

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session
May 8, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Monday, May 8, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Blain Jensen, Committee Secretary

OTHERS PRESENT:

Jeff Saling, StartUpNV
Gabriel Di Chiara, Chief Deputy, Office of the Secretary of State

CHAIR SCHEIBLE:

I will open the hearing on Assembly Bill (A.B.) 75.

ASSEMBLY BILL 75 (1st Reprint): Revises certain requirements relating to securities. (BDR 7-145)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Jeff Saling and I have been working with the Secretary of State's Office on A.B. 75 to ensure the language works within Nevada's securities laws. Assembly Bill 75 deals with the judiciary topic of securities and creates a new class of intrastate investors known as the Nevada certified investor while also exempting from registration certain offers or securities of sales.

The Committee might have heard the term blue-sky laws popularized by U.S. Supreme Court Justice Joseph McKenna in 1917 when he referred to speculative schemes that have no more basis than so many feet of blue sky, referring to fraudulent schemes. Securities law and protections are generally known as blue-sky laws, and A.B. 75 seeks to make some revisions. Justice McKenna elaborated that blue-sky laws are meant to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other similar fraudulent exploitations. Nevada's blue-sky laws were written in the 1990s, limiting who may invest in certain private investments within the State. The purpose of those laws was to ensure the investor had the knowledge and expertise to participate in these offerings while protecting others without the expertise from the risk of losing their investments. Blue-sky laws are about consumer protection.

Nevada's laws are hard-wired to specific federal law and regulatory language related to the U.S. Securities and Exchange Commission (SEC) as a federal-accredited investor, commonly known as accredited investor. Although these federal laws and regulations have changed, *Nevada Revised Statutes* (NRS) have not. Assembly Bill 75 provides a needed update to Nevada's blue-sky laws. Essentially, accredited investor means that someone with enough wealth is given opportunity to invest into private offerings that normal people are not. What A.B. 75 seeks to do is open investing within the State to those who meet the threshold under the federal law of being an accredited investor.

JEFF SALING (StartUpNV):

The slide presentation (Exhibit C) will give the Committee some baseline information to what A.B. 75 entails. In terms of what happens with the startup of a new business, almost all go through this process. Starting with an idea,

validating the concept, creating a minimum viable product, starting to generate revenue and scaling, Slide 2, companies must raise money during this process from somebody unless the business owner has the money. In the early stages, the founder is either funding it or going through friends and family before the business starts making money. Often, the founder can reach out to angel investors or others as this process develops. Assembly Bill 75 seeks to allow more people to invest in these companies.

The accredited investor rule from the federal government says that a person must have \$1 million of net worth or \$200,000 on Internal Revenue Service Form W-2 income as an individual or \$300,000 of W-2 income as a couple. Whereas that means about 9 percent of the total U.S. population can invest in these private companies; in Nevada, about one-third of the population can do so. In terms of the credit investors, if someone lives in California and New York, these people jam freeways; in Nevada, it is a rarer thing for somebody to meet these requirements. We are attempting to make the standards relative to Nevada. Everyone hears the phrase the rich get richer, and guess what? It is true because only wealthy people have access to these private high-risk investments, but they have high returns when the investment works. The protective intentions are admirable for saying only a certain set of people can invest because they are more sophisticated. There have been unintended consequences in restricting people to invest who otherwise would like to. The businesses in Nevada are capital-starved compared to other states we talk about where more accredited investors can invest in these companies. Statistics at any of the national organizations, Angel Capital Association, or other international organizations say 80 percent of the capital used for private businesses comes in the early-stage investments funded by local people within 37 miles of the business location. Nevada businesses are at a severe disadvantage because we do not have enough credit investors to fund these businesses, Slide 3.

Assembly Bill 75 proposes that Nevadans with a W-2 income above \$100,000 a year or above Nevada's median income, whichever is greater, would be able to become a Nevada credit investor and invest. Nevadans who operate a business with gross sales over \$200,000 or two and a half times the Nevada median wage would be able to invest as long as they are investing less than 10 percent of their net worth. The bill seeks to make sure that people do not go over their heads on this investment. We made the standards relative so as economics change over time, the standard will change too, growing the investor base in

Nevada for projects and businesses to stay within the State. Local people are funding these early-stage companies, which should create opportunities for larger venture capitalists to come in later to invest in these companies that have proven themselves. From an investor's perspective, it gives someone the opportunity to create some wealth when forbidden from doing so now. That opens the aperture for investors in Nevada, Slide 4.

I have two examples for the Committee of where A.B. 75 might apply. One example, Slide 5, is personal because my dry cleaner went out of business during COVID-19, and we have not gotten a dry cleaner back. I would love for somebody to come into that dry cleaner store and say, I am going to open a dry cleaner. Most of these dry cleaners or these small businesses have an annual revenue of about \$250,000. In this scenario, the dry cleaner business needs about \$60,000 to buy all the equipment and everything else needed to start the business. The business owner sells business stock of about \$60,000 or 20 percent of the value of the company in this example because A.B. 75 allows for that. Over the next five years, the founder operates the business at a 20 percent profit or \$50,000 a year that gets allocated back to the people who invested 20 percent at 17 cents a share over the five years.

After five years, the founders decide to sell their business for \$500,000 which they should be able to do easily if making a profit of 20 percent on a \$250,000 or \$300,000 level of income. Every dollar invested by the investors in this scenario returns \$2.50. If the founder is smart, he or she has probably given some discounts to the people who invested in their company as well to make it more friendly. In this scenario, the founder incurs no debt; maybe the founder could not even raise debt because his or her situation does not represent a likely candidate to go through the Small Business Administration or bank to get a loan to open the business.

Assembly Bill 75 would allow not only the people establishing the new business to raise money from investors who meet the standard but also those investors who may not meet the requirements from an accredited investor perspective to invest in that business. This will be a feature for chambers of commerce around the State to set up systems like this for chamber members.

The next scenario appeals more to StartUpNV perspective or venture capitalist, Slide 6. There are two former students, one from University of Nevada, Reno, who is a computer scientist and one from University of Nevada, Las Vegas, who

is a business graduate. They are going to start a technology company requiring a \$250,000 investment to start the company and get them through the first 24 months. Once again, they are going to sell 20 percent of their company valued at \$1.25 million, which is 250,000 shares at one dollar apiece, to 500 or 600 different Nevadans who are investing anywhere from a few hundreds of dollars to over a thousand dollars. The way these things usually work is if the business is successful after the first year or so, these founders raise another round of capital, usually selling somewhere between 10 percent and 20 percent of the company.

In the scenario before the Committee, Slide 6, the founders raise \$1 million around two years later at a \$7.5 million valuation, which is a six-time markup from the first valuation. They do that two more times over six years, eventually getting to the point where seven years from the time they started, they sell this company for \$100 million. The founders, because they sold a bunch of their stock along the way, do not have the giant share they had in beginning and are down to 30 percent. The investors under the Nevada certified investor rule would be diluted as well because they would not own the original 20 percent owned in the beginning but own 10 percent at a \$10 million valuation. For every dollar those investors invested, they are getting \$40 back in return. That considers all the dilution and everything else in this scenario. On a larger scale, this is what created so much wealth in Silicon Valley and elsewhere. Because I do not know the ones who met the accredited investor standard could invest and had access to these deals, this should open Nevada to the aperture and give access to these deals for everyday Nevadans who do not have to be sophisticated and rich first before they get the opportunity to invest. By doing that, we will have more money for the founders and more money for the investment by investors.

ASSEMBLYMAN YEAGER:

We do have a friendly conceptual amendment ([Exhibit D](#)) from the Secretary of State's Office. In the Assembly, we made some amendments to A.B. 75 and did not get the language quite right. We are here with a friendly amendment to ensure we do not inadvertently remove some safeguards in NRS for other kinds of securities beyond this.

SENATOR KRASNER:

Why limit this to people who have less than \$100,000? Could there be an exception for people who are worth less or make less than \$100,000 who see

this is a way to invest their money? Somebody who has \$10 can invest in the stock market or put it in a bank account for 3 percent—it is their choice. Why not invest in one of these privately held corporations if a person wants to? Just a consideration. Have you thought about it?

ASSEMBLYMAN YEAGER:

The line has to be drawn somewhere. We are trying to find what works well for Nevada. My hope is to get this passed and successfully implemented through the State then maybe come back in the future to adjust that down. The answer to Senators Krasner's question is we need to be cautious.

GABRIEL DI CHIARA (Chief Deputy, Office of the Secretary of State):

To clarify, the language is net worth of \$100,000. As Speaker Yeager indicated, it is important to have some level of protection in place. When someone who has a net worth of \$100,000 invests 10 percent of his or her net worth in something that has the potential to not succeed, we do not want to set up investors to fail. Wisconsin has a similar measure for interstate offerings and a net worth level of \$100,000. We discussed similar legislation with them, and they said that level feels appropriate.

SENATOR HANSEN:

Under NRS, could I pool money with somebody else? An example of Ira, the poor white boy with no money. Can I go in with several other people and create an investment pool to meet the threshold the SEC requires?

MR. DI CHIARA:

Nevada statute for interstate offerings with no securities being sold across state lines is 35 or fewer investors. There is no requirement for any registration if someone is doing something similar. This is not just about fundraising. It is about the issuing of securities or shares, which can be a little more complicated than just pulling money together. There is an exemption on the books. Assembly Bill 75, as Mr. Saling indicated, is meant to deal with businesses looking to do something more complex and grow larger. We wanted to make sure there is a framework in place.

SENATOR HANSEN:

Does the SEC enforce statute? Do we have an SEC or the equivalent for Nevada? If A.B. 75 passes, who makes sure that someone has met the \$100,000 threshold of value before investing?

MR. DI CHIARA:

The Secretary of State's Office has eight divisions. The Securities Division is one of them with a deputy secretary for securities who serves as the securities administrator. Every state has a securities administrator. She works closely with the SEC and assists with the work. In Nevada, we have a whole oversight, statutory and regulatory framework in NRS 90. We have seven positions for POST-certified law enforcement officers who enforce and investigate criminal securities issues. Secretary of State Francisco V. Aguilar and staff take the oversight of securities seriously. We have another legislative bill that would create a victims of securities fraud restitution fund, because a bad actor does not always have money to pay victims back. We are grateful to Assemblyman Yeager and Mr. Saling for working with us to come up with a conceptual amendment, [Exhibit D](#), on [A.B. 75](#) that will protect investors while also providing opportunities to the business community.

To answer Senator Hansen's question about who verifies that net worth, the conceptual amendment, [Exhibit D](#), specifies whoever is issuing the security will verify, and that serves as a protection for them as much as anything else. The Secretary of State's Office would almost certainly develop a regulation around what that check should look like. Someone who says, "my net worth is over \$100,000 and I would like to invest 10 percent of my net worth in your company" does not help the issuer if that person comes back and says, "you knew I was not worth this amount of money." The issuer would have to verify it. But the Secretary of State's Office would work to come up with a standardized process for that verification.

SENATOR HANSEN:

If you are going to drop it from \$1 million to \$100,000, do you expect to see a big spike in the number of people investing? If so, do you have the staff available to manage that?

MR. DI CHIARA:

The hope is that we would see a spike in the number of people investing. The Secretary of State's Office regularly checks when businesses file one of the types of filings required with our office, of which there are several. It is more of a notification our office is going through all these filings and verifying everything. That is not true just in Nevada, it is true nationwide. They are notifying us of what they are seeking to do and the type of business that they are engaging in. Only if there is an issue do we need to take the time to begin

the investigation process. This should not require any additional staffing from our office.

MR. SALING:

About 3 percent of Nevadans qualify to make these investments. If you go purely on math, and there was a median income rule, then half of Nevadans would be able to invest. With the other restrictions layered on everything else, the hope would be that we get to a third when considering all the restrictions on eligibility. Clearly, not all will be eligible. The idea here is to get the number of investors to 9 percent, 10 percent or 12 percent of the national pool. Nevada would be ahead of where we are now and could go much further by following these suggested rules.

SENATOR HARRIS:

My question is about the income requirement in section 2, subsection 1, paragraph (b), about reported income. Is that just the straight-up W-2 number? What about adjusted gross income versus modified adjusted gross income, which could be a lower number? Which number do we use for this metric on a person's income?

MR. SALING:

The idea is to pick a simple and easy to see number. We went for the top-line number of income because it is easy to find for the issuer who may need to look at somebody's tax return.

SENATOR HARRIS:

To clarify, it is not, in fact, your net worth but reportable income.

MR. DI CHIARA:

Yes. There is a net worth requirement in terms of the amount someone can invest, but the qualification for investing is that reportable income number.

SENATOR HARRIS:

I noticed that under the threshold, there is a difference between a couple and a single person. But in A.B. 75, it is just \$100,000 for a single person or couple. Is there any reason we may want to keep that separate whether for a single person at \$75,000 and a couple at \$100,000 or an individual at \$100,000 and a couple at \$150,000? Is there some reason why that split occurs or in the converse a reason why maybe we should not have that income split?

MR. SALING:

It was a matter of keeping it simple. If someone is going to invest and is above the median wage or \$100,000, whichever standards, it is just easier to do it that way. There is no reason other than purely to keep it simple and easy to enforce and understand.

SENATOR HARRIS:

I would suggest that \$100,000 for a single person is different than \$100,000 for a couple or family. You might want to have a slightly higher threshold even if it is an even nice round number like \$150,000 for a couple versus an individual, especially if what we are looking at is the couple or individual's ability to take this risk.

SENATOR DONDERO LOOP:

This is going to create a lot of wonderful opportunities for people. Would this be a partnership, limited liability company (LLC) or corporation, or is there a structure mandate? Can you just address the liability issues associated with the shareholders and what the Secretary of State's Office nexus is to ensuring things are done appropriately?

MR. DI CHIARA:

My understanding is that several different entities could issue securities based on A.B. 75. Mr. Saling can answer regarding which types of entities are likely to issue this type of security. Regardless of the type of the process, notifying the Secretary of State's Office is represented the same in the conceptual amendment, [Exhibit D](#). Whether it is an LLC fund or something else, they are all required to notify.

MR. SALING:

It will probably be either an LLC or C corporation. The investor funds tend to be LLCs and some of the businesses will be LLCs, but the bigger entities tend to be C corporations because they can attract money from outside the State under the federal law as a C corporation.

MR. DI CHIARA:

That notification process identified in the conceptual amendment, [Exhibit D](#), would require the entity to issue three things to the Secretary of State's Office. First is a background check, similar in statute to the one that teachers must go through. Second is a balance sheet for the entity to show the Secretary of

State's Office the status of the entity as it stands. Third is compensation for the controllers or officers of the entity. These normal things included in other types of security filings would be filed with the Secretary of State's Office and provided to the investor prior to any securities being issued to ensure the prospective investor understands the entity structure, who is being compensated and how.

CHAIR SCHEIBLE:

The Committee has received one letter ([Exhibit E](#)) of support and one letter ([Exhibit F](#)) in opposition. I close the hearing on A.B. 75 and open the hearing on A.B. 76.

ASSEMBLY BILL 76: Revises provisions governing civil actions. (BDR 2-147)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Assembly Bill 76 escaped the Assembly without an amendment and deals with recoverable cost of witness fees. It is straightforward in terms of the cost of expert witnesses in a civil lawsuit can be substantial and a significant factor in the overall cost of litigation. In some cases, the cost may be so high that it can impact the ability of a party to pursue their legal rights. If someone is hiring a doctor or specialized surgeon, they are probably going to be paying \$1,500 an hour to get them to consult or testify at trial. That is a lot of money and can be extrapolated to other professions where folks do not testify in the trial for free and want compensation at the normal billable rate. Assembly Bill 76 seeks to increase the amount recoverable for the person on the prevailing side in the litigation or win, as the first requirement. If that person does not win, the costs are not recoverable.

The last time this amount was increased was in 1989. I want to take the Committee through the history of only a couple of adjustments to this number. The first bill that authorized the court to award the prevailing side witness fees was sponsored by Senator Bill Raggio in 1977, and that was set at \$250. That amount was increased in 1981 in a Senate Government Affairs Committee bill to \$750 per witness. Then in 1989, Assemblyman Matthew Callister and Assemblyman Jon Porter increased it to \$1,500 per witness for up to five witnesses. Even though it is \$1,500, the court can grant more in certain circumstances.

On page 2 of A.B. 76, subsection 5 says "\$15,000 for each expert witness unless the court allows a larger fee after determining that the circumstances surrounding the testimony of the expert witness were of such necessity as to require the larger fee." What is happening in real life is prevailing parties come into court and say we have extra witness fees always more than \$1,500. Then parties have to file motions, brief it with the court, and courts almost always grant those motions. As A.B. 76 proposes to increase the amount from \$1,500 to \$15,000, we eliminate a lot of time and burden on litigants to do motions and briefing for each expert witness above \$1,500, saving time for the courts to look at the motions because in practice those are being granted already.

One question the Committee might have is how did you come up with \$15,000? I do not have a great answer for that, other than my experience in court is if someone goes through trial with an expert witness and proves a case, \$15,000 is probably the right amount of money. When figuring an expert witness must be retained, do work, prepare a report and testify in trial, \$15,000 was a good place to put this. Even if we increase this to \$15,000 and an expert witness fee exceeds that, a court could still grant more under State law. Assembly Bill 76 modernizes where we are in terms of recoverable fees of an expert witness.

SENATOR STONE:

I see the need and the court time that could be saved by A.B. 76. But this bill does not mandate that someone in court spends the \$15,000, right? This is a ceiling, even though the judge can still go beyond the ceiling. It is a guide based on the cumulative time and what an expert witness gets paid.

ASSEMBLYMAN YEAGER:

You are correct, Senator Stone. Say an expert witness was retained and only bills \$3,500, the prevailing party would have to present those bills to the judge. The judge would not automatically say that party is getting \$15,000. It would be the actual cost up to \$15,000 by A.B. 76. If it is more than that amount, the prevailing party would have to go through the process of briefing and a court hearing.

Senate Committee on Judiciary
May 8, 2023
Page 12

CHAIR SCHEIBLE:

I close the hearing on A.B. 76 and adjourn the Senate Committee on Judiciary
at 1:39 p.m.

RESPECTFULLY SUBMITTED:

Blain Jensen,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 75	C	2	Jeff Saling / StartUpNV	Slide Presentation
A.B. 75	D	5	Nevada Secretary of State Francisco V. Aguilar	Proposed Conceptual Amendment
A.B. 75	E	10	Senator Melanie Scheible	One Letter in Support
A.B. 75	F	10	Senator Melanie Scheible	One Letter in Opposition