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

Eighty-First Session
March 29, 2021

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:03 p.m. on Monday, March 29, 2021, Online. 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
Assemblyman Jason Frierson
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Susie Martinez
Assemblywoman Elaine Marzola
Assemblyman P.K. O'Neill
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Robin L. Titus, Assembly District No. 38
Assemblywoman Natha C. Anderson, Assembly District No. 30

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Sam Quast, Committee Counsel
Terri McBride, Committee Manager
Louis Magriel, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Tim Burke, Owner and Winemaker, Artesian Cellars, Pahrump, Nevada
Valdine McLean, Owner, Kruze Rd Winery, LLC, Lovelock, Nevada
Teri Bath, Secretary/Treasurer, Western Nevada Development District
Adam Hand, Winemaker, Great Basin Winery, Reno, Nevada
Alfredo Alonso, representing Southern Glazer's Wine and Spirits; and Nevada Beer Wholesalers Association
Kathleen Neena Laxalt, representing Board of Dispensing Opticians
Corrine Sedran, Executive Director, Board of Dispensing Opticians
Chris Grimm, representing Warby Parker
Robert Wolz, Vice President, Charles Schwab Corporation; Associate General Counsel, Business and Personal Trusts, Charles Schwab Trust Bank; and General Counsel, Charles Schwab Trust Company
Jeff Brown, Senior Vice President, Legislative and Regulatory Affairs, Charles Schwab Corporation, Washington, D.C.
Sandy O'Laughlin, Commissioner, Division of Financial Institutions, Department of Business and Industry
Connor Cain, representing Nevada Bankers Association
Graham Galloway, Board Member, Nevada Justice Association
Jesse Wadhams, representing Nevada Insurance Council
Doug Harris, Field Claims Manager, Farmers Insurance, Las Vegas, Nevada
Mark Sektnan, Vice President, American Property Casualty Insurance Association, Sacramento, California
Joseph Guild, representing State Farm Insurance Companies

Chair Jauregui:
[Roll was called. Committee protocol and virtual rules were discussed.] On today's agenda we have four bill hearings. I want to give everyone the lay of the land because we will be taking the bills out of order. I will be starting with Assembly Bill 375 first, followed by Assembly Bill 391, and then we will hear Assembly Bill 290 and lastly, Assembly Bill 277. With that, I would like to open the hearing on Assembly Bill 375. I believe we have Assemblywoman Titus here to present.

Assembly Bill 375: Revises provisions relating to alcoholic beverages. (BDR 52-915)

Assemblywoman Robin L. Titus, Assembly District No. 38:
I am here today presenting Assembly Bill 375, which revises provisions relating to the operation of craft distilleries, estate distilleries, and wineries. Nevada is home to breweries, wineries, and distilleries that have brought home coveted spirit awards. There are numerous essential breweries creating artisanal and craft brews in each region of Nevada. Wineries in Nevada are located throughout the state, including Pahrump and Fallon, and produce high-quality, estate-bottled vino. We are home to two of the United States' three estate distilleries. This industry is rapidly expanding, and we need to allow more flexibility to do business in Nevada.

As many of you know, in order to operate a winery or craft distillery in Nevada, a business must first obtain permits and licenses from various government agencies, including the Internal Revenue Service and the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury, and Nevada's Department of Taxation. As well, they must meet local licensing requirements. Recent changes to Nevada law have made the prospect of opening and operating a winery in Nevada more attractive.

For example, in 2015 this Legislature made many changes to Nevada's winery laws [Assembly Bill 4 of the 78th Session] by creating new opportunities for wineries to operate in the state. While there were no changes to the licensing or permitting requirements of a winery, it did change the scope of a winery's permitted operation. The measure expanded where wineries could operate in the state by permitting wineries in Clark County and Washoe County, expressly permitting wineries to produce, bottle, blend, and age wine, and adding restrictions concerning the wine and other alcoholic beverages a winery can sell at retail.

Even with these changes, vintners, brewers, and distillers continue to face challenges which have been exacerbated by this recent pandemic. For instance, transporting alcohol between casing room locations, breweries, or wineries must sometimes be handled by a distributor, which increases costs to the vintners and brewers. Even the retail selling of products can have our businesses wanting to expand throughout this great state of Nevada.

Committee members, I have distributed a copy of an amendment that we are introducing at this time [Exhibit C]. You should have all received a written copy and it should be up on the Nevada Electronic Legislative Information System, or if not, you should hopefully all have it in your office. At this time, I am going to turn the presentation over to my copresenter, Tim Burke, who will go over the bill and its amendment. I will be here to answer any further questions.

Tim Burke, Owner and Winemaker, Artesian Cellars, Pahrump, Nevada:
I have been a resident of Nevada for nearly 60 years. I grew up in the small rural community of Dayton near Carson City. My passion for the wine industry began in the early 1980s after visiting Napa, California. I was able to pursue my passion beginning in 2009 when I started attending classes at the University of California, Davis. I have since gone on to earn a certificate in viniculture. I use that knowledge to help vineyard owners in Nevada with their vines. I am the winemaker and co-owner of Artesian Cellars in Pahrump.

I would now like to provide a brief overview of A.B. 375, which addresses some of the concerns that Assemblywoman Titus mentioned. Sections 1 and 2 of the bill authorize a craft or estate distillery to operate as an alternating proprietorship with a licensed winery. Similarly, section 3 allows a winery to operate as an alternating proprietorship with a licensed craft or estate distillery.

In 2017, an alternating proprietorship model was authorized so that separate winery companies can operate in one building [Assembly Bill 431 of the 79th Session]. This would allow a similar model for an estate or craft distillery and a winery to do the same thing. Technically, once we looked at the language, it would be an alternating premise, not a proprietorship. This section of the bill is addressed by the friendly amendment [page 1, Exhibit C].

Sections 3 and 4 of the bill also allow a winery to import wine or juice from any bonded or permitted winery, transfer wine between two or more bonded, permitted, and licensed wineries, and store wine at a federally bonded storage facility. As a winery grows, it accumulates vintages that need to be stored. Wines, especially red wines, often take several years to mature in a bottle before they are ready for sale to the consumer. Wines should also be stored at a much cooler temperature, typically 55 to 65 degrees. Those temperatures are difficult to maintain in a winery that is open to the public, where room temperatures are more commonly between 70 and 75 degrees. A separate bonded storage facility can properly store the wine and free up valuable space in a winery.

Upon passage and approval of A.B. 375, until September 30, 2025, wineries may produce, bottle, blend, or age wine on the premises at a federally bonded and permitted noncontiguous location or a licensed custom crush facility [section 3, subsection 1, paragraph (a)]. Beginning October 1, 2025, the location in which a winery may produce, bottle, blend, or age wine will no longer be restricted [section 5, subsection 2].

For example, because of the restrictions implemented by the COVID-19 pandemic, many wineries have added restaurants and related equipment to their wineries so their tasting rooms could be open. In many instances, a winery's production space was converted to a restaurant and dining area. As well, because of social distancing requirements, production areas have been used to maintain social distancing for customers, eliminating that space from production. A noncontiguous production area would allow wineries to continue to use their converted production space as a restaurant and maintain social distancing. It would also allow us to maintain those additional tax revenues and keep those restaurant employees working.

Under A.B. 375, wineries licensed after October 1, 2015, will be allowed to serve by the glass, on premises, any alcohol beverage until September 30, 2025 [section 3, subsection 2, paragraph (b)]. After October 1, 2025, those wineries will not be restricted to selling wine produced, blended, or aged by the winery and may sell other alcoholic beverages. Finally, A.B. 375 increases the amount of wine that may be sold at retail or served by the glass by wineries that produce, blend, or age less than 25 percent of their wine from fruit grown in the state to no more than 2,000 cases in a calendar year [section 3, subsection 3, paragraph (b)].

There is a friendly amendment to the bill. Section 3 adds that a winery must be licensed by the State of Nevada and defines "custom crush" [page 1, Exhibit C]. Additionally, restored language will allow a winery to import from outside of the state [page 3, Exhibit C] and requires the same percentage as other wines, 25 percent or more, of honey that must be

produced in the state [page 2, Exhibit C]. That particular section regarding honey is important to our mead and cider operations that operate as wineries because they do not use grapes; they use honey to produce their product. Section 4 adds conforming language. These revisions to existing laws will enable businesses to grow throughout the state. I am available now to answer any questions you may have.

Assemblywoman Titus:
That is our presentation. We are happy to take questions.

Chair Jauregui:
Committee members, any questions?

Assemblywoman Carlton:
I had concerns about the custom crush, but I see that it is defined in the amendment [page 1, Exhibit C]. If I am reading this correctly, this would be strictly Nevada grapes. They would not be bringing in grapes or juice from outside of the state. Is that correct?

Tim Burke:
Yes, that is correct.

Assemblywoman Carlton:
That eliminates one of the issues I saw in the bill. I am just trying to understand what the problem is that you are actually trying to fix. I sat through this in 2015 [Assembly Bill 4 of the 78th Session]. It was a very long, four-hour hearing. There was an issue that they were really trying to fix, and it seems that every session now, we are coming back to get a little bit more and then a little bit more. That was one of the original concerns we had in 2015, that this was going to grow into something that is beyond a winery or distillery actually doing the samples on site and being able to let people taste it on site.

Now I see that you want to serve full alcohol. Basically, you want to turn these wineries into bars. I think Nevada has a lot of bars. I guess I want to understand what the issue is that you are trying to fix here. It seems as though you are trying to get out of the winery and distillery boutique niche that we set up for you and become full-fledged bars.

Assemblywoman Titus:
I gave a little overview for the main things that this bill does. As you know, over sessions we see what a bill does and then we come back prudently to add to it or fix it. We have spent a lot of time over the years adjusting things in our bills once we have experience with them. First, one of the things is that it adds mead to it, which we did not identify in the past and which certainly is a custom drink. Mead, by definition, is when you use honey.

Second, as Mr. Burke pointed out, especially as you age these wines you are making here in Nevada, it may take several years. With the limited number of cases of wine you may have in your facility, it really limits the type of product you might have. As you are aging the

great reds you may have and you take several years to age them, you are limited in producing any of the other ones that maybe only require a year in the case or keg. You are limited in what you can produce and how long you can have them.

The other thing is the flexibility of transport between units. Mr. Burke described that briefly in his testimony. The final part is that you are not allowed to sell other products if you are at the tasting room. There may be folks who would prefer something other than boutique wine, such as beers or something else. This allows them to serve by the glass, which would be appropriate as it is an enterprise and a business, and certainly we have to be flexible with that. Mr. Burke, do you have anything else to add to Assemblywoman Carlton's questions?

Tim Burke:
It is an evolving industry. We have very few wineries in Nevada. We have the fewest in the entire West and one of the fewest numbers of wineries in the nation, for that matter. As we have grown as wineries come on, we identified certain areas which are not major changes but are small changes which will allow us to improve our business model and be profitable. None of us are big corporations. We are businesses and individuals who have mortgaged our homes to get these businesses going, so revenue is important. Winery equipment is very expensive. Some additional revenue streams are always helpful for us.

Occasionally we do a special event, whether it is a meeting or something else, and we find it hard to believe that everybody wants to drink wine all the time. Maybe they want a glass of beer or something like that. That is really the reason for that. We still want to be exactly what you said: boutique wineries. Building the Nevada industry is our goal, and wineries are in favor of this.

Assemblywoman Carlton:
I just want to make sure I understand this correctly. We have always had a delineation. It is a three-tier system, and it is that way for a reason. We have always made sure that the licensing went along with the actual function. In reading this, I believe that the winery also wants to be distillery, but they only want to have one license and do not want to be licensed as both a winery and a distillery. They just want to have one license. It seems to be contradictory to how our regulatory system works for enforcement and accountability.

The lines are getting a little blurred here. I have some concerns about that. We have done it that way for a reason. Maybe my next set of questions will probably be for the Department of Taxation rather than for the proponents of the bill to make sure we can address this. It seems like when we did this the first time, it was very limited, and now it is getting a little bit bigger than what I think the intent actually was as far as a family-owned winery or distillery. It is almost turning into a big business, and I think we need to keep that in the backs of our minds as we move forward.

Assemblyman Flores:
I am looking at section 3, page 6, line 43, where it strikes out 1,000 cases and replaces it with 2,000 cases. Could you let us know how many people are in that space now who are doing

the 1,000 cases, and if we go to the 2,000 cases, how many folks will be participating in that or have the capability to do that? I am trying to understand what that means practically through a business lens and who is participating in that and taking advantage of it.

Assemblywoman Titus:
We also have industry on the line if needed, but Mr. Burke?

Tim Burke:
For example, in northern Nevada there are about 15,000 vines in the ground. It takes a good four years from when those vines are planted before they are able to produce any grapes that are commercially viable. A good 50 percent of those vines have been put in the ground after 2015. More vines are going in the ground. I know that here in Pahrump, there are another 3,500 vines being planted this year. But again, we are four years or so out before those vines are actually producing grapes that we can use as Nevada grapes.

Several of the wineries are bumping up against that cap now. They are actively harvesting Nevada grapes. I am sure we are all aware of the frost that took place in June last year in northern Nevada. Every single grape in certain vineyards up there, including one with almost 6,500 vines, was lost. So that fruit was not available. Without that fruit available, there is very little that can be done from the winery's standpoint. We cannot pull the fruit from anywhere else; it must be Nevada grapes.

We are very cognizant of the three-tier system and working within that system. In regard to increasing the cap and going to 2,000 cases, a couple of wineries will probably be on projection for that in this coming year. It is difficult to tell because of COVID-19, which skews all our numbers right now. Hopefully, grapes will become available and we will not have a late frost in June, which will allow some of those Nevada wineries to be able to harvest those Nevada grapes.

Assemblyman Flores:
To make sure I took that correctly, right now, we think there are maybe a couple of wineries that could potentially utilize the 2,000-case number should we go to that. Even that we are not 100 percent sure about because we obviously have the concern that the season, temperature, and other factors would play into it. Even if we move up to the 2,000-case limit, we may not see that be maximized and used until many years down the road. Is that correct?

Tim Burke:
We do not know. It is very difficult to predict the wine, which starts as an agricultural product. That is one of the hardest things about this industry; we are subjected to Mother Nature quite often on our harvests. We also do not know after COVID-19 what our sales are going to be and how the public is going to respond in terms of returning to wineries. We are, of course, hoping that we are pushing up against those limits, because that means more jobs for this industry and for the state, and more tax revenue for the state, which are all things we want to have happen.

Chair Jauregui:
I am going to jump in because I do have a question. I have been on this Committee since I have been at the Legislature, and I recall these bills coming forth every session. You are asking to increase to 2,000 cases. Did we increase that last session as well? Has it always been 1,000 cases, or was that an increase and now this is another increase?

Tim Burke:
No, that has always been the number.

Assemblywoman Considine:
I am just looking at parity and whether opening wineries to serve any alcoholic beverage then also allows craft breweries to open and serve any alcoholic beverage by the glass. Is that where this is going?

Assemblywoman Titus:
You can ask legal counsel about that, but the way that this is under the statute and under the wineries, I do not know that it would also pertain to craft breweries.

Tim Burke:
I would have to go back and look. However, I do know, although I do not know if it is for distilleries or breweries or both, that they actually are allowed to sell wine now.

Assemblywoman Tolles:
First of all, I will just say for the record that I love mead. I was introduced to it in the past year, and we have a location in Reno that I imagine would be really excited about this legislation. One of the challenges is if we were to go out with another couple and three of us like mead, but one of us does not and would just want to be able to order a beer. I think they would really appreciate that. When we are back out in the open again, that will make date nights fun.

My question regarding this is it allows the winery to be able to serve any alcoholic beverage. Are there any other requirements around food that are attached to this, or is that totally separate? In the case that I laid out, all we are doing here is if you are an establishment that serves mead, you are now allowed to serve draft beer for anyone in the group who did not want to have mead.

Assemblywoman Titus:
Again, legal counsel can clarify, but it does not affect any of the other statutes. This just revolves around the serving of the alcohol. It is by the glass and not for sale except by the glass.

Assemblywoman Tolles:
Does legal counsel have an addition to that?

Sam Quast, Committee Counsel:
There is no requirement for food set forth in the section which this would affect. To answer your question, no, there is no requirement for food.

Assemblywoman Hardy:
I wanted to talk a little bit about section 5. You briefly touched on this. There are different dates for when the provisions become effective or when they expire. Could you tell me why they are different and how you arrived at those dates?

Assemblywoman Titus:
Mr. Burke, I will have you give the history on that. You mentioned it briefly in your testimony. If you could clarify, I would appreciate it.

Tim Burke:
In 2015, when the *Nevada Revised Statutes* (NRS) were changed to allow wineries and tasting rooms in Clark County and Washoe County, there were wineries that were grandfathered in prior to any winery license prior to 2015. I believe it was September 30. They had the ability to sell wine or other alcohols by the glass, to have an additional tasting room, and there was no cap requirement on those wineries that were already previously in business prior to the change in statutes in 2015.

After the change in statute, the 1,000-case limit came into effect along with the other items. The grandfather clause has a 10-year date on it which ends in 2025. That is where all those dates are being pulled from.

Assemblywoman Hardy:
I am somebody who has a very limited knowledge about wine in general, so this is a really good learning experience for me. Could you tell me the difference between a craft distillery, an estate distillery, and a winery?

Tim Burke:
Yes. There is no formal designation within the state for an estate winery. An estate distillery means that you are in control of the grains that you use, and therefore you can have the estate designation on that. I am not sure what the craft distillery definition is. But for wineries, it is a fairly broad and generic term.

In an ideal situation, there are three components to wineries. There are vineyards, there is the wine production, and then there is the wine tasting room. In an ideal environment, a winery is all three, but often it is not practical. There are private vineyards in the state of Nevada that we harvest. There are several wine production facilities, not here in the state but in other states. And then there are the wine tasting rooms. All those components eventually come together as a winery.

Assemblywoman Kasama:
I do have to reiterate that I have a girlfriend who loves to go to wineries and cannot get her husband to go with her because he will only drink vodka. She might be able to get him to go now. I do not think we will see people flocking to wineries who like to drink spirits, but I think it will accommodate those who do show up with the rest of us who like wine.

My question is just a general problem. You made a statement, and this is for my personal understanding, where you said as a state, we are the lowest wine producer in the United States. My question is, has that been due to regulatory issues or is that due more to geographic or climate issues? I am just curious.

Tim Burke:
I do not know that we are the lowest, but we are one of the lowest. We are certainly the lowest in the western United States in terms of wineries. Utah has more wineries than we do. It is probably a combination of those factors. One of the biggest drawbacks has been the fact that a great deal of our state of Nevada, as we all know, belongs to the Bureau of Land Management (BLM) or is controlled by the BLM. There are not that many great agricultural producing areas within the state. The University of Nevada, Reno (UNR) did a study on this. Wine grapes are actually a better agricultural product in terms of water use than alfalfa.

But, again, it is a generational type of product. When people talk about hemp or marijuana, they are looking for a quick turn. When you plan to put a vine in the ground, it takes several years. It takes a long time to develop that infrastructure—first to convince people to put vines in the ground, and then for the vines themselves to mature. There is not a lot of knowledge here either. We are all learning as we go. There is not a good playbook for wineries to start up in Nevada. It is a slow process, and we kind of feel like we are pioneers in getting this off the ground, starting with Jack Sanders originally almost 30 years ago.

Assemblywoman Duran:
I understand that we need to make our winery businesses a little more profitable. My concern, as a follow-up to Assemblywoman Carlton and Assemblywoman Considine, is where are you going to get this alcohol, and is it going to be limited to certain drinks? It says, "Serve by the glass, on its premises, any alcoholic beverage" [section 3, subsection 2, paragraph (b)]. Are you opening that up to where you are going to have mixed drinks, or is it just going to be some brandy or some other type of drink? Do you have to have a techniques of alcohol management (TAM) card to mix these drinks?

Tim Burke:
We are not sure what other wineries may want to do in terms of mixed drinks. Any alcohol that we would receive for our wineries would be through the three-tiered system through our distributors. Again, it is never going to be a winery's main part of their business. It just gives them an additional option. They would have to have whatever local liquor licenses are required in order to pour any alcohol of any type. They would certainly have to follow local regulations first.

Assemblywoman Duran:
So just being in the business, you do have to have your TAM card or alcohol awareness card and take all the other classes to serve alcohol as well as your ServSafe [Food Safety Manager Training Program] pass and stuff like that. Are these places going to follow those regulations as well?

Tim Burke:
It is a county-to-county requirement, but yes. For example, here in Nye County anyone who pours must go through and acquire a sheriff's card and have a background check done prior to doing that. I know in Clark County, you have to go through a class on alcohol awareness. But it does vary from county to county.

Chair Jauregui:
I have a couple of questions as well. I think I know the answer to this, but I want to ask to clarify on the record. Regarding the language where it says a winery can "Transport wine between two or more wineries which have been issued a wine-maker's license . . ." [section 3, subsection 1, paragraph (c)], is that in any way stepping into the lane of distributors?

Tim Burke:
We do not think so. There is no tax involved. Any paperwork for a bond-to-bond transfer has to be done and submitted to the Alcohol and Tobacco Tax and Trade Bureau. It is part of our records that we submit to the Department of Taxation every month, so there is a trail for that.

Chair Jauregui:
But would this be a function of an alcohol distributor? Is transporting wine between two or more wineries something that they do? Is that something you would normally hire a distributor to do?

Tim Burke:
Currently, it can be any trucking company that is licensed to transport alcohol. It does not have to be a distributor.

Chair Jauregui:
I was reading that there are quite a bit of different criteria for wine that is made from grapes that are more than 25 percent grown in the state or less than 25 percent grown in the state. You talked about creating jobs and how this is a bill that could potentially create jobs here in our state. Now, if wine is produced from grapes that are 25 percent or more grown in the state, how many cases are you limited to?

Tim Burke:
We are currently limited to 1,000 cases no matter where the grapes are pulled in from. If that were increased to 2,000 cases and we were able to harvest enough Nevada grapes to have

25 percent—for example, if we got enough Nevada grapes to do another 250 cases—that would give us the ability to essentially be a 3,000-case winery. The benchmark for where wineries like to eventually be profitable is 3,000 cases.

Chair Jauregui:
That leads me to my next question. You just said, if I am reading the language right, that "If 25 percent or more of the wine produced, blended or aged by the winery is produced, blended, or aged from fruit grown in this State" [section 3, subsection 3, paragraph (a)], that wine is limited to 1,000 cases, as is wine that is "less than 25 percent of the wine produced, blended or aged by the winery is produced, blended or aged from fruit grown in this State . . ." [section 3, subsection 3, paragraph (b)].

So you are only seeking to increase the number of cases of wine sold that are made from more grapes brought from out of state? Why are we not doing the reverse? Why are we not increasing the number of cases of wine sold that are made from grapes grown in the state versus grapes that are grown out of the state? Because the more grapes we can produce in the state, the more jobs would be created. I do not see us increasing the number of cases that you are allowed to sell for grapes grown in the state. We are only increasing it for the grapes grown out of the state.

Tim Burke:
The goal, frankly, for every winery in the state is to be at 100 percent Nevada grapes. There are not enough grapes to do that. While vineyards are being planted and matured, allowing wineries to increase their numbers and bring in grapes that they have to source—because there simply are not enough Nevada grapes to do that right now—allows us to have capital to put in vineyards. To put in a vineyard is a $25,000 to $50,000 endeavor per acre. Based on current numbers plus staff pay, having the building open, and doing everything else, the financials do not work out very well in our favor to keep building this business.

Chair Jauregui:
I appreciate that. I just think we have to find or build a mechanism in here that would encourage people to want to plant and grow Nevada grapes. Because if we leave it at a 1,000-case limit and we increase the cases that you can produce and sell for out-of-state grapes, then they are only going to be encouraged to buy out-of-state grapes. Like you said, there are a lot of expenses like paying staff, but that is ultimately where we want to get to. I completely agree with you; we want to be 100 percent Nevada grapes. That would be wonderful. I think we have to have a mechanism built in that would encourage people to go that route. Perhaps allowing them to produce more cases if they are made from more than 25 percent Nevada-grown grapes creates an incentive there to want to plant more grapes in the state.

Tim Burke:
There is a mechanism in California where they give incentives to vineyards through tax incentives and those types of things to encourage the agricultural production of grape vines. That is something we do not have in place here in this state. There is really nothing in the

state that encourages vineyard owners themselves. They may not want to make wine or be wineries, but they want to produce grapes to sell to Nevada wineries. Other states do have mechanisms in place to encourage exactly what you are stating.

Chair Jauregui:
I appreciate that. If you have that information you could share, that would be great.

Tim Burke:
I do.

Chair Jauregui:
Committee members, any other questions? [There were none.] I am going to move on to testimony in support.

Valdine McLean, Owner, Kruze Rd Winery, LLC, Lovelock, Nevada:
I support this bill. I support the increase of the case amount for many of the reasons that Tim Burke has stated. The one foremost reason is that it does give us the ability to weather the situations where, when we do have a late frost and it destroys our crops, we still have inventory or the ability to produce, save, and keep going for the following year. Though I am nowhere near 1,000 cases—we just started up—I am looking at future aspects of it.

The other thing that was of real interest is also the ability for us to serve a typical beer. We get a lot of people who have the wine, but again, they bring a friend or spouse or partner who would just like a Coors Light. It is not something like a bar scene that I want at all. That is absolutely not what I am into. But it is nice to be able to offer someone something more than a glass of water while their friend sips wine. That is all I have to contribute to this.

Teri Bath, Secretary/Treasurer, Western Nevada Development District:
I have been involved in the wine industry for the last ten years in Nevada. I am also on the board of the Western Nevada Development District. I would like to say that I am in favor of this bill for an economic development reason, to diversify our economy in Nevada and increase our tax base and job core.

Chair Jauregui:
Can we move on to those wishing to testify in opposition?

Adam Hand, Winemaker, Great Basin Winery, Reno, Nevada:
Like Tim, I grew up in Carson City. I am a graduate of UNR and a professor at UNR today. I have served our state as a member of the public workforce since 2016. There is a lot of good in the bill that has been discussed already. My concern with the bill is the requirement to have 25 percent Nevada-grown fruit to increase the production limit. In northern Nevada, the issue is the lack of fruit and the climate, as has been brought up. I would love to be able

to purchase fruit near Reno to satisfy that requirement. I am one of the wineries that is pushing the limit right now, by the way. There are about 20 vineyards around town. Tim mentioned the number of vines; that would produce about 3,000 cases and would need to be spread around about 6 or 7 wineries in northern Nevada.

He also mentioned the frost that killed all the fruit in most of the vineyards in northern Nevada last year. We have a challenge, not only with the climate and the availability of fruit, but the challenge is our ability to grow our businesses. Brew pubs and craft distilleries do not have any restrictions on the use of Nevada-grown agricultural products. Basically, a brewery can produce 40,000 barrels a year with a value of about $16 million. Craft distilleries can produce 10,000 cases at a value of about $3 million a year. That is just using publicly available sale prices and current limits.

Wineries at 1,000 cases or less have an annual value of about $300,000, which is very difficult to run a business on. It is less than 2 percent of the value that the beer breweries can produce and less than 1 percent of the value that spirit distilleries can produce. Even with the proposed increase to 2,000 cases, wineries would be well below even 5 percent of what the other alcohol producers can produce. The question that I pose is, is it unreasonable for wineries to be able to produce even 5 or 10 percent of what breweries and craft distilleries produce? This addresses a couple of the questions that came up from the Committee members during the discussion. I would be happy to answer any questions.

Chair Jauregui:
Let us move on to those wishing to testify in the neutral position. Before we go to the telephone line, I do know that we had one of our presenters on another bill here to testify on video in the neutral position on A.B. 375. I would like to first go to Alfredo Alonso in the neutral position.

Alfredo Alonso, representing Southern Glazer's Wine and Spirits; and Nevada Beer Wholesalers Association:
Just so I can clarify why we are where we are today, when the bill [Assembly Bill 4 of the 78th Session] passed in 2015, we had newspaper articles all over the place at the time talking about growing grapes. It was about turning Nevada into eastern Washington, and that somehow the system was keeping these folks out, which was not the case. The only difference at the time was there was a bill that had passed ten years earlier [Senate Bill 233 of the 73rd Session] allowing for economic development in the rural counties which had allowed for tasting rooms. You could still have a winery in the other counties; you just could not have a tasting room. So, this is all about the tasting room.

Years later, we have been trying to work with some of the folks who are before you today. Mr. Burke is obviously a fine person and he is trying to make a go in a very difficult and competitive world, so I applaud him for that. Where we have concerns is that, again, as one individual discussed it, it is not about growing grapes. It is not about creating a winery in the sense of what a winery is. It is about flooding the market with other people's grapes and other people's juice.

What is really important here is that the amendment [Exhibit C] covers most of our concerns, and that is why I am in the neutral position right now. The amendment basically makes it certain that we are talking about Nevada wineries using other Nevada wineries with respect to bringing grapes or juice or perhaps a finished product in. One of the concerns that was brought up is the situation where someone wants to buy grapes out of Amargosa Valley in southern Nevada but they cannot transport it, because if they try to transport it, it will go bad. We understand that. That makes perfect sense. If they want to use a custom crush facility, that is, another winery that is located in that area, that is perfectly reasonable and makes perfect sense in allowing them to get closer to that 25 percent.

It is important to note that at 25 percent, you do not have limitations. The whole point—consistent with what the proponents have pushed and thought important five years ago—was to grow Nevada grapes, like you see in every winery and in most wineries throughout the country. Arizona had some issues similar to this, where many of these wineries were coming into the state unfettered. They were not Arizona wineries and had no intention of growing Arizona grapes. They have had to curb that issue back. It is the integrity of the system and of the wineries. What Mr. Burke and others are trying to do is absolutely the right thing.

I think what you have seen in the amendment that was proposed [Exhibit C] covers most of the concerns we had. It strikes the out-of-state crush facilities. Again, if you can buy California grapes and even have them crushed and bottled in California, then I am not sure you are a Nevada winery anymore. I think you are a bar. That was an important piece of that. We are supportive of their efforts to grow more grapes, and I would be glad to answer any questions. What Mr. Burke, Bill Loken before him, and others have been trying to do is amazing, and I hope they have the best of luck and make a lot of wine in the years to come.

Chair Jauregui:
I do have a question for you, Mr. Alonso. I thought, in the bill presentation, that I had asked about if the wine you produce is made of more than 25 percent Nevada-grown grapes. Did you say that you are then not limited in the number of cases you can produce?

Alfredo Alonso:
That is correct. That is how we have always read it and how the bill was first presented and passed in 2015 [Assembly Bill 4 of the 78th Session]. It is also really important to note that more than three-quarters of the wineries in this country are under 5,000 cases. We are talking about the vast majority of wineries bringing in grapes that are closer to the 2,000-case limit that we are even talking about. The idea that this is a small amount is nonsensical.

The thing we are trying to avoid is, again, a large winery or producer—and we have had these issues before with rectifiers in the statute that this body has had to come back and define—that brings in prefermented or fermented juice bottled, and then they are called a Nevada winery or a Nevada anything, for that matter. I think you have to be really careful with that.

We are very limited with our resources at the Department of Taxation. Our enforcement does the best they can under the circumstances, but we are limited. Because of that, it is very difficult to know whether taxes are being paid, especially when you are basically shipping in product from another state. I think what the Minority Leader is trying to do here with the amendment helps the industry overall without going too far.

Chair Jauregui:
Is there anyone else on video who would like to testify in the neutral position? [There was no one.] Can we check the telephone line for anyone else testifying in the neutral position? [There was no one.] Assemblywoman Titus, would you like to give any closing remarks?

Assemblywoman Titus:
I would like to point out for clarity that, as Mr. Alonso said regarding your question, Madam Chair, they can produce an unlimited number of cases now if it is Nevada grapes. The purpose of putting that ceiling on there is to address wineries and California companies coming to Nevada. We really want to promote Nevada businesses. Also, again, we do want to promote Nevada businesses, so the reality here is that we should be supportive of whatever we can do to help true Nevada businesses grow, not only in what has always been a relatively difficult world, but even more so in current economic standards. Thank you all for your great questions and for hearing this bill.

Chair Jauregui:
With that, we will close the hearing on Assembly Bill 375. The next bill on our agenda is Assembly Bill 391. I will now open the hearing on Assembly Bill 391, and I believe we have Assemblywoman Anderson here to present the bill.

Assembly Bill 391: Revises provisions relating to dispensing opticians. (BDR 54-659)

Assemblywoman Natha C. Anderson, Assembly District No. 30:
Assembly Bill 391 includes very, very extensive cleanup language that is coming from the Board of Dispensing Opticians. Over the last year, they have been trying to look over the language of *Nevada Revised Statutes* (NRS) Chapter 637 with the goal of making sure that the language both reflects current and best practices and takes away some of the more cumbersome areas that are a little bit confusing for people. This bill is being brought forward to try to present that.

At the same time, let us be realistic. It is a very extensive bill. I think it is 37 pages. Neena Laxalt, the lobbyist for the Board of Dispensing Opticians, has made a nine-page chart that clarifies where all those changes are [Exhibit D]. That should be on the Nevada Electronic Legislative Information System for those following along. Due to the nature of the very technical language, I would like to hand it over to Corrine Sedran, who is the Executive Director of the Board of Dispensing Opticians, and Neena Laxalt, who is their lobbyist this session.

Kathleen Neena Laxalt, representing Board of Dispensing Opticians:
As the sponsor has said, the Board has been going through their regulations to try to clean them up and update them. As they were doing that, they discovered that they were going to need some changes and cleanup with their statutes as well. This is, in fact, a full statute cleanup. It is taking out some of the outdated areas and combining areas that were either repetitive or confusing. The Board is hoping this bill that is presented to you will make it a lot easier for applicants to understand the law and the licensing process. With that, I will go through the provisions of the bill.

I basically copied and pasted this from the Legislative Counsel's Digest, so I apologize for that. However, Corrine and I did provide a beautiful chart or spreadsheet that will also help you understand it section by section [Exhibit D]. The bill authorizes the Board of Dispensing Opticians to employ an Executive Director. It provides immunity from civil liability to the Board and any of its members, staff, and employees for certain acts consistent with many statutes of other boards, by the way. It expands the purposes for which the Board is authorized to accept gifts, grants, donations, and contributions. It requires the Board to perform certain duties relating to the issuance, renewal, reinstatement, revocation, and suspension of licenses.

The bill prescribes requirements for the submission of an application for licensure. It requires the Board to adopt certain regulations relating to licensure. It prescribes criteria for eligibility for a license as an apprentice dispensing optician. It clarifies certain requirements relating to eligibility for a limited license as a dispensing optician. It revises criteria for eligibility for a license as a dispensing optician. It removes the authority of the Board to issue a special license as a dispensing optician. It reorganizes certain provisions and increases the amount of the administrative fine for engaging in certain activity without holding a license.

With that said, I do want to say that we will have to submit an amendment to section 24 as there was some language that was omitted in the drafting. If you look at section 24, subsection 2 of the bill, it talks about accepting gifts and grants, and that language was, of course, deleted. It says, "administer oaths and issue subpoenas to compel the attendance of witnesses and the production of books and papers." Simply, we need to have added "documents and any other article related to the practice of ophthalmic." Those were just a few words that were missing and are the same words that are in the language of other boards.

That is a quick summary on what the bill is doing. I have Corrine Sedran here, who is the Executive Director of the Board of Dispensing Opticians, and she is going to somewhat follow the spreadsheet that was provided to all of you in an email last Friday, in this presentation, and also in the exhibits for today [Exhibit D]. She can go through and give you a section-by-section—or combined sections-by-sections—breakdown, and then be able to answer any questions you might have following her presentation. I appreciate your time and hope you consider supporting the bill.

Corrine Sedran, Executive Director, Board of Dispensing Opticians:
[Ms. Sedran read from written testimony submitted to the Committee, Exhibit E.] As Ms. Laxalt already alluded to, this bill is meant to clean up our current statute, which is outdated, very clunky, and not very easy to navigate, even for someone like me who deals with it on a daily basis. I know Assemblywoman Anderson did allude to the fact that the bill is very, very long. Part of the reason for that is our statute is incredibly long and cumbersome. Our main purpose here is not only to update but consolidate it and make it clear and comprehensible to anybody who is going to try to navigate our statute and figure out the laws pertaining to ophthalmic dispensing.

For anybody who does not know, ophthalmic dispensers in Nevada dispense prescription ophthalmic products such as contact lenses and spectacles. We license everyone in Nevada—other than optometrists and ophthalmologists—who are dispensing these products to the public. I will go through each individual provision as quickly as I can. If there are questions on the reasoning behind any of them, I can answer those.

The first change we made was changing the short title of the chapter. It was just an unnecessary provision. We never allude to the short title of the chapter; we always just refer to it as NRS Chapter 637. We did add a declaration of purpose here [section 2] in line with other boards' statutes to clarify what the Board's purpose is in regulating this profession [page 1, Exhibit D].

We did do some definitional updates in A.B. 391. The term "ophthalmic dispensing" needed to be updated to reflect current practices, and specifically we wanted to remove the word "delivery" from the definition of ophthalmic dispensing to reflect the reality that a lot of this dispensing is happening online now [section 13, subsection 1, paragraph (b)]. Online purveyors are delivering the products to the consumers. As well, in a retail setting you often have somebody who may not be licensed but who is just handing the product over to the customer. We wanted to clarify, though, that we do need to have a physical, final inspection done of these products by somebody who is licensed before they are handed over to the consumer [section 13, subsection 2, paragraph (d)], so again, we are just updating that definition to reflect that [page 1, Exhibit D]. I believe that covers pretty much everything under the first section heading of the Board's statute, which has to do with general provisions.

I am going to move on to the next section heading, "Board of Dispensing Opticians" [page 1, Exhibit D]. We have made some changes—not to the functionality of the Board but to the language to reflect the functionality of the Board. We added a provision allowing the Governor to appoint a person to fulfill the current term if a member leaves or resigns from the Board [section 14, subsection 4]. We have had that situation before where we have an opening and we just need the Governor to fill it.

We have consolidated provisions pertaining to electing officers of the Board, what constitutes a quorum, and general functioning of the Board in an office setting [section 16] [pages 1 and 2, Exhibit D]. Again, the statute does not reflect current practice. It alludes to a Secretary of the Board; we have not employed a Secretary of the Board, at least with that

title, in many years. This new provision allows the Board to hire an Executive Director and any other personnel as needed and clarifies our ability to contract with outside experts in other areas [section 15, subsection 2]. Again, it clarifies quorum. It also allows the Governor to remove or replace a member of the Board [section 14, subsection 3].

We also clarified some sections relating to compensation for employees and members of the Board [section 15] [page 2, Exhibit D]. The provisions for election of officers have all been consolidated under a single section dealing with Board officers [section 16] [page 1, Exhibit D]. Again, the statute's language is currently very clunky and disjointed, and we wanted to streamline it as much as possible.

There may be some questions about this immunity clause [section 4]. We did follow verbatim language from the Board of Massage Therapy statute when putting this in place. This is pretty common in occupational licensing board statutes. Here, our reasoning for this is that our members of the Board are licensed professionals when it comes to ophthalmic dispensing. We are not legal professionals. We do the best we can to perform our duties, but when we are acting in good faith and without malicious intent, the idea is we should have immunity when we are trying to carry out the duties of our jobs or of our Board's terms [page 1, Exhibit D].

Another provision that may get some questions is in regard to the gifts, grants, and donations that the Board is now able to take in order to carry out the provisions of this chapter [section 17, subsection 1]. This clause was originally under disciplinary actions and allowed the Board to accept gifts and donations to carry out investigations. It did not seem to make sense from the perspective that investigations are supposed to be confidential until the Board takes disciplinary action. It seemed to mean in that context that the Board could take a donation to carry out an investigation from somebody who is filing a complaint. It does not make sense from a public records perspective. Any donations or income to the Board would need to be public, but the complaint is supposed to be confidential. To have that provision under the complaint section did not make sense, so we moved it [page 2, Exhibit D].

As far as I know, we have never accepted donations to fulfill the provisions of this chapter. I am not aware of accepting any gifts or donations. We are a very small Board and we operate on a very tight budget. My thinking on this provision is if we are in a tight spot, as we have been this past year when we may not have been able to collect the licensing fees or renewal fees that we normally would in a regular year, this would give the Board the ability to continue functioning if we were to collect grants and donations for that purpose.

We did fully consolidate some remaining provisions under a single section here [section 18]. Under this provision, the Board would now have general rule-making authority. We wanted to consolidate a lot of the more administrative practices of the Board related to administering licenses, issuing renewals, checking on continuing education credits, and deactivating or reactivating licenses. We wanted to move that off into the regulations so we have more flexibility to accommodate our licensees in cases of unusual years like this past one we had [page 3, Exhibit D].

As well, when this law was enacted, it was enacted with a standard expiration date on all licenses of January 31. Some licenses are issued midyear, and some are issued in October or November. That license is only good through January 31, even though that person has paid a full fee for licensure. We wanted to have the ability to change those deadlines and renewal fees as needed. That is a major reason for moving most of these administrative issues into the regulations: to have more flexibility on these issues. We also wanted to consolidate some regulations pertaining to minimum standards of quality for lenses and for dispensing prescription products [section 18, subsection 2, paragraph (a)]. We wanted to clarify those things under the regulations as well as the general rules and responsibilities of the Board, consistent with other occupational licensing board statutes, so we just gave the Board general regulations provisions here [page 3, Exhibit D].

The last provision I want to speak to under the section heading "Board of Dispensing Opticians" deals with complaints [page 3, Exhibit D]. What we really did here was move all these complaint provisions to the section heading "Disciplinary and Other Actions" at the end of the statute. Again, it is consolidated, it makes sense, and it is easy for people to find what they are looking for with respect to complaints and disciplinary action.

I will go ahead and move on to "Licenses" which is the next section heading of our statute [page 4, Exhibit D]. This was the one that we really wanted to focus on with changing our statute. This is the big one that was causing the most confusion for people and the most difficulty for us. We wanted to update our licensing requirements to reflect current practices.

Assemblywoman Anderson:
I am so sorry, Ms. Sedran, but I have no idea what page you are on. I am trying to follow along and I do not feel I am doing a very good job of that. Could you tell me what page you are on so I can make sure I am on the right page?

Corrine Sedran:
Are you looking at the chart we submitted?

Assemblywoman Anderson:
Yes. If you could give us the NRS number and the page number, that would be a huge help.

Corrine Sedran:
Just so I am clear, do you want the NRS and page numbers for the original statute or for the bill?

Assemblywoman Anderson:
Could you talk about the page number and the NRS section that you are exactly referring to so we can follow along accurately?

Corrine Sedran:
Again, just to clarify, are you asking for the page number of the bill or the original statute?

Assemblywoman Anderson:
I am asking for the language that you are presenting on the chart, please.

Chair Jauregui:
We are looking at the chart right now, correct, Ms. Sedran? You are presenting the chart that you provided as an exhibit [Exhibit D], correct?

Corrine Sedran:
That is correct, I am going through the chart.

Chair Jauregui:
Which page number of the chart are you currently on? I believe that is what Assemblywoman Anderson was asking.

Corrine Sedran:
I am on page 4 of 7 [Exhibit D]. I apologize for not clarifying. On page 4, we are looking at NRS 637.100, which would be section 20 of the bill, regarding qualifications for examination and licensing as a dispensing optician. The current practice is that we use a national exam to test proficiency. This provision is outdated. We want to leave the Board the ability to administer its own exam if it decides to do so in the future, but what we really wanted to do was streamline the requirements for licensure.

We took out a lot of the subheadings, the confusing allusions to the 100 hours of contact lenses training, the certification from the American Board of Ophthalmology, and things like that [section 20, subsection 1]. Those are the specifics of it that really should be addressed in regulation rather than in statute. Also, we wanted to change the length of time that an apprentice needs to apprentice by reducing it from three years to two years [section 20, subsection 1, paragraph (d), subparagraph (1)] to allow people who do their tests and show proficiency to become licensed quicker. That pretty much covers what we have changed with that section [page 4, Exhibit D].

We have also added a provision regarding out-of-state applicants to clarify the waiver requirements and that the Board can waive certain requirements listed under NRS 637.100 [section 6] [page 4, Exhibit D]. We want to make it very clear what the Board can waive, what is still required, and we wanted to take out this provision related to special licenses. For all intents and purposes, a special license is exactly the same as a standard ophthalmic dispensing license. Special license refers to somebody who is coming from out of state and who is using a different application with different requirements, but the license is exactly the same. It is an optician's dispensing license. We did want to take out references to that special license application and consolidate all those provisions governing the licensing requirements for opticians.

I am going to move on to the next section on page 4, NRS 637.110 and 637.115 [Exhibit D]. These have been repealed. These are particulars relating to licensing administration.

We have consolidated a lot of these provisions under a new fees section. We have already adjusted the waiver requirements under NRS 637.100 so these sections are no longer necessary.

I am going on to page 5. All these sections that are listed here are being repealed. We are streamlining the licensing requirements, taking out anything that is redundant, and moving all the deadlines and fees into the realm of regulations. We are now adjusting apprentice licenses under a new section [section 7], so they are in their own separate section and it is clarified and streamlined.

I will go ahead and move down to the bottom of page 5 for NRS 637.121, section 21 of the bill. This is to clarify that limited licenses are no longer being issued by the Board. It is a license to only dispense spectacles as opposed to contact lenses. The Board is no longer issuing those licenses, only dual, full licenses. This is relating to limited licenses and the dispensing optician's ability to still hold that license. They have been grandfathered under these statutes so they can continue to hold that license, but if they let it lapse, they will not be able to get a new limited license [section 21, subsection 1]. We are not issuing new limited licenses.

I will go ahead and move on to page 6 under the "Licenses" section heading [Exhibit D]. For NRS 637.125, we are really streamlining provisions related to the employment of ophthalmic dispensers and apprentice ophthalmic dispensers to clarify the supervision requirements and that they cannot practice without a license [section 22]. If you are employing somebody who is practicing without a license, you are going to be culpable as well under our laws. That is already in the law; we just streamlined it.

Section 10 of Assembly Bill 391 is a new section. We are consolidating and clarifying our complaints provision to make it clear that the Board cannot close complaints pertaining to unlicensed activity or activity that would subject a licensee to disciplinary action. That is all contained under a single section now and clarified as far as what is public record versus what is confidential [page 6, Exhibit D].

Section 23 addresses NRS 637.150. Provisions related to disciplinary actions have been streamlined. We wanted to streamline unprofessional conduct and we also wanted to update the definition of "unprofessional conduct" [section 23, subsection 8]. There were so many subheadings under this section; it was confusing and rambling and we wanted to streamline and consolidate it and make it very clear. I do not think that we have changed anything substantively as far as what would constitute an action that would require disciplinary action by the Board, but we have clarified it [page 6, Exhibit D].

Section 24 is related to investigations. Again, it is streamlining the Board's investigatory authority and general authority to conduct investigations. The provisions related to issuing subpoenas have been moved from up above. They were initially under the section heading "Board of Dispensing Opticians," and they have been moved here to streamline and clarify everything related to disciplinary actions by the Board [page 6, Exhibit D].

I will go ahead and move on to page 7 [Exhibit D]. These two sections, NRS 637.155 and NRS 637.170, have been repealed. These provisions have been combined with NRS 637.150 and streamlined. *Nevada Revised Statutes* 637.175 has also been repealed. This was a single provision under the "Miscellaneous Provisions" section heading. It pertained to dispensing a prescription and giving the length of time that the prescription is valid. We moved this under the general rule-making authority section, which would be section 18 of A.B. 391 [subsection 2, paragraph (a), subparagraph (3)]. We put everything that the Board might want to regulate pertaining to scope of practice and standards of practice under that one section pertaining to rule-making authority.

Finally, under the section heading "Prohibited Acts; Penalties; Enforcement," both NRS 637.181 and NRS 637.183 govern unlicensed activities [page 7, Exhibit D]. This first section, NRS 637.181, deals with individuals while NRS 637.183 deals with employers. There was a fine cap which was changed in NRS 637.183 in this draft to match that of NRS 637.181 [section 26, subsection 3]. The reasoning was that often when there is an unlicensed individual dispensing and breaking the laws, the employer is more culpable than the individual. They are often directing that individual to dispense these products, either without a license or without adequate supervision as required by this statute. That was our reasoning for increasing the fines against the employers to match what the fine cap is for individuals. That is everything I have here. I know that was very lengthy, but I am happy to answer any questions.

Assemblywoman Anderson:
I know there were a large number of things and we will continue to work with the Board to get that clarified. It is tough to try to understand such technical information, but we are more than happy to answer any questions you may have. Thank you for getting this scheduled so quickly with such in-depth information. I think we are ready for questions if anybody would like to ask them.

Assemblywoman Carlton:
Tackling a board bill your first year out is a huge lift. They are very, very complicated and very difficult to explain, especially in this environment when you cannot have individual conversations with folks. If I ask a question that has already been answered, I apologize. I just realized there was a chart [Exhibit D]. It was sent late on Friday and I did not get it, and we were busy this morning, so I am going through the chart right now trying to figure out where all the pieces fit.

The one thing I would like to address is in section 6 where it talks about waiving requirements for licensure. Under subsection 3, they have to have "at least 5 years of work experience." That is something I have worked with that we typically call our credentialing language. However, it is not just work experience; it is a full look at the person. You want to make sure in those five years of experience that there was not something else that might have been going on if they were working in another state.

How does that overlay with the other provisions, such as licensure under section 18, and the Board being able to evaluate the applications? When you lay section 18 on top of section 6, subsection 3, how does that actually work? I love the way you started this with "The Legislature declares that the purpose of this chapter is to protect the public safety and welfare . . ." [section 2]. Just because they have a solid license for five years does not mean there might not have been another issue in the last five years. I would like to understand how those two sections work together. Does the Board have the authority to deny a license, or will they have to accept someone from out of state—otherwise known as reciprocity—under section 6?

Corrine Sedran:
To answer your question, first of all, the language that was submitted to us by the Legislative Counsel Bureau (LCB) with respect to that five-year requirement was not our initial language that we proposed. We are actually not crazy about it. What the language in the current statute says is if you are licensed in another state or U.S. territory, you can bypass our apprenticeship program. If you are not licensed in another state or U.S. territory, you must have five or more years' experience in an unlicensed state or territory.

What we were trying to clarify here was that the experience can be from a state or territory where they have what they call a certification or a limited license, something that is not on par with what we issue. Their licensing requirements are not comparable to our licensing requirements. We wanted to accommodate those people by making it a five-year requirement. However, as far as other requirements to verify that these people are competent to practice, we were going to first address that with the national certifications and exams that are required.

Second, the language is that the Board may waive these requirements. We wanted to leave ourselves open for the Board to still do a full review of all these applications, review and understand what the totality of this person's experience is, as you suggested, and determine based on that whether they are going to issue the license. The point of the new language was to allow the Board to issue a license to someone who may not have a comparable license in another state or territory but who does have plenty of work experience.

Assemblywoman Carlton:
I understand and totally appreciate it. I am cleaning up a bill of my own that will end up going to another Committee because apparently I was not clear enough on exactly what I wanted, so I have had to do a pretty full rewrite. Like I said, I am familiar with this five-year language. We created it as credentialing when we did the original dental bill back in 2003. It is basically looking at a person over the last five years. It is not just work experience; it is looking at them in a totally holistic way to make sure that while they may have great work experience, there is not something else on their record that would make you want to take pause as far as protecting the public in this state. I think you definitely want to address that.

Also, under section 18 [subsection 2, paragraph (a), subparagraph (1)] at the top of page 10, there was "Establishing standards of practice for persons licensed." Typically, we do scope of practice in statute so everyone knows what their rules are as far as their scope of practice goes. Establishing those by regulation could cause issues with other practitioners who are in this general area. We had a very contentious bill last session with optometrists, I believe it was. I would be apprehensive of scope of practice being defined in regulation and not put into statute so we know where everyone's scope lies and so there is no crossover. If you have ever been in a turf battle in this building over scope of practice, you would not forget it. I want to make sure that is delineated very clearly.

Corrine Sedran:
I did want to clarify because I believe I misspoke earlier when I spoke about scope of practice within section 18. Scope of practice will still be addressed under the definition of ophthalmic dispensing [section 13]. Section 18 has what we want to clarify with respect to standards of practice, not scope of practice, meaning when they can or cannot issue a prescription and how they are going to qualify which lenses are up to par and which are not before they are dispensed. We did not mean for these regulations to go into issues of scope of practice, but just standards of practice.

Assemblywoman Carlton:
What I am going to have to do is pull out the current chapter and lay this bill next to it page by page to figure out what the real changes are and go from there.

Assemblywoman Considine:
I may be getting a little confused on this so I appreciate your explaining this to me, but I am going back to what Assemblywoman Carlton said about regulations versus having something in statute. In section 9 [subsection 1], you have "The Board shall adopt regulations establishing reasonable fees for" and then that list. I noticed in the current NRS that those fees are listed and range from $100, $250, $300, to $500, depending on what all those issues or requirements are. The last line in section 9 [subsection 2] says that this is "to reimburse the Board for the cost of carrying out the provisions of this chapter, except no such fee may exceed $500." There are already some fees now that are $500.

I am reading that in conjunction with section 15 [subsection 2, paragraph (a)] where the Board will "Employ an Executive Director and any other employees as it deems necessary, establish their duties and fix their salaries." If the fees are in regulation, then they will be easier to change, but my question is, with all this happening at once, are there reserves to pay for any of those salaries? Will this automatically trigger all those fees to go up to $500 to meet the requirement to reimburse the Board?

Corrine Sedran:
With section 9, the fees provision, we really wanted to consolidate these provisions. The reason we left out the individual fee caps was simply because we wanted to leave it open to potentially do biennial renewals or renewals for a length of time that is different than the

annual cycle, particularly with respect to apprentices who might be licensed for only two years before they get their optician's license. That was the reason for leaving off the caps. We kept the $500 cap simply because that was the highest cap available in the statute.

However, if we need to amend this to include individual caps again where they are at, that is not a problem and we are open to doing that. That is just why we left it more open-ended. As far as the reserves, yes, we have reserves and we can function. We are not going to be desperately increasing fees or anything in the coming year. That was not the intent here. It was really just for the flexibility of the renewal cycle and that issue primarily.

Assemblywoman Considine:
I am a freshman, so in my short time here, what I continue to see is that the fees are put in statute so that it potentially takes more time to change them. Again, as to Assemblywoman Carlton's point before, it is so they can be seen consistently across all the different boards so we know what they are. I just did not know if there was a reason to not keep them in statute and put them in the regulations, as opposed to most fees which seem to be in statute.

Corrine Sedran:
In answer to your question, we did follow the models of other occupational licensing boards when creating this statute. We did it piecemeal, so we took some from some statutes and some from others. Primarily, we tried to follow the example of the Board of Occupational Therapy because their statute was so clean, concise, and clear-cut. Theirs is one of the few statutes where they do not delineate the individual fee and so we followed that prototype. However, again, if the Legislature is more comfortable with individual fee caps, that is certainly something we can put in and it would not be too difficult to change.

Assemblyman O'Neill:
Ms. Sedran, I may have misunderstood you, but I have one question on section 17 and section 15. Did you say you are modeling this after other boards that accept gifts, grants, donations, et cetera, to conduct their business? You mentioned it can influence your investigations.

Corrine Sedran:
Yes, sir. We did model this one particular provision on the Board of Massage Therapy. Theirs was a general provision relating to all operating expenses of their Board and that they were allowed to accept gifts, grants, and donations. We did see a provision similar to our current provision, which only pertains to investigations, and that was in the Board of Psychological Examiners statute.

The reason we thought it did not fall under investigations was because our investigations are supposed to be confidential until the Board takes a formal, public action. It did not seem to make sense to get gifts, grants, and donations for that particular purpose when that gift, grant,

or donation is going to be public. That was our thinking. Again, we have never taken gifts, grants, or donations that I am aware of in the Board's history. This is not a provision we are married to; we just wanted to move it here because we wanted it to be based more generally so there would not be a conflict of interest when doing investigations.

Assemblyman O'Neill:
I appreciate that. I have got to say I think I still have some issues with a licensing board receiving any kinds of grants, gifts, or donations that could possibly influence them one way or another unduly. Or it could even influence who is a member of the Board; if a person who tried to get on the Board gave one gift versus another person. I have one other question regarding the salary of employees. As I recall—it may have been in the last year or so—the LCB did an audit where another agency or commission was allowed to set their own salaries, et cetera, and they were quite excessive. What control would there be with the Board if they set their salaries? What supervision over the Board is there?

Corrine Sedran:
Are you specifically referring to the salary of the Director or of the individual Board members?

Assemblyman O'Neill:
Well, the Board members are already set at not more than $150 per day [section 15, subsection 1, paragraph (a)]. I am looking at section 15, subsection 2, on page 8 of the original bill starting at line 12.

Corrine Sedran:
Right. To answer your question, there would not be a provision in here. There is not one currently. As far as I know, the other occupational licensing board statutes do not address the compensation of the Executive Director or other staff. As far as I know, that is always set in public meetings and as part of the public budget that is submitted to the LCB every year.

In our particular case, we are such a small Board. Our compensation is never going to be excessive just because it would bankrupt the Board. However, there would not be a provision in here to prevent it from being excessive. Again, that is not a provision currently in statute, but what we have really done here is switch the original statute to remove "Secretary" and change the language to Executive Director to reflect the current title and practice.

Assemblywoman Carlton:
Regarding the conversation about gifts, grants, and donations, that is pretty much boilerplate language we have put in a lot of different places. There have been boards in the past that have gone for a grant to increase their technology. They have received donations to possibly do community service or go out and do a mobile van of some type to take their services out into the community. I understand where there might be some concerns, but I think we all

have to remember that the Board members are all appointed by the Governor, they have to sign statements of disclosure, and they have to comply with all of the ethics rules in the state. This just allows the boards a little bit of flexibility to maybe do some things outside of the actual licensing regime.

Sometimes a group will want to come in and do a presentation or hold a virtual class for all the licensees to help keep down the costs of their continuing education credits. They may get a grant for that or a donation from a foundation to do an educational function. This is pretty much boilerplate we put into a lot of places. You will even see it in a number of state agencies so money can be accepted. I know for a while a few years ago, we had to add it to the Department of Public Safety because somebody wanted to make a gift to cover some things for some officers, but they were not allowed to do that. Just so the Committee is aware, it is fairly typical, and I do not see any real issues with it, knowing there are some accountability factors built in.

Chair Jauregui:
Thank you, Assemblywoman Carlton, for that clarification. I think it is helpful for a lot of the newer members on the Committee.

Assemblywoman Kasama:
My question also relates to section 6, subsection 3, where, again, we have "at least 5 years of work experience." My question is, what is typically done in the other states? I am just curious. I want to make sure we are not more restrictive than other states, because I do not know about opticians, but I know that we certainly have a shortage in the medical field. I want to make sure we are not being more restrictive than other states.

Corrine Sedran:
We are in a unique situation with ophthalmic dispensing because it is not nationally predominant among the states to license ophthalmic dispensers. I believe 22 states now issue some sort of license or certification for ophthalmic dispensing. With respect to your question about if this is standard in other states, I would say that in the other licensing states, yes, five years is pretty standard. However, again, this is not a profession that is regularly licensed in all 50 states. Some of the states that do licensing issue more of what they call a certification. They do not require all the comprehensive training and education we require here in Nevada. But yes, five years is pretty standard for license transfers.

Chair Jauregui:
That actually brings up a question for me, Ms. Sedran. You just said all the other states do not require the amount of training or as comprehensive a training program as we do. But then section 6, subsection 2, says anyone holding a license or a certificate in another state can come into Nevada and we would give them reciprocity, basically. We are going to hold them to a lower standard. The standards in Nevada, like you said, are very high with our comprehensive training program, and yet we are going to grant this license without any training to someone who is coming in from out of state with a certificate who might have gone through less training. That is a little concerning to me.

Corrine Sedran:
A couple of things in response to your question. First of all, we do not have any intention of lowering the standard, and we did change the language here under section 6, subsection 2, where we say:

> Holds a corresponding valid and unrestricted license to engage in ophthalmic dispensing in the District of Columbia or any state or territory of the United States whose requirements for that license are substantially similar to the requirements for the issuance of a license to engage in ophthalmic dispensing in this State.

The reason we specifically added that language in there is because the current statute does not specify that the license requirements have to be substantially similar. It just says any license from another state or U.S. territory, and so we did run into issues of people trying to transfer from another state where the licensing requirements are not as stringent as our licensing requirements.

I also want to clarify that this subsection, when we are talking about waivers, only applies to NRS 637.100 pertaining to the apprenticeship training program. The apprenticeship program involves the education and on-the-job training components of the licensing structure. However, it does not exclude these people from having to take the national exams, the certification requirement, or any other requirement of the Board. It just pertains to those on-the-job training and education requirements. We want to accommodate those who are coming from other states that have substantially similar requirements. If not, they still need to have the five years' work experience, and they need to prove competency by taking our national certification licensing exams and any other exams adopted by the Board.

Chair Jauregui:
Having that substantially similar language would make me more comfortable. I also have another question on section 26 [subsection 3]. I am going to need you to walk me through this increase in fines one more time. I know you touched on it when you were going through the presentation, but it is a little concerning that we are raising a fine from $1,000 to $10,000 for each separate violation. Can you walk me through what the thought process was there in section 26, where we are raising that fine on the employer when the violation might have been by the employee?

Corrine Sedran:
I believe the Board's reasoning on this was that oftentimes you have an unlicensed individual who is dispensing under the direction of the employer. That unlicensed individual does not even necessarily know the laws pertaining to ophthalmic dispensing or that there is a licensing requirement. The idea is the employer needs to know the laws and the data regarding their employees, and if they do not, they should be the more culpable party subject to these higher fines, as opposed to the individual.

However, that said, there are, of course, situations where the employer does not know what is going on with their employee. Maybe they are not the on-the-job manager or maybe they just do not know what the employee is doing for whatever reason. The $10,000 is a cap and is not necessarily our initial fine we would issue. More often than not, we usually end up doing some sort of a settlement agreement if there is some sort of imposition of a fine. That was the Board's reasoning for increasing the cap on this particular fine. Again, we are open to an amendment if this is an issue.

Chair Jauregui:
You mentioned it is not typically your initial fine. Then is that something that you have spelled out in regulation?

Corrine Sedran:
As far as the regulations, I believe the fines are put here. You are correct, we would maybe need to address that with tiered provisions in the regulations denoting each amount of the fine. I do not believe we have that in the current regulations.

Chair Jauregui:
Committee members, I did not see any other questions, so I jumped in, but I am going to do one last check. Are there any other questions?

Assemblywoman Carlton:
Along the section you were in—I was waiting to see if someone would bring it up—we have had a lot of conversations about cease and desist in this Committee over the years, and I see cease and desist in that section you just referenced [section 26, subsection 1]. It did not really get totally vetted. What would be the process for issuing a cease and desist? Because that is serious. It is taking someone's job away. We want to understand if there is any judicial review, if you are going to do the citation first, and how you plan on doing this. That is a pretty serious thing for a board to take on.

Corrine Sedran:
The situation with the cease and desist is currently in the statutes, so this language does not change it. We have not added that. What we have added is a citation authority. What we have normally done with cease and desist is start out with a warning letter, which is not a judicial cease and desist as I understand it. We send a warning letter to any person whom we have knowledge of dispensing without a license. If we send in an inspector and they have not complied, then we move forward with judicial action, including a hearing if we have to order them to cease and desist.

Under our current statute, we actually have the ability to issue a cease and desist immediately. That is not changing. What we are trying to accomplish with the citation authority is giving ourselves a little bit of teeth, so we are not sending a letter asking them to please stop dispensing without a license. They ignore us, and then we have to launch immediately to a very expensive hearing to make them stop.

We are not trying to deprive anybody of their employment. We just want them to cease and desist the illegal activity, which is dispensing the prescription lenses without a license. There is no reason why they have to shut down their business or why their employer needs to dismiss them. It is just that particular activity, which is dispensing the prescription lenses to the customer.

Assemblywoman Carlton:
Could you please tell me where you have that authority? Because as I am reading this, I see a lot of delineated language and rewriting, and I know that sometimes when legal counsel does things, they group things together for statutory construction. Could you give me the citation where you currently have cease and desist in your NRS?

Corrine Sedran:
It is now in section 25 [subsection 1] of the bill, but the original language is in NRS 637.181.

Assemblywoman Carlton:
And there is a process that goes along with that?

Corrine Sedran:
We follow a process and a policy in the office. As far as there being a process, this is the process as delineated in the statute. We always initiate a warning letter, and then if we decide to go forward with a hearing, it would be a letter pursuant to NRS 233B.121.

Assemblywoman Carlton:
I just wanted to make sure we clarify that you already have the opportunity to do it, because as I read through this, it almost looks like new language, but I wanted to make sure I had that citation.

Chair Jauregui:
Committee members, last call for questions. [There were none.] We are going to move on to testimony in support of the bill. [There was none.] Let us move on to testimony in opposition. [There was none.] Can we check for those wishing to testify in the neutral position?

Chris Grimm, representing Warby Parker:
Warby Parker is a vertically integrated eyewear brand founded in 2010 with a mission to provide designer eyewear at affordable prices. We have a customer base we have built of millions of people using technology to offer prescription eyewear online and in our 120-plus stores across the country, including one in Las Vegas. By circumventing traditional channels, designing glasses in-house, and engaging with customers directly, we provide high-quality, better-looking prescription eyewear at a fraction of the going price, starting at just $95.

Warby Parker was also founded to be a positive force in the world. For every pair of glasses that we sell, we distribute a pair to someone in need. To date, we have distributed more than

seven million pairs of glasses to people in the United States and abroad. We are currently considering making Nevada home to our new West Coast lab, which will be a manufacturing site, to better serve our customers in the western half of the country.

We are still reviewing the language in this bill. We believe there is a lot of good here in terms of updating the licensing requirements and the general regulations of opticianry. We are still digging through. As everyone on this Committee is aware, there is a lot to go through in this bill. We are looking at things very, very closely. If we have any issues, we look forward to working with the sponsor, the Board, and others to work out any issues that come up. That is why we are neutral, because we are still going through all the language and reviewing everything. Hopefully, we will be able to work out any issues as they come up. Hopefully, there will not be any. We just wanted to publicly offer our testimony and I am happy to answer any questions.

Chair Jauregui:
Assemblywoman Anderson, would you like to give any closing remarks?

Assemblywoman Anderson:
We greatly appreciate the amount of time taken. It is pretty clear that there is still a little more work we need to do before this is ready to be voted out during a work session. Thank you so much for the questions and clarifications, and we will try to get those back to the Committee right away.

Chair Jauregui:
With that, I will close the hearing on Assembly Bill 391.

[Assemblywoman Carlton assumed the Chair.]

Vice Chair Carlton:
With that, I would like to go ahead and open the hearing on Assembly Bill 290, provisions relating to financial institutions. I would invite Assemblywoman Jauregui to open the hearing, introduce any presenters, and go through the bill.

Assembly Bill 290: Revises provisions relating to financial institutions. (BDR 55-979)

Assemblywoman Sandra Jauregui, Assembly District No. 41:
I am here today to present Assembly Bill 290. I will keep my remarks brief and say that I was happy to allow one of my bill draft requests as a vehicle for this proposed bill. I have Robert Wolz, Vice President and Associate General Counsel of Business and Personal Trusts with Charles Schwab Corporation. I promise you he will do a much better job of presenting how Assembly Bill 290 will benefit Nevada. We also have Jeff Brown, Senior Vice President and head of legislative and regulatory affairs with Charles Schwab, here to help answer any questions. With that, I would like to turn it over to Mr. Wolz.

Robert Wolz, Vice President, Charles Schwab Corporation; Associate General Counsel, Business and Personal Trusts, Charles Schwab Trust Bank; and General Counsel, Charles Schwab Trust Company:

[Mr. Wolz referred to a PowerPoint presentation submitted to the Committee, Exhibit F.] The Charles Schwab Trust Company and the Charles Schwab Trust Bank are the two financial institutions that Charles Schwab now has here in Nevada. All of you are familiar with Charles Schwab. I do not know that you are necessarily familiar with how Charles Schwab has a long history of banking institutions here in the state going back over 20 years, which started with Charles Schwab Bank, a federally chartered bank that was originally headquartered in Reno [page 2, Exhibit F].

Currently, we do have two charters. One is for Charles Schwab Trust Bank, which is focused mostly on institutional trusts and providing trust and custody services to employee-benefit plan clients, and the other is for Charles Schwab Trust Company, which is a personal trust company located in Henderson [page 2, Exhibit F]. We started that about five or six years ago; it has been growing. We have just gone over $1 billion in assets and became profitable more quickly than we thought we would. Charles Schwab Trust Bank has about $300 billion in client assets. Charles Schwab Trust Company in Nevada now has about $1 billion in assets. It is also the parent corporation of our other nondepository trust company, the Charles Schwab Trust Company of Delaware, which has more in assets. Together, it is about $11 billion for our entire personal trust business.

That business is headquartered here. Our senior management is here in Henderson. We have been growing here in leaps and bounds because we found that Nevada really provides us an excellent opportunity to conduct these businesses, particularly in the personal trust space. We are able to avail ourselves and offer to our clients the benefits of the cutting-edge trust statutes Nevada has on the personal trust side. It has been an easy sell for our clients since we have been here. One of the reasons we opened it is because we needed a presence on the West Coast. Not all our clients wanted to be in Delaware, and it has been very warmly received [page 3, Exhibit F].

What we are finding is that as our organization grows and evolves, we increasingly use our trust companies not only to benefit our clients in different ways, but also to facilitate the objectives of the greater Charles Schwab organization. As that happens, our business grows. A couple of recent examples include our acquisition last year of USAA [United Services Automobile Association]. That involved the Nevada trust company taking on new products, having to expand our investment management suite, and increasing employment there. We also assist our broker-dealer in other areas to help them comply with their regulatory requirements by serving in roles such as collateral agents and things like that. As we do that, our business grows and the number of employees we require in Nevada grows [page 3, Exhibit F].

It has been a good story for us, and I think it has been a good story for the state. As we go through this and try to expand the role of our entities, that is really the reason we are here today. We are looking for some clarification on some of the trust statutes to allow us to

continue on that expansionary path, specifically with respect to individual retirement accounts (IRAs) that are now sponsored by Charles Schwab & Co., Inc., our broker-dealer.

Currently, the broker-dealer is required to qualify under the *Internal Revenue Code* as a non-bank custodian, and that carries certain regulatory requirements along with it which apply only to non-bank IRA custodians. The Internal Revenue Service (IRS) rules allow a bank or a trust company to act as a custodian of an IRA program without any issues. Because of those regulatory requirements and because our competitors—most notably the Fidelity Investments Inc. and Vanguard Group, Inc. companies of the world—use a different structure where they use a trust company or bank charter with trust powers to sponsor their IRA programs, we are attempting to make that conversion here using one of our Nevada entities [page 4, Exhibit F].

It is anticipated, if we get these changes that would help us facilitate it, that the Nevada entity that serves in this role would sponsor the IRA program for IRS purposes and also act as the primary custodian for the assets of the self-directed IRA accounts currently custodied at the broker-dealer. When I say self-directed, I want to clarify. These are IRA accounts that are invested entirely in publicly traded brokerage assets. There are some negative connotations to self-directed IRAs in certain circles, thinking that people are using these to invest in businesses and precious metals and things like that. There is none of that involved with this. These are purely broker-dealer platform financial assets that these IRAs are generally invested in.

The Nevada entity would not be engaged in a fiduciary role, which we commonly define to be a role requiring the exercise of investment or other discretion with respect to the accounts. We are merely holding the assets and dealing with them at the direction of our clients. We would not be offering investment management or anything of that nature that would give rise to fiduciary liability [page 4, Exhibit F].

Moving on to the bill, the drafted bill really addresses two objectives we are trying to clarify. First, an IRA custodial relationship is a non-fiduciary role [page 5, Exhibit F]. This is pretty much a standard position under federal bank and trust regulatory law, as well as the law of most states. The problem we have seen as we try to clear the path to make this change is that the definition of fiduciary under *Nevada Revised Statutes* (NRS) Chapter 669 suggests a person or entity defined under that statute as an "administrator" who possesses and controls any assets of an IRA account is in fact a fiduciary for the purposes of NRS Chapter 669 [page 6, Exhibit F].

When you talk about the language referring to possession or control, it suggests that a custodian with no discretionary authority over the account could be deemed to be a fiduciary. That would not work for the model that we are proposing. On that point, the statute excludes from the definition of "administrator" under NRS Chapter 669 a trust company or savings bank that sponsors a custodial IRA program, or an affiliate of the trust company or savings bank that would potentially be holding assets or dealing with the assets of the IRA account [page 6, Exhibit F].

Again, a custodial IRA program is one where we do not accept responsibility for investment management or any discretionary authority. We would be using, as Charles Schwab usually does, the best capabilities we can across our many affiliates to service our clients. Some of the activities relating to these IRA accounts will be performed under the direction of the trust bank at the broker-dealer level, pursuant to NRS affiliate agreements that we are required to have as a matter of banking law.

We have also asked for a modification of the definition of "fiduciary" in NRS Chapter 673. This relates to our Charles Schwab Trust Bank charter, which is a Nevada savings bank under NRS Chapter 673. We are proposing the adoption of a definition of "fiduciary" there that is derived from federal law and clarifies that a custodial role is not fiduciary capacity for the purposes of Nevada chartered savings banks [page 7, Exhibit F].

The second piece is a little less controversial and is more of a clarification. We are asking to adopt under NRS Chapter 673 the rules under the *Code of Federal Regulations*, Title 12, Chapter I, Part 9, or what is referred to as federal Regulation 9. These are the rules governing the fiduciary activities of federally chartered banks. We would like to have the rules relating to proprietary bank deposits and the collateralization of fiduciary funds invested in such bank deposits apply to Nevada savings banks [page 7, Exhibit F].

This is merely an expansion of what you have already done. The rules related to proprietary bank deposits and collateralization have already been adopted in Nevada for bank charters other than Nevada savings banks by *Nevada Administrative Code* 662.100. We think this is just an expansion of what has already been established as the policy of the state with respect to these types of arrangements [page 7, Exhibit F]. With that, I would open it up for questions. I think what we are asking to do is fairly simple and we are happy to add anything to that explanation which the Committee deems necessary.

Vice Chair Carlton:
Mr. Brown, did you have anything you would like to add?

Assemblywoman Jauregui:
Mr. Brown is here to help answer any questions.

Jeff Brown, Senior Vice President, Legislative and Regulatory Affairs, Charles Schwab Corporation, Washington, D.C.:
As you just heard, I am here to answer questions if you have them. My role is to head our Washington, D.C., office of legislative and regulatory affairs. I am happy to answer any questions that might relate to Charles Schwab.

Vice Chair Carlton:
I just want to make sure I totally understand this. In the session before last session, we had a lot of conversations around the Attorney General's bill [Senate Bill 383 of the 79th Session]

about fiduciary responsibilities. How does this bill relate to that conversation? Is this a carve-out of that bill? Are we losing any protections for the public in making any of these changes?

Robert Wolz:
I am not entirely familiar with that bill, but I think you are alluding to the Nevada bill where there was some effort to impose certain fiduciary responsibilities on broker-dealers. This does not generally relate to the operation of a broker-dealer. The changes we are asking for relate to the fiduciary activities of a bank, trust department, or in the case of Charles Schwab, a trust company such as our Nevada trust company.

There is a distinction in most trust businesses between a fiduciary business and what they call a custody or agency business. What we are talking about here is facilitating a custody or agency business. In a custody or agency business, your obligations are 100 percent defined by contract. We are not under a discretionary, fiduciary standard to act in a discretionary manner with respect to the investment or distribution of the assets or anything of that nature. It is purely an agency capacity.

I do not think, in this context, that it creates any additional risk. Again, these accounts are 100 percent directed by the account holders, the people who establish these IRA accounts. The trust company or the trust bank would not be providing investment advice. They would merely be administering the plan in accordance with the terms of the IRA plan, which is a creature of the *Internal Revenue Code*. The provisions of the *Internal Revenue Code* dictate what we can and cannot do and what is required, such as making distributions as directed and providing required tax reporting services.

Vice Chair Carlton:
Thank you very much, Mr. Wolz, for clarifying that. It is always good to get those statements on the record so everyone understands exactly what everyone's roles are in some of these complicated measures and investment instruments that people use. There are a lot of them out there. Even if you gave me four or five cocktail napkins, I do not think I would understand it. With that, Committee members, are there any questions from any other Committee members at this time for these two gentlemen?

Assemblywoman Kasama:
My question is that under section 2, subsection 6, it sounded like this section here says, "the savings bank shall not allow funds awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the fiduciary account and consistent with applicable law." You are talking more about the IRA self-directed accounts and how to handle that. I am wondering why this is even in here because I have concerns with this where we are trying to regulate when somebody should invest or not. For example, if the market is super-hot and you do not want to put assets into that and would prefer to have it sitting in cash for a while. Could you help clarify why this section is in here?

Robert Wolz:
Sure. I am glad to answer that question because it brings me to a point I forgot in my primary presentation. That language you are looking at is drawn directly from the federal statute, which is the language that applies to other Nevada bank charters currently. This has a little bit of a wider application for us because we do presently have accounts in the Charles Schwab Trust Bank that are directed trustee accounts under the Employee Retirement Income Security Act, which are deemed generally to be fiduciary accounts. Those accounts are subject to these requirements.

We are complying with these requirements now. We started complying with them when we were an Office of the Comptroller of the Currency (OCC) bank, and when we flipped our bank over to a Nevada charter, we had to go to the federal government and ask them if we could continue to follow these rules. There was a gap in the regulatory and statutory framework. There were no rules applicable to savings banks. We now have these rules in place.

Again, these are the rules for cash investments that are used for any trust company that is OCC regulated or other Nevada charters under the regulation I cited to you earlier. It is nothing new. It is just a codification of the rules we are working under presently with Charles Schwab Trust Bank and these directed trustee accounts.

Assemblywoman Jauregui:
I wanted to let the Committee know we also have somebody with the Nevada Division of Financial Institutions (FID) available to answer questions.

Vice Chair Carlton:
That was going to be one of my next questions, if Terry Reynolds and/or the FID had been consulted and were part of these conversations to begin with. Is our person from the FID available?

Assemblywoman Jauregui:
I see that we had Sandy O'Laughlin signed in to speak. I believe Michael Smith with the FID is also signed in to participate, but I do not see him on Zoom, so we might have lost him.

Vice Chair Carlton:
That is fine. We can get our questions answered as we move through. Did you have any other presenters, or are there any other questions? If not, we will go ahead and go through our other portions of the bill.

Assemblywoman Jauregui:
Just to answer your question because I did sit through one of the meetings, the Nevada FID and Terry Reynolds, Director of the Department of Business and Industry, were consulted throughout the process of this bill.

Vice Chair Carlton:
We always want to make sure our regulators have a seat at the table when we are looking at these things, because they know these things much more intimately than we do. I just want to always make sure they are involved.

Assemblywoman Considine:
I just had a couple of questions. One of them, if I am understanding all of this properly, is that Charles Schwab is a non-bank custodian of these IRAs and those usually have regulatory requirements, but the idea of this is not to have those regulatory requirements. My question is, what would those regulatory requirements be?

Robert Wolz:
Let me give you a little history on how that works. It is kind of odd in the context of Charles Schwab because we are now one of the largest broker-dealers in the country. Those rules were put in place because when the IRS implemented IRA accounts back in the 1970s, they felt that a bank or a trust company was a properly regulated and capitalized entity to support an IRA program, and a broker-dealer was not. A broker-dealer was required to meet certain other requirements. The largest one is something called a net capital requirement, which causes us to hold back some portion of the broker-dealer's capital that we would be able to put to use for a higher and better use, but we have to hold it here. As I mentioned earlier, our competitors are not using this model and are not subject to that requirement, so we are at a competitive disadvantage with respect to that.

The other thing, and we have been talking a little bit with the IRS about this on another front, is that our world has changed at Charles Schwab. We have gone from being a broker-dealer-centered business to a financial holding company, so we have the Federal Reserve looking at our capitalization. Our broker-dealer is subject to all the federal requirements, the Securities and Exchange Commission requirements, and the holding company being required to be a source of strength in the event that the broker-dealer has some financial difficulty. That is highly unlikely, but it has to be there.

We are in a highly regulated banking environment. Our pitch to the IRS has been, why do we, Charles Schwab, have to do this, when we have all these other capital requirements which are pretty onerous and effective in ensuring the financial institution is run in a sound and prudent manner? That is where we are at. There is a capital requirement for that. There are some other reporting requirements which we would not be responsible for.

Again, the thinking of the IRS statute under section 408 of the *Internal Revenue Code* was that a bank or trust company is fine because they are regulated entities and their capital is being monitored by regulatory authorities, whether it is the Nevada FID or the Federal Deposit Insurance Corporation—in the case of the trust bank, it is along with the FID. They are more than capable of serving in this capacity. A broker-dealer might not have been back then. But again, the script has flipped over time as large broker-dealers like Charles Schwab have evolved and the IRS has not changed their rules.

Assemblywoman Considine:
If I am understanding this properly, a couple of the reasons are that those regulations require holding more capital that you cannot use for other things and reporting requirements, but this would take the savings bank out of that. My question then is, what does that mean for any other savings bank in the state? What does that change for anyone else outside of Charles Schwab?

Robert Wolz:
It does not change the capitalization required of the savings bank. We are talking about the capital being held at the broker-dealer because the broker-dealer is the sponsor of the IRA program. We would move the sponsorship to the savings bank. At that point, it would be up to the FID to determine, because the bank is taking on this additional responsibility, whether they might require us to put up more capital. That is at the discretion of the FID once they get their arms around what we are planning on doing if we happen to go this route. We are comfortable with that.

Assemblywoman Considine:
Does that change any other rules for other entities, broker-dealers, savings banks, or anyone else in the state?

Robert Wolz:
I do not know for sure, and I would validate this with the FID, but I think we are the only Nevada-chartered savings bank at the present time. We were the first one. We were here four or five years ago drafting the statute. I think we are still the only one. There may have been one other, but I am not sure. But that does not change anything with Nevada law. What we are talking about is getting relief from an IRS-imposed obligation they would place on the broker-dealer if we continue in our current structure.

Vice Chair Carlton:
Are there any other questions from any other Committee members for our presenters at this time? [There were none.] I believe we can go ahead and move on. With that, do we have anyone in the queue lined up in support of A.B. 290?

Sandy O'Laughlin, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here today testifying in support of Assembly Bill 290. This bill makes changes to NRS Chapter 673, "Savings Banks," and NRS Chapter 669, "Trust Companies," allowing employers to offer IRA investments. The bill's requester worked with the FID prior to submitting the bill for clear content. At this time, we do not anticipate any amendments. I am here to answer any questions the Committee members may have.

Vice Chair Carlton:
Committee members, are there any questions of our regulator?

Assemblywoman Considine:
I would like to ask the same question I asked Charles Schwab. Does this change make any changes to any entities other than Charles Schwab and the state?

Sandy O'Laughlin:
At this time, Charles Schwab Trust Bank is our only savings bank in Nevada. It would really only affect them at this time.

Vice Chair Carlton:
With that, we can go to our next caller in support, if there is one.

Connor Cain, representing Nevada Bankers Association:
I am testifying in support of Assembly Bill 290 on behalf of the Nevada Bankers Association. We want to thank Assemblywoman Jauregui for bringing this bill and we also appreciate your support.

Vice Chair Carlton:
Could we go to opposition please if there are any callers in opposition. [There was no one.] Could we go to those who might be in neutral, please. [There was no one.] I will go back to the sponsor. Assemblywoman Jauregui, did you have any closing comments?

Assemblywoman Jauregui:
Thank you, Vice Chair, and members of the Committee, for giving me the opportunity to present Assembly Bill 290. I just ask for your support and consideration of the bill.

Vice Chair Carlton:
With that, we will go ahead and close the hearing on Assembly Bill 290.

[Assemblywoman Jauregui reassumed the Chair.]

Chair Jauregui:
Committee members, the last bill on our agenda today is Assembly Bill 277. I will open the hearing on Assembly Bill 277, and I believe we have our very own Committee member, Assemblywoman Duran, here to present the bill.

Assembly Bill 277: Revises provisions governing insurance. (BDR 57-984)

Assemblywoman Bea Duran, Assembly District No. 11:
I am here today to present for your consideration Assembly Bill 277, which helps streamline the personal injury claims process after a motor vehicle accident. When Nevadans are involved in an auto, motor vehicle, or motorcycle accident, their only focus should be on their recovery and getting healthy to get back to their family, job, and life. Unfortunately, I am all too familiar with the reality that too many Nevadans do not have the health coverage they need. Consequently, after a car accident, instead of following all recommendations from medical professionals, Nevadans ask themselves if they can afford this.

Imagine a single mother who is on her way to work and driving through an intersection with a green light. A distracted driver plows through the same intersection, impacting her. If that single mother, like many Nevadans, does not have adequate medical insurance and only has limited liability insurance, she will depend wholly on the distracted driver's insurance policy to cover all her medical expenses. Understandably, before undergoing any medical procedures, the single mother would have to know whether or not the distracted driver's insurance policy would cover it.

Under current law, the only way she could find out if the distracted driver's policy will cover her expenses is by filing a lawsuit. That could take a long time, forces her to get an attorney, and further overwhelms an already stressed and injured Nevadan. We, as a society, have a social contract wherein we agree that all who operate a vehicle or motorcycle should have insurance to ensure that when a mistake is made, the at-fault driver can make the injured person's life or persons' lives whole again. I hope to correct this major concern through this bill among a few other technical fixes my copresenter will discuss in great detail. Before handing over the presentation to my copresenter, I would like to offer an overview of the important aspects of the bill.

Section 1 [subsection 3] of A.B. 277 requires the amount paid toward medical expenses after a motor vehicle accident be based on usual and customary charges. The bill defines "usual and customary charges" to mean the typical charges a health care provider would bill an uninsured patient [section 1, subsection 6, paragraph (f)]. It also allows the payment to be deposited in a trust account maintained by the attorney of the insured person upon written request by the insured person [section 1, subsection 3].

Section 2 [subsection 1] of the bill allows the insured person, their attorney, or their insurer to obtain all medical records, reports, and bills from the claimant or the claimant's attorney every 90 days. This section also requires that the insurer must disclose relevant facts or provisions related to the policy coverage, including policy limits, with or without permission from the insured person [section 2, subsection 4].

This concludes my portion of the presentation of Assembly Bill 277. I would like to turn over some time to Graham Galloway with the Nevada Justice Association to share the background details for the measure, address the technical aspects of the bill, and answer any questions that there may be.

Graham Galloway, Board Member, Nevada Justice Association:
As Assemblywoman Duran indicated, there are two distinct components to the bill. In section 1, we are requesting new language in an existing statute that covers medical payments, medical benefits, and coverages for automobile insurance. In section 2, we are revisiting a bill that was passed in 2019, Senate Bill 435 of the 80th Session, which is a bill that covers the exchange of medical records and policy limits information. We learned after the passage of that bill in 2019 that there is a little bit of a problem with some of the carriers interpreting the language of the bill. We are revisiting it to clean up that language so there will not be any ambiguities, conflicts, or problems.

Let me begin by talking about the changes in section 1. Section 1 covers medical payments, medical benefits, and coverage, or what we often just call "Medpay" in shorthand. Medpay coverage is a wonderful coverage. It is an optional coverage, but it is mandatorily required to be offered. The mandatory requirement requires a carrier to offer at least a minimum of $1,000 in medical coverage or Medpay coverage. We often see coverage amounts of $1,000, $2,000, $5,000, and $10,000. Rarely do we see anything beyond $10,000 in Medpay coverage, so what we are talking about here is small numbers. It is a cheap, affordable coverage.

I would encourage everyone listening today to review their policy, take a look at it, and get as much Medpay coverage as possible, because it is a coverage that directly benefits you yourself. It is not based on fault. If you were in a crash that somebody else caused, it would kick in and cover you. If you caused the crash, it covers you. If you run your car into a telephone pole or an embankment or something like that, it covers you. It covers you if you are on a bicycle. It covers you if you are a pedestrian. It covers you if you are a passenger in your car. It covers you if you are a passenger in somebody else's car. It covers your family members if they live with you. It is a great coverage to have.

Up until recently, it was a very simple coverage to administer. You would send your bills and records to your insurance carrier, they would process it, and they would either pay your health care provider, yourself, or your attorney. Recently, with increasing frequency, we see insurance carriers now disputing the amount of what they are going to pay. They hire outside vendors and companies to pore over the bills and dispute the amounts of the bills. Claimants are now left having to fight for a simple, cheap coverage that was routinely, almost automatically, paid in the past without there being any discussion.

Section 1 [subsection 3] of A.B. 277 requires a company to base the payment under the Medpay coverage on the usual and customary charges, not on some third-party vendor's belief of what the bill should be. My most recent experience was when I received a letter from a carrier that said their Kentucky third-party vendor said that the local bills, which were customary and usual, were not customary and usual, and we ended up having to file a lawsuit just to get an additional $2,000 worth of Medpay that was at dispute. This makes it clear how the Medpay benefits should be paid.

Section 2 [subsection 1] revisits a bill that was passed in 2019, S.B. 435 of the 80th Session, that involves this tradeoff, or to use a frequently popular term now, this quid pro quo, where an insurance company gets medical records and medical bills updated on a regular basis. In exchange, the claimant, or injured party, finds out what the policy limits are of the adverse party [section 2, subsection 4]. Just a brief, little historical background for this is appropriate, I think.

In 1995, Farmers Insurance was tired of claimants dumping hundreds of pages of medical records and bills on them at the last moment and being told they had two days to process these and pay the claimants. They proposed a bill that ultimately became a statute wherein the claimant in a personal injury setting would be required to update the medical records and

bills every 90 days for the adverse party's insurance company so they would know what was going on. They could adequately set their reserves, and in exchange, the claimant, or the claimant's attorney, would receive policy limits information.

This worked really well for 20 years until 2015, when Farmers Insurance came back to the Legislature and they were not happy with the quid pro quo, bargain, or exchange. They had a bill at that point sponsored by former Senator Roberson which effectively just eliminated the exchange [Senate Bill 162 of the 78th Session]. It wiped out *Nevada Revised Statutes* (NRS) 690B.042, which was the statutory embodiment of what is now Senate Bill 435 of the 80th Session. It wiped out the statute.

For four years, up until 2019, claimants were not entitled to get the information about policy limits they needed. In 2019, we sponsored S.B. 435 of the 80th Session, which was approved, but unfortunately some of the language there has been interpreted to allow insurance companies to escape their obligations to provide policy limits information. The second section of A.B. 277 is simply a cleanup of S.B. 435 of the 80th Session. It makes it clear that claimants are now entitled to receive policy limit information. These are two distinct concepts, but they are basic, very simple, and for the benefit of all. Frankly, I think the exchange of information through the insurance companies benefits them. As claimants, you get the benefit of knowing how much insurance is out there.

The question that was asked in 2019 that will probably be asked again today is, why is it important to get that information? A claimant would have information and know how much coverage is out there. If they have ongoing medical treatment or need ongoing medical treatment, they know what they can afford, what is going to be covered, and what is not going to be covered. That is the overview of the two provisions in this bill. I am happy to answer any questions that arise.

Chair Jauregui:
I am going to open it up to questions from the Committee, but before we go to the Committee, I wanted to touch on something you said, Mr. Galloway. Section 2, subsection 4 of this bill was something that was law prior to 2015 and then S.B. 162 of the 78th Session stripped the language away. So this is not something new; it is something that existed in law before.

Graham Galloway:
Correct. That is a good question. For 20 years, we had a statute that allowed for the exchange of this information. Then there was a four-year period where the statute was completely deleted from the *Nevada Revised Statutes*, and in 2019 we brought forth Senate Bill 435 of the 80th Session to bring us back to where we were prior to 2015. The language was slightly modified in 2019, so that created an argument by some insurers that they do not have to comply with the requirement of giving over the policy limits.

Chair Jauregui:
Would this language that is being introduced take us back to the language prior to 2015 that existed for 20 years?

Graham Galloway:
Yes and no. It brings us back to substantially similar language, but it is clearer about the obligations imposed on the insurers and the claimants. The original language from 1995 through 2015 is, I think, susceptible to the same interpretation that some carriers are now giving the language from 2019. We changed it slightly to make it much clearer that if a claimant requests the policy limits information, it is not necessarily tied to an insurer's request for medical records. Some have argued that the two requests are linked. The new language in the present bill, A.B. 277, delinks the two requests, which is a slight difference from what the pre-2015 language was.

Chair Jauregui:
I am going to go to Assemblywoman Tolles next.

Assemblywoman Tolles:
That was a good transition to my questions, actually, regarding section 2, subsection 4. I would like to follow up, Mr. Galloway, on the point you just made that for 20 years there was an exchange of information. This proposal, as it reads, feels one way. The exchange only goes one way where there is a requirement to disclose the limits, but there is not a mutual exchange of information for those medical records. Did I hear that correctly?

Graham Galloway:
Yes and no. I think that is my fault; I do not think I was particularly clear. There is still a requirement of disclosure for both sides of this equation. Under the new language, if a carrier or insurance company requests medical records and bills or an authorization that allows them to obtain the medical records or bills, the claimant has to give that to them. If a claimant requests the policy limits, the carrier or insurance company has to give them that. They are not linked together, but there is a mutual obligation. It is just that one side or the other has to take an affirmative step and request that information.

Assemblywoman Tolles:
Thank you, that is perfect because that dives into my question about the last line in section 2, subsection 4, which was that "The insurer may, but is not required to, obtain the consent or permission of the party covered by the policy for the disclosure of the policy limits." I think, if I am hearing you correctly, that the situation you just explained in terms of exchange of information required that policyholder to agree or consent to release that information. That was the process that was put in place for each party, the insurer as well the representative of the insured. This takes out that permission step if I am reading it correctly. Could you explain more about why we are including that?

Graham Galloway:
That is a good question. That, actually, is not language I was personally in charge of, but it is language in there. The intent of that is to prevent any argument or excuse made by the insurance companies to prevent the release of the information regarding policy limits. Being close to California, we often deal with California representatives who, although they are adjusting claims in Nevada, still have a California background. In California, there is a statute that requires the insured to give permission for the release of the policy limits information. We do not have that. We have never had that. That has never been a requirement.

This language is just to head that off and make it clear that is not required. Now, if a company wants to ask permission of their insured, they can, but it is not required. The exchange of medical records and bills is through the claimant. Either the claimant authorizes it or their attorney authorizes it, so that is with their permission. It is a preventative clause or language to prevent that from being raised as an issue. I view it as anticipating the next move on the chess board.

Assemblywoman Tolles:
Just to be crystal clear, we do not have a similar provision or language that applies to the insurers where they can get that information without permission?

Graham Galloway:
I am not sure exactly what you are asking me there. If you could clarify that, I would be happy to take a stab at it.

Assemblywoman Tolles:
I am just trying to wrap my head around this. I really appreciate your answering the questions. Regarding this language that says the information can be released about policy limits with or without consent, I am wondering if that is also the case for medical records where those can be released without consent. I am pretty sure I heard you say those can only be released with the consent of the individual.

Graham Galloway:
The releasing of the medical records and bills is inherently done by consent because either the lawyer or the claimant releases that information. Their consent is built into it. There is no language that is comparative to the language in section 2, subsection 4, regarding the insurance companies going to get consent from their insured to release the policy limits. By definition, when you give up your records to the insurance company, you are consenting. The way the statute is written, I do not think you can refuse to consent. The statute is written so when a company asks the claimant for the records and bills, they have to provide that. There is not really an option the way I interpret and read the bill.

Assemblywoman Tolles:
That makes sense. I understand, because when you get medical treatment, you then bill it to your insurance.

Assemblywoman Marzola:
My question is a follow-up to Assemblywoman Tolles. Just so we can be clear, under section 2, subsections 1 and 2, we as lawyers are obligated to give the medical records upon request by the insurance company. Do I read that right?

Graham Galloway:
You have read it correctly.

Assemblywoman Marzola:
Then we go to section 2, subsection 4, which discusses the insurance company now releasing the policy limits upon the attorney's request. My issue is on line 29, where it says, "The insurer may, but is not required to, obtain the consent or permission of the party." Do you foresee cases where the insurance company is not going to release that policy limit because they say either that they cannot get ahold of their insured or that they are waiting for their insured to respond? I hope my question makes sense.

Graham Galloway:
Your question makes perfect sense. The answer to that is this language is anticipatory. That has not been an argument raised by Nevada adjusters or Nevada companies. On occasion, because we deal with a lot of claims representatives who are domiciled in California, they raise the argument and then we have to take the time to point out they are not practicing or adjusting a claim in California but that they are in Nevada. In Nevada, there is no such requirement.

Again, I do not mean to be flippant, but the language here is anticipating it, like it is a chess move. We hope that this will not be raised, so we put this language in there to make it clear they cannot raise that argument, because that is what happens when you deal with California cases. I practice in California. It is amazing how often the insured does not give permission, so you never end up with that information in California. Frankly, you are advising your client with only half of the information you really need to properly advise them. The short answer to your question is I anticipate it might come up, and that is why that language was placed in there.

Assemblywoman Marzola:
Do you think maybe it would make it cleaner if we were able to take out that sentence, so just we as lawyers would be required to give the medical records upon request? Then the automobile insurance company would be required to provide us with the policy limit upon request?

Graham Galloway:
Yes. As I indicated earlier, this was not necessarily language I proposed. If it had to be removed, I think it could be severed from the rest of the bill and do no harm to the intent and purpose of the bill. I would just hate to have to be back here in 2023 to add this back in if

some enterprising claims person or insurance company decides maybe that is something they must have. Under existing law, they are not required to do that. Yes, this could be considered to be taken out or removed.

Chair Jauregui:
Committee members, do you have any other questions?

Assemblywoman Kasama:
My question relates to section 1, subsection 3, where we have the usual and customary charges. Why are we not using the word "actual"? If somebody's foot is broken and maybe it costs more to fix than the usual and customary charges for whatever reason, it just seems now we have to track what is usual and customary. Why do we not use "actual"? That seems pretty straightforward.

Graham Galloway:
I struggled with this language here. "Actual" is not necessarily a bad term. I kind of like it. That would be something we could consider. I would be happy to discuss that with you and any other invested parties further. The language used was difficult to come up with. "Actual" might be a good alternative.

Assemblywoman Kasama:
It seems simpler. Everyone is not trying to figure out what it is or track it. I can just see regulation growing around that. "Actual" just seems to keep it simple, so I might recommend that to the bill's sponsors to consider.

Chair Jauregui:
Committee members, do you have any other questions? [There were none.] With that, we will go ahead and move on to the support portion of the bill hearing. Can we check the telephone line to see if there are any callers wishing to testify in support? [There was no one.] Let us move on to those wishing to testify in opposition.

Jesse Wadhams, representing Nevada Insurance Council:
We are opposed to A.B. 277 as written. With regard to section 1 dealing with Medpay, we have a couple of concerns there, particularly with the language discussed in the usual and customary component. That is not really a known or defined term, as the Committee has heard. Part of the other issue is there is a current body of law with regard to Medpay in a particular situation with the hospitals and other providers of health care. That law came from 2017 and is now codified in NRS Chapter 449A. This process that would be contemplated in A.B. 277 creates some confusion there. We would want to chat with the sponsor about creating some clarity around that.

Regarding section 2, we have obviously discussed the disclosure of policy limits over the course of multiple sessions. Those of you who were on the Assembly Committee on Judiciary have certainly been a part of that. I want to focus on what that disclosure means, particularly the declaration page component of the disclosure. As we know, all of us with

cars must have insurance. We pay our insurer to defend us. There is a whole body of law in Nevada that requires the insurer to have a duty to defend.

That declaration page contains a lot of information. I went back to look at mine. It is not only my name. It is my address, my wife's name, all the cars we have, and their vehicle identification numbers. If my kids were slightly older, it would include their names too. It includes a lot of information that is personal and sensitive. We have another body of law, NRS Chapter 603A, that looks at a lot of that information and makes it private.

We would want to work with the sponsor and the proponents to clarify that. Again, I think the questions with regard to disclosure and whether or not the individual has the right to prohibit disclosure are an important policy conversation and one worthy of having. As noted, the policy does not belong to the insurer. It belongs to me, the insured. My information will be disclosed. I think it is an important consideration. With that, I am willing to stand for any questions.

Chair Jauregui:
Committee members, are there any questions? [There were none.] We will take the next caller in opposition.

Doug Harris, Field Claims Manager, Farmers Insurance, Las Vegas, Nevada:
We are opposed to this bill. Under section 1, the language does not contemplate those providers that may charge less than what a usual and customary charge would be. Thus, if we have to pay the usual and customary charge but the reasonable and necessary charges are less than that, we create a windfall. That coverage is designed to pay for the bills that are incurred, not an unknown amount that may or may not be billed for the treatment rendered. Frankly, it also requires the payments to be deposited into the attorney's account, which will likely then be used to negotiate those bills further, thus creating a greater windfall. We are no longer paying for the amount of the bills; we are paying for an arbitrary amount that is not necessarily what is actually incurred.

As far as the disclosure of limits, we have some concerns about some of the language in the prior bill. The requirement was to release all bills and records for the treatment provided. They have eliminated that and moved it to "the provider" [section 2, subsection 2]. I anticipate we will get what we got prior to 2015 when we took issue with this bill. We will get one record, we will get the limits disclosed, and then we will see nothing for two years until we get a demand dropped on us with substantially more medical records, multiple treaters, and no ability to investigate the claim, set appropriate reserving, and investigate the injuries.

Additionally, the current statute does not allow the attorney to revoke the medical authorization without cause. They have removed that language to allow the attorney to revoke the medical authorization for really any reason whatsoever. It takes away some of

that quid pro quo, as was described earlier, and we are left with the release of policy limits being a one-time event. Now, the authorization has been revoked and we have no ability to obtain any ongoing treatment records.

Mark Sektnan, Vice President, American Property Casualty Insurance Association, Sacramento, California:
I would like to associate myself with the comments of Mr. Wadhams and Mr. Harris. [Mr. Sektnan also signed a letter that was submitted in opposition to Assembly Bill 277, Exhibit G.]

Joseph Guild, representing State Farm Insurance Companies:
A lot of people do not know this, but as a reminder, State Farm Insurance Companies is a mutual insurance company, and therefore the holders of the policies are the co-owners of the company. For that reason, protection of the privacy of citizens at this time, including the policy holders of State Farm, is a paramount policy consideration in this country. Section 2, subsection 4, which requires the release of an entire declarations page with a lot of sensitive information that Mr. Wadhams already talked about, is entirely irrelevant to the issue at hand. It is completely unnecessary to establish one single fact, which is how much insurance does the person have. That is one concern State Farm has to protect its policy holders.

The other thing I would like to mention is also in section 2, subsection 4 of the bill, and that is the disclosure of policy limits. It should be irrelevant how much a claimant is owed to be made whole. There is no connection there, so we are opposed for that reason. Most jurisdictions in the country do not require the disclosure of this kind of coverage to a claimant's attorney. With that, I would be happy to answer any questions if there are any.

[Exhibit H is a letter in opposition to Assembly Bill 277 which was submitted but not discussed.]

Chair Jauregui:
Can we check the telephone line for those wishing to testify in the neutral position? [There was no one.] Assemblywoman Duran, would you like to give any closing remarks?

Assemblywoman Duran:
Thank you, Chair Jauregui and Committee members, for allowing us to present Assembly Bill 277. The bill helps to streamline the personal injury claims process after a motor vehicle accident. We look forward to working with any stakeholders on any proposed amendments. I would appreciate your support of A.B. 277.

Chair Jauregui:
I will now close the hearing on Assembly Bill 277. The next item on our agenda is public comment. [Protocol concerning public comment was discussed.] Is there anyone on the telephone line wishing to give public comment? [There was no one.] Committee members, that wraps up our afternoon agenda for today. We will stand in adjournment until 6 p.m. this evening. We are adjourned [at 4:19 p.m.].

RESPECTFULLY SUBMITTED:

Louis Magriel
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 Assembly Bill 375, presented and submitted by Assemblywoman Robin L. Titus, Assembly District No. 38.

Exhibit D is a chart titled "Nevada State Board of Dispensing Opticians: BDR 54-659 - Explanation Of Revisions," presented by Corrine Sedran, Executive Director, Board of Dispensing Opticians, and submitted by Kathleen Neena Laxalt, representing Board of Dispensing Opticians, regarding Assembly Bill 391.

Exhibit E is written testimony dated March 29, 2021, presented by Corrine Sedran, Executive Director, Board of Dispensing Opticians, and submitted by Kathleen Neena Laxalt, representing Board of Dispensing Opticians, regarding Assembly Bill 391.

Exhibit F is a copy of a PowerPoint presentation titled "Nevada Assembly Bill 290," presented by Robert Wolz, Vice President, Charles Schwab Corporation; Associate General Counsel, Business and Personal Trusts, Charles Schwab Trust Bank; and General Counsel, Charles Schwab Trust Company, and submitted by Alfredo Alonso, representing Charles Schwab Corporation.

Exhibit G is a letter dated March 26, 2021, signed by Victoria Stewart, Board President, Nevada Insurance Council, et al., and submitted by Christian John Rataj, Senior Regional Vice President, Western Region, National Association of Mutual Insurance Companies, in opposition to Assembly Bill 277.

Exhibit H is a letter dated March 26, 2021, signed and submitted by Christian John Rataj, Senior Regional Vice President, Western Region, National Association of Mutual Insurance Companies, in opposition to Assembly Bill 277.