MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Eighty-first Session
April 6, 2021

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:01 a.m. on Tuesday, April 6, 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 Marilyn Dondero Loop, Senatorial District No. 8
Senator Julia Ratti, Senatorial District No. 13

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Alfredo Alonso, Southern Glazer's Wine & Spirits; Nevada Beer Wholesalers Association
Leif Reid, Southern Glazer's Wine & Spirits; Nevada Beer Wholesalers Association
Michael Hillerby, Anheuser-Busch
Katie Jacoy, Wine Institute
Brian Reeder, Molson Coors
Tom Clark, Distilled Spirits Council of the United States

Jeremy Warren, Revision Brewing Company
Elisa Cafferata, Director, Department of Employment, Training and Rehabilitation
Lynda Parven, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Jeff Frischmann, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Joe Heck, DO, Nevada Osteopathic Medical Association
Beth Slamowitz, Pharmacy Policy Advisor, Division of Health Care Financing and Policy, Department of Health and Human Services
Sharath Candra, Administrator, Real Estate Division, Department of Business and Industry
Bryan Wachter, Retail Association of Nevada

CHAIR SPEARMAN:
I will open the hearing on Senate Bill (S.B.) 307.

SENATE BILL 307: Revises provisions related to the sale of alcoholic beverages. (BDR 52-945)

SENATOR MARILYN DONDERO LOOP (Senatorial District No. 8):
This bill builds upon our previous efforts concerning the sale and distribution of alcoholic beverages involving the three-tier system: producers and importers, distributors, and retailers.

Almost every session, the Legislature has contemplated and enacted legislation involving malt beverages and distilleries, and in the past decade Nevada's brewery and distillery businesses have grown each year. According to the American Distilling Institute, craft distilling grew into almost a $1.8 billion business in 2019, directly employing thousands and indirectly supporting thousands more in related businesses. At retail, these sales were reportedly worth nearly $3.2 billion.

Under Nevada's three-tier system, it is our local distributers and our middle tier that gets the products of these craft breweries and distillers to market. Nevada's distributors also employ thousands of Nevadans and directly provide goods to Nevada retailers. Preserving the independence of the middle distribution tier is essential for ensuring that distributors have the freedom to sell and promote all types of beers, wines and distilled spirits and allows the

growing craft breweries and distilleries to have access to the essential distribution they need.

Recognizing the growing craft brewery and distilling industry while respecting the three-tier system is at the heart of this bill. I introduced this bill for three simple reasons:

• To ensure the continued independence of the distributor tier, making certain that small brewers and distillers have access to the market. Without distributor independence, small brewers and distillers could be shut out due to the constant influence of large suppliers with an enormous market share.

• To ensure the orderly and consistent regulation and enforcement of liquor laws that protect the consumer and businesses licensed in Nevada.

• To continue to encourage our vibrant craft beer industry to continue to grow and thrive.

Alcoholic beverages are generally governed by the Twenty-first Amendment to the U.S. Constitution. However, individual states control the sale of alcohol within the state, distribution of alcohol within the state, importation of alcohol into the state and statues regarding who can possess alcohol in the state. In turn, state laws often assign different roles and responsibilities to different jurisdictions regarding these issues. Senate Bill 307 contains several provisions addressing these issues, making various changes to the regulation of brew pubs, craft distilleries, suppliers and wholesalers.

ALFREDO ALONSO (Southern Glazer's Wine & Spirits; Nevada Beer Wholesalers Association):
We had no intention of coming before you with another liquor bill this Session, but here we are. Historically, these bills are contentious because this is a heavily regulated industry. This is an industry where it took a constitutional amendment to ban the product and another to bring it back, and it has been heavily regulated ever since.

Every state has different issues, and Nevada has done an excellent job of dealing with the issues while spending very few dollars on the enforcement and regulatory side. But these issues are often national, and they affect us all eventually. In many cases a franchise might assist with your buildings, with

your infrastructure. These are Nevadans that have been here for generations, and every inch of their property, every truck they drive and every employee they pay is their own. The independence of this tier is paramount to our system working properly, and more importantly, for new brands to get to market.

We are here today because of some behavior that has happened over the past few years that we felt we had little choice but to ask for help. What you have before you is a good bill regulating some difficult issues that have hurt our wholesalers significantly. And it is happening during a pandemic.

We are still willing to have conversations with those who have issues with the bill. We have pared it down in an attempt to do as little as we need to but still enable our clients in being able to operate properly as independent wholesalers. Mr. Reid will also go into a change we are suggesting to address Mr. Warren's concerns.

LEIF REID (Southern Glazer's Wine & Spirits; Nevada Beer Wholesalers Association):
Let me provide some historical context. In 2009, Miller and Coors merged to form a company known as Miller Coors, now known as Molson Coors. The Legislature enacted a bill in 2009 to create a number of protections being amended in *Nevada Revised Statutes* (NRS) 597.157 and 597.162. In 2017, this Committee heard a similar bill in response to the merger of Anheuser Bush with Miller Coors.

At that time, the Legislature also passed additional changes to NRS 597.162 that codified the consent decree provisions the U.S. Department of Justice (DOJ) imposed on Anheuser Busch. The purpose was to make sure wholesaler independence would continue, small brewers would not be harmed and wholesalers would be able to distribute those brands and allow them to grow nationally.

We codified those provisions in Nevada to make sure that happened. A number of other states have followed. As a result of that legislative action in Nevada four years ago, and more recently in South Carolina and Michigan, Anheuser Busch has taken action that negatively impacts wholesalers in those states. Therefore, S.B. 307 is proposed to ensure that wholesaler independence continues and to ensure small breweries and craft breweries are allowed to

flourish, despite the concentration of monopoly power that exists in the large breweries.

I will walk you through the bill.

In section 1 of S.B. 307, existing law prohibits a supplier from unreasonably withholding or delaying approval of any sale or change of control of a wholesaler. Section 1 adds a 30-day time requirement to existing law, requiring supplier approval of a proposed sale transaction if the supplier to be substituted meets reasonable standards.

In section 2 of the bill, existing law prohibits a supplier with more than one wholesale distributor of its brands within the State from discriminating between such wholesalers with respect to terms or provisions of their franchises. Section 2 provides that pricing and freight charges are explicitly among the terms of a franchise that a supplier may not discriminate between such wholesalers.

Section 3 of the bill prohibits a supplier from requiring a wholesaler to keep minimum inventory of the supplier's alcoholic beverages or other products for a period of time that exceeds the number of days of credit extended to the wholesaler by the supplier. It also prohibits suppliers from requiring wholesalers to make payments under terms that are materially different from the payment terms the supplier imposes for its own payments.

The last part of section 3 prohibits suppliers from attempting to circumvent Nevada law by requiring wholesalers to waive the rights and remedies available to them under Nevada law as part of the terms and conditions of their franchise or distribution agreements with suppliers.

Section 4 authorizes brew pubs operating in Nevada to produce and sell an additional 20,000 barrels above what is currently authorized under Nevada law for export out of the State. This is one section we intend to clarify in our amendment.

Sections 5 through 7 contain technical amendments. Section 5 requires local jurisdictions to ensure that applicants for licenses are not operating within multiple tiers of the three-tier liquor distribution system. Section 6 changes the term "vendor" to "out-of-state supplier" for consistency in the statute and also

to help ensure applicants for licenses are not participating in multiple tiers of the three-tier system. Section 7 revises an existing exemption for consumers who import a gallon or less of alcoholic beverages per month for household or personal use and requires that the exemption applies to the person who brings the product into the State.

SENATOR DONDERO LOOP:
I have encouraged the proponents of the bill to have conversations with the opponents of the bill, and I have also talked with both sides.

MR. ALONSO:
Senator Dondero Loop asked us to talk, and we did that; it was quite spirited, as you can imagine. Mr. Reid and others worked into the night last night in an attempt to at least clarify some of these provisions.

Section 1 does not require the supplier to approve a change of ownership. We are trying to avoid a situation like the Bonanza sale, which put a wholesaler who had to sell the business in a position where the supplier would not give approval, even though the statute clearly says approval cannot be unreasonably withheld. The brewery sat on it and sat on it, and ultimately, it cost the wholesaler a significant amount of the value of the business. There is nowhere else in commerce where that could happen. Yet it happened here simply because we had a large brewer who knew it could push around a small distributor.

If you read section 1 carefully, you can see that it says, "A supplier shall approve," but only "if the person to be substituted ... meets reasonable standards." We are not saying the supplier has to approve the change; we are only saying a decision must be made within 30 days. If the time period is not perfect, we are willing to have that conversation.

Section 2 of the bill means suppliers cannot discriminate on freight and price. It does not mean you have to give everyone the same price, and Mr. Reid has been working on some language to clarify this.

There was also confusion over what we were trying to do with section 3, subsections 9 and 13. Subsection 9 simply means if a supplier requires inventory, the supplier must give the wholesaler credit for those days of inventory. We are not saying suppliers are required to give credit of any kind

unless they require a number of days of inventory. If the supplier requires the wholesaler to have 20 days of inventory, it is only fair to also supply them with 20 days of credit.

Just as an aside, NRS 597.162 already has a provision that requires wholesalers to give their customers credit up to 45 days before they go to cash on delivery (COD). During this Covid-19 pandemic, wholesalers are giving customers as much credit as possible, even beyond the statute, because we want them to survive. We would like them to stick around, all of them. Unfortunately, in some cases our suppliers do not think the same of us. We have one supplier who cut our credit just before Session. It is not fair, and all we are asking for here is fairness.

Section 3, subsection 13 is also simple. The credit terms given to a wholesaler by a supplier should be the same terms given to a supplier by a wholesaler. If a supplier owes money to a wholesaler, they ought to be paying them back in the same manner in which they would like to get paid themselves. Very simple.

Regarding the brew pub provision in section 4, some brewers indicated they would like to ship out and export more. It is important for them to get bigger without affecting those caps. Section 4 allows them to sell an additional 20 barrels outside the State. It allows them to grow without affecting the marketplace in Nevada. We were happy to assist there.

Section 7 of the bill is intended to clarify a statute put in place some years ago that allowed someone to go to a distillery out of State and bring back as much as a gallon a month. There has been confusion as to what "import" means, so we are changing "imports" to "entering this State with." This should make it clear for tax purposes and for any other regulator in the State.

We hope to get you an amendment for S.B. 307 today. When you see it, you will see that we are not trying to do anything out of the ordinary here and are asking for simple fairness.

SENATOR NEAL:
In section 2, subsection 13, what kind of leeway will the amendment give? When it says, "materially different terms when making payments," it did not seem to allow a price justification or when someone acts in good faith. What will your amendment do to that subsection?

MR. ALONSO:
We are trying to make it clear that you simply cannot sit on money that is owed. For example, a supplier might say to a wholesaler, "I've got these coolers that I'd like you to distribute to customers," and withdraw the cash for the coolers from the wholesaler's bank account. The wholesaler cannot do that because it is illegal for a wholesaler to provide anything of value. We then have to tell the brewer, "You're going to have to reimburse the money you got for the coolers. We can't give them to retailers." The supplier answers, "We'll be glad to pay you back for them; we understand the law." But three months goes by, and then five months goes by, without the return of the money. We believe we are essentially breaking the law at that point because we have not been reimbursed.

It is important to note that suppliers take the money they are owed right out of our bank accounts. The wholesaler does not have a lot of say in this. We want to require suppliers to give wholesalers the same credit terms suppliers expect from wholesalers. If a shipment is COD, it has to be paid for immediately.

SENATOR NEAL:
Some of the terms you are mandating through statute are typically negotiated between the parties. In section 1, subsection 5, it says, "The provisions of this section may not be modified by agreement." Why are we restricting the ability to contract what those terms would be and the manner? You are codifying it in statute where it is permanent, and those terms cannot be adjusted at all.

MR. REID:
Let me provide some context. As Mr. Alonso mentioned earlier, liquor distribution is an industry that has been highly regulated and was involved in two amendments to the U.S. Constitution. The most recent of those amendments and the acts of Congress that followed in the 1930s were heavily focused on mitigating the concentration of market monopoly power by breweries. There have been statutory protections to help address the inequality in market power and position that exist between these mega-breweries and their local distributors. One of the things that flows from the Constitution and into Nevada law is that it is in the State's interest to ensure that there is a separation of tiers within the alcohol distribution system so that the suppliers do not control all the tiers.

Four years ago, the Legislature enacted NRS 597.162 in response to yet another mega-merger of breweries. This provision limits what a supplier can do in its dealings with wholesalers. It codified a provision the DOJ imposed on Anheuser Busch, saying that it could not request from wholesalers financial information about the sales of other competing products. This is one way Anheuser Busch tries to exert control over wholesalers. Four years later, they are still doing this.

We are before you now asking for more protections because Anheuser Busch decided that since wholesalers in Nevada are not going to provide information about their sales of other brands, Anheuser Busch will cut wholesalers' credit. Wholesalers are required to keep 15 or 20 days of product on-hand, and Anheuser Busch has recently required wholesalers to pay for that product COD. When wholesalers import alcohol into the State, the first thing they do is pay the excise tax for that importation.

Mr. Alonso also mentioned that by statute, wholesalers are required to provide credit to retailers. Wholesalers, in the tough economic climate that exists during the pandemic, are being required to pay COD for the product they receive and pay excise tax when they receive it, and then they do not receive payment from the retailer until 45 days after they sell it. It has created a difficult situation. I would point out that it is a situation that would not exist for wholesalers in Nevada if they only sold Anheuser Busch products. If a wholesaler is not selling the products of small breweries, Anheuser Busch does not ask for financial information from those sales or withdraw credit, and they would not be on COD terms.

That is why we are where we are and why we are asking for the increased protections in this bill. It is because of the coercive effect of the large breweries, where they give disincentives through things like revoking credit from their wholesalers to discourage them from allowing smaller brands to have a market in Nevada.

SENATOR NEAL:
You implied that you all worked this out last night and they are no longer going to restrain trade. That seems like a big win, if that is what you did.

SENATOR PICKARD:
I was intrigued by the statement that these are local people. I recognize that most of the wholesalers are locals, but it seems to me that we are also talking about some billion-dollar national and multinational wholesalers that are doing business in Nevada. Can you give me a feel for how much market the local wholesalers currently have?

MR. ALONSO:
You will find wholesalers that are as small as a Mom-and-Pop operation literally carrying one brand and trying to make a go of it, more organized small shops like Valley Distributors in Fallon that has a handful of employees, Blach Distributing Company in the rural counties, and Morrey Distributing Company and New West Distributing up north. Then there are the larger distributorships like Southern Glazers Wine & spirits, which is in 45 states. It runs the gamut. We have a myriad of sizes, types and brands. Some of those companies do not practice the behaviors this bill is meant to counteract.

In comparison, we are talking about some massive suppliers, international companies, that are working against the small Nevada wholesaler. Negotiating on a contract is not easy, and many times these folks do not have a choice.

SENATOR PICKARD:
Having been a contractor for many years on a construction site, I have some insight into how difficult contracts can be to negotiate, especially when you are small.

I would like to point out that Southern Glazer's Wine & Spirits, for example, is in 45 states. They are not small or unsophisticated; they are not a Mom-and-Pop operation where Pop jumps into the truck if one of the drivers does not show up for work. I am a parent. I have seven kids in a blended family, and four of them are six months apart. When they were young, I often had to intervene in a spat that they should have worked out for themselves. I feel like I am in that spot now. We have these sophisticated market participants who are asking the Legislature to step in and settle their spat. My penchant for deregulation makes me want to say, "Guys, you're businessmen. Go figure this out." I will hand it to you, however, that we have interjected ourselves already, so as a State we are stuck, and we need to address this.

Part of my concern is that we are starting to enter into contract terms, and as Senator Neal suggested, that really should be worked out amongst you. Can you explain why we need to get into the weeds on issues like credit? You suggested that Anheuser Busch cut credit for wholesalers who did not give them financial data as to what their sales were for other brands. Ultimately, the suppliers are forcing wholesalers to take product, yet we have capped product in statute. Can you explain why we capped these things in statute and why it is important for the Legislature to get involved and require specific credit terms?

MR. ALONSO:
This bill does not require specific credit terms per se. We did not feel that was appropriate. The one issue we took up has to do with the fact that some suppliers require wholesalers to take a set amount of inventory. In some cases, suppliers push inventory out to wholesalers that they have not ordered and do not want or need. Imagine what happens when a wholesaler's credit is cut. How would you possibly have a conversation about this with respect to any terms or conditions when those terms and conditions change unilaterally on a regular basis?

That is why we are before you. The wholesalers have no say. Consider Mr. Moretto in Valley Distributing in Fallon, which is a small company. If he gets his credit cut, he still has to pay the excise tax to the State. And guess what? That supplier may not have paid him back yet for something that happened six months ago. That is the situation this section of the bill is intended to prevent. We do not want to get into contracts, but there are some basic fairness issues here that wholesalers have no say over. Nothing is going to change when the marketplace is controlled by two or three large brewers.

SENATOR PICKARD:
I disagree to some extent. When we are talking about materially different terms, we are talking about the terms of the contract.

You raise a question that I want to ask of the suppliers. Why are we allowing suppliers to control the inventory of the wholesalers anyway? I would think in the normal course of business, the business gets to decide its own inventory and what risks it takes.

When we are talking about the relationships between the wholesalers and the suppliers, why are we not insisting that they first look into arbitration or

mediation to settle these disputes before we start taking a lot of Legislative time? Why is the appropriate approach to this problem to lock something in for two years and then go at it again in the next Session? I see this as frankly a waste of Legislative time, when these are really market-induced questions and concerns that might change from one year to the next. Instead of requiring the terms to be inserted in statute, why are we not inserting a requirement that the two parties submit to binding arbitration first?

SENATOR DONDERO LOOP:
I would submit that what comes before us in this body is many times subjective to what you believe. It is our belief that this was an important bill. While you may not agree with that or agree with the bill, that does not mean it is not important legislation.

SENATOR PICKARD:
I understand the importance of the bill from the practical side of it. I am just asking why we are looking at this means of resolving the conflict. We do this in other industries all the time, where we require some level of mediation with a third party rather than duking it out in the Legislature. It is more of the broad context. Why take our time to do this? We ask this question in courts as well: why are we taking the court's time when this dispute might have been resolved through third-party mediation?

MR. REID:
This is more than a contract dispute between two parties. The statute we are asking you to amend codified provisions from a consent decree from the DOJ's Antitrust Division. After the Division completed an extensive investigation into the merger of Anheuser Busch with Miller Coors, it issued a consent decree to prevent market harm and to prevent a monopoly situation where only limited products could be sold in the market. In 2017, the Legislature considered it prudent to make sure those provisions continued to be followed by the suppliers.

That is why those provisions were enacted four years ago and why the provisions in section 3 of this bill are proposed now to ensure those ends continue to be protected.

SENATOR PICKARD:
I had not made that connection; that makes a lot of sense. I have more questions, but I will take them offline.

SENATOR SETTELMEYER:
I appreciate the bill in the respect that there are some different negotiation abilities between the parties. I appreciate us trying to level the playing field a little bit.

Regarding section 7, I believe we already have something like this to allow shipping into the State for programs like the wine of the month club or whiskey samplers, things like that. Would this provision effectively put an end to those types of programs?

MR. ALONSO:
This provision does not cover those programs. The language we are changing is simply updating the word "import." This section was not intended to include direct shipping. It simply meant that you could go to a California distillery, purchase product and take it with you back into Nevada. When this provision was put in the statute, it was to allow a couple of small distilleries in South Tahoe to sell to Nevadans and for the Nevadans to be able to carry it across the State line.

This section of the bill was needed by the Department of Taxation to make it clear that importing is not the same as carrying a bottle across the State line.

SENATOR SETTELMEYER:
How do programs like the wine of the month club currently operate?

MR. ALONSO:
There is a statute that specifically calls out the wine of the month club. You can get a direct shipment of a case a month delivered to your home. You can see that existing statute in section 7, subsection 2, paragraph (c), subparagraph (3) of the bill. We are simply making clear that the intent of that provision was never to import in large numbers; it was simply to allow for personal use. Again, in consultation with the Department of Taxation, it was thought again that the words "Entering this State with" is more reflective of the original intent.

SENATOR SETTELMEYER:
Section 2 of the bill seems to be saying that freight prices have to be uniform, no matter where the product goes, so if you are shipping from Reno to Las Vegas, versus Reno to Douglas County, the freight charges are going to be equal. Do I have that right?

MR. REID:
No, that is not the intent. The purpose is to make sure that if there are distinctions, they are reasoned and justified, and not arbitrary or imposed without a basis or justification.

SENATOR SETTELMEYER:
That section may need a little more clarity. Section 2, subsection 1 says, "including, without limitation, with respect to pricing or freight charges." By my reading, that means if you shipped a bottle of wine between two points in Reno, local delivery, versus from Reno to Las Vegas, the pricing and freight need to be equal. That will drive up liquor prices, and that perplexes me.

MR. REID:
As Mr. Alonso mentioned, we are working on an amendment that clarifies this language to make sure we avoid any unintended consequences.

SENATOR SETTELMEYER:
I look forward to reading the amendment.

MICHAEL HILLERBY (Anheuser-Busch):
On behalf of our client, we must oppose S.B. 307. Current law already gives Nevada wholesalers the strongest franchise protections in the country. At issue in the proposed legislation are numerous changes further limiting suppliers' rights, expanding the State's involvement in the terms of business relationships between suppliers and wholesalers, and further tilting the balance in the wholesalers' favor.

Due to the time limits on testifying, I would like to highlight one major component of the bill that would cause additional stress on the State's alcohol supply chain. Section 3, subsection 9 of the bill adds to current law that a supplier shall not:

> Require a wholesaler to accept delivery of any alcoholic beverage or any other item if accepting the delivery would result in the inventory of the wholesaler exceeding the amount of credit extended to the wholesaler by the supplier.

This language is an impermissible attempt to mandate a supplier to extend credit to a wholesaler under State law or else risk the wholesaler refusing to accept the supplier's products. In practice, this means the supplier must extend a line of credit to the wholesaler regardless of whether the wholesaler has demonstrated the ability to pay back the credit extended. In fact, current Nevada State law, NRS 597.162, subsection 5, states

> A supplier shall not … require a wholesaler to report to the supplier any of the wholesaler's financial information associated with the purchase, sale or distribution of an alcoholic beverage of any other supplier.

Since suppliers are currently prohibited from requiring complete financial information from wholesalers and wholesalers do not supply complete financial information, we cannot fully evaluate their ability to pay back the line of credit. Thus, we do not extend credit to wholesalers in Nevada. If a wholesaler were to pursue a line of credit from a traditional financial institution like a bank or credit union, they would absolutely provide their full financial information in order to obtain the credit. This is to make sure they have the ability to pay that credit back. If the wholesaler does not submit complete information, the bank is almost certainly not going to provide that credit.

Further, as drafted, the language could mean that if a supplier does not extend credit to a wholesaler, the wholesaler would not have to buy any beer from the supplier. Essentially, zero dollars worth of credit means zero dollars worth of inventory. If the wholesaler has no inventory, how are they going to service retail accounts working Nevadans count on as places to purchase these products? The short answer is they will not be able to. Suppliers will have no route to market, since they provide exclusive territories to wholesalers. Retail accounts will see massive out of stocks, and consumers will not be able to find the products they wish to purchase.

SENATOR PICKARD:
When I was working a large project and a line of credit so I could make payroll, the bank never asked me about contracts with other banks. That is a level of detail that would never be expected from a bank. It sounds to me like the suppliers are asking, "How much of my competition's product are you selling?" Can you explain how that makes sense?

Also, tell me why the supplier should be controlling the wholesaler's inventory. It sounds like the supplier ships product that was not ordered. This creates a risk to the wholesaler—they are either taking inventory they may not be able to sell or overstocking their warehouses. They are being forced to take warehouse space they did not plan on. How is that appropriate?

MR. HILLERBY:
For years before the passage of the 2017 law limiting financial information, our wholesalers gave Anheuser Busch financial information and they always represented other brands. Anheuser Busch has asked for full financial disclosure, not brand-specific information. We think that is a perfectly reasonable request and the same kind of thing a wholesaler might ask of a retailer before giving them product. We do not think there was anything untoward in that. In addition, Anheuser Busch disagrees with Mr. Reid's interpretation of the consent decree and his statement that it needs to be dealt with in State law. That process is being overseen by a court in Washington, D.C.

Regarding your question about inventory, NRS 597.162 subsection 8, which you can find in section 3, subsection 8 of the bill, already limits what suppliers can do in terms of inventory with the wholesalers. These provisions can be negotiated in the contract. My understanding is Anheuser Busch has different inventory systems that wholesalers can opt in or out of.

It is important to remember that wholesalers completely control the destiny of the suppliers' product in a State like Nevada that has such a tight three-tier system. We view wholesalers as incredibly important partners. They are the only way we can sell product in this State, the only way to get it to a resort casino, restaurant, bar or local liquor or grocery store so our customers can buy it. It is critical for suppliers that wholesalers be healthy and adequately stocked.

Anheuser Busch, like other suppliers, tries to plan for market events, particularly in a place like Nevada that has major special events. We have seen a lot of disruption from the pandemic in the last year, and we worked closely with our retail and wholesale partners to make sure they could move inventory. They are trying to look ahead and make sure they have enough inventory on hand. Anheuser Busch has different inventory systems they can opt in or out of. Our relationship is incredibly important. Anheuser Busch does not go out of its way to penalize wholesalers.

State law already provides important limitations to the industry. Adding further limitations damages the relationship and makes it more one-sided in favor of the wholesalers.

SENATOR PICKARD:
What do you say about the suggestion that this bill is the result of trying to make sure we are complying with the antitrust consent decree? It sounds to me like the major conglomerates, these multibillion-dollar multinationals, have significant negotiating power and may not be following the spirit or the letter of the consent decree.

MR. HILLERBY:
Anheuser Busch believes it is in fact complying with the consent decree. There is a mechanism should any party, wholesaler or otherwise, feel they are aggrieved by it. We do not believe the provisions brought forward by the wholesalers four years ago and today accurately reflect the provisions of the consent decree or that this is the place to air their concerns.

You are right that Anheuser Busch and other suppliers are very large, as are some of the wholesalers. Southern Glazer's Wine & spirits, according to *Forbes Magazine*, had $20 billion in sales in 2019. One of the other large wholesalers, Breakthru Beverage Group, sold $5.5 billion in 2019. These are not small or unsophisticated companies negotiating with the suppliers.

Another provision of the bill has to do with expanding caps, and we have had some heated fights about this over the years. The wholesalers have opposed the ability of brewers and distillers to manufacture product here. That just shows there is a vibrant market with lots of competition and lots of options for consumers out there.

SENATOR PICKARD:
I will meet with you offline for the rest of my questions.

KATIE JACOY (Wine Institute):
We are here this morning in opposition to S.B. 307 as written. I have a letter (Exhibit B) explaining our opposition to the bill.

We oppose the bill because it amends the Nevada Franchise Act to add even more State-mandated terms to the private contracts between wineries and wholesalers to the detriment of wineries and the benefit of wholesalers. The law objectively ties wineries to their existing wholesalers and makes it virtually impossible for new wholesalers to enter the market. This state-mandated stifling of competition results in higher prices and reduced service, harming consumers. Since the Franchise Act has been enacted, there has been significant consolidation of the wholesale tier. Now, national megawholesalers have substantial control over the market due to lack of alternatives. There is no longer unequal bargaining power that needs rectifying by state-mandated franchise protection. We do not see a public policy purpose for adding even more restrictive terms that further entrench the giant wholesalers.

Section 2 of the bill prohibits differentials in freight charges, putting into question reasonable business practices currently agreed to by the parties. Freight charges depend on numerous factors, including mileage, size of the shipment, whether the shipment is palletized or broken pallet and the mode of transportation. The smaller the market and the smaller the order, the higher the proportional freight costs to deliver the same item. Freight charges should remain flexible, not mandated by the State.

Section 3, subsection 13, prohibits materially different payment terms for winery payments to wholesalers versus wholesaler payments to wineries. These are different commercial transactions. Almost all wholesaler payments are for shipments of wine, standard business transactions. In contrast, winery payments to wholesalers are typically for special promotions. The winery needs to verify reports submitted by the wholesaler. Payment delays can occur due to inadequate information from the wholesaler. To legislate against wineries for unintentional payment delays is an unfair intrusion into business practices.

BRIAN REEDER (Molson Coors):
We are opposed to S.B. 307.

TOM CLARK (Distilled Spirits Council of the United States):
We join with the other companies represented on our letter of opposition (Exhibit C) to oppose S.B. 307.

We are opposed to this bill for several reasons. First, the changes to the way wholesalers do business in Nevada greatly reduces the opportunity for small businesses to enter the marketplace. That includes a lot of startup companies and those entrepreneurs, many of them minority-owned companies, who want to do business in our State. Second, current law allows Nevadans to have their hard-to-find favorite spirits shipped to them by out-of-state distillers for personal use. That has never been more apparent than during this pandemic.

CHAIR SPEARMAN:
I have asked Mr. Keane to dissect what the bill does to NRS, just to make sure everyone is clear on the intent.

WIL KEANE (Counsel):
One of the issues that seems to be most in question is the change in section 2 regarding freight charges. Certainly, we can clarify the language so everyone is on the same page about what it means. As I read it, it seemed that the conditions for freight charges need to be the same. If you are shipping from Reno to Las Vegas, versus shipping from Reno to Elko, the actual dollar amount of the charge might be different; in fact, the rates might be different. However, if you had two people receiving shipments in Elko, the shipper could not give one rate to one person in Elko and a different rate to another person in Elko. The dollar amount and even the rates can be different as long as there is a reasonable basis for the difference. If that is not clear in the language, we can make it so. I have not seen Mr. Alonso's amendment, so perhaps it includes clarification of this point.

With regard to section 3, it is certainly true that these are putting into statute restrictions on the ability of the various parties to contract. However, these are all policy decisions. There is no legal problem with any of the provisions in the bill. For those who are concerned that some of these restrictions seem more detailed than you might see with other products, it is because there is a different standard for alcoholic beverages under the U.S. Constitution with regard to transportation and sales.

SENATOR DONDERO LOOP:
I would like to close with Mr. Warren's statement.

JEREMY WARREN (CEO, Revision Brewing Company):
We are in support of S.B. 307. We feel it is very important for our State and communities to allow our wholesalers to maintain their independence without being negatively impacted by large breweries. We are also in support of the change in section 4, subsection 3, paragraph (e), which would allow our company and others in the State to produce more beer. Being able to produce more beer and send more beer outside the State will allow us to create more jobs and bring money into the State. It will also allow Revision Brewing Company to be more competitive with larger and regional breweries. It will increase awareness of the Nevada craft beer industry. It is also going to allow us to compete with the out-of-state breweries and increase the tax revenue to the State.

CHAIR SPEARMAN:
I will close the hearing on S.B. 307 and open the hearing on S.B. 308.

SENATE BILL 308: Provides for the establishment of a worksharing program. (BDR 53-716)

SENATOR MARILYN DONDERO LOOP (Senatorial District No. 8):
The Covid-19 pandemic abruptly displaced millions of workers in the United States who as a result faced the loss of stable housing and the imminent risk of financial ruin. In Nevada, there were more than 878,000 new claims for unemployment benefits between March 14, 2020, and March 6, 2021. Unemployment insurance (UI) is the most important fiscal response the State and the federal government have during a recession because it sends timely, targeted and temporary financial assistance to those directly affected by the economic downturn.

However, what these workers need most is to know that they will be able to return to their previous jobs when the pandemic recedes and business returns. Knowing they are likely to be called back to a steady job can relieve workers' anxiety, which can bolster morale and increase consumer spending.

Workshare programs benefit businesses, workers and states. Businesses retain their trained workforce for easy recall to full-time work when economic

conditions improve. Workers keep their jobs instead of being laid off and collect reduced unemployment benefits to partially replace their lost wages. States save money by paying only partial unemployment claims instead of paying full benefits to laid-off workers.

Under approved workshare programs, employees qualify for a percentage of unemployment benefits equal to the percentage by which their hours have been reduced. For example, an employee whose weekly hours are cut by 10 percent would qualify for 10 percent of the State's established weekly unemployment benefits. While that does not fully replace the lost wages, the amount supplements the worker's income until recalled to full-time work.

Currently, 27 states have workshare programs established in law. Arizona, California, Colorado, Connecticut, Florida, Idaho, Massachusetts, Minnesota, Missouri, Oregon, Washington and Wisconsin all have these types of programs, among other states.

The bill is quite long, but I can provide an overview of the substantive sections.

Section 11 of the bill requires the administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation (DETR) to establish a worksharing program to authorize payment for worksharing benefits to eligible employees whose weekly hours have been reduced by a worksharing employer.

Section 12 of the bill requires an employer who wishes to participate in the worksharing program to submit a worksharing plan to the administrator for approval. That plan must include certain information such as the work unit involved and its employers; an estimate of the number of employees who have been laid off; the usual hours of weekly hours of work; the percentages by which weekly hours will be reduced; certification that if an employer provides health and retirement benefits to employees, those benefits will continue under the same terms and conditions; written approval of the agent designated by each collective bargaining unit involved; agreement to provide the administrator certain reports concerning the worksharing plan; and any other provisions added to the worksharing plan by the administrator that the federal Secretary of Labor determines to be appropriate.

Section 13 of the bill requires a worksharing employer who provides health and retirement benefits to employees covered under a worksharing plan to continue such benefits in generally the same manner as when the employees worked their usual weekly hours of work or to the same extent as employees not covered under the worksharing plan.

Section 14 requires the administrator to approve or disapprove a worksharing plan submitted by an employer within 15 days of receipt and promptly give written notice of approval or disapproval. It also provides for certain circumstances under which the administrator must not approve a worksharing plan.

Section 15 requires such notice to include an agreed-upon effective date and the expiration date. It also provides that the worksharing employer may terminate the plan at any time by submitting a notice to the administrator. It authorizes the employer to submit a new application at any time after expiration or termination.

Section 16 includes provisions where the administrator may revoke approval of the worksharing plan at any time for good cause.

Section 17 authorizes a worksharing employer to request a modification of an approved plan.

Section 18 of S.B. 308 provides that a person is eligible to receive worksharing benefits with respect to any week only if the person is monetarily eligible for unemployment compensation and is employed as a member of an affected unit under an approved worksharing plan. This section also provides the person be deemed unemployed in any week during the duration of any worksharing plan if his or her compensation is reduced based on a reduction of usual weekly hours.

Section 19 prescribes the manner in which the weekly benefit amount for worksharing benefits is calculated, which is proportional to the reduction in hours for the employee under the worksharing plan.

Section 20 requires worksharing benefits to be treated in the same manner as regular unemployment compensation with respect to charges to the experience rating out of an employer and the determination of an amount of reimbursement

in lieu of contributions due from the employer who elects to make reimbursement in lieu of contributions.

Section 21 provides that a person who has exhausted benefits from their regular unemployment compensation and worksharing plan may be eligible for State extended benefits.

SENATOR NEAL:
Section 13 refers to the accrual rate. What is that? How will it accrue?

ELISA CAFFERATA (Director, Department of Employment, Training and Rehabilitation):
We are looking at section 13 and the accrual rate. What was your question?

SENATOR NEAL:
Let me clarify. Section 13 basically says if employers are providing health and retirement benefits, "the hours that are reduced under the worksharing plan must be credited for purposes of participation, vesting and accrual of benefits." Typically, accrual of time for benefits uses a complicated formula. How is that going to work? If two different employees accrue benefits at different rates, the contribution is going to be different.

LYNDA PARVEN (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
In other states, it is done on a pro rata basis, and that is determined in regulation. If this bill passes, we will promulgate regulations to spell out all the different steps in these sections.

JEFF FRISCHMANN (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
As I understand it, the accrual rate of participants would be equal to those who are not participating in the program. That is, those whose hours have been reduced would receive benefits at the same rate as those who continue to work full-time. Subsection 2 of section 13 spells this out as well.

SENATOR NEAL:
Section 19, subsection 3 says, "The worksharing benefits paid to a person shall be deducted from the maximum entitlement amount of regular unemployment

compensation established for the benefit year of the person." Can you give me a real example of how this works?

MR. FRISCHMANN:
Assume you own a casino that needs to lay off two dealers, saving 80 hours of wages per week. Instead of laying off two dealers, you may choose to develop a worksharing plan to reduce the hours of 10 dealers by 20 percent each. That saves you 80 hours of wages, the same amount of employee hours as you would have gotten by laying off two full-time employees. Those 10 employees would then each be eligible to receive 20 percent of the usual weekly UI benefit in addition to their wages. If the UI benefit was $400 a week, they would each receive $80 in UI benefits every week.

I have another example provided by the federal government.

> An employee normally works a 40-hour work week. The employee work week is reduced by 8 hours, or 20 percent. If the employee had been laid off and totally unemployed and determined eligible for unemployment compensation, the individual would have received a weekly benefit amount of $270. The employee submits an STC plan [which is the short-term unemployment compensation plan], and the plan is approved. Under the STC plan, the employee would receive $54 of benefits, or 20 percent of the $270, in addition to the 32 hours of wages earned from the employer.

SENATOR NEAL:
Thank you for that.

Section 20 says, "Worksharing benefits must be charged to the employer's experience rating account in the same manner as unemployment compensation is charged." What are the tax implications for employee and employer in that scenario?

MR. FRISCHMANN:
Just as with regular unemployment compensation, the employer's benefit experience rating would be charged for the benefits actually paid to the employee. That does not change. The only difference would be instead of having two full-time employees laid off and the employer paying the $270, they would be paying five employees the $54.

As far as the tax implications, the employee would be responsible for federal income tax to the Internal Revenue Service. In the example I read, the employee would be responsible for any federal income tax due on that $54.

SENATOR PICKARD:
I want to understand the broader context of this bill. As I understand this, we are talking about large employer organizations that are able to put these plans together in advance, get them approved and then essentially allow the State to ameliorate any reduction in force or cost to the employees or the organization.

As I see this, the bill does not fix the immediate problem. I agree completely with the sponsor that our first responsibility to employees should be paying benefits, making sure these people are not out on the street with no resources, particularly when they have paid for this insurance. However, this is going to take regulatory work before it is ready to go. That makes me wonder how this will effect our current backlog on unemployment claims. Will this slow down the work being done to try to catch up with the 200,000 applicants who have not yet received benefits? How long will it take to get the regulations done so we can implement this program?

MS. CAFFERATA:
Before Mr. Frischmann gets into the specifics, let me clarify some aspects of Senator Pickard's question. We are working as rapidly as we can to continue hiring staff and implement technology solutions, but the number of people who have applied for UI benefits and not yet received them is significantly lower than 200,000. We have been making very good progress in getting through the backlog. We will provide you with an update, which we would say has nothing to do with S.B. 308, Senator Dondero Loop's proposal to provide additional benefits in the future.

SENATOR PICKARD:
Those were your numbers when you testified before this Committee on February 10. I have not heard an updated figure since then.

MR. FRISCHMANN:
You referred to large employer organizations. This is not a program that is designed just for large employer organizations. Any employer with two or more is eligible to participate in this program. This would benefit both small employer and the very large employer.

How long will it take to get the regulations in place? We have a conceptual amendment (Exhibit D) to this bill that changes the effective date. Since there are 27 other states that have this type of program, we anticipate that we would be able to get our regulations up and going toward the middle of 2022.

As far as taking away from our work on reducing the backlog, there is a strong likelihood that we will be able to receive federal funding for the implementation costs to start the program. That would mean we would not have to take people away from working on the backlog to get this program going. That new funding would allow us to have this program in place and to prepare for the next economic downturn. We do not anticipate that it would have any affect on work on the current backlog.

SENATOR PICKARD:
That is great news. Having been an employer of both small operations and at the executive level on *Fortune* 500 companies, I submit that the small Mom-and-Pop company with just a few employees will not have the resources to expend the time on developing a plan like this. For practical purposes, this is going to be pretty much reserved to those organizations that have the resources to work on a plan while they are still trying to keep the operation in business. I appreciate that anyone could conceivably jump into this, but I suspect that small employers that are having to consider worksharing will be focusing on just staying alive.

Do you have any data from the other states to show how long that approval process typically takes once the regulations are in place?

MR. FRISCHMANN:
We met with staff from Oregon, and I do not recall seeing any information on that particular question. We will follow up and provide that to you.

SENATOR PICKARD:
My work on the Legislative Committee Sunset Subcommittee over the past couple of interims has demonstrated to me that the ease and speed at which these types of programs get started is critically important.

I notice you have added a fiscal note of some $400,000. That appears to be just for administrative costs. What do you think the impact is going to be on the

trust fund when this program is fully implemented? The trust fund has been exhausted by the pandemic.

MR. FRISCHMANN:
I would not expect there to be any negative impact on the UI trust fund. This is because rather than having one person collect $270 a week, we would have five people each collecting $54 a week. The outlay is the same. I would not anticipate any drain on the trust fund.

SENATOR PICKARD:
I thought the administrative costs were part of the draw, and that it would cost more to administer the program across five individuals than it would for one person. Maybe the hit is not to the trust fund but to your budget.

My expectation would be that costs overall would go up because we are going to be spreading this out over multiple accounts. Is that a misassumption on my part?

MR. FRISCHMANN:
I would say yes, that might be a misassumption. The administrative costs noted in the fiscal note are the cost to implement the program in the event we do not receive the federal funds I mentioned. That is the anticipated cost for the computer program and a little bit of labor costs involved.

SENATOR PICKARD:
I think you were wise to put in that fiscal note. We do not want to count the federal dollars until we actually receive them. We are still trying to get out from under the backlog, no matter how big it is. I am assuming the computer program you are talking about is in the 30-year-old COBOL system, unless you are buying new equipment off the shelf. But then we potentially have a third computer operation that does not talk to the other two, and I see this disaster snowball increasing. We need to get our arms around the immediate emergency before we take on additional projects.

SENATOR HARDY:
This bill has nothing to do with someone who lost their job. It is a reduction in force of time spent in the job. Is the money we give worksharing employees going to get them back up to their full salary: Is it more or less than what unemployment would give them?

MR. FRISCHMANN:
It will replace part of their lost wages. It will not make up the entire amount, but it will be a partial benefit.

SENATOR HARDY:
Will it be more than or less than if they got full unemployment?

MR. FRISCHMANN:
It would be less. That is, this will be unemployment they will be getting, but it would be less than the maximum amount they would be entitled to if they lost their jobs completely.

SENATOR HARDY:
If they get more being on pure unemployment, what is the motivation to keep working?

MR. FRISCHMANN:
I apologize; I was not clear in my response to your last question. In the example I gave, the employee would be paid by the employer for the 32 hours of work worked at the regular rate of pay. For the 8 hours a week the person did not work, the person would receive a partial unemployment benefit from DETR to offset the 8 hours of lost wages. Does that clarify the situation?

SENATOR HARDY:
They would be taking home more money from this worksharing situation than they would be if they were laid off and got unemployment alone. Is that right?

MS. CAFFERATA:
Yes. When you go on unemployment, you are no longer making your old wage. Instead of making, say, $1,000 a week, you are now receiving $467 a week. Unemployment is not a full wage replacement.

The worksharing program is a real benefit to both employer and employee in many situations. The employer keeps a well-trained employee on board and does not have to find and train someone new when the economy rebounds. Employees can keep their skills up, not to mention keeping their health and retirement benefits. Even though their hours have been reduced, some of the lost wages are replaced by unemployment benefits. It softens the blow a little bit, and it keeps the business going. The employees keep their job and do not

have to find a new job. The employers gain more flexibility and continuity of business.

SENATOR HARDY:
Can the State participate in this or any private business, whether they were collectively bargained or not?

MR. FRISCHMANN:
Any employer with two or more employees can participate in it, whether they are a contributory employer or a private employer, or if they are a reimbursable employer, they take contributions in lieu of the money that has been paid out. It is available to any employer within Nevada.

SENATOR NEAL:
In section 19, subsection 5, paragraph (a), how did you come up with that number of 10 percent?

MR. FRISCHMANN:
I am not sure where that language comes from. It might be part of the federal regulations that oversee this or from another state. I believe the federal government will have certain requirements before it provides that funding, and this 10 percent may be one of those. The thinking is that if your hours are not reduced by more than 4 hours in a 40-hour work week, it is not really worth participating in an worksharing program.

SENATOR NEAL:
Thank you. I will read the federal language.

Section 19, subsection 7 has to do with employees with more than one employer. Can you give me a real-life example of how this might work?

MR. FRISCHMANN:
I might be working for ABC Plumbing during the day and at a convenience store at night. It might happen that ABC Plumbing reduces my hours but I still work the same hours for the convenience store. This provision addresses that dual income I am bringing in and how it would affect my potential UI benefits.

This is no different from the existing requirements for those requesting UI benefits. If I got laid off from ABC Plumbing, my earnings from the convenience

store would affect my weekly UI benefits. Essentially, the first $50 or $100 you earn goes into your pocket. Any earnings above that reduce your weekly UI benefits, dollar for dollar.

CHAIR SPEARMAN:
Is this worksharing program mandatory? Do companies have to participate or is it optional?

MR. FRISCHMANN:
It is an employer-driven program. Employers must opt into the program based on their own business needs and business decisions. It is not mandatory; it is 100 percent voluntary for the employer. An employee may not opt in or out. The employer holds all the cards on their participation.

CHAIR SPEARMAN:
If a small business says, "It's not worth my time," it does not have to do it. Is that right?

MR. FRISCHMANN:
Yes.

CHAIR SPEARMAN:
Is this connected to similar programs being implemented at the federal level?

MR. FRISCHMANN:
The US Department of Labor has earmarked $100 million for states to get grants for such programs. This was announced in March 2020. It is not a federal program; rather, it is a piece that the states can add to their state UI programs.

CHAIR SPEARMAN:
Does the federal legislation have to pass in Congress for us to get that money?

MR. FRISCHMANN:
No.

SENATOR DONDERO LOOP:
As we have discussed, S.B. 308 is not a short-term fix. It is to better serve Nevada citizens in the future.

CHAIR SPEARMAN:
What is the average unemployment benefit amount for an individual out of work?

MS. CAFFERATA:
The maximum possible in regular unemployment, where your employer has contributed in, is $467 per week; the average is closer to $300 per week. For self-employed gig workers, the payment is $480 a week maximum. These benefits are intended to be a partial wage replacement as a bridge to a new job. In periods of long-term recessions, you will start to see us talk a lot more about our workforce training and support for folks in addition to unemployment, which is only part of the solution.

CHAIR SPEARMAN:
Would it be fair to say that during the last year, people on unemployment did not receive $2,000 a month from unemployment?

MS. CAFFERATA:
During the pandemic, we had several bills from Congress that added to the amount we paid. For a time, there was $600 a week in addition, so folks were receiving closer to $1,000 a week, or $4,000 a month. Currently, there is Congressional support of $300 a week. Added to the average of $300 a week from us, the average right now is $2,400 a month.

CHAIR SPEARMAN:
Was there a time when Congress did not contribute?

MS. CAFFERATA:
Yes. We had the Coronavirus Aid, Relief, and Economic Security Act, which provided $600 a week for a couple of months. We had Lost Wages, which provided an additional $300 for five weeks. Currently, the Continued Assistance Act and the American Rescue Plan are providing an additional $300 a week. We have no control over those congressional allocations.

CHAIR SPEARMAN:
I am trying to get a handle on when the additional payment stopped.

MS. CAFFERATA:
The $300 a week is in place now. We will give a timeline from last year of when those additional payments started and stopped.

CHAIR SPEARMAN:
The pandemic has touched all of us. I will close the hearing on S.B. 308 and open the work session on S.B. 184.

SENATE BILL 184: Revises provisions relating to the practice of medicine. (BDR 54-25)

CESAR MELGAREJO (Policy Analyst):
I have a work session document (Exhibit E) describing the bill and its amendments.

SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 184.

SENATOR NEAL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
I will open the work session on S.B. 217.

SENATE BILL 217: Revises provisions related to applied behavior analysis. (BDR 54-533)

MR. MELGAREJO:
I have a work session document (Exhibit F) describing the bill and its amendments.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 217.

SENATOR PICKARD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
I will open the work session on S.B. 229.

SENATE BILL 229: Revises provisions relating to the practice of pharmacy. (BDR 54-823)

MR. MELGAREJO:
I have a work session document (Exhibit G) describing the bill and its amendments.

SENATOR NEAL:
I have a question about the amendment. On page 1 of Exhibit G, the ending paragraph refers to "a practitioner who provides health care services that include the diagnosis and initiation of treatment." Are we prohibiting diagnosis or enabling it?

JOE HECK, DO (Nevada Osteopathic Medical Association):
No, it does not prohibit diagnosis and the initiation of treatment. It just says that when in a collaborative practice agreement using diagnosis and initiation of treatment, you must follow the provisions in section 2, subsection 2, paragraph (c), subparagraphs (1) through (3). Those are the criteria in order to be able to initiate diagnosis and treatment.

SENATOR NEAL:
Does this refer to a pharmacist in a collaborative practice agreement?

DR. HECK:
This refers specifically to the practitioner.

SENATOR NEAL:
I read this and wondered if pharmacists are now diagnosing.

DR. HECK:
No, they are not.

SENATOR HARDY:
I am concerned it may not be interpreted that way. I do not know how the pharmacist is not diagnosing if the pharmacist is treating. How can you separate those two processes? Is the practitioner the one who diagnoses and the pharmacist treats? Is the pharmacist not diagnosing, just treating without knowing what the diagnosis is?

BETH SLAMOWITZ (Pharmacy Policy Advisor, Division of Health Care Financing and Policy, Department of Health and Human Services):
As Dr. Heck said, section 2 is specific to the practitioner. Sections 3 and 4 of the bill identify what needs to be included in the collaborative practice agreement and also within the protocol that exists within that agreement. Sections 3 and 4 define that the procedure for the practitioner to provide the diagnosis must be included within that protocol. The pharmacist does not diagnose, and is only treating in terms of what has been approved within that protocol between the pharmacist and the practitioner.

SENATOR JULIA RATTI (Senatorial District No. 13):
I would point out that another portion of the bill explicitly says that nothing in this bill allows a pharmacist to go outside of their scope of practice.

SENATOR HARDY:
I will vote no but reserve the right to change my vote on the Floor.

SENATOR PICKARD:
I will vote no but reserve the right to change my vote on the Floor.

SENATOR SETTELMEYER:
I will vote yes, with reservations.

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 229.

SENATOR NEAL SECONDED THE MOTION.

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

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CHAIR SPEARMAN:
I will open the work session on S.B. 280.

SENATE BILL 280: Revises provisions relating to the Real Estate Commission. (BDR 54-247)

MR. MELGAREJO:
I have a work session document (Exhibit H) describing the bill and its amendments.

SENATOR PICKARD:
I have a question about the amendment. Section 2, subsection 1, new paragraph (c) says, "To the greatest extent possible represent minority or underrepresented groups that reflects the general population of this State." I read this as establishing a quota based on the population. Is that the intent, or are we trying to increase the number of minorities or underrepresented groups on the Real Estate Commission?

SENATOR SCHEIBLE:
This matches language in NRS 645.060 and elsewhere in NRS. The intent was not to establish a quota system, but to avoid creating boards that are full of "old white men" when we know that there are a lot of real estate agents, brokers and salespeople who are not old white men.

CHAIR SPEARMAN:
Unless we solidify this in statute, the comeback when there is no diversity is "We couldn't find anyone."

SENATOR HARDY:
How many old white men are on the Commission now?

SHARATH CANDRA (Administrator, Real Estate Division, Department of Business and Industry):
We had two women on the Commission, but because of term limits, currently all the members are white males. I do not know their ages.

SENATOR SETTELMEYER:
Who appoints these people to the Commission? Is that not up to the Governor? Should we not be able to trust him to appropriately put the right people onto this Commission?

SENATOR SCHEIBLE:
I do not have an answer to that question. The point of the amendment, which was proposed by the Real Estate Division, is to ensure that when we are appointing people to the Commission, we are not just looking at individuals but are also looking at the makeup of the Commission as a whole. The point is to encourage the Governor, as he or she, or they, appoint people to the Commission to take that into account.

Having served in the Legislature for almost four years, I can relate to having had someone send me an application or ask for a recommendation for someone for a job or an award. It is one thing to look at every application individually; it is another thing to look at all the applications you approved or all the appointments you made and realize that you have appointed a board that does not reflect the community.

This does not say we are not going to select the most qualified person possible; we should always select the most qualified person possible. But if there is some other reason, like structural racism, that is causing only members of the majority group or the privileged group to apply or be selected for these positions, paragraph (c) tells the Governor to take a second look and say, "Wait a minute. I think we're missing some people here. Let's bring them into the fold." To the extent possible, let us make sure the Real Estate Commission includes women, people of color, people with disabilities, LGBTQ people, and is not focused solely on groups of people who are already well represented in our government.

MR. CHANDRA:
I understand some of this language came from other statutes. We asked for this provision to encourage diversity in the Commission. Mr. Keane indicated there were a couple of statutes throughout NRS where this language was used as a general qualifier, and we felt it would be good practice to have in this statute.

I misspoke earlier. Senator Hardy, there is one woman from the rural counties on the Commission right now.

SENATOR SETTELMEYER:
If this is a good idea in NRS 645.090, why are we not adding it to NRS 645.060 as well? Why is it only in one section and not both?

SENATOR SCHEIBLE:
It would be redundant to have it in both places. However, if you are suggesting that adding it in both places would influence your position on the bill, I would be open to a conversation about it.

SENATOR SETTELMEYER:
I just do not understand why we cannot trust the Governor to do the right thing, and I do not know if I will be able to get past that. We either trust the Governor or we do not.

SENATOR SCHEIBLE:
These statutes will outlast the Governor who is currently in office. This is not about putting trust in a particular person or even in a particular office. It is about establishing a policy going forward that we as a Legislature believe to be the right policy and the objectives of the Legislative Body. It will require, to the greatest extent possible, that every future Governor of Nevada, whether they share this vision or not, does what they can to promote it.

CHAIR SPEARMAN:
Mr. Keane, is this new wording from 2019, or did it exist prior to that?

MR. KEANE:
The language in paragraph (c) reflects the intent of the requestor. The language I sketched out was that the members of the Commission must be appointed so that as a body, and to the extent practicable, the members of the Commission represent the ethnic and cultural diversity of the State, including without limitation members of ethnic minority groups and members of other underrepresented groups. By using language such as that, we are mirroring existing language that has been around for a while in NRS.

I do not have the history on all the provisions of NRS that do this, but just for two examples, in NRS 389.510, subsection 2, paragraph (c) states, "Insofar as practicable, the members appointed by the Governor to the Council reflect the ethnic and geographical diversity of this State." There is another provision in NRS 388.5966, subsection 2, that the Governor and various other officials to:

> ... coordinate their respective appointments of members to the Council to ensure that, to the extent practicable, the members appointed to the Council reflect the gender, ethnic and geographic diversity of this State.

There are numerous examples that put different factors in there, but the idea is that they are trying to get representatives who reflect the diversity of the State. These are not hard and fast quotas and it is only to the extent practicable.

As far as the history goes, these provisions have been around for various lengths of time. If you like, I can pick one and trace its history back.

CHAIR SPEARMAN:
I just wanted to see if this was protocol under Governor Sandoval or Governor Gibbons or anyone else or if it is brand new.

MR. KEANE:
They are not brand new; they are in existing statutes. I would have to trace one back to find out when it was put in place.

CHAIR SPEARMAN:
That will not be necessary. Senator Settelmeyer's concern was that we either trust the Governor or we do not. If this is brand new, it is something we might want to take a look at. If it is not brand new, other bills similar to this have been passed that would state the same thing without implying that we do not trust the Governor.

SENATOR LANGE:
With all due respect, this is not about whether we trust the Governor or not. We just saw a Commission that had two women on it, and when they left, two men were appointed in their places. That is a clear example to me of why we need this language. Whenever we have a body that is appointed, we are telling the Governor, "These are the things that are important to us. Please take these into consideration when you are appointing committee members." It is important to always remind people when they are appointing committees to make sure they are diverse and they reflect what Nevada is.

I really like this language, and I hope we pass this bill.

SENATOR PICKARD:
I agree that we want to encourage diversity in everything. Diversity of thought and perspective and diversity in general enhances debate. The more varied our perspectives and experiences, the better the result generally turns out to be. However, I think it is a mistake, both practically and legally, to express our animus toward any particular group, old white men like me or otherwise.

I support the idea of diversity and appreciate the intent of the amendment, but I cannot get past the point that we are inserting people who have nothing to do with facilitating transactions. I think that is a mistake.

CHAIR SPEARMAN:
Are you saying the people appointed will have nothing to do with the Commission's business? I am just trying to understand your statement.

SENATOR PICKARD:
I support the idea of diversity because it is important when we debate anything. Perspectives are different, and no one perspective is any more important than another. It is a mistake to express animus toward any particular group. It is wise to try to achieve diversity; I just do not like the way we are going about it. We should seek diversity for its benefits, not out of an animus toward any one group.

SENATOR HARDY:
One of the most important words in the amendment is the word "qualified." Obviously, we want people on the Commission who are qualified. Right now, the Commission is skewed toward one particular group. Recognizing that this will allow two more people to be appointed, we have sent a message that we are interested in people who are qualified and, inasmuch as we already have representation for people like me who are old and white, maybe it is time to get people who are not as old and not as white.

Originally I was not too thrilled with this, but the reality is that we are going to give a message to those who appoint that when they do, we want to make sure appointees are qualified and diverse enough to represent people who need to be represented.

CHAIR SPEARMAN:
For the record, I think this is the right thing to do. I was privileged to have an opportunity to speak to the Futura Health class of soon-to-be doctors. When Congresswoman Shelley Berkley called me, she said the students requested I speak on diversity and why it is important. I also had an opportunity to speak at Nevada State College, and they also requested that I speak about diversity. I had a request from Malcolm X's daughter, who teaches at a college in New York, to give a speech to her class, and they too wanted to know about diversity.

I think we are on the right path. In 2021, you would think we would not have to do this, but we do. As a Black woman: sometimes I have been the most qualified head and shoulders above whoever was selected, but because I was Black I was not chosen. Once I was actually told that: "Well, I don't think a Black woman can do this." So these situations do exist.

This bill is a way for us to walk our talk. Senate Concurrent Resolution No. 1 of the 32nd Special Session was passed unanimously by both Houses, bipartisan and bicameral. We need to recognizing that the most qualified person is not always picked and many times it is because of implicit bias.

> SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 280.
>
> SENATOR SCHEIBLE SECONDED THE MOTION.

SENATOR HARDY:
We need to recognize that serving on the Real Estate Commission requires candidates with knowledge about the business of real estate and the ability to deal with the transactions that body oversees. There are people who are part of diverse communities who have the capability to do that sort of thing. I would hope we would encourage the Governor to look for people who are qualified as well as reflecting the diversity of the State.

CHAIR SPEARMAN:
Mr. Chandra, what kind of transactions do they do on the Real Estate Commission?

MR. CHANDRA:
The Real Estate Commission, among other things, considers disciplinary action related to real estate transactions. Licensees come before the Commission to answer for things they have done that either harm the public or violate one of the regulations. A lot of these come down to those details: "Did you provide these documents? What was the transaction? How did it occur? Who were the parties? Was all due diligence paid?" It becomes more of a question of whether you, as a licensee, did all the things you were supposed to do to protect your client, and if you did not, there are consequences. It is about licensee discipline. They do get technical, and some of the transactionary details require some knowledge of real estate and understanding.

CHAIR SPEARMAN:
Are all the people currently on the Commission real estate agents?

MR. CHANDRA:
Currently, every member of that five-member Commission has qualifications related directly to real estate. They are all practitioners.

This bill adds two additional positions. The diversity question is a separate issue. That is just a statement that to the extent possible, we need to do that. We are neutral on the policy question of adding two more members to the Commission and what their qualifications should be.

CHAIR SPEARMAN:
Let me stay with the question of diversity. I know some people who are real estate agents who are from India, some who are African American and some who are from the Latinx community. If the pool of real estate agents represents the population of the State, would it stand to reason that someone who would be qualified to complete the transactions you mentioned would have the experience to do that?

MR. CHANDRA:
Absolutely. There is plenty of diversity out there that can be represented on the Commission.

CHAIR SPEARMAN:
I needed to ask that because I grew up at a time when if you were Black and you got a job where you were the first Black person hired, people would say, "Oh, well, that's because of quotas." I just need to be clear about this.

I have been informed that this wording appears in statute starting in 1999. That means it has been in statute under Governor Kenny Guinn, Governor Jim Gibbons, Governor Brian Sandoval and Governor Steve Sisolak. That is three Republicans and one Democrat. So this language has been applicable to Republican and Democratic governors alike. It is not a matter of who we trust; it is a matter of protocol, of policy. My hope is that in 20 years, people will automatically look for the most qualified person, and if a person of color shows up, that person will be selected. But that is not the case right now.

SENATOR PICKARD:
I would like to get away from the diversity piece and get to the substance of the amendment, which is that we are inserting two nonexpert, or potentially nonexpert, people on the Commission who are consumer advocates for affordable housing.

The difficulty I see in that is that real estate agents have nothing to do with affordable housing. They do not set the rates; they do not set the prices; they do not determine the availability. Affordable housing has nothing to do with the practice of real estate. As a licensee myself, I can say that we are required to understand how to facilitate transactions. That is the role of a real estate agent or broker. At no time does a real estate agent have the ability to affect whether or not a price is affordable, whether that is on the leasing side or on the purchasing side. I believe it is a mistake to add people with a focus completely outside the realm of real estate to this Commission.

I am not suggesting a nonreal estate agent not participate on the Commission because that outside perspective might be interesting when it comes to disciplinary action. But to specifically require a focus on something that is completely outside the jurisdiction and purview of a licensee is a mistake.

CHAIR SPEARMAN:
Senator Scheible, can you speak to why you inserted that qualification?

SENATOR SCHEIBLE:
With all due respect to Senator Pickard, his statement is exactly the problem. We have been looking at real estate transactions and the real estate industry as separate from affordable housing. It is time for us to bridge that gap, and for every individual who works in the real estate market, who helps people buy, sell, lease, rent or invest in real estate, to have someone in their oversight committee who is concerned about affordable housing and ensuring that all of our Nevada communities have adequate, accessible, affordable housing.

I request that we take a vote on the motion.

THE MOTION PASSED. (SENATOR PICKARD VOTED NO.)

* * * * *

CHAIR SPEARMAN:
I will open the work session on S.B. 314.

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

MR. MELGAREJO:
I have a work session document (Exhibit I) describing the bill and its amendments. In addition, we have an amendment (Exhibit J) from Senator Neal.

SENATOR SETTELMEYER:
What is the reasoning behind changing the amount from $5,000 to $7,500 in Exhibit J? Is there some data that shows that this represents a significant number of individuals?

SENATOR NEAL:
No, there is no data behind it. I met with the folks in opposition to discuss this threshold, and they wanted the threshold to be $20,000. I offered $10,000, and they rejected that, so I went to $7,500 because they kept saying we would be bringing in hobbyists. I picked that number after talking to the Retail Association of Nevada, saying, "I'll increase the threshold to make sure we don't capture hobbyists." The issue we are trying to go after is organized retail theft, and a threshold of $20,000 is too high to do that. If that changes your opinion of the bill, I will drop it back to $5,000.

SENATOR SETTELMEYER:
This bill goes a long way to address this problem. Other states have looked at similar legislation. Do you know what threshold other states have used? Should we follow other states for the sake of consistency?

SENATOR NEAL:
If we are going for consistency, it would be $5,000.

BRYAN WACHTER (Retail Association of Nevada):
We would agree that $5,000 is the standard. Arkansas has just passed their language at $5,000, and I believe $5,000 was also included in the federal bill. We are sympathetic to the hobbyist argument. We feel there should be no amount of anonymous selling that could be done and that the disclosure is limited so it includes the hobbyists. We are fine with a threshold of $7,500, but $5,000 would be more consistent with other states.

SENATOR SETTELMEYER:
I could support the bill in either fashion. There is something to say for consistency, but I will support it either way.

SENATOR PICKARD:
One of the things I saw as an advantage in this bill from the outset was the "know your vendor" arrangement. By eliminating the requirement that the information be publically available, have we affected at all the ability of the buyer to get in touch with the seller if there is a problem?

SENATOR NEAL:
The way the bill is written, seller information will be given on request, but the confidentiality piece was added so the information is not made public. It is confidential until you have a complaint, and then you should disclose to that buyer. It is not just open information.

> SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 314.
>
> SENATOR LANGE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR SPEARMAN:
I will open the work session on S.B. 320.

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

MR. MELGAREJO:
I have a work session document (Exhibit K) describing the bill and its amendments.

SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 320.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SPEARMAN:
Is there any public comment? Hearing none, we are adjourned at 11:22 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
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. 307	B	1	Katie Jacoy / Wine Institute	Opposition Letter
S.B. 307	C	1	Tom Clark / Distilled Spirits Council of the United States	Opposition Letter
S.B. 308	D	1	Senator Marilyn Dondero Loop	Proposed Conceptual Amendment
S.B. 184	E	1	Cesar Melgarejo	Work Session Document
S.B. 217	F	1	Cesar Melgarejo	Work Session Document
S.B. 229	G	1	Cesar Melgarejo	Work Session Document
S.B. 280	H	1	Cesar Melgarejo	Work Session Document
S.B. 314	I	1	Cesar Melgarejo	Work Session Document
S.B. 314	J	1	Senator Dina Neal	Proposed Amendment
S.B. 320	K	1	Cesar Melgarejo	Work Session Document