

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Eighth Session
March 16, 2015**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 8:32 a.m. on Monday, March 16, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator James A. Settelmeyer, Chair
Senator Patricia Farley, Vice Chair
Senator Joe P. Hardy
Senator Becky Harris
Senator Mark A. Manendo
Senator Kelvin Atkinson
Senator Pat Spearman

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Renee Fletcher, Committee Secretary

OTHERS PRESENT:

Alfredo Alonso, Community Financial Services Association of America; Southern Wine and Spirits; Nevada Beer Wholesalers Association
Chris Ferrari, Dollar Loan Center, LLC
Jon Sasser, Legal Aid Center of Southern Nevada, Inc.; Washoe Legal Services; Southern Nevada Senior Law Program

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Keith Lee, Nevada Title and Payday Loans, Inc.; Distilled Spirits Council of the United States
Barry Gold, AARP Nevada
George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Michael Hillerby, Bently Heritage Distillery, Bently Enterprises, LLC
Susan Carbiener, Vice President of Operations, Bently Enterprises, LLC
Brady Frey, Chief Operating Officer, Bently Enterprises, LLC
Mike Draper, Frey Ranch Estate Distillery; Churchill Vineyards, LLC
Colby Frey, Owner, Frey Ranch Estate Distillery, Churchill Vineyards, LLC
Ray Bacon, Nevada Manufacturers Association
George Racz, Owner, Las Vegas Distillery, LLC
Tom Adams, President, Seven Troughs Distilling Company, LLC
Kimberly Surratt, Reno Rodeo Association
Chris Shanks, Co-Owner, The Depot Craft Brewery Distillery
Lisa Granahan, Economic Vitality Manager, Douglas County
Jesse Wadhams, Wirtz Beverage Nevada; Guaranteed Asset Protection Alliance
Tyre Gray
Dan Wulz, Legal Aid Center of Southern Nevada, Inc.
Jim Wadhams

Chair Settlemeyer:

I will open the hearing with Senate Bill (S.B.) 242.

SENATE BILL 242: Requires payday lenders to use best practices. (BDR 52-953)

Senator Michael Roberson (Senatorial District No. 20):

The payday lending industry has had dramatic growth over the last couple of decades since its inception as a check-cashing business in the early 1990s. The Community Financial Services Association of America (CFSA), the national payday lending trade group which represents over half of the payday advance stores, reports there are approximately 20,600 payday advance stores across America. Nevada has regulated this industry for over 10 years to protect customers.

The CFSA believes that payday advance transactions should be conducted safely and responsibly with appropriate consumer protection, and has developed best practices used to maintain quality in the payday advance industry and can be used as a benchmark for payday lenders. The development of best practices

ensures responsible conduct among lenders, protects borrowers' rights and encourages self-governance within the industry.

Senate Bill 242 requires a licensed individual to provide check-cashing services, deferred deposit loan services, high-interest loan services and title loan services, to comply with the provisions set forth by this bill. Section 4 of S.B. 242 states a licensee must comply with the disclosure requirements of *Nevada Revised Statute* (NRS) 604A.405 and the federal Truth in Lending Act. A licensee must disclose the cost of the service fee as both a dollar amount and an annual percentage rate, as well as making rates clearly visible to customers prior to entering into the transaction process.

Section 5 of S.B. 242 forbids charging a fee for any service that is prohibited by State or federal law. Section 6 addresses truthful advertising. Section 7 encourages consumer responsibility and requires a licensee to be forthcoming about the intended use of the payday advance service. Notices should advise consumers that payday services should be used for short-term financial needs, and customers with credit difficulties should seek credit counseling prior to entering into a loan transaction.

Section 8 of S.B. 242 prohibits customers from rolling over a payday advance. Section 9 makes clear under NRS 604A.460 a licensee must advise a consumer of the ability to rescind, at no cost, any transaction on or before the close of business the following business day. Section 10 denotes collection of past due accounts in a professional, fair and lawful manner, without threats, intimidation or harassment. Section 11 requires the industry to self-police and report violations to the Commissioner, Division of Financial Institutions. Section 12 makes a repayment plan available to customers unable to repay a loan agreement. Section 13 requires a licensee that offers payday advances via the Internet to be licensed in each state and comply with regulations of each state.

Alfredo Alonso (Community Financial Services Association of America):

Senate Bill 242 codifies many of the same practices done within our association. This bill is good for the industry, as there have been abuses in the payday advance industry. The check-cashing service should be removed, as it is not part of a repayment issue as established in the bill. Section 12 should also be removed since it duplicates a repayment plan within the deferred deposit section.

Chris Ferrari (Dollar Loan Center, LLC):

We agree with the comments of Mr. Alonso and are glad to see best practices added to the payday advance industry. We have a couple of clarifications to work out with Senator Roberson and Mr. Alonso; otherwise, we approve and support S.B. 242.

Jon Sasser (Legal Aid Center of Southern Nevada, Inc.; Washoe Legal Services):
Senate Bill 242 is an excellent idea to have Legislative intent for the payday advance industry to conduct itself utilizing best practices. We support the bill as written. Therefore, I would like to review any proposed amendments prior to scheduling the final work session.

Keith Lee (Nevada Title and Payday Loans, Inc.):

We support S.B. 242 with the proposed amendments by Mr. Alonso.

Senator Harris:

What is the average amount of debt taken out by individuals using the payday advance service?

Mr. Lee:

I do not know what the average loan amount is through the industry as a whole. I can get the information for the companies I represent.

Senator Harris:

Section 8 references NRS 604A.408, which only allows a 90-day rollover on a loan. Are we taking away the ability for consumers to pay back a high-interest loan in such a short period?

Mr. Lee:

The intent of this code of ethics and the NRS is to stop the debt treadmill. Each individual and circumstance is different.

Senator Harris:

When individuals are in a debt situation bad enough to require a payday loan, their income will not likely allow them to pay the loan back in 90 days. How does this help the individual find appropriate ways to cover their monthly expenses and reduce their debt?

Barry Gold (AARP Nevada):

The AARP is pleased that S.B. 242 has been brought before the Committee. It is important that standards be enacted for best practices for the payday loan industry. We would also like to understand the proposed amendments before deciding to support this bill.

George Burns (Commissioner, Division of Financial Institutions, Department of Business and Industry):

Our agency is responsible for licensing, examinations and enforcement of NRS 604A. I have submitted a copy of my written testimony ([Exhibit C](#)). The Division of Financial Institutions is generally neutral with duplication of established provisions. Language that is generic and all-encompassing may generate confusion in an already complex statute.

In section 2 of S.B. 242, the term “payday lender” is generic, used to define a “deferred deposit lender” as listed in NRS 604A. The term “payday lender” does not really apply to check cashers, high-interest lenders and title lenders, which S.B. 242, the “Payday Lender Best Practices Act,” appears to address directly and indirectly. The term “licensee” encompasses all businesses listed under NRS 604A. As section 7 is a new requirement to the statute, the advertising disclosure is not applicable to check-cashing services and is confusing for long-term, high-interest and title loans. Again, the term licensee listed in section 8 reiterates the extension period limits in NRS 604A.408, therefore, not applicable to 30-day title loans that allow up to six extensions, and 210-day title loans that do not permit any extensions. Our agency looks forward to working with the sponsor to address the technical concerns outlined in my testimony [Exhibit C](#).

Senator Roberson:

I am willing to meet with any concerned individuals and take all proposed amendments into consideration.

Chair Settlemeyer:

I will now close the hearing on S.B. 242 and open the hearing on S.B. 246.

SENATE BILL 246: Revises provisions governing craft distilleries. (BDR 52-631)

Michael Hillerby (Bently Heritage Distillery, Bently Enterprises, LLC):

Bently Enterprises has invested heavily in Nevada and supports S.B. 246.

Susan Carbiener (Vice President of Operations, Bently Enterprises, LLC):

Bently Enterprises is a diverse group of companies based in Minden and San Francisco. Please refer to my slide presentation ([Exhibit D](#)). We have 150 employees consisting of cowboys, graphic designers, property managers and front-end developers, all experts in their fields and active in their industries. Our roots in Carson Valley started in 1961 when Don Bently started Bently Nevada operations. We now occupy a 200,000 square foot, state-of-the-art building in the Bently Science Park. Bently Nevada was one of Northern Nevada's largest non-gaming employers before being sold to General Electric in 2002. We continue to create new business in the Carson Valley and to enhance our agricultural operation at Bently ranch. We have renovated historical buildings with modern technology and energy efficiency. Our focus remains on agriculture, sustainability and historic preservation.

With the passage of A.B. No. 153 of the 77th Legislative Session, allowing craft distilling in Nevada, we formulated a plan for revitalization of downtown Minden. We purchased the iconic flour mill building and silos in the late 1960s. The original, historic mill building was built in 1906. Across from the mill building is the Minden Creamery, constructed in 1916. Bently will be renovating these buildings, which will be the Bently Heritage Distillery. The entire site will be designed for pedestrian access through the estate and to downtown Minden.

We will manufacture vodka, gin, rye whiskey, bourbon and single malt whiskey. We will use grains grown locally on Bently Ranch. We will be exporting a significant amount of sales, our main business focus. The first grain crop testing is under way. The mill building will contain a tasting room, tours for the public, space for public events and catering. Our whiskey pot stills will be in the silos. The creamery building will contain stills for the production of gin and vodka. Bently will purchase state-of-the-art equipment from Vendome Copper & Brass Works, Inc. located in Kentucky, Forsyths located in Scotland, Kothe Distilling Technologies located in Germany, and local suppliers such as Silver State Stainless located in Carson City.

The total project budget, including construction, renovations and land value, is in excess of \$44 million. By completion in late 2016, we expect to hire 13 new positions paying more than \$25 per hour. Our investment in Minden has a significant impact on our regional economy. In addition to benefits to local retailers, such as dining and lodging, we will target the estimated 2.7 million Lake Tahoe visitors, encouraging them to experience Bently Heritage.

Senate Bill 246 will enable craft distillers to meet customer demand, export Nevada's craft spirits, allow a reasonable return on investment (ROI) and be an important driver of economic development.

Mr. Hillerby:

I will outline some of the modifications brought forth in S.B. 246 starting with section 1, subsection 2, paragraph (b), which references the changes that are forthcoming. The craft distillery law was created in the 77th Session with A.B. 153. Nevada has a three-tier system for how liquor is sold and taxed, which is very specific and detailed. It is not relevant to smaller distilleries, craft distilleries or estate distilleries. More of the public is interested in seeing where the crops are grown for the manufacturing of their food and liquor as well as to meet the people involved in the process. Nevada's laws do not take this into consideration; therefore, A.B. No. 153 from the 77th Session as well as S.B. 246 are important to the distillery industry.

The changes begin in section 1, subsection 2, paragraph (c) of S.B. 246, moving the export cap to 60,000 cases. To put this into perspective, Nevada imported 176,797 cases in December 2014, 144,889 cases in November 2014 and 149,287 in June 2014. Senate Bill 246 only requests an annual total of 60,000 cases for any distiller in Nevada to export to 49 other states. Section 1, subsection 2, paragraph (d) and paragraph (e) add an additional location, other than the distillery, to offer taste samples and direct sale of spirits. Section 1, subsection 2, paragraph (e) also increases direct sales to the public to one case per day. Section 1, subsection 2, paragraph (f) allows any distiller to donate directly to charities with approval from the Department of Taxation. Section 1, subsection 2, paragraph (g) allows transfer of bulk, neutral spirits, manufactured at the distillery, to another supplier. Section 2, subsection 2, paragraph (g), subparagraph (2) would not classify the bulk transfer as a sale. The other supplier would blend the neutral spirits and sell their own mixture. For clarification, a case is 12 bottles.

Wholesalers and distributors support S.B. 246, and we are working together on the language in the bill to determine the most economical sense for all involved. One other item I would like to point out is the removal of the limit of samples to any one individual, section 1, subsection 2, paragraph (d), which will put distilleries on par with bars, restaurants, hotel casinos, brew pubs and wineries within Nevada.

Senator Farley:

How many bottles or cases do other states allow to be sold directly to customers on the distillery property?

Mr. Hillerby:

Direct sales on a distillery property vary from state to state dependent on the laws of that state.

Senator Hardy:

What is a neutral spirit versus distilled spirit?

Brady Frey (Chief Operating Officer, Bently Enterprises, LLC):

Within the process of distilling alcohol, prior to final cuts, you have a neutral spirit that can be blended with other ingredients to produce a final product. A neutral spirit has some, but not all, ingredients, which can be used for other products by other suppliers.

Senator Harris:

The reference to the one other location, found in section 1, subsection 2, paragraph (d), do you anticipate the other location to be a retail facility such as a restaurant?

Mr. Hillerby:

The second location would be determined by the individual distillery. Other locations could include restaurants, on or off the premises, special events such as the Nevada Day Parade or the Fallon Cantaloupe Festival. A second location would be a temporary sales or tasting location, or both.

Senator Harris:

If the distillery is one location and you have a full-time second location, such as a restaurant or pub owned by the distillery, would you also be able to have a temporary location for special events?

Mr. Hillerby:

Having more than one or two locations is important. The more opportunities there are to market products, the better for any distillery, but we fully understand and support the three-tier system. We have a wholesaler/distributor partnering with Bently Enterprises, but would like to have some control over the marketing and sales.

Mike Draper (Frey Ranch Estate Distillery; Churchill Vineyards, LLC):

Nevada has seen a boom in craft breweries and distilleries, which have earned a reputation for producing quality products. It is imperative that Nevada see this industry as legitimate with significant economic potential and the ability to attract visitors from all over the world. In the 6 months from its inception, the Frey Ranch Estate Distillery has received substantial attention from all over the Country for its premium products and its unique grain-to-glass operation.

Frey Ranch, also home to Churchill Vineyards, is the only estate distillery and estate winery in the Country. The editor for Drink Spirits online publication recently visited Frey Ranch and called their white whiskey the best he had ever tasted. White whiskey comes right out of the still before it is aged in barrels, and their vodka rivaled some of the best vodka on the market. Frey Ranch aspires to be a national brand and is quickly gaining notoriety. We support S.B. 246 as a needed evolution in Nevada's liquor laws. This bill will allow wider platforms to expose products to consumers. Existing law succeeds in allowing for the initial beginnings of the craft distillery, but does not create a business environment that allows for growth and expansion. Current law does not invite, encourage and reward entrepreneurial spirit within Nevada.

Colby Frey (Owner, Frey Ranch Estate Distillery, Churchill Vineyards, LLC):

The Frey family has spent five generations building the economy in Northern Nevada. We started farming in the Genoa area in the 1850s before Nevada was declared a U.S. state, and we now occupy the Lake Ridge area in Reno. My great-grandparents owned the Peckham Ranch. My grandfather invented a tree stump puller to clear trees on ground considered not farmable, turning the land into prime farmland. In 1944, the land was sold to my grandfather's brother. My grandfather then saved enough money to purchase what is now the Frey Ranch, originally the residence of Senator Robert Douglas. My grandfather sold this land to my father in 1980, and I was able to purchase the ranch from my father in 2009. To maintain income in months of bad times, we created a winery and eventually a distillery.

We researched crops that would require less water to survive drought conditions yet generate more revenue. This year, our water allocation in Churchill County was set to 20 percent, the worst allocation our irrigation district has seen in its 100-year history. Lower water allocation is catastrophic for farmers. Lack of water does not mean lack of bills, land payments and

property taxes. It is important to us to seek ways to conserve water while creating better income potential.

Alfalfa is the primary crop in Churchill County. Wine grapes consume only 10 percent of the water needed by alfalfa, and grains in the distillery consume 40 percent to 80 percent. By diversifying our crops, we are able to save water. Churchill Vineyards started planting wine grapes in 2001 and produced our first wines in 2004. We received our federal distilling license in 2006. We have been experimenting with turning different wines into brandy. With the passage of A.B. No. 153 of the 77th Legislative Session, we drastically expanded our plans to construct a state-of-the-art distillery. We are farmers first. Frey Ranch Estate Distillery started as a way to create product from the grains grown on our farm. Previously, the grain was fed to dairy cows. With the distillery, we are able to sell the spent grains to dairy farms after the alcohol is distilled. Spent grain still has nutritional value and practically zero waste.

The distillery was designed so we could produce enough product in the winter months to shut down for the summer months, thus we can farm in the summer and distill in the winter. In addition, this allows us to maintain employment for our workers year-round. The distillery is capable of producing 10,000 cases of 12 bottles each of spirits per month. I believe Frey Ranch distillery has the largest production capacity of any distillery on the West Coast. We have a one-of-a-kind Vendome still, that is capable of making any spirit in the manner it was intended. Our whiskey, vodka and gin are produced 100 percent by our own grown crops. This produces a truly unique, 100 percent Nevada product.

We have been able to overcome obstacles that many farms face, and our goal is to create a high quality product that can be distributed nationally, also aiding Nevada's economy. With legislative assistance, Frey Ranch Estate Distillery can be a national brand, making Nevada a household name.

Ray Bacon (Nevada Manufacturers Association):

I spent many years of my career at Bently Nevada and can attest that the old mill building and silos had become infested with various vermin. I had personal dealings with the owner who was deciding whether to tear the buildings down. Instead, the owner decided to spend the necessary money to clean up the structures in hopes it would be something historic and useful.

From an economic development standpoint, the Freys helped contribute to the diversification of Nevada's economy, along with the electronics company that started with 3 employees, and grew to employ over 1,000 when it was sold. The Freys are now using their agricultural products to manufacture additional products.

George Racz (Owner, Las Vegas Distillery, LLC):

I wrote the draft for what became A.B. No. 153 of the 77th Legislative Session. That bill has helped my family and many others to start the distilling industry in Nevada. During the last 4 years, we have had more than 20,000 visitors. Our distillery produced the first Nevada-made bourbon, named Nevada 150, to honor and celebrate Nevada's 150th anniversary. Within the last 2 years, four distilleries opened in northern Nevada for a total of five distilleries. It is amazing to have Bently join the industry. Senate Bill 246 gives our industry better opportunities to grow and succeed.

Tom Adams (President, Seven Troughs Distilling Company, LLC):

Here are some facts from the microbrewer perspective since the passage of A.B. No. 153 of the 77th Legislative Session. As of this past year, there are five operating distilleries in Nevada. Seven Troughs was able to hire two full-time employees. Distribution has been gained throughout Nevada and into California. Seven Troughs has over 100 retail accounts. Last year our distillery consumed 30 tons of Nevada grown grain from Winnemucca Ranch, Frey Ranch and Bently Ranch. We will consume 50 tons this year. Nevada distilleries have proven they can make outstanding products.

Seven Troughs has made significant support to local charities. Senate Bill 246 will allow distilleries to donate to more local charities and nonprofit organizations. We offer support through donation of goods and a royalty program to raise funds for the Reno Rodeo Association's Legacy Vodka Project. We provide direct assistance to the Boys and Girls Clubs of Western Nevada, Care Chest of Sierra Nevada, Veterans Guest House, Reno Rodeo Association and more.

Despite the small successes the distilleries have had, S.B. 246 would have a significant impact to help our industry grow and flourish. Tasting rooms are very important for the public to see and taste what we manufacture. Our tasting room sales are approximately four times higher than the sales to our 100 statewide distributor accounts. Customers want a connection to the

process and like that the product is made locally. Limiting the number of bottle sales in the tasting room causes us a loss of revenue. We can only sell two bottles per month to any person, resulting in unsatisfied customers.

Our most effective marketing comes through direct interaction with our customers. We do not have large marketing budgets. We reach customers through charity and special events. The offsite privileges permitted by S.B. 246 would allow distilleries to grow such interactions by attending farmers markets, special events, sporting events and charity events, which will cultivate brand recognition and longer sustainable sales growth.

Kimberly Surratt (Sponsor Chair, Reno Rodeo Association):

We are the beneficiaries of a project with Seven Troughs Distillery Company. We created the Reno Rodeo Legacy Vodka project. Senate Bill 246 is very important and beneficial for us. The Reno Rodeo began in 1919 and is quickly coming to its 100-year anniversary. We are landlocked in our current location. Except for bad weather days, the rodeo has a sellout crowd every night. We are in desperate need for expansion, and the Legacy project is for that purpose. Without expansion our economic impact on the community is \$57,391,543 from non-locals who come to Reno specifically to see the rodeo. We are a nonprofit organization, with only three paid employees paid through our foundation dollars. Total employment impact from the visitor expenditures is 652 full-time jobs supported for one year by the Reno Rodeo Association and Foundation. Please note the dollar figures listed do not include the economic impact from residents.

For contributions to the Legacy Vodka project, our partner, Seven Troughs Distillery, is limited on the amount of sales and charitable interactions. With the passage of S.B. 246, there could be taste testing on the grounds at the rodeo, and the benefit to the rodeo would grow dramatically. Our expansion project is budgeted at \$60 million, growing from 30-40 acres to over 100 acres, which will double or triple our economic impact to the community. We are modeling our vodka project after the Pendleton whiskey project, which is tied to the Pendleton Round-Up, a rodeo located in Pendleton, Oregon. The Pendleton project is immensely successful. The Reno Rodeo can be just as successful. The Reno Rodeo is able to purchase alcohol for use at a party at the National Finals Rodeo in Las Vegas. We had hundreds of spectators that attended the National Finals Rodeo who stated they wanted to purchase the brand of vodka supplied at the party, but were unable to do so at the rodeo.

Chris Shanks (Co-Owner, The Depot Craft Brewery Distillery):

We are the first combined craft brewery and distillery in Nevada. We support S.B. 246 for the same reasons as the other testifiers have stated. We have 75 employees and are a full-service restaurant, craft brewery and craft distillery, located in the historic Nevada-California-Oregon Railway depot in downtown Reno. We spent over \$4 million renovating our property. Assembly Bill No. 153 of the 77th Legislative Session was a great first step to diversify our economy.

Reno has many older industrial buildings, warehouses and mills that would need to be demolished without the distillery industry. Being able to sell more bottles on the premises and additional locations would allow us to pay back our initial capital investment quicker and help us realize a better ROI. Senate Bill 246 helps us expand and grow to a full-fledged distillery.

Lisa Granahan (Economic Vitality Manager, Douglas County):

The local government perspective is important. During the 77th Legislative Session, Douglas County supported A.B. 153 to allow distilleries. Subsequently, in 2014, Douglas County allowed large and small craft food and beverage production in commercial and tourist zoning areas. The result is a rehabilitation of the former historic mill building in downtown Minden. The multimillion dollar project is in the design review stage. One core value of the economic vitality program is creating a distinctive downtown area where residents and tourists want to visit to experience local cuisine, shopping and tasting the wares of the distillery, which they can purchase, share with friends and family, encouraging a desire to return.

Douglas County has worked hard to diversify the industries and economy so we are not as dependent on gaming and construction. Senate Bill 246 furthers manufacturing export opportunities and enables the sale of locally made spirits, creating additional reasons to attract more visitors, and contributing to the success of our eateries and retail shops. Douglas County supports S.B. 246 as a step towards furthering our economic vitality. I am submitting my written testimony ([Exhibit E](#)).

Alfredo Alonso (Southern Wine and Spirits; Nevada Beer Wholesalers Association):

Our goal is for a balance in terms of how liquor is produced and sold, as well as proper tax collection and enforcement of that balance. There has been significant growth in the small sectors of the distilling industry. Limits on the

number of bottles sold to any individual vary in different states. Some states only allow the sale of one bottle per customer; other states allow more than two. This is largely dependent on the ability of a state's enforcement.

We applaud anyone coming to Nevada to start production of distilled spirits; however, we oppose S.B. 246. One concern is the cost of Nevada's enforcement ability. With respect to the bill, we do not have concerns with exportation, unless the industry size of craft distilling takes the place of a standard distillery. The initial goal was to have craft distilling be a smaller tier. Another concern is the definition of a taste, or sample. If you change a taste from two fluid ounces to an unlimited amount, it is no longer a sample. These are distilled spirits and can be very potent. If a customer samples five or six different bottles at an ounce per shot, there is a significant concern.

We are also concerned about customers being able to purchase a case of spirits per day. This amount is drastically more than two bottles per month. Regarding the transfer of bulk neutral spirits, it is important that the recipient distillery be properly licensed and any resulting sales be taxed appropriately. Distilled spirits are not beer or wine; therefore, our concern is whether a case size should be six or twelve bottles.

Jesse Wadhams (Wirtz Beverage):

I echo the comments of Mr. Alonso. We oppose S.B. 246, however we are willing to work with the proponents to find a mutually beneficial agreement. One concern is that craft distilleries are requesting to export and sell a total of 70,000 cases per year. Keep in mind that Jack Daniels in Las Vegas sells 92,000 cases per year. Do we want our craft distilleries to be 75 percent of the size of America's most popular whiskey brand?

Keith Lee (Distilled Spirits Council of the United States):

We agree with the comments and concerns of Mr. Alonso and Mr. Wadhams. While recognizing the need for entrepreneurs, we support the three-tier rule. Our market share increases with the addition of different spirits, but it needs to be accomplished wisely. I will also be working with the proponents of S.B. 246 to determine if we can agree on the language.

Senator Farley:

Do distilleries need a liquor license to dispense tasting samples? How much does a distillery make on sales per bottle from their premises versus selling through the distribution process?

Mr. Alonso:

It is not more expensive for a distillery to sell through a wholesaler.

Senator Farley:

Would I make more money selling a bottle of spirits from my premises than if I sold it through distribution?

Mr. Alonso:

Yes, you would make more money selling a bottle from your distillery. Our concern is keeping tabs on what is actually sold so the State does not lose out on the taxes. We are worried about those distilleries not following the rules.

Senator Manendo:

Depending on tasting size limits, if a consumer has too much to drink, then has a car accident after leaving the distillery, is there any liability on the distillery?

Senator Farley:

Any distillery or winery should be responsible enough to know if someone has had too much to drink, that individual should not be served additional alcohol.

Chair Settlemeyer:

I will now close the hearing on S.B. 246 and open the hearing on S.B. 253.

SENATE BILL 253: Enacts provisions governing the sale of guaranteed asset protection waivers. (BDR 57-795)

Senator Patricia Farley (Senatorial District No. 8):

I would like to present S.B. 253 to enact guaranteed asset protection (GAP) waivers. A GAP waiver may be referred to as debt cancellation agreement. Auto insurance typically provides enough protection to cover costs of repair or replacement on a vehicle that is damaged or stolen. However, if the cash value is less than an individual owes on his or her loan, this gap in amounts is not covered by insurance policies. Hence, if that individual had purchased a GAP

waiver, the auto creditor will waive some or all of the loan balance, after insurance coverage.

Sections 3-14 of S.B. 253 provide definitions of terms. Section 16 provides that marketing, issuance, sale and administration of GAP waivers are not subject to the provisions of Nevada's insurance codes, except for those provisions giving the Commissioner of Insurance authority to regulate, investigate and conduct hearings on violations of the law. Additionally, this section states that GAP waivers do not apply to debt cancellation or suspension agreements regulated by federal laws or policies of insurance. Section 17 prohibits a creditor who sells GAP waivers from including the words "in the name of the business" that could indicate the creditor is not the insured. These words include insurance, casualty, surety and mutual.

Section 18 of S.B. 253 authorizes a creditor to sell a GAP waiver to a borrower owing money to that creditor pursuant to a finance agreement. The cost of the GAP waiver must be separately stated as a part of the amount financed and can be paid for with one lump payment or in installments. Section 19 prohibits a creditor from requiring the purchase of a GAP waiver as a condition of credit approval or terms of the sale. Section 20 requires certain information to be disclosed in the GAP waiver. The free-look period is addressed in section 21, allowing a consumer a minimum of 30 days to cancel the GAP waiver for some, or all, of the amount as a refund.

Section 22 of S.B. 253 requires a retail car dealer to purchase a contractual liability insurance policy that insures the obligation of each GAP waiver. Section 24 requires a creditor to make records of GAP waivers available to the Commissioner of Insurance for compliance checks and enforcement of rules and regulations, if necessary. A GAP waiver is not insurance; it is a debt waiver. Auto dealers must acquire insurance to insure the obligation of each GAP waiver; however, the GAP waiver is not an insurance policy for the consumer.

Jesse Wadhams (Guaranteed Asset Protection Alliance):

Senate Bill 253 will standardize the sale of GAP waivers. Debt cancellation is between two parties, the creditor and an individual, agreeing to waive any debt collection if the proceeds from an insurance company do not cover the full balance on a loan. An important component of this bill is that it will add more consumer protection.

Tyre Gray:

I agree with all statements from Senator Farley and Mr. Wadhams, extend my support of S.B 253 and am available to answer any questions.

Senator Atkinson:

Whom exactly is this contract between?

Mr. Wadhams:

The contract for a GAP waiver is between the creditor giving the person a loan and the individual financing a vehicle.

Senator Atkinson:

Is a GAP waiver the same as GAP insurance?

Mr. Wadhams:

A GAP waiver is a waiver against collecting on a debt. It is a debt cancellation for the amount of money remaining on a debt that was not paid by an insurance policy. There is still GAP insurance available, which is regulated under *Nevada Administrative Code* 691C.

Senator Atkinson:

Suppose I have an accident in my vehicle, which is totaled, and Kelley Blue Book says my car is worth \$15,000, but I owe \$25,000. If I have purchased GAP coverage, is it insurance? What does S.B. 253 change?

Mr. Grey:

Insurance is a third-party contract. A GAP waiver is only between the creditor and the debtor. The creditors waive their right to collect a portion of the debt not covered by the debtor's insurance company.

Senator Atkinson:

We already have this law in effect. What is S.B. 253 changing or adding?

Mr. Wadhams:

Senate Bill 253 is an attempt to put together a model act for GAP products to provide a standard methodology for offering them that will provide appropriate terms and conditions and appropriate consumer protections.

Senator Atkinson:

What makes a GAP waiver different from GAP insurance? Are laws not clear?

Mr. Wadhams:

Some of the confusion is in the sale of GAP products. We are attempting to make sure the process is standardized with clear, understandable rules.

Senator Harris:

What form does a GAP waiver come in? Is it a certificate? How can a consumer prove they purchased a GAP waiver? Does it ensure consumer protection?

Mr. Wadhams:

Senate Bill 253 will make clear rules on the offering of GAP products. There is typically a pamphlet or set of instructions which will clarify language such as the free-look period or disclosures that this is an optional product. The other component is the GAP waiver becomes part of the finance agreement. Therefore, the terms are included within the finance agreement.

Senator Harris:

With the variety of products offered, how are we protecting the consumer? Will a consumer's credit be protected if there is a deficient amount owed to the creditor?

Mr. Wadhams:

Senate Bill 253 provides for consumer protection by clarifying there be an administrator backing the GAP products and providing appropriate record keeping. Documentation would follow the loan paperwork to each successive lender; therefore, each lender would know a GAP waiver exists.

Senator Spearman:

If a consumer purchases GAP coverage then determines the coverage is not needed, is a refund available?

Mr. Wadhams:

There are different products available. Some products are cancellable; some are not. There are options such as a 30-day free-look period, which offers a full refund. Refund options are disclosed at the initial transaction.

Senator Spearman:

Is a GAP waiver rolled into the life of the loan? Does it include interest?

Mr. Wadhams:

A GAP waiver is included in the financial agreement that can have interest accrued. It is important to note that for consumer protection, there must be a disclosure that GAP waivers are optional, and the consumer is not obligated to purchase a GAP waiver.

Senator Hardy:

Since this is not considered an insurance product, is there any model act from the National Conference of Insurance Legislators? You mentioned a model act. Are you implying other states are selling GAP waivers now or will be selling, so we have footsteps to follow? What is the amount of risk the creditor is taking since no one is paying the deficiency value? Does S.B. 253 apply to other GAP waivers besides vehicles?

Mr. Wadhams:

There is a cost to GAP waivers. A creditor would build any cost into the finance agreement. Should there be any deficiency in the loan amount, the loan would be marked "paid in full."

Senator Hardy:

Does the customer know the cost of the GAP waiver?

Mr. Wadhams:

Yes, a customer knows the cost of a GAP waiver before agreeing to purchase it. The cost of the GAP waiver is not for the full amount of any possible deficiency, but a smaller amount.

Senator Hardy:

What is the cost of a GAP waiver?

Mr. Wadhams:

The available products vary. A GAP waiver can range in price from a few hundred dollars to several hundreds of dollars.

Senator Hardy:

Would this apply to a leased vehicle?

Mr. Wadhams:

Yes, you can purchase GAP waivers for leased vehicles.

Senator Hardy:

Does the consumer pay the creditor for a GAP waiver?

Senator Farley:

As an example, I agree to purchase a vehicle for \$23,000. I agree to pay an additional \$1,200 for a GAP waiver, which becomes part of the financial agreement. If I wreck my vehicle and my auto insurance does not cover the total amount due on the loan, the creditor forgives the balance, and I owe nothing further. There is no fighting between lenders and insurance companies for any balance of money.

Senator Hardy:

Is this a model act now, or are you trying to start a model act?

Mr. Wadhams:

The Guaranteed Asset Protection Alliance is an alliance of various vendors of GAP products. This model act is their trade organization attempting to standardize the selling of this product throughout the United States. There are 47 states moving towards this model language.

Senator Hardy:

Is this language modeled after something else that worked?

Mr. Wadhams:

Yes, the bill uses proven model language.

Senator Atkinson:

Are there multiple GAP products? Why are we adding additional product to what exists? Did the Attorney General (AG) and Insurance Commissioner issue opinions referencing this product as insurance? Should GAP products be regulated under insurance laws?

Mr. Wadhams:

There has been some dispute between the AG and Division of Insurance as to whether this should be regulated as insurance. Senate Bill 253 is attempting to

clarify the two-party situation between a creditor and a borrower. The GAP product is not insurance because there are only two parties to that agreement.

Dan Wulz (Legal Aid Center of Southern Nevada, Inc.):

I am confused as to why S.B. 253 is necessary, and I am in opposition to this bill. Car dealers are already able to make deals with buyers. The proponents are saying that an insurance-like contract is not insurance, therefore not being bound by law. The AG has stated that a similar contract "is" insurance. It is not good policy to create a new category of an insurance-like contract that is not subject to insurance laws.

When a contract has no known value and is sold on credit, it does not help the economy. Conservative principles should dictate great care and skepticism in the creation of such exotic contracts. I am curious to know how many cars, per thousand, are totaled in an accident or an unrecovered theft, as a GAP waiver acts like insurance against a very remote event. Senate Bill 253 is creating a consumer product that no consumer has requested, which operates exactly like GAP insurance. It is not wise to endorse the sale of a contract that has no known value at an unknown price, as well as being exempt from our insurance laws.

I have prepared testimony and exhibits from my testimony on A.B. No 88 of the 77th Legislative Session ([Exhibit F](#)). The points made during this hearing were that for similar products, consumers do not know they have purchased such a product, or are led to believe the product is not optional. If the product is not insurance, then consumers are not protected.

We have no way to determine if GAP waivers are grossly over-priced, and have no way to regulate the pricing. Similar contracts written to date are incomprehensible. There are some samples within [Exhibit F](#). These contracts contain binding, mandatory arbitration clauses, which strip consumers of rights and remedies. GAP products are subject to discriminatory pricing since consumers cannot determine their value.

To clarify exactly what a creditor would waive in a GAP waiver, S.B. 253 does not state the creditor will waive the remaining balance. Section 10 states the creditor agrees to waive part or all of a remaining balance. The creditor chooses to write the contract that only makes them waive part of a remaining balance.

Mr Sasser:

I agree with Mr. Wulz and am in opposition to S.B. 253. I would like to point out that with regards to the model act that has been tested in 47 states, there are no facts stating if any of these states have actually passed the act or have any experience with it. There are no guarantees of consumer protections. The only difference I hear is that a GAP waiver is between two parties instead of three.

Jim Wadhams:

There is a big difference between insurance coverage and financing agreements. Financing companies are not insurance companies, and each is regulated differently. Insurance laws are in statutes and remain unchanged. There is no AG opinion; in fact, there are conflicting opinions of the office of the Commissioner of Insurance. Finance companies are not regulated the same as insurance companies.

Chair Settlemeyer:

I will close the hearing on S.B. 253, and open the work session on S.B. 159.

[SENATE BILL 159](#): Revises provisions relating to insurance. (BDR 57-829)

Marji Paslov Thomas (Policy Analyst):

I will read the summary of the bill from the work session document ([Exhibit G](#)). There are no proposed amendments.

Chair Settlemeyer:

As there is no discussion, I will now close the work session on S.B. 159.

SENATOR HARDY MOVED TO DO PASS S.B. 159.

SENATOR FARLEY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Settlemeyer:

I will now open the work session on S.B. 181.

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SENATE BILL 181: Provides for the licensure of certified anesthesiology assistants. (BDR 54-240)

Ms. Paslov Thomas:

Please note there is an additional amendment, submitted by Senator Hardy. I will read the summary of the bill from the work session document and five proposed amendments ([Exhibit H](#)).

Chair Settlemeyer:

As there is no discussion, I will now close the work session on S.B. 181.

SENATOR SPEARMAN MOVED TO AMEND WITH ALL THE PROPOSED AMENDMENTS AND DO PASS AS AMENDED S.B. 181.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Settlemeyer:

I will now open the work session on S.B. 233.

SENATE BILL 233: Revises provisions relating to occupational safety. (BDR 53-990)

Ms. Paslov Thomas:

I will read the summary of the bill from the work session document and two proposed amendments ([Exhibit I](#)).

Chair Settlemeyer:

The Committee agrees this bill is not problematic. The testimony received by the proponents was they would rather formulate their own training, which allows them to specialize such training.

Senator Atkinson:

I was approached by an individual who has concerns regarding this bill. I am honoring my commitment, but advising you that this individual will follow up with you shortly.

Chair Settlemeyer:

I will now close the work session on S.B. 233.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 233.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Settlemeyer:

I will now open the work session on A.B. 75.

ASSEMBLY BILL 75: Revises provisions governing certain proposed changes in the schedule of rates or services of a public utility. (BDR 58-351)

Ms. Paslov Thomas:

I will read the summary of the bill from the work session document ([Exhibit J](#)). There are no proposed amendments.

Chair Settlemeyer:

As there is no discussion, I will now close the work session on A.B. 75.

SENATOR HARDY MOVED TO DO PASS A.B. 75.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Settlemeyer:

I will now open the work session on A.B. 154.

ASSEMBLY BILL 154: Makes various changes to the Nevada Employment Security Council. (BDR 53-553)

Ms. Paslov Thomas:

I will read the summary of the bill from the work session document ([Exhibit K](#)). There are no proposed amendments.

Chair Settlemeyer:

As there is no discussion, I will now close the work session on A.B. 154.

SENATOR HARRIS MOVED TO DO PASS A.B.154.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Settlemeyer:

I will now open the work session on S.B. 123. The work session documentation is submitted ([Exhibit L](#)).

SENATE BILL 123: Revises provisions governing certain loans. (BDR 52-634)

Chair Settlemeyer:

Discussion on S.B. 123 regarded the right for remedy at law. Everyone should have a remedy at law so a person does not look for his or her own remedy. Clarification by legal counsel indicated there might be an ability for remedy at law already, which would result in S.B. 123 not being necessary. For final clarification, do individuals have a right to their initial loan? Can an individual go to court to acquire their original loan?

Dan Yu (Counsel):

Based on my review of NRS 604.480, the lender of a deferred deposit loan or high-interest loan can seek access to court as a remedy at law for an outstanding or defaulted original loan. Subsection 2 of NRS 604.480 pertains to

treadmill, or cycle of debt referencing a second loan for purposes of paying back an original loan.

Chair Settlemeyer:

With clarification from counsel, it is determined that S.B. 123 is no longer relevant. I will now close the work session on S.B. 123.

SENATOR ATKINSON MOVED TO POSTPONE INDEFINITELY S.B. 123.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Settlemeyer:

I will now open the work session on S.B. 113.

SENATE BILL 113: Revises provisions relating to insurance. (BDR 57-690)

Ms. Paslov Thomas:

I will read the summary of the bill from the work session document and three proposed amendments ([Exhibit M](#)).

Senator Atkinson:

I have not had many issues resolved on S.B. 113. I am not in favor of this bill, yet I reserve my right to change my vote if the proponents can clarify the issues. I have major concerns with this bill.

Senator Spearman:

I have had the opportunity to speak with a few individuals; however, my concerns are with the religious implications. I oppose the bill, yet reserve the right to change my vote on the floor.

Chair Settlemeyer:

I will now close the work session on S.B. 113.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 113.

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SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS ATKINSON, MANENDO AND
SPEARMAN VOTED NO.)

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Chair Settlemeyer:

With no further business, the meeting is adjourned at 10:45 a.m.

RESPECTFULLY SUBMITTED:

Renee Fletcher,
Committee Secretary

APPROVED BY:

Senator James A. Settlemeyer, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	2		Agenda
	B	6		Attendance Roster
S.B. 242	C	3	George Burns	Written Testimony
S.B. 246	D	22	Susan Carbiener	Slide Presentation
S.B. 246	E	1	Lisa Granahan	Written Testimony
S.B. 253	F	37	Dan Wulz	Written Testimony and Exhibits from the 77th Legislative Session on A.B. 88
S.B. 159	G	1	Marji Paslov Thomas	Work Session Document
S.B. 181	H	6	Marji Paslov Thomas	Work Session Document
S.B. 233	I	1	Marji Paslov Thomas	Work Session Document
A.B. 75	J	1	Marji Paslov Thomas	Work Session Document
A.B. 154	K	1	Marji Paslov Thomas	Work Session Document
S.B. 123	L	1	Chair James A. Settlemeyer	Work Session Document
S.B. 113	M	2	Marji Paslov Thomas	Work Session Document