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

Eighty-First Session
April 7, 2021

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:03 p.m. on Wednesday, April 7, 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 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:

Assemblyman Edgar Flores (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Annette Magnus, Executive Director, Battle Born Progress
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Quentin Savwoir, Deputy Director, Make It Work Nevada
LaLo Montoya, Political Director, Make the Road Nevada
Benjamin Challinor, Policy Director, Faith in Action Nevada
Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber
Bob Russo, Private Citizen, Gardnerville, Nevada
Janine Hansen, State President, Nevada Families for Freedom
Lynn Chapman, Treasurer, Independent American Party of Nevada
Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce
Michael Hillerby, representing Nevada Optometric Association
Ken Kopolow, Private Citizen, Las Vegas, Nevada
Steve Girisgen, Private Citizen, Las Vegas, Nevada
Spencer Quinton, President-Elect, Nevada Optometric Association
Jonathan Mather, Private Citizen, Carson City, Nevada
Terri Ogden, Executive Director, Nevada Optometric Association
Robert Holden, State Government Affairs Director, National Association of Vision Care Plans
Tray Abney, representing America's Health Insurance Plans
Maya Holmes, Healthcare Research Manager, Culinary Health Fund
Maggie O'Flaherty, representing State Board of Osteopathic Medicine
Tiffany Banks, General Counsel, Nevada Realtors
Noah Herrera, Private Citizen, Las Vegas, Nevada
Doug McIntyre, Private Citizen, Reno, Nevada
Trevor Smith, Private Citizen, Incline Village, Nevada
David Dazlich, Director, Government Affairs, Vegas Chamber
Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada

Chair Jauregui:
[Roll was called. Committee protocols were explained.] Thank you, everyone. We have an agenda today with three bills that we will be hearing, Assembly Joint Resolution 10 of the 80th Session, Assembly Bill 398, and Assembly Bill 436. We will start by opening the hearing on Assembly Joint Resolution 10 of the 80th Session, which proposes to amend the *Nevada Constitution* to prospectively increase the required minimum wage paid to employees. We have Speaker Frierson with us today to present the bill.

Assembly Joint Resolution 10 of the 80th Session: Proposes to amend the Nevada Constitution to prospectively increase the required minimum wage paid to employees. (BDR C-1273)

Assemblyman Jason Frierson, Assembly District No. 8:
I am here to present Assembly Joint Resolution 10 of the 80th Session, which proposes to amend the *Nevada Constitution* to prospectively increase the required minimum wage paid to employees. This resolution was approved during the 2019 Session and if approved in an identical form this session, the proposal will be submitted to the voters for final approval or disapproval in the 2022 General Election. More than ever, people are working jobs that pay too little and offer too few benefits. Last session we were committed to increasing minimum wage in Nevada gradually over the next few years to reach $12 by 2024. This last July, Nevada saw that first increase; $8 an hour for workers who receive health insurance and $9 an hour for workers who do not receive health insurance. The Bureau of Labor Statistics of the U.S. Department of Labor reported in 2020 that 10 percent of our labor force, or about 125,000 workers made $9.77 an hour or less. This increase was the first statewide increase of our minimum wage in over a decade.

A minimum wage is just that: it is an hourly wage floor, not an hourly wage ceiling. This resolution would allow Nevadans to decide how the minimum wage is enacted in our state, which I think is critical. Assembly Joint Resolution 10 of the 80th Session proposes to amend the *Constitution* to set the minimum wage at $12 per hour beginning on July 1, 2024, regardless of whether the employer offers health benefits to its employees. Additionally, A.J.R. 10 of the 80th Session removes the annual adjustment to the minimum wage as currently established in the *Nevada Constitution* and instead provides that if at any time the federal minimum wage is greater than $12 per hour, then the state minimum wage would also be increased to the amount established at the federal minimum wage.

Finally, A.J.R. 10 of the 80th Session allows the Legislature to establish a minimum wage that is greater than the hourly rate set forth in the *Nevada Constitution*, again making clear that that is the floor and not the ceiling. I urge your support for what I believe is critical legislation. The distinction between minimum wage depending on whether there are health care benefits has been included in the *Nevada Constitution* and our statutory structure for some time. Nevada is the only state that has that distinction. We have had numerous conversations in an attempt to define what health care benefits need to be in order to qualify. It is an unusual way to calculate minimum wage and distinguish between minimum wage rates. We believe it is time to make a change so that Nevada can remain competitive with surrounding states.

Again, this effort, along with Assembly Bill 456 of the 80th Session which started the incremental increase in minimum wage, was a compromise reached in the 2019 Session to minimize the impact on businesses but recognize that minimum wage is no longer a job that folks have just for the summer when they are not in school. We have Nevadans who are fighting to pay to feed their children based on jobs that pay minimum wage. Times are different and also the minimum wage in our surrounding states is changing to where we need

to be more competitive. Leaving this to Nevada voters will be an ultimate indication of where our state wants to go. I would urge your support and encouragement to put this before Nevadans to vote on. With that, I am happy to answer questions.

Chair Jauregui:
Thank you so much, Speaker Frierson, for bringing forth A.J.R. 10 of the 80th Session. I will turn to the Committee first to see if there are any questions. Actually, I will take privilege as the Chair just because these questions used to come up during the 2019 Session when I had the privilege of chairing the Assembly Committee on Legislative Operations and Elections. This is an Assembly joint resolution; would you walk the Committee and those listening through how a joint resolution works? If we pass it today it does not become law, it still has another step to go through.

Assemblyman Frierson:
Absolutely. Thank you, Madam Chair. As an Assembly joint resolution, in order to amend the *Constitution*, it would have to pass the Legislature twice. It would then go before the people. Otherwise it could go before the people twice and then come through the Legislature. With joint resolutions, it would have to be passed twice in the Legislature before being placed on the ballot. You are right, if this body passes this for the second time, it would appear on the next election ballot for the voters to decide whether or not they want to change what is currently a minimum wage of $5.15 an hour if insurance is provided or $6.15 an hour if insurance is not provided.

In my remarks, we talked about health insurance and the benefits being so varied that it was not a reliable way to determine what the minimum wage would be. Some people would have a $20 deductible, and other insurance policies may have a $1,000 deductible. I think very few would take issue with a minimum wage of $5.15 as simply not being acceptable. It certainly does not keep us competitive with surrounding states. Increasing this gradually between last year and 2024, I do believe is a responsible way forward. Ultimately, that was passed in 2019. A.J.R. 10 of the 80th Session simply changes the minimum floor in the *Constitution* to match up with what the minimum wage will be in 2024 based on Assembly Bill 456 of the 80th Session.

Assemblywoman Tolles:
Speaker Frierson, I know we have had these conversations in the past, so I will not go back through previous questions, but something did just occur to me in the explanation of putting it at the constitutional level. Let us say we want to make adjustments in the future because we realize—and one of the things I have brought up before has been concerns about how, for example, in-home care providers, particularly when you add that to the eight-hour overtime rules that we have in our state, that can overprice us past the Medicaid reimbursement which then gets pushed on to the families and sometimes prices [unintelligible].

If we were to put this at the constitutional level and we decided in future legislative sessions we wanted to come back and make some changes or adjustments because we have run into those side consequences that impact those families in need, by putting it in at the constitutional level, does that make it harder for us to be able to come back as a Legislature and make those kinds of adjustments?

Assemblyman Frierson:
I would remind folks who are listening, I think the premise of the question is we are doing something by virtue of the *Constitution*. We are allowing voters to do something. To the extent that voters believe that a floor is a floor and that it is inconceivable to think about how home prices are going up—affordable housing is limited—that we would ever want to go backwards to the extent that we as a legislative body can change those other legislative structures about eight-hour work shifts and overtime. Those are statutory things that we can adjust any time we are in the Legislature. But I think that this measure is asking the Nevada voters, Do you believe that the $5.15 floor is adequate? Or do you believe that it should be something different than that?

I will remind this body that the original proposal was actually $15. This represented a compromise working with various stakeholder groups, and I believe there was a measure in 2017 that would have decreased the amount of time to get to that $12 so I believe that A.J.R. 10 of the 80th Session represented a compromise and flexibility to give folks time to get ready. Ultimately, that is going to be a decision for Nevada voters if this is ultimately passed.

Assemblywoman Tolles:
Thank you for that clarification, at least on some of the other factors that tie in.

Assemblywoman Dickman:
This goes along with Assemblywoman Tolles' question. You are saying that it would be the people putting it in the *Constitution*, but a lot of people do not exactly understand how it all works. My question would be the reverse: if we wanted to raise the minimum wage because, like you say, home prices and a lot of things are going up, how would we do that? Would we have to go to the *Constitution* then to do that?

Assemblyman Frierson:
The answer is no. It does not work that way. This is a minimum, as I indicated at the onset. The wage increases that would get us to $12 by 2024 are already in statute. That was passed in Assembly Bill 456 of the 80th Session, so we would not have to go to the *Constitution* to raise the minimum wage. We would simply do it statutorily.

Chair Jauregui:
Members, this is the last call for questions before we got to testimony. [There were none.] I am going to move us into the testimony portion of the hearing. [Testimony protocol was explained.]

Annette Magnus, Executive Director, Battle Born Progress:
We rise in strong support of A.J.R. 10 of the 80th Session. Nevadans are depending on you, their legislators, to start somewhere in bringing them some economic relief, especially at a time like this. When we started this work on this bill in 2019, we had no idea how important it would become. Assembly Joint Resolution 10 of the 80th Session is critical because businesses have been abusing the provision of connecting health care with the minimum wage. We have heard story after story where businesses are able to pay a dollar less than the current minimum wage in the state simply because they offer unaffordable, garbage health care plans that employees rarely take advantage of. No one should be paid a dollar less because their employer is taking advantage of a loophole to save a dollar an hour, especially when people are struggling.

We must give voters the ability to remove this provision that has been taken advantage of, and this is our chance to do so. Nevadans should have access to good, affordable health care and get a living wage. This should never be an either/or. Another critical part of this bill is tying the state minimum wage to the federal minimum wage, so if wages go up faster than what we approved in 2019, Nevadans can benefit. Assembly Joint Resolution 10 of the 80th Session also puts the Legislature in a position so that you, as our elected officials, can continue to improve people's lives by ensuring that the minimum wage is raised to continue meeting increased cost of living instead of going through an intense process to make modifications.

The business community continues to resist any attempts to enact a raise to the minimum wage, claiming that it will lead to mass layoffs and a crush of small businesses. As someone who runs a small business myself, I can attest that I am able to manage a small nonprofit and ensure my staff is compensated properly and pay a hundred percent of their health insurance. Other businesses can do it too. If you prioritize the life and health of your employees, then you find a way to pay them enough to afford food, housing, transportation, and medical care, especially during a global pandemic.

Many of us have been fighting to raise the wage for years, and now is our chance to finally do something about it. Nevada is a place of second chances for many workers, a land of opportunity where hard work pays off for many, but not for our minimum wage workers. We need to do right by them by passing A.J.R. 10 of the 80th Session. We want to thank Speaker Frierson again for working with us on this critical issue. Please support this bill.

[Written testimony was submitted, Exhibit C.]

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
I am here in support of A.J.R. 10 of the 80th Session. For our communities and economy to thrive, jobs need to pay at least enough to get by with basics. When people cannot afford to go to the doctor or to make basic home repairs, all of us are hurt. Additionally, the economy slows down when people cannot afford even the basics. Increasing the minimum wage boosts not only individual households, but the communities where workers

live and spend. This bill would solidify the statutory changes of Assembly Bill 456 of the 80th Session and eliminate the health care carve-out that has been taken advantage of by employers. Nevada needs an updated process to ensure the Legislature can take action on the minimum wage laws and not leave employees behind. We urge your support.

Quentin Savwoir, Deputy Director, Make It Work Nevada:
Make It Work Nevada works alongside Black women and Black families to fight for economic, racial, and reproductive justice. In 2019 we also worked in coalition to pass Assembly Bill 456 of the 80th Session to ensure that Nevada's labor force got a minimum wage increase. Black women and Black families still earn less than their white counterparts and considerably less than their white male counterparts. Increasing the minimum wage is one tool we have to help close that wage gap. We support A.J.R. 10 of the 80th Session because our community members and our workforce deserve ongoing support and investment. Thank you for your time.

LaLo Montoya, Political Director, Make the Road Nevada:
Make the Road Nevada is a nonprofit organization fighting to improve the quality of life of immigrants and working families here in Nevada. We also want to thank Speaker Frierson for presenting the bill and ensuring that our state will keep up with surrounding states and whatever is set in federal law, and ensuring that the communities that have been hardest hit during the pandemic will have a voice in fighting against subminimum wage. I concur with other callers.

Benjamin Challinor, Policy Director, Faith in Action Nevada:
Faith in Action Nevada is a nonpartisan, multifaith organization that organizes and advocates for racial, economic, and social justice as well as an inclusive democracy. Fighting for a living wage is part of fighting for economic justice as well as racial justice. Taking out the health care carve-out from the *Constitution* is important in making sure that if at any point the federal government looks to raise the minimum wage higher than our floor of $12, we are able to provide that here in the state. We urge the Committee for their support and thank Speaker Frierson for his continued work on raising the minimum wage.

Chair Jauregui:
We will move on to testimony in opposition.

Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber:
I would like to thank the Speaker of the Assembly for his efforts in reaching out and working with stakeholders last session on A.J.R. 10 of the 80th Session; however, we continue to be opposed at this time. We recognize efforts that were put in in regard to timeline and incremental amounts as would be proposed through the resolution. Again, we do want to thank Speaker Frierson for reaching out and working with stakeholders.

Bob Russo, Private Citizen, Gardnerville, Nevada:
I oppose A.J.R. 10 of the 80th Session. Perhaps raising the minimum wage laws are well-meaning. However, the evidence shows that as well-meaning as they may be, they do not benefit the economy nor the people they are intended to help. An article from February 2021 in the *American Spectator* titled "Don't Overlook Minimum Wage's Negative Effects" states:

> In his autobiography, *Up From the Projects*, the late economist Walter Williams explained his move away from the belief that minimum wages help the poor. His change of heart on the topic began when one of his UCLA professors asked him whether he cared more about the intentions behind the minimum wage or its effects.

Walter Williams found that minimum wage laws were particularly detrimental to Black people. He summed it up when he wrote:

> While there is a debate over the magnitude of the effects, the weight of research by academic scholars points to the conclusion that unemployment for some population groups is directly related to legal minimum wages. The unemployment effects of the minimum-wage law are felt disproportionately by nonwhites.

They also take their toll on low-skilled immigrants and young people hoping to enter the workforce for the first time. According to the above article, economists at the University of Washington studied the employment effects of Seattle's move to gradually increase its minimum wage to $15 an hour. It raised it to $13 an hour in 2016, and to $15 an hour this year. The findings showed that it led to a 9 percent reduction in low-wage jobs.

Janine Hansen, State President, Nevada Families for Freedom:
Assembly Joint Resolution 10 of the 80th Session does not belong in the *Nevada Constitution*; it makes it totally inflexible. We oppose A.J.R. 10 of the 80th Session, the constitutional amendment to raise the minimum wage to $12 an hour, unless the federal government raises it higher. Recently the United States House of Representatives voted for a $15 minimum wage which did not pass the United States Senate. A new report from the Congressional Budget Office estimates the Democrats' proposal would kill 1.4 million jobs. Meanwhile, this month, a CNBC and a SurveyMonkey poll of small businesses showed that one-third said they would lay off workers if the minimum wage went to $15 an hour.

The minimum wage is designed for entry-level jobs which will be eliminated by depriving young people of work experience and opportunities. Higher minimum wage laws hurt the very people they are supposed to help, including minorities, low-skilled workers, and teenagers. However, increases in the minimum wage do benefit unions.

The National Bureau of Economic Research authors Jeffrey Clemens and Michael Wither find that significant minimum wage increases can negatively affect employment, average income, and economic mobility of low-skilled workers . They find that significant minimum wage increases reduced the employment, average income, and income growth of low-skilled workers over short and medium horizons. Most troubling was that these low-skilled workers saw significant declines in economic mobility.

In an article by Walter Williams, "Elitist Arrogance On Minimum Wage Hurts Minorities," he says:

> Supporters of a $15 minimum wage are now admitting that there will be job losses. "Why shouldn't we in fact accept job loss?" asks New School economics . . . professor David Howell, adding, "What's so bad about getting rid of crappy jobs . . . " What is a "crappy job"? My guess is that many of my friends . . . held the jobs Howell is talking about as teenagers . . .

Assembly Joint Resolution 10 of the 80th Session will hurt the most vulnerable minorities, low-skilled workers, and teenagers. Oppose A.J.R. 10 of the 80th Session.

[Written testimony was provided, Exhibit D.]

Lynn Chapman, Treasurer, Independent American Party of Nevada:
Madam Chair and Committee, please oppose A.J.R. 10 of the 80th Session. James Sherk, research fellow and labor economist testified before United States Senate [Hearing of the Committee on Health, Education, Labor, and Pensions, June 25, 2013]. He said:

> Supporters of the minimum wage intend it to lift low-income families out of poverty. Unfortunately, despite these good intentions, the minimum wage has proved ineffective at doing so . . . Minimum wage positions are typically learning wage positions—they enable workers to gain the skills necessary to become more productive on the job . . . Raising the minimum wage makes such entry-level positions less available . . . This hurts these workers' . . . Even if minimum wage workers do not lose their job, the overlapping and uncoordinated design of U.S. welfare programs prevents those in need from benefiting from higher wages. As their income rises they lose Federal tax credits and assistance. These benefit losses offset most of the wage increase. A single mother with one child faces an effective marginal tax rate of 91 percent when her pay rises from $7.25 to $10.10 an hour. Studies also find higher minimum wages do not reduce poverty rates. Despite the best of intentions, the minimum wage has proved an ineffective—and often counterproductive—policy in the war on poverty.
>
> One of the central premises of economics is that "demand curves slope downwards"—when prices rise people buy less of a good or service. When gasoline becomes more expensive Americans drive less, and when it becomes

> less costly Americans drive more. The same applies to business owners. When the price of goods or services they use in production rises, they buy less of them. This includes labor costs—when wages rise employers hire fewer workers. Economists estimate the long-run elasticity of labor demand in the U.S. economy at around –0.3. In other words, a ten percent increase in labor costs causes employers to cut their workforce by three percent.

Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce:
I will be very brief and echo the same message that my colleague at the Vegas Chamber stated. I do want to thank Speaker Frierson for ensuring business groups like ours and others have been included in these conversations since last session.

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

Chair Jauregui:
Next caller please? [There was no one.] Let us check for anyone wishing to testify in the neutral position, please. [There was no one.] At this time, I would like to call Speaker Frierson back to give any closing remarks.

Assemblyman Frierson:
Thank you, Madam Chair and the Committee, for your time and attention. I certainly appreciate, in particular, the folks from the business community's concerns that were taken into account with Assembly Bill 456 of the 80th Session as a compromise from 2019. I am also confident that Nevadans know how to speak for themselves, and if this is something that Nevada voters do not want, then Nevada voters will vote it down. We are simply giving Nevada voters an opportunity to make this call, and I look forward to giving them that opportunity.

Chair Jauregui:
At this time, I will close the hearing on Assembly Joint Resolution 10 of the 80th Session. Members and those listening over the Internet, I have lost my Vice Chair to the Assembly Committee on Health and Human Services, so at this time I will be taking bills out of order. I will wait for her to get back for us to hear Assembly Bill 398, so she can take over as Chair. At this time, I would like to open the hearing on Assembly Bill 436. We have Assemblywoman Marzola here with her copresenters to present the bill, which revises provisions relating to vision insurance.

Assembly Bill 436: Revises provisions relating to vision insurance. (BDR 57-808)

Assemblywoman Elaine Marzola, Assembly District No. 21:
Today I am introducing Assembly Bill 436 on behalf of the Assembly Committee on Commerce and Labor. Even though I did not get to work on this bill, when Madam Chair asked me if I wanted to introduce A.B. 436, I immediately said yes because I knew it would

give me a chance to learn about the boards and help me become an even better member of this Committee. Assembly Bill 436, known as the Nevada Eyewear and Eye Care Consumer Protection Act, aims to combat abusive practices in the vision coverage market. At this time, I would like to turn the presentation over to Mr. Hillerby, who will provide the details of the bill and discuss the proposed amendment.

Michael Hillerby, representing Nevada Optometric Association:
We appreciate your time today and appreciate the opportunity to bring the bill before you. Let me give you a little background on the bill, then we will walk through the provisions. Some 200 million Americans enjoy some type of vision care plan coverage that helps with eye exams and helps to cover eyewear and other materials they may need. Two-thirds of those Americans who have those plans are covered by just two major carriers of vision care insurance. Those major carriers have become more and more vertically integrated and created a really lopsided market for both patients and our eye care providers, optometrists and ophthalmologists, to deal with. One of the largest plans is actually owned by the world's largest manufacturer of frames and lenses. That same company also owns more than 9,000 retail locations around the world. In the United States, that includes LensCrafters, Pearle Vision, and others. They own their own laboratories. One of the other major plans owns its own brands of frames and lenses and owns laboratories as well. It has created something of an imbalance in that market.

Nevada has, for a number of years, regulated dental plans. Dental plans are very similar to vision plans in that they are a supplemental benefit to your health insurance and are typically prepaid discount plans, not insuring risk the same way that health insurance does; it works differently. Most of you have used either vision or dental plans and know when you go to that provider you receive a discount or free teeth cleaning once a year. You receive a discount or free eye exam. Periodically you would be eligible for new frames and lenses maybe every two years from your provider. These are, in the vision plan, relatively inexpensive add-ons. In our firm, which is a small law firm here in Nevada, family coverage costs a total of about $14 a month. The individual coverage is about $5 for the vision plan. That is the total coverage, and you pay less than that if your employer—as we do—provides some degree of benefit for that. For that you receive the ability to get some access to very important preventative eye care, as well as lenses and frames when you need those.

What we have seen, particularly in recent years with the growth in the size of those plans, is the putting of more and more pressure on both patients and doctors in how they access care and the choices that are available to them. For example, the plans will mandate that you use certain laboratories to make the glasses; they may own those laboratories or just have financial arrangements with them. What our members see—and we have some of our doctors on the line today to be able to talk about that—is long delays for patients, relatively high error rates, real patient satisfaction, and ultimately higher costs. Those plans have also done things which we prohibit in the *Nevada Revised Statutes* (NRS) chapter on dentistry. They will mandate that a provider provide discounts on services or products that the vision plan does not provide any benefit for, and this law would prevent that as well.

Again, part of this is trying to establish some level of balance in that relationship. We are not asking in this bill to create an entire chapter of NRS as we did with dental plans back in, I believe, 1983. We are not asking for additional mandated benefits or changes in reimbursement rates to providers. We want to find ways to make sure that there is some degree of regulation in Nevada so the Commissioner of Insurance in the Department of Business and Industry has clear authority, that there is an opportunity for both patients and Nevada's doctors to reach out and have ways to deal with some of the abuses or solve disagreements that may happen as a part of that. We do not directly regulate vision plans in law. There is general coverage for those as part of health insurance plans, and that is something the Division of Insurance in the Department of Business and Industry could speak to in more detail should you need it. However, we do think it is important to put some pieces in here and deal with some of the challenges that we have seen.

I will start walking through the bill at this point. We have submitted an amendment that you have on the Nevada Electronic Legislative Information System [Exhibit F]; it should be in front of you. The operative section of the bill is section 1. That is the new language that provides some oversight of these plans and provides some limitations on some of the practices. I will start with the amendment to go through section 1 so that you see some of the clarifying language we are proposing to add. Section 1, subsection 1, paragraph (a) [page 1, Exhibit F] prohibits an insurer from setting, limiting, or otherwise discounting "the amount that the provider of vision care may charge for vision care that is not reimbursed under the contract." Again, this is the idea of mandating discounts on services they do not cover. What you would typically see, for example, is if you go to your local eye doctor, get an exam, and need glasses, they would advertise that you could get a second pair for 40 percent off, let us say. They do not provide any coverage for that second pair and this law—much as we already have in the dental chapter—would prohibit an insurer from mandating set prices or discount levels on services or materials they do not cover.

Moving on, section 1, subsection 1, paragraph (b) [page 1, Exhibit F] cannot require the provider of vision care to "participate in the network of providers of vision care of, or contract with, the insurer" as a condition of participating in the medical services. There is a great deal of overlap—and again, some of our doctors can talk about this in our question-and-answer session after the presentation—between the medical benefit and the vision benefit. Some of the services that you would receive at your ophthalmologist or optometrist may be medical services; some would be vision; and there is overlap in those plans. What our members see is that in order to participate in the medical portion of that plan, to provide those services, often there is a requirement that they must enroll in a vision care plan that they may not wish to enroll in. It may not provide the kind of benefits they would like to see; it may not be popular with their patients. We would like to keep those two negotiations separate from the medical and vision plan.

Section 1, subsection 1, paragraph (c) [page 1, Exhibit F] gets rid of the requirement that "the provider of vision care to use specific laboratories as the manufacturer of ophthalmic devices or materials provided to covered persons, or conditions the reimbursement, co-pay or other payment upon the use of specific laboratories." What we see, particularly with the large

plans, they either own or have contracts with labs located at different places around the United States. They will tell you today when they testify, and we do not disagree, that there may be a monetary benefit to them and may be competitive pricing with the volume they send. What Nevada's patients experience, and your local Nevada eye doctors, is real challenges with that. There are local, Nevada-based labs in Reno and Las Vegas that our doctors could use, and would like to use in many cases, and with which they may be able to negotiate very good rates. That is entirely covered by the vision care plans. They have taken that decision out of the hands of patients and doctors in Nevada. Particularly when they have an ownership interest in that lab, those are typically out of state, delays in receiving that, issues of quality control, having to send glasses back, having patience to wait for weeks sometimes and longer—and again, some of our members can talk about that. Those glasses may be really important. I wear mine because they help me read a little better; you may really need your glasses to drive, to get to work, to teach your children in your class if you are a classroom teacher, go down the list. Waiting for weeks to get them repaired and get them done correctly is really not an option.

Section 1, subsection 1, paragraph (d) [Exhibit F] s something we have seen somewhat recently in proposals by at least one of the plans that would condition the reimbursement for the exam, the medical care part, the eye care part of the visit on whether or not the provider prescribed eyewear brands owned by that vision care plan. We think that is, frankly, fairly unconscionable. This would ban that practice. Negotiate a contract with the providers and the providers with the vision care plans that has a reimbursement rate established and stick with that. The decision about the right frames, the right lens, the right contact lenses, and the right treatment for that patient should be between the patient and that doctor and not have something behind the scenes that would tend to try to influence that doctor's decision. We have language in NRS Chapter 636 regulating optometry that requires that optometrists do not enter into any financial arrangement which would tend to jeopardize that independent judgment. We think it is appropriate to include that in this language.

Section 1, subsection 1, paragraph (e) one says cannot provide "for unreasonably low or nominal rates of reimbursement for vision care." What we have seen in reports from other states that have tried to enact some of these provisions, particularly the mandated discounts on noncovered services, is some plans may advertise that they provide a discount on the second pair for a copay of $5 or for a fee that they would reimburse of something very nominal such as $5 to the eye care provider, thus forcing that discount on that additional service or product. Again, we think if you are going to cover it, then it should be covered the way you do the first pair. It should be actual real coverage, not illusory; that would do that.

Section 1, subsection 2, simply says before entering into a contract they need to disclose in the terms of that contract, the rates of reimbursement for the various services. Section 1, subsection 3, says, "An insurer shall disclose in any policy of insurance . . . any description of benefits covered by such a policy, whether written or electronic, any ownership or other pecuniary interest of the insurer in a supplier of ophthalmic devices or materials or a provider of vision care." Again, as we have seen this vertical integration where big companies are

owning the vision care plan, owning major retail outlets, owning the laboratories, and owning the contact lens supply stream, we think it is important that employers who provide the plans know that in the policy documents and understand as they make their decisions.

Section 1, subsection 4, is very related to section 1, subsection 1, paragraph (a), and that is the mandatory discount on a noncovered service. One of the other things we have seen in some of the other states that have enacted this is some of the plans may advertise that they provide coverage, that there are additional things available at additional copays or discounts. This would make it clear you cannot do that; it needs to be a part of the standard process and needs to be part of the same copayment or deductible that the insured would enjoy otherwise. Section 1, subsection 5, involves the provider directories [page 2, Exhibit F]. With some of the plans we have seen attempts to list doctors as "premier" or using other terminology based on how much they prescribe or sell of brands owned or with other financial interests of the insurer. This would prohibit the insurance plan from differentiating among providers in the provider directory based on these kinds of criteria. Again, we do not think that is appropriate. In NRS Chapter 636, which regulates the practice of optometry, optometrists are barred from adding any titles or doing any kind of advertising or marketing that would tend to say that they are more qualified or a competitor is less qualified. We think that is fitting that that also apply to the vision care plans.

In section 1, subsection 6 of the bill, you have the definitions. "Provider of vision care" means a physician who provides vision care or an optometrist. Ophthalmologists can be licensed either under NRS Chapter 630 as an allopathic physician, or NRS Chapter 633 as an osteopathic physician. Section 1, subsection 6, paragraph (b) is vision care and we have provided new language here [page 2, Exhibit F], "Routine ophthalmological evaluation of the eye, including refraction. For the purposes of this section, vision care does not include the initiation of a treatment or diagnostic program for medical care." When you go see your eye care professional, ophthalmologist or optometrist, because of the different types of coverage, some services are vision care and coded one way, some services are medical care and coded another. That is the differentiation in that definition because for the purposes of this bill, the vision care deals specifically with the vision care plans. In section 1, subsection 6, paragraph (b), subparagraph (2), the definition of devices and materials "including, without limitation, lenses, frames, mountings or other specially fabricated ophthalmic devices." Those provide the definitions for the bill.

I will quickly run through the other sections. Sections 5, 6, 7, 8, and 9 reference the specific types of insurance. Section 5 repeats the provisions provided in section 1 and makes them applicable to nonprofit corporations for hospital, medical, and dental services and NRS 695B.320. Section 6 amends NRS 695C.300 and health maintenance organizations. Section 7 amends NRS 695F.090 and prepaid limited health service organizations. Sections 8 and 9 amend NRS Chapter 287, Programs for Public Employees.

The remaining part of the amendment references sections 10, 11, and 12 [page 2, Exhibit F]. In the original language we submitted, we were looking for language that made it clear that if a patient is covered by a vision care plan and they are seeking a need, services, or materials not covered by the vision care plan, that the eye care provider would not charge any more than the usual and customary rate. The way this came out in drafting placed that language within the three chapters I mentioned that license those professionals, NRS Chapters 630, 633, and 636. That is not a role we historically have ever asked Nevada to have their licensing boards play, getting involved in potential financial disagreements. That is not something the boards were prepared to do and it is a big departure from their core mission of making sure that professional competency, licensure, and a process for public complaints and discipline for professions in NRS Title 54. I know there is a letter on Nevada Electronic Legislative Information System from the State Board of Osteopathic Medicine suggesting just that and agreeing with the amendment to take it out [Exhibit G]. Again, after seeing the bill and reaching out to the boards and getting some feedback, it was clearly not appropriate to include that language there. We have the effective date of the bill which would make the bill effective for new contracts or contracts renewed after October 1, 2021.

Madam Chair, we have some of our Nevada Optometric Association optometrists online who would be happy to talk and share some of their testimony. Would you prefer for us to take questions at this point while we have some of them available to answer, or move to their testimony and then take Committee questions?

Chair Jauregui:
We can start with their testimony, Mr. Hillerby.

Ken Kopolow, Private Citizen, Las Vegas, Nevada:
I have been practicing here in Las Vegas for about 30 years. Mr. Hillerby, thank you for that presentation; it was really clear and concise. It was really well delivered, and we appreciate that. I do not have anything prepared other than to say this bill has no intention of dismantling or disabling vision care plans. What we see as practitioners in this state with regards to our patients is a lack of understanding and a lack of transparency. It creates a lot of confusion. I think one of the most important things that the amendment to the bill will help is removing a lot of the confusion. Also, there is definitely some anti-competitive-type behavior which tends to drive prices up.

Those are the things that we are trying to address with this bill and these are based on day to day, every single day, 80 percent of our patients come in and do not understand what their contract is, what is covered, what is not covered, who are they actually dealing with, are they dealing with a doctor, or are they dealing with a big company. There needs to be some more clarity and I think other states have provided this. There is a federal bill that is being worked on as well. I think my colleagues want to make some comments and we will be happy to take some questions afterward.

Steve Girisgen, Private Citizen, Las Vegas, Nevada:
I am an optometrist in southern Nevada and also an executive board member of the Nevada Optometric Association. I will provide a statement and of course be available to answer questions regarding the bill. Assembly Bill 436 is critical to maintaining access to care for Nevadans. It lowers costs and allows the highest level of care that Nevadans deserve. Vision plans and their vertically integrated model poses concerns as decisions may not always be in the best interests of our patients, but in the interests of supporting their vertical integration. Further, with our bill, by mandating transparency with insurance company affiliations, allowing insurance commission oversight, removing tiered provider listings based on economic measures as opposed to quality of care outcomes, and allowing a free market and lab procurement will allow Nevada to enjoy the best quality of care and services with open access at the lowest cost. I will be available to answer any questions.

Spencer Quinton, President-Elect, Nevada Optometric Association:
I live in Las Vegas; I have practiced optometry in Henderson for the last 21 years. The Nevada Optometric Association represents over 200 Nevada optometrists, and we advocate for that patient-doctor relationship and for the continuity of quality care for our patients. I support A.B. 436. I would like to share a few examples from my everyday practice that show why these commonsense revisions would be necessary and help everyday Americans. One of the key provisions deals with provider nondiscrimination. In other words, the provider could not be forced to be on a vision plan—often a very discounted, undesirable vision plan—in order to participate on a medical plan. This limits access, which is often restricted to only the doctors who can participate on a given discount program, rather than focusing on doctors who can provide more efficient, high quality, cost-effective care. Because of this, I have many patients who choose to pay out of pocket rather than change vision plan providers every time that their plan changes, when their human resources department might change to a different, discount plan, which obviously disrupts continuity of care. Unfortunately, it is often the patients who can least afford to pay out of pocket who bear the brunt of these vision plan abuses and are forced to use discount plans which often are not really plans, just a very minimal discount.

Another key part of A.B. 436 would allow patients and doctors the freedom to choose which labs and suppliers of materials are in their best interest and where reimbursement would not be conditioned upon buying materials from a lab owned by the self-serving vision plan. We really think this is a way to protect our patients, to separate that, and to allow freedom of choice in this way, because that restriction is very anticompetitive and antipatient. More importantly, it costs our patients time, money, and quality eye care. Of course, many people are dependent on glasses, as Mr. Hillerby said, to be able to drive, to be able to walk, let alone to be able to learn, work, and do the things that we use our eyes for. It is obvious that we need them. People who are very dependent on vision correction to see often cannot wait the days, weeks, and even months with some of the discount plans. I have had patients who have had to wait a couple of months for their glasses. It is totally unacceptable and patients, if they can, pay out of pocket. Why should they pay out of pocket when they or their businesses are paying premiums for the benefit? Having lab choice would let us use labs that

are local. Often, we can get glasses back within a day or two. Many times, we have in-house labs where, within an hour or two, we could get the patients taken care of and get them back on the road.

I had a patient last week, a young lady, 20 years old, and she cannot see the big "E" on the chart without her glasses. You do not want her driving; she cannot without her glasses. And here she is in a car accident, she cannot see now, her glasses broke. We were able to get her glasses made within an hour, and she is back on the road. If she had to wait even a week or two for her glasses, she would be stuck. She could find some other way, get a ride or do other things, but it is really not a practical thing for people to have to do without the basic gift of sight when it is unnecessary. We think that the vision plans do not need to reimburse a different amount, they simply need to be able to reimburse to whichever lab the patients want to use.

It is documented that vision plans have had massive profits during the pandemic. Patients have not been using routine benefits as much, and yet, they continue to pay the premiums. We are seeing that the plans are using—nationally and here in Nevada—their might and their vast resources to try to fight commonsense legislation like A.B. 436, and I am sure we will see that today. They will try to limit the doctor-patient relationship and get in the way of that relationship and try to get in the way of a patient's choice to use whichever lab they want to use. This undermines continuity of care, and we believe that what is best for our patients is to make some of these small changes that can make a huge difference in the lives of everyday Americans. We think that vision plan abuses hurt our patients, and they should be held accountable to the state Commissioner of Insurance. Right now, it is not clearly defined, as we have shared. We urge support of the passing of A.B. 436. Thank you very much.

Jonathan Mather, Private Citizen, Carson City, Nevada:
I am speaking in support of A.B. 436. The doctor-patient relationship is extremely important to me and, I think, to any doctor. That is why we get into this business, because we care about people and we want to do what is best for them. We take years of training and years of education, and our patients expect us to turn that into, in a short time, a treatment for them. If they come in with blurry vision, light sensitivity, or pain in their eyes, they do not want just what the insurance says, they want what is going to work best. The example that I have for you is right along those lines. We have a patient come in and they have light sensitivity all the time; they go in the store, they go into Walmart and their eyes hurt because things are bright to them. Obviously, this is an issue that people deal with every day, so we have ways to treat that—through transition lenses that get darker when you go outside, through tinting lenses, things like that. The problem is that the insurance companies have decided to insert themselves into that relationship and say they can only get this transition, the transition that we own and that we make. They can only get a tint of a certain percentage instead of 90 percent dark like sunglasses. Well, you cannot wear sunglasses inside an office and expect to be able to see; they need a partial tint.

What insurance companies have done is decide that they know what is best for the patient by providing benefits only for those particular items instead of allowing the doctor to say, This is what you need, then the insurance company says, Okay, here is what we will cover for that. The idea behind this bill is to address that issue. We do not want insurance companies' determination of benefits to interfere with our ability to provide what we feel, know, and have been trained is the best treatment for our patients.

The other way this comes into play on a daily basis is when patients have problems. As Mr. Hillerby and Dr. Quinton have pointed out, if a lens is taking too long or if they have been waiting more than a week or two for their glasses, what does the patient do? They do not call the insurance company and say, Hey, where are my glasses, you paid for this, why do they not have them? They call the doctor, and now the doctor is the responsible party even though we are just representing the insurance company for their products which they expect us to sell on their behalf and for their delays, for their manufacturers, for their laboratories. And we do not have any interest in them. We take the vision plans because we want to take care of patients. Because we want to care for people. Not because we want to sell somebody's products or because we want to make the most money that we can off of each person that walks through the door.

Chair Jauregui:
Thank you for your testimony. Mr. Hillerby, can we go to questions?

Michael Hillerby:
Absolutely, Madam Chair.

Assemblywoman Dickman:
I just wondered if you could talk a little bit about the opposition from the insurance industry. Are you familiar with it, and could you address it?

Michael Hillerby:
We are and, in fact, I would be remiss if I did not thank my colleagues representing some of the health plans. They are my friends; we work together regularly. We have been in communication and have let them know about the bill. We have shared the amendment with them. They have talked to me about some of their concerns, and we had some additional concerns show up since the amendment and the bill have dropped. We have been able to talk to most of them in the last several hours or day. I absolutely understand the concerns and I appreciate their professionalism and the opportunity to work together on them. There is some genuine disagreement about how this ought to work.

Again, we understand from the insurer side particularly on the laboratory piece. They view that as an important cost control and they are able to get a certain level of discounted pricing from labs that they may own or that they have financial arrangements with. But the impact on the Nevada consumer, on our patients, is the bigger issue and what is the real out-of-pocket cost? While they may save pennies in the ultimate cost of the premium based on that lab arrangement, they may end up spending a lot more money if they are not able to

get the materials, the glasses they need, or the tint they need depending on their eye condition to allow them to work in an environment. As Dr. Mather said, some of these lights can cause real challenges for people with different health and eye conditions. We are not sure, at the end of the day, that that ultimately saves the patient much money. We do not know if that really is translating into money for the patients. They view the mandated discount on noncovered services as a way to potentially lower costs for patients, and we understand why they do that. In practice, we do not know if that is really what happens.

By federal law, optometrists and ophthalmologists are required to give the prescription for glasses or contact lenses to the patient and patients can, and regularly do, go other places to shop. They may go online and look for an online retailer of contact lenses or glasses. They may go to one of the large retailers: Costco, Walmart, LensCrafters, or a number of options that are now out there. Our members will tell you—and I will see if any of them want to jump in—that they know if they do have optical shops—and some do and some do not anymore because that market is very competitive—it is their job to make that value proposition for the patient. The level of service—local doctors and opticians there in the shop being able to properly fit those glasses and contact lenses—the education, and the pricing all go together. If they can make that value proposition, good for them. If they cannot, that is their problem.

We disagree that it is ultimately just about saving money for patients. At whose expense does that really come? We know that the vision care plans provide a very important benefit, and we are not opposed to them per se. We are not asking that they be banned. We are not asking for an increase in the reimbursement rates. What we are saying is we think that some reasonable controls on that contractual relationship that affects Nevada's doctors, and ultimately the patients, is appropriate. That was why we brought the bill. I would be happy to answer more specific questions or see if any of the doctors want to jump in.

Ken Kopolow:
There is something to be said about the insurance company controlling both the reimbursement as well as the costs. The provider becomes almost a hostage to the reimbursements and to the cost. It does not seem quite fair or transparent. It certainly puts us in a position where we are forced to see more patients, possibly provide lesser quality care when they are dictating all areas of our ability to pay and reinvest into our practice. It is just interesting that the insurance company, who is really providing only a service of aggregating patients for us, is dictating our reimbursements and our costs. That is the perspective that I have an issue with, and I think most of us do.

Assemblywoman Dickman:
I really appreciate those answers. I just thought it was something that should be addressed.

Chair Jauregui:
Assemblywoman Dickman, we do have people signed in for opposition. We can hear them too and then give the sponsors an opportunity to close out with closing remarks where they can address the concerns once they hear it from the opposition.

Assemblywoman Hardy:
In listening to this, I just wanted to make sure that I understand this correctly. You are not saying that the reimbursement rates need to be any different, say, for using a lab. You are just saying it should be the doctor and the patient's choice if they want to use a lab that is local to get something faster. You just want them to have the choice. You are not asking for any difference in a reimbursement rate.

Steve Girisgen:
We are not asking for any change in the reimbursement rate. What we are really asking for, as Mr. Hillerby put, is reasonable controls which would allow for a free-market approach with procurement of the labs. For example, as Dr. Kopolow had mentioned, the insurers are mandating the labs that we select and, along with that, mandating the cost that we are to pay. That immediately eliminates a free-market approach of our ability to procure other laboratories and negotiate better rates. I have been practicing long enough now where I have lived in both worlds, where I had the ability to negotiate better rates, and indeed did negotiate better rates, and passed along lower costs to our consumers as a result of that.

I think it is important to understand that we are not asking for higher reimbursement rates. That is an individual negotiation by each provider in the insurance plan. What we are asking for is the freedom and the ability to procure our own lab, and by doing so it allows better quality for our patients, better timely returns for our patients. The glasses could be returned quicker by keeping the work in the state of Nevada as opposed to farming it out to Texas with certain vision plans, or to Ohio, or to other states with other vision plans, which could take up to two weeks or longer to have these glasses returned. So it is better quality, better service, and lower cost.

Assemblywoman Hardy:
Thank you, that is very helpful. I was actually in that situation when I went to get my glasses this year. I was going to have to drive up to Carson City. I thought to myself, I hope they get them by a few days because I need them to drive. That is a practical explanation that is helpful. As far as the vision plan, what I understand is, you go in to the eye doctor, you have your exam, you come out, sit down, and they recommend contacts or glasses, and, like we have talked about, tint, or nonglare, all of those options. You determine what is best. Then, if you have one of these vision plans, there is an amount that will be reimbursed, and if it is anything over that, then the patient has to pay the extra for that. Is that correct?

Steve Girisgen:
When it comes to the actual ophthalmic lenses that are prescribed for you, there is a set allotment and there is a set copay. There is a copay that you pay and that is already predefined in the plan. Does that answer your question?

Assemblywoman Hardy:
Yes. I was just trying to get to your saying that ends up costing the consumer more. What things would the consumer have to pay more for?

Steve Girisgen:
When you have to utilize the laboratory of the insurance company, there is a cost associated with those lenses. They call that a "chargeback" fee in our lingo. With that fee, that cost is assessed to the provider, so now there is a dictated reimbursement and there is a dictated cost to procuring those materials. They have the liberty to dictate both sides of it and what they are essentially doing is they are moving margin from the provider to the insurance company, therefore overall increasing the cost—because there is a cost of doing business in general that providers have to do for the general public. That is how it really drives up the cost for the general public to be able to cover your operating expenses.

Chair Jauregui:
Members, are there any other questions? [There were none.] We will move into the testimony portion of the hearing. If we could check the telephone lines for anyone wishing to testify in support.

Terri Ogden, Executive Director, Nevada Optometric Association:
Assembly Bill 436 helps protect consumer choice and vision care and is critical to stop vision compliance abuses here in Nevada. Vision plans are reducing access to care for Nevadans, increasing costs, and eroding the quality of care and services Nevadans deserve. Vision plans and their vertically oriented business models are making decisions in the best interest of their business models instead of fulfilling the fiduciary obligations to their member's best interest.

By mandating transparency with our affiliations, allowing insurance commission oversight, removing tiered provider listings based on economic measures, and allowing a free-market approach to lab fulfillment, A.B. 436 will allow Nevadans to enjoy the best quality of eye care with open access at the lowest cost. Nevadans deserve to have a choice in their vision care.

[Assemblywoman Carlton assumed the Chair.]

Vice Chair Carlton:
Thank you very much. If we could have the next caller, please? [There was no one.] If we could go to any callers in opposition, please.

Robert Holden, State Government Affairs Director, National Association of Vision Care Plans:
We are in opposition to Assembly Bill 436. More than ten of our members are operating in Nevada, covering almost 2 million lives in commercial plans as well as through Medicaid and Medicare Advantage Plans. As stated earlier, our members cover routine vision care. The medical service that they uniformly cover is an annual eye examination. Additionally, our plans typically provide an allowance for the purchase of frames and provide a covered ophthalmic lens as mentioned earlier. This bill is focused on prohibiting a vision care plan from negotiating pricing, otherwise limiting the eyewear whether it is fully covered or not.

The American Optometric Association's own study shows that legislation like this can add $168 to the cost of eyewear for enrollees. Optometrists are exempt from restrictions on self-referral and frequently refer patients to their own dispensaries for eyewear and set the final retail pricing for the items sold. Accordingly, our plans negotiate a maximum amount that optometrists can charge our enrollees for options on an otherwise covered lens. The bill's restrictions on the ability for plans to use laboratory networks does not address quality or access to additional labs. For their private-pay patients, optometrists overwhelmingly contract with the same laboratory divisions that care plans contract with for their enrollees. There are no quality control issues unique to vision care plan laboratories. Our member plans contract with a number of different laboratories from a variety of manufacturers and frequently offer coverage for lenses better finished in office by an optometrist. Our plans limit the laboratories they use most frequently for their most affordable plans, and for Medicaid plans, and this bill would take those affordable options out of the market. I would be pleased to answer questions that the Committee may have for our industry.

[Assemblywoman Jauregui reassumed the Chair.]

Tray Abney, representing America's Health Insurance Plans:
We testify in opposition to this bill today. Prohibiting insurers from contracting with vision care providers for discounts on noncovered services disadvantages consumers by causing them to pay more for vision care. To help keep vision care affordable, vision coverage plan contracts typically include provisions to provide plan members with discounts on noncovered services. These discounts for noncovered vision care services reduce plan member out-of-pocket spending; they also make the vision coverage plan and vision care providers in the plan network a better deal for consumers. Prohibiting contracts from including discounted prices for noncovered products would raise consumer out-of-pocket costs and limit consumer choice.

Mr. Holden mentioned that the study by the American Optometric Association shows consumer cost increases on the order of 30 percent to 60 percent in states that have enacted legislation similar to this. It is important to point out that payment rates for materials are negotiated. Negotiated vision product discounts are good for in-network providers because vision care plan coverage provides in-network optometrists with an increase volume of patients and customers. Discounts on vision care products help to build plan enrollees' loyalty to their in-network provider. Prohibiting vision care plan discounts on noncovered services can drive consumers away from local vision care professionals. Without access to discounts, consumers are more likely to seek to obtain materials from online sources, bypassing their local eye care professional altogether. This bill might be good for doctors, but it is not good for patients and consumers.

Chair Jauregui:
Thank you very much for your testimony. Can I have the next caller please? [There was no one.] Let us move to testimony in the neutral position please.

Maya Holmes, Healthcare Research Manager, Culinary Health Fund:
We are neutral for now on A.B. 436, but we have some serious concerns about the language in the bill. Patients face a lot of unexpected costs when they are going to a network vision provider. We want to better understand how providers and patients are being impacted. We have concerns with some of the specific language and its restrictions on insurers. The sponsors have reached out to the Health Services Coalition which we are members of, and we want to continue those discussions to work with the sponsors on the language.

Maggie O'Flaherty, representing State Board of Osteopathic Medicine:
Thank you to Mr. Hillerby for his work on the bill and, in particular, the amendment presented as that is what brought us to the neutral position today. The amendment removes section 11 concerning our role in the process and clarifies the intent as Mr. Hillerby explained. With that change, we are happily in neutral.

[Exhibit H, Exhibit I, and Exhibit J were submitted but not discussed and will become part of the record.]

Chair Jauregui:
Thank you for your testimony. May we hear the next caller? [There was no one.] Mr. Hillerby, would you or your copresenters like to give any closing remarks?

Michael Hillerby:
We first want to thank you and the Committee for your time and the excellent questions. I want to thank Assemblywoman Marzola for the opportunity to work together introducing the bill. I look forward to continuing to work with her on this. Again, we appreciate the Committee considering this and considering what is best for Nevada's patients and doctors. To the concern raised by the opposition about the cost of glasses and materials that they do not cover, we share those same concerns and we want good outcomes for our patients that our members see.

Again, a reminder that we, by federal law, are required to give that prescription; they can go other places and do that. If ultimately the combination of cost, quality, service, and getting that from a local provider does not make sense; if that value proposition cannot be made for the local eye doctor, optometrist, or ophthalmologist, that patient will not do that and that is their choice. Many optometrists and ophthalmologists do not necessarily have optical shops anymore because of the level of competition out there.

For the opposition I would say, if the concern is to make sure that an additional pair of glasses, some additional service, or equipment they do not cover is provided at an appropriate discount as good coverage for the patient, they should cover that. That is an option they have. Cover it and provide a limited copay on additional equipment. That would be, perhaps, a better way to do that than to artificially try to change that market as they have been doing through the contracts.

We look forward to working with the Committee and continuing the conversations we have had with the folks in opposition. Again, I do want to express my appreciation for their professionalism, as always, my colleagues, to be able to talk and work through these things. We thank you.

Chair Jauregui:
Thank you, Mr. Hillerby. With that, I will close the hearing on Assembly Bill 436. At this time, I would like to turn the virtual gavel over to Vice Chair, Assemblywoman Carlton.

[Assemblywoman Carlton assumed the Chair.]

Vice Chair Carlton:
I believe the last bill on our agenda today that needed to be addressed is Assembly Bill 398. With that, we will open up the hearing on A.B. 398, and I will invite Assemblywoman Jauregui to the virtual testimony table for opening comments and remarks on the bill.

Assembly Bill 398: Revises provisions relating to sales of residential property. (BDR 10-812)

Assemblywoman Sandra Jauregui, Assembly District No. 41:
Good afternoon, Vice Chair Carlton and members of the Committee on Commerce and Labor. I am here today to present Assembly Bill 398 alongside my copresenters, Tiffany Banks with Nevada Realtors and Noah Herrera, a broker. I have spent most of my adult career in housing and real estate, and I am proud to be here giving a voice to the industry at the Legislature.

Many of you here have gone through the process of buying and selling a home. During the sale of a home, sellers are required to complete a form known as the Seller's Real Property Disclosure, more commonly known in the industry as the SRPD. This discloses to the buyer anything they need to know about the property before they purchase, and this is to protect the sellers from future legal actions as well. When we identified language in the *Nevada Revised Statutes* (NRS) that needed to be cleaned up to ensure that Realtors know the SRPD must be completed by the seller and the Realtor to protect everyone in the transaction, I was happy to lend a vehicle to help. I would now like to turn it over to Ms. Tiffany Banks with Nevada Realtors to walk through the bill and give remarks, followed by Mr. Noah Herrera.

Tiffany Banks, General Counsel, Nevada Realtors:
Before I walk you through the proposed statutory changes, I will touch on what Assemblywoman Jauregui just went over on the background of the SRPD. Under existing law, at least ten days before the property is conveyed to a purchaser, the seller is required to complete and serve upon the buyer a disclosure called the SRPD. This form is important in ensuring the buyer is aware of what the seller knows about their property. The majority of buyer's agents require the sellers to provide this SRPD within a set time frame after signing the purchase agreement, so the buyer has adequate time to review and conduct inspections. Oftentimes this is far beyond the ten days before the conveyance of the property.

In the bill, page 2, lines 9 and 10, explicitly states that the "seller's agent may not complete a disclosure form. . . on behalf of the seller." Further, lines 25 to 37 provide that the seller's agent is not liable to the buyer if the seller is aware of a defect and failed to disclose, or the seller becomes aware of or the problem worsens before conveyance. Lastly, lines 38 to 41 state that the seller's agent must still comply with NRS 645.252:

> A licensee who acts as an agent in a real estate transaction:
>
> 1. Shall disclose to each party to the real estate transaction as soon as is practicable: (a) Any material and relevant facts, data or information which the licensee knows, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.

There has been a long-standing and clear understanding in the real estate community that the agent never fills out the SRPD on behalf of their client, and this will now be codified in statute. Under existing law, NRS 113.120, section 2, paragraph (b) explicitly states "That the disclosures set forth in the form are made by the seller and not by the seller's agent." However, we have seen a growing number of lawsuits naming licensees as defendants, citing issues that the seller failed to disclose on the SRPD. We have growing concerns that this is impacting both consumers and real estate professionals. The language in this bill seeks to limit such lawsuits aimed at a licensee who truly was not aware of a certain defect on the property.

Finally, posted on Nevada Electronic Legislative Information System by Mr. Finseth and Ms. Reese, you will find a conceptual amendment proposed by the Nevada Realtors [Exhibit K], which further clarifies that the agent shall not fill out the SRPD. Once again, on behalf of the Nevada Realtors, we would like to thank Chair Jauregui for bringing this piece of legislation on the Nevada Realtors' behalf. Thank you, Vice Chair Carlton for allowing us to present A.B. 398 this afternoon. I would now like to turn the remainder of the presentation over to Mr. Noah Herrera, a real estate practitioner, to discuss the implications these issues have had from a real estate practitioner's perspective. Thank you for your time today, and I am happy to answer any questions you may have after his presentation.

Noah Herrera, Private Citizen, Las Vegas, Nevada:
I have been a Realtor in Las Vegas for over 27 years. This bill takes a huge step in the right direction, codifying in statute what we have practiced for a very long time.

Our clients turn to us as their trusted advisors in real estate. When it comes to the SRPD, this is a form we cannot help them complete under any circumstances. Every property is unique in its own way. The seller has to think through everything that has ever happened at their home. Some sellers have lived on their property for over 50 years; this may take some time. We always encourage them to fill it out thoroughly and honestly. Full disclosure allows a buyer to know the condition of the property before the sale is complete. Items that must be disclosed on the SRPD include electrical, heating, cooling, plumbing, and sewer, as well as

the condition of any other aspect of the property which the seller is aware of. As a Realtor, we have no actual knowledge of any condition of the property unless the seller tells us. Should a seller refuse to disclose a relevant item that a licensee should disclose, the licensee does inform the seller that, under the law, the licensee is required to disclose to all parties all material and relevant property facts.

In addition, the SRPD is an important tool for the buyers of property to understand the challenges and issues of a home in which they are making the largest investments of their lives. Buyers have a particular period of time to review the information in the SRPD, ask questions, do their own due diligence, and ultimately decide if they want to move forward with their purchase or opt out of the purchase. The disclosure of information by the seller to the buyer, in many ways, is one of the most critical step points in any real estate transaction. Occasionally, and why this bill is so important, is that periodically, lawsuits name Realtors as a party for the seller's failure to disclose an item on the SRPD which later becomes a problem for a buyer. These lawsuits are becoming more commonplace.

Again, I would reiterate that the seller of a property is filling out these forms, not the buyer's agents. They have nothing to do with these actual forms. The ensuing litigation forces Realtors like myself to use their error and omissions (E&O) insurance for unwarranted claims that have become problematic. As Ms. Banks has already covered, this bill does nothing to alter the liability for the real estate professionals to disclose what they know or should have known about a property as contained in NRS 645.252. That standard remains in place and is important from a consumer protection and industry point of view. With that, thank you for taking time to address this bill that clarifies for both consumers and practitioners what the laws are and allows us to focus on serving our clients rather than getting caught up in time-consuming legal battles on a form that we ourselves did not even fill out. I am happy to answer any questions that you may have.

Vice Chair Carlton:
I will go ahead and open it up to the Committee for questions.

Assemblywoman Considine:
I am a little confused between the existing language in section 1, subsection 1, paragraph (b), that does include that a seller or the seller's agent, if they discover a defect, "the seller or the seller's agent shall inform the purchaser or the purchaser's agent." To me, it seems like there is some level of responsibility in that portion. Moving down to the new language in section 1, subsection 1, paragraph (c), subparagraph (2), then it seems like that is very much the same type of language except now it is only on the seller. I am confused on the difference between those two and why it was done this way and not just taking out the seller's agent in paragraph (b).

Tiffany Banks:
The way it is drafted in section 1, subsection 1, paragraph (b), that specifically has to do with the completed disclosure, the service to the buyer. How it is drafted on page 2, lines 15 through 17, it says if the defect identified "has become worse than was indicated on the

form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact." In that case, they are acting as the agent in that disclosure. They are saying this condition has worsened, either through an inspection or something has been discovered. They are relaying the message. Moving further down into the new language, that specifically has to do with if they fill out the form and fail to disclose something, they would not be held personally liable for something that the agent truly did not know, if that helps answer your question.

Assemblywoman Considine:
It does, but I am also talking about page 2, lines 12 and 13 where it does say "a seller or the seller's agent discovers a new defect."

Tiffany Banks:
Yes, that is exactly the scenario that I used. If, through a home inspection, an issue is discovered such as there is an issue with plumbing, the seller or seller's agent would disclose that issue. The new language specifically has to do with if the seller did not fill something out on the SRPD that they did have knowledge of; the agent is not liable in that case.

Assemblywoman Considine:
Thank you. I was just confused because having it in there. If the seller's agent discovers something, to me that negated what you were talking about, but the seller's agent has nothing to do with discovering anything. My next question is, reading through all of this, in this situation, does that mean that the seller is liable still? Or is no one liable at that point?

Tiffany Banks:
Yes, the seller is still absolutely liable. The problem that we have seen is the E&O insurance is being used for that seller's agent. We specifically kept in the language that a licensee is still liable under NRS 645.252 when I went through that definition earlier. We did not want to say that a licensee is totally negated of all duties, but we wanted to be clear: if that is something that, through the SRPD, the seller knew about and failed to disclose by no fault of the agent, the agent would not be pulled in through their E&O in that specific instance.

Assemblywoman Kasama:
I just wanted to put on the record, when you talk about notice should you discover something after the SRPD, it does not mean that a new SRPD has to be completed; it means you could send them an email, a letter, even a phone call. You just have to notify them of a change that you have become aware of. Is that correct?

Tiffany Banks:
Yes, that is correct. You just have to notify them and update them of anything that was not previously disclosed that the seller now has knowledge of. Through the inspections is the most common way that they gain that knowledge and have notice of something that could materially affect the value of the property.

Assemblywoman Kasama:
Right, but there is no need to fill out the SRPD again, just provide notice.

Tiffany Banks:
That is correct.

Vice Chair Carlton:
I do have a question. Coming at it from the consumer side, I have an agent who is representing me and selling my home. I will use myself as an example: we have been in our house since 1992, a very long time. We have actually reached the point to where the windows we originally replaced when we bought the house—do not tell former Assemblywoman Swank, I replaced my windows—we are now going to have to replace again because we have been there for so long.

I want to understand. Now that this total burden is going to be on the seller—I am just the homeowner—how do I know what I am supposed to put on that form? If I miss something and I am not a professional, how do I make sure that I fill this form out correctly and do not put myself in harm's way to where the buyer could come back? I have been in the house for 30 years. How am I supposed to remember everything I have done to it?

Tiffany Banks:
I will take a stab at it first, then Mr. Herrera, if you want to jump in from your perspective of how you would guide your client through that. You are really not doing anything different here than what you have always done. You are filling out the SRPD exactly how this has been intended from Day One. The seller has to fill it out to their knowledge; it is very clear on the SRPD that the seller has to think back of any instance that they think could have affected the value of their house.

Sometimes—and again, I would like Mr. Herrera to go into this a little more—your agent has to prompt you on what you remember. The difference is that the listing agent does not know what you know or what you do not know, so it is your job, the same way it has been your job this entire time, to fill out that form. The only difference is that we are now codifying it in statute that the agent is not touching the form, which they were never supposed to touch the form from the beginning anyway.

Vice Chair Carlton:
Was this a provision that went into effect during all the construction-defect legislation and litigation that was going on back in the early '90s?

Tiffany Banks:
I do not know how long this has actually been in existence. I just know for as long as anyone can remember, it is always been that the sellers filled out the SRPD. Again, we are not asking to change how anything is done, we are just asking to have it clearly drafted in statute.

Under NRS 113.120, the current law specifically says that once the seller "Provides notice: (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property." That has been in statute since 1995.

Vice Chair Carlton:
It has been in statute since 1995, okay. That gives me the historical perspective of knowing where this originally came from, and I can picture the guys at the table right now testifying on it. Mr. Herrera, if you could just enlighten me a little bit. I know that it does not have a whole lot to do with this bill, but I think now that a burden is being shifted or codified, sellers are now going to be held to a standard I am not sure they are going to be prepared to fulfill. How are we going to help them not get themselves in trouble?

Noah Herrera:
This is no different from when there were a lot of real estate owned (REO) properties and the banks were filling these out, or they wanted agents to fill out. We said, Hey, we cannot fill these out. So what we do is, let us say that you have a house. You have one of your rental houses that you have not been in for ten years. What we would tell our clients and advise our clients on is to fill it out to the best of your ability and the best of your knowledge. A lot of times you have to go with them through the house, not filling it out but saying, What happened here? Okay, you got a new air conditioner. What is the problem? What is the concern? You just help them and walk them through the whole process of how it happens.

Vice Chair Carlton:
We will just let it go, that is fine. I am probably digging deeper into this than I need to.

Assemblywoman Jauregui:
This is really just to make sure that we are protecting everyone in the party. Sellers are going to have knowledge about defects in the home that an agent would never know about. This is just to encourage them that they are disclosing to protect everyone, including the buyer who is buying the property. That there is nothing that they are not made aware of, especially in Mr. Herrera's perfect example of the REO market.

This will cover everyone; if you are filling it out with the things you are aware of, then this will protect you for not disclosing something that you have not been made aware of as the seller. It just protects everyone in the party: it protects the seller if they disclose every issue that they are aware of that they should disclose to the buyer. It also protects the buyer of something important that they should be made aware of before they purchase the property. It also protects both agents in the transaction as well.

Tiffany Banks:
I just wanted to clarify for the record, there is no shift of any burden here. Again, how the law has always been is that the seller fills it out. There is no shifting of a burden, you are just

taking out the licensee. It is really important for the consumer to not think that their licensee or Realtor can ever actually fill out that form. Because they cannot. This is just clarifying that in statute. There is been no burden shift here.

Vice Chair Carlton:
I will just respectfully disagree. Were there other questions?

Assemblywoman Duran:
Thank you for the presentation. I am just a little confused and I am not sure how this works. I am not really into real estate. If they fill out this form then all of a sudden there is something that is made available, if I am a buyer, can I request an inspection at that point to make sure there is nothing else wrong? How does that work? Am I responsible for paying for that if I want the home?

Tiffany Banks:
Typically, during a real estate transaction, you have what is called a due diligence period. Typically, the SRPD is provided at the onset as soon as escrow is open, so the buyer has time to review what the seller has disclosed in the SRPD. We always encourage buyers to do due diligence, to do inspections, to do everything that they want to be sure that the property is how they want it to be. The SRPD is just one of those tools that says maybe look a little bit closer at the plumbing, or look a little bit closer at the electrical. We still highly encourage you, whether or not anything is disclosed on the SRPD, to do your due diligence and do inspections. If something pops up, absolutely do that further inspection. That is one of those useful tools, and that is exactly what it is used for.

Assemblywoman Duran:
Do I pay for that inspection at that point? Or is that mutually agreed upon between the seller and the buyer, or is that just the cost for me?

Tiffany Banks:
All of that would be contractual. At the onset, the buyer and seller agree to what inspections are paid by whom. However, those are absolutely items that are negotiated through the course of the transaction. If something comes up, absolutely the parties can negotiate and say, I want to look further into this. If the sellers disclosed something and they want to come to an agreement about who pays for what on the actual contract, it will say who is going to pay for what; absolutely all of that can be negotiated. I would like to point out that you also do have a right to rescind. There are also different rights that you have if something is disclosed or discovered after you are in escrow. That is all in existing law under NRS Chapter 113.

Vice Chair Carlton:
Are there any other questions at this time? [There were none.] With that, we can move on to support.

Doug McIntyre, Private Citizen, Reno, Nevada:
I am a Realtor from northern Nevada. I am testifying today in support of A.B. 398 and would like to thank Assemblywoman Jauregui for this bill. Serving as real estate advisors for our clients, we always encourage them to fill out the SRPD with the utmost honesty. We always tell them to disclose, disclose, disclose. For every buyer, we encourage them, no matter what the SRPD says, to conduct inspections and take advantage of the full due diligence period. We want the property to be sold with as much information as possible, so the buyer can make a purchase based on the best and most accurate information provided. Pulling Realtors into litigation because we have E&O insurance is unfair and not right. We need this clarification in the law proposed here to stop predatory lawsuits. We are in full support of A.B. 398.

Trevor Smith, Private Citizen, Incline Village, Nevada:
I am a real estate broker in Incline Village. I am testifying today in support of A.B. 398. As Realtors, we act as facilitators in transactions to help our clients comply with the law and that should not mean that we become liable. We are there to make sure they do it right, but that should not put us in harm's way. We are a conduit here. In this case, we are doing our best to be sure that our clients make full disclosures in their SRPD. A lot of sellers I work with get "SRPD amnesia" at first and forget all sorts of things they should be disclosing, and it is not good for anyone. As a Realtor, I tell my clients stories about my property. For example, five years ago we had mice in the basement or a plumbing leak, and this is what we did. Then sellers start remembering their own instances. This language is crucial in codifying into statute what we already practice. We do not want to be caught up in the middle of a dispute when the reality is the disclosure is between the buyer and the seller.

David Dazlich, Director, Government Affairs, Vegas Chamber:
We believe this is a good bill that provides clarity for our Realtor members going forward, and we would urge your support.

Vice Chair Carlton:
Can I have the next caller please? [There was no one.] If we could go to opposition? [There was no one.] If we could go to neutral? [There was no one.] With that, I will go back to the sponsor if there are any closing remarks.

Assemblywoman Jauregui:
Thank you so much, Vice Chair and members of the Commerce and Labor Committee. I am here to answer any questions that you have after the hearing. My virtual door is open, and I am available. I would urge your support of Assembly Bill 398. Thank you.

Vice Chair Carlton:
With that, we will close the hearing on Assembly Bill 398, and I will pass the virtual gavel back to Assemblywoman Jauregui.

[Assemblywoman Jauregui reassumed the Chair.]

Chair Jauregui:
Members, we have one item remaining on our agenda today and that is public comment. [Public comment protocols were explained.] Do we have anyone wishing to provide public comment?

Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada:
Before I begin, can we not talk about Assembly Joint Resolution 10 of the 80th Session? I think I missed out. I am sorry.

Chair Jauregui:
If your comments are testimony regarding A.J.R. 10 of the 80th Session, then you will have to submit those in writing, Mr. Hojjaty.

Cyrus Hojjaty:
Okay. I will just talk about wages in general, my apologies. Minimum wage increases have their benefits; the issue is that it does not really work too well if it is adjusted for inflation. I believe Washington State does that. The other issue is that it does not solve the heart of the problem, which is, of course, the growing level of income inequality and the growing level of cost of living. The cost of living is rising. Rents and housing prices are rising faster than inflation. If we keep raising the minimum wage, but they fail to keep up, it is not going to do a lot and it is not going to solve the heart of the problem. Again, we are going after the bones of the structure; we are not going after the foundation.

The other concern is income inequality. Right now, typically, a CEO makes 500 to 1 in terms of worker pay ratio to CEO. As a result, minimum wage has not kept up in terms of that component. I want to know, why we do not have a top-to-bottom wage ratio, where you have former CEOs like Jim Murren of MGM, he had a total compensation of $35 million. Meanwhile, many of his employees, perhaps are still struggling to make ends meet. I would like there to be a ratio of 1 to 50 also for companies like Walmart and Amazon. I wonder why very few of the organizations in Nevada, left or right, are even talking about this. In fact, our current administration is not talking about this. This is the number one problem with our economy.

Chair Jauregui:
Can we check the telephone line for anyone else wishing to give public comment? [There was no one.]

Thank you, Committee members. I know we have been having long days, and many of you went from one morning-long hearing straight into this hearing. I appreciate your attention to all of the bills that we have heard in this Committee today. Thank you again for being here at 6 p.m. because our next meeting is scheduled for 6 p.m. this evening. It will be a work session. Thank you, our meeting is adjourned [at 3:09 p.m.].

RESPECTFULLY SUBMITTED:

_____
Paris Smallwood
Committee Secretary

APPROVED BY:

_____
Assemblywoman Sandra Jauregui, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony dated April 7, 2021, presented by Annette Magnus, Executive Director, Battle Born Progress, in support of Assembly Joint Resolution 10 of the 80th Session.

Exhibit D is written testimony dated April 7, 2021, submitted by Janine Hansen, State President, Nevada Families for Freedom, in opposition to Assembly Joint Resolution 10 of the 80th Session.

Exhibit E is an email dated April 7, 2021, submitted by Laurie Agnew, Private Citizen, Reno, Nevada, in opposition to Assembly Joint Resolution 10 of the 80th Session.

Exhibit F is a proposed amendment to Assembly Bill 436, dated April 7, 2021, submitted by Michael Hillerby, representing Nevada Optometric Association.

Exhibit G is an email dated April 6, 2021, submitted by Susan Fisher, representing Nevada Board of Osteopathic Medicine, in neutral to Assembly Bill 436.

Exhibit H is written testimony submitted by the National Association of Vision Care Plans, in opposition to Assembly Bill 436.

Exhibit I is a letter submitted by Troy Ogden, Private Citizen, Reno, Nevada, regarding Assembly Bill 436.

Exhibit J is an email dated April 7, 2021, submitted by Jennifer L. Shane, Private Citizen, Reno, Nevada, in support of Assembly Bill 436.

Exhibit K is a proposed conceptual amendment to Assembly Bill 398, presented by Tiffany Banks, General Counsel, Nevada Realtors.