

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

**Eighty-first Session  
May 25, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 6:30 p.m. on Tuesday, May 25, 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:**

Senator Nicole J. Cannizzaro, Senatorial District No. 6

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst  
Wil Keane, Counsel  
Kim Cadra-Nixon, Committee Secretary

**OTHERS PRESENT:**

Paul More, Culinary Workers Union Local 226; National Labor Relations Board,  
Local Joint Executive Board of Las Vegas  
Bob Ostrovsky, Nevada Resort Association  
D. Taylor, Unite Here

CHAIR SPEARMAN:

We open the work session with Senate Bill (S.B.) 386.

**SENATE BILL 386**: Revises provisions relating to certain businesses. (BDR 53-1010)

CESAR MELGAREJO (Policy Analyst):

I have a work session document ([Exhibit B](#)) which explains S.B. 386. This bill was heard on April 7. Proposed Amendment 3439 ([Exhibit C](#)) will be presented today by Senator Nicole Cannizzaro.

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

We have a proposed amendment, [Exhibit C](#), to S.B. 386. This informed piece of legislation will put us on the pathway to full economic recovery and will support employers and employees.

PAUL MORE (Culinary Workers Union Local 226; National Labor Relations Board, Local Joint Executive Board of Las Vegas):

The purpose of this bill is to ensure a pathway back to work for the thousands of employees who have been laid off because of the pandemic. This measure does not require work to be created to accommodate employees; it simply provides that for those who have worked in a position or a similar position previously, there is an opportunity to return to his or her previous job.

I will review the primary sections in [Exhibit C](#). Section 4 clarifies the bill does not grant additional authority to subdivisions of the State. Section 4 also recognizes collective bargaining agreements. If a conflict arises, the recall rights will prevail.

Several changes are proposed for definitions in section 10. The requirements of recall do not apply to gaming establishments operating under a restrictive license. This bill does not include managerial or executive employees, per section 12. Section 13 removes potential liability for executives of a corporation. Section 18 defines a resort hotel. Section 18.5 defines restricted license and restricted operation.

Section 20, subsection 3 provides a broader scope of language requirements for employee layoff notices. Notices to employees are to be in Spanish, English or any other language that is spoken by not less than 10 percent of the employer's workforce. Section 20, subsection 4, paragraph (c) addresses notices regarding alleged violations of this act.

Section 22 requires covered employers to offer laid-off employees open positions that are the same or similar to the one previously held. This removes the section that requires all open positions are offered to laid-off employees. Section 22, subsection 4 amends the requirements for laid-off employees to respond to the offers of employment. Employers can make simultaneous offers that expedite the hiring process. Section 22, subsection 6 addresses the conditions that absolve an employer of extending employment offers.

Section 24 covers the enforcement provisions of the bill that allow aggrieved employees to file a complaint through the Labor Commissioner or through civil action. Class action rights are still in place and this bill will not amend those procedures.

Section 24, subsection 2 of the amendment defines the processes an employee must follow before taking grievances or complaints to the Labor Commissioner. Subsection 3 of this section covers adverse actions taken by an employer against an employee.

We have modified the remedies available in section 24, subsection 5. Attorney's fees are considered a discretionary award. Section 26 concerns severance agreements.

The provisions of the amended S.B. 386 expire upon termination of the Declaration of Emergency for Covid-19 or August 31, 2022.

BOB OSTROVSKY (Nevada Resort Association):

The language in the later sections of the bill, relative to S.B. No. 4 of the 32nd Special Session, makes changes that are consistent with the Centers for Disease Control and Prevention (CDC) guidelines and the Covid-19 positivity rate in the State. Senate Bill 386 does not repeal S.B. No. 4 of the 32nd Special Session, but it does remove a number of the sections which are no longer consistent with the CDC guidelines.

The resort industry employed almost 350,000 people before the pandemic. By April 2020, this number dropped to 204,000. The indirect effect of employees who supported casinos resulted in a loss of 66,000 jobs. Our members care about the dedicated employees in the resort industry. It takes a well-honed team to make a billion dollar building work.

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The Nevada Resort Association testifies neutral on S.B. 386. We hope most of the resort employees will come back to work before the expiration of this bill. If S.B. 386 passes, we will do our best to fulfill its obligations.

SENATOR SETTELMAYER:

Is there an exemption to this bill for businesses that employ less than 50 people?

SENATOR CANNIZZARO:

To my knowledge, there are no exemptions for small businesses.

MR. OSTROVSKY:

We did not discuss exemptions for small businesses.

MR. MORE:

The definitions cover hotels with 200 or more guest rooms and event centers with more than 5,000 seats. The legislation was intended to apply to larger establishments.

SENATOR SETTELMAYER:

Will this apply to smaller businesses within a large establishment?

MR. MORE:

Yes, the requirements will apply to subcontracted or leased establishments.

SENATOR SETTELMAYER:

I find this troubling.

SENATOR NEAL:

How would an employee fight back under the provision in section 24 concerning a legitimate business reason?

MR. MORE:

The language concerning the rebuttable presumption only applies if there is an allegation of employer retaliation. In civil litigation, an employee has the initial burden of proving the case. In certain contexts, a burden-shifting framework has been adopted. The best known of these is Title VII of the Civil Rights Act of 1964 in the discrimination context of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

The idea of this framework is protective of employees. Employees will not usually know why their employer decided to terminate them, so the burden is then placed on the employer to explain the justification for termination. If the initial presumption is retaliation, the burden then shifts to the employer to prove the termination was for a legitimate business reason.

SENATOR NEAL:

There is no pretext argument available when legitimate business reasons are available as a means for termination. I understand this is a heavy burden for a casino worker to overcome. I do not see this as fair.

MR. MORE:

We have crafted the bill with a balanced approach for both employers and employees. If an employer has a legitimate business reason for taking action that is not retaliatory, civil liability will not apply.

SENATOR LANGE:

What percentages of employees are back to work?

D. TAYLOR (Unite Here):

Approximately 55 percent of our union employees are back to work. We still do not have international travelers or business travelers coming to our State.

SENATOR LANGE:

For example, MGM is an employer with many properties. Will they call employees back to work on a property basis or a company basis?

MR. TAYLOR:

For the employees we represent, workers will go back to work on a property basis.

SENATOR LANGE:

What is the process for companies with many properties that have filled all positions at a particular property, but the company still has unemployed workers?

MR. TAYLOR:

For legal reasons, a company like MGM does not transfer employees from property to property.

SENATOR LANGE:

How long do you anticipate it will take to get employees back to work?

MR. TAYLOR:

The answer to that question is reliant on three conditions. Business travel, entertainment and conventions are essential to business in our State. Hopefully, a year from now we will have all employees back to work. Because the vaccine is in place, we are optimistic travel will increase. This bill is important to get employees back to work with their years of service intact.

MR. OSTROVSKY:

We estimate 70 percent of employees will return to work. The other 30 percent will be filled by new applicants, both union and nonunion. I agree with Mr. Taylor that business travel, entertainment and conventions are essential to getting our employees back to work.

SENATOR LANGE:

This bill is important because it provides a road map for unions, employees and resorts. This legislation will help employees who were laid off know the process of getting back to work.

Small gaming taverns and businesses have been disproportionately affected just like the larger businesses that are part of the Nevada Resort Association.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 386.

SENATOR SCHEIBLE SECONDED THE MOTION.

SENATOR SCHEIBLE:

I want to thank Majority Leader Cannizzaro for her work on this bill that ensures workers in Nevada get back to work.

SENATOR NEAL:

I understand hard policy takes negotiation; however, I hope we do not see the language in section 24 of the bill repeated in future legislation.

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SENATOR PICKARD:

I am troubled by the phrase "rebuttable presumption" in section 24, subsection 3. This places a significant burden on employees. Although we have made progress, it has not come far enough for me to support the bill.

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

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CHAIR SPEARMAN:

We are adjourned at 7:23 p.m.

RESPECTFULLY SUBMITTED:

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Kim Cadra-Nixon,  
Committee Secretary

APPROVED BY:

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Senator Pat Spearman, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit Letter</b>	<b>Begins on Page</b>	<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
S.B. 386	B	1	Cesar Melgarejo	Work Session Document
S.B. 386	C	1	Cesar Melgarejo	Proposed Amendment 3439
S.B. 386	C	1	Senator Nicole J. Cannizzaro	Proposed Amendment 3439
S.B. 386	C	5	Paul More / Culinary Workers Union Local 226; National Labor Relations Board, Local Joint Executive Board of Las Vegas	Proposed Amendment 3439