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

Eightieth Session
May 3, 2019

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:33 p.m. on Friday, May 3, 2019, 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

Assemblyman Chris Edwards (excused)
Assemblywoman Melissa Hardy (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Nicole J. Cannizzaro, Senate District No. 6
Senator Moises (Mo) Denis, Senate District No. 2

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Wil Keane, Committee Counsel
Katelyn Malone, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Nick Stosic, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry
Stephanie McGee, Deputy Commissioner, Market Regulation and Captive Services, Division of Insurance, Department of Business and Industry
Michael D. Hillerby, representing Bently Heritage, LLC, Minden, Nevada
Carlo F. Luri, Director of Government Affairs, Bently Heritage, LLC, Minden, Nevada
Jesse A. Wadhams, representing Fennemore Craig, P.C.
Tom Adams, President, Seven Troughs Distilling Company, Sparks, Nevada
Joe Cannella, Founder/Chief Executive Officer, Ferino Distillery, Reno, Nevada
Cory J. Hauser, President, Branded Hearts Distillery, Reno, Nevada
Josh Damon, Owner, Damon Industries, Sparks, Nevada
Brandon Halvorson, Area Sales Manager, Damon Industries, Sparks, Nevada
Alfredo Alonso, representing Southern Glazer's Wine and Spirits of Nevada
Molly Ellery, representing Frey Ranch Estate Distillery
Misty Grimmer, representing Cox Communications
Helen Foley, representing T-Mobile US, Inc.
Warren B. Hardy II, representing La Paloma Funeral Services
Jennifer Kandt, Executive Director, Nevada Funeral and Cemetery Services Board
Sandra J. Anderson, Executive Director, Board of Massage Therapy
Marlene Lockard, representing Nevada Chiropractic Association
David Rovetti, DC, Northwest Reno Chiropractic, Reno, Nevada
Catherine M. O'Mara, Executive Director, Nevada State Medical Association
Chris Ferrari, representing Nevada Dental Association
James T. Overland Sr., DC, Preferred Chiropractic, North Las Vegas, Nevada

Chair Spiegel:
[Roll was taken. Committee rules and protocol were explained.] We will open the hearing on Senate Bill 88 (1st Reprint).

Senate Bill 88 (1st Reprint): Revises provisions governing producers of insurance and other persons regulated by the Commissioner of Insurance. (BDR 57-220)

Nick Stosic, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry:
[Read from prepared text (Exhibit C).] Senate Bill 88 (1st Reprint) is intended to clean up some of the insurance licensing statutes in Title 57. Sections 1 and 2 of the bill eliminate licenses for fraternal organizations, as *Nevada Revised Statutes* (NRS) Chapter 683A requires them to be licensed as producers, not separately as fraternal organizations. These sections also eliminate a license for associate adjusters. We are also eliminating an exchange enrollment facilitator license change fee. The exchange enrollment facilitator licenses do not have the ability to be modified; therefore, this fee is never charged.

Section 4 eliminates the requirement for an applicant to provide verification of prelicensing education prior to sitting for an exam, and instead will complete those requirements at the time of the test. Sections 5 and 7 remove the requirement for licensed business organizations to submit a list of each producer authorized to transact business, as this is not currently information that the Division of Insurance collects or would utilize, unless an enforcement action was taken. Sections 6 and 7 also eliminate fixed annuities as a limited line license, as they are not issued as a limited line by the Division of Insurance. The removal requirements in sections 5, 6, and 7 are to simplify requirements for licensees and remove a reporting burden. The Division of Insurance maintains the ability to seek a list of producers under its investigation and examination powers of Title 57, as needed.

Sections 8 through 10 remove the prelicensing education requirements for insurance consultants as well. Sections 11 through 14, sections 17 through 21, section 34, and section 36 eliminate the associate adjuster license. This particular license was originally created for gaining knowledge and experience before becoming an independent adjuster. As statutes were revised over time, there became effectively no difference between an associate adjuster license and an independent adjuster license. By removing the associate adjuster license, we clarify that there is no difference between the two licenses. Section 19 also removes the requirement that nonresident adjusters must maintain a place of business in the state. However, this would not change the in-state office requirements placed on insurers and third-party administrators that administrate workers' compensation claims under NRS 616B.027.

Sections 15 and 16 revise the licensing requirements for adjusters, including the prelicensing education rescission. Section 15 adds a requirement that adjusters establish and maintain a valid electronic email address, as the Division of Insurance uses these addresses to communicate with its licensees and create an efficient and cost-effective way of doing so. Section 16 also provides for a request for a waiver if an adjuster is unable to comply with the

license renewal requirements due to military service, a long-term medical disability, or other extenuating circumstance. It also requires the adjuster to inform the Commissioner of Insurance of any address change within 30 days, and allows the Commissioner of Insurance to contract with nongovernmental entities to perform ministerial functions, including the collection of fees and data related to licensing that are deemed appropriate.

Section 29 corrects a reference in NRS 695C.055 to subsection 31 in NRS 680B.010. Section 32 clarifies that an exchange enrollment facilitator license is no longer active as soon as the Silver State Health Insurance Exchange terminates the facilitator's appointment. Section 37 contains the effective date for the bill.

Assemblywoman Carlton:
Senate Bill 88 in its original form required a two-thirds majority vote, which has been removed in Senate Bill 88 (1st Reprint). All of the fees have also been revised. Were the fees revised to avoid needing a two-thirds majority vote?

Nick Stosic:
The intent of the original bill was to comply with the National Association of Insurance Commissioners' Producer Licensing Model Act and to be uniform with other states. We were attempting to change the licenses from three-year licenses to two-year licenses. However, during the transition period, we would be collecting revenue over a three-year period, but were making it revenue-neutral for the producers and licensees. The new license would have cost about two-thirds of what a three-year license would cost, which ultimately reduced revenue to the State General Fund in the transition period. That is why it did not make sense for us to move forward with the transition.

Assemblywoman Carlton:
In section 16, subsection 5, there is a statement that allows the Commissioner of Insurance to contract with nongovernmental entities to perform ministerial functions. What does this refer to?

Stephanie McGee, Deputy Commissioner, Market Regulation and Captive Services, Division of Insurance, Department of Business and Industry:
The Division of Insurance contracts with nongovernmental entities for the licensing process so that we can provide electronic licensing. Licensees have the ability to apply for and renew their licenses online, and the entities collect the fees and submit them to the state. National Insurance Producer Registry (NIPR) collects data about each license and posts it for other states to be able to reciprocate licensing. For example, another state can issue a nonresident license for a producer licensed as a resident in Nevada by relying on Nevada's information about the producer. This provision allows us to use the types of contracts that we currently use for producer licensing for adjuster licensing as well.

Assemblywoman Carlton:
Does the vendor charge an administrative fee for this service?

Stephanie McGee:
The vendors sometimes charge a fee to the licensees, but they do not charge the state a fee.

Assemblywoman Carlton:
In addition to their licensure fee, licensees are having to pay a vendor fee as well. Is that correct?

Stephanie McGee:
Yes, if there is a transaction fee charged for a service.

Assemblywoman Carlton:
What is the transaction fee, and how much does an adjuster pay for their licensure?

Stephanie McGee:
The transaction fee depends on what service they are using, which vendor they use, and how the transaction comes about. For example, when a licensee needs to print his or her license, the transaction fee is about $5.50, unless it is less than 30 days from the license's issue date. National Insurance Producer Registry charges about $15 for an application, and I believe the other vendor we use for this service, Sircon, charges the same. A transaction fee can range from $5 to $15, depending on the service.

Assemblywoman Carlton:
Do you currently subcontract these services?

Stephanie McGee:
These services will be available for new licensees. The Division of Insurance has been processing paper applications. The vendors can help facilitate the electronic application process. We want to ensure that we are efficient and able to take advantage of electronic services that are available.

Assemblywoman Jauregui:
Section 6, subsection 1, paragraph (h) eliminates fixed annuities as a limited line. Does this mean that these insurance producers will no longer need licenses?

Stephanie McGee:
The fixed annuities limited line has been absorbed into the life insurance line of authority, which is a major line of authority. Most producers who are licensed to sell fixed annuities already have a life insurance line of authority, so the fixed annuity limited line is an unnecessary line.

Assemblywoman Jauregui:
A producer can sell fixed annuities, but they would be licensed to sell life insurance. Is that correct?

Stephanie McGee:
That is correct.

Assemblywoman Jauregui:
Section 5, subsection 2, paragraph (c) eliminates the requirement for all organizations to send their information to the Commissioner of Insurance, and the requirement to send the information of anyone selling insurance on their behalf. Why is that?

Stephanie McGee:
The Division of Insurance still has the ability to request the information directly from the firms. This requirement was an additional piece of information that the state was having to obtain from the business entities, and the provision eliminates an additional hurdle for a producer to maintain his or her license.

Assemblywoman Jauregui:
The organizations will not be required to provide the information, so the Division of Insurance will not be tracking the producers under the umbrella of a firm. Is that correct?

Stephanie McGee:
That is correct. Each firm will still be required to designate a licensed producer to ensure that the firm is maintaining compliance and that everyone who works for the firm is in compliance as well. The Division of Insurance would still require at least one individual to be responsible for the firm's compliance.

Assemblyman Daly:
I find the language in section 16, subsection 4 to be peculiar. It requires an adjuster to inform the Commissioner of their change of address "by any means acceptable to the Commissioner." What was considered acceptable to the previous Commissioner, what is acceptable to the current Commissioner, and what will be considered acceptable to the next Commissioner?

Stephanie McGee:
We want to have flexibility in how we accept information. For the most part, information is filed electronically with the vendors that were mentioned in response to Assemblywoman Carlton's questions. We accept filings by paper as well. We want to have the flexibility to not be tied to one method or another.

Assemblyman Daly:
How is a licensee supposed to know what is considered acceptable or not? I think the language should be more specific to what will be accepted.

Nick Stosic:
There has been a push for efficiency and electronic communications within the Division of Insurance. Notices, bulletins, and renewal notices are sent via email. The Division has been pushing for its communications to be efficient and cost-effective. Oftentimes, licensees are instructed that the preferable method of communication is electronic communication.

Chair Spiegel:
Committee members, are there any additional questions on S.B. 88 (R1)? [There were none.] Is there anyone who wishes to provide testimony in support? [There was no one.] Is there anyone who wishes to provide testimony in opposition? [There was no one.] Is there anyone who wishes to provide neutral testimony? [There was no one.]

We will close the hearing on Senate Bill 88 (1st Reprint) and open the hearing on Senate Bill 345 (1st Reprint).

Senate Bill 345 (1st Reprint): Revises provisions governing estate distilleries. (BDR 52-980)

Senator James A. Settelmeyer, Senate District No. 17:
I have the pleasure of having the only estate distilleries in Nevada—Frey Ranch Estate Distillery in Fallon, Nevada, and Bently Heritage, LLC in Douglas County—within Senate District No. 17. Estate distilleries were created by law several sessions ago and, per statute, must grow 85 percent of their raw materials on their own land in the state of Nevada. However, they are afforded a higher production threshold than other distilleries in *Nevada Revised Statutes* (NRS).

Senate Bill 345 (1st Reprint) was created when disagreements arose within the Department of Taxation regarding where and when the taxes should be collected. The Department of Taxation began assessing every parcel of land separately, and we felt that it needed to be clarified in law. For example, Bently Heritage owns about 25,000 acres of land in Douglas County. Assessing taxes on the property where they grow grain in relation to the property where it is being distilled becomes a nightmare. The bill clarifies when the products will be taxed for the Department of Taxation.

Additionally, Bently Heritage produces a sherry cask vodka, which is a more common product than I originally thought. Under current law, estate distilleries do not have the ability to derive products from neutral or distilled spirits manufactured by another manufacturer. Senate Bill 345 (1st Reprint) would enable estate distilleries to receive products from a licensed Nevada brewpub or winery to further distill and create products of this nature.

Michael D. Hillerby, representing Bently Heritage, LLC, Minden, Nevada:
Bently Heritage currently imports from Portugal empty casks that were used to make sherry, and would continue to do so. The bill would allow us to buy limited amounts of product

exclusively from Nevada breweries and wineries that would be further distilled into other products at Bently Heritage. These products will not be blended or used for rectification, but specifically distilled into other products.

Senator Settelmeyer:
The bill seeks to further advance Nevada businesses.

Michael Hillerby:
We want to thank Senator Settelmeyer, as well as Assemblymen Ellison, Titus, and Wheeler for sponsoring this bill. It has been difficult to piece together its various components due to the complex nature of Nevada's three-tiered system, which designates that a business can manufacture, wholesale, or retail beer and alcohol, but not perform two or three of these functions. In order to enable the popular brewpub, winery, and distillery industries in Nevada, we have had to seek specific exceptions and limits, which always involves lengthy negotiations with wholesalers and others involved.

Senate Bill 345 (1st Reprint) is almost complete. Southern Glazer's Wine and Spirits of Nevada has proposed an amendment with which we are comfortable. It clarifies that when a distillery makes a transfer from a brewpub or winery, the Department of Taxation should be notified that the distillery is accepting the transfer. The transfer from the brewpub or winery would need to be made by the wholesaler with whom the business has a contract, or if the wholesaler cannot do it or is unwilling to, the business can get a permit from the Department of Taxation to transfer the product. The bill also clarifies when the taxable event occurs, to coincide with federal law. Once the products are packaged for retail and moved out of the federally bonded warehouse, the taxable event occurs in the state of Nevada.

Some of the language in the bill is duplicated. There are fairly convoluted statutory permissions and exceptions for wineries, which will change in 2025. In the bill, some language will be in effect until 2025, and the duplicative language will go into effect in 2025. Wineries that use a minimum of 25 percent Nevada-grown fruit and wineries that use less than 25 percent Nevada-grown fruit have been provided different privileges over the years.

The amendment to be submitted by Southern Glazer's will propose the technical language regarding the prohibition of buying neutral spirits from other manufacturers be reinstated. To be clear, we are only seeking changes to NRS 597.237 for estate distilleries. We are not seeking any changes to NRS 597.235 for craft distilleries. The bill provides express permission for estate distilleries to use beer and wine from other manufacturers. We purposely have not revised the statutes for any other businesses in the industry.

Carlo F. Luri, Director of Government Affairs, Bently Heritage, LLC, Minden, Nevada:
The passage of S.B. 345 (R1) would allow us to continue to innovate and produce Nevada-made and Nevada-sourced products for export around the world. Innovation and expanding our product offerings are the most important aspects of the bill. There was some concern about language that was removed from section 2, subsection 2, paragraph (a).

The intent of the bill and its amendment is not to allow estate distilleries to purchase neutral or distilled spirits. The intent is for estate distilleries to buy only Nevada beer and wine to further distill into distilled products. The amendment will reintroduce the language that was removed from the bill.

Jesse A. Wadhams, representing Fennemore Craig, P.C.:
There will be an amendment proposed that we are generally comfortable with. The amendment will add back into NRS 597.237 the language that was struck from section 2, subsection 2, paragraph (a) of the bill. Striking this language and adding language to paragraph (b) indicates that the expression of one is exclusive of the other. We always believed that adding the language in paragraph (b) did not fully exclude what was expressed in paragraph (a), but to the extent it provides anyone additional comfort, we would offer an amendment to reinstate the language in paragraph (a) with a provision that states "except as provided in paragraph (b)."

Senator Settelmeyer:
We will submit the amendment as soon as it is complete. I appreciate everything this legislative body has done for estate distilleries. In Douglas County, Bently Heritage has invested over $100 million to renovate the Minden Flour Mill. My father was one of the last managers at the mill before it closed in the 1930s, and it is remarkable how they have renovated it. Frey Ranch Estate Distillery has tripled their production since they were founded.

Michael Hillerby:
I want to reiterate that this bill applies only to estate distilleries. Each category of distillery has different restrictions and can produce different amounts of alcohol. In exchange for the restriction that 85 percent of their raw materials are grown on Nevada land owned by the distillery, estate distilleries are able to manufacture larger quantities of alcohol for manufacture and sale than other distillery categories. These restrictions are the result of working around the three-tiered system, as mentioned previously.

Assemblywoman Neal:
The product will be taxed once it is sold and leaves the premises. Was the product ever being taxed as inventory? It would not have been possible for the product to impose no taxes. Will the bill require the inventory in the warehouse to be nontaxable?

Carlo Luri:
We have federally bonded warehouses, which means the product in the warehouse is under federal bond with the Alcohol and Tobacco Tax and Trade Bureau, and we do not pay federal taxes on the product until it leaves the warehouse. The Department of Taxation interpreted that once the product was bottled and in our warehouse, we should pay the tax on the inventory, even though it has not yet been sold. We want to harmonize the timing of the state tax with the federal tax, so when the product leaves the bonded warehouse for distribution, we pay taxes to both the federal government and the State of Nevada.

Assemblywoman Neal:
Since we are making a distinction between warehouses that are and warehouses that are not, how many warehouses are not federally bonded?

Carlo Luri:
All of our warehouses are federally bonded, and I believe that all producers are required to have federally bonded warehouses.

Senator Settelmeyer:
By federal law, the Alcohol and Tobacco Tax and Trade Bureau requires all warehouses be bonded.

Michael Hillerby:
The language at the bottom of page 4 does not change the amount due for taxes. The language clarifies that the transfer is not only taxable when the product is bottled for sale, but taxable when the product leaves the warehouse, and harmonizes the taxes with federal requirements.

Assemblywoman Neal:
I am trying to get a handle on the distinction between warehouses that are bonded or not, why we needed to differentiate between the two, and whether the two parties are being treated differently. However, you are saying that this is not the case.

Assemblywoman Tolles:
I have had a lot of conversations with constituents on this topic and have heard a lot of support. I look forward to seeing the amendment. Are you open to additional cosponsors?

Senator Settelmeyer:
You are more than welcome to be a cosponsor. That would be a welcome amendment.

Chair Spiegel:
Seeing no additional questions from the Committee, is there anyone who wishes to provide testimony in support? [There was no one.] We will hear testimony from those in opposition.

Tom Adams, President, Seven Troughs Distilling Company, Sparks, Nevada:
At this juncture, we are concerned about one part of the proposed legislation. Craft distilleries are innovators in this industry. We do collaborative projects with small breweries and wineries within the state. We have a thriving community of craft producers. We fear that granting express permissions to NRS 597.237 license holders to purchase beer and wine from other Nevada businesses would constitute a limitation on NRS 597.235 license holders. By granting estate distilleries the opportunity to purchase beer and wine from breweries and wineries, we are fearful that it will take away opportunities from smaller craft producers. We ask that this provision be extended to NRS 597.235 license holders as well.

Joe Cannella, Founder/Chief Executive Officer, Ferino Distillery, Reno, Nevada:
I want to reiterate what Mr. Adams stated. We are opposed to the bill as written. I do not think the bill was written with the intent to exclude craft distillers in the state, but we are concerned that it will impact our ability to grow as well. We think the bill would stifle the growth of the industry overall in favor of promoting the growth of estate distillers specifically. To be clear, I am not opposed to the new allowances, but want them to be equitable to the other innovative distilleries in the state.

Wil Keane, Committee Counsel:
This bill does not amend NRS 597.235 relating to craft distilleries. The bill amends NRS 597.237 relating to estate distilleries. I understand the notion that expanding the abilities of an estate distillery could impact a craft distillery's business. However, the bill, as written, does not revise any provisions related to craft distilleries.

Assemblywoman Carlton:
I understand the proponents' goal, and I understand the opponents' concern that there could be an adverse impact on them, as estate distilleries will be able to do something that craft distilleries cannot. Estate distilleries must grow and purchase their materials in Nevada, but I do not believe those requirements apply to craft distilleries. Craft distillers can purchase materials in the open market and outside the state of Nevada. Am I understanding this correctly? Do you, as craft distillers, purchase only Nevada materials and products?

Tom Adams:
The products we purchase must be made in Nevada. However, our raw agricultural materials, such as corn and wheat, can be sourced from outside the state of Nevada. My product must be made in Nevada, and we have a limitation on our ability to produce. We can produce a maximum of 40,000 cases per year, which is still an enormous amount. Even though we can buy raw materials outside the state, I am proud to say that I do not believe that any of the distillers in the state do.

Assemblywoman Carlton:
You have the option to source materials from outside of Nevada, but you currently do not. The thought process is if one side of the equation is changed, then the other side should be as well. We certainly do not want to adversely impact your industry; we want economic growth and diversification. Would you be willing to commit, as estate distillers do, to only purchase goods and materials from Nevada?

Tom Adams:
I can speak on behalf of my business, and we are committed to use 100 percent Nevada-grown agricultural products. When this law was originally established, this was a tough thing to commit to, but it has become much easier since. We appreciate the sentiment, and I will speak with the other craft distillers as well.

Cory J. Hauser, President, Branded Hearts Distillery, Reno, Nevada:
I want to echo what both Mr. Adams and Mr. Cannella have said. Our concern was in not being able to use products that are made here in Nevada from local wineries and breweries. I have no problem committing to using only alcohol products made in Nevada, to further distill for them or make products ourselves. Some wineries would like to be able to make fortified products, such as sherry or port, but they would need to partner with a distiller or obtain a distiller's license to do so. Obtaining a distiller's license is a lengthy process and not something they are likely to do. We, being a smaller facility, have more opportunity to create unique products and help other Nevada businesses do that too.

Assemblywoman Carlton:
Did you testify in opposition in the Senate?

Tom Adams:
Yes, I testified in opposition during the Senate hearing, but some of my concerns were not addressed.

Assemblywoman Carlton:
Hopefully, we will be able to address your concerns.

Josh Damon, Owner, Damon Industries, Sparks, Nevada:
Damon Industries is a rectifier in the industry, and we are opposed to the current bill. If the amendment will prohibit estate distilleries from purchasing neutral or distilled spirits from other parties, we are in support.

Chair Spiegel:
What is a rectifier?

Josh Damon:
As a rectifier, we are not allowed to make anything, but must purchase it and change it in some way. I buy high-proof neutral grain alcohol, dilute it, and can turn it into premixed margarita or lemon drop mixes, for example.

Assemblywoman Neal:
You are referring to the amendment that we do not have a copy of. Have you seen the amendment?

Josh Damon:
I have not.

Assemblywoman Neal:
You are discussing the amendment as an abstract concept that you believe in. Is that correct?

Josh Damon:
The language was included in the original bill. We were told that the amendment would prevent estate distilleries from buying neutral spirits from another manufacturer. If the amendment is added, we are supportive.

Assemblywoman Neal:
But you have not actually seen the amendment. Is that correct?

Josh Damon:
That is correct.

Assemblywoman Neal:
You are supporting the amendment in good faith.

Josh Damon:
Yes.

Brandon Halvorson, Area Sales Manager, Damon Industries, Sparks, Nevada:
Our main concern is in ensuring that the language in section 2, subsection 2, paragraph (a) is added back in the bill. If that is the case, we would no longer be opposed to the bill.

Chair Spiegel:
Is there anyone who wishes to provide neutral testimony?

Alfredo Alonso, representing Southern Glazer's Wine and Spirits of Nevada:
We will send the amendment for your review as soon as it is complete. We support the attempts to expand the industry and make innovative products. However, it is important to distinguish what you have heard today from what the bill seeks to do. The bill furthers the growth and use of agricultural products grown by the distillery. The two estate distilleries in the state are growing at least 85 percent of the materials that go into their spirits. The distinction between estate and craft distilleries was made because of the significance of this requirement. It makes sense, because they are bolstering Nevada-grown products. The bill's intent is to keep the business in Nevada, so if estate distilleries want to make unique products, they will need to buy the alcohol from Nevada wineries and breweries. The only change the amendment puts forth is for estate distilleries to have their wholesaler bring the wine and beer in bulk. If they cannot do that, there is a process currently in statute for obtaining a permit that they would take advantage of. In either case, the distillery would be able to purchase the alcohol and have it delivered. We support Mr. Wadhams' amendment to add the language back into section 2, subsection 2, paragraph (a) if it makes everyone more comfortable.

Molly Ellery, representing Frey Ranch Estate Distillery:
Frey Ranch was the first estate distillery in Nevada and began commercial distilling in 2014. We currently distill vodka, gin, barrel-aged gin, and absinthe which are all award-winning and are currently sold in seven states. For the past 4 1/2 years, we have been distilling

several varieties of whiskey as well, which we are excited to report is expected to be on the market later this year and available nationwide. We are proud to be an estate distillery, so much so that we have trademarked the phrase "Ground to glass." As the first in the state, we are proud of the role that we have played in helping craft the laws that protect our industry. We are excited about businesses like Bently Heritage, the spirits they are creating, and the path that Nevada is on to be a nationwide epicenter for estate distilleries.

With that in mind, we are neutral to S.B. 345 (R1) as written. Our business does not have a need for the provisions in the bill, nor do we anticipate needing them in the future. The bill neither helps nor hurts us, but we understand that the provisions may benefit many others. Our main goal is to protect the integrity of what an estate distillery is, and to ensure that this bill will not hurt us or the industry as a whole. Additionally, we stand in support of Mr. Alonso's amendment and the clarification on taxation that was brought forth earlier by Senator Settelmeyer. We thank everyone involved for the bill, and look forward to seeing its progression.

Assemblywoman Carlton:
Regarding the concerns expressed earlier about the impact on NRS 597.235 license holders, I want to understand what the adverse impact may be. The last thing we want to do is help one business by hurting another business that we would like to see grow. Do you have any thoughts on that?

Alfredo Alonso:
I do not believe that the language affects NRS 597.235 license holders in any way. It was not intended to, unless the businesses are disobeying the law. I see this issue as applying to estate distilleries only. The bill clearly revises only their statutes and it was never the intent to affect anyone else.

Assemblywoman Carlton:
To clarify, if estate distilleries are allowed to change their business practices, but we limit and do not provide the same opportunities to other businesses, even if they comply with all the provisions of the law, they would not have the same opportunities as estate distillers in regard to the variety of products they can make. Is that correct?

Alfredo Alonso:
The two businesses are in two distinct lanes. Craft distillers could purchase land to grow their own product, and effectively become an estate distiller at any time. They have not and are still considered craft distillers, whether or not they source from Nevada or other states. Estate distillers are taking huge risks. If they want to stay in business, they have to continue growing. Craft distilleries can always source materials from other states, which is a benefit because Nevada's weather and climate often preclude it from being a consistent source.

Senator Settelmeyer:
In no way was the bill intended to revise provisions within NRS 597.235, nor does it. The bill addresses NRS 597.237, relating to estate distilleries. As Mr. Alonso indicated, there is

a major difference between the two. Buying agricultural products from outside sources is not as risky as growing agricultural products. Estate distillers are diversifying our state's agricultural economy and were created to be different due to their level of investment and risk. We provided them an opportunity to conduct their business differently and this bill allows them to utilize a new aspect of the law. I did not include NRS 597.235 license holders for this reason. I will continue to work with Mr. Alonso on the amendment to put forth for your review.

[(Exhibit D), (Exhibit E), and (Exhibit F) were submitted but not discussed, and will become part of the record.]

Chair Spiegel:
We will close the hearing on Senate Bill 345 (1st Reprint) and open the hearing on Senate Bill 220 (1st Reprint).

Senate Bill 220 (1st Reprint): Revises provisions relating to Internet privacy. (BDR 52-920)

Senator Nicole J. Cannizzaro, Senate District No. 6:
Senate Bill 220 (1st Reprint) makes various changes relating to data privacy. Senate Bill 220 (1st Reprint) was brought forth after a number of conversations I had with my constituents who, generally speaking, have expressed concern about the privacy of their personally identifiable information. Commonly, my constituents have expressed frustration over the increased number of sales and robocalls offering services or products related to searches that had been conducted on the Internet, among others. Likewise, they have received emails or pop-up ads offering items they had looked up during an online search, or services they had received through online sources. These situations are not unique or singular, and I am sure many of us can relate. Certainly, providing personally identifiable information online or to businesses in the course of obtaining goods or services will require a consumer to assume a certain amount of risk. But it is still incumbent upon businesses operating in these spaces to uphold their obligation to keep their customers' data safe.

In 2017, an estimated 1.6 million data breaches occurred throughout the United States, which left more than 178 million records vulnerable to attack. According to Forbes.com, over 2.5 quintillion bytes of data are created every day, which are primarily made up of personally identifiable information. One quintillion words would fill about 11 trillion books. Measured in gallons of water, it would take 210,000 years for that amount of water to flow down Niagara Falls. There are over 2 billion Facebook users. Every minute, 500,000 Snapchat users upload photos, 50,000 Instagram photos are uploaded, and another 500,000 tweets are sent. The prevalence and volume of data that is generated, shared, and sold presents challenges regarding the security of the data and what our obligations are as lawmakers to ensure that we are tackling the challenges in a serious and meaningful way.

In response to these concerns about data privacy and security, a number of states and countries have taken action to implement laws designed to protect consumer data. The European Union (EU) recently implemented the General Data Protection Regulation (GDPR), which went into effect in May 2018. The General Data Protection Regulation applies to businesses that use EU residents' information and includes provisions for the right of EU residents to be "forgotten," meaning there are ways for consumers to request companies to erase their data. The General Data Protection Regulation also allows consumers to move data from one place to another, the right to be free from automated decision-making functions, requires the mandatory reporting of data breaches within 72 hours, mandates that personal information must not be shared publicly without the informed consent of the consumer, requires data collection disclosure, and provides significant penalties for any violations. In the United States, a number of states have also enacted various forms of data protection, including child online privacy data in Delaware, e-reader privacy in Arizona and Delaware, consumer data privacy in California, privacy policies for websites, Internet service providers, and online services of various forms in Connecticut, California, Oregon, Minnesota, Delaware, and even Nevada. There are laws governing the disclosure of certain personal information in Utah.

Senate Bill 220 (1st Reprint) attempts to recognize that there is a need in Nevada to ensure that consumers have the capability to protect their personally identifiable information. Senate Bill 220 (1st Reprint) provides a mechanism for consumers to opt out of having their personal information sold to a third party and builds on some of the bills that were passed last session, specifically a bill [Senate Bill 538 of the 79th Session] that was sponsored by former Senator Aaron Ford.

Sections 1.3, 1.6, and 1.8 contain definitions for various terms within the bill. Section 1.3 defines a "designated request address" as an email address, toll-free telephone number, or Internet website that is established by an operator and used to allow a consumer to submit a verified request. Section 1.6 defines "sale" as an exchange of covered information for monetary consideration between an operator and another person for the person to license or sell the information to another. Section 1.6 further clarifies the definition of a sale and actions which do not constitute a sale of information. Section 1.8 defines the "verified request" as a request submitted by a consumer to an operator and clarifies where the operator can verify the authenticity of the request and the consumer's identity through commercially reasonable means.

Section 2 requires an operator to set up a designated request address so that consumers can opt out of allowing their information to be sold. Further, this section provides that a consumer may make such a request at any time. When an operator receives a verified request, the operator is prohibited from making any sale of the information. Within 60 days of receiving a request, the operator must respond to the request, and may request an extension of no more than 30 days if reasonably necessary. If an extension is requested, the operator is required to notify the consumer. Sections 4 and 5 make conforming changes to current data security laws to include the provisions of S.B. 220 (R1). Section 6 makes clear that an operator subject to these provisions includes a business which engages in activity that

is connected to the state of Nevada. Section 6 also exempts certain businesses from the state law, as these businesses are currently governed by federal statutes, including certain financial institutions, entities that are subject to the Health Insurance Portability and Accountability Act (HIPAA), and certain motor vehicle manufacturers and repair and service facilities. These entities are subject to data privacy provisions in other portions of federal law. Section 7 allows the Attorney General to enforce the provisions of this bill.

Senate Bill 220 (1st Reprint) seeks to provide additional protections for consumers who do not wish to have their personal data sold by businesses for profit. It is an important step in security and data privacy for Nevadans.

Assemblywoman Neal:
Section 1.6, subsection 2, paragraph (b) excludes from the definition of sale "The disclosure of covered information by an operator to a person with whom the consumer has a direct relationship for the purposes of providing a product or service requested by the consumer." What transactions does this paragraph encompass? It seems that a lot of transactions would be excluded from what is considered a sale.

Senator Cannizzaro:
Section 1.6, subsection 2, paragraph (b) intends to define what would constitute a sale. Some circumstances in which consumers are asking or requesting something require the business to provide certain data. It is impracticable to ask the business not to do so. I know that this may cover a number of transactions or interactions between the consumer and the operator. Frankly, the paragraph is intended to exclude the instances where data is required in order to fulfill a consumer's request. It is not defined as a sale, because the company is not necessarily receiving a monetary contribution in exchange for providing the data, but rather in response to a consumer request.

Assemblywoman Neal:
I understand section 6, subsection 2, paragraph (b) to mean that companies that are subject to the provisions of the Gramm-Leach-Bliley Act are excluded from the provisions of this bill, but this would exclude insurance companies, some consumer credit companies, and others. Are these entities not considered operators for the purposes of privacy issues?

Senator Cannizzaro:
Certain privacy protections already exist in federal law for financial institutions. Section 6, subsection 2, paragraphs (b), (c), and (d) are meant to exclude entities that are already subject to these federal laws so there is no confusion about which portions of this law apply to them or not.

Assemblywoman Neal:
Before these exceptions were provided, were there any state provisions in place that provided enhanced privacy protections? The federal government can sometimes provide weaker protections, where the state could have provided stronger protections.

Senator Cannizzaro:
My understanding is that the data protected under these exemptions is not data that would ordinarily be available for sale by those entities. Because of the way in which it is protected under federal law, it is not covered by the provisions of the bill. The bill does not seek to change the protections in other portions of Nevada law, but that is the intent for including the exemptions. The same exemptions apply to entities subject to HIPAA provisions and some motor vehicle manufacturers.

Assemblyman Daly:
If I am understanding the intent of the bill, businesses must reveal that they will resell your information and the consumer must agree. If the consumer declines, they often will not get to use the service or purchase the product, but at least they have made a conscious decision. Is that correct?

Senator Cannizzaro:
That is exactly the reason for the bill. The bill does not prohibit companies from using consumer data for their own purposes. The bill prevents companies from selling the data to third parties. Consumers can continue to operate as they are now. No one has to opt out. But if a consumer is sharing personally identifiable information with a website, service, or company, the company will be required to have a designated request address, as defined in section 1.3, which can be an email address, toll-free number, or Internet website, for consumers to contact them and opt out of the company using their information for sales purposes. The company may use the information in the course of doing business with the consumer or for other certain uses, but the bill provides an opportunity for consumers to opt out.

Assemblyman Daly:
The new language in section 6, subsection 1, paragraph (c) states "or otherwise engages in any activity that constitutes sufficient nexus with this State to satisfy the requirements of the *United States Constitution*." Does this language refer to the commerce clause, meaning if a consumer resides elsewhere but has nexus with this state, the bill applies to them as well?

Senator Cannizzaro:
That is correct. This paragraph is intended to include the commerce clause provisions when a company has a significant nexus to the state.

Wil Keane, Committee Counsel:
This language is a long-arm statute. It extends the state's ability to exercise personal jurisdiction over someone to the greatest extent possible under law. The language is purposefully tied to the *U.S. Constitution* so as jurisprudence evolves, our state can continue to legally exercise personal jurisdiction over people who are not physically present in the state.

Assemblyman Yeager:
You mentioned that Europe was at the forefront of addressing these privacy concerns. When the regulation was rolled out, I know there was some consternation. Is S.B. 220 (R1) modeled from Europe's legislation? Do you have any knowledge of how the European model is working in protecting privacy?

Senator Cannizzaro:
I cannot specifically speak to how the law in the EU is working. During the course of my discussions about the bill and the direction we wanted to go in, there were some concerns expressed about the compliance at the state level. If this issue was enforced at the national level, the compliance issues would be fewer because the law would not change across state borders. The bill seeks to create protections in Nevada law without altering something so extensive as the Internet, or companies that operate over the Internet. It is difficult to target these companies that operate only in the state of Nevada in a different way than they may be regulated outside the state of Nevada. Senate Bill 220 (1st Reprint) is not as aggressive as the European laws, but I think it is a step in the right direction. It is difficult to address an issue that is not only fluid over time, but fluid across state borders. This bill is an attempt to address the issue in a meaningful way.

Assemblywoman Tolles:
How can we explicitly and clearly inform the consumer that these rights are afforded to them?

Senator Cannizzaro:
The answer is twofold. At times, it is difficult to relay information to consumers when the law changes. I believe the more people exercise this right, the more people will opt out. My constituents are looking for something like this; they want to protect themselves and their data. Second, I think the visibility of requiring companies to have a way for consumers to opt out will help enforce the law and relay to people that this is a right they can exercise.

Assemblywoman Tolles:
Are you envisioning that the company would be required to post their designated request address on their website? Have you considered including language in the bill to make it explicitly clear that it is a requirement?

Senator Cannizzaro:
Currently, the requirement is for the designated request address to be made available, but I would certainly be open to including language such as that in the bill.

Chair Spiegel:
We will hear testimony from those in support.

Misty Grimmer, representing Cox Communications:
We are appreciative of Senator Cannizzaro. We and several others in the telecommunications and Internet service provider industries expressed our concerns about the original drafting of the bill. She was open to our suggestions to make this a bill that achieves her goals and is practicable for the companies that have to carry it out.

Helen Foley, representing T-Mobile US, Inc.:
I agree with what Ms. Grimmer stated. The State Privacy and Security Coalition comprises 23 major technology firms, media, communications, payment cards, online security, retail companies, and 6 trade organizations. Senator Cannizzaro has been very cooperative with us. We want to have as much nationwide consistency as possible when we address an issue such as this, and she was able to incorporate our amendments. We think this is a strong piece of legislation.

Chair Spiegel:
Is there anyone who wishes to testify in opposition? [There was no one.] Is there anyone who wishes to provide neutral testimony? [There was no one.]

We will close the hearing on Senate Bill 220 (1st Reprint) and open the hearing on Senate Bill 323 (1st Reprint).

Senate Bill 323 (1st Reprint): Revises provisions governing the attorney's fees and costs which may be recovered by certain regulatory bodies which administer occupational licensing. (BDR 54-905)

Warren B. Hardy II, representing La Paloma Funeral Services:
We appreciate Senator Denis bringing Senate Bill 323 (1st Reprint) forward on our behalf. Senate Bill 323 (1st Reprint) closes a loophole in the law that we have experienced but that I believe is an anomaly. One of our clients had an issue with one of the boards, went through the disciplinary process, came to a resolution, and the resolution required us to pay the cost, which happens from time to time. Statute allows the boards to recover the reasonable costs of a disciplinary proceeding. We requested to be provided a copy of the charges, to determine whether the cost we were being charged was reasonable, to see which attorney's fees, investigatory fees, and other fees were included in the $74,000 bill that our client received. We were not permitted to receive a copy of the itemized statement. We ultimately had to go to district court to establish the reasonableness of the charges. It was not until the conference with the Office of the Attorney General regarding the settlement that we were allowed to review the documents. We were not allowed to retain the documents, but were allowed to review them during the conference.

I have spoken with many boards, and this is not their practice. Their practice is to provide an itemized statement of the charges. I subsequently learned that the executive director of the board in question advocated for the statements to be released as well. The Attorney General's office refused to release them. This bill provides that an individual subject to the disciplinary case is not required to pay the fees unless, and until, they have been provided

with an itemized statement. In the Senate hearing, the bill was much broader and addressed some of the discrepancies and inequities between boards in Nevada, but that is a discussion for another day.

Senator Moises (Mo) Denis, Senate District No. 2:
Mr. Hardy did a great job of presenting the bill. The concept of the bill is as simple as he explained.

Assemblyman Daly:
To clarify, an itemized statement does not need to include each small detail, but only bigger-picture items. Is that correct?

Warren Hardy:
You are correct. It is not our intent to require that level of detail. We want to obtain a general understanding of what was charged and why. We are not permitted to acquire any information as to the charges at this time, and our request to do so had been denied by the Office of the Attorney General. There are other remedies for cases in which we do see a charge that is unreasonable, such as going to district court to determine the reasonableness.

Senator Denis:
I believe this is a standard practice among boards. We are asking for standardized reporting.

Chair Spiegel:
We will hear testimony from those in support.

Jennifer Kandt, Executive Director, Nevada Funeral and Cemetery Services Board:
Mr. Hardy is referring to a case that came before the Nevada Funeral and Cemetery Services Board. I would like to clarify that we do not hire outside counsel. We utilized the Attorney General's Office for prosecution of this case. At the conclusion of the case, the defendant was provided detailed billing information—the Attorney General's Office prepared an affidavit that contained a printout from ProLaw. The printout provided the date, the name of the attorney, the number of hours worked on the case, and the rate per hour. They were also provided with subpoenas and the cost for each, and even the cost of postage was detailed. They were not provided with a copy of the narrative in ProLaw, as the Attorney General's Office believed that to be attorney-client privileged information. I explained to the Attorney General's Office that I believed we were the client, we held the privilege, and we had no issue with releasing the narrative. I want to clarify the Board's perspective on this case.

Sandra J. Anderson, Executive Director, Board of Massage Therapy:
The Board of Massage Therapy includes its incurred costs with the settlement agreements when we settle with individuals for sexually inappropriate activity in the treatment room. We provide an itemized statement, and I believe this is the practice of most boards. We are in favor of the bill because it aids the continuation of government transparency.

Chair Spiegel:
Is there anyone who wishes to testify in opposition? [There was no one.] Is there anyone who wishes to provide neutral testimony? [There was no one.]

Warren Hardy:
Ms. Kandt is correct in what she indicated. However, when trying to determine the reasonableness of a charge, there is no reason that we should not be allowed to obtain a copy of the narrative as well to ascertain what was involved in the charges.

Senator Denis:
This bill will provide transparency and uniformity among boards as they do their reporting. I think it will be a good enhancement to the current law.

Chair Spiegel:
We will close the hearing on Senate Bill 323 (1st Reprint) and open the hearing on Senate Bill 365 (1st Reprint).

Senate Bill 365 (1st Reprint): Revises provisions relating to health insurance. (BDR 57-684)

Marlene Lockard, representing Nevada Chiropractic Association:
Senate Bill 365 (1st Reprint) addresses silent preferred provider organizations (PPO), which are arrangements in which an insurance company, third-party administrator, or self-insured employer contracts with another company to gain access to discounts. I have provided a document (Exhibit G) that summarizes the bill and illustrates how silent PPOs work. The provider is reimbursed at a discounted network rate, without the positive benefits of being in the network. No patients are sent to the provider and the provider does not receive marketing and other benefits of signing onto a network. The illustration (Exhibit G) shows through what process this is done. The insurance company uses algorithms to find the health care provider's tax identification number (TIN), which is sold to a payer who they normally do business with. The provider then receives payment that is substantially less than what their arrangement with the payer contracts.

The language of this bill is modeled after the National Conference of Insurance Legislators. Silent PPOs have been outlawed in several states and modified in Texas, Florida, California, Oklahoma, Louisiana, North Carolina, Ohio, and Connecticut. This bill modifies the provisions regarding silent PPOs by providing that the payers using the discounted, silent, or rented PPO must inform the provider as to which contract they are utilizing. This gives the provider the opportunity to terminate the contract. We do not want the patient to be caught in the middle, so in working with stakeholders, we have agreed that when a provider discovers that there is a silent or rental PPO being used, they may terminate the contract with the PPO but must give the patient 90 days' notice.

Assemblywoman Neal:
Are silent PPOs utilized by workers' compensation and self-insured employers?

Marlene Lockard:
Yes.

Assemblywoman Neal:
How would the bill affect these groups?

Marlene Lockard:
The bill would strengthen the providers in those areas. Oftentimes, the patient is unaware that the payer is paying a discounted rate, and the provider is certainly unaware.

David Rovetti, DC, Northwest Reno Chiropractic, Reno, Nevada:
Silent PPOs began in the late 1990s in Nevada. I bought most of them, but many of my colleagues did not. I signed a contract that I would accept a discount and, in return, the patients paid a lower copay or less deductible. I benefitted by being referred more patients, the insurance company benefitted, and the patient benefitted. Twenty years later, third-party administrators are not doing much business with insurance companies directly, but they sell or lease my contract to them. I do not discover that they have leased, sold, rented, or transferred my contract until I am billed for the services and receive a statement from the insurance company with a check for a 10 or 20 percent discount.

I would like to opt out or cancel these contracts, but it is virtually impossible to do so. The explanation of benefits indicates a PPO contractual discount but, oftentimes, does not even include the name of the third-party administrator. I must call the insurance company to find out who is administering the discount, which is difficult to do because the customer service representative cannot tell us and has to connect us to a contract specialist. Sometimes the name of the PPO contractor will be included in the explanation of benefits with no contact information. In the past, I have had to contact the Secretary of State to find out the name of the corporation.

I have had cases in which the third-party administrator has transferred my contract to another administrator as well. An insurance company could also replace my contract with another one if I opt out, so the contracts will keep popping up. Senate Bill 365 (1st Reprint) will provide transparency in the form of a website with the name of the company that the PPO is rented to.

Chair Spiegel:
Could you speak to how this affects the front end? What happens on the front end when there is a call placed for prior authorization? Would you find out at that time that the insurance company will be billing you at a discounted rate?

David Rovetti:
No, we would not find out at that time. We would simply receive the authorization. We would not find out until the bill is sent to be paid, which is the last step in the process. I have found that the insurance company usually tries to take the 10 or 20 percent discount from the provider when the patient does not have to pay a copay, such as in workers' compensation claims or motor vehicle accidents. The silent PPO does not affect the patient at all.

Assemblywoman Neal:
It seems as though all was well when silent PPOs first came about, but what has happened since then that you must seek out these companies for their bad behavior? Is it because they are paying you less and that is a problem for you? Or is it because they are unscrupulous actors?

David Rovetti:
Many of these companies are no longer doing anything substantial besides holding contracts. They swoop in at the last minute to claim their money. I am not referred patients by them, and I am not on a list for the general public to view for discounted services. I am a tax identification number in the insurance company's computer system. Many of the third-party administrators have been in possession of my contract for years and, in my opinion, are interested in making money off the contracts. The less transparent they are, the better it is for them, because it is more difficult for me to find out who they are. This does not only affect me, it affects hundreds of other providers.

Assemblyman Daly:
My understanding of how a preferred provider organization works is that a network is developed with a list of providers that will be distributed to the participants and their families. The provider agrees to a discount because they will be paid promptly and will be referred patients. To clarify, you signed up for a network as a provider. The insurance company placed you on a list and agreed to distribute your information to people in their network, but have since sold the list to a third-party administrator, unbeknownst to you, and you no longer have any benefits. The only reason you know that you are in their network is because you receive a discounted bill. Is that correct?

Marlene Lockard:
Yes, that is correct. Usually there is a contract that exists, but it could have been signed 20 years ago. Perhaps the insurance company has even gone out of business. The third-party administrators buy or rent contracts from insurance companies. The doctor provides services and does not receive the benefits of a legitimate PPO, but is reimbursed by a silent PPO discount. This is why so many states have outlawed silent PPOs. We are proposing that if the payer pays the doctor at a discounted rate, they need to inform the doctor of which contract it is based on so he has the opportunity to terminate the contract if he so desires. As I mentioned, there will be continuity of care for the patient. The contracts must be posted and updated on a website so that doctors can find out where these discounted rates are coming from. The bill provides for transparency, but does not outlaw silent PPOs.

Assemblyman Daly:
To clarify, there existed a network that a provider signed up for, but the insurance company sold access to the network to a third-party without informing the provider. It seems to me that workers' compensation networks would not have a group of patients that they could send to a provider, and a provider would not know who was in their network, but many vendors in PPOs want to know how many patients are being referred.

Marlene Lockard:
That describes a fair PPO—a standard preferred provider network in which both parties benefit from belonging to the network.

Chair Spiegel:
How is it possible that this has continued for so long and you are subject to a contract that may have expired 20 years ago?

David Rovetti:
The contracts never expire. In 1997, I formed my own network of chiropractors, which marketed to workers' compensation claims. Currently, I have in my possession 15 contracts with other chiropractors that give me the right to negotiate a discount. I will not sell the contracts, but I could sell them to a workers' compensation provider and allow them to take a 20 percent discount from the tax identification numbers of those chiropractors. I could negotiate that I get 10 percent and they get 10 percent. Everyone would be happy except for the 15 chiropractors.

Chair Spiegel:
Insurance companies must abide by network adequacy requirements set forth by the Insurance Commissioner in order to conduct business in Nevada. Can insurance companies use silent PPOs to fulfill the requirements?

Marlene Lockard:
I do not know the answer to that question.

Assemblywoman Neal:
I understand the transparency aspect of the bill, but why are we not trying to prevent the perpetual assignment of contracts? I think that would better put a stop to this behavior.

Marlene Lockard:
There are states that have prohibited silent PPOs. We chose to work to resolve the problem by requiring transparency and allowing providers the opportunity to opt out or terminate the contracts. It is difficult for providers to trace back and find from where they are being paid.

Chair Spiegel:
We will hear testimony from those in support.

Catherine M. O'Mara, Executive Director, Nevada State Medical Association:
We are in support of S.B. 365 (R1). I want to thank the proponents for bringing this bill forward. Physicians experience this issue as well. We support the Nevada Chiropractic Association and appreciate our inclusion in the bill. You should feel confused about this problem, because it is confusing. Silent PPOs are created when a PPO network is rented without anyone's knowledge. Physicians often do not know which network rate to apply, which can create confusion. The discounts are a problem, but a bigger problem for physicians is the lack of transparency and the problems we encounter in trying to resolve these issues.

A patient comes in with an insurance card for their network, but the patient does not know if they belong to a plan that has rented a network. The patient only knows to see a provider in their network. The patient is treated, the bill is sent to the insurance company, and the explanation of benefits is returned. At this point, the physician will know who the payer is, but we do not necessarily know which insurance company it is, which product it is, or which discount we should apply within the insurance company. The best case scenario is when the payer is fully solvent and taking care of its insurers. In some cases, there exists multiple employer welfare arrangements, when many entities pool their resources to rent a network. In those rare cases, there is no way for the provider to understand how to rectify the problem when the payer becomes insolvent. The insurance company that rented the network has no corresponding responsibility to ensure the claims for the other insurers are paid.

Some of us would like to go further than this bill does. However, we hope this bill will get rid of the "silent" part of the process. We want to understand what is happening, so we can understand who is benefitting from these contracts and the corresponding responsibilities of the parties involved. Physicians' offices will operate more efficiently in processing the claims and could ensure that we get paid appropriately for services rendered. To us, knowing how patients are accessing our office and what networks we are on is more important than the discount.

In regard to network adequacy, I do not believe that it is a question of whether or not insurance companies can use silent PPOs to satisfy a network adequacy requirement. The PPO is already established and needs to have a certain number of providers in the network. If the insurance company rents the network, is this population of providers being accounted for in whether or not the network can take care of them? I do not know the answer, but I wanted to bring up the nuance so that as we work through these issues, we are on the same page.

Chris Ferrari, representing Nevada Dental Association:
In section 7, subsection 5, paragraph (a), the language "limited-scope dental" was removed from the bill. My proposal was to delete the words "dental or" so that the language reads "limited-scope vision benefits" and then to reincorporate "dental or" to ensure dental policies are afforded the protections mentioned by the previous speakers.

Assemblywoman Carlton:
Dental policies were included in the bill, then removed, and now added back in?

Chris Ferrari:
That is correct.

James T. Overland Sr., DC, Preferred Chiropractic, North Las Vegas, Nevada:
[Submitted prepared text (Exhibit H).] This bill relates not only to chiropractors, but to all health care providers in Nevada—medical physicians, osteopaths, physical therapists, occupational therapists, hospitals, and other health care facilities. This bill opts for transparency. The nonterminated contracts that doctors like Dr. Rovetti and myself have signed have been outlawed or severely limited in how they can operate in nearly 26 states. The federal government has outlawed silent PPOs as well. One of the most important things to understand is that the patient is not impacted. The continuity of care will not be interrupted and the patient will pay no more than they normally would for a deductible or a copay. Patients are not affected by this bill.

We are not opposed to a PPO or any health care provider contracting with a population of providers. We want to know up front if the contract is rented, leased, assigned, borrowed, or sold to another entity and, if it is, what the impact on our health care practices is. If the rate will be discounted, I would like to know up front so I can either agree to it or decline the contract. For example, I have seen a contract I signed in 2005 appear time and time again, despite my opting out. Other insurance companies have bought or rented the contract over the years with a discounted fee. We think this is wrong; we are given discounted rates without advanced notice.

I am currently caring for an individual who is injured and is in the workers' compensation system in New York. As a result, her insurance company handled the payments from the state of New York. When I received my bill to pay the fees mandated by the New York workers' compensation system, it was discounted because of a contract that I signed 15 years ago that had been either bought, rented, or assigned. This issue crosses state lines as well. As health care providers, we want transparency and would like to know what contracts we are signing. We hope the old contracts will go out of existence. If they do not, we will appear before this body again to pass stronger language for outlawing the contracts.

Chair Spiegel:
Is there anyone who wishes to testify in opposition? [There was no one.] Is there anyone who wishes to provide neutral testimony? [There was no one.]

We will close the hearing on Senate Bill 365 (1st Reprint). Is there anyone who wishes to provide public comment? [There was no one.] The meeting is adjourned [at 2:41 p.m.].

RESPECTFULLY SUBMITTED:

_____
Katelyn Malone
Committee Secretary

APPROVED BY:

_____
Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony submitted by Barbara D. Richardson, Commissioner, Division of Insurance, Department of Business and Industry, and presented by Nick Stosic, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry, regarding Senate Bill 88 (1st Reprint).

Exhibit D is a letter dated May 2, 2019, to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Tom Adams, President, Seven Troughs Distilling Company; Cory Hauser, President, Branded Hearts Distilling; Brandon Wright, Co-Owner, The Depot; Joe Cannella, Founder/Chief Executive Officer, Ferino Distillery; James Sipaila, President, Forsaken River Distilling; Jeremy Baughman, President, Verdi Local Distilling; and Will Whipple, Co-Owner, 10 Torr, in opposition to Senate Bill 345 (1st Reprint).

Exhibit E is a letter dated May 2, 2019, to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Joe Cannella, Founder/Chief Executive Officer, Ferino Distillery, Reno, Nevada, in opposition to Senate Bill 345 (1st Reprint).

Exhibit F is a letter dated May 2, 2019, to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Aaron Damon, Owner, Damon Industries; Josh Damon, Owner, Damon Industries; and Tiffany Damon, Owner, Damon Industries, in opposition to Senate Bill 345 (1st Reprint).

Exhibit G is a document titled "Senator Dondero-Loop—Silent PPO (SB 365) Summary," presented by Marlene Lockard, representing Nevada Chiropractic Association.

Exhibit H is a letter dated May 3, 2019, to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by James T. Overland Sr., DC, Preferred Chiropractic, North Las Vegas, Nevada, in support of Senate Bill 365 (1st Reprint).