

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

**Eighty-first Session
March 31, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:02 a.m. on Wednesday, March 31, 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

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:

Matt Brinton, National Institute of Modern Aesthetics
Jaron Hildebrand, Nevada State Medical Association
Gary K. Landry, Executive Director, State Board of Cosmetology
Matt Robinson, Nevadans for Data Privacy
Paul Moradkhan, Vegas Chamber
Josh Hicks, Consumer Data Industry Association
Philip Recht, People Search Service Coalition
Maya McKenzie, State Privacy and Security Coalition, Inc.
Omar Saucedo, AT&T

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Tiffany Gagle

Paige Easley

Andrea Johnson, National Women's Law Center

Katie Robbins, Planned Parenthood Votes Nevada

Christian Gabroy, Nevada Justice Association

Virginia Valentine, Nevada Resort Association

Jessica Stender, Equal Rights Advocates, U.S. Equal Employment Opportunity
Commission

Caroline Mello Roberson, National Abortion and Reproductive Rights
Action League, Pro-Choice Nevada

Tess Opferman, Nevada Women's Lobby

Marlene Lockard, Nevada Women's Lobby

Alexis Motarex, Nevada Chapter Associated General Contractors of America

Amber Stidham, Henderson Chamber of Commerce

Christopher Sewell, Chief Operating Officer, Department of Employment,
Training and Rehabilitation

Nick Vander Poel, Reno Sparks Chamber of Commerce

CHAIR SPEARMAN:

We open the hearing with Senate Bill (S.B.) 291.

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

SENATOR ROBERTA LANGE (Senatorial District No. 7):

I am presenting S.B. 291, a bill that expands the practice of cosmetology by
including the practice and licensure of master estheticians.

I am joined by Matt Brinton, CEO of the National Institute of Modern Aesthetics,
who will provide additional information about the practice of master
estheticians.

The esthetics industry is swiftly evolving with technology. Cosmetic lasers and
medical light-based devices take skin care and antiaging to the next level.
However, many of the innovations in skin care do not fall under the scope of
practice of the State esthetics license.

These new procedures use state-of-the-art technology. The inability to license these procedures poses a problem for both spas and estheticians.

According to Associated Skin Care Professionals, there are approximately 183,000 estheticians licensed in the United States. In addition, the U.S. Bureau of Labor Statistics expects the number of licensed skin care specialists to increase by 17 percent between 2019 and 2029. The demand for esthetics services continues to grow.

All states require estheticians to complete some type of education or training to qualify for licensure. A few jurisdictions—the states of Washington, Utah, Virginia and Washington, D.C.—currently recognize a two-tier esthetician license. To become a licensed master esthetician requires additional training and education in a master esthetics program or apprenticeship. The typical route to achieve the required education is in a formal esthetics program within an esthetics school or school of cosmetology.

I will provide an overview of the substantive sections of S.B. 291.

Sections 1 and 21 authorize a registered nurse or master esthetician to perform a nonablative esthetic medical procedure under certain circumstances and under the supervision of a healthcare professional. These sections also prohibit these professions from performing any ablative esthetic medical procedure.

Sections 18 through 20 prescribe the qualifications to obtain a license as a master esthetician or an instructor of master estheticians. Section 26 provides that a person licensed as a master esthetician may be appointed as a member of the State Board of Cosmetology.

Section 22 requires the Board to adopt regulations prescribing a curriculum in master esthetics and sets forth certain requirements to be included in such curriculum.

Section 25 provides that physicians, osteopathic physicians, physician assistants and advanced practice registered nurses who engage in the practice of master esthetics are exempt from the licensing and regulation requirements of the bill.

Section 28 authorizes the Board to issue a provisional license as an instructor to certain licensed master estheticians under certain circumstances. Additionally, section 29 authorizes the Board to issue a limited license to persons who are licensed as master estheticians in another state. This allows them to practice master esthetics subject to certain restrictions.

Section 30 establishes the fees for examination as a master esthetician and as an instructor of master estheticians, and section 33 provides the fees for a license as a master esthetician.

Section 41 requires a student master esthetician to complete a minimum of 10 percent of the total instruction hours before commencing work on members of the public.

Section 42 revises provisions relating to disciplinary action against holders of licenses issued by the Board to a person licensed as a master esthetician or an instructor of master estheticians.

Finally, section 44 establishes a process allowing the Board to issue a license as a master esthetician to certain applicants who do not meet the requirements outlined in this bill but who hold a license as an esthetician issued by the Board on or before October 1, 2023; apply for licensure on or before October 1, 2023; and meet certain other requirements.

We have a proposed amendment ([Exhibit B](#)) from the National Institute of Modern Aesthetics requesting the effective date be changed to January 1, 2022.

MATT BRINTON (National Institute of Modern Aesthetics):

We operate an esthetics school and teach advanced esthetics courses in the western U.S. We have experience training thousands of students. This bill presents an opportunity to create an advanced esthetics license. Advanced esthetics services are performed in our State without appropriate training and licensing.

These esthetic services involve new technology, sometimes with FDA-regulated medical devices. Some of these services include laser hair removal, tattoo removal and skin rejuvenation. This bill addresses the concern that a license is not required to perform advanced esthetics services.

This legislation will add an additional 600 hours to the current curriculum of 600 hours. Two broad areas are covered in the curriculum. Advanced esthetics includes services such as microneedling and microdermabrasion. Medical esthetics includes the use of advanced devices.

This legislation intersects with the medical world. We have attempted to meet with the medical community, but at this time, the community has not responded. We prepared this legislation based on the best practices of nearby states with advanced esthetics certification.

It is important to have medical supervision of advanced esthetics procedures, and this is not happening in our State. This legislation would require medical physicians to oversee and supervise procedures. Section 1, subsection 1, paragraph (b) requires a medical professional to remain within 60 miles or 60 minutes of the location where the procedure is being performed.

We see robust business in areas where these procedures are in place. If technicians are not properly trained, we do not know if these advanced procedures are being performed properly. Additionally, significant damage can occur.

This bill presents an opportunity for a formal license leading to a career. This license can be transferred to other participating states. It also enables business owners to operate safely and effectively. We look forward to working with the medical community on this legislation.

SENATOR PICKARD:

Are people being harmed by estheticians without proper licensing and training?

SENATOR LANGE:

The esthetics industry has evolved, and estheticians now work on living tissue. This has created a need for additional training.

MR. BRINTON:

This area is largely unregulated, and we do not have statistics on injuries. Insurance rates for medical esthetics procedures are higher in Nevada. We believe this is because operators are unlicensed.

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SENATOR PICKARD:

Are the training requirements high enough? Should dermatologists be the physicians supervising medical esthetics practices?

MR. BRINTON:

The advanced esthetic license requires 1,200 hours of training. We have recommended this type of training in other states for ten years. We also have a grandfather clause in the bill. This level of training is working in Washington, California, Oregon and other states.

We want to work with dermatologists on this legislation. In this bill, estheticians are prohibited from using ablative esthetic medical devices.

SENATOR PICKARD:

I am concerned estheticians may not be providing services in a medically supervised environment. I am also concerned we do not have statistics showing injuries caused by lack of training.

SENATOR NEAL:

Please clarify section 20, subsection 1, paragraph (c).

MR. BRINTON:

The language used in this section is the same language used in all cosmetology licenses.

SENATOR NEAL:

How many nurses and how many physician's assistants specialize in dermatology?

MR. BRINTON:

Screenings by midlevel nurses and physician's assistants are working in other states. These professionals are capable of screening for contraindications.

SENATOR NEAL:

I am concerned about the language in section 22, subsection 2, paragraph (e) regarding an automated external defibrillator.

MR. BRINTON:

This is standard language for training used in other states.

SENATOR NEAL:

Are we suggesting estheticians be trained to use an automated external defibrillator? Even with training, estheticians are not trained to be a physician.

MR. BRINTON:

We want to discuss this standard language with physicians in the State.

SENATOR NEAL:

From a medical perspective, the provisions in this bill are complicated. I am concerned about the levels of supervision for physicians, nurses and physician's assistants.

Does this bill bypass cosmetology training? Will this bill require a new cosmetology board?

MR. BRINTON:

Cosmetology is a broad umbrella with many specialties including hair styling, nail services and skin care. These licenses are now segmented.

SENATOR HARDY:

Will master estheticians also be required to have education in hair styling and nail services?

MR. BRINTON:

No, master estheticians will earn licenses concerning only skin care.

SENATOR SCHEIBLE:

One can be trained to use the automated external defibrillator. You do not have to be a medical professional to receive this training.

SENATOR SETTELMAYER:

I am concerned with the term master. The public might misunderstand and think a master esthetician can diagnose skin conditions.

MR. BRINTON:

Working with the skin does intersect with medical procedures. It would be problematic if an ablative tool was used on a cancerous lesion. At this time, Nevada does not require a license to perform an ablative procedure.

The purpose of this bill is to bring medical professionals and experienced estheticians into the screening process to avoid complications. We have demonstrated in other states that a 1,200-hour course provides sufficient training to perform less invasive advanced esthetics procedures.

SENATOR SETTELMAYER:

What data has been identified to document injuries? Did other states see a reduction in injuries after adopting these measures?

MR. BRINTON:

Without regulatory supervision, we only have anecdotal information. This legislation also creates meaningful career opportunities in an expanding industry.

SENATOR SETTELMAYER:

Government is to protect the people; not to get in the way of business.

CHAIR SPEARMAN:

I understand a G.I. Bill, the Servicemen's Readjustment Act of 1944, may be used for esthetics training. What is the cost of education to become an esthetician?

MR. BRINTON:

Tuition costs range from \$1,300 to \$1,700, and yes, the G.I. Bill may be used to become a licensed esthetician.

CHAIR SPEARMAN:

Can a military spouse with an esthetics license go to another state and practice right away?

MR. BRINTON:

Estheticians can transfer to 37 other states. This may not apply to a master esthetics license; however, we are not aware of any state where a license requiring 1,200 hours would not transfer.

If a state has an advanced esthetics license, the license from Nevada would be transferable. If a state does not have an advanced esthetics license, the license from Nevada would equate to the lower level license.

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CHAIR SPEARMAN:

If we pass S.B. 291, is there an opportunity to collaborate with veterans in hospitals and clinics?

SENATOR LANGE:

This industry will do everything it can to offer services to veterans coming back from combat.

MR. BRINTON:

Students who graduate with this training are hired in practices dealing with trauma. There is a huge opportunity to provide effective and meaningful esthetics procedures. Nevada is a destination state and medical tourism is popular. Students will come to this State to receive advanced esthetics education.

CHAIR SPEARMAN:

What types of financial aid are available for this degree?

MR. BRINTON:

Accredited schools have access to federal loan programs just like a university.

CHAIR SPEARMAN:

What do we need to do to ensure this legislation is correct for Nevada? We must ensure we are making advanced esthetics safe for all Nevadans and also ensure we are helping veterans.

JARON HILDEBRAND (Nevada State Medical Association):

We are a patient advocacy association and testify in opposition to S.B. 291. We are opposed to this legislation due to public health and safety concerns.

This bill brings a solution where there is no problem. There are no shortages of providers adequately trained to perform advanced esthetics services. Estheticians receive extensive training.

These are optional services, and the Legislature must ensure meaningful protections are put in place. It is appropriate for the State to require standards and licensures for various professionals.

This bill creates a new title of master esthetician, and the title is determined by a for-profit organization. We are concerned only one company will be allowed to create the requirements for licensure based on the services the for-profit company provides.

This bill will determine standards of a subspecialty designation within cosmetology. The bill also suggests a registered nurse can be a supervising medical professional for a master esthetician if within 60 miles or 60 minutes of the practice. The health and safety of Nevadans should require a higher standard of supervision.

This policy does not improve patient safety, and it could threaten patient safety by teaching more invasive and dangerous techniques. The recipients of this education will work without supervision. Master injector status is given by manufacturers of wrinkle fillers.

GARY K. LANDRY (Executive Director, State Board of Cosmetology):
We testify neutral on S.B. 291. We look forward to receiving direction on this matter from the Legislature.

SENATOR LANGE:

The overarching goal of this bill is to raise the standards of customer care and ensure the safety of Nevadans by establishing a licensing program to ensure those who perform advanced esthetic procedures have received appropriate education and training.

CHAIR SPEARMAN:

The term master is used in other professions. Please look at the definitions and address the concerns.

We will suspend the hearing on S.B. 291 due to technical difficulties with testifiers calling in. We will now open the hearing on S.B. 260.

SENATE BILL 260: Revises provisions relating to Internet privacy. (BDR 52-253)

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

I come before you to introduce S.B. 260 which proposes to expand statutory prohibitions of the sale of certain personally identifiable information of a consumer.

Our constituents have expressed frustration over the increased number of sales and robocalls which offer services or products related to searches conducted on the internet. Likewise, just the mention of a product near your cell phone will result in a targeted advertisement on social media.

These situations happen because a person's personal information—that we think is protected—was most likely sold to several different data brokers. Data brokers are companies that collect a person's personal information and resell it to other companies for marketing purposes.

These data brokers do not have a direct relationship with consumers whose data they have collected. Most people are not aware their information has been sold.

Unfortunately, consumer data is an extremely lucrative industry. According to TechCrunch, data brokering is a \$200 billion industry. Over time, a single email address can be worth an average of \$89. This value can more than double if a person is a frequent traveler. Because it is such a lucrative business, there are over 4,000 data and information broker companies worldwide.

Most well-known data brokers offer an option to remove part or all data being published. Others hide this option deep in their privacy policy. Others do not post an option at all. Of course, the most effective way to avoid information leaks would be to go fully off the grid, get a burner phone, only use a post office box and change your name to Jane Doe.

For most of us, these options are not realistic. It is so important to do everything within our power to limit the reach of data broker websites.

In 2019, the Legislature enacted S.B. No. 220 of the 80th Session to prohibit an operator of a website or online service from selling certain personally identifiable information collected from a consumer. This bill covered personally identifiable information in which a consumer submitted a verified request to the operator directing the operator not to sell such information.

I brought forth this bill after my constituents expressed concern about the privacy of their personally identifiable information. Senate Bill 260 takes the next step in protecting our constituents' personal information by prohibiting a data broker from selling personally identifiable information if a consumer submits

a verified request to the data broker directing the broker not to sell such information.

I have worked with stakeholders on a conceptual amendment ([Exhibit C](#)).

I will provide the Committee with an overview of the substantive sections of the bill. Section 2 defines data broker as a person engaged in the business of purchasing covered information about consumers who reside in this State from operators or other data brokers and making sales of or disseminating such covered information.

Section 3 requires a data broker to establish a designated request address where a consumer may submit a verified request which directs the data broker not to sell any covered information about the consumer that the data broker has purchased or will purchase.

A data broker who receives such a request is prohibited from selling any covered information about that consumer. Data brokers are required to respond to a verified request within 60 days of receipt.

If the broker determines an extension is reasonably necessary, section 3 allows an extension of 30 days. The data broker is required to notify the consumer of the extension.

Section 10 allows an operator of a website who fails to make available to consumers a notice regarding collected covered information may remedy a failure within ten days of being informed. This applies only if it is the operator's first time failing to comply with the requirements of this section.

Section 11 makes it an unlawful act if the operator of a website continues not to provide the notice regarding collected covered information within ten days and knowingly or willingly fails to comply with the requirement of such notice.

Section 12 authorizes the Attorney General to seek an injunction or a civil penalty against a data broker who violates these provisions. If the Attorney General has reason to believe a data broker has violated or is violating the provisions of section 3, the Attorney General may institute an appropriate legal proceeding against the data broker.

Section 12 provides that a district court may issue a temporary or permanent injunction or impose a civil penalty, not to exceed \$5,000, for each violation that finds the data broker has violated section 3 of this act.

In today's digital world, protecting your sensitive personal information can feel like an impossible dream. However, we can implement measures to allow our constituents a choice to opt out if they do not wish to have their personal information sold.

MATT ROBINSON (Nevadans for Data Privacy):

I will review points of the conceptual amendment, [Exhibit C](#).

Senate Bill 260 defines a data broker as a person engaged in the business of purchasing covered information about consumers who reside in this State and selling or disseminating such covered information. The definition of data brokers is broad and could capture unintended parties. The conceptual amendment revises the definition of a data broker to include an individual or entity whose primary business is the purchase of covered information.

We also propose deleting the reference to dissemination of data in section 2 because it may capture unintended operators.

The initial draft of this bill closed the window to remedy a failure to comply with the provisions from 30 days to 10 days. The amendment reverts the remedy timeline to 30 days to allow appropriate time to correct mistakes. Since companies are only afforded one right to cure period per consumer, there is no reason to further limit the rectification period.

In the days after passage of S.B. No. 220 of the 80th Session, operators were required to establish and maintain a list of consumers who have opted to not have their information sold or shared. Several companies reported to the Attorney General they do not collect or keep any consumer data. This bill actually forced the companies to start doing so. We support an amendment to exempt these companies.

The Attorney General also recommended removing the term willfully from section 11, subsection 2. The term knowingly is a more appropriate benchmark.

Fair credit reporting institutions and fraud prevention entities are exempt from this legislation because they operate to provide consumer protection.

SENATOR PICKARD:

Internet providers such as Google gather personally identifiable information; however, data collection is not their primary business. Are these entities excluded from this bill?

MR. ROBINSON:

Yes, that is correct. Internet providers are not included in this bill because data collection is not their primary business.

SENATOR PICKARD:

What percentage of data collection will be captured by this bill?

MR. ROBINSON:

I do not know the actual percentage of data collection that will be captured by this bill. The large internet providers you mentioned are self-regulating, and there is adequate coverage for those entities.

SENATOR PICKARD:

Who handles consumer requests, and how do consumers verify their requests have been honored?

MR. ROBINSON:

The process is left up to the data collection company. I will have to investigate this further.

SENATOR PICKARD:

We need to define the process for consumers.

SENATOR CANNIZZARO:

A designated verified address was required to be posted on a company's website in S.B. No. 220 of the 80th Session. The consumer could go to this address to opt out of data collection. The consumer would know if the request was received because the company must respond to the consumer's request.

VICE CHAIR NEAL:

Explain an indirect situation that would place a data broker in violation of section 3 of this act and cause a legal proceeding?

SENATOR CANNIZZARO:

I see your concern with this language. Our objective is to target those whose primary business is selling data and directly violate the statute. We do not want to target those who unintentionally violate the statute.

PAUL MORADKHAN (Vegas Chamber):

Based on the feedback we have received from our members who are affected by this bill, we testify neutral on S.B. 260. We will continue to review changes to the proposed amendment by Argentum Partners.

JOSH HICKS (Consumer Data Industry Association):

Consumer Data Industry Association is the voice of the consumer reporting industry. We represent consumer reporting agencies including nationwide credit bureaus, regional and specialized credit bureaus, and background check companies. We promote the responsible use of consumer data.

We would like to see the amendments to the bill providing exemptions for entities covered by the Fair Credit Reporting Act 15 USC section 1681. We would also like to see an exemption for entities involved in fraud prevention activities.

PHILIP RECHT (People Search Service Coalition):

Our coalition includes a number of companies that provide background checks, fraud detection and people search services. These companies qualify as data brokers under the provisions of S.B. 260.

We support strong privacy bills which are good for both industry and consumers. As an example, we supported the California Privacy Bill and the creation of a California Data Broker Registry.

Our companies provided opt-out rights prior to passage of legislation. We agree with the goal of this bill; however, as drafted, the bill covers publicly available information, and under the First Amendment, states can regulate information on the public only if they have a compelling reason to do so.

There is no legal justification for regulating data that is publically available. Including publically available data in the bill risks a First Amendment violation. We propose amending the definition of covered information in section 6 to exclude data that is made available to the public in government records, widely available media or by consumers themselves. We are available to provide suggested language used in legislation in other states.

MAYA MCKENZIE (State Privacy and Security Coalition, Inc.):

The State Privacy and Security Coalition, Inc., is a coalition of leading technology, retail, media, telecommunications, automobile and payment card companies that promotes the common business interests of its members in the privacy and cybersecurity sectors. Our coalition also includes eight trade organizations.

We testify neither in support or opposition to S.B. 260. We are focused on refinements to this legislation. The conflicts and operational nature of this legislation make the text critically important. We can only make an accurate assessment of the bill's impact on businesses and consumers through careful review of the text. Every word matters.

We ask the committee not to approve the bill until the language in the amendment is vetted. This patchwork regulation adversely impacts businesses and consumers in Nevada. It will also impact compliance costs by mandating the creation of conflicts and different compliance solutions.

It is also important to understand that two other states have new privacy laws that will take effect in 2023. We have yet to see the real-world impact of this legislation.

There are several additions that will create a more workable and focused bill. These include Gramm-Leach-Bliley Act of 1999, the Driver's Privacy Protection Act of 1994 and the Fair Credit Reporting Act.

Provision of this information by information services is very important in fighting fraud and identity theft. Nevada and Nevada small businesses will be harmed in certain cases. Exemption ensures businesses can continue to use their current compliance solutions by promoting consumer protection.

OMAR SAUCEDO (AT&T):

AT&T was part of a coalition of businesses that helped pass Nevada's privacy law, S.B. No. 220 of the 80th Session. We want to help pass meaningful privacy reform this Session.

We are testifying neutral due to the conceptual amendment presented today by Argentum Partners. Due to the complex nature of privacy legislation, we need to review the amended text of the bill.

CHAIR SPEARMAN:

Data privacy appears to be a pervasive problem in the civilian population. How does this compare to veterans and military personnel?

SENATOR CANNIZZARO:

Veterans and military personnel fall within the protections of this bill as well as the current statute covering privacy issues in our State.

CHAIR SPEARMAN:

Can you find out how many of Nevada's military personnel and veterans have been harmed by the sale of their personally identifiable information?

SENATOR CANNIZZARO:

Yes, I will try to obtain this information. The policy in S.B. 260 will protect consumers.

CHAIR SPEARMAN:

We will close the hearing on S.B. 260 and reopen the hearing on S.B. 291; which provides for the licensure and regulation of master estheticians and instructors of master estheticians.

TIFFANY GAGLE:

A master esthetician license is important in helping estheticians become more competitive in the field of esthetics.

PAIGE EASLEY:

I am in support of S.B. 291. A license reflecting advanced skin care training will be helpful in job placement as well as in adherence to advanced esthetics regulations.

The training I received from the National Institute of Modern Aesthetics helped me understand esthetics regulations. We were educated about esthetics services an esthetician is permitted or not permitted to perform. Regular esthetician licensing does not focus on advanced esthetics services. Clients will benefit from advanced skin care services performed by a licensed master esthetician.

SENATOR LANGE:

We are not tied to the language of master esthetician for the expanded education in skin care. Oregon, for example, uses the language advanced practice esthetician and this could be an option for our State. We will research the options and report to the Committee.

CHAIR SPEARMAN:

We will close the hearing on S.B. 291 and open the hearing on S.B. 293.

SENATE BILL 293: Revises provisions relating to employment. (BDR 53-907)

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

I am pleased to present S.B. 293, which seeks to stop the practice of requesting salary history from a potential employee.

In the Eightieth Legislative Session, we took a monumental step in Nevada by passing Equal Pay for Equal Work legislation; however, we must recognize the gender pay gap still exists in this Country.

To demonstrate this fact, I will share a personal story. My mother received an unexpected check for additional pay from her employer. Another employee made an allegation there was not equal pay for equal work in her place of employment. The other employee sued and won.

My mother fell into the category of pay discrimination for women in her workplace. This illustrates the problem in our State and our Country. She received the check because she was paid disparately.

This is a problem we can address with S.B. 293. We can close the wage gap between the salaries of men and women. For people who say the gender pay gap no longer exists and this is a problem of the past, my mother's story occurred just five years ago.

The gender wage gap costs women in the U.S. \$840 billion each year. Current estimates show women on average make 82 cents to every dollar men earn. Today, in 2021, a woman has to work a year and three months to earn the same amount of money as her male counterpart. This is evidence of the gender wage gap.

On average, a woman just starting her career will earn \$406,760 less over a 40-year work life compared to a man. For women of color, the inequity is even more pronounced. On average, a Black woman will earn \$964,400 less throughout her career than her male counterpart, while a Latina woman earns on average \$1.1 million less than her male counterpart.

I look forward to an Equal Pay Day at the Legislature when a woman can say she makes as much as her male counterpart.

This imbalance has been further exacerbated in the last year due to the Covid-19 pandemic. Women have lost the majority of jobs due to the economic fallout from the pandemic. Many women have been forced to drop out of the labor force altogether and are sadly disproportionately represented in the industries most devastated by the pandemic.

The passage of equal pay in the Eightieth Session was a monumental step in addressing the gender pay gap, but there is still work to be done in creating parity in pay for men and women. Requesting job applicants' salary histories has been a common practice for employers. Businesses often use previous salary information to calculate new hire compensation—a process that has a disproportionately negative impact on people of color. This process perpetuates pay disparity between women and men.

Employers' requests for applicants' salary histories force women and people of color to carry lower earnings and pay discrimination with them from job to job. Even if the employer is willing to pay an applicant significantly more than what he or she previously made, the negotiation process is likely to be affected by anchoring the applicant to his or her lower earnings.

Even when factors like education, industry, race, region and work experience are considered, the wage gap between men and women remains. Employers who rely on salary history to select job applicants and to set a new hire's pay

will tend to perpetuate gender- and race-based pay disparities in their workforce.

Some employers claim they need to know the salary history of applicants to determine the market value of an applicant or the position. But salary is not a neutral, objective factor. Salary history often reflects the historical market forces which value the equal work of one sex over the other. Simply put, relying on salary history leads to depressed wages for women and people of color.

To address these inequalities, 19 states and 21 localities have enacted salary history bans. Those states include Alabama, Colorado, Delaware, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon and Pennsylvania. These same provisions should be implemented in Nevada statute.

Some of you may find S.B. 293 familiar because the Legislature has considered similar provisions to address certain discriminatory practices relating to employee compensation.

The Legislature enacted S.B. No. 166 of the 80th Session and S.B. No. 177 of the 80th Session to provide recourse for employees facing unlawful employment practices and discrimination in the workplace.

Several changes to file a complaint with the Nevada Equal Rights Commission (NERC) were enacted in S.B. No. 166 of the 80th Session. This bill also expanded remedies the Commission may order when responding to unlawful employment practices. Senate Bill No. 177 of the 80th Session helped expedite civil action as a result of certain unlawful employment practices.

Senate Bill 293 takes the next step in preventing pay discrimination by prohibiting potential employers from inquiring about an applicant's salary history. The bill also authorizes a person who believes he or she has been discriminated against by an employer's inquiry of salary history to file a complaint with NERC.

One of the biggest questions that may arise from S.B. 293 is whether this type of policy will achieve the intended effect of narrowing the wage gap between men and women.

Early research in some of the jurisdictions adopting salary history bans does show the wage gap between men and women has narrowed. Overall this bill will increase wages of women and particularly those women who have experienced an earnings penalty due to things like childbirth. It has had an impact for women over the age of 35 who have children 5 years of age or older. This demonstrates salary bans are helping to close that wage gap.

According to a study by the Technology and Policy Research Initiative at Boston University School of Law, the largest aspect affecting gender wage gaps derives from the salary bargaining process. The study also showed that wage disparities are not based on education, experience, occupation, industry, region or hours worked.

Enactment of salary history bans is showing employers are posting wages more often. We also see increased pay for those who do change jobs. Women showed a 6.4 percent salary increase and nonwhite applicants a 7.7 percent salary increase when they change jobs.

Early research is showing that salary history bans have the intended effects. Planning questions about salary history levels the playing field in the negotiation process.

I will review the substantive sections of the bill.

Section 1 and sections 9 through 12 prohibit certain private and public employers from inquiring about an applicant's wage or salary history. These sections also prohibit relying on wage or salary history to determine whether to offer employment or the rate of pay for the applicant.

If the applicant does not provide wage or salary history, the employer may not refuse to interview, hire or promote an applicant. An applicant is not prohibited from voluntarily disclosing wage or salary history, and an employer is not prohibited from using the voluntarily disclosed information to determine the rate of pay of the applicant. In addition, a potential employer is not prohibited from asking an applicant about his or her wage or salary expectation.

Section 1 makes violations of these employment provisions an unlawful employment practice. An employer, employment agency or any agent or representative found to have violated the provisions of this bill may be subject

to an administrative penalty of not more than \$5,000 for each violation. Additionally, the Labor Commissioner may recover any costs and attorney's fees incurred in investigating violations.

Sections 3 and 5 provide the prohibitions implemented by this bill do not apply to employment outside of this State, religious organizations, nonprofit organizations and certain businesses on or near an Indian reservation.

Section 6 authorizes a person who believes he or she has been injured by an unlawful employment practice relating to an employer's inquiry of wage or salary history to file a complaint with NERC.

In cases where NERC concludes an unfair employment practice has occurred, section 7 concludes the Commission must issue a letter to the person making the complaint of his or her right to sue.

Finally, section 8 authorizes a court to award the person the same legal or equitable relief that may be awarded to a person under Title VII of the Civil Rights Act of 1964, if the employee is protected under the provisions of Title VII or certain provisions of existing state law.

In Nevada, women earn 83 percent of what their white male counterparts earn. Black women earn just 65 percent and Latinas earn only 54 percent compared to White men. At the current rate, the gender pay gap nationally will not be closed until 2044. We must combat this disparity in Nevada.

SENATOR NEAL:

Will any costs be incurred by local governments?

SENATOR CANNIZZARO:

The local governments have not reached out to me with any concerns. I do not expect any new costs for local governments because they already post salary ranges for positions.

SENATOR NEAL:

Section 1, subsection 1, paragraph (c) includes the language refuse to promote. Does this provision cover a situation where a female employee is promoted but paid less than the previous male counterpart?

SENATOR CANNIZZARO:

The example you stated is the reason the gender pay gap still exists. Section 1, subsection 1, paragraph (c), provides that an employer cannot refuse to promote applicants if they refuse to divulge their salary histories.

A female employee who is promoted but paid less than the previous male counterpart falls within the equal pay provisions passed during the Eightieth Legislative Session. This bill prohibits an employer from refusing to promote an applicant because he or she will not divulge salary history.

SENATOR NEAL:

The employment process of obtaining a promotion is not transparent. Clear language in this bill will help women of color navigate through what has been a subjective process resulting in lower salaries for hundreds of years.

SENATOR CANNIZZARO:

Evidence is showing that salary history bans will help to correct pay disparities. Parity cannot be achieved until the negotiation process is more transparent.

SENATOR NEAL:

Who does the representative refer to in section 1, subsection 5?

SENATOR CANNIZZARO:

The representative refers to an employer, an employment agency or the human resources director. We want to ensure remedies are available to those who experience an unfair employment practice.

SENATOR NEAL:

I worked on a different bill and was informed that employees of a government entity cannot be liable in a civil case. I see differences in the reaction of the Legislative Body when a bill that fights discrimination and disparity is sponsored by a Black woman and when a bill is sponsored by a White person.

Disparities are not only happening out in the world; they are happening in this building. I appreciate that you are sponsoring this bill, Senator Cannizzaro.

SENATOR CANNIZZARO:

Anyone in this building who thinks that a Legislator, based on color or gender, is not equally prepared to bring forth language to address discrimination and

disparities is incorrect. Fighting discrimination is part of the job we have been hired to do.

A threat of killing a bill is wrong, and I will assist you with this issue. Senator Neal, you are a fierce fighter for what is right. We can all do more to work with the same intention as you. A threat such as you mentioned will not be tolerated.

SENATOR SETTELMAYER:

I appreciate S.B. 293. I am disturbed to hear a fellow member of this Body has had such an experience. I would like to help correct the injustice done to you, Senator Neal.

CHAIR SPEARMAN:

Senator Settelmeyer, your voice is appreciated.

I heard Congressman Steven Horsford say, "Many say after the pandemic we have to get back to normal." He responded, "I hope we don't."

A National Public Radio article, dated March 7, "*Why Us?: A Year After Being Laid Off, Millions Are Still Unemployed*," explains how many people have been marginalized and disparities have been normalized. A McKinsey Global Institute study predicts it could take two years longer for women and people of color to recover jobs lost during the pandemic. Senator Cannizzaro, have you examined covert or latent activities that could arise to circumvent what this bill seeks to do?

SENATOR CANNIZZARO:

Equal Pay Day in March is dedicated to raising the awareness of the gender pay gap. On average, women earn 82 cents for every dollar men earned in 2019. This is an average of women's salaries; women of color make less.

CHAIR SPEARMAN:

There are three tiers of unequal pay for women.

SENATOR CANNIZZARO:

Senate Bill 293 is essential to the recovery of our State and economy. We need to support working families. During the pandemic, women suffered the highest proportion of lost jobs. We need to build back a stronger and better economy.

I am working to strengthen this bill so there are not unintended loopholes. We do not want to prohibit discussion about salaries; however, salary history should not be the starting point of salary negotiations. We want to hold the employers who are bad actors accountable and also impact the wage gap by enforcing salary history bans.

CHAIR SPEARMAN:

In 2017, we viewed a presentation by the Department of Health and Human Services regarding how students were doing in school. Most of the students who lived in single-parent homes did not do as well as students in households with two parents.

Why does this happen? The research found that most of the single parent households were headed by women who had more than one job. The time they could spend with their children was significantly less than a two-parent household. Pay inequity is an economic security issue for families.

ANDREA JOHNSON (National Women's Law Center):

We support Nevada joining the movement to ban the harmful practice of requiring salary history in employment practices. This proactive measure will help insulate Nevada businesses against wage gaps arising in their workforce. This bill will also reduce exposure to unequal pay lawsuits.

We are seeing more and more employers, including state and local governments, disavow this practice. Fourteen states have now passed bills prohibiting salary history in employment practices. These bills were passed with bipartisan support. Research shows these bills are helping to close racial and gender wage gaps in these states.

Millions of women, particularly Black and Latina women, were forced out of the workforce due to the crisis. These women want to reenter the workforce. As businesses seek to rebuild after the pandemic, it is important to prohibit reliance on salary history tools. This will help Nevada's wage gap from worsening and also help businesses more effectively and equitably rebuild. It is important that job seekers reentering the workforce after the pandemic secure pay that accurately values their worth.

All states that have passed similar legislation included employers of all sizes. Regardless of employer size, this provision is easy to comply with—just do not ask for salary history.

We support including the exception to allow employers to rely on salary history if voluntarily provided. While we support this exception, we do not want this exception to become a loophole.

We also encourage language saying that an employer may rely on salary history to support setting a higher salary than originally offered. We have seen this language in other states. This reliance must not create a gender-based wage gap. This would be unlawful under Nevada's equal pay law.

KATIE ROBBINS (Planned Parenthood Votes Nevada):

We support S.B. 293. Discriminatory practices such as requiring wage history can negatively impact many applicants and lead to strong candidates being overlooked for positions. This practice also continues the inequities of pay received between men, women and people of color.

CHRISTIAN GABROY (Nevada Justice Association):

We support S.B. 293. Since 2004, we have helped employees gain fair pay and fight against harassment and wrongful termination. This bill provides an effective measure to deal with discrimination. I see discrimination every day in my practice. Women earn only 82 percent of what their male counterparts earn. The statistics are even worse for minorities.

VIRGINIA VALENTINE (Nevada Resort Association):

We support of S.B. 293. The Nevada Resort Association represents some of the largest employers in the State. We agree with the sponsor the provisions of this bill will help level the playing field for jobs applicants and ensure equity in hiring.

JESSICA STENDER (Equal Rights Advocates, U.S. Equal Employment Opportunity Commission):

We support S.B. 293. As testified earlier, women earn only 82 percent of what their male counterparts earn. Women of color face a significantly larger wage gap. This wage gap is not only harmful to women but also to their families. Women are often the primary or cowage earner for the family.

We are pleased to see Nevada will likely join the growing number of states that have passed legislation to ban inquiry and reliance on salary history. Salary history requirements in employment practices are a major contributor to the gender- and race-based wage gap.

An employer's inquiry into a prospective employee's past pay might seem innocuous, but because women and especially women of color earn less than their male counterparts in almost every industry and occupation in this Country, such reliance on prior salary results in perpetuating gender- and race-based pay gaps.

A growing number of companies have recognized the harm of perpetuating past pay discrimination by voluntarily ceasing to ask prior salary questions. The Society for Human Resource Management reports salary history should not be a factor in setting compensation.

I align the remainder of my comments with those who have testified in support of this bill and potential amendments.

CAROLINE MELLO ROBERSON (National Abortion and Reproductive Rights Action League, Pro-Choice Nevada):

We support S.B. 293 and agree with the comments of those testifying in support.

TESS OPFERMAN (Nevada Women's Lobby):

I want to express my appreciation to Senator Cannizzaro for bringing forward such a reasonable and necessary bill.

As a woman working to move forward in my career, I do not want my salary history to determine my future salary. It is an unfair employment practice and contributes to pay inequality for women. My experience, my qualifications, my references, as well as an interview are appropriate ways to determine whether I am capable of performing a job and the pay I should receive. Asking what salary I expect or need is another appropriate way to decide my pay rate.

An inappropriate way to determine my pay rate is to ask about prior salary history. Salary history questioning is one of many ways that our employment systems contribute to pay inequality.

I urge you to support S.B. 293 and pass policies to break systems that maintain inequality.

MARLENE LOCKARD (Nevada Women's Lobby):

We support S.B. 293 and echo the remarks of those testifying before us. According to the Institute for Women's Policy Research, if current trends continue, Hispanic women will wait 232 years and Black women will wait 108 years for equal pay of their male counterparts. This is not acceptable.

Women with a bachelor's degree will lose up to \$713,000 over a lifetime, compared to the salaries of their male counterparts. This is an economic issue that impacts all of society, not only women.

ALEXIS MOTAREX (Nevada Chapter Associated General Contractors of America):

We support the intent of the bill; however, we have concerns with the language as currently drafted. It should be lawful for an employer to seek information regarding prior pay. There are some circumstances where it is helpful to both the prospective employee and the employer to have a clear understanding of wage history and expectations. The Equal Pay Act seeks to prohibit reliance on wage history to protect against discrimination. We would like to see the language in S.B. 293 changed to more closely reflect the Equal Pay Act.

Section 1, subsection 1, paragraph (a) and section 1, subsection 1, paragraph (b) appear to conflict with each other.

We are also concerned with the language in section 1, subsection 2. The language without prompting seems ambiguous. An employer and a prospective employee may have different perspectives on how the topic of salary history occurred.

AMBER STIDHAM (Henderson Chamber of Commerce):

While we agree with the overall intent of this bill, we are technically in opposition to S.B. 293. I have submitted opposition testimony ([Exhibit D](#)).

MR. MORADKHAN:

The Vegas Chamber testifies neutral on this bill. We believe there should be equal pay for equal work regardless of gender.

Senate Bill 293 codifies the U.S. Court of Appeals for the Ninth Circuit court ruling of *Rizo v. Yovino*, 950 F.3d 1217 (2020) as it relates to wage history. This court case directed employers would not be able to ask wage history as part of the application process.

This bill is balanced between employers and employees and has clear intent on what is trying to be achieved.

CHRISTOPHER SEWELL (Chief Operating Officer, Department of Employment, Training and Rehabilitation):

The Department of Employment, Training and Rehabilitation stands ready to assist Senator Cannizzaro with this bill.

NICK VANDER POEL (Reno Sparks Chamber of Commerce):

We testify neutral on S.B. 293 and echo the comments by the Vegas Chamber.

SENATOR CANNIZZARO:

It is critical that we continue to work toward combating the disparity in Nevada. For those in opposition, I am happy to work with you on the definitions. The intent of this bill is to implement policies that will have an impact on the wage gap.

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CHAIR SPEARMAN:

The type of legislation in S.B. 293 will help bring equality in pay and is important legislation.

We will close the hearing on S.B. 293 and adjourn at 11:23 a.m.

RESPECTFULLY SUBMITTED:

Kim Cadra-Nixon,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

| EXHIBIT SUMMARY | | | | |
|------------------------|-----------------------|-----------------------|-----------------------------------------------|-------------------------------------------------------------------|
| Bill | Exhibit Letter | Begins on Page | Witness / Entity | Description |
| | A | 1 | | Agenda |
| S.B. 291 | B | 1 | Senator Roberta Lange | Proposed Amendment by The National Institute of Modern Aesthetics |
| S.B. 260 | C | 1 | Senator Nicole J. Cannizzaro | Conceptual Amendment by Argentum Partners |
| S.B. 260 | C | 1 | Matt Robinson / Nevadans for Data Privacy | Conceptual Amendment by Argentum Partners |
| S.B. 293 | D | 1 | Amber Stidham / Henderson Chamber of Commerce | Opposition Testimony |