MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-Eighth Session
April 8, 2015

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 8:38 a.m. on Wednesday, April 8, 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 Pat Spearman

COMMITTEE MEMBERS ABSENT:

Senator Kelvin Atkinson (Excused)

GUEST LEGISLATORS PRESENT:

Senator Don Gustavson, Senatorial District No. 14
Senator Joyce Woodhouse, Senatorial District No. 5

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Patricia Devereux, Committee Secretary

OTHERS PRESENT:

Catherine O'Mara, Nevada Craft Brewers Association

Josh Watterson, Head Brewer, Brasserie Saint James; Director, Nevada Craft Brewers Association
Robert Snyder, Treasurer, Nevada Craft Brewers Association; Chief Financial Officer, Big Dog's Brewing Company
Matt Marino, President, Nevada Craft Brewers Association; Director of Operations, Joseph James Brewing Company, Inc.
Alfredo Alonso, Nevada Beer Wholesalers Association
Jesse Wadhams, Wirtz Beverage Nevada
Adam Porath, Nevada Society of Health-System Pharmacists
David Fluitt
Liz MacMenamin, Retail Association of Nevada
Scott Stolte, Dean, College of Pharmacy, Roseman University of Health Sciences
Susan Nguyen, Assistant Professor of Pharmacy Practice, College of Pharmacy, Roseman University of Health Sciences; Clinical Pharmacist; University Medical Center of Southern Nevada; Nevada Society of Health-System Pharmacists
Stacy Woodbury, Executive Director, Nevada State Medical Association
Denise Selleck, Executive Director, Nevada Osteopathic Medical Association
Mary Wherry, M.S., R.N., Deputy Administrator of Community Services, Division of Public and Behavioral Health, Department of Health and Human Services
Steve VanSickler, Vice Chair, Board of Governors, Nevada Mortgage Lenders Association; Chief Credit Officer, Silver State Schools Credit Union
George Ross, Nevada Bankers Association
Jennifer Gaynor, Nevada Credit Union League

Chair Settelmeyer:
I will entertain motions to pass out of Committee without recommendation and rerefer Senate Bill (S.B.) 299 and S.B. 259 to the Senate Committee on Finance.

SENATE BILL 299: Revises provisions relating to providers of health care and insurance coverage for health care services. (BDR 54-238)

SENATOR HARDY MOVED WITHOUT RECOMMENDATION TO REREFER S.B. 299 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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SENATE BILL 259: Requires an employer to provide paid sick leave to each employee of the employer under certain circumstances. (BDR 53-973)

SENATOR MANENDO MOVED WITHOUT RECOMMENDATION TO REREFER S.B. 259 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Settelmeyer:
We will open the hearing on S.B. 139.

SENATE BILL 139: Revises provisions concerning brewpubs. (BDR 52-715)

Senator Don Gustavson (Senatorial District No. 14):
The craft beer makers of Nevada asked me to sponsor S.B. 139.

Catherine O'Mara (Nevada Craft Brewers Association):
The Nevada Craft Brewers Association (NCBA) is comprised of 35 craft breweries and brewpubs statewide. These local operations collectively employ more than 600 people in jobs ranging from food and beverage service to the high-tech science and engineering involved in brewery operation. These companies support their communities with charity programs and sponsorships. They also generate significant State tax revenue. In 2012 and 2013, when there were only 20 breweries and brewpubs in the State, craft breweries contributed an estimated $362.1 million to the State economy. Based on the growth of the industry, the NCBA expects that amount to have been much higher for 2013 and 2014.

Senate Bill 139 seeks to remove the cap on how many barrels Nevada brewpubs can produce annually. The current cap of 15,000 barrels was set in 1995 with passage of A.B. No. 594 of the 68th Legislative Session that

increased the cap from 10,000 to 15,000 barrels, but only in Clark County. In 2013, A.B. No. 153 of the 77th Legislative Session provided a uniform cap of 15,000 barrels statewide, in line with Clark County. Note that the cap has not been increased in 20 years.

Why bring forth this bill now? Nationally, craft brewing has become an emerging industry. Craft brewers produce 11 percent of volume share of the U.S. marketplace. In 2014, craft brewers produced 22.2 million barrels—an 18 percent rise in volume and 22 percent increase in retail dollar value. Craft brewing is a viable and successful industry, and there is no reason why Nevada should not fully participate in it. Our award-winning breweries are well placed to be at the forefront of the industry. There is expected to be 36 brewpubs in the State by the end of 2015.

With the 15,000-barrel cap lifted, there is no reason why Nevada brewpubs cannot succeed. Colorado, California and Utah have caps of 60,000 barrels. In 2015, Wyoming and Arizona passed legislation removing or increasing caps to promote the growth of brewpubs. Wyoming increased its cap from 15,000 barrels to 50,000 barrels. Arizona increased its cap from 40,000 to 200,000 barrels. Senate Bill 139 will make Nevada's craft brewers competitive with other western states.

Josh Watterson (Head Brewer, Brasserie Saint James; Director, Nevada Craft Brewers Association):

Brasserie Saint James is a Nevada brewpub. In just 2 1/2 years, we have developed a strong following in the craft brewing world. At the 2014 Great American Beer Festival, we won the Homemade Brewery of the Year Award. This illustrates the high quality of beer being produced in Nevada.

Brasserie Saint James has reached its full capacity of 1,200 barrels annually. We are expanding, with new stainless steel vessels arriving this month. We have added a recent University of Nevada, Reno graduate with a degree in biology to our full-time staff. He is in Germany, obtaining a technical degree in brewery technology. While this expansion will allow us to produce more than 5,000 barrels, it also puts us in an awkward position: If growth continues on the expected scale, our next expansion would put us over the low production limit of 15,000 barrels. We may have to move our facility or open a larger one in a neighboring state, all of which have higher barrel caps.

Current *Nevada Revised Statutes* (NRS) unwittingly give an unfair preference to out-of-state breweries of all sizes. While there is no law stipulating how much beer a brand can bring in from another state through distributors, Nevada breweries, which pay State production taxes and hire local employees, have to limit their growth. I do not think those who oppose S.B. 139 would be willing to increase market balance by limiting brands like Budweiser, MillerCoors or Corona to the same level as Nevada brewpubs.

I would like to produce as much beer as the market demands. Brasserie Saint James's management has been asked if we would be willing to distribute our brand in places as far away as Brazil and Thailand. Unfortunately, we have to ignore such requests. Those who oppose S.B. 139 asked me to define "craft brewing." They are asking us to segregate an industry in which all participants, no matter their size, have the same fees and regulations. The Brewers Association of America defines "craft brewers" as any brewery with up to 6 million barrels of production that emphasizes independence and tradition.

Enforcement of barrel caps allows Nevada breweries to compete on a level playing field with each other. If our breweries are allowed to grow, it will help—not hinder—cap enforcement in the State. The more beer we are allowed to produce, the more manufacturing taxes we pay to the State, which, in turn, will allow more enforcement officers to be hired. Enforcement of brewery regulations is not made more complicated or difficult by growth. Breweries are stationary objects, and the account books and staff do not change locations. Whether we produce 50 barrels or 5 million barrels, enforcement procedures are the same. Enforcement officers will be able to handle and understand an extra zero on a production report.

The three-tier tax system of marketing will not be affected by S.B. 139. Under the system, breweries can sell only to wholesalers within the State and/or directly to Nevada consumers. The wholesaler can then sell only to the retailer, not to the general public or at the retail level. If we make more beer, distributors have more beer to sell—a win-win situation. Nevada brewers are simply asking to become relevant inside and outside of our borders with an increased barrel cap. We are one of the more restrictive states for brewpubs, depending on how you read other states' laws. If the cap were increased, State tax revenues and jobs would increase.

Senator Hardy:
Did you say the definition of a brewpub is a brewery that produces less than 6 million barrels?

Mr. Watterson:
Yes, 6 million is the definition from the Brewers Association of America, to which most breweries belong. A brewery barrel contains 31 gallons.

Senator Hardy:
How much do large commercial breweries like MillerCoors produce? Six million barrels is a lot.

Mr. Watterson:
The closest Budweiser facility, in Fairfield, California, produces more than 7.2 million barrels annually.

Senator Hardy:
If it produced 1.2 million fewer barrels, would it be considered a brewpub?

Mr. Watterson:
Yes, and that is just one of Budweiser's facilities.

Senator Hardy:
Senate Bill 139 just removes the 15,000-barrel cap. It that correct? Does it say, "up to" some other figure?

Ms. O'Mara:
The bill just removes that cap. Craft brewers could produce as much beer as the market dictates. Budweiser facilities shipped a total of 16 million barrels in 2013. Six million barrels sounds large, but that is the craft brewers' standard nationwide. MillerCoors ships up to 13 million barrels annually.

As part of the Internal Revenue Code, small breweries that produce less than 2 million barrels get a tax benefit for their first 60,000 barrels. They pay taxes at $7, versus $18, per barrel on that amount.

Senate Bill 139 removes the cap entirely. The NCBA spoke with those opposing the bill, and we are willing to work with them to set a new cap that makes

sense. It needs to allow for investment in business development and be sustainable long term.

Senator Hardy:
Are you expecting a friendly amendment that caps the number of barrels so you do not overshoot the market?

Ms. O'Mara:
I have been told there is no forthcoming amendment. The NCBA has not heard a single good reason as to why the 15,000-barrel cap should stay in place. We have just heard many fears about what will happen if the cap is removed.

Senator Hardy:
Is the NCBA also not proposing a cap?

Ms. O'Mara:
We are willing to do so.

Chair Settelmeyer:
If you do the math, we are talking about the equivalent of 550 acre-feet of water—a serious amount. As an agriculturist, I can get my arms around that figure. Do you have a suggested cap that is more reasonable than "unlimited"?

Ms. O'Mara:
I am thinking that a cap of at least 60,000 barrels annually would be reasonable. That would not simply kick the ball down the field for new legislation in the 79th Legislative Session. Sixty-thousand barrels is in line with nearby states' caps, while allowing Nevada to be a leader among them. That figure is not quite up to Arizona's level of a 200,000-barrel cap, but it is competitive with states like Colorado that have microbreweries, craft breweries and large breweries operating successfully in the marketplace. A higher cap will position Nevada to build tourism. Members of the NCBA could become the industry's regional leaders.

Robert Snyder (Treasurer, Nevada Craft Brewers Association; Chief Financial Officer, Big Dog's Brewing Company):
I support S.B. 139. Big Dog's Brewing Company has been operating since 1993, when Holy Cow Casino and Brewing Company opened on Las Vegas Boulevard as one of the first State breweries of the modern era. Along with

Great Basin Brewing Company in Reno, we kick-started Nevada craft brewing, which has really taken off since 2005. You have a letter of support for S.B. 139 from Great Basin brewmaster Tom Young (Exhibit C).

In 2003, Holy Cow built a new facility at our draft house location, moved its operation and renamed the company Big Dog's Brewing Company in honor of our founder, Tom Wiesner, aka Big Dog. Big Dog's is a family-owned and family-operated business. Mr. Wiesner's son Kurt is the president. Between our brewery, brewpub and catering company, we employ 85 people and generate hundreds of thousands of local and State taxes annually. Big Dog's recent equipment expansion increased its production capacity to 4,000 barrels annually. We expect to produce 2,000 barrels in 2015 and max-out our capacity in 2016. The expanded facility could potentially produce 15,000 to 20,000 barrels annually by 2020.

Nevada Revised Statutes unnecessarily limit the potential of brewpubs and stifle entrepreneurship and investment in them. Brewpubs are a capital-intensive endeavor with inherently low profit margins. They require a high volume to generate profits. Banks and investors expect our business plans to show growth and profitability. However, real-world numbers show that a brewpub that wants to become a regional producer must have a business plan well beyond 20,000 barrels annually to have even a chance of seeing positive investment returns.

Nevada Revised Statutes punish brewpub licensees for being successful. They could potentially force a successful brewpub to convert to a "brewery," which does not allow on-site retail sales of its brand. That support is necessary for these small businesses to succeed. Nevada breweries and brewpubs have much in common with beer wholesalers, our partners in distribution. Eliminating the cap and allowing production limit to rise is in the best interest of the brewers, State and wholesalers.

Brewpubs are natural tourist destinations, adding to the State tax base. Regional breweries have devoted fans from in and out of State. Their facilities attract tourists who want to see where their favorite beers are made, meet the brewers and enjoy the brands' full lineup of products. Nevada law encourages distributors to favor out-of-state brands that have higher production limits. A distributor can sell any amount of a brand throughout Nevada, but we are limited in what we can sell to the same distributor. Nevada law limits exports

from our State, which limits job growth. Production limits written to protect the three-tier system should not limit companies' abilities to produce export products sold through that system.

Nevada breweries make fantastic beer, as evidenced by awards from international competitions. Big Dog's Red Hydrant Ale won the gold medal twice at the World Beer Cup, the "Olympics of beer competitions." Other Nevada breweries have won similar major awards. "Made in Nevada" is something of which we are proud, and we want to share that with the world. The industry is growing, but, unfortunately, it is heading toward an artificially low, unnecessary ceiling.

Matt Marino (President, Nevada Craft Brewers Association; Director of Operations, Joseph James Brewing Company, Inc.):
Joseph James Brewing Company, Inc. is in the City of Henderson. Nevada has two types of brewery licenses. We hold a manufacturing license, with no cap on production. We cannot sell on the retail level, so all of our beer is sold through distributors. This discussion should not focus on the amount of water breweries use. If a large brewery wants to come here, local, county or State planners must consider the water used. Every industry that uses a lot of water faces the same restrictions.

The difference between production breweries and brewpubs is the latter also sells retail, usually through a bar or restaurant. Great Basin Brewing Company has a family-owned restaurant with an on-site brewery. They also sell through distributors. If a brewpub wants to exceed the 15,000-barrel cap, it must move out of State or, as in the case of Great Basin, close its restaurant and lay off many workers. Lift that cap, and brewery owners, distributors and employees will all benefit in a win-win situation. I have not heard plausible reasons from the opposition as to why we should not lift the cap.

Chair Settelmeyer:
My mention of water use was because I could not visualize how much 15,000 barrels of beer equals. As an agriculturalist, translating it into acre-feet allowed me to do so.

Alfredo Alonso (Nevada Beer Wholesalers Association):
The Nevada Beer Wholesalers Association opposes S.B. 139. Nevada does not fund enforcement of its brewery restrictions at a level anywhere near that of the

states we have discussed today. Comparing them to us is like comparing apples-to-oranges. Nationally, 97 percent of craft breweries produce less than 60,000 barrels annually, and 93 percent produce less than Nevada's cap of 15,000 gallons. Ninety-one percent of U.S. craft brewers produce less than 7,000 barrels, far less than our cap. Raising the cap simply because someone wants to do so raises questions about its purpose if brewers are not actually getting close to a new cap.

Only one State craft brewery is even close to producing 15,000 barrels. If it gets to that cap, it can become a regular brewery. Once you cease to be a brewpub, as a full-fledged brewery, you can sell unlimited amounts of beer in the marketplace. I hope all of our brewpubs become as successful as Boston Beer Company's Samuel Adams brand someday.

We have heard that the industry has grown since the last cap was imposed 20 years ago. However, in the 77th Legislative Session, this Committee changed that designation. In 2013, Las Vegas and Clark County had a 15,000-barrel cap, but the rest of the State had none. Therefore, the Committee imposed that cap statewide. If the cap is removed, any brewer of any size can come to the State and compete in the marketplace with existing brewpubs. Removing the cap would hurt small brewers in ways they do not understand. The wholesalers will work during the 2015-2016 interim session with craft brewers to find a cap that works for everyone. If we follow the definition of brewpub as working within all three distribution tiers, how do we ensure the stability of the existing system yet still allow brewpubs to grow?

Jesse Wadhams (Wirtz Beverage Nevada):
I agree with Mr. Alonso's comments. Wirtz Beverage Nevada opposes S.B. 139 as written.

Senator Manendo:
If there is no interim study, do you envision any compromise areas?

Mr. Alonso:
I have spoken to Ms. O'Mara. The Nevada Beer Wholesalers Association had hoped to have these discussions during the 2013-2014 interim session, but that did not happen. Discussion of an arbitrary cap—although only one brewpub is close to it now—is difficult because it is not that simple. You must discuss whether raising the cap allows for unlimited restaurants and brewpubs, as is the

case under current NRS. How will regulations on the increased sales be enforced?

Senator Farley:
I disagree with economic principles that believe capping entrepreneurship is good for the State, and that restricting out-of-state businesses from coming here, just because they are large, is good. It is not the Committee's responsibility to limit business growth.

I do not understand the difference when a craft brewer transitions into a full-fledged brewery. That economic argument seems flawed. I understand that, from a tax standpoint, there must be regulation and enforcement. However, the wholesalers' job is to grow with the industry, not restrict it so you can no longer control it; that is backwards. Why do we need any kind of cap?

Mr. Alonso:
Beer is alcohol, the only substance placed in the Nevada Constitution as prohibited, then, after the repeal of the U.S. Constitution's 18th Amendment, restored in 1933. We have federal and State excise taxes on alcohol, the collection of which is critical to the State. The three-tier system was created after ratification of the 21st Amendment, which repealed the 18th Amendment. The brewpub industry is highly competitive. The fact that wholesalers can sell craft brewers' products with the same zeal they apply to Budweiser or MillerCoors attests to that. There are thousands of brewpub products in the marketplace, as opposed to, say, two or three brands of other kinds of products. It is a unique system, so it is treated differently.

Senator Farley:
The question seems to be, is the industry just growing and wholesalers need to budget how to collect tax revenue in order to keep up with enforcement? There is a problematic flaw in the system.

Mr. Alonso:
I agree. Oregon spends $17 million annually on enforcement of alcohol regulations. Texas spent about $52 million as of fiscal year 2014. Nevada probably spends less than $250,000 annually, assuming our two investigators were separated out from tobacco law enforcement, which they are not.

Senator Hardy:
Do you have a "secret" barrels-cap number for your friendly proposed amendment?

Mr. Alonso:
No. That is a discussion that must include on-premise sales, the number of brewpub locations and other factors. If we raise the cap—especially to the level the proponents have proposed—that is a huge amount to which brewpubs are currently not even close. I understand the free-market argument, but alcohol is a different, abnormal product. Liquor has myriad social ramifications, and it must be handled carefully to protect the tax system and those dollars coming to the State.

Senator Gustavson:
The craft brewery industry is growing. We would like Nevada to be one of the premier places for people to visit brewpubs. There should not be a production cap. The opposition apparently does not have a cap figure in mind; perhaps that is because we should not have one.

Chair Settelmeyer:
We will close the hearing on S.B. 139 and open the hearing on S.B. 357.

SENATE BILL 357: Revises provisions relating to pharmacists. (BDR 54-869)

Adam Porath (Nevada Society of Health-System Pharmacists):
I have practiced pharmacy in Nevada since 2006, having completed my pharmacy-practice residency at Renown Regional Medical Center in Reno. I am board certified as a pharmacotherapy specialist and ambulatory care pharmacist. For the last 5 years, I have worked collaboratively with physicians in an outpatient hospital-setting managing patients with chronic disease states such as high blood pressure, high cholesterol and heart failure. I also help patients with smoking cessation, polypharmacy consultations when patients are on ten or more medications and managing blood therapy.

The concept of S.B. 357 is simple. We have a health care-access issue in Nevada. We have a pool of highly trained, accessible health care professionals we could potentially use to increase that access. We are not the only state considering pharmacists as an avenue to help address such shortages. There are 75 bills in 31 states addressing some aspect of patient access to pharmacist

care. There are bills in both houses of Congress to recognize pharmacists as health care providers under Medicare, with more than 90 cosponsors for the two bills. In 2014, similar Congressional legislation garnered 122 cosponsors. Several states recognize some form of advanced pharmacist practice, including Montana, New Mexico, North Carolina and California.

Pharmacists with advance training can supplement physician-led health care teams with our expertise in medications. The Veterans Health Administration (VHA) has used pharmacists in primary care for more than 20 years. Numerous studies have demonstrated the benefits of pharmacist-physician patient comanagement across the continuum of care. In hospital or clinical settings, clinical pharmacist team members improve patient outcomes.

Despite being recognized in NRS as health care providers, the ability of pharmacists to provide patient care outside of hospitals is limited due to billing restraints. Senate Bill 357 is a first step toward expanding access to pharmacists' clinical services. The State Board of Pharmacy's endorsement of pharmacists who have additional training and credentials as advanced practice practitioners will provide State and private insurance payers a means to better determine which pharmacists would be eligible for reimbursement of services. Nevada has 144 pharmacists board certified in some area of specialty who could potentially be reimbursement-eligible providers. A majority of them already work in VHA or hospital settings, so only about one-third of those 144 pharmacists could be utilized in primary care.

You have my proposed amendment (Exhibit D), supported by bill sponsor Senator Debbie Smith, to S.B. 357. It eliminates a lot of the bill's original language in NRS 639 related to pharmacists' ability to furnish patients with certain nonprescription medications. The proposed amendment's language was taken from legislation passed in California in 2014. It distracts from the discussion of creating a mechanism to allow pharmacists to provide better patient care. After discussions with stakeholders, specifically the Nevada State Medical Association, we think we should retain the status of pharmacists' implementation and modification of drug therapy under protocols or written guidelines.

David Fluitt:
I am a regional pharmacy supervisor for a grocery pharmacy chain in California and Nevada. I have been a pharmacist for 33 years, 23 of them in Nevada. I am

networked through Nevada Medicaid on its Pharmacy and Therapeutics Committee and its Medical Advisory Committee.

The trend in health care is a switch from a fee-per-service base to a service-oriented one, known as the value-based payment model. There is a new opportunity for pharmacists to be part of a team of professionals that includes nurses and physicians to address patient's needs. From my work on the Medicaid committees, I know there are many people with chronic conditions who need special care. It begins with a lengthy meeting with a provider to determine the course of therapy. That includes transition from in- to outpatient services, particularly with mental health conditions. People with mental health issues often have a series of comorbidities that need to be addressed. Pharmacists are in the best position to do so because of our expertise with direct therapy. Nevada is medically underserved in certain rural and urban areas. The bill could help remedy that by allowing pharmacists to join medical teams.

Liz MacMenamin (Retail Association of Nevada):
The Retail Association of Nevada includes chain drugstores and employers of many pharmacists, so we have been working closely with pharmacists. We support recognition of the importance of pharmacists in the health care industry. They are not necessarily just people with bachelor of science degrees. Many pharmacists have doctorate degrees after very lengthy and intense coursework in biomedicine, pharmaceutical sciences, administrative and clinical services, toxicology, pathophysiology and pharmaceutical chemistry.

The Retail Association of Nevada would like the Committee to consider that studies have shown the importance of medication therapy management and pharmacists' roles within that field. They are also critical to working with the chronically ill by heading off preventable adverse drug events and achieving good patient outcomes.

Senator Hardy:
Section 3, subsection 1, paragraph (b) of the proposed amendment, Exhibit D, is about pharmacists "managing patients." Subsection 2, paragraph (a) says pharmacists may perform "a physical assessment of a patient," and paragraphs (b) and (c) say they can "Implement, monitor, and modify drug therapy … ," "Order and interpret laboratory tests … " and "Refer a patient to other providers of health care." Section 5, subsection 3, paragraph (b) talks about "Defining the scope of practice for an advanced practice pharmacist in collaboration with the

Board of Medical Examiners." If I had just closed my eyes and heard this job definition, I would say it is of a doctor. However, pharmacists are not doctors. I recognize the vital things clinical pharmacists do, but the bill seems to be describing doctors. Doctors are kind of what you want to be.

Mr. Porath:
Pharmacists' role on the health care team is not that of diagnosticians. The "quarterback" on that team has been and should always be the physician. The role pharmacists play is that of medication experts. After physicians diagnose the patient, our role is to ascertain the best way to treat the ailment. We can be very helpful to the entire team by doing that and may optimize patient outcomes. Physical assessments performed by pharmacists are directed by patients' existing drug therapies. We look for responses to that therapy and/or complications. Initial diagnoses are not in pharmacists' purview.

Senator Hardy:
As written, the proposed amendment, Exhibit D, does not say that. "Perform a physical assessment" means physical exam, which must be preceded by knowledge of a patient's history. "Implement" means to start, versus "monitor" and "modify." "Order and interpret" means diagnose. That is how the proposed amendment reads.

Mr. Porath:
Nevada Revised Statute 639.2809 basically allows pharmacists to do all of the things you outlined under collaborative practice agreements. When implementing a drug therapy, we follow a collaborative practice agreement algorithm to say, "You, as a physician, have diagnosed the patient with hypertension, and you may have started that patient on one particular drug that's not managing their hypertension." An additional drug needs to be implemented. It is critically important that we implement drug therapy in certain situations after patients are referred to us. In order to safely use those drugs, we need to monitor patients by ordering laboratory tests. An example is anticoagulation management, for which we interpret lab results and modify drug therapy.

Senator Hardy:
What does "after patients are referred to us" mean?

Mr. Porath:
In outpatient hospital settings, hospitalists or primary care physicians in ambulatory medical practices send referrals to pharmacists' departments, saying, "Manage this patient for disease state X protocol." If there is a shared electronic medical record, the physician and pharmacist can clearly see what is happening with the patient. Under NRS 639.2809, if we do not share electronic medical records within 72 hours, we must communicate in writing with the physician if any changes have occurred in the therapy.

Senator Hardy:
The proposed amendment, Exhibit D, does not talk about referrals made to pharmacists for patients.

Mr. Porath:
The ability to do the things you listed falls under the collaborative practice agreement or protocol with a practitioner pursuant to NRS 639.2809. The referral must already be in place.

Senator Hardy:
Does the Board of Medical Examiners have jurisdiction over pharmacists? Do pharmacists have a status similar to that of physicians' assistants or advanced nurse practitioners? I do not see a "fence" around the referral process.

Mr. Porath:
There is no referral "fence" language in the proposed amendment. The collaborative practice agreements and protocols under which pharmacists work are approved by the State Board of Pharmacy.

Senator Hardy:
The proposed amendment specifies the Board of Medical Examiners.

Mr. Porath:
No, it says the State Board of Pharmacy in section 5, subsection 3, paragraph (b). It specifies that the scope of practice for advanced practice pharmacists will be regulated by the State Board of Pharmacy in collaboration with the Board of Medical Examiners.

Senator Hardy:
Does the Board of Medical Examiners know what you are proposing?

Mr. Porath:
I do not know.

Senator Farley:
It sounds as if this discussion should have happened in Committee members' offices, particularly that of Senator Hardy. I do not understand what the pharmacists are trying to do, even though I have read the bill. Senator Hardy is a physician, and he also does not know where the bill is going.

Scott Stolte (Dean, College of Pharmacy, Roseman University of Health Sciences):
Roseman University of Health Sciences has Nevada's only College of Pharmacy, with campuses in Las Vegas and Henderson. We prepare our graduates for the skills outlined in S.B. 357. Indeed, under our national accreditation standards, we are required to provide those skills. The College and I support S.B. 357.

Susan Nguyen (Assistant Professor of Pharmacy Practice, College of Pharmacy, Roseman University of Health Sciences; Clinical Pharmacist, University Medical Center of Southern Nevada; Nevada Society of Health-System Pharmacists):
In my teaching role, I see the impact pharmacists have on patients and providers coping with Nevada's primary care provider shortage. My patients are preferred from three primary care physicians because the patients have chronic diseases such as diabetes, high blood pressure or high cholesterol. The patients are referred to me because they are newly diagnosed or hard to manage. I provide education and review their laboratory information and medications.

For example the doctor may start the patient on a medication for diabetes, such as insulin. However, because lack of follow-up time, the patient may go for 3 months without seeing the doctor. The doctor will refer the patient to me to manage their insulin. In order to do so, I need to review the laboratory information, such as fasting blood sugars and other diabetes-specific data. From that review, in collaboration with the physician, I decide to adjust the insulin flow. Everything I do is reported back to the physician, who must then agree with my recommendation, which is then sent to the patient. Please support S.B. 357.

Senator Hardy:
I am getting a mixed message. A patient is referred to you, and you manage their chronic disease. You change the medications, which is approved by a physician. Notice is then given to the patient. Is that correct?

Ms. Nguyen:
Yes. Basically, patients with chronic disease states are referred to me. We discuss education, and I review their medications to see if they are effective. If not, I make recommendations to the physician to improve the therapy.

Senator Hardy:
I am hearing that you make recommendations, and the physicians follow through on them. However, that is not what S.B. 357 says.

Ms. Nguyen:
Senate Bill 357 will take that process a step further. For example, if I identify during an appointment that a patient has uncontrolled diabetes, I would have to wait for the physician to order laboratory tests, which will delay the prompt care the patient needs. The bill will allow me to immediately order tests to determine why the patient's medications are not controlling the diabetes.

Senator Hardy:
Will the bill allow you to make those medication changes by yourself?

Ms. Nguyen:
I could make changes after informing the physician of my actions. The collaborative practice agreement with the doctor would state my role and abilities as a pharmacist in that clinic. The agreement would specify which medications I could initiate and adjust, after working with the clinic's providers.

Stacy Woodbury (Executive Director, Nevada State Medical Association):
The Nevada State Medical Association supports S.B. 357 with a few concerns. As introduced, the bill gave us great pause, so we have been working with Mr. Porath on his proposed amendment, Exhibit D. Section 3, subsection 2, paragraphs (a) through (c) describe the allowable duties of advanced practice pharmacists. We want to limit the physical assessment in paragraph (a) to performing assessments only for monitoring toxicity and efficacy of drug therapy. We were concerned about the bill's provision that pharmacists must establish protocols in a collaborative practice agreement with a physician.

However, we are comfortable with how that is presented in the proposed amendment's section 3, subsection 1, paragraph (b).

The Nevada State Medical Association is still hesitant about provisions concerning referrals to a provider. However, we have agreed to discuss what limitations should be placed on referrals with Mr. Porath. We understand that physicians start the referral process in hospitals. However, after Senator Hardy's comments, we would be more comfortable if there were "fences" around that in the bill that specify referrals start and end in hospitals.

Senator Hardy:
Has the Nevada State Medical Association discussed the bill and proposed amendment with the Board of Medical Examiners?

Ms. Woodbury:
No, but we agree the discussion must be had.

Denise Selleck (Executive Director, Nevada Osteopathic Medical Association):
The Nevada Osteopathic Medical Association shares many of the same concerns as Ms. Woodbury about S.B. 357. As written, we oppose the bill. Senator Hardy has asked all of the questions we had about the proposed amendment, Exhibit D. It sets pharmacists up under the State Board of Pharmacy, in consultation with the Board of Medical Examiners. The State Board of Osteopathic Medicine should be included under that regulation because I do not think pharmacists are looking strictly for collaborative agreements with medical doctors. They should also have agreements with osteopathic doctors in hospital settings.

Mary Wherry, M.S., R.N. (Deputy Administrator of Community Services, Division of Public and Behavioral Health, Department of Health and Human Services):
The Division of Public and Behavioral Health had concerns about section 4 of S.B. 357, but those elements were stricken in the proposed amendment, Exhibit D. We would like to strengthen language about protective measures.

Mr. Porath:
It is critically important that we expand access to care for patients using a certain subset of pharmacists. I recognize Senator Hardy's concerns, and we will work with stakeholders to resolve them and other details.

Chair Settelmeyer:
We will close the hearing on S.B. 357 and open the hearing on S.B. 349.

SENATE BILL 349: Revises provisions governing mortgages. (BDR 54-99)

Senator Joyce Woodhouse (Senatorial District No. 5):
You have my written testimony (Exhibit E). Under current NRS, a person who wishes to be licensed as a mortgage broker or mortgage agent must complete an education program on mortgage lending and pass a written examination. In section 1 of S.B. 349, this requirement is revised so that the Division of Mortgage Lending will adopt a test for applicants who will not be residential mortgage loan originators, instead fashioning an exam germane to commercial mortgage lending.

Section 2 of S.B. 349 amends a law that provides that a signatory to the consent judgement entered in the case *United States of America v. Bank of America Corporation et al., No. 13-5112 (D.C. Cir. 2014)* who complies with the Settlement Term Sheet under that judgment or any mortgage service, mortgagee or beneficiary for the deed of trust who complies with the final service rules issued by the Consumer Financial Protection Bureau (CFPB) is deemed to be in compliance with certain requirements of laws relating to foreclosures or to owner-occupied housing securing a residential mortgage loan.

Section 2 of S.B. 349 revises this exception. Mortgage services, mortgagees or beneficiaries of deeds of trust that are in compliance with the CFPB's final servicing rules will be deemed to be in compliance with certain requirements of State law relating to the foreclosure of owner-occupied housing.

Steve VanSickler (Vice Chair, Board of Governors, Nevada Mortgage Lenders Association; Chief Credit Officer, Silver State Schools Credit Union):
Senate Bill 349 concerns testing germane to commercial mortgage originators. When Nevada implemented the 2008 Safe and Fair Enforcement Mortgage Licensing Act in 2011, the commissioner of the Division of Mortgage Lending was granted the ability to oversee mortgage licensing and rules. That legislation did not make clear that the Act really only pertains to residential lending.

Since 2011, commercial mortgage bankers have been required to take residential continuing education courses and pass an examination that has nothing to do with the business in which they are engaged. As per

NRS 645D.0137, if the Division has jurisdiction over commercial mortgage originators, the continuing education and testing needs to be germane to commercial mortgage banking.

The Division is sponsoring A.B. 311, which removes current Commissioner James Westrin's regulatory oversight of commercial mortgaging banking activities.

ASSEMBLY BILL 311: Makes various changes to the regulation of residential mortgage bankers, mortgage brokers, mortgage loan originators and mortgage servicers and enacts the Nevada Private Money Real Estate Loan Act. (BDR 54-668)

It states that his authority pertains solely to residential lending. It would be an overreach by the Nevada Mortgage Lenders Association (NMLA) to change his level of authority to exclude commercial mortgage origination, so we support A.B. 311. If it fails, we will still have the situation addressed in S.B. 349.

George Ross (Nevada Bankers Association):
The second half of S.B. 349 states that if a bank or loan servicer complies with CFPB regulations and has more than 5,000 loans, it must provide germane continuing education and testing. The worry of the banking community is that since the passage of S.B. No. 321 of the 77th Legislation Session, derived from *United States of America v. Bank of America Corporation et al.,* there is a State law. We have State and federal judges in Nevada. It does not take long before there are all sorts of banking- and mortgage-related cases going in different directions. State courts make decisions and common laws that differ from those of federal courts. However, banks and large loan servicers must follow CFPB regulations. Senate Bill 349 eliminates the problem of lenders being caught between conflicting State and federal laws and regulations. Banks strongly favor the second half of the bill.

Jennifer Gaynor (Nevada Credit Union League):
The Nevada Credit Union League supports S.B. 349 because it is a commonsense approach to harmonizing State and federal law.

Mr. VanSickler:
The Nevada housing finance industry added an amendment to S.B. No. 321 of the 77th Legislative Session, the "Homeowners Bill of Rights," that aimed to permit compliance with CFPB's final servicing rules in order to satisfy that bill's provisions. During the drafting process for S.B. 349, the amendment was incorrectly added, granting a CFPB compliance exemption only to national depositories that were signatories to the 2012 National Mortgage Settlement.

Nevada's smaller independent mortgage banks, community banks and credit unions must follow CFPB and State rules, which is a financial burden on their businesses and consumers. The Settlement is set to expire in late 2015, which means national depositories will soon be subject to the same duplicative and conflicting rules. There is a precedent for allowing compliance with the CFPB's rules to equal compliance with state-level rules: a measure similar to S.B. 349 that passed in Colorado in 2014.

The independent CFPB agency's sole task is to protect consumers from financial harm. The CFPB's rules apply to all mortgage servers. The agency amended its national servicing rules multiple times since April 2014 to ensure its requirements meet any new consumer protection needs. Commissioner Westrin told the NMLA he agrees with the national servicing rules and that State standards should not conflict with them. The Division is advocating for passage of A.B. 480 to gain regulatory oversight over national mortgage servicers.

ASSEMBLY BILL 480: Provides for the licensing and regulation of mortgage loan servicers and revises provisions governing the administration of the Division of Mortgage Lending of the Department of Business and Industry. (BDR 54-1174)

Senator Harris:
You have testified that the CFPB's main goal is to protect consumers. If we change NRS to remove that layer of protection, where will consumers go with mortgage problems? How do we determine if banks and servicers are complying with the CFPB rules?

Mr. VanSickler:
All banks and servicers must comply with the rules. Banks are overseen by the Division of Financial Institutions. The NMLA can provide references to Websites for consumers who need answers to mortgage-servicing questions and refer

them to Commissioner Westrin's office. The Division of Mortgage Lending also conducts consumer outreach on in-state and out-of-state mortgage loans.

Senator Harris:
The CFPB rules require mortgage servicers to maintain communication with delinquent borrowers. In my law practice, I represent such borrowers, and it is often difficult to establish and continue that kind of communication. Where do consumers who are having difficulties getting resolutions to their homeowner issues from servicers turn to for redress? There is little transparency or communication in that situation.

Mr. VanSickler:
Commissioner Westrin feels for Nevada homeowners who are lost in the delinquent loan process. The CFPB's oversight is really only of institutions with assets of more than $10 billion. Commissioner Westrin and the NMLA do not believe Nevadans have an adequate avenue to redress their servicing concerns.

Senator Harris:
Will there be a consumer-protection framework established so borrowers can know exactly where they can go for answers and to initiate a process if they are having difficulties dealing with their lenders or mortgage servicers?

Mr. VanSickler:
The NMLA is trying to do that, working with the Division on outreach to our member institutions. The NMLA is a subchapter of the Mortgage Bankers Association of America. If borrowers come to us, we will direct them to Commissioner Westrin or servicers to get their issues resolved.

Chair Settelmeyer:
We will close the hearing on S.B. 349. Seeing no more business before the Senate Committee on Commerce, Labor and Energy, this meeting is adjourned at 10:07 a.m.

RESPECTFULLY SUBMITTED:

Patricia Devereux,
Committee Secretary

APPROVED BY:

Senator James A. Settelmeyer, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	2		Agenda
	B	7		Attendance Roster
S.B. 139	C	1	Tom Young	Letter of support
S.B. 357	D	6	Adam Porath	Proposed amendment
S.B. 349	E	2	Senator Joyce Woodhouse	Written testimony