

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

**Eighty-first Session  
May 11, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:03 a.m. on Tuesday, May 11, 2021, Online and in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Dina Neal, Vice Chair  
Senator Melanie Scheible  
Senator Roberta Lange  
Senator Joseph P. Hardy  
Senator James A. Settelmeyer  
Senator Keith F. Pickard

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Natha Anderson, Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst  
Wil Keane, Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Neena Laxalt, Board of Dispensing Opticians  
Corinne Sedran, Executive Director, Board of Dispensing Opticians

CHAIR SPEARMAN:

I will open the hearing on Assembly Bill (A.B.) 391.

**ASSEMBLY BILL 391 (1st Reprint)**: Revises provisions relating to dispensing opticians. (BDR 54-659)

ASSEMBLYWOMAN NATHA ANDERSON (Assembly District No. 30):

This bill includes extensive cleanup language from the Board of Dispensing Opticians to more closely reflect current practices of the profession and clarify some areas of *Nevada Revised Statutes* (NRS) 637.

In January, the Board asked me to help them bring forward a small cleanup bill. Imagine my surprise when I met with representatives from the Board and discovered the small bill covers the entire chapter. The language we are bringing to you now has done exactly what the Board members planned: to take away some of the barriers to becoming a licensed optician. They wanted to make sure people who transfer to Nevada from other states or even from other nations are able to do so in a consistent fashion. The bill also includes some cleanup language about requirements, penalties and licensing fees.

To help keep track of the provisions of the bill, Neena Laxalt has created a breakdown of the bill ([Exhibit B](#)). I will refer to it as we go over some of the highlights of the bill.

Section 6 covers waivers of some requirements for licensure for certain applicants. It makes those waivers more consistent and clear.

Section 9 consolidates the fees in one section. Before, they were sprinkled throughout the chapter. None of the fees are new; they are all simply put into one consistent spot.

Section 13 has created a lot of concern over the last week. We met with those who voiced concern last week and agreed to changes in the language of the bill, which you will find in our proposed amendment ([Exhibit C](#)). We are now reverting back to the language that is currently in statute.

Section 14 allows the Governor to choose to fill a vacated Board seat to complete the remainder of the member's term. We made the language permissive, replacing "shall" with "may," to give the Governor some leeway on filling vacancies. If there are only two months left on a member's term, it is not worth the time it takes to fill the vacancy. If there is a year or more left, the vacancy probably needs to be filled.

Section 18 has to do with the licensing exam. The Board is no longer administering the test and has not been for some time. Instead, those exams are now performed by the national organization, the American Board of Opticianry.

SENATOR PICKARD:

Section 17 talks of accepting gifts, grants and donations. Can you explain why we need that provision?

NEENA LAXALT (Board of Dispensing Opticians):

That language was moved from another section. Most of the occupational licensing boards have this language in their statutes. I do not know if it has ever been used or why it was initially put in, but I believe it might be more for grants.

CORINNE SEDRAN (Executive Director, Board of Dispensing Opticians):

This provision was originally part of the statute covering complaints and investigations and said we could accept grants and donations to carry out investigations, which seemed to present a conflict of interest. Our investigations are confidential until the Board decides to take disciplinary action. We decided to move this provision and make it a general provision to allow the Board to accept grants and donations to carry out its business. To my knowledge, the Board has never utilized this provision, but it is standard boilerplate language for all occupational licensing statutes in the NRS.

We would like to keep this provision in the bill because we operate on a tight budget. We are a small Board, and we do not have reserves, which became a problem when the Covid-19 pandemic hit last year.

SENATOR PICKARD:

I was not aware in the prior iteration that you could receive gifts and grants as part of an investigation. Particularly if it came from the person being investigated, that would raise some eyebrows. Was that in statute or in the regulations?

MS. SEDRAN:

It is in the statute, not the regulations. We can clarify it in the regulations if it is needed.

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SENATOR PICKARD:

Section 13, subsection 1, paragraph (a) of A.B. 391 removes verification of lenses and frames. I was under the impression opticians do this regularly. Is there a reason why we are deleting verification?

MS. LAXALT:

The changes to section 13 are included in the amendment in [Exhibit C](#) in the third item on page 1. The amendment removes all the changes from this provision and reverts it back to its current language. The interested parties will work through the upcoming Interim to agree on more appropriate language, possibly through the regulatory process.

SENATOR PICKARD:

Can you tell me what the disagreement was about and why this was an issue?

MS. LAXALT:

It had to do with the process between when a prescription is written to the endpoint of delivery. The main concern was that when a corporation sends glasses out, by Nevada law they are supposed to be reviewed by a dispensing optician prior to going out to a customer. If the customer is outside of the State, some felt that final inspection was not needed, and the Board disagreed. We will keep working with the parties.

SENATOR NEAL:

How many investigations do you typically do in a year? I understand why you would need to hire investigators, but why lobbyists, professional consultants and attorneys too?

MS. SEDRAN:

This provision allows the Board to hire these professionals when needed. The current statute gives us the ability to contract with professional consultants; this provision just clarifies the titles of those consultants. As it stands now, our legal representation is provided by the Office of the Attorney General (AG). We are not hiring an outside attorney, but this would allow us to do so if needed. We investigate any complaints we receive, so I would say we conduct a maximum of five to six investigations per year. Regarding lobbyists, we only hire a lobbyist during the Legislative Session or when we are proposing a regulatory change. We do not have a full-time lobbyist on staff.

This language is permissive and clarifies the Board's ability to hire these various consultants and professionals.

SENATOR NEAL:

Section 23 is the provision about fines. You refer to an administrative fine of not more than \$10,000 for each incident and say that those fees can be combined. This seems to me to be an increase.

MS. SEDRAN:

Which subsection are you referring to?

SENATOR NEAL:

Section 23, subsection 2 is the first occurrence. There is another occurrence in section 25.

MS. SEDRAN:

Section 23 is a current provision that we moved to make the statute a bit more organized and cohesive. We did not increase the maximum fine. Each act constituting grounds for disciplinary action can be fined up to \$10,000 under current statute.

Section 25 originally had an increase from \$1,000 to \$10,000 with the rationalization that this fine pertains to an employer as opposed to an individual. Often, the employer is the more culpable party when there is unlicensed activity taking place, so we were going to increase that fine to \$10,000. However, after discussion, we agreed to omit that increase, as you can see in our amendment.

SENATOR NEAL:

Is this change in the amendment in [Exhibit C](#)?

MS. LAXALT:

No. That change was made in the amendment approved by the Assembly. We may be talking about two different sections. Section 26, subsection 3 was moved up to \$10,000 in the original bill, and the Assembly amended that to put it back to the original \$1,000. Section 25, subsection 3 is current language that was not changed by this bill.

SENATOR NEAL:

I am confused. The first reprint of the bill still shows \$10,000. Is there another version I do not have?

MS. SEDRAN:

In section 23, the fine is \$10,000, and that is the way it is in current statute. This fine pertains to an individual who is caught dispensing without a license. Section 26 is the one we were going to raise from \$1,000 to \$10,000.

SENATOR NEAL:

I was looking at section 25. Yes, the fine is \$10,000, but the new language is for each separate violation, which it does not say in current statute. That is an increase to me. Subsection 4 says the penalties in subsections 1, 2 and 3 can be combined. If you impose a penalty of \$5,000 for each of those, the total penalty would be \$15,000. That is a definite increase.

ASSEMBLYWOMAN ANDERSON:

I see now. You are absolutely correct.

MS. SEDRAN:

I apologize for the misunderstanding. We got this language from the Legal Division and did not realize it was a change. My guess is that this is boilerplate language. We are happy to take out "each separate violation" if requested. That was not something we were intending to do.

MS. LAXALT:

You are correct, we did not catch that. We can certainly add to the amendment to remove "for each separate violation."

SENATOR HARDY:

Why does this bill require a two-thirds majority vote to pass if all the fines stay the same?

Also, how can you impose a fine on someone who is not licensed? In other boards, if you are not licensed, the licensing authority has no jurisdiction over you because you are not licensed. Is the fine assessed by some other body?

MS. LAXALT:

We do not know where the two-thirds requirement came from. This bill takes existing fees and fines and puts them in one place in the statute. The intent was that this bill raise no fees or fines.

Regarding citations of unlicensed people, several years ago, many boards had problems with unlicensed practitioners. This, I believe, started the trend of boards getting the ability to go after unlicensed people practicing illegally.

SENATOR HARDY:

Where does the money go, and who prosecutes them?

MS. SEDRAN:

The Board would be the one to issue the complaint. If we found evidence of unlicensed activity, we would hold a hearing and impose a fine. We follow Nevada law regarding collection of fines. They go to the State Comptroller's Office, and then we can collect our legal fees back out of those fines. We do not keep the fines.

This is not new language. This is currently within the Board's jurisdiction to go after unlicensed activity. That is one of the Board's primary roles.

SENATOR HARDY:

My question is more basic than that. If you find an unlicensed practitioner, how do you get them to pay the fine you have imposed? Do you have a gun? Do you go in and say, "You're unlicensed, and we're investigating"? Do you send a complaint to the AG's Office? How do you investigate someone safely?

MS. SEDRAN:

We do it the same way most boards do. We hire a private investigator who is licensed and insured. Typically, the initiation is a complaint we receive. If we have reason to believe the information in the complaint, we follow up with an investigation.

SENATOR HARDY:

Is hiring a private investigator in your budget?

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MS. SEDRAN:

Correct. We hire on a case-by-case basis to investigate each complaint. We do not have a private investigator on staff.

CHAIR SPEARMAN:

How much does each investigation cost?

MS. SEDRAN:

A typical investigation costs between \$1,000 and \$5,000, depending on how many times we have to send the investigator back to the location. The most expensive part of the process is not the cost of the investigator but the cost of buying the glasses.

ASSEMBLYMAN ANDERSON:

We will make sure to deal with the concern Senator Neal brought forward in our amendment. That was an oversight on our part.

CHAIR SPEARMAN:

I will close the hearing on A.B. 391 and open the work session on A.B. 227.

**ASSEMBLY BILL 227**: Revises provisions relating to contractors. (BDR 54-720)

CESAR MELGAREJO (Policy Analyst):

I have a work session document ([Exhibit D](#)) that summarizes the bill and describes the conceptual amendment.

SENATOR PICKARD:

I just want to get on the record that I asked for backup for the comment the State Contractors' Board made relative to its claim that it had pursued prior similar conduct. The Board sent us a link that referred to five decisions. They were American Fire and Electric, Summit Drywall and Paint, Hardy Painting and Drywall, Kahre and P.K.M.M. Only one of these decisions dealt with employee leasing companies. Summit Drywall, Hardy, Kahre and P.K.M.M. did not deal with these types of cases at all.

It is also important to note that the one decision dealing with employee-leasing companies was an administrative law judge (ALJ) decision. For those who may not be aware, an ALJ is someone who is technically paid by the Division, or in this case the Board. Administrative law judges are independent; they hear



appeals from the administrative decision. In this decision, the ALJ made an important comment that the Board did not contest. He said:

The wage-earning employees leased from properly registered leasing companies by licensed contractors are in fact the regular full-time employees of the licensed contractor. The employees are under the supervision and control of the licensed contractor. This ALJ does not see how the employee leasing model presented in this case conflicts with the Legislature's mandate that the provisions of chapter 624 [of NRS] are intended to promote public confidence and trust in the competence and integrity of licensees and protect the health, safety and welfare of the public.

The decisions the Board used to support its position that *Legacy Specialists, Inc. v. Nevada State Contractors Board*, No. CV20-00404 (Washoe Cnty. Ct. Nev. filed Feb. 28, 2020) was improperly decided are misleading. The Board did not cite any case that supports its position. The Board's representation to this Committee was misleading at best and false if they knew about it. That is something I find deeply concerning. We rely on people to tell us the truth and support their decisions, and that is not what happened in this case.

It is clear in my mind that this is a practice that has gone on for better than 30 years without complaint. These licensed contractors, as the testimony provided, are largely minority and disabled or partially disabled contractors who cannot work a full-time position for a contractor. The small businesses that rely on temporary labor are going to be put out of business by this bill.

As a result, I cannot support this bill. I find it offensive that the components of the bill would completely disregard the needs and rights of those who have been working in this field for 30 years. I proposed an amendment that would resolve this for everyone without jeopardizing public safety or welfare, and the Board would not even consider it.

I will be a strong no and urge this Committee not to support this bill.

SENATOR SETTELMAYER:

I myself have used private employment agencies through the local conservation district in Douglas County. We found them to be extremely safe. Their individuals are well-trained. They are very flexible on hours, so we have used

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them for weed crews and other agricultural jobs. They have a long-standing history throughout the State.

This bill has the potential to affect the jobs of 4,300 people at least, generating over \$16 million in wages. I cannot see putting that many people out of work. I will be opposing this bill.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 227.

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS HARDY, PICKARD AND  
SETTELMAYER VOTED NO.)

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CHAIR SPEARMAN:

Is there any public comment? Hearing none, we are adjourned at 8:57 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Pat Spearman, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
A.B. 391	B	1	Assemblywoman Natha Anderson	Breakdown of Bill
A.B. 391	C	1	Assemblywoman Natha Anderson	Proposed Amendment
A.B. 227	D	1	Cesar Melgarejo	Work Session Document