

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Ninth Session  
April 10, 2017**

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 1:32 p.m. on Monday, April 10, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/79th2017](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Irene Bustamante Adams, Chair  
Assemblywoman Maggie Carlton, Vice Chair  
Assemblyman Paul Anderson  
Assemblyman Nelson Araujo  
Assemblyman Chris Brooks  
Assemblyman Skip Daly  
Assemblyman Jason Frierson  
Assemblyman Ira Hansen  
Assemblywoman Sandra Jauregui  
Assemblyman Al Kramer  
Assemblyman Jim Marchant  
Assemblywoman Dina Neal  
Assemblyman James Ohrenschall  
Assemblywoman Jill Tolles

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman John Hambrick, Assembly District No. 2  
Assemblywoman Ellen B. Spiegel, Assembly District No. 20



**STAFF MEMBERS PRESENT:**

Kelly Richard, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Kathryn Kever, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Keith Lee, representing Nevada Association of Health Plans; and Distilled Spirits Council of the United States  
Erik Jimenez, representing Express Scripts Holding Company  
Paul Young, representing Pharmaceutical Care Management Association  
Tom McCoy, representing American Cancer Society/Cancer Action Network  
Alfredo Alonso, representing Southern Glazer Wine and Spirits; and Nevada Beer Wholesalers Association  
Leif Reid, representing Southern Glazer Wine and Spirits; and Nevada Beer Wholesalers Association  
Jaron Hildebrand, representing Craft Brewers Manufacturing Group  
Nick Vander Poel, representing Reno-Sparks Convention and Visitors Authority  
Mike Draper, representing The Depot; Pigeon Head Brewery; and Brewer's Cabinet  
John Ocegüera, representing Breakthru Beverage  
Michael Hillerby, representing Anheuser-Busch Companies; and Nevada State Board of Accountancy  
Lesley Pittman, representing MillerCoors Brewing Company  
Randi Thompson, representing Nevada Wine Coalition  
Nicola Neilon, CPA, representing Nevada State Board of Accountancy  
Viki Windfeldt, Executive Director, Nevada State Board of Accountancy  
Anna M. Durst, Chief Executive Officer, Nevada Society of Certified Public Accountants  
Erv Nelson, representing Harvester Funding, LLC; and Payroll Funding Company, LLC

**Chair Bustamante Adams:**

[The roll was taken.] We are going to the work session first, and then we have four bills. We are going to move work session bills Assembly Bill 115, Assembly Bill 199, and Assembly Bill 354 to Wednesday. There are still some questions on these bills, and I want to make sure that everything is clear. There are some amendments, and we need to ensure they are correct. We will also be hearing Assembly Bill 223 and Assembly Bill 457 on Wednesday.

**Assembly Bill 115: Authorizes a physician assistant or advanced practice registered nurse to perform certain services. (BDR 40-98)**

**Assembly Bill 199: Revises provisions relating to end-of-life care. (BDR 40-813)**

**Assembly Bill 354**: Revises provisions relating to employment practices. (BDR 53-275)

**Assembly Bill 223**: Revises provisions relating to energy efficiency programs.  
(BDR 58-660)

**Assembly Bill 457**: Revises provisions relating to certain professional licensing boards.  
(BDR 54-410)

**Chair Bustamante Adams:**

Our first work session item is Assembly Bill 245.

**Assembly Bill 245**: Enacts provisions governing the dispensing of biological products and interchangeable biological products. (BDR 54-504)

**Kelly Richard, Committee Policy Analyst:**

Assembly Bill 245 is sponsored by Assemblywoman Benitez-Thompson. It was heard in Committee on March 22, 2017 ([Exhibit C](#)).

It requires a pharmacist, including a certified Internet pharmacy, to dispense an interchangeable biological product in substitution for a prescribed biological product, under certain circumstances. The dispensing pharmacist must also provide certain information to a patient's prescribing practitioner concerning the specific product dispensed.

During the hearing on the bill, Assemblywoman Benitez-Thompson proposed an amendment to require the State Board of Pharmacy to maintain a link on its Internet website to the United States Food and Drug Administration's "Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations," otherwise known as the "Purple Book." The Board confirmed to staff that adoption of this amendment removes the fiscal impact of the bill.

**Chair Bustamante Adams:**

Are there any questions? Seeing none, I will entertain a motion to amend and do pass.

ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 245.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON,  
CARLTON, AND NEAL WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblywoman Jauregui. We are going to move to Assembly Bill 262.

**Assembly Bill 262: Revises provisions relating to contracts for the sale of vehicles.  
(BDR 52-937)**

**Kelly Richard, Committee Policy Analyst:**

Assembly Bill 262 is sponsored by Assemblyman Carrillo. It was heard in Committee on March 22, 2017 ([Exhibit D](#)).

Assembly Bill 262 provides that a person who knowingly repossesses a vehicle before default or commits any act against a consumer in violation of the Uniform Commercial Code has committed a deceptive trade practice. The bill also makes changes to provisions related to surety bonds for vehicle and off-highway vehicle sellers and manufacturers. It requires the surety to appoint the Commissioner of Insurance as its agent; additionally, the bill expands the uses for which a consumer may make a claim against a surety bond.

There is an attached amendment submitted by Assemblyman Carrillo [pages 2-13, ([Exhibit D](#))]. The amendment removes section 1 of the bill, thereby removing the definition of "knowingly" from Chapter 598 ("Deceptive Trade Practices") of *Nevada Revised Statutes*. It also adds conversion, negligent representation, and abuse of process to the list of torts for which recovery can be sought from the surety bond in sections 7 through 9.

**Chair Bustamante Adams:**

I will entertain a motion to amend and do pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 262.

ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there any discussion?

**Assemblywoman Tolles:**

Some of my concerns are addressed in the amendment, but I need time to review it. I will be voting no today.

**Chair Bustamante Adams:**

Is there any further discussion? [There was none.] I will take the vote.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, MARCHANT,  
AND TOLLES VOTED NO. ASSEMBLYMEN PAUL ANDERSON,  
CARLTON, AND NEAL WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Daly. We are going to move to Assembly Bill 359.

**Assembly Bill 359: Exempts certain persons who enter into contracts or agreements with the State of Nevada or a political corporation or subdivision of the State from certain provisions relating to contractors. (BDR 54-643)**

**Kelly Richard, Committee Policy Analyst:**

Assembly Bill 359 is sponsored by Assemblyman Thompson. It was heard in this Committee on April 3, 2017 ([Exhibit E](#)).

As drafted, Assembly Bill 359 exempts a person who enters into a contract with the State of Nevada or any of its political corporations or subdivisions to perform work to maintain or repair property and who directs the work of a licensed contractor from licensure as a contractor.

Assemblyman Thompson has submitted an amendment [page 2, ([Exhibit E](#))], which is attached. The amendment exempts an entity recognized by the Internal Revenue Service as a nonprofit, which facilitates the repair or maintenance of a property and facilitates work to be performed by a licensed contractor, from having to be licensed themselves as a contractor. The amendment further specifies that the property owner must also be a party to a contract with the exempt entity and the licensed contractor.

**Chair Bustamante Adams:**

Is there any discussion?

**Assemblyman Hansen:**

I have not seen the amendment yet so I will be voting no. I will be reviewing the amendment.

**Chair Bustamante Adams:**

You had questions during the hearing. The answers to your questions have been incorporated into the amendment. I understand that you want a chance to review the amendment.

**Assemblyman Kramer:**

I am in the same position. I want time to review the amendment.

**Chair Bustamante Adams:**

I will entertain a motion to amend and do pass.

ASSEMBLYMAN ARAUJO MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 359.

ASSEMBLYMAN BROOKS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KRAMER, AND  
MARCHANT VOTED NO. ASSEMBLYMEN PAUL ANDERSON,  
CARLTON, AND NEAL WERE ABSENT FOR THE VOTE.)

[The floor statement was not assigned.] Next, we are going to take the two energy bills. We are going to move to Assembly Bill 452.

**Assembly Bill 452: Directs the Legislative Committee on Energy to conduct an interim study concerning energy choice. (BDR S-1113)**

**Kelly Richard, Committee Policy Analyst:**

Assembly Bill 452 is sponsored by the Assembly Committee on Commerce and Labor. It was heard in the Subcommittee on Energy on April 3, 2017 and by this Committee on April 5, 2017 ([Exhibit F](#)).

Assembly Bill 452 requires the Legislative Committee on Energy to conduct a study during the 2017–2018 Interim concerning energy choice. The study must include: (1) consideration of any issue, policy, or requirement identified in Ballot Question No. 3, the Energy Choice Initiative, approved by the voters at the 2016 General Election; and (2) a review of the work of the Governor’s Committee on Energy Choice established by the Governor after the voters’ approval of the Energy Choice Initiative.

**Chair Bustamante Adams:**

Is there any discussion? [There was none.] I will now call for a do pass vote on Assembly Bill 452.

ASSEMBLYWOMAN TOLLES MADE A MOTION TO DO PASS  
ASSEMBLY BILL 452.

ASSEMBLYMAN BROOKS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON,  
CARLTON, AND NEAL WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Brooks. The last work session item is Assembly Joint Resolution 10.

**Assembly Joint Resolution 10: Expresses opposition to the development of a repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in the State of Nevada. (BDR R-1012)**

**Kelly Richard, Committee Policy Analyst:**

Assembly Joint Resolution 10 is sponsored by Assemblyman Brooks, et al. The resolution expresses opposition to the development of a repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in the state of Nevada. The resolution protests any attempt by the United States Congress to move forward with the repository; calls on the

President of the United States to veto legislation that would locate such waste in this State; and calls on the Secretary of Energy to find the proposed repository unsuitable, abandon consideration of Yucca Mountain as a site, and initiate a process to find alternative strategies for dealing with such waste ([Exhibit G](#)).

**Chair Bustamante Adams:**

Is there any discussion?

**Assemblyman Kramer:**

I will be voting no on this, but I reserve my right to change my vote later.

**Assemblywoman Tolles:**

I understand that this is a sensitive topic. One of my constituents has requested an unbiased, updated study. I will also be voting no.

**Assemblyman Marchant:**

I was the only person to vote no when the Committee heard this. I would like to see the facility repurposed from a permanent storage facility to a reprocessing or recycling facility. This can make billions of dollars for Nevada.

**Assemblyman Hansen:**

I am in support of this resolution, and I want my reasoning put in the record. It is interesting to me that one of the topics of the public lands discussion is how we can obtain control of public lands currently controlled by the federal government. We have been talking about ways to place these lands under state control, and I fully support that effort. It is odd to me that the people who want the federal government to remain in control of public lands are often the same people who strenuously object to the other 49 states telling us that they are going to put their trash in Nevada's backyard.

If, in fact, the public lands of Nevada belong to all the citizens of the United States and all the other states, then we really do not have a leg to stand on. It is the 49 other states versus our 1. I am supporting this resolution because I do not think other states have a right to do that. This legislative body should be in control of public lands of Nevada.

**Chair Bustamante Adams:**

I am going to call for a motion to do pass Assembly Joint Resolution 10.

ASSEMBLYMAN OHRENSCHALL MADE A MOTION TO DO PASS  
ASSEMBLY JOINT RESOLUTION 10.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN KRAMER, MARCHANT,  
AND TOLLES VOTED NO. ASSEMBLYMEN PAUL ANDERSON,  
CARLTON, AND NEAL WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Brooks.

We are going to hear Assembly Bill 381 first. Assembly Bill 431 will be second and Assembly Bill 454 will be third. Assembly Bill 255 will be the last bill that we hear today. I am going to open the hearing on Assembly Bill 381.

**Assembly Bill 381: Revises provisions governing prescription drugs covered by policies of health insurance. (BDR 57-698)**

**Assemblywoman Ellen B. Spiegel, Assembly District No. 20:**

I am here today to speak about prescription drugs. A drug formulary is a list of prescription drugs, both generic and brand name, used by practitioners to identify drugs that offer the greatest overall value. Many times my constituents have had issues with their insurance companies changing their drug formularies.

My constituents have found that their insurance companies have moved medications from a \$10 tier to a \$50 or \$150 tier. The increased cost of these prescriptions is a problem. People select their insurance based on the insurance company's drug formulary. They carefully calculate the cost of medications, including maintenance drugs. They have to plan for the expected cost of their drugs. They need to know the actual amount they will be paying. They carefully estimate both the cost of their drugs and their premium so that they know what their total out-of-pocket expenses will be.

In many instances, the insurance companies have changed their drug formulary. Consumers believe that they have purchased a plan with specific drug costs, but later the insurance company sends them a letter telling them that certain medications have been moved to a more expensive tier.

This has been a big problem. In order to help individuals, the Division of Insurance addressed this last December and came out with regulations. However, this is still an issue for some people in employer plans. Most notably, it is an issue for people who are in small group employer plans. Small group insurance plans have 100 employees or fewer.

Small group employers can have the decision makers look at what is right for the employees. They can work with their employees and look at the types of medication they require and the circumstances of their employees. They can work to find the best solution for their employees. Larger employers also face this issue, but it is not the same for them. They are larger and have more power to negotiate with insurance companies.

I have a mock-up of the bill ([Exhibit H](#)). This is on the Nevada Electronic Legislative Information System. It takes into account the work that I have done with insurance companies, self-insured providers, and others. We have looked at the concerns they had with the bill as it was originally introduced. Originally, the bill said that health insurance companies could not move the drugs from a less expensive tier to a more expensive one. This has been changed. I believe that we have something workable now.



Last December, the Division of Insurance put regulations in place for large insurance plans. Unfortunately, we are unable to apply these to small group employer plans. One of the challenges that I have had in trying to address the concerns of employer plans is that employers can have effective dates starting with any month of the year. Logistically, it is challenging for the insurance companies. If you have floating dates, it is difficult to lock in the drug formularies.

We can address this challenge and meet the underlying goal by shifting the effective dates of the formularies to coincide with the calendar year. They do this same thing with individual plans. This means that insurers would have their formularies set from January 1 of the year to December 31 of the same year. During that time, they cannot make changes. The effective dates of the insurance companies and the employer plans can be whenever they are. This was done with the express understanding that we would make a conforming change to the *Nevada Revised Statutes* (NRS) that allows insurance companies to change their plans mid-plan to adjust their formulary if that change goes into effect on January 1.

This does mean that for many employers, the formulary would change during their policy years, but employers also have the ability to change when their policy year begins. An employer who meticulously goes through their employees' major medications and looks to find a plan that actually works for their employees will have the ability through the free market to change the effective date of their plan and lock into the formulary. They will know that their employees are covered.

The bill contains an exception. If a generic drug comes on the market, then the more expensive, brand name drug can move up into a higher tier. This gives the employee the opportunity to have the less expensive generic drug. This is good consumer protection. This will not apply to a grandfathered plan—a plan that was in place before the Affordable Care Act.

Nothing in this bill prevents an insurance company from moving a drug from a higher tier to a lower tier. This presents an opportunity for more favorable prices for an employee. We are adding two new sections. We need to change the current NRS to allow insurers to alter their plans for this purpose during the policy year. We are adding an effective date of January 1, 2018.

**Chair Bustamante Adams:**

Are there any questions from the members? [There were none.] How did you put together your stakeholder group? Who was involved? I want to make sure that the Committee members know who has been involved in this process.

**Assemblywoman Spiegel:**

Last summer I submitted my bill draft request and began talking with stakeholders. I did not have language back until much later. I met with representatives from the insurance industry and insurance carriers, meaning insurance companies. I have also met with representatives of self-insured plans and insurance agents who sell policies. They spoke to me about their customer needs.

This amendment takes into account the input that I received. I did not have a final version of the mock-up until this morning. I have provided a copy of the mock-up to representatives of the insurance industry today and discussed it with them. I had previously contacted them to tell them that it was being drafted. However, the insurance industry has not had an opportunity to look this over in detail.

**Chair Bustamante Adams:**

Seeing no other questions from the Committee, I am going to go to those in opposition to Assembly Bill 381. We have time constraints, and I want the bill's sponsor to hear any concerns about the bill.

**Keith Lee, representing Nevada Association of Health Plans:**

We are the association that comprises the major health insurance writers in the state. We have met with the sponsor. This bill has changed a lot. As it was first written, it applied to all the various types of health insurance that are covered in NRS Chapters 689A, 689B, and 689C. This bill now focuses only on NRS Chapter 689C—health insurance for small employers.

We have not seen the amendment; we have not had a chance to vet it. We are very mindful of the time constraints this Committee faces and we are reviewing the amendment now. We were not aware of some things the bill's sponsor mentioned today. We need to review these items. We will continue to work with the bill's sponsor, keeping the time constraints in mind.

**Chair Bustamante Adams:**

I would like an update by tomorrow at 10 a.m. I will need to know if your group is in support or in opposition to the bill by 5 p.m. tomorrow.

**Erik Jimenez, representing Express Scripts Holding Company:**

I want to echo the comments of Mr. Lee. We just saw the amendment this afternoon. We have not had a chance to review it. We have been working with the bill's sponsor and hope to come to an agreement.

**Paul Young, representing Pharmaceutical Care Management Association:**

As the previous speakers have noted, we just received this amendment. I need to review it and discuss it with my client. We are hopeful that we can work something out.

**Chair Bustamante Adams:**

I need an update from everyone by 10 a.m. I need to know if you are in support of this bill or if you are in opposition to it by 5 p.m. tomorrow. Is anyone else in opposition? [There was no one.] We will move to those in support.

**Tom McCoy, representing American Cancer Society/Cancer Action Network:**

We are in support of this bill. I consider this the "tiering up bill." It is important to the cancer patients that we represent to know how much their medications will cost. We select policies based on premium costs and we want to know how much prescriptions will cost as well. The overall intent of the bill is to help all patients—not just cancer patients—in Nevada. For this reason, we support Assembly Bill 381.

**Chair Bustamante Adams:**

Is there anyone in neutral? [There was no one.] Seeing none, I will close the hearing on Assembly Bill 381 and open the hearing on Assembly Bill 431.

[Assemblyman Frierson assumed the Chair.]

**Assembly Bill 431: Revises provisions governing alcoholic beverages. (BDR 52-1018)**

**Assemblywoman Irene Bustamante Adams, Assembly District No. 42:**

This bill is about beer and spirits. I am passionate about small businesses, and they are the focus of this bill. There has been a lot of work by the stakeholders to reach a consensus. This bill will be good for Nevada.

**Alfredo Alonso, representing Southern Glazer Wine and Spirits; and Nevada Beer Wholesalers Association:**

Many of you who have worked on legislation involving liquor know that it is complicated, it is difficult, and it is often contentious. There are many reasons for this. It is the only product that was banned from use in the United States and then ultimately Congress made it legal again. States count on the sale of liquor for budgetary reasons. The popularity of liquor ebbs and flows with respect to societal issues. It touches everyone in some fashion.

Balance is a very important word when we talk about liquor, particularly in a state like ours. Many of the states surrounding Nevada have significant enforcement dollars. These are used to ensure that everyone in the industry adheres to the rules and regulations. Nevada has chosen to have a leaner enforcement budget; it is significantly leaner.

Assembly Bill 431 strives to strike a balance. All the stakeholders have put a lot of work into this bill. We had involved discussions centering upon the amount of alcoholic beverages we should allow someone to produce while still protecting public interests and distributors—who are an integral part of the system. We have considered how we can help independent businesses continue to grow and thrive. I think we have achieved a good balance with this bill.

There is an amendment ([Exhibit I](#)). It is almost completely crafted, but there are still a few small changes to be made. These changes have literally come about in the last few hours. In essence, what we are doing—and this is key—is allowing producers to go from 15,000 barrels in total production to 40,000 barrels of malt beverages for all the brewpubs he or she operates in that county in any calendar year. We are capping the on-premise retail sales at 5,000 barrels per calendar year. This allows a brewpub to have several locations, but puts us in a position where the industry can be monitored. We can ensure that everyone is paying their taxes and we do not end up having "glorified bars" that take business away from traditional bars—both gaming bars and traditional neighborhood bars. I think we have struck a balance here.

This is significant. To put this in perspective, 91.6 percent of the breweries in the entire country produce between a low of zero and a high of 7,500 barrels per year. The number of barrels allowed by this bill is big. We have included protections to ensure that breweries do not become a storefront for illegal sales to a bar or to someone who wants to come in, fill their trunk with liquor, and drive off and sell that alcohol illegally.

I think that we have assured that there is a balance. Stakeholders have reached a consensus on a couple of other issues. The brewpubs want to be allowed to go to a farmers' market, a county fair, or other venues to sell their product. We had concerns that someone would be operating in all three tiers in that situation. There is language in this amendment that allows a brewpub to obtain a basic permit like they obtain now when they provide beer to a nonprofit. The brewpubs would go through the same process. It is a process that they understand. They would have to have someone with a liquor license at the other end to pour the beer. Ultimately, I think this is a happy medium for everyone. Again, we want to make certain that we have someone on either side of the three-tier system, someone who is properly licensed and collecting taxes. Ultimately, I think this is a good way for all three tiers to conduct business in Nevada.

**Leif Reid, representing Southern Glazer Wine and Spirits; and Nevada Beer Wholesalers Association:**

In 2008, there was a megamerger between Miller Brewing Company and Coors Brewing Company. In 2009, NRS 597.162 was enacted. We are proposing an amendment to section 3 of the bill. The proposed changes to section 3 are the same changes that were made at the federal level for the mega beer merger.

Anheuser-Busch Companies, LLC and MillerCoors announced a merger last year. The Department of Justice, through a consent decree judgment, approved this merger. Several prohibitions are part of this consent decree. Section 3 includes changes that mirror those required by the Department of Justice judgment in order to allow the merger to go through.

In addition to currently prohibited actions by large breweries, section 3, subsection 2 prohibits a supplier from preventing the small Nevada wholesalers, who are local businesses, ". . . from using best efforts to sell, market, advertise or promote alcoholic beverages of any other supplier." In addition, it will prevent a supplier from penalizing wholesalers for having other relationships.

Subsection 4 prevents a supplier from the disapproval of "a wholesaler's selection of a general manager or successor general manager based on the wholesaler's sales, marketing, advertising, promotion or retail placement of an alcoholic beverage of any other supplier." This bill prevents a supplier from requiring a wholesaler provide the financial information on the sales of other brands to the supplier.

Finally, in subsection 10, it will not allow suppliers to "Discriminate against, penalize or otherwise retaliate against a wholesaler because the wholesaler raises, alleges or otherwise brings to the attention of the Department of Taxation an actual, potential or perceived violation of this chapter."

These provisions are identical in sum and substance to those contained in the Department of Justice judgment allowing Miller Brewing Company and Coors Brewing Company to merge. There are some technical changes in section 1.

**Acting Chair Frierson:**

I know that Chair Bustamante Adams has an amendment ([Exhibit I](#)). Are you going through the bill itself or the proposed amendment?

**Assemblywoman Bustamante Adams:**

We received the mock-up of the amendment minutes before the meeting. I am not sure if it has been placed on the Nevada Electronic Legislative Information System (NELIS) yet.

**Acting Chair Frierson:**

Both an amendment and the bill are on NELIS. I want to be clear about what you are discussing.

**Leif Reid:**

Section 4, subsection 1, paragraph (d) of the amendment will now read 40,000 barrels, not 30,000 barrels. There are some other technical changes in that section.

**Alfredo Alonso:**

This morning we only had a portion of the stakeholders who were in concert with what you have before you. We had several conversations throughout the morning and ultimately decided on these new changes. We discussed them with Chair Bustamante Adams and the Committee Counsel. Unfortunately, these changes could not be incorporated into the mock-up of the amendment before this meeting.

**Acting Chair Frierson:**

In section 4 of the mock-up of the amendment, it originally said 15,000 barrels. That was changed to 30,000, but now it will read 40,000 barrels. Is that correct?

**Assemblywoman Bustamante Adams:**

Yes, it will now read 40,000 barrels. There has also been a change in the first line in that paragraph. Originally, it said, "A person who operates one or two brew pubs . . . ." It now will read, "A person who operates one or more brew pubs may not manufacture more than 40,000 barrels."

**Alfredo Alonso:**

We are removing the location cap so there will be no cap on locations. There is only a cap on the amount sold on premises for retail—5,000 barrels. A total of 40,000 barrels can go into the market. There are clarifications in terms of technical issues that have been worked out.

One of the other issues was allowing kegs to be sold. Some would argue that you cannot sell them now and some argue that you can. We have capped that. On location, you can sell up to 1,000 barrels in keg form. We did not believe that kegs were "package form," but this is an easy way to clarify this.

**Acting Chair Frierson:**

Are there any questions from the Committee?

**Assemblywoman Jauregui:**

The original bill limited brew pubs to two locations in the state. Is that limitation completely removed? [Testifiers nodded affirmatively.] So now we are allowing 40,000 barrels a year to be manufactured, 5,000 barrels can be sold at any of the brewpub locations, and brewpubs can have an infinite number of locations?

**Alfredo Alonso:**

It is an aggregate of 5,000 barrels at retail and an aggregate overall of 40,000 barrels.

**Assemblywoman Bustamante Adams:**

Originally, the number of barrels was 2,000. We are raising it to 5,000 barrels.

**Assemblywoman Tolles:**

Originally, brewpubs were to be allowed two locations. Are we eliminating any restrictions on the number of locations? [Testifiers nodded affirmatively.]

**Assemblyman Paul Anderson:**

Brewpubs can now have unlimited locations, but we are limiting retail sales to 5,000 barrels a year, which can be sold at any of the brewpubs' locations. For the marketplace, as a whole, they are allowed to sell 40,000 barrels per year total. At 5,000 barrels, they have to stop selling at that particular premise and then sell the rest through distribution. Is this accurate?

**Alfredo Alonso:**

Yes. Just to provide some perspective, the biggest player in this industry is somewhere between 12,000 barrels and the cap which is 15,000 barrels. We are going to 40,000 barrels aggregate. Average production has been between 1,000 and 2,000 barrels per year, but closer to 1,000. These are large numbers. We are raising this to 5,000 barrels total per year that can be sold at brewpub locations and 40,000 barrels as a whole that can be sold in the marketplace.

**Assemblyman Kramer:**

As I understand it, some of the verbiage in section 3 comes from a U.S. Department of Justice judgment that allowed the megamerger of Miller Brewing Company and Coors Brewing Company.

I have always thought that there are three parts to the liquor industry—beer, wine, and hard liquor. I understand that this bill addresses beer, but does it affect wine and hard liquor?

**Alfredo Alonso:**

Congress held hearings on the megamerger. They discovered the need for the independence of the third tier. This is especially true with the growth of craft beers. It is extremely important that these businesses be as independent as possible. Clearly, we have no intent of diminishing the relationships that we have with the large brewers. That will continue. It is by contract. Obviously, because of their size, there is going to be a Herculean effort to make sure that their beer, liquor, wine, or other products are sold as well as humanly possible in Nevada. What this does, for those few that perhaps did not sign on to this or for those that might want to penalize wholesalers for simply doing their due diligence and being an independent business, this language makes certain that is not a relationship allowed in Nevada. This is about the independence of small businesses—how can we sell craft brew if we cannot be independent ourselves?

**Leif Reid:**

When the merger between Anheuser-Busch Companies, LLC and MillerCoors was proposed last year, the Antitrust Division of the U.S. Department of Justice conducted a very thorough investigation. They collected almost 1.5 million documents. They interviewed hundreds of people involved in all aspects of the liquor distribution industry. They identified these activities as having anticompetitive effects and limiting the independence of the distribution tier. The Department of Justice has used this language, and that is why we have incorporated it into this bill.

**Assemblyman Kramer:**

I understand that. Section 3, subsection 1, prohibits a wholesaler from selling an alcoholic beverage of any other supplier. The other subsections of section 3 make the antitrust provisions clear. I understand that.

Over the past five or ten years, we have seen more small wineries built in Nevada. There is one in Fallon and there is one in Pahrump. Others are planned around the state. To me, there is a similarity between a craft brewer and a winery.

I do not want to hurt fledgling industries in Nevada with rules regarding distribution. As I see it, the wineries are different. They bring people from other states. They will go to a winery to buy a case of a wine that they like. I really do not want to see this activity mixed up in the second tier of liquor. I am concerned that this bill will affect both craft brewers and small wineries.

**Alfredo Alonso:**

We believe this bill helps them. We have discussed this with Mr. Loken who owns the Pahrump Winery. I think that an independent wholesaler tier is very important to anybody who wants to break into the market. That is the key here. An independent wholesaler is more likely to sell everybody products to the best of their ability if they make a good product. This is the key. This bill provides that independence.

**Assemblywoman Neal:**

We have been told that this bill will help small businesses. Parts of it propose expanding brewpubs and helping them, yet other parts of the bill impose limitations.

The amendment I have is dated April 9. I have questions about sections 4 and 12. On page 4, lines 42 through 43, it says, "A brew pub shall not obtain more than 20 such special permits for the transportation . . . ." Help me understand the reasoning behind section 4, subsection 3. This is the text in green. It seems to have a direct relationship to subsection 3, paragraph (d). Is there a reason for the limitation on special permits?

**Leif Reid:**

The language in paragraph (d) is language that was discussed previously. This allows brewpubs to take their products to farmers' markets, county fairs, and similar types of activities. Currently, the law does not permit them to do this.

**Assemblywoman Neal:**

I understand that; I heard the earlier testimony. When you read section 4, subsection 3, paragraph (d) it says, "The amount of malt beverages sold by a brew pub may not exceed 5,000 barrels in any calendar year, including, without limitation, any sale made by a retailer pursuant to subsection 3." To me, this means there are two points of sale—beer is sold at the brewpub and in retail locations. The text in section 4, subsection 3, paragraph (a), subparagraph (3) is in green. It is my understanding that no matter what the points of sale, regardless of if you are selling at a brewpub or being a retailer at a farmers' market, you only have 20 permits for the transportation of malt beverages per year. Is that how this is interpreted?



**Alfredo Alonso:**

This was a compromise between many of the smaller brewpubs. They want to be able to take their wares to a farmers' market. Twenty permits per year is an arbitrary number. The theory was if a brewpub was at two farmers' markets a week, this figure would allow them to be at most of those during that period of time. Most of the larger brewpubs do not do this. This was a compromise to allow small brewpubs to attend events without needing to be included in all three tiers. All we are saying is that if you sell at these events, the amount of beer you sell is counted as part of the yearly allowable amount of 5,000 barrels.

**Assemblywoman Neal:**

That makes sense. This helps me. I was reading this as there are two acts and special permits, and this is how many times brewpubs can do this in a calendar year. My next question is on section 12, subsection 3, paragraph (b). It covers what a wholesaler should not do. It says, "Invest money, directly or indirectly, including through a subsidiary or agent, in a retail liquor store." What is the reasoning behind this? What has happened that you are trying to limit someone's ability to invest in someone else's business of reinvesting money? Can you explain this?

**Leif Reid:**

This provision is a companion to a federal law called the tied house provision. Essentially, it is part of protections in federal law to prevent "pay to play" activities in the liquor market. This is language intended to clarify that all transactions like these are captured, including providing things of value in this manner to a retail liquor licensee cannot be done even if it is done through a third party. This is to prevent "pay to play" transactions; it is to eliminate tied house violations.

**Assemblywoman Jauregui:**

I have a question about section 10, subsection 2, paragraph (b). This says, "May not engage in any other activity for which a license is required pursuant to this chapter, unless the person holds the appropriate license for that activity." I am not clear on what this means. What is an example of this?

**Leif Reid:**

This is intended to ensure the integrity of the three-tier system. It ensures that suppliers are suppliers, wholesalers are wholesalers, and retailers are retailers. They should not be involved in any activity not specifically authorized under the amendment.

**Assemblyman Marchant:**

Is there a reason that caps have been put on the brewpubs? Who is threatened by this?

**Alfredo Alonso:**

It is an issue of balance. We want to make sure that these laws are enforceable. We want to make sure that we are collecting the proper taxes and doing all we can to enforce the law. In a state like Nevada, this is a leap of faith. We are hoping that the Department will still have the ability to make sure everyone is doing what they are supposed to be doing, but

without caps, the potential exists that someone could come in who never intends to sell to the marketplace. Their intent could be strictly to sell all 40,000 barrels at their brewpub. This becomes a huge problem. It would create many issues and hurt the system. This does not include its impact on taxes. Without this, it can impact our ability to enforce these laws and regulations. We would need to hire a significant number of investigators. The point is that this is being done across the country. We are hoping to curb that here. The brewpubs have told us that they want to sell to the marketplace; we want to sell to the public through wholesalers. This is how the brewpubs will grow.

**Assemblyman Marchant:**

This is a tax issue too. My concern is free market principles.

**Alfredo Alonso:**

States like Texas have looked at this from a free market standpoint. Ultimately, they had to come back and say that the free market only works to some degree. Again, this is about balance and making sure that all parties are doing what they say they are doing without providing a lot of funding for enforcement. We have a good system. It is very lean. We do not have a large bureaucracy to enforce the rules and regulations. I think that at the end of the day, we end up with a system that is lean, provides a lot of freedom for entrepreneurs, and still protects those in the system as well as the integrity of the three-tier system.

**Assemblyman Ohrenschall:**

Section 4, subsection 3 at the bottom of the mock-up of the amendment is in a green font. Lines 36 through 45 concern transporting malt beverages and says, ". . . A brew pub shall not obtain more than 20 such special permits for the transportation of the malt beverages from the Department of Taxation . . . ." How did you arrive at this number?

**Alfredo Alonso:**

It is an arbitrary choice. It is a number that we felt was a fair number to start with. Some people wanted a higher number and others wanted it to be lower. This is a good compromise.

**Assemblywoman Tolles:**

Do other states have similar limits for special events?

**Alfredo Alonso:**

No, other states do not do this. We think this is a good compromise. It allows brewpubs to do what they want to do—operate in all three tiers outside of their facility. All sides agreed that for brewpubs they believe attendance at events is good for their business. This is a good compromise.

This is new. Every state is different. I am sure that there are iterations of this, but I cannot tell you that anyone else has the same restriction.

[([Exhibit J](#)) was submitted but not presented.]

**Acting Chair Frierson:**

Are there any other questions from the Committee? [There were none.] Is there anyone in support of Assembly Bill 431?

**Jaron Hildebrand, representing Craft Brewers Manufacturing Group:**

I am here to testify in support of Assembly Bill 431. We appreciate this amendment; it increases the caps. A compromise has been worked out. We believe that the benefit for local businesses and the connected economic growth will increase tourism dollars. Increasing the cap is critical to this growing industry.

**Nick Vander Poel, representing Reno-Sparks Convention and Visitors Authority:**

I have a unique reason for testifying today. The Reno-Sparks Convention and Visitors Authority (RSCVA) conducts focus groups to determine what visitors would like to see and experience when they visit our area. Millennials have expressed great interest in brewpubs and wineries. The RSCVA identifies this as a potential tourism opportunity. We support this language.

**Mike Draper, representing The Depot; Pigeon Head Brewery; and Brewer's Cabinet:**

These are small businesses in Reno. They are doing really cool, great entrepreneurial things. We appreciate the leadership that Assemblywoman Bustamante Adams has shown regarding this issue. More importantly, we appreciate her desire to learn more about our industry.

This industry is growing, and many opportunities exist within the craft brewing industry in Nevada. The specifics of this industry are complicated. The three-tier system is a complicated system that was put into place a long time ago, and it serves a purpose. As the industry continues to grow and evolve and the craft brewing industry begins to percolate, grow, and excite, we appreciate the willingness of various parties to evolve that system.

This amendment is the result of a compromise between distributors, big brewers, small brewers, and our Legislature. We are in support of the amendment and Assembly Bill 431. We appreciate everyone's efforts. It is important for this body to continue this discussion. This evolution will continue to happen in our state as we see more and more craft breweries, craft distilleries, and wineries. My clients feel that the necessary changes to the industry need to be done in collaboration with the distributors and other parties. Our system needs to evolve.

I have been working on these issues for the last 10 or 12 years. This is the first time that the parties have worked together to create something that helps everyone advance. There are pieces in this legislation that everybody likes and others that everyone wishes were a little different, but overall this is a pretty good deal.

**John Oceguera, representing Breakthru Beverage:**

I am speaking in favor of Assembly Bill 431 as amended. Breakthru Beverages is in favor of any bill that maintains or strengthens our three-tier system and the franchise laws in Nevada. We believe that this bill, as amended, does that.

**Acting Chair Frierson:**

Is there anyone else in support of Assembly Bill 431? [There was no one.] We will move to those in opposition to A.B. 431.

**Michael Hillerby, representing Anheuser-Busch Companies:**

I represent Anheuser-Busch Companies. They are also known as ABNBev. I am here today in opposition to this bill. I want to clarify the reasons for this. We found it interesting that when the news reports came out about this bill, people were saying that Anheuser-Busch and other big beer suppliers were behind the bill and were concerned about craft brew pubs.

We are not behind this bill. We were never approached about the bill, and we do not support it. We are particularly concerned about section 3. Earlier, Mr. Reid talked about the Department of Justice and the consent decree. As Mr. Reid mentioned, there was a megamerger last year; ABNBev was part of that. They went through a very long and detailed process with the Department of Justice and the Court of Appeals in Washington, D.C. It ended with a consent decree.

Several times in their testimony, people have indicated that the language in the bill is similar to this decree. They have indicated that they have done this in order to ensure that the bill complies with Department of Justice antitrust requirements. That consent decree is designed for a specific transaction and a specific company. This bill would apply these requirements not just to ABNBev, but also to every other company. Assemblyman Kramer had asked if this bill affects other parts of the industry such as liquor and wine. This bill does. It applies the same rules in section 3 to everyone.

The consent decree has specific rules and monitoring provisions. The court has already appointed a trustee who is a specialist. He is a former Department of Justice antitrust specialist in private practice in Washington, D.C. He will be monitoring the federal enforcement of the consent decree and working with the court and the Department of Justice. If any of the distributors have concerns or complaints about enforcement specific to Anheuser-Busch as a company, they can bring them to the trustee. Violations of the consent decree can include treble damages as well as costs and fees. Again, this was designed for a specific transaction involving a specific company and a specific part of the industry—beer.

No state has passed a law like this. They have not chosen to try to enshrine this language. Consent decrees can change over time. There is no guarantee that this one will or will not change. Once finalized, it will have a ten-year expiration date. Anheuser-Busch is already complying with the decree.

Our wholesale partners are critical. Anheuser-Busch has told us that not every state has a three-tiered system. There are other kinds of systems to regulate state liquor industries. Of the states that have a three-tier system, Anheuser-Busch tells us that they feel Nevada's is one of the strongest in favor of wholesalers.

These wholesalers are a critical part of our business. They determine our success, they determine where things are sold, when they are sold, the quality of service, and the quality of the product when it is delivered. Our contracts with wholesalers are evergreen—they are perpetual. Once we make a contract with the wholesaler, there are very specific controls in the law as to how those contracts can be changed. It is very difficult to end these contracts. This partnership is critical, and we think this balance of power is very important. This bill will fundamentally change that balance of power by adding this new language. It will apply language that is specific to Anheuser-Busch and our consent decree to a much broader part of the industry.

We believe that the current system is working. The current balance protects Nevada wholesalers well. It provides protections for the suppliers that enter into this market. Nevada is an important market. Whether we are speaking about Nevada wholesalers, suppliers, affiliates of Nevada companies, or larger companies, the size of the company is important.

In fiscal year 2015-2016, approximately 92 million gallons of beer and alcohol were sold. This is because of Las Vegas and our tourism economy. These sales generated almost \$50 million dollars of tax revenue for the state.

Several people have commented that Nevada should be proud of the lean operation of its government. However, annual tax revenue increases every year. They increase about \$1.5 million per year. It may be time to take some of this money and get more enforcement agents to make sure that we are collecting all the taxes owed. They are an important source of revenue for the state. Anheuser-Busch would like to be part of these discussions. We may potentially be interested in supporting an expansion of enforcement as well.

**Acting Chair Frierson:**

You said that no other state has legislation like this and Nevada is considered friendly to wholesalers. Does that mean that, in your experience, other states are more restrictive? Are they less restrictive or not restrictive at all?

**Michael Hillerby:**

I would have to ask the company for more details on the other states. My experience is limited to Nevada law. Anheuser-Busch has told us, based on their experience with the three-tier system in other states, that Nevada is a state that is heavily weighted in favor of protecting wholesalers rather than suppliers. Other states may be more on the other side of that scale.

**Assemblyman Paul Anderson:**

I am curious about the settlement for the national megamerger last year. For brew pubs that are planning to expand, what is the benefit or detriment of adding this language to the bill?

**Michael Hillerby:**

I need to think about that question. I would need to ask my client to delve into this. I am not sure that this language has any direct benefit for craft brewers. They are considered separately in the three-tier system. I do not know that there would be any benefit for craft brewers, and I cannot tell you if this language would be harmful to them either.

**Lesley Pittman, representing MillerCoors Brewing Company:**

We are in opposition to Assembly Bill 431. We support every single section of this bill, with the exception of section 3. There has been some misidentification in the local media in terms of what big beer's position is on this particular legislation.

We have a problem with section 3. We believe that we have a good partnership with our distributors here in Nevada. We do not engage in the activities listed in section 3. We see this as a poke in the eye. From our perspective, this particular language is overly broad. It creates the opportunity for unnecessary litigation and liability. It tips the law in favor of the wholesalers.

Nevada has some of the strongest statutory provisions for the wholesale community. We think that codifying the language in section 3 into law will upset that balance of power and provide additional power to wholesalers.

The Department of Justice required Anheuser-Busch to sign the consent decree mentioned by Mr. Reid and Mr. Hillerby. This was done in order to ensure that there was a level playing field for companies like MillerCoors and smaller craft breweries. From our perspective, incorporating that language into NRS makes the whole purpose behind the consent decree null and void.

**Keith Lee, representing Distilled Spirits Council of the United States:**

The Distilled Spirits Council of the United States, or DISCUS, is a trade association composed of the major distillers in our country. We are here in opposition to Assembly Bill 431. We have no issue or problem with the balance of the bill, but section 3, as Ms. Pittman so eloquently noted, is a poke in the eye.

You have heard that the language in section 3 is incorporated because of a megamerger of two beer companies that resulted in a consent decree. The consent decree did not mention, and has nothing to do with, distillers or distilled spirits. In 2017, when we worked through NRS 597.162, there was some bloodletting between the suppliers and the wholesalers. At that time, we agreed to the language that was used to amend NRS 597.162. Since then there has been a truce—it has apparently been broken.

As Mr. Hillerby indicated, we have a mutually beneficial relationship with our wholesalers and distributors—we need them and they need us. Frankly, we do not see good public policy being achieved by the proposed language in section 3. We urge you to reject it.

**Acting Chair Frierson:**

Are there any questions from the Committee? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone who wants to testify in neutral?

**Randi Thompson, representing Nevada Wine Coalition:**

I appreciate the comments from Assemblyman Kramer and others regarding wine. In the last session, a bill regarding wineries was passed. It was a hard-fought bill. I am sharing some of the concerns that brewpubs have. As Assemblyman Marchant mentioned, they have concerns about the caps in this bill.

I am pleased with the section addressing special events. I want to make sure that wineries are included in that. Special events are crucial in helping small businesses get their name out to the public. They donate wine, participate in events such as the Edible Pedal 100 in Reno, and they go to farmers' markets in order to get their name out there. It is difficult for growing businesses to promote their products without going directly to the public. Allowing them to participate at special events is critical to the success of wineries and brewpubs.

I share Mr. Hillerby's concerns about enforcement issues. We have a very powerful three-tier system in Nevada. I would like to see the state help these small industries more. Caps are always a concern for us. This is a very new industry in this state. As Assemblyman Kramer noted, new wineries are being built. We actually have a winery going in on Fourth Street in Reno; it is one of the first ones. Another is planned for Las Vegas. There are many limitations in the winery business, but we are working around them.

We look forward to working with the Legislature in future sessions. Wine is a growing industry in this state. We appreciate the bill, but have some concerns. We also want to support brewpubs and participation in special events.

**Acting Chair Frierson:**

Are there any questions? [There were none.] Seeing no further questions, I am going to close the hearing on Assembly Bill 431.

[Assemblywoman Bustamante Adams reassumed the Chair.]

**Chair Bustamante Adams:**

We are going to open the hearing on our third bill, Assembly Bill 454.

**Assembly Bill 454: Makes various changes to provisions relating to accountants.  
(BDR 54-109)**

**Michael Hillerby, representing Nevada State Board of Accountancy:**

This bill provides updates and modernization to the Nevada State Board of Accountancy.

**Nicola Neilon, CPA, representing Nevada State Board of Accountancy:**

I am a certified public accountant in Carson City and a member of the Nevada State Board of Accountancy. The Nevada State Board of Accountancy requested Assembly Bill 454. We have provided written remarks, and these are available on the Nevada Electronic Legislative Information System ([Exhibit K](#)). I will just touch on the highlights that we believe are important.

The purpose of this bill is to clean up, revise, and clarify certain statutes governing the licensure of certified public accountants (CPAs) in the state. The Board has worked with the Nevada Society of Certified Public Accountants on the language for the bill and it is the Board's understanding that the Society supports Assembly Bill 454.

We propose adding and amending the definitions of "report," "attest," and "compilation" to make Nevada law consistent with the definitions provided by the Uniform Accountancy Act. These proposed changes mirror and capture the intent of the definitions of the Uniform Accountancy Act. They are important so that our state is consistent with other states in the country.

In the 1960s when *Nevada Revised Statutes* (NRS) Chapter 628 was first adopted, "public accountants" were grandfathered in and licensed by the Board. At this time, there are no public accountants. All licensees are now certified public accountants. The Board is requesting that you delete references to registered public accountants and business entities formed by public accountants in NRS Chapter 628.

Under current law, in addition to the notice required by NRS Chapter 233B, the Board is required to mail to licensees, at least 60 days in advance, proposed amendments to the rules of professional conduct. The Board's proposed amendment to the current law removes the 60-day notice requirement but retains the NRS Chapter 233B rulemaking requirement of 30-days' notice and would allow the Board to provide notice of changes or amendments via email to licensees. Obviously, if we do not have email addresses on record for licensees, we would still mail these notices out to them. However, this is a cost-reducing measure and in our last fiscal year it cost the board over \$14,000 to comply with the requirement to mail these notices. We believe that emailing notices will provide a significant savings to the board.

The Board is proposing to expand the type of work experience that qualifies for licensure. This benefits current students and accountants who are seeking licensure. It broadens the definition of work experience. Currently, the work experience required for licensure is two years public accounting experience in a firm or internal auditing work or governmental accounting and auditing work equivalent to two years of public accounting experience. The intent of this amendment is to allow other nonpublic accounting experience to count to qualify. This will be defined in the Board's regulations.



These sections are of significance to the Board. Currently by law, the Governor appoints or reappoints members to the Board from a list of three persons submitted by the Nevada Society of Certified Public Accountants. We would like to amend this language so that current members of the Board may be reappointed without the Society submitting two additional names to the Governor. It has been challenging to submit additional names under current requirements.

Another item I would like to draw your attention to is section 28. We are requesting language to allow the Board to cooperate with other licensing boards or agencies who are investigating a licensee by sharing otherwise confidential investigation information. We want to clarify that the Board's confidential investigative records are privileged. This preserves that confidentiality provided by NRS 628.418(1). In addition, all records that are required to be public pursuant to NRS 628.418 will continue to be public.

The Nevada State Board of Accountancy has submitted an amendment to [Assembly Bill 454 \(Exhibit L\)](#). This is available on the Nevada Electronic Legislative Information System. The majority of these changes cleans up the bill and adds certain things that were omitted in the bill itself.

One thing that appears to be causing confusion is the definition of certificate holders versus the definition of licensees. To clarify that, we want to delete the words "certificate holders" and retain the word "licensees." The word "licensees" is a broad term that encompasses both individuals and firms. Certificates are issued to individual holders of a certified public accountant certificate. Keeping the wording for certificate holders and licensees is important so that the Board will retain its ability to regulate both individuals and firms. Retaining the word "licensees" will allow the Board to adopt regulations for a program to ensure both individuals and firms are maintaining the standards of the profession.

**Michael Hillerby:**

I want to make sure that the Committee knows that over the last year to a year and a half, there have been a series of meetings, public workshops, and meetings of the Board. We have been working with the members of the Nevada Society of Public Accountants to get feedback from those in the profession. This bill is the result of this process.

**Assemblyman Daly:**

Are we eliminating the requirement for a resident agent in section 10 for service and various things? I am assuming that requirement or ability exists somewhere else in another statute, otherwise you would not be deleting it.

**Viki Windfeldt, Executive Director, Nevada State Board of Accountancy:**

The resident agent was for purposes of mailing. When an initial application was received, we would have to have a resident agent notification. Afterwards, when someone has been licensed for subsequent years, often the information is outdated. We do not use it for

purposes of notification. People holding CPA certificates are required under a different statute to maintain their contact information and address with us. That is the information that we use if we have to notify a licensee about any disciplinary action or send renewal information. The resident agent is not used for purposes of mail.

**Assemblyman Daly:**

So there is another section in the statute that covers service if someone is suing them?

**Viki Windfeldt:**

Yes.

**Assemblyman Daly:**

You are deleting the part about public accountants in section 38. These requirements were put in place in the 1960s. Is there anyone who still meets the criteria for "public accountant"? Is this why it is being deleted?

**Michael Hillerby:**

Yes, that is a reference to the older "public accountant." Years ago there were still two or three public accountants still around, and they watched this law like a hawk to make sure that they were still grandfathered in. They are all retired or have passed away at this point.

**Chair Bustamante Adams:**

Are there any other questions? [There were none.]. I have a question on section 7. If I understand correctly, the problem that you are running into is that you had to submit two additional names to the Governor.

**Nicola Neilon:**

Yes. One of our challenges is that if there is a sitting member of the board who is up for reappointment, it is difficult to get someone to run against them. Trying to find three names was challenging. With this, the Society can still submit three names if they have three candidates who are interested, but it will not require us to submit three names.

**Chair Bustamante Adams:**

Can you tell us how you involved your licensees in the process of providing input for this legislation? Were they involved? Did you hold workshops or public meetings? If you did, how many people participated in this process?

**Viki Windfeldt:**

The workshops and board meetings were not well attended. We think that is probably because no one had any issues with what we were discussing. The primary participants were the Society and the Society members. Other than that, no one else wanted to provide input.

When this bill came out, we received two comments. They just wanted assurances that governmental accounting will still count towards experience for licensure. I informed them that it is not our intent to remove that from the bill. It is not the Board's intent to disallow that type of experience.

**Chair Bustamante Adams:**

You said that you are eliminating the requirement to mail proposed amendments to the rules of professional conduct and would instead send email notices. What section is that?

**Nicola Neilon:**

That is section 9.

**Michael Hillerby:**

I represent other boards, and that provision is unique. It requires that notifications be mailed through the postal service. Many other boards and state agencies allow people to request to be added to a board's mailing list and the boards must abide by that. They can send notices either by hard copy or by email. Most people choose to receive notification via email.

This is an older part of the statute that still required all those notifications to be mailed out to every licensee. It has been noted that this is expensive. The Society and others that wish to receive a mailed notification will receive that. All others will receive their notifications via email.

**Chair Bustamante Adams:**

I appreciate the ability to receive information via email. My question is what do you do when someone changes their email address or moves without giving you updated contact information? Is it the individual's responsibility to notify you of any changes? Do you reach out to them?

**Viki Windfeldt:**

It is up to the licensee to notify us. Every year they renew their license and provide updated contact information. Another section of our regulations requires them to notify us of any changes to their contact information within 30 days. It is their responsibility, however, when we send out notifications by email and get bouncebacks. When we receive a bounceback we reach out to the licensee in a different manner and update their contact information.

**Chair Bustamante Adams:**

Is there anyone in opposition to Assembly Bill 454? [There was no one.] Is there anyone in support?

**Anna M. Durst, Chief Executive Officer, Nevada Society of Certified Public Accountants:**

I am a Nevada CPA and Chief Executive Officer for the Nevada Society of Certified Public Accountants. I am here to voice my support of Assembly Bill 454. The society's legislative committee worked with the Nevada State Board of Accountancy on this bill. All the members of that committee are also CPAs who the Nevada State Board of Accountancy services.

This bill is to clarify provisions governing certified public accountants' licensing requirements, align the language with the Uniform Accountancy Act, and clean up outdated sections, which are no longer applicable.

We agree with the Nevada State Board of Accountancy that it is appropriate to amend sections of NRS from time to time to reflect changes occurring in the profession. The Nevada Society of Certified Public Accountants encourages the Committee to support this bill. [Written testimony was submitted ([Exhibit M](#)).]

**Chair Bustamante Adams:**

Is there anyone else in support? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] We will close the hearing on Assembly Bill 454 and open the hearing on our last bill, Assembly Bill 255.

**Assembly Bill 255: Provides that provisions governing certain short-term loans apply only to consumer loans. (BDR 52-921)**

**Erv Nelson, representing Harvester Funding, LLC; and Payroll Funding Company, LLC:**

This bill is to clarify and codify existing law regarding the distinctions between consumer loans and commercial loans. Loans made to individuals are consumer loans. Loans made to businesses such as corporations, partnerships and limited liability companies, trust, and other similar entities are commercial loans.

Nevada Revised Statutes (NRS) 99.050 codifies the general rule in Nevada. It says, ". . . parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed." Since 1981, the general rule for lending in Nevada has been that the parties can agree to any terms they want.

There is no usury law. Other states have usury laws. These place a cap on the amount of interest that can be charged. It can vary. It might be 40 percent, it might be 50 percent, or it might be 18 percent. Different states have different rates. There is federal law in place for consumer loans. In 1969, the National Consumer Credit Protection Act was enacted. It is also known as the Truth in Lending Act. The Federal Reserve System published

Regulation Z to implement this law. It has been changed during the last couple of years, but there are a number of other laws that apply to consumer loans. Traditionally, these laws have not been applied to commercial loans.

At one time, there was an 18 percent cap on variable interest rate notes. In 1981, this body removed the cap. There are general rules; there have been exceptions to these general rules. These exceptions are primarily set forth in NRS Chapter 604A and NRS Chapter 675. These deal with loans to consumers. They include installment loans, payday loans, car title loans, and similar things.

A few weeks ago, Assemblywoman Heidi Swank, Assembly District No. 16, and Assemblyman Edgar Flores, Assembly District No. 28 presented some bills. These bills concerned NRS Chapter 604A and NRS Chapter 675. At that point, I testified in neutral. I did not think their bills applied to my clients because they are commercial lenders.

The Supreme Court of Nevada has decided two cases concerning lending law. One was in 1991. This was after the law was changed to take away the caps on lending. The case said that parties to a lease could contract at any rate of interest they want for late payments. This case was *Consumers Distributing Company Limited, Appellant, v. E.T. Hermann and Jane Hermann, Trustees of the E.T. and Jane Hermann 1978 Living Trust, Respondents* [812 P.2d 1274 (1991)].

In November 2001, the United States Court of Appeals, Ninth Circuit made a similar ruling in the case, *Shannon-Vail Five Inc. v. Bunch* [270 F.3d 1207 (2001)]. In this case, the Ninth Circuit Court said that loans that are made from Nevada companies to businesses located in California, which require repayment in Nevada, are governed by Nevada law. They went on to say because there is no usury law in Nevada for commercial loans, the parties could contract for whatever rate they wanted.

This has been the law since 2001. My clients are Payroll Funding Company, LLC and Harvester Funding, LLC. They are both commercial lenders. They only loan to businesses. We were relying on NRS 99.050 and this case law. In 2008, they decided to organize in Nevada. I have been their Nevada attorney the entire time they have done business in this state. My understanding has always been that the consumer protection legislation regarding banking does not apply to commercial loans. I have advised my clients that this is so. I think most lawyers would agree with me.

The reason we are here today is that my client was sued in Nevada. I settled the lawsuit, but an out-of-state borrower has taken the position that my clients' loans violate Nevada law. They feel that they specifically violate NRS Chapter 604A which deals with title loans and payday loans. My defense is that this is a commercial loan; this is not a consumer loan.

My clients have also been sued in Florida. The entity that is suing them makes the same argument—they say that these loans violate NRS Chapter 604A. The purpose of this bill, which is sponsored by John Hambrick, Assembly District No. 2, is to clarify the law and to preserve Nevada's industry of having lenders incorporate in this state rather than going to other states.

The state of Washington has a usury law, which states that loans cannot have interest rates above a certain percentage. Some of the commercial lenders were concerned about this. Washington passed a law saying that the usury law only applies to loans that are made primarily for personal, family, or household purposes. They have made it clear that usury laws apply to consumer loans only. They do not apply to commercial loans. These types of loans are completely different. There are totally different policy reasons for these types of loans.

We want to clarify the statutes regarding consumer loans. As originally drafted by the Legislative Counsel Bureau, it further defined the loans that are described in NRS Chapter 604A and NRS Chapter 675 as applying to personal, family, or household purposes. I think the reason that they drafted it that way was to mirror the language in federal law concerning Regulation Z and the laws of other states.

After I met with the Committee Chair, Vice Chair, and a number of Committee members, it became apparent that it would be wiser just to make an exemption for commercial loans. We could simply say that commercial loans are exempt. The mock-up of the amendment, which is on the Nevada Electronic Legislative Information System ([Exhibit N](#)), makes changes to the bill. It goes into each of the sections of NRS Chapter 604A and NRS Chapter 675. These sections already have exemptions. It adds one more exemption to these. The first line in section 1 of the amendment says, "NRS 604A.250 is hereby amended to read as follows." It goes on to list the entities excluded from the provisions of this NRS Chapter. Originally, there were 15 types of exemptions. We added a sixteenth. It does not apply to a person. A person is a term that can mean a corporation or a lender.

The sixteenth exclusion at the very bottom of the page is in blue. It says, "A person who exclusively extends credit for business, commercial, or agricultural purposes outside of this State to persons who are not residents of this State."

Some of the Committee members were worried about Nevada residents. We wanted to make it clear that this does not change the consumer protection provisions for any Nevada resident or any Nevada borrowers. This applies to loans made to businesses outside the state.

I provided the Committee with a letter of support from Payroll Funding Company, LLC ([Exhibit O](#)). It explains their business. I want to point out a couple of the highlights of the letter. Payroll Funding Company is a Nevada limited liability company. It chose to organize in Nevada because of Nevada's commercial lending laws. I discussed these laws that are in NRS Chapter 99.050. The two legal decisions that I spoke about also reinforce Nevada commercial lending laws.

My client makes loans to businesses located in many states with the exception of Nevada. They do not loan money in Nevada. They have never made consumer loans; they loan exclusively to businesses. They write approximately \$15 million in loans per year. Their clients are primarily smaller companies in the range of \$1 million to \$7 million in annual sales. They loan to 1.1 million companies in the United States. They lend to help these small companies when they cannot meet their payroll. When these businesses have cash flow problems, they borrow from my client. These are usually short-term loans—it may be for a week, maybe three weeks, or a month.

Since the recession in 2008, it has been extremely difficult for small businesses to get loans from traditional banks. My client and others in this niche market loan to small companies nationally. If the money they lend is paid back within a day, there are no charges. If it is paid back within a week, there is a fee and if it is paid back within three weeks, then the charges increase. Small businesses can use these funds for operating costs, capital improvements, business expansion, or any other related expense or investment. My client's company typically makes about 50 loans per month. The loans average \$50,000 each. They make small loans.

They collect 92 percent of the loans they make without any problems. This shows that a number of these small businesses, even though they are small, are financially viable. They pay back their loans—they just cannot get a loan from a traditional bank. Twenty percent of my client's customers have been with them for the entire 14 years that they have been in business in Nevada.

Occasionally there are loan defaults, and our contracts state that defaults will be resolved under Nevada law. I try to negotiate with borrowers who are in default. Many times we are able to renegotiate the terms for borrowers in default—we let them pay more over time. If that cannot happen, then we may resort to lawsuits or they may sue us. If we are sued, we rely upon Nevada law.

This bill does not concern predatory lending practices. It does not involve consumer loans. This bill codifies the law that has been in place since 1991.

**Assemblyman John Hambrick, Assembly District No. 2:**

When Erv Nelson first spoke to me about this problem, it seemed that a bill like this is a commonsense approach to the issue. There are no secondary or ulterior motives behind this bill. This is an upfront bill.

**Chair Bustamante Adams:**

Are there any questions?

**Assemblywoman Carlton:**

When I first spoke to Mr. Nelson about this bill, I thought that the language was very broad. I think this amendment protects people who need a short-term loan in order to make payroll. I know that the interest rate is high because of the length of the loan. If you use an annual percentage rate, it looks like a high interest rate, but it is not. I know what you are seeking to address, and I think this bill achieves it.

**Chair Bustamante Adams:**

Are there any other questions? [There were none.] Is there anyone in opposition to Assembly Bill 255? [There was no one.] Is there anyone in support of A.B. 255? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] I am going to close the hearing on Assembly Bill 255. Is there any public comment? [There was none.] The meeting is adjourned [at 3:30 p.m.].

RESPECTFULLY SUBMITTED:

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Kathryn Keever  
Committee Secretary

APPROVED BY:

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Assemblywoman Irene Bustamante Adams, Chair

DATE: \_\_\_\_\_



## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is the Work Session Document for [Assembly Bill 245](#), dated April 7, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for [Assembly Bill 262](#), dated April 7, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is the Work Session Document for [Assembly Bill 359](#), dated April 7, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is the Work Session Document for [Assembly Bill 452](#), dated April 7, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit G](#) is the Work Session Document for [Assembly Joint Resolution 10](#), dated April 7, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit H](#) is a mock-up of [Assembly Bill 381](#), submitted and presented by Assemblywoman Ellen B. Spiegel, Assembly District No. 20.

[Exhibit I](#) is a mock-up of a proposed amendment to [Assembly Bill 431](#), submitted by Assemblywoman Irene Bustamante Adams, Assembly District No. 42 and presented by Alfredo Alonso, representing Southern Glazer Wine and Spirits; and Nevada Beer Wholesalers Association.

[Exhibit J](#) is a PowerPoint presentation regarding [Assembly Bill 431](#), dated April 10, 2017, submitted by Alfredo Alonso, representing Southern Glazer Wine and Spirits; and Nevada Beer Wholesalers Association.

[Exhibit K](#) is testimony in support of [Assembly Bill 454](#), dated April 10, 2017, submitted by Viki Windfeldt, Executive Director, Nevada State Board of Accountancy and presented by Nicola Neilon, CPA, representing the Nevada State Board of Accountancy.

[Exhibit L](#) is a proposed amendment to [Assembly Bill 454](#) submitted by Viki Windfeldt, Executive Director, Nevada State Board of Accountancy.

[Exhibit M](#) is written testimony dated April 4, 2017, presented by Anna M. Durst, Chief Executive Officer, Nevada Society of Certified Public Accountants regarding [Assembly Bill 454](#).

[Exhibit N](#) is a proposed amendment to [Assembly Bill 255](#) presented by Erv Nelson, representing Payroll Funding Company, LLC and Harvester Funding LLC, submitted by Assemblyman John Hambrick, Assembly District No. 2.

[Exhibit O](#) is a letter dated April 6, 2017, in support of [Assembly Bill 255](#) to Chair Bustamante Adams, Assembly Committee on Commerce and Labor, authored by William R. Robbins, Manager, Payroll Funding Company, LLC, presented by Erv Nelson, representing Payroll Funding Company, LLC and Harvester Funding LLC.