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

Eighty-First Session
April 30, 2021

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:03 p.m. on Friday, April 30, 2021, Online and in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Sandra Jauregui, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblywoman Venicia Considine
Assemblywoman Jill Dickman
Assemblywoman Bea Duran
Assemblyman Edgar Flores
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Susie Martinez
Assemblywoman Elaine Marzola
Assemblyman P.K. O'Neill
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

Assemblyman Jason Frierson (excused)

GUEST LEGISLATORS PRESENT:

Senator Nicole Cannizzaro, Senate District No. 6
Senator Roberta Lange, Senate District No. 7
Senator Dina Neal, Senate District No. 4

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Sam Quast, Committee Counsel
Terri McBride, Committee Manager

Paris Smallwood, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Matt Robinson, representing Nevadans for Data Privacy
Matthew Walker, representing AT&T Nevada
Jeanette Belz, representing American Property Casualty Insurance Association
Jimmy Lau, representing Verizon
Cameron Demetre, Executive Director, TechNet
Mackenzie Warren, representing Consumer Data Industry Association
Dylan Keith, Policy Analyst, Vegas Chamber
Beth Slamowitz, Senior Policy Advisor on Pharmacy, Department of Health and Human Services
Connor Cain, representing Comprehensive Cancer Centers of Nevada
Cari Herington, Director, Nevada Cancer Coalition
Laura Rich, Executive Officer, Public Employees Benefits Program
Alexandria Dazlich, Director of Government Relations, Nevada Restaurant Association
Jeff Trent, Vice President of Operations, Hash House A Go Go
Randi Thompson, State Director, National Federation of Independent Business
Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada
Terry Reynolds, Director, Department of Business and Industry
Jennifer Lazovich, representing DoorDash, Inc.
Rose McKinney-James, representing GrubHub

Chair Jauregui:
[Roll was called. Committee protocols were explained.] Members, we have a short agenda today. We have three bills for hearing and one bill for work session. We are going to go ahead and move right into the bill hearing portion of our meeting. I see that we have our first presenter here. I am going to open the hearing on Senate Bill 260 (1st Reprint), which revises provisions relating to Internet privacy. Majority Leader Cannizzaro, when you are ready, the floor is yours.

Senate Bill 260 (1st Reprint): Revises provisions relating to Internet privacy. (BDR 52-253)

Senator Nicole Cannizzaro, Senate District No. 6:
I am pleased to be here today with you to introduce Senate Bill 260 (1st Reprint), which proposes to expand statutory prohibitions of the sale of certain personally identifiable information of a consumer. Along with me, Madam Chair, joining us via Zoom, is Matt Robinson, who would like to give some comments on the background of the bill, and then the two of us would be able to answer any questions once we are finished with the presentation. By way of background information, I think it is not uncommon for those of us who have spoken with our constituents to hear them express frustration over the increased

number of sales and robocalls offering services or products related to searches that had been conducted while on the Internet. Likewise, just the mention of a product nearby your cell phone may result in a targeted ad on social media.

These situations happen because a person's personal information that we think is protected was most likely sold to several different data brokers. Data brokers are companies that collect a person's personal information and resell it to other companies for marketing purposes. These data brokers do not have a direct relationship with the consumers whose data they have collected, so most people are not even aware of what is happening.

Unfortunately, consumer data is also an extremely lucrative industry. According to TechCrunch, data brokering is a $200 billion industry. Over time, a single email address can be worth an average of $89, and this value can more than double if a person is a frequent traveler. Because it is such a lucrative business, there are over 4,000 data and information broker companies worldwide.

Most well-known data brokers do offer an opt-out option for people to remove part or all of their data from being published, while others may try to hide it deep in their privacy policy or not post an option at all. Of course, the most effective way to avoid information leaks would be to simply go fully off the grid, get a burner phone, only use a P.O. box, and change your name to Jane Doe. For most of us, that is just not a feasible answer. That is why it is so important to do everything within our power to limit the reach of those data broker websites where it is not wanted.

During the 2019 Session, the Legislature enacted Senate Bill 220 of the 80th Session to prohibit an operator of a website or online service from selling certain personal identifiable information collected from a consumer if the consumer submits a verified request to the operator directing the operator not to sell such information.

I brought forth Senate Bill 220 of the 80th Session after my constituents had expressed some of those same concerns about the privacy of their personal identifiable information, and now Senate Bill 260 (1st Reprint) takes the next step in protecting our constituents' personal information. It prohibits a data broker from selling that personal identifiable information if a consumer submits a verified request to the data broker directing them not to sell such information.

I would like to briefly walk the Committee through the sections of the bill. Section 1.5 exempts fair credit reporting and fraud prevention organizations, publicly available information, and information and data processes pursuant to the federal Driver's Privacy Protection Act of 1994 from the provisions of this bill. Quite simply, the reason for those exclusions is that data is already covered under those particular provisions. Section 2 defines a data broker as a person primarily engaged in the business of purchasing covered information about consumers who reside in this state from operators or other data brokers and making sales of such covered information.

Section 3 requires a data broker to establish a designated request address where a consumer may submit a verified request, which directs the data broker not to sell any covered information about the consumer that the data broker has purchased or will purchase. A data broker who receives such a request is prohibited from selling any covered information about that consumer that the data broker has purchased or will purchase. Furthermore, a data broker is required to respond to a verified request within 60 days of receipt. Section 3 allows a data broker to extend the period to respond to a consumer by 30 days if the broker determines that an extension is reasonably necessary, but the data broker is required to notify the consumer of the extension.

Section 10 provides that if an operator of a website fails to make available to consumers a notice regarding collected covered information, they may remedy such a failure within 30 days after being informed and only if it is their first time failing to comply with those requirements. Section 11 makes it an unlawful act if the operator of a website continues not to provide the notice regarding collected information within 30 days and if they knowingly fail to comply with the requirement of such notice.

Section 12 authorizes the Attorney General to seek an injunction or a civil penalty against a data broker who violates these provisions. If the Attorney General has reason to believe the data broker has violated or is violating the provisions of section 3, then they may institute an appropriate legal proceeding. Section 12 also provides that a district court that finds the data broker has violated section 3 of this act may issue a temporary or permanent injunction or impose a civil penalty.

We also submitted to this Committee two amendments that were worked out as of yesterday [Exhibit C and Exhibit D]. I think we are still making sure that the language accomplishes what we are trying to accomplish with those two amendments. You will see one that I believe was submitted by Mr. Robinson, then one that was submitted on my behalf. These came from concerns after various stakeholder group meetings. The first amendment deals with some of the telecommunications industries that we had been speaking to. It clarifies the definition of a data broker [Exhibit C]. The intent of this language is to help it mesh with two other states that have implemented very similar laws so those definitions match and we know exactly whom we are talking about with respect to data brokers.

There is an amendment to section 4 that is a technical correction to avoid confusion between the data broker provisions of this bill and what currently exists for operators. The amendments to sections 10, 11, and 12 further align the intent on clarifying the right to cure provisions. Those are provisions that will be enforced by the Attorney General; they extend the application of the cure provision to data brokers. They make sure we are providing that appropriate notice so the Attorney General can implement those.

There is also an amendment [Exhibit D] that we have submitted for your consideration as well that is friendly and includes the exemptions information that is otherwise covered by the federal Fair Credit Reporting Act (FCRA) and the Gramm-Leach-Bliley Act (GLBA) that also complies with how this law is structured for operators as a result of Senate Bill 220 of

the 80th Session. Those types of data and information are already regulated under those provisions. I would like to turn it over to Mr. Robinson to add any additional comments, and then we would be happy to take any questions.

Matt Robinson, representing Nevadans for Data Privacy:
I will be very brief. The Majority Leader did a great job of walking through the sections of the bill. Just a bit of background on this: The conversation and work on this started a couple of years ago during the 2019 Session as Senator Cannizzaro alluded to with Senate Bill 220 of the 80th Session. We looked at that as a great first step toward achieving security for Nevadans' data and their personal information. As with anything over the course of a couple years of being implemented, we went through and noticed some ways we might be able to strengthen this and do it in a way that was good for everyone. That is what you see in front of you today in the form of S.B. 260 (R1).

There are three main goals here. The first one is to define data brokers and bring them into the fold under the scope of this bill. Current statute only covers entities that collect your data or info through a website or web page and inadvertently omit those that go out and purchase your data—often wholesale. They will then go sell it to other folks who may sell it to other people or use it to target you for specific products or services. We thought it was important that everyone be treated the same under the eyes of the law in this.

The second thing that we are trying to do here is we are expanding and clarifying the definition of sale. Again, in current statute, resale is the condition of qualification here. That initial sale or exchange of data is not currently covered. Your data is your data, and a sale or transmission of that is a sale or transmission of that. We believe that first sale should be included in this provision as well.

Third, there is a right to cure period in current statute. It is 30 days, and we think that is a good thing. People make mistakes, companies make mistakes; it is the nature of business. We heard from some of our stakeholders, specifically a group called the Electronic Frontier Foundation, that it appears some entities and operators were perhaps taking advantage of this and it was not having the desired deterrent effect but was more of a loophole to continue operating how they have been without rectifying that behavior. What we do in S.B. 260 (R1) is go through and clarify that you are afforded this right to a cure period once. Moving forward, you will be expected to operate in compliance.

I will leave with some parting words. I think this is the second step down the path that is probably going to be a fairly long conversation. This is a hot issue right now nationally. You have big tech companies coming before Congress to explain their actions and the way they operate. You have high-profile breaches, as in the recent Equifax breach. You have the popularity of a movie on Netflix called *The Social Dilemma*. This is a conversation that the country is having; it is a conversation that our citizens are having in Nevada. We expect this to be, again, the second step in a long list of things we can do in Nevada to help protect our consumers' digital information. You are your data; you are your information. This is important work. We appreciate Senator Cannizzaro for going down this path with us.

We had a great stakeholder group and it really was a delight to work with everyone to bring forward a bill that we think is good for business and consumers alike in the state of Nevada. With that I will stop and hand it back to Senator Cannizzaro, if she would like to say anything else.

Senator Cannizzaro:
At this point, I think we would be ready to take any questions the Committee may have.

Chair Jauregui:
Thank you, Senator Cannizzaro and Mr. Robinson. Committee members, any questions for our presenters?

Assemblywoman Considine:
Thank you so much for bringing this forward. I think everything Mr. Robinson said concerning everybody paying attention to this and being interested in this is right on, so I appreciate it. I have a couple of quick questions on section 3, "Each data broker shall establish a designated request address . . . ." How does somebody find that address?

Senator Cannizzaro:
This is a request address—and we went through this, too, with Senate Bill 220 of the 80th Session—they are required to provide on their website as a way for the consumer to contact them and say, Hey I do not want my data to be sold. It should be placed on the website in a readily available place where folks can find it.

Assemblywoman Considine:
My second question is on section 3, subsection 4. When they receive this letter and they have 60 days to respond, during that 60 days, can your data be sold or does somebody expect it not to be sold the day that they receive it?

Senator Cannizzaro:
That is a great question; it is not delineated in the language. We were trying to make sure they have enough time, as they receive a wide volume of these particular requests, that they would have the time to go through them and figure out where data exists and make sure it is removed. I do not think that is specifically addressed by this language, and it is a good question. My anticipation would be that they likely would be proceeding as they ordinarily would, so somebody's data may be subject to that. It certainly was not the intent. From either the broker or the operator side—which is what is in current law—we wanted to allow them time to find that data and then identify something that could not be sold.

Assemblywoman Hardy:
My questions are along the same line as my colleague regarding the address. That was my first question, where they would find it. So is that a physical address, not an email? Next would be the verified request: Is that a consumer simply writing a letter saying, Do not sell my information, or is it in anything more formal than that?

Senator Cannizzaro:
In section 7 it has the definition of a designated request address. We worked on this last session as well, so that it was a number of different things because smaller businesses may have a toll-free number that works better than a particular email address. So in that definition, it includes an electronic mail address, the Internet website, or a toll-free telephone number to submit that request. That was one of the concerns we heard last session with respect to where that information could be sent, and we wanted to make sure it would accommodate both smaller and larger folks into that definition, which now, as you can see in section 7, includes just data brokers. It would be the same for them; they could have a toll-free telephone number, an electronic mail address, or an Internet website for folks to be able to submit that.

I believe we left some of the definitions of the verified request a little flexible as well. You can see that in section 9. The verified request and what would have to be submitted is left pretty flexible with respect to that request, so that it is not overburdensome for the consumer to have to say, Well, I have this information, this information, this information. It has to be something the operator or the data broker could verify in that you are sending it from an email address, you give them your name, and they have your information. That is why there is also that flexibility in the time, as I mentioned for one of the previous questions, for them to be able to respond. But we left that flexible because we did not want to put in a bunch of parameters that would make it complicated for the consumer to be able to submit when they are really just trying to remove their information. It could be as simple as, This is my name and here is the email address I have been using to interact with your particular website or your particular service. We also wanted it to be something that, depending on the particular data broker or the operator, as it exists under current law would be able to adopt practices to verify what that was. It is intentionally left a little flexible for that reason.

Assemblywoman Hardy:
I appreciate that because we would not want it to have to be this exact wording, this exact way. The broker could say, Oh, well, we do not have to do it because it was not this specific phrasing.

Assemblywoman Kasama:
Thank you, Senator, this is really important. I know we are all concerned about our privacy. My question is, just stepping back one step, this is how we are going to send the information, but how do we find all these data brokers? Maybe you could give an example of that. If I am a consumer and I want to submit this, where do I go, how do I find them, because I would like to do that now.

Senator Cannizzaro:
I think we all do and that is the reason for bringing the bill. What we have put into the bill are, obviously, the parameters with respect to the verified request address and for people to be able to submit that. I think it is a good question, How do you know who exactly is selling your data? Obviously some of that is on the part of the consumer, too, when you are interacting with a website or with some place that you may be providing personal identifiable

information, to be able to go ahead and opt out that way. I do not know if Mr. Robinson has any further highlights that he might be able to put on that particular question. Some of this is on the part of the consumer to make sure they are protecting their information, just like you would not leave your credit card sitting out on a table or you protect your PIN [personal identification number] when you enter it as you are buying gas, that kind of activity. Some of that is on the consumer to go ahead and find that verified address and submit the request, but what we tried to do was make sure that is something that is readily apparent, available, and easy for the consumer to comply with. I do not know if Mr. Robinson has anything else to add onto that.

Matt Robinson:
That is an interesting question and it is part of the crux of this. This is such a pervasive issue. People are so digitally active nowadays and it really is difficult to pinpoint, especially when you are talking about operators in general. Data brokers are a little bit different. They are lead generators, they are background check websites, they are a different function than generally whom people interact with on a daily basis. The short answer is, it is very difficult to find out if a data broker has your data. As we have said, this is a first or second step down a somewhat long path to address these issues.

Some states have implemented data broker registries; I believe Vermont and California have those. There is a website consumers can go to and see if they have interacted with any of those companies, or they can go and theoretically send blanket requests to all of them and say, Should you ever come across my data, please do not disclose or sell it. I think that is something we are going to have to look at addressing down the road. I am not sure this bill does that, but it definitely gets us further down toward that angle of being able to identify these folks and take your data out of their possession.

Assemblyman O'Neill:
I hope this is a simple question because I am building upon what my colleague to my left had to say: how quickly can we enact this? The other side of it is, have any of the data brokers, et cetera, had any pushback on enacting the protections [unintelligible]? There is no enacting date on the bill, so it goes to the automatic date of October. I was just wondering, can we do it earlier? Is there some issue, data, or something else that we have to deal with first?

Senator Cannizzaro:
That is a great question I actually have not asked. I would venture to guess that one of the answers you may receive is they would need and want the time to be able to set up the verified request address and make sure they had processes in place to start processing any requests that did come through. Obviously, I think the sooner we can do something here to protect data, the better. Obviously, I would invite any answers to that question that may exist on the part of some of these data brokers. That would be my guess as to what one of the answers may be.

Assemblyman O'Neill:
The sooner, the better, if I may say so.

Chair Jauregui:
Members, any other questions? [There were none.] We will move into the support testimony portion of the bill hearing. Is there anyone in Carson City wishing to provide testimony in support?

Matthew Walker, representing AT&T Nevada:
AT&T, along with other wireless carriers, had some initial concerns with the consistency of the definition of data broker in this bill. After many hours of great conversation with Senator Cannizzaro and other stakeholders, we have reached a consensus amendment that you will find on the Nevada Electronic Legislative Information System (NELIS) [Exhibit C] that creates much more consistency and hopefully will also offer some additional clarity to consumers as these bills are rolled out across the country.

Jeanette Belz, representing American Property Casualty Insurance Association:
I want to thank Mr. Robinson for working on the amendment in NELIS [Exhibit D] regarding the changes to organizations that are already regulated through the federal privacy laws, including the Fair Credit Reporting Act and Gramm-Leach-Bliley Act. These help to protect those that are already regulated under the federal law, so it makes it all consistent.

Chair Jauregui:
Is there anyone else in Carson City? [There was no one.] Is there anyone on Zoom wishing to provide testimony in support? [There was no one.] Can we please check the telephone line?

Jimmy Lau, representing Verizon:
We would like to echo the sentiments of our telecom colleagues and thank Majority Leader Cannizzaro for working with us on the proposed amendment on NELIS [Exhibit C], especially regarding the definition of data broker. Thank you for your time, and have a good weekend.

Chair Jauregui:
Next caller? [There was no one.] Can we please check the telephone line for those wishing to testify in opposition, seeing no one here in Carson City and no one signed up on Zoom.

Cameron Demetre, Executive Director, TechNet:
TechNet is the national bipartisan network of tech CEOs and senior executives. It promotes the growth of the innovation economy and represents over 85 companies and 3.5 million customers. I have not seen the latest amendments. I would like to review those before I make my comments as relates to the data privacy broker component. But while we appreciate the recent inclusion of the Driver's Privacy Protection Act exemption, TechNet respectfully must continue to take an oppose-unless-amended position on S.B. 260 (R1). While we are still seeking additional federal exemptions included in other privacy laws, including the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act, from the previous stakeholder meetings, it was our understanding that data regulated by the FCRA would be

exempt from the measure. We believe this exemption is important as the federal law already provides robust protections for consumers while allowing responsible use of data for permissible purposes.

Additionally, we also previously requested that they would recognize data regulated by the GLBA, which is important both for compliance with federal law and for operational consistency among states. Non-financial institutions have data that is subject to the requirements of GLBA, and they receive the data from a financial institution pursuant to certain delineated uses that they pass on for uses expressly authorized by the GLBA. We are seeking additional clarity on the definition of data broker. It sounds like there are conversations that already have been productive in this rate, but TechNet advocates for a similar data broker definition to Vermont's in order to avoid a patchwork of definitions. [unintelligible] considered a data broker in the eyes of state legislatures. Lastly, TechNet is seeking a right to cure process consistent with other states that provides for the ability to [unintelligible] previous violation has occurred. The right to cure benefits consumers by incentivizing companies to be forthright and identify potential problems. For these reasons, we are opposed to this measure.

Chair Jauregui:
Next caller, please. [There was no one.] Seeing no one here in Carson City wishing to testify in neutral and no one signed up on Zoom, can we please check the telephone line for those wishing to testify in the neutral position.

Mackenzie Warren, representing Consumer Data Industry Association:
We want to recognize the sponsor, Majority Leader Cannizzaro, for meeting with Consumer Data Industry Association several times and for the general direction of the amendment thus far. These amendments really help keep a clear line between what is federally regulated and what is highly regulated by that framework, and then what is regulated by the state. Just a quick nod again to Senator Cannizzaro and to Mr. Robinson with Argentum for being so responsive. We are working on some further refinements to address those activities regulated by federal law, and we look forward to having those worked out and hopefully supporting the bill by the work session.

Dylan Keith, Policy Analyst, Vegas Chamber:
I wanted to thank the Senate Majority Leader for meeting with stakeholders and the Chamber to discuss the intent of the bill and the policy issue at hand. Based on the feedback we received from our members, the Vegas Chamber is neutral on the revised version of S.B. 260 (R1). We appreciate the efforts to narrow the definition of data broker and address the curing effect to be maintained at 30 days, which we support.

[Exhibit E was submitted but not discussed and will become part of the record.]

Chair Jauregui:
Next caller, please. [There was no one.] Majority Leader Cannizzaro, would you like to give any closing remarks? [Senator Cannizzaro did not wish to give closing remarks.] With that,

I will close the hearing on Senate Bill 260 (1st Reprint). The next bill on our agenda is Senate Bill 290 (2nd Reprint). I will open the hearing on Senate Bill 290 (2nd Reprint), which enacts provisions relating to prescription drugs for the treatment of cancer. Senator Lange, thank you for joining us, welcome to the Commerce and Labor Committee. When you are ready, the floor is yours.

Senate Bill 290 (2nd Reprint): Enacts provisions relating to prescription drugs for the treatment of cancer. (BDR 57-973)

Senator Roberta Lange, Senate District No. 7:
I am pleased to present Senate Bill 290 (2nd Reprint), which seeks to allow diagnosed patients with stage 3 or stage 4 cancer to be granted an exception to the step therapy protocols. Cancer is the second-leading cause of death in Nevada and in the United States. The incidence of cancer in Nevada is exacerbated by lifestyles of the state's population. According to the American Cancer Society, approximately 16,970 new cancer cases will be diagnosed in Nevada this year alone; approximately 5,410 cancer deaths will occur in this state in the year 2021; and the average annual age-adjusted mortality rate for cancer deaths per 100,000 persons in Nevada is 157 compared to the national rate of 155.5.

Individuals who have cancer face tremendous financial burdens to treat the disease. If they have health insurance, they may still find themselves owing thousands of dollars to health care practitioners and facilities. Individuals without health insurance face an additional burden of not being treated adequately for their disease because of their lack of insurance. In fact, the United Health Foundation reports 15 percent of our state's population avoids seeking care due to cost.

Health insurers provide coverage for health-related services, including prescription drugs, but patients also must follow certain utilization management processes before coverage of service begins. These practices are currently known as "step therapy" or "fail first" protocols. Generally, health insurers use step therapy to lower costs, while health care practitioners tend to prescribe the most effective treatment for their patients but may not place a priority on prescribing low-cost treatments. However, a health insurer's step therapy policy may override the practitioner's recommendation for a certain treatment. Step therapy requires patients to try less expensive treatment options first and restricts coverage for certain prescriber types such as treatments conducted by specialists. As a result, expensive treatments, which may be the most effective, can only be prescribed if a more inexpensive treatment first proves to be ineffective.

At least 12 states have enacted legislation that addresses step therapy practices, often allowing patients to appeal the process within a certain time frame. During the interim, the legislative Committee to Conduct an Interim Study Concerning the Costs of Prescription Drugs received written testimony from various stakeholders demonstrating that step therapy causes barriers to patients' access to care, and advocated for changes to current practices. Too many of our state's residents will unfortunately face a cancer diagnosis, and advocates requested that the Legislature remove any unnecessary barriers to the cancer drugs they need.

I will do a brief bill summary. Senate Bill 290 (2nd Reprint) requires certain health insurers to grant an exemption to its step therapy protocol upon receipt of a complete application from an insured, attending practitioner of the insured, who has been diagnosed with stage 3 or stage 4 cancer. That includes supporting clinical rationale and documentation if a treatment under the step therapy has not been effective at treating cancer symptoms of the insured, or if the delay of treatment would have severe or irreversible consequences for the insured, if the treatment under the step therapy is not reasonably expected to be effective, or a treatment under the step therapy is contraindicated, or, based on peer-reviewed clinical evidence, would likely cause an adverse reaction or other physical harm to the insured, or prevents the insured from performing his or her occupation or daily activities, or the insured is stable under treatment of the prescription drug for which the exemption is requested and the insured has previously received approval for coverage of that drug, or finally, any other condition for an exemption is met as prescribed in the regulations adopted by the Commissioner of Insurance.

Health insurers must respond to a step therapy exemption request within 72 hours of the request. A health insurer is required to respond as expeditiously as necessary if the attending practitioner determines that a step therapy process may seriously jeopardize the life or health of the insured. Health insurers may request, as supporting documentation, the insured's medical records demonstrating that the insured has tried other drugs included in the step therapy protocol without success, or demonstrates that the insured has taken the requested drug for a clinically appropriate amount of time to establish stability in the relationship with cancer.

Health insurers are required to provide coverage for the requested prescription drug in accordance with the terms of the applicable health insurance policy. The insurer may limit the coverage to one week's supply but must cover the drug for as long as necessary to treat the insured, if the attending practitioner determines after one week that drug is effective. An insurer may conduct a review not more frequently than once a quarter, in accordance with the available medical evidence, to determine whether the drug remains necessary to treat the insured for the cancer symptoms. Health insurers are also required to post in an easily accessible location on their Internet website maintained by the insurer, a form requesting an exemption from a step therapy protocol. Finally, a health insurance policy issued or renewed on or after January 1, 2022, must include the coverage required by this bill and any provision of the policy that conflicts with it is void.

Madam Chair and Committee members, thank you for the opportunity to be here. This is important legislation that has the support of the insurance companies, the prescription managers, and many medical professionals. I urge your support, and with that, I am happy to take any questions. Before I do that, let me say I have two amendments that are going to be posted, the first one is to change the date that I mentioned [Exhibit F]. They put the default date in the bill when we had asked for January 1, 2022, so that has to be amended in the bill. Also, in section 1, subsection 5, you will see that on the review committee, it says they have to provide the names and occupations of the people on the review committee. In talking with many people in the medical field, putting someone's name on there can cause an adverse

problem for doctors and people in the medical position if the person who put the application in is denied. We are going to remove the names part—just the names—and keep where they practice; that will still stay in the bill.

Chair Jauregui:
Senator Lange, could you give me the section for that second amendment? [Amendment not submitted.]

Senator Lange:
It is Section 1, subsection 5 on page 3.

Chair Jauregui:
Perfect. Members, any questions for Senator Lange?

Assemblywoman Carlton:
Thank you, Senator, for walking through the bill so well for us. I do appreciate that. I am looking at a second reprint and unfortunately, I did not have the opportunity to look at the original and then the first reprint, so I am just trying to compare silos next to each other. Originally, this bill covered everyone and then it was amended to take Public Employees' Benefits Program (PEBP) out, but then it was amended again to put PEBP back in. Was Medicaid ever included?

Senator Lange:
Yes, Medicaid was included in the beginning. The reason Medicaid was removed was because our state currently is in a situation where that would have put a fiscal note on the bill that would have possibly caused the bill not to pass. We felt it was more important that we get this bill passed out of the Legislature, get it into law, and in two years when I believe the state will be in a better financial position, that will be my first priority.

Assemblywoman Carlton:
I appreciate that. I have always been of the philosophy that a cancer patient is a cancer patient. Whether they are poor or not, we should try to do everything we can to get there. I am not going to turn this into a Ways and Means meeting, but this does have a fiscal note with the second reprint. Apparently, the fiscal note was not there and is back because of the PEBP change. It currently does have a fiscal note of over $713,000 for PEBP, which I am not sure is entirely accurate, because they act as their third-party manager to come up with a number. I think we would need to investigate that a little deeper to make sure. But if it comes down to some of the cost of cancer treatments, $713,000 is not a whole lot of money when you start comparing them to cancer drugs.

I think there might be someone from Medicaid available. I would like to get a statement from them if it is possible. With the way this bill is drafted, it looks to me as though it would be the cost of the review of the oncologist as this would move forward. I do not think Medicaid uses step therapy. I would like to get that addressed if it is possible.

Senator Lange:
We have removed the language about the oncologist because oncologists are not always available to sit on these committees for review. In section 6, subsection 1, paragraph (c), it is a registered nurse or pharmacist.

Beth Slamowitz, Senior Policy Advisor on Pharmacy, Department of Health and Human Services:
For clarification purposes, step therapy is allowed in Medicaid, but currently fee-for-service Medicaid does not utilize step therapy at all. But I do believe that the managed care organizations (MCOs) do utilize step therapy as a utilization tool for their formularies and preferred drug lists. It is also referred to as a fail-first type of policy or protocol, so I think this would be impactful to the managed care organizations if Medicaid was included. I believe there is a section of the bill that states that MCOs are exempt.

Assemblywoman Carlton:
Would there be a way for us to estimate what the impacts would be if they looked at who they are currently treating? Moving forward, is there a way to come up with, hopefully, a reasonable number so that we would understand the impact?

Beth Slamowitz:
I am guessing that the managed care organizations would need to look at the current medications and the oncology treatments and see if they have any kind of step therapy applied to them and what that looks like from a utilization standpoint, that if they have to now not allow that step therapy to happen, or to allow a member to be able to request an exemption, how that would physically impact their plan. That would then, of course, trickle back to an expense to the state from the drug cost standpoint.

Assemblywoman Carlton:
And then the match would be dependent upon the Medicaid recipient, whether it is the standard FMAP [Federal Medical Assistance Percentage], or the newly eligible, whichever category they would fall in. If they were the newly eligible, it is 90 cents on the dollar, so it is just going to cost the state 10 cents on the dollar. But on the other, it is about 68 cents, so it would cost us maybe 30 cents per dollar on those drugs. If I could please request trying to get some information if we can, because I feel very strongly that a cancer patient is a cancer patient. Since we have already got one fiscal note on this thing, if you are going to put one foot in the water, you might as well just jump in and go from there. Thank you very much. If you could help us with that, we would appreciate it.

Beth Slamowitz:
Of course.

Assemblyman O'Neill:
I think my question is a whole lot easier and less complicated, less expensive too. It is a concern. In several places in the bill, it talks about the advocate for the insured. I assume that is a family member or social worker, but nowhere does it define how you identify the

advocate, and I am trying to give you the position of two family members who maybe see it differently than the patient does. How do we identify who is the true representative or that advocate?

Senator Lange:
The advocate for the insured could be a family member. It could be the physician who is helping fill out the paperwork that they are submitting to the insurance company. It could be anyone the patient might choose.

Assemblyman O'Neill:
Just for clarification, there is no formal declaration necessary?

Senator Lange:
No, sir.

Assemblywoman Hardy:
I had the privilege of serving on that interim prescription drug committee, and this was one of the items we discussed that I thought was a really good idea, especially when you are dealing with illnesses such as cancer where the more expensive medications could help someone. Having to go through all the steps to get there can cause a delay in treatment and become a matter of someone surviving or not. So thank you for bringing this bill forward. I just had a question. On page 6, it reads that the insurer may initially limit the coverage to one week's supply of the drug and then the practitioner would determine if it was effective. I was just wondering, one week seems short. Is that a long enough time to determine if it is not working so they cannot continue? Is that a fair amount of time?

Senator Lange:
Many of you may remember Peggy Pierce, who was an elected official in the Legislature. She had cancer and she got medicine and you are right, the medicine is very expensive. She took the medicine for less than a week and had a horrific reaction to it and then the medicine is about $1,000 a pill, $30,000 a month. She had this horrific reaction, could not take the medicine, and now the insurance company had just covered that drug and she could take 27 pills; it was a huge amount. There could be an appeal process; there is always an appeal process in people's insurance. But if they did one week, that would be enough time to find out if they were going to have a reaction right away to it. Then if they did, there would not be the huge loss of the coverage of the medicine, and then after that first week they could go and get their prescriptions regularly. It is only for that first initial time that they are taking the medicine.

Assemblywoman Hardy:
That is interesting to know. Let us say in a situation like that, they did have a reaction. Could they then go maybe to another medication, or would they have to go through the whole process again?

Senator Lange:
Yes, they could work with the doctor and the insurance company to go to a different medication because they have already been approved through the exemption of the step therapy program.

Assemblywoman Dickman:
Thank you, Senator Lange, for this bill. I think probably most of us have had family members going through cancer treatments. We will be very appreciative of this. I was just curious, have you had any pushback from the private insurers?

Senator Lange:
The answer is no. In fact, I pulled everyone together early on and we talked about everything. Initially, everyone was against it and as we talked, we were able to work it out and I could tell them why this bill was so important. We found ways to work together to come up with this bill that works for everyone.

Chair Jauregui:
Assembly members, any other questions before we go to testimony? [There were none.] I am going to move us into testimony in support. Is there anyone in Carson City wishing to testify in support? [There was no one.] Seeing no one signed in on Zoom, could we please check the telephone line?

Connor Cain, representing Comprehensive Cancer Centers of Nevada:
I am testifying in support of S.B. 290 (R2). We thank Senator Lange for her tireless work to craft legislation that will truly help patients. We have submitted a letter in support of S.B. 290 (R2) [Exhibit G] and would urge your support as well.

Cari Herington, Director, Nevada Cancer Coalition:
We are in support of S.B. 290 (R2). This is the first step forward in addressing step therapy for a cancer patient. There is very rarely a one size fits all in cancer treatment and care, so we are really excited that this bill is a start in mitigating the potential negative impact of step therapy for our oncology patients.

Chair Jauregui:
Next caller, please. [There was no one.] Is there anyone wishing to testify in opposition in Carson City? [There was no one.] No one is signed in on Zoom; can we please check the telephone line. [There was no one.]

Is there anyone in Carson City wishing to testify in neutral? [There was no one.] Is there anyone on Zoom wishing to testify in neutral to Senate Bill 290 (2nd Reprint)? [There was no one.] Can we check the telephone line?

Laura Rich, Executive Officer, Public Employees Benefits Program:
The Public Employees' Benefits Program (PEBP) had previously placed a fiscal note of approximately $713,000 per fiscal year, but the fiscal note was later removed as a result of

the original amendment, Amendment 409. Section 9 of the amendment provided an exemption to insurers who use a formulary. However, the latest amendment, Amendment 442, removes this language and therefore PEBP has submitted a new fiscal note to reflect this.

In addition to the fiscal impact, PEBP does have some concerns with the exemption granting requirement. Currently, PEBP relies on our pharmacy benefit manager (PBM) to review these types of cases using the step therapy program. The PBM uses an independent team of physicians and pharmacists to make formulary decisions using Food and Drug Administration-approved guidelines and clinical justification. Although PEBP has chosen to implement step therapy, the goal of step therapy is not to stop the member from taking the right therapy, especially for cancer. Within the PBM step therapy processes, there is an exception process that members and their doctors are able to leverage today. The concern is that the bill appears to place the burden to grant this exception now onto PEBP to make the final clinical decision, and PEBP does not have the expertise on staff to be able to perform this function.

Assemblywoman Carlton:
Ms. Rich, thank you very much for calling in and walking us through this. Because there have been a number of changes, I just want to make sure I understand it. With the exception language, even with some of the changes that have been made, because the PBM actually manages this for you—I do not think I quite caught exactly what the issue is, so that we know what we need to fix. If you could state it again, please?

Laura Rich:
The concern here is that the exemption process, or the exception process because the PBM does that for us today already through step therapy, it implements a separate process. It appears, from the way our staff has interpreted the language, that PEBP would then make that final decision as to whether or not that exemption would be granted. The problem, from a PEBP perspective, is that we do not have the clinical expertise on staff to make that. It would fall back onto the pharmacy benefit manager, which we would already have done that through the step therapy process, if that makes any sense.

Assemblywoman Carlton:
That made it a little bit clearer for me. Basically, you are saying that your contract with your PBM manages this function for you. Public Employee's Benefits Program does not manage this function, so we would need to be explicit in the language and say that if an insurance company has someone doing this for them, that it would not have to be done twice. You could use what was provided to you as dealing with the appeal process so that you would not have to, in essence, redo what you are paying your contractor to do. We would just need to clarify that the decision by your manager would, in essence, be a decision by PEBP.

Laura Rich:
Correct.

Assemblywoman Carlton:
So the fiscal note, as we said earlier, was there, then not there, then there. Do you know where it actually is right now? Is the $713,000 still your mark in the sand, or is that changing?

Laura Rich:
Yes, we have just basically placed the original fiscal note on again, because the first amendment did away with the language that would require an insurer that uses a formulary such as PEBP to meet the requirements of the bill. In the latest amendment, that language was removed and so the original fiscal note was placed back on to the bill. I had staff submit it last night. It is an estimate because, again, we do not know specifically how many of our cancer patients are in stage 3 and 4. We do not get that kind of information. The PBM had to use an estimate of what that would look like. That is a best guess-type estimate that we provided based on the information we received from our pharmacy benefit manager.

Assemblywoman Carlton:
Ms. Rich, if you could get me a little more—you know our fiscal staff is going to be asking for this—detail on the total population you are looking at versus the percentage. That way we can extrapolate if we would need to for Medicaid or anything else. I think we need a little bit more information to dive in on this. Thank you very much, and if you could get that from your PBM, I would greatly appreciate it.

Chair Jauregui:
At this time, I will go to Senator Lange for any closing remarks.

Senator Lange:
I would like first to give you an example. If I went to the doctor right now and I was diagnosed with stage 3 or stage 4 cancer, currently under insurance protocols, I would have to start with a step one medicine. If that did not work, I would go to a step two medicine. If that did not work, then I can go to a step three. But what this bill is trying to do is, say you go to the doctor and you are diagnosed with stage 3 or stage 4 cancer, your doctor can petition the insurance company to skip over the step one and two and immediately get the step three medicines that will be most beneficial to you.

When we talked about patients in insurance companies who currently have cancer in stage 3 and 4, I am not sure that gets you to the answer of who would need a step three or four medicine, because if they are currently in stage 3 or 4, they would be getting a step three and four medicine. What we are looking for are the people who are going to the doctor and being diagnosed with stage 1 or 2 who need to jump to a three or four because that is what they have. I think it is really important to keep that distinction there. It is kind of complex. We worked with the prescription benefit managers on this bill; they were part of the discussion. This is the first time I have heard about this.

I would also say the federal government currently has a bill about step therapy and exceptions. It was in the last session and it was renewed in this session. Currently, Senator Jacky Rosen has signed on in the U.S. Senate and in the U.S. House, Congressman Mark Amodei has signed on. What their bill does is treat every kind of disease. I chose to concentrate on the disease that affects Nevadans the most.

Because it would be fair to say that insurance companies are skittish about how much this is going to cost, what I can tell you is in my research, states such as Washington and California have laws just like this that allow this, and their insurance costs are lower than Nevada's insurance costs. Everybody thought the insurance costs would go up; they actually went down. It did not affect their insurance costs. To be fair, they have a bigger pool they can draw from, and that is important, too, but I think we have to be really careful when we think about how much it is going to cost. You have to do apples to apples, and you cannot do apples to oranges. I encourage you to look at this bill. Vice Chair Carlton, I would be so thrilled if we could include Medicaid in this bill because I really want to do that. I was thinking about where our state was and not knowing the cost. That is why I exempted it from the bill at this time. Thank you for your attention to this matter. I hope we can vote it out and head to the floor or Senate Committee on Finance, wherever we might be going.

Chair Jauregui:
Thank you, Senator Lange. With that, I will close the hearing on Senate Bill 290 (2nd Reprint). Our last bill on the hearing agenda is Senate Bill 320 (1st Reprint). I see Senator Neal here, so at this time I would like to open the hearing on Senate Bill 320 (1st Reprint), which enacts various provisions relating to food delivery service platforms. Welcome, Senator Neal.

Senate Bill 320 (1st Reprint): Enacts various provisions relating to food delivery service platforms. (BDR 52-591)

Senator Dina Neal, Senate District No. 4:
I am here to present Senate Bill 320 (1st Reprint). We are going to quickly go through this bill. This bill has gone through a series of iterations. You all should have received an email last night that had five changes to the bill, and then we have an additional change in section 19. If anybody has ever ordered food from third-party food delivery services during this pandemic or before, you realize it has come to be a little bit more expensive than it used to be, and that these companies are in a space where we all had to depend on them because we were unwilling to go outside because of the pandemic and because restaurants were at pretty much zero capacity. This bill is set out to at least try to engage in some of the practices that started to pop up and appear during the pandemic.

Just to quickly go through the bill, sections 3 through 11 are all definitions. Those are the general definitions for who is what, who is the "user," who is the "food delivery service platform." The key provisions are really sections 12 through 19. They are the ones that have gone through a series of changes and discussions.

I need to go through section 4 because we have an amendment on section 4, which gives the definition of the food service delivery platform. The amendment on the Nevada Electronic Legislative Information System (NELIS) [Exhibit H] was added to because we got an email from TaskRabbit after this bill sat out there for about a month. Some of you know what TaskRabbit is—you are nodding, but I do not even know what TaskRabbit is. Apparently, this definition captured TaskRabbit and they said, We do not want to be captured. We agreed, and so there was an amendment to section 4, which said we add an additional definition of what does not constitute a third-party delivery company. We do not wish to capture TaskRabbit or this part of the market because they do not charge a restaurant commission fee and would conduct their business from the perspective of a customer versus a delivery company. The amendment for section 4, subsections 1 and 2 reads:

> "Food delivery service platform" means an Internet website, online service or mobile application which allows users to purchase food from multiple food dispensing establishments and arrange for the same-day delivery or same-day pickup of such food.
>
> Food delivery service platform does not include websites, mobile applications or other electronic services that do not post food place menus, logos or pricing information on their platforms and that do not assess any commission or other charge to a food place in connection with a delivery of its menu items.

I want to make sure I put that on the record because the session has been very special and when people do not hear their amendment, they start panicking.

Now I will go to section 12. Section 12 is a provision in the bill that we are trying to get at individuals who have been doing some menu stealing and putting up information for a restaurant they do not have permission to have on their food platform. This provision says that unless the food delivery service platform has entered into a written agreement with the food dispensing establishment and that is expressly authorized, they should not have a restaurant's menu on their website. Section 13 says when they need to remove it—in a timely manner, within 48 hours. That was an agreement.

In section 13, subsection 3, there is a penalty. I pulled this penalty from Rhode Island—there are other states trying to deal with this issue. Rhode Island had a penalty of $1,000 per day of the violation. I thought that was pretty steep, so I dropped it to $500 for Nevada. If a third-party food delivery platform has a restaurant's menu on their website without permission, they need to remove it. If you are told to remove it and you do not, we start fining you.

Section 14 lays out the intellectual property. It came up during the time we have been out of session. Food delivery platforms were using the likeness, trademark, or intellectual property of a restaurant. This spells out that you need to have the written consent. Do not go around stealing images of a restaurant and putting them on the platform when you know you do not have permission to use them. This also adds a civil penalty if a company violates this

provision. It kicks in a $500-per-day violation for each day of the continuance of the violation. It constitutes a "separate and distinct." This kicks in, we find out it is on there, you are told, Take my KFC logo off of your website—we could even do the Kevin Hart "Christian Chicken"—take it off the website or it is going to be a $500 fine. I have to joke; it is been a rough day today. Section 15 says we have the right to bring an action against the food service delivery platform in the sum of $5,000 or the amount of the actual damages sustained, whichever is greater.

Section 16 contains disclosure provisions and has an amendment. These disclosure provisions caused Ms. Dazlich gray hair, and then I was a secondary recipient of the gray hair, and then you all probably were a third because I am sure they said, Hey, S.B. 320 (R1) is coming your way, I hate it. Please change this bill. Section 16 has been amended to take out the average percentage a restaurant can pay and now only require a third-party delivery provider to provide a statement that the restaurant is charged a commission that is separate from the delivery fee paid by the customer. This amendment takes out the proprietary information charged by third parties as well as any information regarding what the restaurant pays. Section 16 now reads:

> If a commission is disclosed pursuant to paragraph (c), a statement that indicates that a commission is to be paid by the food dispensing establishment in connection with the online food order, including the highest Commission, expressed as a percentage of the food purchase price, charged by the food delivery service platform provider to any food dispensing establishment in Nevada.

That is our agreement and our amendment. If you all have questions on section 16, you will have to ask Ms. Dazlich because she represents the Restaurant Association, or you can ask Assemblywoman Carlton. I do not have knowledge on how commissions work.

Section 17 says that if a food delivery service platform provider determines it is not feasible to disclose the information required pursuant to section 16, they may submit a request to the commissioner for Consumer Affairs about the alternate manner in which they would like to disclose this information. We have talked to Mr. Reynolds in the Department of Business and Industry. They are going to do regulations to try to take the fiscal note off the bill since this will go to Consumer Affairs and they will have a role in any kinds of issues that pop up. Section 18 also deems the acts in sections 16 and 17 as deceptive trade practices. For section 19, I am going to let Ms. Dazlich explain that one because that has gone through at least six or seven iterations.

Alexandria Dazlich, Director of Government Relations, Nevada Restaurant Association:

Section 19 has gone through numerous changes, including the percentage that a third party is charging a restaurant. That was pushed down from 20 percent to 15 percent. We have lowered that temporary cap from 20 percent to 15 percent. That was done because credit

card fees were excluded, and we have already passed a similar cap in Clark County that is still active and we wanted to mirror the jurisdiction and make it easy to implement. The third party has agreed to lowering the cap temporarily.

In addition, we have delegated that control to the county. We have changed that from governor; we have delegated to the county for the purposes of that May 1 deadline. We hope that was just something that could be determined by each county. They can kind of see, because it is going to be based off of dine-in capacity restrictions. It is going to be based off of capacity, so if they are at 100 percent capacity with no social distancing, it would no longer apply, but if a county is still practicing social distancing and they are requiring a limited capacity, then that cap would be in effect in that particular county. Again, we are just trying to delegate that to local control.

In addition, there is an exemption that we have added. That particular exemption is for active caps that have already been instituted before April 30. The purpose of that is because of the Clark County cap passed last year. That is the only exemption that is added.

Senator Neal:
Ladies and gentlemen, that is S.B. 320 (R1). We are open for questions.

Chair Jauregui:
Thank you and we do have some questions from the Committee.

Assemblyman Flores:
I wanted to go back to your conversation regarding the penalties for misusing someone else's menu or information on the website. I do not understand what the bigger issue is. First, if I am a restaurant and there is a third party bringing business to me and picking up items and doing x, y, and z, and they have my menu, I am trying to understand what the issue is there. Number two, what if they just have links to your website? You come to the third party and they have a bunch of links to the menus of other businesses. Is that an issue? If you can, walk me through those two.

Senator Neal:
There was menu stealing going on. This is not where we already have an existing relationship, this is where you have used my information because you somehow want to tie the restaurant into that platform, but you do not have permission to have that menu on there. You have not had a conversation with the restaurant, but what you are doing is placing it on there and then folks are putting in orders, but there is no actual contractual relationship between that restaurant and that third-party delivery platform. That needed to be corrected for a couple of reasons, and I will let Ms. Dazlich break it down.

The other part you asked about, the likeness and the intellectual property, once again, you can have the trademark or logo on there and you do not have it with permission. You have it on there to try to rope in the restaurant to start being a partner. Most people get on DoorDash or Uber Eats and say, Hey, I really want something from Hash House a Go Go, but I do not

see Hash House a Go Go. Somehow it mystically shows up there, but Hash House a Go Go was saying we do not have a relationship with DoorDash. Our stuff should not be on there because we have not entered into a contract. This tries to get at that bad behavior and stop that behavior, so that is a provision. For more detail, I will let Ms. Dazlich speak and we have the vice president of Hash House a Go Go on camera.

Chair Jauregui:
Do you want to go to Mr. Trent or Ms. Dazlich first?

Senator Neal:
I want to go to Ms. Dazlich first because I do not know if this has happened to him, but I am sure he knows about it. We have the provisions in the bill because this was happening and they felt like they had no rights and there is no statutory construction that tells them, Do not do this.

Alexandria Dazlich:
The issue we are having here is because when third parties take the menus, oftentimes they are outdated or they require further specification. There are also incorrect business hours that have been changed because of COVID-19. A lot of the menus have been pared down. A lot of these types of issues are reflected on the restaurant, so when that customer puts in that order, let us say it is for a Thai restaurant, it requires additional specification in terms of spiciness. If a third party just goes on behalf of the restaurant and it comes back not what the customer ordered and it is too spicy, then that customer can go back and create a bad review for that particular restaurant. It oftentimes reflects badly on the restaurant. It is something that has been an issue even before the pandemic, and it has been exacerbated since then.

Assemblyman Flores:
That is what I am trying to get at. It is not an issue that the third party was not providing the item that you were purchasing. It was more a question of if you are getting exactly what you asked for, or little questions like that. But it is not the third party was receiving an order, then they place it themselves and there is a fee for that, and then at some point you are still getting your food and all that is happening. The question is whether you have an accurate description of what the menu presently is or something like that. I am still not there on that; the restaurant is still making business and they are getting money. If I want to tell somebody to go purchase food for me, if I want that—I am just having a hard time understanding the penalties on that side. I do understand taking somebody's intellectual property, I guess I can respect that, but I am having a hard time understanding penalizing somebody when I am going to a third party and saying, Go get this food for me. I am having a hard time still getting there, and maybe you have some additional information. But it is not that they are not getting the food and it is not that the third party is stealing money or anything like that, it is a question of are you getting the exact item that is available at the time. I assume that is what it boils down to.

Alexandria Dazlich:
Even if the restaurant does not have a relationship with the third party, there have been instances where they have shown up at the restaurant and pretended to have that relationship and then billed the restaurant at a later time. There are instances where that has happened and then they would be contractually obligated, according to the third party, to pay those fees. There is more than just it being delivered cold or inaccurate or having bad reviews. This has been a huge problem; in fact, third parties have agreed to adopt these types of provisions, and I think I can say with full transparency that all three delivery providers are very open to this particular section. It is not contentious whatsoever.

Chair Jauregui:
There was a second part to Assemblyman Flores' question that did not get addressed about the links, and I want to hear the response to that too. Would it be a violation if they have links back to the menus of the restaurant?

Senator Neal:
I would not say so because there is a link that drives you to the business of the individual, but I would not go so far as to say that it is the link. I would be reading the plain language of the section to say that if you have placed the order and you are somehow using their likeness, trademark, or any other factor without permission, you need to remedy that. And there is a moment to remedy that. There is a notice provision in there that if you find out that the link is on the website and you are saying, Why are you advertising, and I do not have a relationship with you, I think within the 48 hours that needs to be corrected. I think you are worried about the fine, but there is also a window where you have time to fix it if it is found out.

I honestly feel that if this is a business-to-business relationship, first of all; you should not be using anything without anybody's permission. It is the same thing with your law firm. You do not want anybody out there saying, Oh, well, if they gave you a bad review, that falls on you. But if some other law firm is putting your website on their website saying, Well, he does not really practice this version of law, and then you find out that your link is on some Canadian website, you have to deal with it. The question is how would you like to deal with that, especially if the link is giving a misrepresentation about your law firm. Does that make it better? Technically, to me, if you have my information on your website and I did not give you permission, whether it is the Internet link or not, you are actually misrepresenting me if we do not have a written contract. Because we do not have a business relationship, why do you have my stuff? That is how I view it.

Assemblyman Flores:
If a link is an issue, I am having a difficult time even starting to get there. Links are posted everywhere; we consistently do it all the time. There are numerous third-party platforms where we put links. If we start getting into the world where you cannot post a link and that could be problematic; I just have a huge issue with that. I think this universe that we are getting into is so large and we are casting such a wide net, but to say a link could be problematic, I do not know if that is misrepresenting anything. You are just posting. We can

have this conversation offline and I think I just need to walk through it myself in my head. I get the taking of the intellectual property, but the posting of a link, if that would put somebody in violation and then potentially get them a fine, I think I am personally still not there. I need to dive further into it myself and maybe we could have a conversation.

Senator Neal:
Let us have a conversation about that because in Section 14, likeness is defined, it has a legal definition. I am not sure it falls into a website link, but if you want the bill to say it is not a website link that we are talking about but simply when you get into the trademark intellectual property and the likeness, the actual likeness that I have a legal right to, cannot be used without permission. Ultimately that is my goal, but if you need it to be clear that it is not a website link, I do not have any problem putting that in there. If it is giving you heartburn to charge somebody a $500 fine for a website link, that is a non-issue. From all of the fire that we went through on this bill, that is a non-issue for me.

Assemblywoman Considine:
Thank you for bringing this bill. I am going to go to section 16. When I read the Legislative Counsel's Digest on section 16 it says this requires a food delivery service platform provider to disclose certain information. What I envisioned is that if I was ordering food, the receipt would show the total cost of the food, the delivery fee, the credit card fee, any required tip, and whatever else. That is what I had in mind. I am a little lost about those changes to section 16, subsection 1(b). If this bill were to pass, what would I see on that receipt now?

Alexandria Dazlich:
I just want to clarify that when Senator Neal mentioned section 16 earlier, we included a section that was taken out later. It would just be a statement. You would have the price of the food, any sales tax, the amount the driver would be paid, and then at the very bottom it would just be a statement that says the restaurant is charged a commission fee in addition to the delivery fee the customer pays. It is just a simple sentence; there are absolutely no percentages; there is no averaging. I just wanted to make that clear. It started off as something that was supposed to disclose those types of rates and fees but since then has just become a sentence; absolutely no proprietary or sensitive information is contained in section 16 now.

Assemblywoman Considine:
If I have this right, what you are saying is that commission that is charged to the restaurant would be in there somewhere, but it would not be delineated? I would not be able to see it; it would be in the food cost or something?

Alexandria Dazlich:
Correct. It would say the food purchase price, the sales tax, any delivery fee or service fee charged, any gratuity, and then when I say a statement, I literally mean a sentence. Absolutely no numbers; it is just that restaurants are charged in addition to what customers pay.

Assemblywoman Considine:
So from a consumer transparency point of view, you would notify the consumer that there is additional money somewhere in there? And there is just a statement as to why, but it does not tell you what or how much?

Alexandria Dazlich:
Exactly, and that is for the purpose of consumer education. I think a lot of people do not understand when they pay these fees, they think they are covering the delivery fee, but the restaurant is charged up to 30 percent per order, which oftentimes takes out all the profit or any type of revenue that they would be able to make on these transactions. Again, it is to educate the consumer side. I want to be clear, that is before they place an order as well as on the receipt, if that is applicable, if there is a receipt provided.

Chair Jauregui:
I am going to jump in because I have a question on that section too. I am glad you touched on why you want the disclaimer, too, because I did not understand that portion of the bill. What is the purpose of letting the consumer know that there is a commission paid? Obviously DoorDashers are getting paid for their work. A restaurant does not disclose that they have to pay for the products they buy to make the products they are going to sell. Everyone knows there is a cost for doing business. What are you hoping to accomplish by letting the consumer know there is a commission paid or that the restaurant does help pay for the cost of delivery? I do not understand what the intent is of giving that information to the consumer.

Alexandria Dazlich:
The purpose of that is there is a total lack of transparency right now. I think when we are interacting with third-party delivery as well as tech companies in general, a lot of people have ethereal ideas of what they charge. When we dealt with the Clark County Commission, it was really difficult to even pass that cap of 15 percent because they said, Well, there are all these different reasons why and we have to take this into consideration and that into consideration. We could not even get a basic breakdown of what they charge and why they charge it. I know there are extenuating circumstances in which they take that into consideration. However, I think overall there has just been a lack of understanding, a lack of clarity, and a lack of transparency in general. This is supposed to encourage the fact that people understand that restaurants pay for every transaction and potentially up to 30 percent. Of course, we have taken out any type of number or any association to those particular types of relationships or proprietary information.

Chair Jauregui:
I am going to go to one of the members next, but when I would order from my local favorite restaurants, if they offered delivery services, I would always order directly from the restaurant so the restaurant could keep more of that money within them. Obviously if the restaurant did not offer delivery services, then I would order from a third-party app because I knew. I am just under the assumption that everyone else knows as well. But if the restaurant does not offer delivery service, then there really is no other avenue for a consumer.

Jeff Trent, Vice President of Operations, Hash House A Go Go:
The question comes up when people do not understand the magnitude of what the third parties charge. They all charge differently, and they charge for marketing. There is no one way that they do it, so it varies. That is why we went to Clark County to get the 15 percent. It was to get some stabilization in a cost during this pandemic. All these companies charge different fees and they are not transparent about it to the guests because it doubles the cost. That would slow their business, so they do not show it very well.

Assemblywoman Hardy:
I appreciate this bill because when we owned our sandwich shop through the pandemic, we had some of the same issues. We had never signed up for any of these delivery services because we did not want to pay extra. My husband said, I am not going to pay this extra money, I will deliver it myself. Then when we got in the situation where we could not have the store open for customers to sit in, we had to rethink what we were going to do. Ours was a little bit different because it is a franchise; some of the stores are corporate, some are franchised. We had instances where a delivery person would come in to get an order and we would say, This did not come through our line service, where did this come from? And then to your point, if a customer was upset and we got a bad review, then we had to deal with our corporate office about a bad review on Yelp. It was not because of us, it was from a service. So we went through and signed up with some of these, signed the contracts and things like that so we can increase our business. I totally understand and I am grateful for this bill because I know it can cause a lot of issues for the business owner and for the consumers who do not understand why they are being charged so much or what all the fees are. My question would be since section 19 talks about when there is a declaration of emergency, is this bill not just while we are in an emergency? This is going forward from here on?

Senator Neal:
I will speak to this a little bit. The conversations around section 19 that have been ongoing for two months have been that it is going to be variable. What we worked out, and the amendment we worked out, was that if the county is still at a limitation, or if we go to 100 percent but not everybody is vaccinated and we find ourselves back in a flare-up, this then becomes a variable that will come back in operation. If there is no actual pandemic or something like social distancing in play, the argument that was made to us was it is a free market, you cannot limit a free market, so we are not willing to agree to allow this to go in perpetuity.

Ideally, yes, that would make sense to the universe to allow for some kind of regulation over these entities. But they have persuaded enough people that section 19 without the amendment that we currently have—which I believe is changed even more since last night's conversation—is the only way we will be able to successfully get a vote on this bill. They have actively lobbied to make sure we could not have any regulation post-pandemic, unless there was an actual flare-up or social distancing still in play and the restaurants were not fully open. That is the only way that provision will operate.

Alexandria Dazlich:
The thought behind tying that to restaurant-specific restrictions is if we are not operating at 100 percent, then we are not really operating in a free market. If they do not have an opportunity to completely have dine-in or offer that, that is something we feel should be curtailed temporarily. Of course, that is a temporary cap and again, it is something that has been passed across the nation. I think eight other states have already passed it, including Oregon and Washington. I think Texas is considering it, and I have a whole other list of states. This is something that is not new; it is something that is temporary. Please keep that in mind.

Assemblyman O'Neill:
Senator Neal, Ms. Dazlich, I want to thank you so much. I was probably the cause of some of your gray hair and antacid pills over the last few days going to section 19. I have got to say that I was opposed to the bill initially because of that free market. You worked diligently; you were tremendous in working on this, and I cannot thank you enough for it. I have another suggestion; it is the enacting date, since we are starting to come out of the pandemic and we are going to local jurisdictions.

I was reminded by some just how strongly the restaurants have been impaired by this. I was reminded by my dearest wife, when we went out several weeks ago and I witnessed an argument between the cashier and one of the food delivery places. They had their own website pirated. They had the connection into the local restaurant, and the restaurant had people calling them up complaining to no end about what they were paying for and price gouging, et cetera. That is what really got me to understand the situation better, and I want to thank you. As I said, you may want to look at the enacting date because as we come out of the pandemic, waiting several months to put this in action may be too late for some of those restaurants. That is my suggestion.

Senator Neal:
Thank you, Assemblyman O'Neill. We would be willing to make those changes, but if you get any additional phone calls telling you, I hate that, I will put that all on you.

Chair Jauregui:
Members, any other questions for our presenters? [There were none.] At this time, we will move into testimony in support of Senate Bill 320 (1st Reprint). I do not see anyone in Carson City; is there anyone on Zoom who wishes to provide testimony in support?

Jeff Trent:
Most of what we covered this afternoon is relevant just to our industry, but Assemblyman Flores and Assemblywoman Hardy brought up a question about menu stealing, and I wanted to add a couple of sentences to that. Without any written agreement, if what happened to Assemblywoman Hardy happens, and that third party goes away and leaves the food in the car and there is a food illness created because of that, that third party is not liable. There is no insurance protection that covers the restaurant or themselves in that case. So the insurance people come to the restaurant, or because they are insured, they are going to try to

tag us with that penalty. What you ensure with a written agreement is that third parties are going to abide by the health department regulations. Then the trademark, we pay a lot of money to have our trademark secure and protected, and by using it illegally, these third parties circumvent the trademark law and possibly diminish the brand. It is a big thing for a company when someone puts on an improper representation and has no right to do it. Regulating third-party delivery companies may seem like uncharted territory, but we have to put commonsense laws in place to protect small restaurants especially. I urge you to support this bill.

Chair Jauregui:
Thank you so much for your testimony, Mr. Trent. Can we please go to the telephone line?

Dylan Keith, Policy Analyst, Vegas Chamber:
I would like to start by thanking the bill's sponsor for bringing this bill forward. The Chamber supports S.B. 320 (R1) because it brings transparency and parity between the interested parties, which at the end of the day benefits Nevada's consumers. As you have heard, our restaurants, which include small and family-owned operations, have been hit significantly harder during the pandemic. We believe this bill will help those small restaurants as they attempt to recover and rebuild. Thank you, Chair, and members of the Committee for your time. We urge your support on S.B. 320 (R1).

Randi Thompson, State Director, National Federation of Independent Business:
I first want to thank Senator Neal for bringing this bill. It is a very important bill, although complicated. Thank you, Chair Jauregui, for hearing the bill. The National Federation of Independent Business has dozens of restaurant members. I have heard from several of them—and these are the smaller restaurants—about the lack of transparency of the food delivery services. Yet these food delivery services have been the lifeblood for many restaurants this past year, so we appreciate that they are around. But we do support this bill as we think it will add transparency to these transactions as Mr. Trent testified.

Chair Jauregui:
Next caller, please. [There was no one.] If we could go to the telephone line, seeing no one here in Carson City and no one signed in on Zoom, to testify in opposition. [There was no one.] Can we please check the telephone line for those wishing to testify in neutral?

Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada:
I think it is very important to bring a lot of transparency to these delivery services and apps. I hear that many restaurants have been overcharged; they have been hit very hard. Many restaurants actually require the driver or the delivery person to use a card to order the food because they do not want to get the tablet devices and pay all the fees, so then literally the driver would have spent a long time waiting for the food and it is just very inconvenient. These are one of the unintended consequences as a result of the current system. My concern is if this bill gets passed, will this reduce demand for these programs, and will this mean less

work for these delivery drivers? Because a lot of these people depend on these jobs to make a living and I want to make sure they make ends meet. Thank you all so much for bringing this bill, it is very important to talk about it.

Terry Reynolds, Director, Department of Business and Industry:
Thank you for letting me address this in the neutral position. We know with our Consumer Affairs Unit we often see complaints in regard to this issue. In 2020 we actually had quite a bit more complaints over charges of products and food items. I would suggest that you request that the Department of Business and Industry, through their Consumer Affairs Unit, develop regulations for disclosure of the statutory items under section 16, as well as the items under section 17 where a provider may request the commissioner of Consumer Affairs disclose the information on an alternative manner. We are happy to do that. We would work with the Bureau of Consumer Protection within the Office of the Attorney General and make sure that we cover the statutory requirements, assuming that this piece of legislation moves forward.

Jennifer Lazovich, representing DoorDash, Inc.:
Although DoorDash does not support commission caps, we are testifying in neutral today. We want to thank Senator Neal and Alexandria Dazlich for working with us on language in section 19 that would make it clear the temporary cap is in place for as long as there are occupancy or social distancing limitations on restaurants. If there are no occupancy or social distancing limitations on restaurants, the temporary cap would not apply. We came to an agreement with Senator Neal and Ms. Dazlich late last night. The language that was posted on NELIS is not quite what we agreed to, but Ms. Dazlich did refer to the portion we talked about in her testimony. To the extent that further tweaks are necessary, we would ask that we be allowed to continue working with the parties on language that clarifies when the temporary cap is in effect.

Assemblywoman Carlton:
Since we have a representative of a company that actually does this, I think one of my questions is on one of the things we just heard. As the company operates, and I believe your employees are independent contractors, if there was a problem with something that happened with the employee, would DoorDash be the responsible party or would the driver be the responsible party? Let us say a sandwich was left in a hot car at 120 degrees, they are doing two hours' worth of deliveries, and that last sandwich ends up causing a problem. Is that on DoorDash's dime or on the driver? How do you see that?

Jennifer Lazovich:
I do not have the answer to that question right now, but I would be happy to get it and follow up with you.

Assemblywoman Carlton:
Thank you, I think that is one concern that at least I have. Being in the food industry for years, I understand what can happen. I think you all need to mark it down that the Restaurant Association and I are on the same page one day out of 24 years; I think I need a gold star for

that one. I just want to make sure if there is a problem, the consumer knows what is going to happen. We heard from the gentleman from Hash House A Go Go and I have seen—I do not use these because of my perspective on food—folks telling me they are having problems getting the quality of food they know probably came out of the restaurant, but it was not the same quality by the time it got to their door. If you could address that and send the answer to the Chair and staff so we can share it with the Committee, I believe that would be very helpful in our deliberations.

Jennifer Lazovich:
Understood, thank you.

Rose McKinney-James, representing GrubHub:
I appreciate the opportunity to offer some brief comments in neutral. We started this process in opposition and I guess we can say we have evolved that position based on the amendments that have been discussed and approved by the Senate. We appreciate the willingness of the sponsor, the Nevada Restaurant Association, and the other delivery platforms to work toward addressing some of the key issues you have discussed today in this bill. I think it is important to note that we appear to be turning a corner on the challenges created by COVID-19 that resulted in these temporary restrictions. That said, I think we can acknowledge and expect there will be a similar amount of transition to get back to prior levels of operations. We are pleased to have the opportunity to participate in the language that will ensure clarity around the menus, that they are being properly posted and based on a written agreement.

I need to say GrubHub remains fundamentally opposed to fee caps as a general principle, but we acknowledge the need for some balancing during the extraordinary circumstances of a pandemic. We are currently reviewing the new language now being discussed in section 19. We look forward to working with the sponsor and the other parties to address this newly proposed language and we are hopeful that the parties can continue to refine and clarify the issues related to the expiration and understand jurisdictional considerations. We remain hopeful that we can arrive at a mutually agreeable resolution.

Assemblywoman Carlton:
Hello, Ms. McKinney-James. It is nice to hear your voice; we do miss you in the building, I will say. I have the same question I had asked Ms. Lazovich earlier. How does GrubHub look at their employees? Are they independent contractors? If there was an issue with food, who would bear the liability with that? I am not asking you to give us the answer right now, but if you could provide us with that information as we move forward, I believe it would be very helpful.

Rose McKinney-James:
I would be happy to seek that information from the client, and I will get back to you.

Chair Jauregui:
If we could go to the next caller, please? [There was no one.] Senator Neal, would you like to give any closing remarks?

Senator Neal:
I would like to thank the Assembly Committee on Commerce and Labor for hearing this bill and tolerating my jokes. We will continue to work on section 19 and also with Assemblyman Flores on his changes, and with Assemblyman O'Neill.

Chair Jauregui:
Thank you, Senator, and I think your jokes were very appreciated by the Committee. Committee members, we are going to move on to the next item on our agenda. We have a work session today on Senate Bill 35. You should have your work session documents with you; I know they were emailed to you yesterday evening. With that, I will hand it over to Ms. Paslov-Thomas to present Senate Bill 35 for work session.

Senate Bill 35: Revises provisions relating to the Private Investigator's Licensing Board. (BDR 54-419)

Marjorie Paslov-Thomas, Committee Policy Analyst:
Senate Bill 35 revises provisions relating to the Private Investigator's Licensing Board [Ms. Paslov-Thomas read from Exhibit I]. It was sponsored by the Senate Committee on Commerce and Labor (On Behalf of the Attorney General) and was heard on April 21, 2021. Senate Bill 35 abolishes the Fund for the Private Investigator's Licensing Board from the State General Fund and instead requires the Board to establish an account in a financial institution in the state of Nevada. The bill requires that any money collected, except fines in certain circumstances, must be deposited in the new account, and such money must be used for expenses incurred in carrying out the Board's powers and duties. There are no proposed amendments.

Chair Jauregui:
Is there any discussion on the bill? [There was none.] At this time, I would entertain a motion to do pass Senate Bill 35.

> ASSEMBLYWOMAN CARLTON MADE A MOTION TO DO PASS SENATE BILL 35.
>
> ASSEMBLYWOMAN MARZOLA SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYMAN FRIERSON WAS ABSENT FOR THE VOTE.)

I will assign that floor statement to Assemblywoman Marzola.

That brings us to our last item on the agenda, which is public comment. [Public comment protocols were explained.] Is there anyone on the telephone line wishing to give public comment? [There was no one.] Are there any comments from anyone on the Committee? [There were none.] You should have already received your agenda for Monday. Please note the start time; we will be meeting at 1 p.m. on Monday. Thank you and have a nice weekend, everyone. We are adjourned [at 3:09 p.m.].

RESPECTFULLY SUBMITTED:

_____
Paris Smallwood
Committee Secretary

APPROVED BY:

_____
Assemblywoman Sandra Jauregui, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Senate Bill 260 (1st Reprint), submitted by Senator Nicole Cannizzaro, Senate District No. 6.

Exhibit D is a proposed conceptual amendment to Senate Bill 260 (1st Reprint), submitted by Matt Robinson, representing Nevadans for Data Privacy.

Exhibit E is a letter dated April 29, 2021, submitted by Robert Callahan, SVP, State Government Affairs, Internet Association, regarding Senate Bill 260 (1st Reprint).

Exhibit F is a proposed conceptual amendment to Senate Bill 290 (2nd Reprint), presented by Senator Roberta Lange, Senate District No. 7.

Exhibit G is a letter dated April 30, 2021, submitted by Connor Cain, representing Comprehensive Cancer Centers of Nevada, in support of Senate Bill 290 (2nd Reprint).

Exhibit H is a proposed conceptual amendment to Senate Bill 320 (1st Reprint), presented by Senator Dina Neal, Senate District No. 4.

Exhibit I is the Work Session Document for Senate Bill 35, presented by Marjorie Paslov-Thomas, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.