

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

**Eightieth Session
March 27, 2019**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 1:04 p.m. on Wednesday, March 27, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Marilyn Dondero Loop, Vice Chair
Senator Chris Brooks
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi Seevers Gansert

COMMITTEE MEMBERS ABSENT:

Senator Nicole J. Cannizzaro (Excused)

GUEST LEGISLATORS PRESENT:

Senator Ben Kieckhefer, Senatorial District No. 16

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Committee Policy Analyst
Bryan Fernley, Committee Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Matthew Digesti, Blockchains, LLC
Chris Ferrari, Intuit
Tyson Falk, Figure Technologies

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Elliot Malin, Nevada Technology Association
Wendy Stolyarov, Filament
Erin Houston, Deputy Secretary of State for Securities, Securities Administrator,
Nevada Secretary of State
Dave Dazlich, Las Vegas Metro Chamber of Commerce
Sophia Romero, Legal Aid Center of Southern Nevada; Consumer Rights Project
Ray Bacon, Nevada Manufacturers Association
Christy McGill, Office for a Safe and Respectful Learning Environment,
Department of Education
Keeli Killian, Nevada School Counselor Association
Emma Dickinson, President, Nevada Association of School Psychologists
Natha Anderson, Washoe Education Association; Nevada State Education
Association
Ward Drusedum
Kristin Barnson, President, Nevada School Counselors Association
Gwynne Partos
Eddie Haycock
Theo Small, Clark County Education Association
Helen Foley, Board of Examiners for Marriage and Family Therapists and Clinical
Professional Counselors
Velynda Kimes
Morgan Gleich, Executive Director, Board of Psychological Examiners
Ira Victor, Discovery Technician, Inc.
Jen Chapman, Records Association of Nevada
Renée Olson, Administrator, Employment Security Division, Department of
Employment, Training and Rehabilitation
Brian McAnallen, City of North Las Vegas
Debbie Conway, Clark County Recorder
Jim Pierce, Assistant County Clerk, Clark County
Kimberly Gaa, Administrator, Information, Development and Processing,
Department of Employment, Training and Rehabilitation
Judi Moravec
John Piro, Deputy Public Defender, Clark County Public Defender's Office

CHAIR SPEARMAN:

I will open the hearing on Senate Bill (S.B.) 161.

SENATE BILL 161: Provides for the establishment of the Regulatory
Experimentation Program for Product Innovation. (BDR 52-875)

SENATOR BEN KIECKHEFER (Senatorial District No. 16):

This is one of four bills I have sponsored targeting the technology ecosystem in Nevada and its development. This effort began for me before the 2017 Session. I was working with a group of start-ups and entrepreneurs in northern Nevada to talk about legislation that could shift some of our economic development policy toward smaller start-ups and technology. That culminated with S.B. No. 398 of the 79th Session. That was our first toe in the water as it relates to blockchain, which according to the Merriam-Webster dictionary is "a digital database containing information ... that can be simultaneously used and shared within a large decentralized, publicly accessible network." The success of that legislation has far outpaced what any of us imagined. Other states have seen the fruits of our labor and are following suit.

This bill is intended to help Nevada keep up with emerging technology. Wyoming has passed 13 bills relating to blockchain and financial technology in the past 2 years, including one that is similar to S.B. 161. This bill and Wyoming's bill are modeled after what was originally founded in Arizona, which created its regulatory sandbox for fintech and is up and running. In this case, sandbox refers to an environment in which new products and services can be tested in a confined way before being released to a larger market. Fintech refers to products and companies that employ newly developed digital and online technologies in the financial services.

Ultimately, S.B. 161 creates a program whereby the State can waive certain statutes or regulations that do not align with the reality of today's technology. If a company has an idea or an innovation that is ready to go to market, but there are some regulatory barriers that prevent that launch, that company could apply to the State to participate in this program, get waivers from those regulations and thereby get limited access to the Nevada marketplace to test products and services.

We have a proposed amendment ([Exhibit C](#)) to make a couple of big changes to the bill. First, the amendment moves the Regulatory Experimentation Program for Product Innovation (REPPI) from the Office of the Attorney General (AG) into the Department of Business and Industry (B&I). This is following consultation with AG Aaron Ford, members of the Governor's Office and the Director of the B&I, who thought the alignment of housing the REPPI within the agency that regulates these industries would be appropriate. It also eliminates any potential

conflicts of interest the AG might have in implementing the bill while also enforcing the laws of the State.

The second change in [Exhibit C](#) relates to the scope of the bill. I have handed out a chart ([Exhibit D](#)) that maps out the statutes referenced in S.B. 161. The amendment in [Exhibit C](#) would basically carve out the columns on the far left and far right of the page and focus on those industries regulated by the Commissioner of Financial Institutions and the Commissioner of Mortgage Lending. It eliminates everything out of the Secretary of State's office and carves out *Nevada Revised Statutes* (NRS) 604B from the Commissioner of Consumer Affairs. Everything that would be left as applicable within this program is listed in the two middle columns on [Exhibit D](#).

Those are the big changes proposed in [Exhibit C](#). It is meant to streamline the bill and make it more workable as we go forward.

I will walk you through the sections of S.B. 161 to spell out what it does. I am going to include the amendments in [Exhibit C](#) as we go through the bill. Where the bill currently refers to the AG, substitute the B&I and the Director.

Sections 2 through 10 of the bill are definitions, including the most important one in section 7, which defines "innovation."

Section 11 of the bill charges B&I to establish and administer the REPPI and let companies test a financial product or service if they work under specific chapters of the NRS. Those include NRS 604A, 645A, 645B, 645F, 645G, Title 55 and Title 56.

Section 12 of the bill outlines the application process for a company to participate. It also includes the payment of a nonrefundable fee of \$1,000, which is what triggers this bill's two-thirds requirement.

Sections 13 and 14 of the bill outline the approval process the Director would need to go through in determining whether an applicant is suitable for the program. This includes consultation with the regulatory institution that oversees that function, the Commissioner of Financial Institutions or the Commissioner of Mortgage Lending as appropriate.

Section 15 discusses what happens after approvals are made and offers some additional protections.

Sections 16 and 17 limit the scope of the test. Section 16 limits the number of consumers who would be eligible to use the service or product to 5,000 during the testing period. That could then expand to 7,500 with the approval of the Director through a secondary application process. Section 17 puts additional limits on the size of transactions that could be conducted in this test to \$2,500 in a single transaction or \$25,000 for a series of transactions to a single consumer. Those caps could increase to \$15,000 and \$50,000 upon approval of a secondary application by the Director.

Section 18 ensures continued conformance with federal requirements over financial planners and investment advisors.

Section 19 outlines the process that an applicant and/or a program participant would have to go through in order to be approved for those secondary caps of both consumers and transactions.

Section 20 outlines all disclosures that need to be included in the relationship between the participant and consumers.

Section 21 requires a phone number and website to be available for consumers to lodge complaints.

Section 22 requires participants to keep records open to the B&I and requires participants to maintain those records for at least two years.

Section 23 outlines certain confidentiality provisions for program participants.

Section 24 allows for the use of electronic records by B&I in the implementation of the program.

Section 25 gives further limitations. A two-year test period is allowed and can be extended by another year in section 26 of the bill, with the approval of the B&I. Ultimately, the idea is to have the waivers be temporary to allow the company to execute proof of concept.

Section 27 authorizes the AG to bring suit against a bad actor. This function will stay with the AG's office.

Section 28 authorizes the Director to enter into agreements with other governments to allow participation.

Section 29 states that participants are deemed to have a State license by their participation in the program, if they are required to do so by the federal government.

Section 30 outlines regulatory authority for the B&I.

Section 31 requires reports to the Legislature regarding the program's implementation and rollout.

Sections 32 through 46 are conforming language.

MATTHEW DIGESTI (Blockchains, LLC):

We are here today to support S.B. 161. I have written testimony ([Exhibit E](#)) explaining our support for this bill and how it can benefit Nevada.

As Senator Kieckhefer said, other states are taking notice of Nevada's work and are ramping up efforts to copy what we are doing and outdo what we have done. We view this bill as phase 2 building off the foundations of S.B. No. 398 of the 79th Session.

From our perspective, S.B. 161 has a number of benefits. First, it is fantastic for startups in economic development. It has a good benefit for private industry. Second, startups admitted into REPPI will be operating under the oversight and proactive involvement of State regulators. What typically happens with emerging technologies is that companies operate and regulators react, and if they do not like what they see they can be very reactive in how they respond. It can be an adversarial situation at that point. With S.B. 161, we are trying to get in front of that and allow regulators to be involved from the beginning, to oversee what is happening and help innovators fit within the regulatory framework.

Third, while the company is in REPPI, transactions with consumers are done entirely with the oversight of regulators. That makes this program a sweet spot

when it comes to consumer protection. Consumers know their transactions with this business will be done with regulators looking on to make sure things are being done properly.

Let me give you an example to highlight what we are hoping to accomplish with S.B. 161. We talked to a man in Reno who owns a restaurant and who is into cryptocurrency. On his own time, he created a payment application where his business could accept bitcoin as payment. He came to me for advice on the regulatory framework or landscape, and we discussed what it would take for him to roll that application out just for his own business. That would fall into the money service business licensing framework in the B&I. At the time, it was unclear whether you would have to be licensed as a money service business in order to accept bitcoin or any other cryptocurrency as payment. We talked about the application process, how much it would cost and what the ongoing compliance obligations would be. He decided that it was just too cost-prohibitive for him to even try. If this program had been in place, he could have applied to it, and it would be something he could afford to actually do with the oversight of regulators, which is a good place to be.

I have one more example. Arizona has launched this type of program successfully, and there are four companies actively in the program right now. A recent one is a company that lends to its customers based on a percentage of their income rather than on an interest rate. The benefit for the consumer is that if you lose your job or your income is reduced, you do not automatically default on the loan. The lender works with you, the loan continues and your credit is not negatively affected. This is an innovative financial product, and Arizona did not know how it would fit within their existing lending regulations. By all accounts, it is going well. It is a product tailor-made for this program.

With blockchain moving in a positive direction and given its natural intersection with financial technologies, we anticipate it will be used for programs in Nevada, particularly start-ups, because we are focused on building a virtual ecosystem around these emerging technologies.

SENATOR BROOKS:

This bill hinges on one thing, and that is the definition of "innovation." If a business can make the argument that they are meeting that definition in section 7 of S.B. 161, the rest of the bill could apply to them. Is that correct?

SENATOR KIECKHEFER:

That is accurate. The idea is if you can justify to the Director of B&I that your product is an innovative product and fits this definition, you are eligible for the program, though approval is not guaranteed. Final approval for the program rests with the Director and the regulations B&I promulgates.

SENATOR BROOKS:

If the Director of an executive branch agency determines this is an innovative product based on this definition, which is pretty broad, they can circumvent existing regulations governing that business model. Is that right?

SENATOR KIECKHEFER:

The guidelines for the program would be uniform. The justification as an innovator would be left to the Director.

SENATOR BROOKS:

You are saying that the Director, who is one director of one agency in the executive branch, determines whether the product meets the criteria of "innovative" in the bill. Do the directors of other agencies under B&I get to approve of the application?

SENATOR KIECKHEFER:

No. Approval will lie within the Director's scope, but the Director will consult with regulators regarding any waivers requested. In the application process, the company is to spell out specifically which regulations they would like to waive so they can test their product. It is not a scenario where they would have carte blanche once they were approved. Only specific waivers would be approved.

SENATOR BROOKS:

Would it have to come back to the Legislature for approval?

SENATOR KIECKHEFER:

No.

CHRIS FERRARI (Intuit):

We are neutral on S.B. 161 and have a friendly amendment ([Exhibit F](#)).

This bill addresses small business access to capital in Nevada. Intuit is a large employer in Nevada. You may be familiar with our products TurboTax and

QuickBooks. Through QuickBooks, Intuit is able to offer loans to small businesses with no origination fees, prepayment penalties or hidden charges. Nevada is the only state in the U.S. where Intuit is unable to offer these business-to-business loan products. This amendment will remedy that.

There are some good parallels between the concepts in [Exhibit F](#) and S.B. 161 as it stands. Intuit is a tech company, and QuickBooks offers small business access to capital, so it is in the same spirit as S.B. 161.

Intuit exhausted the regulatory process with the Division of Financial Institutions (FID) in 2018. At that juncture, the FID said, "This is as much as we can do from a regulatory perspective. You would have to change statute to allow this product in the State." I would point the Committee to NRS 675.230. Although Intuit has 405 employees in Reno and a significant campus, section 1 of that statute reads: "A licensee may not conduct the business of making loans under this chapter within any office, suite, room or place of business in which any other business is solicited or engaged in." That creates quite a hurdle for us, and it is one the regulators could not get around in the case of QuickBooks.

[Exhibit F](#) is a conceptual amendment that creates the definition of an internet business lender. There is no consumer crossover in this measure. While this is not by any means formal language, we wanted to put something in there to give the Committee the direction we were attempting to take.

TYSON FALK (Figure Technologies):
We are in support of S.B. 161.

Figure Technologies is a fintech company that uses blockchain as a central tenet of its business model. It moved to Reno last year, in no small part because of Nevada's regulatory climate and the forward-thinking innovative policies of the Legislature as shown in S.B. No. 398 of the 79th Session. While it is unlikely Figure Technologies would use REPPI, as it is a fairly mature company, we certainly would have been able to use it during the start-up process. We see it as a helpful tool, a next step to encourage innovation in this space for other startups to be able to operate within a somewhat regulated framework and therefore not subject to onerous regulations. We are happy to support S.B. 161.

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ELLIOT MALIN (Nevada Technology Association):

We support this bill. I have written testimony ([Exhibit G](#)) describing the benefits of this concept for Nevada.

WENDY STOLYAROV (Filament):

I am here today representing Filament, a blockchain hardware, software and firmware company founded and headquartered in Reno. While our business would not be affected by this bill, we are active members of Nevada's tech community, and we worked with Senator Kieckhefer on S.B. No. 398 of the 79th Session. That bill laid out the welcome mat for technology companies and has triggered a mini boom for tech. We believe S.B. 161 will be similarly beneficial to Nevada's burgeoning tech industry. It would pair innovation with responsible oversight and allow our state to remain ahead of the curve, paving the way for innovators who may not have the wherewithal for immediate licensure.

Though this bill will not directly affect us, it might have been useful when our company was taking its first steps. We would like to see the tech community here in Nevada be supported and nurtured, and we believe S.B. 161 will provide that nurturing environment in a manner that is safe for Nevada's consumers. We encourage you to support the bill with the amendment in [Exhibit C](#).

ERIN HOUSTON (Deputy Secretary of State for Securities, Securities Administrator, Nevada Secretary of State):

We were neutral on this bill. The amendments proposed by Senator Kieckhefer have removed our concerns, and we are now in support.

DAVE DAZLICH (Las Vegas Metro Chamber of Commerce):

We are here today in support of S.B. 161. Maintaining the business-friendly atmosphere of Las Vegas and Nevada, especially in relation to startups, is one of the Chamber's priorities. We feel this bill sets forth a very good framework, especially vis-à-vis the relationship between new start-up businesses and regulators. We think this is a positive and constructive step to head off problems and make that relationship much less adversarial.

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SOPHIA ROMERO (Legal Aid Center of Southern Nevada; Consumer Rights Project):

I am here today in opposition to S.B. 161. I have a packet of information ([Exhibit H](#)—This is a copyrighted exhibit. Original is available upon request of the Research Library) analyzing the likely effect of this bill.

I would like to thank Senator Kieckhefer for working with us. While we appreciate the intent of the bill, from a consumer protection standpoint, this bill would be extremely harmful to our clients. Essentially, this bill attempts to skirt existing consumer protection statutes, specifically those that apply to payday loans, title loans and mortgages. Just because an innovative financial product or service uses cryptocurrency or blockchain, that does not mean consumers will not lose their vehicles or homes in the real world. For example, of the four Arizona products, one is from a payday loan company and one is from a title loan company. Under this bill, companies would not have to fulfill licensing requirements that are designed to protect the public, not even the barest minimum safety and soundness requirements, or other conditions relevant to the product or service.

The dollar amount that could be lost by consumers is considerable. Section 17, subsection 2 of the bill states that on the high end, loans can go up to \$15,000 per transaction and \$50,000 per consumer for up to 7,500 consumers. That is a possible total amount of \$375 million loaned to Nevada consumers per company without any licensing requirements and without being subject to any of our current consumer protections.

Nevada is still slowly recovering from the housing crisis and faces predatory lending on a daily basis. It is unreasonable to allow these types of products and services into the State without being subject to Nevada's current consumer protections.

RAY BACON (Nevada Manufacturers Association):

We signed in as neutral on S.B. 161 because we were concerned that the AG's office did not have the technical expertise to be able to sort out what was going on. With the amendment moving that over to B&I, our objection went away.

VICE CHAIR DONDERO LOOP:

I will close the hearing on S.B. 161 and open the hearing on S.B. 372.

SENATE BILL 372: Revises provisions relating to school counselors, school psychologists and school social workers. (BDR 54-546)

SENATOR HEIDI SEEVERS GANSERT (Senatorial District No. 15):

This bill was brought to me because we provide services in our schools for which we could get Medicaid reimbursement. We are not getting that reimbursement because these professionals—school counselors, psychologists and social workers—are licensed or have an endorsement through the Nevada Department of Education (NDE) instead of being licensed by the requisite professional boards. To be able to get reimbursement from Medicaid, professionals must be licensed by their professional boards.

I have a proposed amendment ([Exhibit I](#)), and as I go through the bill, I will introduce those amendments.

This bill contemplates moving school counselors, psychologists and social workers to their professional boards for licensure. It also contemplates adding members to the professional boards so these individuals have representation. In section 4 of the bill, one member is added to the Board of Psychological Examiners to represent school psychologists. In sections 17 and 20 of the bill, two members are added to the Board of Marriage and Family Therapists and Clinical Professional Counselors, which would be renamed as the Board of Marriage and Family Therapists, Clinical Professional Counselors and School Counselors.

Sections 1 through 12 of the bill reference the changes needed for school psychologists. Sections 13 through 25 cover school counselors and section 26 covers school social workers.

There has been a lot of talk about this bill from folks who are opposed to this transition. We want to make clear that in moving these professionals to their professional boards, we are not changing the requirements for licensure; we are not changing job descriptions or duties; we are not expanding their roles; and we are not requiring them to prioritize specific types of students. They would continue to do the work they have always done.

We also have a section in the bill that states any federal funds brought in because of this change would be used for mental health needs in the schools. The hope is to bring more funds to provide the services students need.

CHRISTY MCGILL (Office for a Safe and Respectful Learning Environment, Department of Education):

School districts, the NDE and Medicaid have been working for several years to increase mental health services in our schools by increasing Medicaid funding. Current conditions are not perfect for this to happen, and in fact we have had several pilot programs that did not thrive.

One of the limiting conditions we found was the difficulty of expanding existing provider types. Medicaid has worked with us on ways to increase the school psychologists, counselors and social workers in our schools. To this end, we are looking to increase our Medicaid funding. That is what this bill represents.

The proposed amendment in [Exhibit I](#) looks at the Medicaid provider type 60, which is defined as "school based," and expanding that to include all kids, not just kids in special education. Massachusetts has done this with good effect. School social workers are currently dual licensed, so Medicaid can be billed for their services now. School counselors and psychologists are not currently dual licensed. This bill would enable them to be so.

[Exhibit I](#) ensures that this is completely voluntary. The school psychologist or counselor who wishes to remain under the NDE and not bill Medicaid can do so. It also allows flexibility for districts to choose to bill Medicaid for their counselors or psychologists or not.

SENATOR SEEVERS GANSERT:

[Exhibit I](#) is written to grandfather in current employees and requires new psychologists and counselors to license under the professional board. After talking to the professional associations, we would like to change that amendment to make participation completely voluntary. Those who are currently employed and those who are new to the profession can either get their license or endorsement through the NDE or through their professional board.

Ms. MCGILL:

We would also like to amend [Exhibit I](#) to enable a pilot program to try this out. If it is not working at the end of two years, we can return to the old system. If it is successful, we can expand the program as needed.

SENATOR SETTELMAYER:

I have had a number of emails from people who did not understand the intent of the bill. It sounds wise to use federal dollars first, State dollars second, local government dollars third and personal dollars last. With that being said, would the fee for licensure change? One email I received states the licensing fee is \$150 every 5 years. Would that fee stay the same?

Ms. MCGILL:

The fees would remain the same.

SENATOR SETTELMAYER:

A lot of emails stated we are adding a level or a step that did not exist, and that is not necessarily true. We are just shifting where those funds go so more adequately they represent what they are doing.

SENATOR DONDERO LOOP:

How many states do this now?

Ms. MCGILL:

I am learning that every Medicaid program is unique. This is Massachusetts' way of doing it, and it is one of the models we looked at. It is an innovative approach to school counselors and psychologists. Different states bill for them in different ways. We wanted to make sure we were not leaving anyone out. Because Nevada is fairly new to this, we were trying to figure out a way to be flexible and include all our school behavioral health providers.

SENATOR DONDERO LOOP:

In my life as an educator, I have found that school psychologists, social workers and counselors are educators first. They might not teach math and reading to a classroom of 30 kids, but they are educators first. They see the whole child. They are not like psychologists in the community where we might go see them in an office.

What I am struggling with is S.B. 372 seems to put up more barriers for students who need these services. We are now asking these professionals to go to a board of examiners to get a license, which many of them do not have. We are eliminating mental health staff in these days of fragile mental health and eliminating support services we need for our children and do not have. Nurturing and helping students is an ongoing process, and decreasing the number of

school psychologists, counselors and social workers puts one more barrier in the way of that process. We are not allowing the process to function as things stand.

If there is only one state doing this, there has to be a reason. In education, successful programs do not happen with just one state. People jump on the bandwagon in education.

SENATOR SETTELMAYER:

I am confused. I thought these individuals were already licensed, and we were just talking about them getting their licenses from a different place. Is that right?

SENATOR SEEVERS GANSERT:

The goal of S.B. 327 is to bring in more money to provide greater services and improve the ratios of professionals to students. If we move the licenses over, the criteria they must meet is exactly the same. We are not asking them to meet a higher threshold as far as degrees and experience. We are actually mirroring the language that currently exists in the NDE and moving them over to the professional boards. We are not changing that.

Let me say a little more about Medicaid in general. I have had a number of bills where we have changed the State plan and had approval from the Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services, to make certain types of providers eligible for Medicaid reimbursement so we can bring in more reimbursement. What happens with Medicaid, because it is a push-down from the federal government, is that you are constantly chasing the perfect model. One state will find a new category of care that is eligible and approved in another state's plan, so you always have to be conscious of what other states are doing so you can add it to your plan. Once you see someone else do it, you can amend your plan and make more people eligible to draw down more federal dollars.

This bill contemplates moving licenses in their current state to the professional boards because that would make them eligible for Medicaid. We are not asking for more or different licensing criteria. It has been proven in Massachusetts, and I think other states may have done something similar, but maybe not to the extent we are looking at.

Ms. McGill mentioned that this could serve as a pilot program. If folks are willing to voluntarily transfer their licenses, or if recent graduates get their first licenses through the professional board, we can then test to see if it brings in more Medicaid dollars. If additional money is brought in, it can only be used for providing mental health services to the pupils of the school district or charter school that brings the dollars in. This is a way to bolster funds for mental health, which is our goal.

SENATOR SETTELMAYER:

So the short answer to my question is yes. What this bill does is basically the same as getting your driver's license from the Department of Motor Vehicles rather than from the Division of Public Safety. It does not change the test, the requirements or the cost. It just means you get it from a different place, which would potentially allow us to shift the cost to Medicaid. We are not changing the requirements for a license or requiring people who do not have licenses to get them. Correct?

Ms. MCGILL:

With the amendment making participation completely voluntary, yes, that is correct.

SENATOR DONDERO LOOP:

That is not how I read the amendment. Also, I do not see a fiscal note for this bill. Who is going to fill out the paperwork, collect the money and distribute it? How is that all going to work? I know psychologists, social workers and counselors do not have the time.

Ms. MCGILL:

Yes, Medicaid does come with paperwork. That is part of opening up their provider type 60. Schools are already billing Medicaid for special education; the staff for that are already in place. We want to build upon this system to include behavioral health and mental health services for students. There will be increased paperwork, and eventually we hope to get to the point where the school districts are certified public entities that can bill for the paperwork as well. But this program is just a baby step, making conditions right so the school districts can start billing and we can get more of these providers into our schools.

As you said earlier, these professionals are educators first, and they also do services that can be billed through Medicaid. That is part of the reason for doing this as a pilot program. We want them to keep doing what they are doing, but they also provide some services that can be billed to Medicaid. That could increase the amount of money and allow us to improve the student-professional ratios, which in turn would allow us to hire more school psychologists.

SENATOR HARDY:

As I understand it, psychologists who voluntarily put themselves in a position where they could be eligible to get Medicaid funding work under the license of the school, and the school then has an opportunity to use those volunteer psychologists to benefit the school only, as opposed to the school district. Those schools likely already are Medicaid providers because they are doing special education things, so they would not have to fill out new forms to bill for Medicaid dollars they are already in the process of billing for. Is that right?

Ms. MCGILL:

Yes, that is our intent.

SENATOR DONDERO LOOP:

That would be your intent, but as a school employee, I personally do not think that is how it would happen. I want to say that this is all a happy story, but I know how schools work. I have watched psychologists, counselors and social workers spend more time with paperwork than with kids. I would love to know that we could get this money, and I would love to know that it would help us do the things we need to do. But I also know it costs more money to get a license from a board of examiners than it does from the NDE. I am just afraid we are putting barriers between our students and the services they need. I wish I could say something else.

CHAIR SPEARMAN:

School employees as a rule do not make a lot of money; in fact, in Clark County, if you look at the number of people who are eligible for social service assistance, the number two employer is the Clark County School District. Who is going to pay for these licenses? What is the timeline? If these professionals cannot afford the license or the additional requirements, we are putting burdens on people who are trying to help. There are a number of other bills circulating that would provide for Federally Qualified Health Centers (FQHCs) in close proximity to schools. I am concerned that people who feel a calling to work in

public education do not get a lot of money, and we are going to require them to spend some money to maybe get the school something from Medicaid.

Ms. MCGILL:

The reason to do this in a time-limited pilot program is to work out problems like that. Yes, dual licensure requires two licenses. Community-based services like the FQHCs close to schools are absolutely needed. So are additional school counselors, social workers and psychologists. States that have more robust services for students have both of these. With the ratios in our schools, a school counselor could have a caseload of 700 students. He or she does not have time to collaborate with community providers.

CHAIR SPEARMAN:

There probably are states with very robust programs like this, but how does their per-pupil funding compare to ours? There are a lot of things we could do, but people always get queasy when we talk about putting more money into public education. There is a difference between having \$15,000 per-pupil funding and having only \$7,200. You can do a lot more with more money; I hope one day we get to \$15,000. In the meantime, most people who are working with the school systems right now are doing it because they feel called. They are not required to take a vow of poverty, but in many cases they do.

Ms. MCGILL:

I would have to get back to you about the per-pupil funding; I do not have that information at my fingertips. I agree that it is a calling. There is also a calling for more school counselors, psychologists and social workers in our schools. We would love to get those ratios up.

CHAIR SPEARMAN:

I am not disagreeing. I am just saying that this approach may not be the best way to do it.

SENATOR SEEVERS GANSERT:

Just to reiterate, the transfer to a professional board would be voluntary. My understanding is that you would not have a dual license. Once you go under the professional board, you would not have a license under the NDE. The person would have a single license, so it would not be duplicated. The ultimate goal with this pilot program is to bring more dollars into our schools for health care so we can reduce the ratios and get more care for our students.

SENATOR DONDERO LOOP:

You have referred to a pilot program a couple of times, and I do not see that word in the bill or in the amendment.

SENATOR SEEVERS GANSERT:

We have moved to the term "pilot" because we went from making the move to the professional boards mandatory to grandfathering in current professionals to making the move optional. We want to see how many professionals will transfer over, how much Medicaid money we can bring in, what does that funding look like and does it bolster the dollars for mental health within the schools as we hoped. The current amendment makes moving your license voluntary, whether you are currently licensed through the NDE or you are a new graduate and are licensed through the professional board.

SENATOR HARDY:

So it is voluntary for the new graduate as well as the seasoned professional.

SENATOR SEEVERS GANSERT:

Yes, it is all voluntary.

There is an advantage to having a license under a professional board. We see bills around compacts and reciprocity, and it is all related to professional boards. If you are licensed as a psychologist under a professional board in California, you can potentially move much more easily to Nevada or another state. It is good for employees, especially people who are recent graduates, to get a license under the professional board because of the flexibility it offers. Maybe we can bring more people into the State under something like this.

CHAIR SPEARMAN:

In 2016, Massachusetts' per-pupil funding was \$15,200; in 2018, it was \$18,593.45. That may be why this idea is working there.

KEELI KILLIAN (Nevada School Counselor Association):

We are here in opposition to S.B. 372. We are strongly opposed to school counselors being included in this bill and respectfully request that school counselors be removed entirely from S.B. 372.

There are several key factors that contribute to this opposition. First is the licensing issue with the NDE and the professional board. The second and more

alarming reason is that the Nevada School Counselor Association (NvSCA) was not consulted in the drafting of this proposed legislation. Yesterday was the first time the NDE reached out to us and the two other associations in this bill. Specific to school counselors, this bill directly impacts our profession across the State, and being overlooked is disheartening.

Finally, counselors are first and foremost educators. We have clinical training, but we are not clinicians. School counselors have extremely large ratios and have access to a lot of students. We are not able to keep up with our current caseloads. To ask us to do more paperwork is a huge barrier.

We would like to thank Senator Seevers Gansert and the NDE for having a conversation about this with us yesterday. We welcome the opportunity to have further discussions on this bill.

EMMA DICKINSON (President, Nevada Association of School Psychologists):
We respectfully oppose S.B. 372. I have a letter of opposition ([Exhibit J](#)) from the National Association of School Psychologists expressing our concerns.

Nevada has a significant shortage of school psychologists, and requiring an additional licensing body creates additional barriers that will make the shortage worse. Only one state, Virginia, has licensing for school psychologists through their board of psychological examiners. Virginia state leadership strongly advised us not to go this route, as it is detrimental to school psychologists and their ability to practice and to serve students.

We were not consulted in the drafting of this legislation. During initial discussions regarding expanding Medicaid, we strongly discouraged moving licensing authority outside the NDE. The fact that our input was disregarded and the legislation directly contradicts our recommendations is appalling. We were willing to continue the dialogue and contribute to collaborative bills; however, we were not further consulted.

This bill represents a fundamental shift in how we are overseen and regulated. It is a different practice and standard. We recommend S.B. 372 not move forward.

NATHA ANDERSON (Washoe Education Association; Nevada State Education Association):

We represent teachers, counselors, nurses, deans and education support professionals across the State. The Nevada State Education Association agrees with the NvSCA in its opposition to S.B. 372. We appreciate the effort to try to get financial help from Medicaid. However, as Senator Dondero Loop said, we have been in the classrooms, and the realities are not always what they are on paper.

We are concerned about the fact that the paperwork and the process would take away from the time our counselors have to meet with students, which is the most important thing a counselor does. As Ms. McGill pointed out, we are always asking for more help. However, we believe this measure makes it harder for us to actually provide those services.

SENATOR SETTELMAYER:

I know Senator Seevers Gansert reached out to the Washoe County School District and the Clark County School District. Are you saying that neither of them bothered to reach out to any of you? I see you shaking your heads no.

MS. KILLIAN:

That is correct. None of the three associations have had a conversation regarding this bill until yesterday when the NDE asked if we would sit in on a phone conversation. I spoke with Senator Seevers Gansert on Monday. There were no conversations with any of the associations prior to that.

SENATOR SETTELMAYER:

That is sad. The sponsor of the bill tried to do the right thing by contacting the school districts. I would have assumed that if I contacted the school districts, they would have reached out to you. I know she would like to work with you to find an answer.

WARD DRUSEDUM:

I have been a school counselor with the Clark County School District for 11 years. I am overworked. My caseload is well over 500 students.

I have a couple of concerns about S.B. 372. One is with the licensing provisions. You are going to have a board full of marriage and family therapists overseeing and setting policy for educators. I am an educator, and I wonder

what they know about education. The other concern is my caseload. I interact with students every day. I usually do my paperwork at night, and I usually choose to work off contract hours. I am concerned that this is going to put an undue burden on me and all school counselors. It will take time away from what we should be doing: focusing on academics, social/emotional health and career issues. With this bill, I am afraid we will spend most of our time being glorified bill collectors for the State.

KRISTIN BARNSON (President, Nevada School Counselor Association):

The NvCSA will not support any proposal for school counselor licensure to be moved to the clinical board, or a dual license, or even a practitioner's choice of license. We request that school counselors be completely taken out of this bill. School counselors are educators, and they need to be licensed by the appropriate education agency. Changing our license would fundamentally change the role of the school counselor in Nevada.

The rationale for the move is to give schools the ability to bill Medicaid to fund more positions. However, Medicaid funding can only go to specific services for specific Medicaid-eligible students. This bill would severely limit the role of the school counselor from working with all students in all domains, specifically the college/career and academic domains. This is an extremely important issue.

We have been working in collaboration with our national association, the American School Counselors Association. They fully understand the pros and cons of reimbursing for Medicaid services and becoming an eligible provider, and they understand what services are reimbursable under Medicaid. They have shared with us that we can bill Medicaid without needing to change our licensing body. We would not ask the dental board to license a cardiologist. The scope of their work is different.

Staffing ratios are a concern in Nevada, as they are in the rest of the U.S. This is not a solution.

GWYNNE PARTOS:

I am a school psychologist in Nevada, and I am opposed to S.B. 372. It is problematic to create legislation changing the oversight and licensing of a profession without involving practitioners of that profession in the discussion. I believe this bill is intended to increase the ability of school districts to bill Medicaid for the services of school psychologists, but it is unnecessary and

creates more problems than it solves. There are 33 states in which school psychologists, licensed by their departments of education, are recognized as able to bill Medicaid.

It was stated that the bill does not have an impact on or change our licensing requirements or duties. I respectfully disagree. The Board of Psychological Examiners has issued a conceptual amendment ([Exhibit K](#)) stating that the language of S.B. 372 does not address the scope of practice of school psychologists. I agree with Senator Dondero Loop that this bill does indeed put up barriers. It does not make sense for the Board of Psychological Examiners, which regulates professionals who practice in clinical settings, to oversee professionals who work in educational settings. The needs and demands of school are very different, which is why our licensure should continue to be overseen by the NDE.

I have been a school psychologist for 18 years in two states. I work at a specialist level, and like the majority of school psychologists in Nevada, I do not have a doctorate degree. It is unclear to me how this bill would affect me, my colleagues and new professionals entering the field. There is already a shortage of school psychologists in Nevada, and this bill exacerbates that problem. It does nothing to improve student outcomes and would in fact be deleterious to students.

I share Chair Spearman's hope that Nevada's per-pupil funding will increase in the future. I disagree that S.B. 372 will be helpful to student outcomes.

EDDIE HAYCOCK:

I have worked in Nevada for 11 years as a school counselor and 5 years as a school psychologist. I am in opposition to this bill and echo what others have said in opposition.

I had the opportunity to work at a school doing crisis recovery work, coordinating mental health services after a school shooting. The roles of the school counselors in that situation were completely different from the roles of marriage and family therapists. We are educators first; we provided educational support and resources for students. We are not here to provide intensive one-on-one therapy with students. My concern is if we are changed to the professional board, that is what we will be expected to do.

THEO SMALL (Clark County Education Association):
We oppose S.B. 372.

There are two points that have not been made. First, the Commission on Professional Standards in Education, which reports to the NDE, currently includes a member who is a school counselor. Second, through the Nevada Educator Performance Framework, we have piloted an evaluation system based on national standards for school counselors, psychologists and social workers. That work is important, and we need to keep it where it is.

HELEN FOLEY (Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors):

We are neutral on S.B. 372. I have written testimony ([Exhibit L](#)) from Jake Wiskerchen, President of the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors. This board knows nothing about the profession of school counselors, who are primarily educators. If they came under our board, the marriage and family therapists and clinical professional counselors would have to supervise those interns. We do not know their profession; it is very different.

VELYNDA KIMES:

I am with the Clark County Education Association and have been a school counselor for five years. I am opposed to this bill. My concern with the idea of a pilot program is that we do not know which schools will be involved. Each school has different populations and different needs. We also do not know what will constitute success for such a pilot.

MORGAN GLEICH (Executive Director, Board of Psychological Examiners):

We are neutral on S.B. 372. Should the Legislature move the regulatory authority and oversight of school psychology personnel to our Board, we are more than willing to step forward. We believe we have not only the resources but the experience to put in place a system for oversight much like four other states in the U.S. This bill allows the Board to provide supervision and monitoring to a profession that provides a necessary service to school children in Nevada.

We have three issues with S.B. 372: the fees are not clearly stated, the scope of practice is not clearly defined and the term "school psychologist" should be

more clearly defined as a licensed specialist in school psychology. [Exhibit K](#) includes language from Texas that might be helpful in resolving these issues.

SENATOR SEEVERS GANSERT:

I am hearing from these testifiers that we want to work on getting more money to mental health. This bill, especially as a pilot with voluntary participation, would help with that.

I apologize for the disconnect. We did have folks representing the different professions at meetings, but it appears they did not reach out to the professional associations. Obviously, we could have done that better.

CHAIR SPEARMAN:

For those who were unable to testify on this bill, we will include your written testimony ([Exhibit M](#), [Exhibit N](#), [Exhibit O](#)) in the record.

I will close the hearing on S.B. 372 and open the hearing on S.B. 302.

SENATE BILL 302: Revises provisions relating to personal information collected by governmental agencies. (BDR 52-547)

SENATOR SEEVERS GANSERT:

I am presenting this bill in tandem with Ira Victor, who has more than two decades of information security and digital forensics experience. He is a partner in a Nevada-based consulting firm and is codeveloper on multiple U.S. patents related to information security. His professional background includes work in electronic payments systems, enterprise mail hosting, incident response, digital forensics and e-discovery, which is a legal term referring to the discovery of electronically stored information in response to a lawsuit or investigation.

Mr. Victor came to me last summer with concerns about the security of some of the personal identifying information (PII) gathered by the State. This bill is an effort to try to reduce the probability of a breach. You can never be completely certain that you are not going to have a breach, but S.B. 302 would help the State reduce that risk.

We have distributed Proposed Amendment 5519 ([Exhibit P](#)). I will walk you through the bill and the amendment.

Section 1, subsection 2 of the bill states governmental agencies that maintain records including personal information, which would include name, address, social security numbers and income, must:

... comply with the current version of the CIS Controls as published by the Center for Internet Security, Inc. [CIS] or its successor organization, or corresponding standards adopted by the National Institute of Standards and Technology [NIST] of the United States Department of Commerce.

Those are national standards we should be following whenever we collect and maintain this type of information. The amendment adds the words "to the extent practicable" to this provision because we know compliance can be costly.

Section 3 of the bill provides for a waiver process. Mr. Victor will explain why there may be concerns about electronically transmitting information from individuals or small businesses. Such waivers would allow individuals to provide information in writing instead of in an electronic upload and would be in effect for two years.

The amendment also changes the effective date. We moved it to January 1, 2021, so State agencies can work toward these standards to the extent practicable with the funds they have available.

IRA VICTOR (Discovery Technician, Inc.):

I am an expert in information security and digital forensics, the science of determining the path of digital data. I work with businesses in Nevada, many of them small businesses, that have had challenges protecting data. I have a presentation ([Exhibit Q](#)) to help explain the need for this bill.

I and some other professionals helped Senator Valerie Wiener back in 2005 on S.B. No. 347 of the 73rd Legislative Session, which created NRS 603A, the Nevada Data Breach Notification law. We helped Senator Wiener create a safe harbor for companies that took good measures to protect the information they had with encryption. That law had to do with identity theft, which by comparison was a fairly simple problem.

In the ensuing years, cybercrime and cybercriminals have become much more sophisticated and creative in how they attack. Most people are aware of this problem, but not of the sheer dollar volume. The amount of money being lost globally is projected to reach \$2.1 trillion in 2019 alone.

Cybercriminals target individuals, businesses and governments. Because larger entities have greater security on their systems, criminals are targeting small businesses and individuals as a way of carrying out attacks on the larger entities. For example, if you are a business and you authenticate to your bank online, the bank says, "Yes, this is our customer, and we need to allow them to gain access to certain information." Cybercriminals have found a way to use that as an entrée to get access to the bank's systems. That business has just become an unwitting accomplice to cybercrime, and in addition to the damage done to the business and the bank, the business may end up in litigation.

Small businesses and individuals are most susceptible to this because they do not have armies of people to set up their systems and protect their data. In many small businesses, the person who is responsible for information technology (IT) is the same person in charge of human resources and operations. It is challenging for one person to master all those fields, so they get along the best they can. Software is being developed to help improve cybersecurity, but invariably it is designed for big companies and is too expensive for small businesses. When I have reached out to those developers asking for help for a company with 20 employees, they are not interested and tell me they have nothing for that situation because the return is too small. It is a real challenge for individuals and small businesses to even begin to protect their data, so a lot of them remain unprotected.

When someone who has relatively poor security on their network connects with a State system and sends potentially malicious traffic to a State system, or a bad guy impersonates a resident of Nevada and tries to get into a State system, the results can be catastrophic. In addition to downtime for the State agencies, recovering from a severe cyberattack can be expensive, and the loss of public confidence is high. The City of Atlanta, Georgia, suffered a major cyberattack in 2018 that took down critical systems in the city. People wondered how Atlanta could have succumbed to such a severe cyberattack. One of the ways criminals did it was by worming their way in through connections or communications with the state that the state thinks are legitimate but which are not.

We cannot stop all the bad guys, but we can make it harder for them. That is what S.B. 302 is aiming to do. Section 1, subsection 2 of the bill refers to CIS Controls. The CIS is a nonprofit organization and provides its CIS Controls for free. These controls are a minimum standard to protect information systems. We also refer to the NIST standards, which set a higher bar. State agencies are encouraged to move to either one of those standards, and there is a lot of crossover between the two. If you are compliant with NIST standards, you are compliant with CIS Controls, and vice versa.

The amendment to this section of the bill, as seen on page 2 of [Exhibit P](#), is practical. If it is not possible for an agency to meet all of the CIS or NIST standards, this amendment gives them the ability to meet the standards they can and implement the others as it becomes possible. This gives agencies flexibility while still moving the State toward these controls. Nevada has a great chief information security officer, Bob Denhardt, who is with the Division of Enterprise Information Technology Services, Department of Administration. He is familiar with CIS and NIST controls and is a good resource for more information about these controls.

Section 3, subsection 3 of the bill creates an opt-out provision. Let me give you a practical example. Imagine a Nevada business with 20 employees. Until last summer, if the business felt it could not adequately protect the electronic information on its systems regarding its employees—social security numbers, payroll information and so on—that business could send the info to the Department of Employment, Training and Rehabilitation (DETR), via paper rather than electronic transmission. As of July 2018, DETR has been requiring that information to be sent electronically. Businesses can apply for a waiver for a year, but granting such a waiver is at the discretion of DETR. [Exhibit P](#) extends the term of that waiver to two years to give the business time to fix the security problems. Keep in mind that when a business sends in that information, it is not just the business at risk, it is also all of its employees whose PII is being transmitted to DETR.

Regarding section 4 of the bill, the State already has provisions around the protection of PII. We are not breaking any new ground here; we are just defining what happens with that data.

Section 2, subsection 1, paragraph (c) of the bill enables an audit mechanism to see where the State agencies are in this process.

SENATOR SEEVERS GANSERT:

We brought this bill because the State gathers a great deal of personal information, whether it is DETR, the Department of Taxation or the Department of Wildlife, which collects PII when issuing hunting and fishing licenses.

JEN CHAPMAN (Recorders Association of Nevada):

We are neutral on S.B. 302. I have written testimony ([Exhibit R](#)) expressing some of our concerns about the original bill. We brought those concerns to the sponsor of the bill, and she has addressed them in [Exhibit P](#).

We think it is a great thing to move toward the CIS and NIST standards. The amendment allows us to work toward that higher bar to protect data. We are already doing everything we can at a county level. We will continue to try to reach those higher standards. We appreciate the intent of this bill.

RENÉE OLSON (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

We are in the neutral position on this bill. We are highly committed to protecting the data we secure within the Employment Security Division. We maintain a lot of PII. We felt the original language of the bill had possible fiscal, process and efficiency impacts in two fairly significant areas of the Unemployment Insurance program, which would be our claims processing and our quarterly tax reporting by employers. I am happy to follow up with details on those two issues if desired. The proposed amendment in [Exhibit P](#) alleviates those possible issues.

As noted, current regulation provides a waiver for one year. Currently, out of 70,000 employers, 6 have requested waivers due to security concerns, and we have granted those waivers. We will be amending our regulations to address the 24-month period outlined in [Exhibit P](#). We do not have any other concerns at this time.

CHAIR SPEARMAN:

Did you say there would be a huge fiscal impact?

MS. OLSON:

There is a possible fiscal impact, but it is not huge. We are unable to determine the size of that impact at this time because we do not know how many people would opt to file via paper in lieu of electronic filing. If paper filing is significant,

we may need to create a secured process to receive the information. At this time, we cannot determine what the fiscal impact would be.

CHAIR SPEARMAN:

Please work with the sponsor of the bill to address that issue.

BRIAN MCANALLEN (City of North Las Vegas):

We share some of the same concerns voiced by Ms. Olson. We had some concerns with the original bill, but the amendment in [Exhibit P](#) resolves a lot of our concerns. We are extremely concerned about cybersecurity in North Las Vegas. Local governments are under a major threat, and we are targeted all the time. This bill is well-reasoned and attempts to increase our standards and move us in the right direction. I think the amendment is helpful, and we appreciate Senator Seevers Gansert working on this issue.

DEBBIE CONWAY (Clark County Recorder):

I am a member of the Recorders Association and agree with its neutral position. Initially we were opposed because of the timeline and the amount of resources it would have taken to implement this bill. The amendment in [Exhibit P](#) allays our concerns.

JIM PIERCE (Assistant County Clerk, Clark County):

I am neutral on S.B. 302. I came to this meeting prepared to speak against the bill because of the short time frame. The proposed amendment in [Exhibit P](#) gives us more flexibility. We have had a great experience over the last ten years with the credit card industry and have reached payment card industry (PCI) standard compliance. In Clark County, all the departments working with IT have spent a lot of time and money becoming PCI compliant. We finally became 100 percent compliant last year, and we are going to put a lot of effort into continuing that. From our standpoint, the intent of this bill is good. We have a lot of information we feel we need to protect. Following these standards will make a lot of sense.

The timeline is crucial. For a county the size of Clark, we are looking at a lot more than a year or two to get this implemented.

KIMBERLY GAA (Administrator, Information, Development and Processing, Department of Employment, Training and Rehabilitation):

I am neutral on S.B. 302. My concerns had to do with the original language of the bill. We have not had enough time to digest the amendments in [Exhibit P](#)

and understand the potential scope of the compliance aspects within the standards. I wanted to put on the record that DETR is committed to making sure all information is as secure as possible. We want to take a closer look at this, and we have a pending meeting with Senator Seevers Gansert to that end.

MR. VICTOR:

The speaker from Clark County noted that Clark County has met the PCI standards. I have a chart ([Exhibit S](#)) that maps the CIS Controls against other information security standards. If an agency is in compliance with the PCI standard, they can compare those to the CIS standards and see where they stand.

SENATOR SEEVERS GANSERT:

My understanding is that if you are compliant with the PCI standards, you are compliant with the CIS controls.

I appreciate the testimony from DETR. As you heard, they already have a waiver system; this bill just makes it two years instead of one. I would not expect DETR to have a significant fiscal impact from this bill. The intent of S.B. 302 was to put this concept on the radar and make people aware of how important it is that we be as secure as we can, given the information we collect every day.

CHAIR SPEARMAN:

I will close the hearing on S.B. 302 and open the hearing on S.B. 412.

SENATE BILL 412: Makes various changes to provisions relating to certain amusement devices. (BDR 52-1049)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

A former employee of the Gaming Control Board (GCB) came to me and asked about these items called amusement devices. A gambling game is defined in NRS 463.0152 as "any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value." In 2017, the American Amusement Machine Association put out a "Fair Play Pledge" stating that games are supposed to be fair—that is, every player has an opportunity to win through skill. As it happens, some amusement games are rigged. It has been

said that you have a better chance of winning on a slot machine than you do on an unregulated amusement game machine.

We live in a State that understands gambling. In 2015, Florida passed the golden standard of fair play for amusement game devices or machines, called the "Family Amusement Games Act." The final text of this Act is included in the proposed amendment ([Exhibit T](#)) that was submitted. With the crush of bill drafting, we were not able to model S.B. 412 after the Florida bill, but the amendment is to use the text of the Florida Act in this bill. It then dovetails with the Nevada language instead of the Florida language.

I have also distributed a collection of photographs ([Exhibit U](#)) showing a number of amusement devices. On page 1 of [Exhibit U](#), you see an amusement device that has an iPad as one of its prizes. Other prizes include an Apple TV, a Nintendo game system, a Coach purse, a Predator drone, an Xbox 360, a Galaxy tablet and dozens of gift cards worth \$150 each. Page 4 shows a machine full of high-end sneakers worth \$1,000 or more, and page 6 shows a machine with a prize of a \$100 bill.

It used to be if you put money into a machine in hopes of getting \$100 or more, that was called gambling. These machines are not taxed or regulated as gaming devices; they are amusement devices and are taxed on the value of the prizes only rather than on their returns. Page 7 of [Exhibit U](#) shows advertising from the company that makes these machines. According to this ad, they cost around \$3,500 and "can easily pull in \$2000+ a month in cash." You can program the machine to set the number of tries before players win, from 1 to 9,999. Winning is not based on skill; it is based on chance and how the owners have programmed the machine. This is clearly gambling.

The original bill language considered having parents accompany children who play these games, which is not what we want; we do not want parents training their kids how to gamble. I will ask the person who brought this issue to my attention to walk you through the Florida bill.

JUDI MORAVEC:

I retired last year after 33 years with the GCB as a special agent in the Enforcement Division. Among my duties were the transportation and use of slot machines in other states. I assisted federal investigations into illegal gambling devices. As part of my duties, I came across these so-called amusement skill

machines many times. We did not have a problem with such machines as long as they operated for a nominal price.

In 2013, it was estimated that amusement machines had become a \$60 billion industry. More than 21 states have now addressed amusement games by regulation. Nevada is one of the only states that does not address these amusement devices in any way. The only mention of amusement or arcade machines in the NRS came about when a child was murdered in Primm, Nevada. At that time, a statute was enacted mandating extra security watching over arcades in casinos. Other than that, we have never addressed them.

From time to time, complaints come in from parents about these machines. One machine we started to watch is called Key Master, which is often found in theaters, malls, markets and on the public paths in outdoor malls. It is built by companies outside Nevada. Key Master machines offer prizes worth more than \$1,000 and charge \$5 per chance. We obtained a manual for one of these machines, and the operator can set the machine so it only pays off once every 9,999 tries.

These machines are usually set when they are sold to the customer at a default of 700 losses before it will give up one win. They call them skill machines; however, the machines are built so that no matter how great your skill, the machine will not let you win unless you happen to be the 701st customer. There are usually 3 levels of prizes with the most valuable prizes on the top.

In Arizona, police seized 25 of these machines in an investigation against one operator. The court case on this matter ran on for quite awhile. Other states have gone up against companies like Dave & Buster's and Chuck E. Cheese. Their machines had a loss limit of 2,500 tries before one win.

The children and parents who are using these devices sometimes get pretty savvy, and that is when they call the GCB. I remember one gentleman in particular who said, "These things are gambling devices, so this is your problem. My kid has played this thing so long to get an iPad that I could have bought him three iPads."

We sent some of these machines to our lab, and the technicians declared them to be gaming devices. The case went to the AG's office, which also said they were gaming devices. I looked at statutes in more than 20 states, and Florida

finally came up with language the industry was happy with. I do not know if Florida has a regulatory entity enforcing or inspecting amusement devices. New Jersey has an Amusement Game Board that inspects, enforces, taxes and regulates amusement games, including boardwalk games, to make sure they are fair and honest.

The Florida law has all the things I think Nevada needs, though there will need to be some changes; for example, they classify amusement devices into types, and I do not know if we need to do that. The gist of it is that we need to stop the rigging and set a limit on the value of the prizes.

They call these machines storefront or prize redemption machines. They got popular when operators saw how much they could make by having the prize itself drop out of the machine, which meant they did not need to hire someone to redeem tickets and hand out prizes. These machines were first made by Sega, and Sega was sued for fraud because of the rigging and cheating that occurs when operators set the odds so high. Sega no longer makes these machines, but there are companies making knock-offs. They sell them here in Nevada. One company offered me three machines at a cut-rate price; they only asked if I had places to put them.

Another type of amusement device you may have seen is the Wedges & Ledges pusher machines, which you can sometimes find in laundromats and markets. When we examined them, we found that the quarters were glued to the platform so they could not be pushed off. They also had diverters so the coins that were pushed off never reached the payout slot. In addition, there was a transparent shield that stopped the quarters from dropping over the edge. We took all of those machines out of the State. We were able to do this because we could define it as a gambling device that had been approved by the State and was currently being played in some casinos.

There are thousands of these amusement machines in use in Nevada right now. We need to clean up the existing amusement skill games operating now. The Amusement Expo International is being held right now in Las Vegas. It is a huge exposition where they are selling these machines. They will sell machines that are not just able to be rigged, but tailor-made to fit each state's laws. There are ways of making these true skill machines with prize limits as outlined in Florida's laws. Florida has tied the prize limit to the state's inflation index, which they adjust every year. Some states have prize limits as low as 75 cents.

I would recommend we sit down with the industry and come up with some good language using the Florida act as a model to address all the machines currently being played and those that will be made in the future.

As I said, this was a \$60 billion industry back in 2013. Articles have been written about the way Nevada has ignored amusement games. They scorn the GCB and call these arcades and amusement centers "kiddie casinos." They accuse us of doing this deliberately to get our children addicted to gambling. The Key Master machine is advertised as the most addictive amusement machine out there.

SENATOR SETTELMAYER:

I remember as a kid going to the children's area of Circus Circus in Reno. Does this bill jeopardize the carnival-type games at Circus Circus or similar venues? I am thinking of games where you inflate a balloon or knock over milk cans and so on.

Ms. MORAVEC:

The regulation they have on the books in Florida specifically addresses electronic games. In New Jersey, they include the type of games you describe. Florida's law was started in 2010 and has gone through three changes since then in response to lawsuits from the industry. The final version came out in 2015.

JOHN PIRO (Deputy Public Defender, Clark County Public Defender's Office):

We are opposed to S.B. 412 if the Florida law is used. In the original language, the bill created a new misdemeanor for this type of offense. However, the Florida language creates a felony on a graduated scale. We are concerned about the impact of that portion of the bill. If that provision is removed, we will have no concerns about the bill.

We are definitely not excited about games that cheat children out of their money, but we are concerned about the felony penalty. We will meet with the sponsor of the bill to work this out.

SENATOR HARDY:

I appreciate Mr. Piro's input. I do not want to have something put in place right now. There has to be a phase-in process with involvement by the industry and

the GCB. I look forward to having hearings so people can digest what we are proposing. As NRS 463.0129, subsection 1, paragraph (c) states:

The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming and the manufacture, sale and distribution of gaming devices and associated equipment are conducted honestly and competitively.

These amusement devices can clearly be described as gaming devices. If we keep the definition of a family amusement device and require them to be skill-based rather than chance-based, that will solve many of these problems.

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CHAIR SPEARMAN:

I will close the hearing on S.B. 412. Is there any public comment? Hearing none,
I will adjourn at 3:21 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	10		Attendance Roster
S.B. 161	C	1	Senator Ben Kieckhefer	Proposed amendment
S.B. 161	D	1	Senator Ben Kieckhefer	Chart
S.B. 161	E	1	Matthew Digesti / Blockchains, LLC	Written testimony
S.B. 161	F	4	Chris Ferrari / Intuit	Proposed amendment
S.B. 161	G	1	Elliot Malin / Nevada Technology Association	Written testimony
S.B. 161	H	17	Sophia Romero / Legal Aid Center of Southern Nevada	Information packet
S.B. 372	I	2	Senator Heidi Seevers Gansert	Proposed amendment
S.B. 372	J	2	Emma Dickinson / Nevada Association of School Psychologists	Letter of opposition from National Association of School Psychologists
S.B. 372	K	6	Gwynne Partos / Nevada School Counselors Association	Conceptual amendment from the Board of Psychological Examiners
S.B. 372	L	1	Helen Foley / Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors	Written testimony from Jake Wiskerchen, Board President
S.B. 372	M	1	Senator Pat Spearman	Written testimony from the Nevada State Education Association
S.B. 372	N	1	Senator Pat Spearman	Written testimony from Laura Hale
S.B. 372	O	2	Senator Pat Spearman	Written testimony from Bob Peinemann
S.B. 302	P	6	Senator Seevers Gansert	Proposed Amendment 5519

S.B. 302	Q	10	Ira Victor / Discovery Technician, Inc.	Presentation
S.B. 302	R	1	Jen Chapman / Recorders Association of Nevada	Written testimony
S.B. 302	S	2	Ira Victor / Discovery Technician, Inc.	Chart
S.B. 412	T	8	Senator Joe Hardy	Proposed amendment
S.B. 412	U	7	Senator Joe Hardy	Photographs