape retailers selling to youth under the age of 21 years old at 30 percent, which is a concerning number. Some more concerning numbers we have are that 20.4 percent of Nevada high school students reported it is very easy to get cigarettes and 34.5 percent of Nevada high school students reported it was very easy to get vape products. The sole purpose of tobacco and nicotine vape products is to addict people. These products are especially addictive and harmful to use because of the stage of brain and physical development. Assembly Bill 53 would directly protect the health of Nevada youth and all Nevada residents.

Chair Backus:

As there are no further callers wishing to provide testimony in support, we will move to testimony in opposition to A.B. 53. Is there anyone in Carson City who would like to testify in opposition?

Mark Hackmann, representing Nevada Petroleum Marketers & Convenience Store Association:

We are in opposition of A.B. 53. We have a few concerns with A.B. 53 as introduced. There are 1,293 convenience stores in Nevada, employing 20,817 people, totaling approximately \$2 billion in merchandise sales annually across all stores, not counting fuel sales. A single store averages about 1,000 transactions per day. Sales of tobacco products make up about 33 percent of convenience store revenue. License suspension that results in losing one-third of total revenue will likely put the business in jeopardy of failure. Some of our smaller stores have indicated that a loss of tobacco sales revenue for only 30 days would likely cause them to go out of business. Those stores that do survive would have a significant reduction in staff. There are multiple stores in each member's district and in many cases a convenience store is the only source of dairy, fresh and frozen foods, as well as other essentials. Adding license suspension to monetary fines creates a strict liability offense, in which a license holder is significantly punished for an act they neither performed nor could have prevented. Many of our members have robust training programs that are more rigorous than required, as well as policies that terminate clerks who make illegal sales. It is crucial that legislation is written to be effective in preventing and/or punishing the act that causes harm, not the status of being a licensee. This is especially true today because according to the CDC [Centers for Disease Control and Prevention] Youth Risk Behavior Survey of 2019, 92 percent of youth access tobacco products from means other than purchases in store; 88 percent coming from social sourcing, which is the gifting, proxy purchased by another, or transfer from one to another such as bumming or borrowing. The vast majority of tobacco retailers are doing the right thing by verifying the age of under-40 customers. Our members understand and support laws on the books aimed at preventing underage access to all tobacco products. We want legislation that is effective at preventing access while reducing the negative impact on the community.

Bryan Wachter, Senior Vice President, Government and Public Affairs, Retail Association of Nevada:

At the moment we are in opposition to A.B. 53. My colleague from the Petroleum Marketers Association did a great job of talking about the economic impacts. I would like to address a few things that you heard from the presentation and just highlight them. We heard testimony that no retailer has ever hit, or in the last 24 months, has not hit the three-violation period. I think there is an argument to be made that if the current penalty schedule is being an incentive to making sure retailers do not get to that third violation, we would question how heavy-handed this actually is. The other thing that we would caution is comparing all of those rates state by state. I know this question came up. Those are not always apple-to-apple comparisons. We do believe that moving the tobacco age from 18 to 21 contributed significantly to some confusion. There was a class of citizens who had a right to purchase tobacco and then no longer enjoyed that right. There are certainly reasons that we feel provide context to those increases. We are also encouraged by the new compliance numbers, especially our retailers. While it has been on the top of our mind, we are not at liberty to just ignore those scanning requirements, and that is something we have stressed and our members are stressing. We have experienced those same emails you have gotten, only our clerks do

not experience emails behind computer screens; they experience very angry and irate folks who may be looking for a cigarette. They experience those face-to-face. Those conversations are happening with those clerks as they are going through it.

We think two violations in a 24-month period is extreme. We are talking about as a store owner you have one violation in February 2021; you have a completely different employee, say in November 2022. Both of those incidents would mean that your license would need to be suspended for 30 days, and we feel that goes too far. We do agree, and I would borrow the comments from Assemblywoman Anderson, that the fine rates may be too low and may not be providing the proper incentive to make sure this activity does not continue. We would stress that we think the new compliance rate is something that is going to continue. We would certainly wait for all of those results to come in before we did something as heavy-handed as remove a license, which is going to lead to economic problems in the community, both for the license holder as well as those employees. A lot of these stores are only profitable because of this revenue stream and losing that for 180 days is almost going to guarantee that employees are going to lose their jobs.

Chair Backus:

Do we have anyone else in Carson City who would like to provide testimony in opposition to A.B. 53? [There was no one.] Is there anyone in Las Vegas who wishes to give testimony in opposition to A.B. 53? [There was no one.] Is there anyone on the phone lines who wishes to give testimony in opposition to A.B. 53?

Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada:

If an 18-year-old can put his life at risk by joining the military and buying property, then they should have every ability to get cigarettes. In fact, going back to the presentation, some states still have the same policy as Nevada, but the results are much different. The culture and lifestyle in this state is considerably different. As I have seen, at the federal level, it has been raised to 21, but yet we see that there is no significant effect, correct me if I am wrong.

For over several decades we have had the alcohol age at 21. Has this significantly reduced alcoholism? There is no evidence of that because we have seen that the rates even above 21 have come down. All this is going to do is create a black market, encourage people to get more fake identification, not to mention many of you who advocate raising the age of not just cigarettes, but even firearms to 21, want to give 16-year-olds the right to vote. Why stop at tobacco. We can go after their junk food, pharmaceutical drugs. I have heard articles where they want to push these vaccines to people who are toddlers, and in the last 20 to 50 years we have seen tobacco use go down. I personally have never smoked tobacco, never vaped, hardly ever do any of these addictive things, and I think the best solution is for self-education. As a matter of fact, I have lived here for almost six years in the state and I have never gambled one penny of my money in this state.

Chair Backus:

We will move on to the next caller in opposition to A.B. 53. [There was no one.] Next, we will move to testimony neutral to A.B. 53. Is there anyone in Carson City who wishes to testify? [There was no one.] Is there anyone in Las Vegas who wishes to testify?

Leann D. McAllister, Executive Director, Nevada Chapter of the American Academy of Pediatrics:

I offer this neutral informational testimony as context around the issue of enforcing the legal age of buying tobacco [[Exhibit I](#)]. Cigarette smoking is responsible for more than 480,000 deaths per year in the U.S., including nearly 42,000 deaths resulting from second-hand smoke exposure. This is about 1 in 5 deaths annually, or 1,300 deaths every day. According to 2021 data from the National Youth Tobacco Survey, over 13 percent of high school students currently use tobacco products, and we heard from the Attorney General's Office and other experts today that Nevada's rate is significantly higher than that.

The vast majority of people who become tobacco dependent do so before 21 years of age. Youth brains are susceptible to the addictive properties of nicotine because their brains are still developing. Trying tobacco just one time puts children and adolescents at risk for addiction to nicotine. The majority of smokers, 90 percent, start by age 18. These young smokers often get their vapes and cigarettes from their friends who are over 18 but under the age of 21. I invite you and the public to learn more about this issue from the American Academy of Pediatrics on the link I have submitted in my written testimony [[Exhibit I](#)].

Megan A. Boelter, Public Health Law Attorney, Western Regional Director, Preventing Tobacco Addiction Foundation, Tobacco 21:

For more than two decades the Preventing Tobacco Addiction Foundation has worked to raise the minimum legal sales age for all tobacco and nicotine products to 21 and has developed model policies in conjunction with national health partners to help states navigate best practices when complying and enforcing federal, state, and local tobacco retail license programs. Such policies include that, as Nevada has enacted, including comprehensive tobacco product definitions, tobacco retail license requirements, annual inspection requirements, which Nevada does not include, and clear delineation of penalty structures that have proven effective in decreasing both the sale and the use of these products, given that the true objective of such measures is to reduce and ultimately prevent retail sales of tobacco and nicotine products to kids.

We appreciate the opportunity to provide comments and although we support revising the penalty structure for retail violations, we remain neutral, given that this change alone does not create a means to truly impact sales of tobacco products to youth in the state of Nevada, although suspension and revocation of a tobacco retail license upon a second cited violation is part of a model penalty structure, even if for a minimum of 10 to 30 days, giving some weight to the idea that selling dangerous products to youth is a serious offense in the eyes of Nevada. This is assuming a rigorous compliance protocol, which is a systematic review of a retailer's willingness to comply with the law. As you have seen from my colleagues, the

Synar is way above what would be allowed for the state to receive its entire allotment of SABG funds, putting the state at risk of critical funds during an ongoing public health crisis, which includes the vaping epidemic.

Even more critical is the loss in health and productivity of a generation of youths who are still being primed for a lifetime of addiction. Just so you are aware, when you bring up costs and people talk about the cost to retailers, the cost of the compliance program, the Campaign for Tobacco Free Kids indicates that the cost alone to Nevada due to tobacco use is \$1.8 billion annually. You can be aware that the cost will be received one way or another. I do feel that Nevada is getting hard hit here with respect to the Synar protocol and agree improvements need to be made by comparing them to other states that conduct their Synar inspections in different ways. New Mexico, the state in which I reside, has yet to complete an entire surveillance about the number of tobacco retailers they have. So, their surveys are very limited in what they can control or what they can provide in their Synar reports. It is a little bit difficult to compare apples to apples. Nevada has its own revised statutes that need improvement and that could provide a more accurate depiction of what the actual Synar rate is. That includes annual mandatory compliance checks. At this time Nevada does not include that. Even at one every 24 months, you would know then the retailers to go to and inspect on a secondary basis, to see if the first citation was effective in getting them to comply with the law. And remember, the law, even with the additional electronic verification, is simply requiring that retailers check the ID. That is the variable that is in question. Check the ID to verify that the purchaser is over the age of 21.

It seems antithetical that the state is struggling with its compliance protocols given the Office of the Attorney General's commitment to hold the tobacco industry accountable for its predatory malicious marketing tactics. I am referencing the most recent settlement by the state's Attorney General's Office against Juul Labs, which garnered \$14.47 million for the state. There are other revisions that would be even more effective in terms of making—

Chair Backus:

Ms. Boelter, I am going to cut you off here. I think you are going outside of the bill. Is there anyone else left in Las Vegas to give testimony in neutral?

Megan Boelter:

No there is not, but I appreciate the opportunity to comment, and we do remain neutral with recommendations for improvement. It was within the scope of the bill because this is talking about compliance structures. I appreciate the opportunity to comment.

Chair Backus:

We will move to Carson City for testimony in neutral.

Nicki Aaker, Director, Carson City Health and Human Services:

We have made great strides to decrease youth smoking, and we have more work to do. I want to thank the Attorney General's Office for their work on this bill. According to the 2021 Youth Risk Behavioral Survey, in Nevada the percentage of high school students who

have ever used electronic vapor products is 36.7 percent. Additionally, the percentage of high school students who used electronic vapor products during the 30 days before the survey is 17.6 percent. Also, it has been discovered that 38.5 percent of Nevada high schoolers said it would be fairly or very easy to get cigarettes if they wanted some, and 47.5 percent of high schoolers said it would be fairly or very easy to get electronic vapor products if they wanted some. This is almost one in every two minors. The ease and frequency with which youth can access tobacco products should be a concern to everyone.

To address this youth smoking and vaping epidemic, we recommend providing and promoting strong tobacco cessation programs, adequately funding youth educational and prevention initiatives, and increased staffing levels for compliance checks. The information that was provided to my agency indicated that no compliance checks were conducted in Carson City in 2022, and Assemblywoman Anderson had asked the question about the staffing. We look forward to working with the Attorney General's Office.

Chair Backus:

It does not look like we have anyone else here in Carson City to offer testimony in neutral. We will go to the phone lines. Do we have anyone on the lines who wishes to give testimony in neutral on A.B. 53? [There was no one.] Would the presenters like to give any final remarks?

Teresa Benitez-Thompson:

You have heard from stakeholders and friends, all moving in good directions, with the best interest of various people who have different thoughts on how to approach this. We will be having stakeholder meetings to see if there is a better place we can land. We do think we are coming from a spot of great research and due diligence, but we know we always need to right-size things to Nevada for our Nevada way. We will be in on those conversations, and we will invite anyone from this Committee who would like to participate in those. Let your Chair know, and I would be happy to get a list of names from her, to include you in those conversations. You heard a couple of different things today. You heard talk about our investigators not being as hearty as we would like. That is always a harder conversation to have. Getting more staff in places is always a harder conversation to have, not one that we are opposed to, just harder conversations to have, as well as talking about the number of investigations that we do or can do. There was some talk on the record about people who are seniors, but our investigators are very much youth and the law says to card if they think you look under the age of 40. We do try to do education out to the retailers as well so they fully understand the law. They do not need to be carding seniors. Our investigators only investigate in legal places and in legal ways, so they will show their ID and we try to very much make the distinction that our investigators look to be youth. They look their age. We do not send a 39-year-old in to investigate. We are not trying to do gotcha moves. That is something we have lots of conversations with lots of different industries about. For right now we will leave it there, and we can follow up on anything else the Committee members want to discuss.

[[Exhibit J](#) was submitted but not discussed and is included as an exhibit for the meeting.]

Chair Backus:

Thank you for your presentation. We will now close the hearing on A.B. 53.

I will open the hearing on Assembly Bill 1. Will Commissioner Keyes of Esmeralda County come forward, along with anyone else who is presenting with you this evening.

Assembly Bill 1: Authorizes certain counties to impose additional local sales and use tax under certain circumstances. (BDR 32-306)

Ralph Keyes, Chairman, Board of Commissioners, Esmeralda County:

I appreciate the opportunity to introduce Assembly Bill 1, requested by our county. Our solid waste facilities include a landfill located in Goldfield and two transfer stations located in Silver Peak, which is approximately 30 miles one way from Goldfield, and Fish Lake Valley which is about 75 miles one way from Goldfield. The roll-off containers at the transfer stations are exchanged at least once a week, or more often if necessary, by using a specialized vehicle for this purpose, operated by the sole solid waste employee.

The primary source of funding for solid waste operations comes from a special assessment on parcels. We recently raised the assessments to \$56 for vacant parcels, \$66 for residential parcels, and \$150 for commercial or industrial parcels. Some funding is also derived from container rentals to mining operations or for building projects. In the existing funding scheme, there is no consideration for the volume of solid waste disposed of or any contribution by nonresident persons or companies who use our facilities.

The average of Esmeralda County annual taxable sales from 2017 through 2021 was \$1,307,660. If the tax proposed in A.B. 1 were in effect, solid waste operations would have received \$3,269.15. While this amount would not fund the \$106,087 cost of the solid waste operations in 2021, it would add a component to the funding that did recognize volume as the more people buy, the more waste they would generate. It would also parallel inflation, allowing for fewer increases in the parcel fees. I am grateful to this Committee for considering this bill, and I am happy to take any questions from the members.

Chair Backus:

I have received emails from various people around the state, and I just wanted to ensure even if A.B. 1 passes it still has to go to the county commissioners for a vote to decide to implement it, and then it ultimately goes to the voters of that county to approve the increase in a tax. Is that correct?

Ralph Keyes:

That is the way I understand it. There is a safeguard there that people get to decide this, which is a good way to do it.

Assemblywoman Cohen:

With the new truck stop that is being built, how is that impacting the situation in Goldfield and the situation for the need for doing this?

Ralph Keyes:

At this point we have two proposed truck stops. One is north of Tonopah, which is actually in Esmeralda County. Our revenue stream would not change because it is a commercial business, and they would pay a \$150 annual fee for the solid waste assessment on their parcel. Through the 0.25 percent sales tax, it would actually offset that considerable waste stream that would increase from that business. The way it is structured, we may get a large increase of waste revenue, but not much in the way of funding to pay for it. This would actually help that problem for us. That is why we proposed it here. As it is, parcel owners pay the fee for the landfill, not somebody buying something at a convenience store. The people who generate the waste actually help pay for the disposal of the waste. It is a fairly simple, pragmatic approach that we look at this way.

Assemblywoman Anderson:

To the question Assemblywoman Cohen just asked, it is not clear to me what this tax would be on exactly. Is the plan to have the county commissioners specify it before it goes to the voters? I am confused as to what exactly the tax would be levied upon.

Ralph Keyes:

It would be a 0.25 percent additional sales tax on sales of products in our county, with the effect that if you purchase something, more than likely you are going to generate some waste. If you purchase something at the convenience store you are going to have something to throw in the trash. This is to offset that impact to the county because the revenue stream will not keep up the way we generate that revenue to run the solid waste department because it is based on a parcel tax. A business pays \$150 a year for solid waste disposal. We feel that we are going to generate way more than that and that is the way to address it. You make the trash; you pay for the disposal. It is simple terms.

Assemblywoman Anderson:

Thank you for the simplicity and the clarification. To reiterate the Chair's question, it would first go to the county commissioners for that language, and then go to the voters for a final vote. What is the timeline you are thinking about?

Ralph Keyes:

Yes, it would have to be put on a ballot to be voted on so it has to go through the process. It would not come up until the next election cycle. The board of county commissioners would have to approve it to go to the voters. It is a lengthy process, as you know.

Assemblywoman Summers Armstrong:

Oftentimes we consider a sales tax regressive, and if you institute the sales tax your constituents would also have to pay it on the things they purchase. Do you believe the number of visitors who will come and use these two truck stops would far outweigh what the residents in your community would end up having to pay for this sales tax?

Ralph Keyes:

The way it works right now is, everybody who owns property in Esmeralda County pays a parcel assessment. That is the only way we generate revenue to run our solid waste department. We do not have a landfill where they have a gatekeeper who collects money going in and out of there. That would actually cost us more to run than the system we have right now. This is a simple way to generate a little bit of money to help offset the cost of the actual generators of the trash, without burdening the residents there. They are already paying the bulk of the fees. If you come into our town, stop at the convenience store and buy something, you would be paying a tiny bit in the sales tax to dispose of your waste, not the residents of the community. That is the simplicity of this.

Assemblyman O'Neill:

This question may be a little early, but have you taken a straw poll of your county residents, how they feel about raising their tax 0.25 percent for this effort?

Ralph Keyes:

Generally, people do not like an increase in taxes and it is a bitter pill, although we did have to raise our solid waste assessments this last year and that was extremely painful. We have many retired residents and a lot of veterans who live there on fixed incomes, and we have already gotten an earful from raising our fees the way we did last year. This is another avenue that they would really not be that much of a part of. We have very few retail outlets in our county. Some of the larger retail outlets will be coming into business here shortly, I hope. The people who pass through our county that buy products and throw them in the trash would actually help fund the disposal of their waste. It would not be the taxpayers' burden at that time. The people that generate the waste would pay for the disposal, or part of the disposal. The way I see it, it is really a fair way to do it. I think I could get the support from my constituents that way, because they already got beat up raising this assessment last year.

Chair Backus:

Do we have any other questions from any of the Committee members? [There were none.] Thank you for your presentation. We will take testimony now in support of A.B. 1. Is there anyone in Carson City wishing to provide testimony in support of A.B. 1? [There was no one.] Is there anyone in Las Vegas who wishes to provide testimony in support of A.B. 1? [There was no one.] Is there anyone on the phone lines who wishes to provide testimony in support of A.B. 1? [There was no one.]

Next, we will take testimony in opposition to A.B. 1. Is there anyone in Carson City wishing to provide testimony in opposition to A.B. 1? [There was no one.] Is there anyone in Las Vegas who wishes to give testimony in opposition to A.B. 1? [There was no one.] Is there anyone on the phone lines who wishes to give testimony in opposition to A.B. 1? [There was no one.]

Next, we will take testimony neutral to A.B. 1. Is there anyone here in Carson City who wishes to give testimony neutral to A.B. 1?

Bryan Wachter, Senior Vice President, Government and Public Affairs, Retail Association of Nevada:

We typically take a neutral position on questions, especially when they are going to the public for an election cycle. It is up to them. We did, however, want to get on the record that we would really look and ask the counties to make sure that the rate is effective and is going to generate the revenue they are looking for. This Committee is probably going to hear, over the next 100 days or so, about tax erosion, especially in our sales tax. Sales tax supplies just shy of 50 percent of all state revenue, local revenue, and county revenue. Because of digital sales tax and the fact that more and more of our products are being purchased in digital format and not in tangible format, we are going to continue to lose sales tax over the course of the next 20, 10, 2 years. We would just put that on your radar to look at the tax erosion policy as you are contemplating all these sales tax enhancements.

Chair Backus:

Do we have any further testimony here in Carson City neutral to A.B. 1? [There was none.] Is there anyone in Las Vegas wishing to give testimony neutral to A.B. 1? [There was no one.] Is there anyone on the phone lines wishing to give testimony neutral to A.B. 1? [There was no one.] Commissioner Keyes, do you have concluding remarks?

Ralph Keyes:

As I have said, it is never fun to impose a tax. If the voters do approve it, I think it would be a good thing. We are the poorest county in the state. We are always struggling, like most other counties, and this is one way to offset the burden on our citizens.

Chair Backus:

Thank you for your presentation this evening. We will close the hearing on A.B. 1. That brings us to the last item on our agenda, public comment. Is there anyone here in Carson City this evening who wishes to give public comment? [There was no one.] Is there anyone in Las Vegas who wishes to give public comment? [There was no one.] Is there anyone on the phone lines who wishes to give public comment this evening? [There was no one.] Are there any remarks from the Committee members? [There were none.]. Our next Committee meeting is Thursday evening in Room 4100. I look forward to seeing you at 4 p.m. We will be hearing Assembly Bill 38 and Assembly Bill 41. We are adjourned [at 6:05 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblywoman Shea Backus, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Office of the Attorney General, Assembly Committee on Revenue," presented by Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General.

[Exhibit D](#) is a copy of a PowerPoint presentation titled "Opioid Litigation and Recoveries Update, Legislative Update," dated February 21, 2023, presented by Mark J. Krueger, Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General.

[Exhibit E](#) is a copy of a document titled "One Nevada Agreement on Allocation of Opioid Recoveries," submitted by Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General.

[Exhibit F](#) is a copy of a PowerPoint presentation titled "The Master Settlement Agreement," presented by Elizabeth Hickman, Senior Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General.

[Exhibit G](#) is a copy of a PowerPoint presentation titled "Tobacco Legislation 2023 (A.B. 53)," presented by Stacey L. Williams, Deputy Attorney General, Tobacco Enforcement Unit, Office of the Attorney General.

[Exhibit H](#) is a copy of a report titled "State of Nevada, Office of the Attorney General, Bureau of Consumer Protection, 2023 Annual Report for Contingent Fee Contract for Legal Services," submitted by Teresa Benitez-Thompson, Chief of Staff, Office of the Attorney General.

[Exhibit I](#) is a written statement dated February 21, 2023, submitted by Leann D. McAllister, Executive Director, Nevada Chapter of the American Academy of Pediatrics, neutral to [Assembly Bill 53](#).

[Exhibit J](#) is a written letter to the Assembly Committee on Revenue, dated February 21, 2023, submitted by Nevada Tobacco Control and Smoke-free Coalition, in support of [Assembly Bill 53](#).