

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

**Eighty-first Session  
March 30, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:00 a.m. on Tuesday, March 30, 2021, Online. [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

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst  
Barbara Williams, Committee Secretary

**OTHERS PRESENT:**

Bryan Wachter, Retail Association of Nevada  
Paul Moradkhan, Vegas Chamber  
John Dillon, The Home Depot  
Bailey Bortolin, Nevada Coalition of Legal Service Providers  
Alexandria Dazlich, Nevada Restaurant Association  
Nick Vander Poel, Reno Sparks Chamber of Commerce  
Mike Shutley, Amazon  
Cameron Demetre, TechNet  
Edith Duarte, eBay  
Robert Callahan, Internet Association  
Randi Thompson, National Federation of Independent Business  
Kristen Corral, Cofounder, Tacotarian  
Hannah Smith, Grubhub  
Rose McKinney-James, Grubhub

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Jennifer Lazovich, DoorDash  
Laura Curtis, DoorDash  
Piper Overstreet, Uber Technologies  
Keri Valentic Moore, ThinkFoodGroup

CHAIR SPEARMAN:  
We will begin by hearing Senate Bill (S.B.) 314.

**SENATE BILL 314**: Provides for the regulation of high-volume marketplace sellers. (BDR 52-657)

SENATOR DINA NEAL (Senatorial District No. 4):  
Organized retail theft is a \$30 billion per year industry. It has a significant impact on customers and retailers. Customers are in the dark about who is selling them merchandise. It means higher prices for consumers and less sales tax revenue for State and local governments.

In many cases, there is also a health and safety issue. Stolen food products, pharmaceuticals and other consumables not maintained in proper conditions or labeled improperly can pose a serious health hazard.

In 2020, about 13 percent of organized theft was allergy medication and 13 percent was pain relievers. Relabeling by thieves can result in improper directions that cause harm if followed. There is a real risk of harm to the consumer.

Senate Bill 314 protects retailers, but it also protects the consumer. This bill is primarily about transparency. Nevada needs to continue the work of the federal government in this area of organized retail theft.

BRYAN WACHTER (Retail Association of Nevada):  
I will share my presentation ([Exhibit B](#)) on S.B. 314. The bill addresses the issue of consumer protection, creates parity for Nevada businesses, both online and physical, and attempts to stop the funding of criminal enterprises.

Slide 4 defines organized retail crime (ORC) as the association of two or more people engaged in illegally obtaining retail merchandise in substantial quantities. It is not stealing for personal use or petty larceny. These sophisticated criminal activities fund both local crime and international terrorism.

Counterfeit goods cost the U.S. economy an estimated \$509 billion each year, about 3 percent of the annual gross domestic product, according to the FBI. In 2019, the National Retail Federation found 97 percent of retailers experienced ORC, and retail shrink reached approximately \$60 billion. Half of that is directly attributable to ORC.

We need to focus on counterfeit goods. Intellectual property is stolen. This can include digital media, shoes, handbags, toys, safety equipment and prescription drugs. The internet has allowed criminals to extend a greater geographical reach. A small company trying to break into a market may offer its product online. While it tries to grow the business, an ORC ring may manufacture a similar product overseas without following safety standards or regulations. New and improved manufacturing, such as 3D printing, is making counterfeit products cheap and easy to make.

Slide 7 of [Exhibit B](#) shows the top items stolen by ORC gangs. The items range from designer clothes to deodorant to denim pants. Infant formula represents a large market and must be stored under certain conditions. Failure to do so results in a health hazard. Many of the products pose huge safety risks to consumers. In the brick-and-mortar-world, retailers are liable for those risks. In the online world, that is frequently not the case.

Counterfeit goods have a huge effect on consumers. The U.S. Department of Homeland Security (DHS) reports uncovering counterfeit airbags and their components, lithium-ion batteries, baby carriers, prescription drugs and cosmetics. The potential dangers imposed by the unregulated manufacture of these counterfeit items are obvious.

Goods stolen by sophisticated crime organizations are another large market. These organizations prey upon people in dire circumstances and use them as distractions and lookouts, using shopping lists based on what is most marketable. They are knowledgeable about theft laws and are adept at staying under felony thresholds. Because many companies value the health and safety of their associates first and foremost, standard policy is often to avoid confrontation with gangs when they are in the store. The lululemon store in Reno had \$50,000 worth of merchandise recovered last month from a California ORC gang. When the gang was apprehended, it had \$150,000 worth of merchandise stolen from approximately 20 different retailers. This is

happening in Nevada, and it is happening now with many negative consequences for our businesses and consumers.

Slide 10 of [Exhibit B](#) includes a video of a California police raid of a storage location used by an ORC gang. There are hundreds of dollars of merchandise arranged so well it looks like a retail hardware store. All of these products were stolen. These thefts deprive the State of significant sales tax revenue.

There is no industry standard for dealing with this problem. Some online marketplaces have instituted some of the provisions in S.B. 314 and have removed 2.5 million fraudulent sellers and 6 billion fraudulent posts. Bad actors move from platform to platform and are just as sophisticated at the selling of the merchandise as they are in the counterfeiting and stealing.

The DHS has said the current incentive structure tends to reward the trafficking in counterfeit and pirated goods more than these incentives help to deter such trafficking. Las Vegas consistently ranks near the top of cities affected by ORC. Many of the online marketplaces use artificial intelligence (AI) designed to stop suspicious behavior and root out illegal activity. They are a great supplement to the requirements in S.B. 314, which are basic transparency provisions. However, there is no consensus on exactly what the AI programs are looking for.

Individual businesses, whether online or physical, are responsible for resolving Intellectual property conflicts. Larger retailers have the resources and legal departments to constantly monitor the issue. Smaller retailers do not have the necessary resources. There is no consistency.

What we expect from all sellers in Nevada is presented in S.B. 314. The bill defines a high-volume seller and requires the marketplace to verify six basic pieces of information, seen on Slide 13. The bill also requires some disclosure of information, if pertinent.

Per the American Rescue Plan Act of 2021, all marketplaces must issue their sellers a Form 1099-K if sales exceed \$600. The bill defines high-volume seller as one with \$5,000 or more product sales or 200 or more transactions in a continuous 12-month period during the previous 24 months. The bill then requires the marketplace to verify the information the seller provided. The

marketplace is then required to perform the verification on an annual basis. This ensures consumers have access to the seller.

There is privacy protection built into S.B. 314. A small business using its personal phone number or home residence will not be required to make that information public on marketplace platforms. Disclosed information is the business name, phone number, address and email address. Tax identification and bank account information would never be disclosed.

The threshold only pertains to new or unused products and is per marketplace platform. The thresholds were established based on the level of activity on a marketplace that should be conducted anonymously. Brick-and-mortar stores are required to comply with all regulations on all products, so the \$5,000 threshold is reasonable. The bill creates parity between how products are bought and sold online versus in a physical store. The existing disparity has disadvantaged small physical businesses in Nevada.

Senate Bill 314 also creates parity for consumers. According to a survey, 34 percent of parents were unaware of the prevalence of counterfeit toys, and a similar percentage were not aware that counterfeit toys are not tested for safety. The bill empowers consumers with more data. Consumers will know who they are buying from.

Lastly, the bill empowers the Attorney General to hold marketplaces accountable for their role in protecting consumers and businesses.

Sections 2 through 9 of S.B. 314 define terms, such as "deceptive trade practice," "consumer product," "high-volume marketplace seller" and "marketplace seller." Section 10 requires a high-volume marketplace seller to provide to the marketplace certain information within 24 hours of becoming a high-volume marketplace seller. A proposed amendment ([Exhibit C](#)) extends that timeframe to three business days.

There are provisions in section 10, subsection 1, for the seller to provide the information to a third party or payment processor if so desired. The seller, if a natural person, must provide a photo identification. If not a natural person, the responsible party for the business entity must provide a photo identification or other satisfactory documentation. The high-volume marketplace seller must also

provide a tax identification number and information on whether the seller is selling on other marketplace platforms.

Section 10, subsection 2, outlines the requirements for the annual verification of information. Section 11, subsection 2, outlines the information to be disclosed to consumers and provides consumers with a method to report violations. Section 11, subsection 3, details the alternatives to using a personal address or phone number and provides consumers with a method of redress in the event of a conflict.

Section 12 provides transparency between products fulfilled by marketplace platforms and those fulfilled by sellers themselves.

SENATOR PICKARD:

The problems addressed by S.B. 314 seem well-researched. In section 6, the high-volume marketplace seller is defined by having both 200 or more sales and exceeding retail value of \$5,000. Why not make the disjunctive "or"? Why not stop a retailer from selling 300 unsafe items at \$2, or 4 items at \$2,500?

SENATOR NEAL:

Are you suggesting we lower either of the parameters?

SENATOR PICKARD:

No, the limits as they stand are fine. I am suggesting the way the section is worded, a bad player could sell on ten marketplaces and easily stay below one or the other proscribed thresholds.

SENATOR NEAL:

The definitions were arrived at to appease stakeholders opposed to the bill. We did not want to penalize hobbyists who are doing nothing illegal.

MR. WACHTER:

We were looking for a level that would not go after the small legitimate retailers. It is expensive to be a retailer. Statistically, you will likely fail in your first five years. We recognize there should be leeway for the smallest of sellers. The dual threshold has become the industry standard for digital goods.

SENATOR PICKARD:

I was looking at it from a strictly consumer protection viewpoint. I understand the bill seeks a balance between consumer protection and economic development.

Section 9, subsection 2, requires a two-factor authentication measure. Why is that necessary?

SENATOR NEAL:

Everyday activities such as paying an electric bill online now require two-step authentication. The Federal Financial Institutions Examination Council reviewed and published guidelines for multifactor authentication in 2006. It has become common to require usernames, passwords, token devices or smartphone confirmations.

It requires the user to verify identity through both something you know and something you possess. The bill is not burdensome because we are all using this technology already.

SENATOR PICKARD:

My concern was that disadvantaged people trying to start a small business may not have the resources and education to comply with a two-factor verification system.

SENATOR NEAL:

An entrepreneur who does not have the sophistication to use a simple two-factor verification process probably needs additional training and mentorship. Two-factor authentication has become a part of our everyday life.

SENATOR PICKARD:

Section 11, subsection 3 allows businesses to not disclose their personal address or phone number. A consumer who has an issue and wants to file suit has no way to serve them with a complaint. If the businesses are categorized as high volume, why not require them to disclose that information?

MR. WACHTER:

Section 11, subsection 4, addresses this concern. If a customer cannot get a response from a seller who has requested partial disclosure, the bill provides that the customer can get the information from the marketplace.

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SENATOR SETTELMAYER:

I bought a used dump truck on Facebook for \$6,000. Would the person who sold it to me be a high-volume seller?

MR. WACHTER:

No, a sale of one item would not qualify. Additionally, the bill pertains only to new merchandise. Such a sale would not fall under the provisions of S.B. 314.

SENATOR SETTELMAYER:

I like the amendment extending the time limit for sellers to provide information to the marketplace to three business days from becoming a high-volume seller.

SENATOR NEAL:

Some stakeholders opposed to the bill wanted to extend the time limit to ten days. Three business days was a reasonable compromise.

SENATOR SETTELMAYER:

How long will the verification process take?

SENATOR NEAL:

The verification process should be quick. Many online marketplaces we talked to had their own version of a monitoring system of their sellers. eBay had a thorough, established verification process. The feedback was that it could do its own verification and did not want to be regulated as to how to do it.

SENATOR SETTELMAYER:

I am always concerned with the State regulating things sold on the internet. How does that fit in with the Commerce Clause? Have other states done something similar to this bill?

MR. WACHTER:

We are not the first. Similar bills have been introduced in 14 other states. A similar bill passed the second house in the Arkansas Legislature yesterday and is on its way to the Governor. I will follow up and provide you with the relevant information regarding how the bill does not violate the Commerce Clause. It has become an established fact that states have the right to regulate internet activity, especially as it pertains to consumer protections.



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CHAIR SPEARMAN:

Senate Bill No. 197 of the 80th Session prohibited the sale of cosmetics tested on animals. That was a consumer safety issue. Mr. Wachter said cosmetics are one of the commonly counterfeited items. Is there any connection between the previous Session bill and S.B. 314?

SENATOR NEAL:

There could be a correlation if an ORC gang created a cosmetic, tested it on animals and then put it on the marketplace. That seems a narrow caveat. Has the counterfeiting gone beyond taking cosmetic products off the shelf and repackaging them? Are counterfeiters trying to produce and market the cosmetic product themselves?

MR. WACHTER:

Organized retail criminals have gotten that sophisticated. As it relates to S.B. No. 197 of the 80th Session, Nevada has said we do not want products tested on animals. Nevada can say we do not want cosmetics to contain certain chemicals. Criminals will not follow S.B. No. 197 of the 80th Session or any other safety regulation or requirement. There would be no way to know if they were tested on animals. There is a direct connection to consumer safety.

CHAIR SPEARMAN:

Please clarify the federal reporting requirement you spoke of and how it relates to the proposed requirements in S.B. 314.

MR. WACHTER:

The American Rescue Plan Act of 2021 stipulates on January 1, 2022, all online marketplaces will be required to issue a Form 1099-K to sellers with sales over \$600. The thresholds in S.B. 314 are for the purpose of defining high-volume sellers.

CHAIR SPEARMAN:

You spoke of this bill helping small business. That is of particular interest to me, as the Covid-19 pandemic has been especially hard for small businesses in the Black, Indigenous and People of Color (BIPOC) community.

How has ORC affected the businesses owned by members of the BIPOC community? Do we know if ORC has been the principal cause of a BIPOC business failure?

SENATOR NEAL:

There is a beauty supply warehouse store in my district owned by a Black woman. If she were to experience a large-scale theft, it could be a major loss. It costs her about \$5,000 per month just to keep her doors open. She has to maintain full shelves to compete with the beauty supply store down the street. If she experienced a loss and can identify the thieves, she has the burden of pursuing her case through the court system. She has to install a security system.

CHAIR SPEARMAN:

Racism is a public health crisis, and the threads of racism run through every aspect of our society, including business. I would appreciate any information I can get on how ORC affects BIPOC businesses. A major retail chain may easily absorb \$3,000 in losses, but to a small business owner, that may make the difference of staying open through the pandemic.

MR. WACHTER:

When small BIPOC business owners experience a major theft, they end up competing against their own product online. The resources needed to stay open and restock inventory may make the difference between staying open or closing. It may make the difference in keeping an employee or letting them go.

That same struggling business owner now has to invest in security measures and become an investigative sleuth in an attempt to track down online where his or her products may be retailed. All of that makes it much less likely those small businesses will flourish into larger, healthy businesses.

CHAIR SPEARMAN:

Can we determine the cost of the extra security steps small business owners take when they have experienced ORC? If ORC is affecting the BIPOC business community in any way, it is a direct line back to the systemic racism we are trying to deconstruct this Session.

SENATOR NEAL:

I have discussed with Assemblywoman Teresa Benitez-Thompson creating a small business impact study to understand how the pandemic has affected businesses. It is still theory at this point. Although many small businesses received federal funds from the various stimulus bills, we could gain an understanding of how they were affected by the required changes in business

models during the various stages of the pandemic. Such a study could help quantify the losses incurred and the cost of being made whole again.

Small business is a gateway to wealth and allows for an individual's dreams and creativity to be realized. Opponents of S.B. 314 claim it will hurt small business, but my tenure as a Legislator has been focused on supporting small businesses. This bill is about transparency and identifying who sold a particular good on an online marketplace.

PAUL MORADKHAN (Vegas Chamber):

The Vegas Chamber supports S.B. 314. The bill is about parity among businesses, greater transparency and protecting Nevada's consumers from fraudulent products and criminal activity. The direct financial and safety impact on consumers and retailers is a growing concern, as ORC gangs become more sophisticated in operation and scope. Counterfeit products are a public safety health hazard. The reality is that ORC negatively impacts consumers and businesses, large and small.

JOHN DILLON (The Home Depot):

The Home Depot is the world's largest home improvement retailer, employing nearly 4,000 associates at 22 facilities in Nevada. We support S.B. 314.

The goal of the legislation, through increased transparency requirements, is to give consumers the information they need to make safe and legitimate purchases on online marketplaces while deterring bad actors who seek anonymity.

The growth of ORC is one of the primary reasons we need this legislation. To be clear, ORC is not petty shoplifting. It is theft for greed, not theft for need. A typical ORC ring begins with a white-collar criminal who devises a way to turn products into cash, or what we refer to as fencing. The fence then recruits individuals to steal on his or her behalf—often preying upon vulnerable populations such as the homeless and individuals afflicted by drug addiction. They will pay them de minimis amounts while making hundreds of thousands and even millions of dollars in these schemes.

Increasingly, these stolen goods are being resold on unregulated online marketplaces. A 2020 study by the National Retail Federation found that

59 percent of stolen merchandise credit and gift cards were being resold online, representing an 8 percent increase over 2019.

In closing, we do not seek to tighten laws with respect to petty theft, including theft by individuals acting under the direction of organized crime leaders. Rather, we see value in proposals like S.B. 314 that create commonsense and proconsumer policies. Sunlight is the best disinfectant.

BAILEY BORTOLIN (Nevada Coalition of Legal Service Providers):

We support S.B. 314. We see it as an important consumer protection issue that will benefit Nevada consumers and Nevada small businesses.

ALEXANDRIA DAZLICH (Nevada Restaurant Association):

We urge support of S.B. 314.

NICK VANDER POEL (Reno Sparks Chamber of Commerce):

We support S.B. 314. The bill provides much-needed safeguards to Nevada's consumers and small businesses.

MIKE SHUTLEY (Amazon):

We are proud to have invested nearly \$4 billion in Nevada since 2010. We have created more than 21,000 jobs. There are 19,000 small and medium business sellers in Nevada growing their businesses with Amazon.

Amazon shares the goal of holding bad actors accountable while protecting consumers and honest entrepreneurs. However, S.B. 314 is not the right approach to fighting ORC.

Amazon is committed to fighting all forms of fraud and abuse from harming our customers. We have the processes, technology and teams in place to protect our customers by preventing counterfeits, unsafe products and other fraudulent activities before they occur. In 2019, we invested more than \$500 million and dedicated 8,000 employees to this effort. Our Seller Identity Verification system analyzes hundreds of unique data points to verify a prospective seller's information and identify potential risk, including looking at the seller's Internet Protocol address to determine whether that person is using a private network to hide his or her location. We connect through live video chat with the seller. Once a selling partner is verified, we consistently monitor accounts and require additional documentation to list certain products.

This legislation will hurt honest, small businesses by setting up roadblocks for legitimate sellers. The bill's verification requirements are ineffective and will not stop criminals. A legitimate seller will be suspended from conducting business if unable to gather the materials required by S.B. 314 or unable to merely tell Amazon the information has not changed within the bill's stipulated timeframe.

The seller verification in this bill creates more bureaucracy, not more transparency. Displaying more personal information like an email address or phone number does not help consumers make more informed shopping decisions. Instead, the bill entices consumers to initiate offline, unmonitored communications that could expose them to fraud and abuse.

To prevent this abuse, Amazon has specifically tailored tools to best protect our customers and selling partners by minimizing unmonitored communication channels. This bill will not stop the bad actors and is not the right approach to fighting ORC.

CHAIR SPEARMAN:

What roadblocks does this legislation put in the way of small business? How do those roadblocks intensify problems for small BIPOC businesses?

MR. SHUTLEY:

This ineffective requirement for documentation will not stop the bad actors. Instead, a seller using Amazon who cannot provide this information quickly could lose their online marketplace privileges until he or she can comply.

The provision allowing small businesses to choose not to post a personal address or phone number could create a stigma for those truly small businesses that choose not to disclose this information online.

CHAIR SPEARMAN:

Please follow up with the bill sponsor to see if she can address your concerns.

CAMERON DEMETRE (TechNet):

TechNet is the national, bipartisan network of tech CEOs and senior executives that promotes the growth of the innovation economy. We represent over 85 companies and 3.5 million customers.

TechNet opposes S.B. 314. The intent of the bill is aimed at protecting consumers from stolen or counterfeit goods. However, the bill would hurt small businesses and individual sellers and create privacy risks. Online marketplaces are already heavily invested in technology and processes that identify bad actors and remove them from their platforms.

The bill is burdensome and unfair by treating all sellers as guilty before being proved innocent. It will harm legitimate small Nevada sellers. This legislation will hurt their ability to compete by creating an onerous, time-consuming process of verification big-box retailers would not have to deal with. As small businesses struggle to maintain profits while providing essential products to consumers during the pandemic, now would be an especially poor time to place an additional, unnecessary regulatory burden on them. The ability for Nevada's small businesses and individual sellers to reach consumers would dwindle, while large, physical retailers would remain largely unaffected.

The bill would force small businesses to compromise private information in order to continue selling on online platforms. Those unwilling to divulge highly personal information would be forced to stop listing their products and lose essential revenue. The public could easily learn the home address of a grandmother in Sparks who makes and sells hand-knitted facemasks. The open display of such personal information could potentially lead to a dangerous situation.

EDITH DUARTE (eBay):

We are opposed to S.B. 314. Our company is a mission-driven e-commerce platform that connects sellers and buyers across the globe, serving 65,000 Nevada sellers. Our platform has been a lifeline for small businesses, especially during the pandemic.

Trust and safety on a marketplace are of paramount importance to the buyer and seller experience. We do not want stolen goods on our site. The bill does not prevent ORC but instead creates burdensome policies that unfairly disadvantage small online businesses and favor the big-box retailers.

The thresholds proposed for labeling high-volume sellers are too low. They will decrease the number of sellers on our site. Annual verification of the extensive list of information would be challenging for many online marketplaces. The bill

creates privacy concerns by requiring the extensive collection and disclosure of personally identifiable information.

Our company has a long-standing commitment to both consumer rights and owner protection. We deploy technology, processes and personnel to prevent prohibited items from being listed on our platform. We have partnered with retailers, brands and regulators. We have collaborated with law enforcement and our attorney general's consumer protection bureau to enforce our policies.

ROBERT CALLAHAN (Internet Association):

I have submitted a letter ([Exhibit D](#)) in opposition to S.B. 314.

CHAIR SPEARMAN:

I would like to hear more about the roadblocks those in opposition claim will hurt small businesses. All those in opposition please talk to the sponsor and have her address your concerns. I would like to hear from anyone who can shed light on potential benefits or harms from S.B. 314 to small BIPOC-owned, women-owned and veteran-owned businesses. I want to make sure we are doing all we can for those businesses still suffering from the consequences of the pandemic.

RANDI THOMPSON (National Federation of Independent Business):

We are neutral on S.B. 314. I will be meeting with Mr. Wachter to discuss any implications to small business.

SENATOR NEAL:

I am eager to meet with those in opposition to the bill. It is important to recognize that those doing business as an online retailer can and should have some measure of regulation. That is parity. Brick-and-mortar stores already have to regulate and control what is on their shelves. That is basic consumer protection.

MR. WACHTER:

We heard a lot about roadblocks from those opposed to S.B. 314. We are not creating roadblocks, we are strengthening consumer protections. We are ensuring a minimal level of transparency in the online marketplace. We have done a lot to respond to the privacy concerns. The information the bill requires is no more than you would find on a 1099 form. There are no onerous requirements that may be difficult for small businesses to adhere to.

CHAIR SPEARMAN:

In August 2020, both Houses of the Legislature and the Governor issued a proclamation declaring that racism is a public health crisis. We must look at the consequences of S.B. 314 to small BIPOC businesses. We must examine what has happened during the pandemic to small BIPOC businesses as a result of not having this legislation in place. This cause will affect all the decisions we make as a Legislature this Session.

I will close the hearing on S.B. 314 and open the hearing on S.B. 320.

**SENATE BILL 320:** Enacts various provisions relating to food delivery service platforms. (BDR 52-591)

SENATOR NEAL:

Senate Bill 320 is focused on third-party food delivery service platform providers (FDSPP). We are working off of the amendment ([Exhibit E](#)). The amendment embodies the best version of the bill after talking to all stakeholders. I looked at several other states with FDSPP ordinances. Nevada can be unique, so I did not want to use cookie-cutter language. I wanted to build a bill that reflects what is happening in Nevada.

Section 3, subsection 1 defines "commission," which was one of the contentious parts of the bill. The language reflects a similar ordinance from Chicago.

Sections 2 through 11 are definitions. Section 8 deals with the definition of "likeness" and is important because of the problem of menu stealing. There are three main components of the bill: menu stealing, receipt transparency and commissions.

Section 12 spells out that a FDSPP can only deliver food from establishments with which it has a written agreement expressly authorizing the platform to engage in such activities. This is intended to prevent menu stealing or using the likeness of a restaurant without the restaurant's permission, a problem that has worsened during the pandemic.

Section 13 allows a restaurant to submit a written request to be removed from the delivery platform, and the delivery platform has 48 hours to do so. Subsection 3 imposes a civil penalty of \$500 per day for failure to comply.



Sections 14 and 15 address the unauthorized use of the likeness, registered trademark or intellectual property of a restaurant. If taken to court, it awards the sum of \$5,000 or the amount of actual damage sustained, whichever is greater.

Section 16 is the transparency part of S.B. 320. It details what the receipt from the FDSPP must disclose in an open and plain way. The receipt must show the price of the food, sales tax, delivery fee and gratuity. Lastly, our original language included the required disclosure of the commission paid by the restaurant to the FDSPP. In the amendment, it has been changed to a percentage of the aggregate food purchase. The cost of using a food delivery service platform is high. The bill requires transparency in the receipt.

The pandemic encouraged exponential growth in FDSPPs. Section 19 limits the commission the delivery service platform can charge a restaurant to 20 percent while a Declaration of Emergency issued by the Governor remains in effect.

The last page of the amendment excludes grocery and convenience stores from the definition of "food dispensing establishment." It was not our intent to include grocery stores in this legislation.

Ms. DAZLICH:

The intent of S.B. 320 is to balance the power dynamic between restaurants and FDSPPs. For the past year, the pandemic has severely limited dine-in capacity and has resulted in an artificial dependence on delivery which has not given the market time to naturally adjust.

Prior to the pandemic, FDSPPs made up around 5 percent of most restaurant operators' total business. For most, it now makes up 15 percent or more. Through many of the Covid-19-related restrictions, restaurants have had to become reliant on FDSPPs or lose out on what little revenue they could make.

It is in this forced reliance on delivery that the issues between restaurants and FDSPPs worsened as dine-in capacity continued to be limited. During the pandemic, delivery platforms continued to charge restaurant operators up to 30 percent per order in addition to the delivery cost charged to the consumer. The Association worked with the Clark County Commission to pass an emergency order that temporarily caps commission fees at 15 percent per order, which saved our restaurant operators thousands of dollars. However, the

emergency ordinance was met with pushback. Some of the FDSPPs skirted the 15 percent delivery cap for months before complying, while others claimed the cap did not apply because they identify themselves as a marketing company. Others added a new fee, charging an extra \$2 per order to customers.

It was during our discussions with restaurants that other issues like menu stealing and billing transparency quickly became part of the bigger discussion at the county level. It became our mission to pass legislation to protect our restaurants Statewide by supporting legislation that would provide billing transparency and prohibit menu stealing.

Menu stealing is a major issue for restaurants that discover the unauthorized use of their menu or logo on third-party food delivery websites and applications. There have been instances where FDSPPs have posted outdated menus, incorrect business hours or inflated prices—sometimes using stock images that do not accurately portray the restaurants' dishes. In addition, there have been many instances of botched orders, either due to human error or because a dish is no longer available or requires further specification, resulting in food being delivered late, cold or different than what was ordered. When these problems occur, customers often call the restaurant to complain. This puts the restaurant in the unfortunate position of being blamed for mistakes it did not make and cannot fix. It is for these reasons that many restaurants intentionally chose not to partner with these services before the pandemic because they wanted to more closely control the quality of their food and the takeout experience.

The FDSPPs are part of an exciting frontier that makes people's lives easier. However, left unchecked, they come at the cost of many independent restaurants. As big tech develops new sectors of the economy, rules and regulations are needed to protect our vital industries like restaurants.

Commonsense legislation, like consent between parties and billing transparency, is necessary as we move forward. Implementing these changes at the State level ensures these practices are observed Statewide. This uniformity is important to our restaurant operators who may have more than one location and do not have the means to adjust their business model for each restaurant location. If adopted, this legislation would provide a unified set of rules that are consistent and easy to follow.

Since the beginning of the pandemic, more than 80 percent of our members have lost upwards of 70 percent of their normal revenue, while over 30 percent have closed permanently. We need to do everything we can to help safeguard our restaurant industry which has been devastated by this pandemic.

KRISTEN CORRAL (Cofounder, Tacotarian):

I am one of the owners of Tacotarian, a popular restaurant in Las Vegas. We have two locations with plans to open two more by the end of the year. We are in the process of creating a food delivery co-op to combat some of the egregious and predatory practices we will discuss today.

As a restaurant owner, and now an accidental expert in predatory food delivery platforms, I can tell you the tactics used on a daily basis by the giant tech companies are far from your average best business practices. These tech giants are not working to help restaurants, as they claim.

With restaurants struggling to survive a global pandemic and delivery seemingly here to stay, we need to figure out how to begin to put some regulations on these platforms. Companies like Grubhub, DoorDash and Uber Technologies are not required to carry a business license in local jurisdictions, with the exception of unincorporated Clark County. The average fee per order on the big three platforms is between 30 percent and 35 percent. For most business, especially BIPOC businesses, these are nonnegotiable. The national average for restaurant profits prepandemic was 4 percent to 8 percent.

When the pandemic hit, I worked with the County to pass a 15 percent cap on FDSPP fees. That cap saved local restaurants thousands of dollars. During the beginning of the pandemic, our Tacotarian Southwest location paid nearly \$7,000 in a few months in FDSPP fees. We are lucky we run a successful brand with a loyal following. But some small restaurants were forced to decide whether to pay the egregious delivery fees or pay their rent.

Most customers have no idea what fees are being imposed on restaurants or themselves, which is why billing transparency is important. When Tacotarian started using social media to inform customers how much these delivery apps were charging us, many customers were upset. They knew they were paying more, but they did not know how much more or that the restaurants were being charged at all.

Billing transparency seems to be an issue. When you go to the grocery store, you purchase groceries and get an itemized receipt. Third-party deliverers should have to provide that same transparency. This is not proprietary information, it is backdoor price-fixing. Competitive pricing is what capitalism is built on. We have to put commonsense laws in place to protect our small businesses.

We are starting our own food delivery co-op, and we have hundreds of restaurants signed up to be on the platform. Technically, we will be an FDSPP. Yet, I am not here in opposition but in support of this legislation. When you operate with ethics and integrity, there simply is nothing to hide. I urge you to support this bill. Opposing it means directly harming independent restaurants in Nevada communities. Restaurants are the lifeblood of Nevada, as are the people who invested their life's savings into our restaurants. So please side with restaurants, support local businesses and put commonsense food delivery regulations in place.

SENATOR PICKARD:

I agree transparency is important. I disagree the information required in the bill is not proprietary—I feel it is. Grocery stores do not put the cost of goods sold on their receipts. Do the food delivery service platforms charge for advertising on their space?

Ms. DAZLICH:

They do charge for advertising, usually as an additional cost the restaurant can opt into.

SENATOR PICKARD:

Section 14 of S.B. 320 stipulates penalties for unauthorized use of a registered trademark. Why is this necessary since federal and State law already makes that illegal?

SENATOR NEAL:

When I spoke to the Legislative Counsel Bureau, Legal Division, regarding this bill, FDSPPs seemed to fall outside of statute. It was necessary to clearly define them and bring them into existing statute.

SENATOR PICKARD:

Section 16 requires the FDSPP to disclose the commission the restaurant is paying to the platform. I view this as the cost of goods sold, which is

proprietary. By publishing this information, are we requiring FDSPPs to give out their cost information to their competitors? Do we disadvantage the businesses in their ability to negotiate a better price?

SENATOR NEAL:

In the proposed amendment, the requirement to disclose a specific commission was replaced with the requirement to include a statement indicating a commission is to be paid by the restaurant in connection with the online food order expressed as a percentage of the aggregate food purchase price.

I would reiterate grocery and convenience stores are not included in this legislation.

Ms. DAZLICH:

When the bill was originally drafted, we wanted to include a cost breakdown of the amount the restaurant pays per order. That raised some of the biggest objections from FDSPPs. We ended up with the idea of an aggregate number. The customer's receipt will include the price of food, the tax, the delivery fee and the gratuity. Under this legislation, the receipt will also disclose the average amount the restaurant pays FDSPP.

This is not proprietary, this is transparency. The customer will be made aware that the use of FDSPP may not be in the best interest of the small, independent restaurants. The restaurants do not have the bargaining power to adjust the exorbitant rates charged by FDSPPs. At a time with limited seating capacity because of the pandemic, customers expect to use delivery services, often not realizing they eat into a restaurant's profits. Consumer education is vital to the survival of Nevada's restaurants.

If FDSPPs disclose the rates they are charging, they will be forced to compete with each other. Competition is healthy. What is wrong is keeping the public and restaurants in the dark about how they arrive at their fees.

SENATOR PICKARD:

What is acceptable to one party may be considered proprietary by the other party. I might suggest you lump the delivery charges with commissions and allow for some competition within the industry.

I applaud Ms. Corral's efforts to band together and create another option for consumers. That is exactly the kind of competition we should be seeing. We want to make sure we are not allowing price gouging, or that companies are taking advantage of people, particularly in this pandemic-related economic downturn. I do not know the FDSPPs business model, or what it costs for them to provide this service.

SENATOR NEAL:

When FDSPPs argued against this bill, I wondered how they were able to meet similar legislative requirements imposed by Chicago. This bill was created out of legislation that passed in other localities. There is a reason these entities are fighting hard to avoid regulation.

Ms. CORRAL:

The transparency on the back end is not proprietary. All FDSPPs know what each is charging. They all charge the same amount. In addition to educating consumers, publishing those fees would give restaurants some negotiating power we do not have, especially minority and women-owned businesses.

Ms. DAZLICH:

Grubhub stock has doubled in the last year.

SENATOR PICKARD:

That makes sense, since it was perfectly positioned to serve a market that was badly needed when the pandemic hit. I want to be careful of accusing anyone of illegal activity. That is for the federal government to decide.

SENATOR SETTELMAYER:

A couple of restaurants in my district have had their menus stolen. Unfortunately, they were old menus, but FDSPPs used them on their sites. Because they were old, menu prices were out-of-date. It leads to a situation where a restaurant is in an argument with a customer because of the actions of an intermediary.

Why did you exclude grocery stores? They sell prepared food to be taken home. What would happen if a FDSPP delivered food from a grocery store to a customer? Why were they left out of the bill?

Ms. DAZLICH:

The bill was drafted to help small, independent restaurants. Grocery stores did not really fit the model. We would be open to including them if needed.

SENATOR SETTELMAYER:

What is the legislative intent of section 12, requiring a written agreement between a restaurant and an FDSPP? I would not want to disenfranchise small businesses because the contract was too daunting and they do not have a legal team. If an owner or manager were to date and sign a menu, could that qualify as consent as opposed to a written agreement?

SENATOR NEAL:

The insertion of the qualifier "written" was by request from FDSPPs.

SENATOR SETTELMAYER:

Will the disclosure of commission only involve the restaurant's cost for deliveries? If a restaurant chooses to advertise on an FDSPP at an additional cost, I do not see why that information needs to be disclosed. Credit card fees are another item I do not feel need to be disclosed.

Ms. DAZLICH:

We do not intend to include those additional charges restaurants may opt into, such as advertising or marketing. It is more of an outward-facing document, ensuring the consumer is aware of the real cost of the transaction.

I want to be clear we are not accusing FDSPPs of price gouging or anything illegal. They have come to the table and tried to negotiate openly with us. We are trying to ensure they cannot get around caps and other regulations that have been or may be imposed on them. It is an issue of compliance, holding companies accountable and educating the consumer. This issue is affecting restaurant operators who have to keep their doors open and make payroll.

This legislation would impose a 20 percent cap on the commission during a declared state of emergency. What happens after that? The FDSPPs will likely go back to the 30 percent or higher rate they were charging, which effectively means the small independent restaurant potentially loses money on the transaction. With disclosure, the restaurant can shop around and potentially get a better deal.

SENATOR SETTELMAYER:

I know of situations where restaurants are at odds with one another, when they do not have to be, because of improper actions by FDSPPs. In section 19, why are you deleting the term "Honorable Steve Sisolak?"

MS. DAZLICH:

The language allows for the bill to be applicable in a future emergency order that might limit indoor dining capacity.

MR. VANDER POEL:

The Reno Sparks Chamber of Commerce supports S.B. 320. We have seen both pros and cons of FDSPPs. This legislation is a step in the right direction and provides consumer protections with billing transparency. Nevada restaurants are part of Nevada's economic backbone, and this is a commonsense compromise which benefits all parties.

MR. WACHTER:

The Retail Association of Nevada supports this legislation. Our restaurants in Nevada play a vital role in the foundation of our economy. Hundreds of thousands of Nevadans are still out of work, and the hospitality industry is struggling to rebuild. The transparency found in S.B. 320 will provide our small restaurants with the ability to negotiate and to educate the public on how FDSPPs work.

The goal of this Legislature should be to return our job force to prepandemic condition. Doing that will get Nevadans back to work.

MR. MORADKHAN:

The Vegas Chamber supports S.B. 320. We have many member small restaurants hard hit by the pandemic and still operating at limited capacity. They have operated under restrictions for a full year as they did their part in helping slow the spread of Covid-19. We need to support this industry, especially the small restaurants that are women- and minority-owned. This bill brings important parity and transparency to this issue.

MS. THOMPSON:

The National Federation of Independent Business supports S.B. 320.



I spoke with one of my restaurant members, and he explained that gross revenues for restaurants were not that far down in 2020 because of the increase in takeout and delivery. The problem with this scenario is restaurants paid between 26 percent and 38 percent to delivery companies. When the bulk of your business is delivery, you end with higher revenues but much less profit. Restaurant delivery provides name recognition and marketing, but it is not a significant profit generator. Last year, when so much business was delivery, restaurants struggled to make a profit.

Senate Bill 320 adjusts the relationship between FDSPPs and small, independent restaurants. The Federation primarily represents locally owned and operated businesses, businesses that do not have corporate backing to get them through tough times. The additional transparency and accountability brought by this legislation will help ensure they can continue to provide delivery service, make a profit and stay in business.

HANNAH SMITH (Grubhub):

Grubhub opposes this bill. We are working with the bill sponsor, Committee members and the Nevada Restaurant Association and hope to find a path forward.

I want to thank the Nevada Restaurant Association for its tireless support of the State's restaurants and Delivering with Dignity, a Nevada organization that works with local restaurants and nonprofits to deliver food to those in need during the Covid-19 pandemic. Grubhub is proud to have partnered with Delivering with Dignity through our Grubhub Community Relief Fund.

We strongly support the provision requiring a formal agreement between restaurants and FDSPPs. We strongly support ending menu stealing and are working on national legislation to require all companies to play by the same rules.

Unfortunately, there are two problematic provisions of S.B. 320. As drafted, the bill requires companies like Grubhub to disclose the terms of the contract between us and our restaurant partners. These amounts vary depending on the services selected by each restaurant owner and are set in a private contract. Requiring disclosure of that information would hurt restaurants competitively and is akin to requiring grocery stores to disclose how much they paid for their produce.

For diners, we disclose every fee consumers pay clearly prior to checkout and on their receipt, consistent with our long-standing commitment to transparency. This protects the privacy and competitiveness of the restaurants that choose to partner with Grubhub.

The bill also institutes a 20 percent commission cap on every independent restaurant in Nevada. We are concerned about the unintended and damaging consequences of fee caps. While well-intentioned, fee caps limit how restaurants, especially small and independent restaurants, can effectively market themselves to drive demand.

Grubhub provides critical marketing services with hard costs. This lets local independent restaurants compete with large chains that have significant marketing budgets. When a cap is set so low that an FDSPP cannot offer a basic level of marketing support, thousands of restaurants across Nevada are placed at a distinct competitive disadvantage with big national chains. In other jurisdictions where fee caps have been implemented, we have seen a clear effect of caps lowering how many orders restaurants receive, which in turn lowers revenue for drivers by reducing the number of orders to be delivered.

And finally, we have heard from the experts on what is needed next. The National Restaurant Association's recent *Blueprint for State and Local Restaurant Recovery* includes detailed steps lawmakers can take to support restaurants. These include safeguarding tax treatment to prevent unforeseen liability of federal relief funds, establishing grants to save restaurants and providing property tax relief. What you will not find on that list is any argument for fee caps or private contract disclosure as policies that effectively support restaurants and their emergence from the pandemic.

We urge you to reject the damaging provisions in S.B. 320 and hope to find solutions that deliver the support restaurants need.

SENATOR PICKARD:

Can you address the claim that the commission range of 25 percent to 38 percent is unreasonable?

MS. SMITH:

Commissions in that range are not for simple delivery. They may be contracting for other services such as marketing, advertising and loyalty programs.

MR. CALLAHAN:

The Internet Association represents the Nation's leading internet companies and we are opposed to S.B. 320. We are opposed to any commission caps, regardless of their duration. Such caps result in harmful consequences and set a concerning policy precedent.

These fees cover a broad range of services. To the extent these commissions are capped, it could result in reduced support of services for small restaurants. We have concerns about the disclosure requirements and look forward to reviewing the proposed amendment. We do not want consumers confused by the difference in actual charges to them and commission paid by the restaurant.

ROSE MCKINNEY-JAMES (Grubhub):  
We are opposed to S.B. 320.

JENNIFER LAZOVICH (DoorDash):

While DoorDash appreciates some of the changes made in the proposed amendment, we still remain opposed to certain sections of the bill. I was involved in the ordinance passed by Clark County. No other jurisdiction in southern Nevada passed an ordinance mandating a temporary cap on commissions.

DoorDash considers restaurants to be our partners. We want our restaurant partners to do well, which is why our contracts with restaurants are voluntary and can be amended or canceled at any time. This was true before the pandemic and during the pandemic. Additionally, we offer a number of marketing options restaurants can choose. Every contract with every restaurant is unique to their needs.

Section 16, subsection 1, paragraph (d) requires public disclosure of the percentage commission paid by a restaurant. We are requesting this section be deleted. These are private contracts and should remain private. Our contracts include marketing options and delivery fees and are unique to each restaurant. This information is proprietary and should not be disclosed.

Section 14 should be amended to allow basic information such as name, address and phone number to be shown on the platform without written consent. Written consent from a restaurant would still be required to take any orders or to publish a menu. But the basic information about a restaurant is

helpful to them in the same way the basic information is shown on a Google search or Yelp.

There was quite a bit of testimony about how restaurants were "forced" to use FDSPPs when occupancy levels were reduced. Section 19 should be amended to state the cap will remain in effect until the Declaration of Emergency is lifted or restaurants are allowed to return to 100 percent occupancy levels, whichever occurs first.

LAURA CURTIS (DoorDash):

We remain opposed to certain portions of S.B. 320. Our biggest concern is with section 16, subsection 1, paragraph (d), which still requires a percentage disclosure of the commission charged to a restaurant by an FDSPP.

The commissions negotiated between a restaurant and DoorDash are private and should remain that way. The commissions should not be mandated to be disclosed. When restaurants choose to partner with DoorDash, they agree to pay fees for a wide range of optional services, such as advertising and marketing. For example, some restaurants may want to pay higher fees for marketing options to attract new customers or to expand their existing delivery radius. Other restaurants may not want to pay for these options. All of the fees a restaurant pays are voluntary and confidential. This information is highly competitive between food delivery companies. Restaurants set their prices for menu items on our application, so they can build those commission costs into their prices should they so desire.

It would be the same thing as requiring a restaurant to put on their menu or receipt the cost breakdown of a burger including the meat, the bread and the wages of employees. Using the language in S.B. 320, the restaurant would also need to disclose the name of the meat distributor or bakery. These are private contracts and should remain private between the parties.

DoorDash has already committed to not adding new restaurants to our platform without consent, and we are comfortable with the other portions of section 16 which require disclosure of other information such as total online food order price, sales tax, delivery fee and gratuity to be paid to the driver.

PIPER OVERSTREET (Uber Technologies):

We understand the intent of the bill as a temporary relief measure for the restaurant industry, but there are two concerning components remaining.

The first is section 3, subsection 3, concerning credit card processing fees. The majority of jurisdictions, including Clark County, that have passed temporary Covid-19-related commission caps have either initially excluded credit card processing fees or retroactively removed them. The FDSPPs have no control over these fees.

Our second concern is several of the disclosures required in section 16. Every restaurant that elects to pay a commission on our platform elects to do so based on the needs of their business. This is an optional service with real operating costs associated. Food delivery is expensive, which is why many restaurants did not offer it before the advent of FDSPPs. Contracts can be amended or cancelled at any time with no penalty.

MR. DEMETRE:

TechNet opposes S.B. 320. Food delivery platforms have become crucial to restaurants remaining open and continuing to generate revenue. These viable partnerships have enabled restaurants to reach new customers. Since the pandemic, our companies have provided tens of millions of dollars in direct restaurant support and millions more providing free meals to healthcare workers, seniors, school children and other vulnerable groups.

Restaurant commissions cover a broad range of services made available through our member platforms. They are not one size fits all. They are tailored to each restaurant's needs. Restaurant commissions go to support FDSPP operational costs. Operational costs include onboarding new drivers, ensuring delivery workers are paid fairly, covering insurance costs, providing personal protective equipment, payment processing and order management. Commission caps would dramatically curtail services offered by FDSPPs, making food ordering and delivery more expensive and potentially limiting food delivery access to the more rural parts of Nevada.

Food delivery platforms are competing for restaurant business and offer a wide range of partnership structures and commission rates to suit restaurants' needs. These fee structures are transparent and clear when any restaurant enters into a

contractual partnership with a delivery network company. As required by the bill, disclosure of the contract details would disclose proprietary information.

KERI VALENTIC MOORE (ThinkFoodGroup):

Over the years, our restaurants in Las Vegas have had their menus posted on FDSPP sites without consent. We had to call or write letters to have our menus removed, just to have them reappear on the sites after a few months. It should not be the burden of the restaurants to audit all FDSPPs we do not have written contracts with. The relationship should be bound by a contract if they are to use our intellectual property.

With no regulations placed on the delivery services, our restaurants can lose quality control, harming their reputation. We do not use FDSPP services because we are inside a hotel on The Strip. The costs involved using these platforms are an issue, but for us the main issue is delivery itself. There are too many variables and timely steps involved in offering delivery while keeping our quality standards in place.

Senate Bill 320 will allow Nevada restaurants to control their brands in the delivery marketplace, customers will have a clear understanding on what they are paying for, and the FDSPPs will have an opportunity to work with more businesses that may have mistrusted them in the past.

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CHAIR SPEARMAN:

I will close the hearing on S.B. 320. We will hear S.B. 291 tomorrow.

**SENATE BILL 291**: Provides for the licensure and regulation of master estheticians and instructors of master estheticians. (BDR 54-997)

Seeing no public comment, this meeting is adjourned at 11:01 a.m.

RESPECTFULLY SUBMITTED:

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Barbara Williams,  
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. 314	B	1	Brian Wachter / Retail Association of Nevada	Presentation
S.B. 314	C	1	Brian Wachter / Retail Association of Nevada	Proposed Amendment
S.B. 314	D	1	Robert Callahan / Internet Association	Opposition Letter
S.B. 320	E	1	Senator Dina Neal	Proposed Amendment