

**MINUTES OF THE
Senate Committee on Commerce and Labor**

**Eighty-second Session
March 29, 2023**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:02 a.m. on Wednesday, March 29, 2023, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Pat Spearman, Chair
Senator Roberta Lange, Vice Chair
Senator Melanie Scheible
Senator Skip Daly
Senator Julie Pazina
Senator Scott Hammond
Senator Carrie A. Buck
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Senator Marilyn Dondero Loop, Senatorial District No. 8

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Kelly K. Clark, Committee Secretary

OTHERS PRESENT:

Mike Schneider
Mike Schoenbaechler, Co-owner/Winemaker, Grape Expectations; Vegas Valley Winery
Patty Peters, Co-owner, Grape Expectations; Vegas Valley Winery
Helen Foley
Wiz Rouzard, Deputy State Director, Americans for Prosperity

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Emily Osterberg, Henderson Chamber of Commerce
Tim Burke, Winemaker, Artesian Cellars
Bill Loken
Alfredo Alonso, Southern Glazer's Wine and Spirits
Ashley Jeppson, Administrator, Division of Plant Health and Compliance,
Nevada State Department of Agriculture
Kim Frankel
Leslie Bell, Washoe County Sheriff Deputies Association
Jason Leshner, Washoe County Sheriff Deputies Association
Randy Sutton, National Director, The Wounded Blue
Tom Morley, Laborers Union, Local 872 and Local 169
Wendy Leonard
John Abel, Las Vegas Police Protective Association
Rick McCann, Nevada Association of Public Safety Officers
Anje Earl
Janira Varty
Leonard Cardinale
Scott Edwards, Las Vegas Peace Officers Association
Wilson Crespo
Dalton Hooks, Nevada Self Insurers Association
Paul Moradkhan, Vegas Chamber
Bryan Wachter, Retail Association of Nevada
Lindsay Knox, Nevada Restaurant Association
Warren Hardy, Urban Consortium
Misty Grimmer, Nevada Resort Association
Chas Nort, Nevada Alternative Solutions
Jeanette Belz, American Property Casualty Insurance Association
Beth Schmidt, Las Vegas Metropolitan Police Department
Sarah Collins, National Electrical Contractors Association
Victoria Carreon, Administrator, Division of Industrial Relations, Nevada
Department of Business and Industry
Troyce Krumme, Las Vegas Metro Police Managers & Supervisors Association

CHAIR SPEARMAN:

We will start today with Senate Bill (S.B.) 259.

SENATE BILL 259: Revises provisions relating to alcoholic beverages.
(BDR 52-676)

Senator Marilyn Dondero Loop (Senatorial District No. 8):

I am pleased to present S.B. 259, which builds upon our previous efforts concerning wine and wineries in this State. Over the last decade, we have made changes to Nevada law that makes the prospect of opening and operating a winery in Nevada more attractive.

In 2015, the Legislature made many changes to Nevada's winery laws by creating new opportunities for wineries to operate in the State. While there were no changes to the licensing or permitting requirements of the winery, it did change the scope of permitted operations and expanded where wineries could operate in the State. It permitted wineries in Clark and Washoe Counties to produce, bottle, blend and age wine, and it added restrictions concerning wine and other alcoholic beverages.

A winery can sell at retail. As a result of this measure, we have grown from four to ten successful wine producers in this State.

In 2013, the Nevada Governor's Office of Economic Development first identified the expansion of vineyards as one of the State's agricultural opportunities. Wine grapes have low water requirements. Vineyards also often offer tourism opportunities, such as tours or wine tasting.

According to the 2022 economic impact analysis by the National Association of American Wineries in Washington, DC, Nevada's wine industry generates an estimated \$3.54 billion in total economic activity. Nevada's climate is conducive to growing a wide array of varietals. Even with these advancements, vintners continue to face challenges.

For instance, the restrictions on tasting and retail selling of products can hamper businesses wanting to expand throughout Nevada. In addition, there is a lack of parity between wineries licensed before and after October 1, 2015.

Establishing a sustainable vineyard is cost prohibitive due to these restrictions. For these reasons, I am happy to sponsor S.B. 259. Section 1 deletes provisions limiting the amount of wine that a winery licensed on or before September 30, 2015, may sell at a location other than the winery. The amount sold at a second location may not exceed 50 percent of the total volume of wine sold by the winery.

Section 1 further authorizes a winery licensed on or after October 1, 2015, to sell or serve its wine at one other location other than at the winery. It is currently limited to not more than 50 percent of the total volume of wine sold by the winery

Section 1 further authorizes a winery licensed on or after October 1, 2015, to sell or serve its wine at one other location, other than on the premises of the winery. If less than 25 percent of the wine produced, blended, or aged by the winery is produced from fruit grown or honey produced in Nevada, this bill would increase the number of cases of wine the winery and its one location can serve from 1,000 cases to 2,000 cases. In addition, up to 150 barrels of cider produced by the winery can be served annually.

In addition, section 1, subsection 4, revises existing provisions and authorizes the State Board of Agriculture to adopt certain regulations to ensure that a winery complies with federal law. That requires the Board to adopt regulations and create a certification for wine produced, blended or aged from fruit grown, or honey produced, in this State.

Section 2 revises provisions that govern when a board of county commissioners or the governing board of a city may recommend the suspension or revocation of a license. It says such boards shall render their decisions within 60 days after a citation is served upon a licensee.

We have three guests with us today: former Senator Mike Schneider, who will provide some history on winemaking in Nevada; and Patty Peters and Mike Schoenbaechler, co-owners and operators of the Vegas Valley Winery and Grape Expectations, a wine-making school in Henderson. They will provide background on their product and facility.

MIKE SCHNEIDER:

In 2005, I sponsored a bill that created an opportunity to create a wine-making school. People go to the school, the grapes and equipment are available, and people learn to make wine. It was a big deal to get the bill passed. Since then, this business has been thriving. People from all over the State go there and learn to make their own wine. The school also makes and sells wine at the winery. They have a tasting room at the winery, but since it is located in an industrial area, there is very little foot traffic. Only people who know about it go down there.

We want to create an opportunity where a winery can expand and establish a tasting room in a nice area away from the winery. That might be Water Street in Henderson, downtown Las Vegas, the Arts District, or someplace like that. Their business is thriving, they have expanded once, but the winery is located in a warehouse area. I will ask the owners to explain how the business operates.

MIKE SCHOENBAECHLER (Co-owner/Winemaker, Grape Expectations; Vegas Valley Winery):

I am co-owner of Vegas Valley Winery with Patty Peters. Ours is a small winery located in Henderson. We have also operated Grape Expectations for 16 years. Our business has grown. We have people from all over the State that come and make wine at our school. We teach them how to make wine; they experience the winemaking process. When it became feasible to open a commercial winery, it seemed like a good fit for us. Once that happened, we started to produce wines commercially.

We have a very small tasting room in Henderson connected to our production facility. One challenge is that we are located in an industrial complex which makes it difficult to get the public to acknowledge us or come visit.

That is why we would like to have a secondary location for our tasting room, so we could relocate to an area with a bit more foot traffic, an area like downtown Las Vegas, the Arts District, or Water Street in Henderson. Those areas are thriving. We would love to be part of that.

At the same time, we would like to be able to serve wine at the winery for folks who come out for a tour and want to have a glass of wine. That is why we are asking for two locations.

We are at our limit with sales of 1,000 cases of wine. We would like to sell more wine. The additional revenue could help pay for the second location.

We would also like to add hard apple cider, which has never been addressed before. We started making cider four or five years ago. As far as I know, we are the only winery in the State that makes hard cider. We source our apples from North Las Vegas and we produce the cider in Henderson. The hard cider is a 100 percent Nevada product. It has become very popular. We are at a point where we want to produce enough of it to begin distribution to bars and restaurants, going through the proper channels. We would apply the

three-tier system. It will allow our small business to grow and create jobs. It will allow us to become a more sustainable business. These provisions will also allow new wineries to get started.

As more Nevada wineries open, there will be more demand for Nevada grapes. Hopefully, grape growers in the State will plant and grow more grapes. That would be beneficial to the whole State.

PATTY PETERS (Co-owner, Grape Expectations; Vegas Valley Winery):

I am very proud of Vegas Valley Winery; we were the first in Clark County. Many people who come are people who regularly make wine with us. They are from Las Vegas and Reno and have been coming for 16 years. It is a wonderful little community of people who love wine and making wine. Hopefully, we are here to stay.

SENATOR STONE:

When I first moved to Nevada a few years ago, I did not know there was a wine industry here. I came from a wine-growing area in Temecula, California, where I owned a winery. From 2005 to 2014, I served on the board of supervisors there. We helped save wine country, which today is a \$1 billion industry. There is a tremendous opportunity for growth here. I understand there are not enough local grapes to make 100 percent Nevada wine, but that could be a future goal. Why is there a limit on the amount of wine you can produce?

MR. SCHOENBAECHLER:

There is a limit on the amount we can sell per calendar year. It basically is to help promote the Nevada grape industry. A Nevada vineyard that grows its own grapes or purchases Nevada grapes and uses 25 percent Nevada fruit by volume, can have unlimited sales.

It is based on the amount of Nevada fruit available and being able to either own or grow a vineyard. For us, being located in Henderson, it is not cost-effective or feasible to grow grapes due to the lack of land. That is why we have a sales limit. The limit is on the wineries that do not produce Nevada fruit or use Nevada fruit in their production.

SENATOR STONE:

That is understandable. The model for what you are attempting is not unique. I support it. Even in Temecula, many wineries do not make wine at the wineries;

they make it in industrial zones, referred to as refineries, where it is a lot less expensive to produce. Then they bring the wine to the tasting rooms in the tourist areas to sell the product.

SENATOR BUCK:

I am a customer of Grape Expectations. I made some wine called "Buck 2020" a couple of years ago. Are you going to be making any of these products at your second location? Or will it just be for tasting?

MR. SCHOENBAECHLER:

The secondary location would strictly be a tasting room. There would not be any manufacturing taking place at that location.

HELEN FOLEY:

I support this bill. As a private citizen, I am here today to tell you how much fun it is to make wine. I began making wine at Grape Expectations years ago at the invitation of Senator Schneider. I joined a group with Julie Wilcox. We have such a great time making wine twice a year. Some of our grapes come from south of the equator. We make Chilean wine and South African wine. It is a wonderful experience. Many illustrious people join us; it really is an excuse to have a party. We go through the crushing and racking process, the bottling and we make our own labels. We get creative. They make nice hostess presents.

It is a great activity, but they are trapped by this law. It would be wonderful for more people in Nevada to have this experience. Please support this legislation.

WIZ ROUZARD (Deputy State Director, Americans for Prosperity):

We are glad to support this bill. We believe small businesses, especially wineries, have an important role to empower our local economies. There is no better way to unleash economic prosperity than to remove the restrictions. This will empower local business. Why would there be a cap? I think there is room for improvement there, but we are happy to see this bill move forward. Let us get the party started in Vegas with these local wineries. We urge you to support this bill.

EMILY OSTERBERG (Henderson Chamber of Commerce):

I am here representing the Henderson Chamber of Commerce and its more than 1,800 members. Most of them are small businesses. Most wineries are small

businesses. This bill will help them expand their businesses in a responsible manner while easing the regulations that can stifle growth. We support this bill.

TIM BURKE (Winemaker, Artesian Cellars):

I am the winemaker and co-owner of Artesian Cellars in Pahrump. I support S.B. 259. There are very few wineries in Nevada. Every adjoining western state has more wineries than we do. This bill makes changes that will help our wineries to be more financially viable. Hopefully, it will help increase the number of wineries in our State. Every vintner in Nevada wants to expand wineries and make our industry strong. The addition of a tasting room is a common practice in neighboring states.

It makes sense that production facilities be located near the vineyards. Land and labor are less expensive there. But there are very few customers. For example, the Frey family worked hard for many years to establish Churchill Vineyards. Fallon is an hour from the closest major metropolitan area in Reno. Their winery was the only one in Fallon. It was very difficult for them to market to the Reno area and convince Reno residents to drive to Fallon to visit the winery. Their winery is beautiful. Their tasting room and production facilities are first class. The Freys are wonderful people dedicated to Nevada. But very few people came to Fallon to visit their winery.

Unfortunately, after years of hard work, the Freys have ceased their winery operations. They have concentrated on the distillery, which was developed using a distribution business model. If the Freys had an opportunity to open a second wine-tasting room in Reno, it might have been profitable. They might still be operating as a Nevada winery today.

Cider is considered a wine, made from fruit, most commonly apples. Nevada does not have a large apple orchard industry. Establishing a separate case category for cider will give the wineries that are producing cider the ability to grow that market segment without affecting their wine case cap. There is a direct correlation between locally grown wine grapes and developing a wine region. Napa is associated with high-quality wines made from Napa vineyards.

BILL LOKEN:

Between 2003 and 2019, my wife and I owned the Pahrump Valley Winery. We grew it into the largest winery in the State. In 2008, we released the first 100 cases of Nevada red wine ever commercially produced. When we sold the

winery in 2019, we were producing between 2,500 to 3,000 cases of Nevada wine per year. We were working with different vineyards and the growers had increased production to a point where we could make 5,000 to 6,000 cases of Nevada wine a year.

One thing brought up earlier was the cap—the 2,000 case cap—and the requirement to use at least 25 percent Nevada fruit. In 2015, when the laws changed, we recognized that without a strong incentive to require Nevada-grown grapes, the State would absolutely miss out on an opportunity to grow a new industry, agritourism.

Nobody goes to visit alfalfa fields, but they do want to see vineyards. The requirement to use 25 percent Nevada fruit in order to sell 2,000 cases of wine keeps the pressure on to continue to develop Nevada vineyards and produce Nevada wine.

Customers want to buy local wine. We do not want to see the Nevada wine industry turn into a wine suburb of California. We want to create our own identity, like Arizona, Oregon, Washington and other states.

One acre of grapes in southern Nevada will produce about 250 cases of Nevada wine. To increase sales capacity by 1,000 cases, the winery would only have to produce one acre of Nevada grapes. That is a small price to pay to support local grapes and wine.

ALFREDO ALONSO (Southern Glazer's Wine and Spirits):

I am testifying in neutral today. Everybody knows this started out as a rural incentive. Many years ago, Joe Dini tried to get wineries in rural areas to increase economic development activities. It was never illegal to have wineries in other counties. They just could not have a tasting room. Adding that was an important piece. Anybody who can grow wine in the desert is my hero. I know how hard these folks work on their wineries.

It is important to give everyone the ability to succeed. I think what Mike and Patty want to do is import grapes. The cap is only on imported grapes. What you grow yourself, is unlimited, that is the incentive. The wine sales cap is a great way to manage the system. When Arizona went without a sales cap, it did not work. Once they returned to a sales cap, they began to thrive again.

I am happily neutral and support these winemakers' efforts. The reason apple cider is included is because federal law treats it as a wine. We had to differentiate because it was not addressed in Nevada law.

I have a friendly amendment ([Exhibit C](#)). In section 1, subparagraph 2, that section was not supposed to be deleted. The point is, if you are going to have another location, which is not your primary location, you can only sell half as much at that location. You cannot move everything into the tasting room because you are not manufacturing it there. You still must have a primary location. That was a simple mistake.

ASHLEY JEPPSON (Administrator, Division of Plant Health and Compliance, Nevada State Department of Agriculture):

We appreciate the intent of this bill is to try to increase opportunities for Nevada businesses and grape growers. That is always a good thing.

However, some language in the bill requires our Department to create a certification program and adopt regulations to verify that labels comply with federal laws. That will require staff time and would come at a cost.

You have seen our fiscal note. We also request that a fee authority be provided in this bill, so we can see these requirements through to completion. This bill would require us to go onsite to verify compliance and review winery labels.

MR. ALONSO:

We were prepared for this. We know about the fiscal note. I will refer questions to Bill Loken and Tim Burke. We disagree with the need to go to the Nevada State Department of Agriculture. The Alcohol and Tobacco Tax and Trade Bureau (TTB) takes care of these regulations at the federal level. They would need to work with the Nevada State Department of Agriculture to clarify that.

When you pull the grapes out of the ground, there is a bill of lading. That is what the wineries send to the TTB. If the vineyards sell product to an individual, that will be shown as well. There is nothing required from an agency, unless it is the TTB going to a winery to conduct a DNA check of the wine. That is the only way to determine what is there.

There is nothing that an agency will do other than paperwork. The bill of lading is the only way to determine how much wine or cider has been produced there.

All the labeling requirements are federal requirements. The goal here is to assist some of the Nevada wineries that are growing grapes, using grapes or buying grapes. They should get some benefit from that. We strongly believe that a wholesaler will want to sell into the system.

SENATOR DONDERO LOOP:

Thank you for hearing S.B. 259. I appreciate the questions. In reference to the fiscal note from the Nevada State Department of Agriculture, the agency has not contacted me. I look forward to that conversation and passing this bill.

CHAIR SPEARMAN:

We will close the hearing on S.B. 259 and open the hearing on S.B. 274.

SENATE BILL 274: Revises provisions relating to industrial insurance.
(BDR 53-946)

SENATOR SKIP DALY (Senatorial District No. 13):

I am introducing S.B. 274 regarding workers' compensation. The Legislature has issued legislation on various things, but essentially, we have a no-fault system.

There is an exclusive remedy. You cannot sue for damages against the employer if you are injured on the job, but that is in exchange for a promise that your medical bills will be taken care of if you are, indeed, injured on the job.

That is what we are discussing today. This bill addresses the situation when that system fails, and the exclusive remedy then fails to cover the cost of the on-the-job injury due to people acting in bad faith. The exclusive remedy fails the worker in that situation.

There are two parts to the bill which I will cover before Kim Frankel tells her story. Kim was the genesis for this bill. She can tell her story much better than I can.

Section 1 creates a right to sue a third-party administrator or an insurer—the insurance company, not necessarily the employer—unless you are a self-insured employer. Even then, it is not an open-ended right to sue just because you are aggrieved or you do not agree with the result.

It is only after you have gone through the entire process that this bill would go into effect. Let us say you have had a hearing, you have received an award and they still deny the claim. Or the case goes to appeal and you win the appeal, but they still deny the claim.

Then you go to court, you win in court and the third-party administrator is ordered to cover your injury, and they still deny the claim. Those are the steps you would have to go through. All those processes and safeguards that we put in place are still there. But if a third-party administrator or self-insured employer acts in bad faith and still denies the claim, we need to have a remedy for that, which we currently do not have.

Section 2 increases the benefit penalty. That is one of the other remedies that you do have. You would appeal to the Commissioner of Insurance and ask them to give the insurer a penalty. That penalty is set at not less than \$5,000 or more than \$50,000.

Prior to that, the limit was \$10,000. In 1999, the maximum benefit penalty was increased to \$25,000; in 2005, it was \$37,500; in 2011, it was raised to \$50,000. So here we are, 12 years later, trying to make it match the current tort limit, which is in the *Nevada Revised Statutes* (NRS) 41.035 at \$200,000. That tort limit was raised to \$200,000 in 2019. We are trying to catch up the workers' compensation benefit penalty to the tort limitation from 2019.

The current rate has not been increased for 12 years, since 2011. I have asked Kim Frankel to come up and tell her story. Her case was really the inspiration for the bill. Leslie Bell is here to assist with questions.

KIM FRANKEL:

I am a disabled detective formerly employed by the Washoe County Sheriff's Office. I am speaking today in support of S.B. 274 revising provisions to workers' compensation. On June 25, 2020, a hit-and-run driver under the influence slammed into the back of my assigned, undercover detective vehicle. It was while I was working on a case, as a crimes against children detective, for the Washoe County Sheriff's Office.

Initially, my workers' compensation claim was accepted by my employer, Washoe County, and their third-party administrator Cannon Cochran Management Services, Inc. (CCMSI). I was diagnosed with whiplash, lumbar

strain, a concussion, post-concussion syndrome, vertigo, bilateral ulnar neuropathy and, as you visually see, some of the symptoms of functional dystonia.

As instructed by CCMSI physicians, I continued to report to work on light duty, even though my body was shutting down. I suffered and fought through nausea, vomiting, extreme and debilitating vertigo, and burning and itching that made me want to rip my skin off and my hair out. There was a piercing sound in my ears that stopped me dead in my tracks, along with auditory exclusion, involuntary muscle contractions and the violent, repetitive, twisting and shaking of my body. All because I trusted and believed my employer of 17 years and the workers' compensation system.

On May 21, 2021, after several independent medical evaluations scheduled by CCMSI and their physicians confirmed my diagnosis as industrial, CCMSI issued a determination, suspended my benefits and denied the diagnosis of dystonia as non-industrial. They had no supporting evidence, medical or otherwise, to support their determination.

On December 29, 2021, an appeals officer reversed the CCMSI determination. However, CCMSI refused to comply.

I did not understand how my employer—Washoe County, and their third-party administrator, CCMSI—could blatantly disregard a judge's order. Then I learned that Nevada was not a bad faith state. There is nothing to deter employers and third-party administrators from intentionally mishandling injured workers' claims.

I am testifying today because of an article by Jessica Hill in the Las Vegas Review-Journal discussing the backlog of Nevada injured worker cases. The injured workers and their attorneys would not authorize names to be published, for fear of retaliation from the current workers' compensation system. That was when I decided to go public with my story. The response I have received has been overwhelming.

In 2005, I took an oath to protect and serve the people of this great State. I have also earned the trust of the State by working for 17 years as a peace officer and detective, investigating some of the most heinous crimes with

transparency. I then made a public promise to all the injured workers of Nevada to be their voice and fight to make Nevada a bad faith State again.

To this day, my family and I continue to unnecessarily suffer and endure the loss of my career, finances, independence and our family home. I have been harassed by private investigators. I have endured endless judicial hearings. I continue to suffer due to delayed medical treatment, billing, bullying and other unlawful acts. All these acts have been committed against me by my employer Washoe County, their third-party administrator, CCMSI and their legal team.

I am now permanently incarcerated by my industrial injuries, not because I was injured on the job, but because to this very day, and this very minute, Nevada's workers' compensation system continues to delay my human right to medical treatment. That is despite court orders that have gone as high as Nevada's District Court, and benefit penalties ordered by the Division of Industrial Relations (DIR) in the Nevada Department of Business and Industry.

If there were a deterrent such as bad faith, the cruel actions of employers, insurance companies and third-party administrators would be mitigated. This bill is a deterrent. It does not open the system to frivolous lawsuits.

SENATOR SCHEIBLE:

Thank you to Senator Daly for bringing this bill and thank you Ms. Frankel for advocating for Nevada's injured workers. We are all public servants. I would be devastated if I was unable to continue this work. I am very sorry for what you are going through and I commend you for being such an amazing advocate.

This bill serves the purpose that you are trying to achieve. My question is about the practical implication of creating the bad faith standard. As I understand it, if I am injured on the job and my medical bills are \$10,000 and my employer pays the \$10,000, then there are no complications. My employer acted in good faith. I am all done. I cannot, at that point, go back and sue my employer for an additional \$5,000 or \$10,000 just because I am upset that I got injured, or I do not think that \$10,000 is enough to offset my personal pain and suffering.

What this bill does say is that if I am injured on the job and my bills are \$10,000 but my insurance company only pays me \$5,000, then I can sue them. I can hold them to our agreement that they must cover the \$10,000 in injuries.

I can tell them you only paid \$5,000 you still owe me another \$5,000. Am I understanding this correctly?

SENATOR DALY:

That is the intent of this bill. If you entered a settlement and they paid, that would be it. That is the exclusive remedy. But if you entered a settlement and they do not follow through, then, of course, you have appeals and some other steps to take. But if every step of the way, they deny you, as they did in Kim's case, that is when this bill goes into effect. She filed an appeal; she received the benefit penalty. That still did not deter them, nor did they pay. To this day, they are still denying Kim Frankel's claim.

It is my understanding that she got the best treatment that she could. She is paying for that out of her own pocket. Washoe County is still attempting to interfere, by intimidating the doctor who is providing her treatment. He has stopped that treatment due to their meddling and threats.

The Legislature created a system that allowed this to happen. We are the only ones who can fix it. That is our responsibility. It needs to be narrow. I will work with the industry to make sure it does not create frivolous lawsuits. But if there is denial after denial, even after hearing a court awards penalties, there must be a remedy. We must fix it.

MS. FRANKEL:

In my case, Senator Scheible, my claims are accepted. It has been opened and accepted because it was ordered through the courts. My employer and their third-party administrator, despite court orders, are still not complying. In effect, what that does to the employee: you have an open claim; you cannot see a physician on your own; all treatment must go through the workers' compensation system.

As a result, I cannot use my own private health insurance. That would be committing fraud in the State of Nevada. Despite court orders, because there are no deterrents and no repercussions, here I am. This has been going on since June 25, 2020. As an employee, I cannot get out of it. I pursued medical treatment because I was desperate. I knew I had a window of recovery that their selected physicians and neurologists told them was the timeframe for my treatment.

But they did not comply with their own doctors' recommendations. Now I am permanently disabled. I did not receive treatment in the necessary window of recovery.

I sought medical treatment through Oregon Health & Science University (OHSU) on the recommendation of their neurologists. I am paying cash, \$600 an hour, for my treatment. In doing so, they still sought out my neurologist team at OHSU. They sent them two volumes of non-essential documentation that would lead any reasonable person, let alone an organization of physicians, to believe they would be pulled into a lawsuit if they provided treatment.

I was paying cash for my treatment, but it has been stopped. I have exhausted everything through the law. I have gone through the judicial system, like every other injured employee. I have gone through the benefit penalties. They have completed investigations. All that did was find CCMSI guilty of mismanagement of my case. All that did was tie me up even more in the judicial system.

I am appealing the findings of the DIR; the hearing is scheduled for May 24, 2023. I am nowhere closer, even though I am trying to pay cash to receive the medical treatment that any one of us in this room deserves. It is all because I was injured on the job, by being hit by a driver under the influence, who is now serving time. I did my job. I upheld my oath. He ran, I pursued, I got him off the streets before he killed anybody. This system treats injured workers who just want to get back to work worse than a perpetrator who commits the most heinous crimes in this Country.

SENATOR DALY:

Just one last comment. This bill is not retroactive. Kim is not going to benefit if this bill passes. This is for future people. I commend her even more.

LESLIE BELL (Washoe County Sheriff Deputies Association):

I am the workers' compensation representative for the Washoe County Sheriff Deputies Association. I have been on both sides of this issue. I owned a third-party administrator agency; I have handled claims. Today I handle claims. The difference between a bad faith remedy and the benefit penalty remedies that exist today is bad faith is defined as "malicious and willful." Our Supreme Court has defined it as the "absence of a reasonable basis for denying benefits" in prior case law.

To clarify regarding the benefit penalty. To your question, Senator Scheible, if you have a routine claim, those things are founded in statute. They are resolved. You get determinations, you get appeal rights, and you go through the Nevada Department of Administration if you disagree.

In this case, where a decision was made to deny this diagnosis and suspend her benefits, which ended up resulting in her constructive termination from the County, the third-party administrator had no evidence. There was not one medical record that said the injury was not related to that accident, and yet they still denied it. That is bad faith. That is the core of bad faith. That is not covered by the benefit penalty.

SENATOR SCHEIBLE:

Thank you for that clarification. I think that helps me and the rest of the Committee to understand this complex process.

CHAIR SPEARMAN:

I was medically retired. I had been selected for a United Nations (UN) assignment and had to get a complete physical. They found out my shooting hand was not working. I did not know why. I went to Walter Reed National Medical Center where the doctors figured out it was dystonia. Now I get Botox shots every six months. Otherwise, this hand is permanently closed. I am fortunate I was in the military; they take care of those things.

I think the thing that we have in common is I was also a military police officer, which is why they said I had to retire. As a police officer, I needed my gun hand. As a result, I was not able to go on the UN peacekeeping assignment.

I have a question. When you go to the doctor or the hospital for strokes or cardiac cases, there are specific actions needed within a certain time frame. That recovery time you mentioned, was that a medical opinion?

MS. FRANKEL:

Yes, that was a medical recommendation because the dystonia symptoms started in my hands and fingers within nine days of the accident. By the time I saw their neurologist, Dr. Pang, on December 2, 2020, my hands were clawed like this. At that very first visit, he told them I have dystonic postures and there was a window for recovery. Then through their independent medical

evaluations, there were other neurologists who also told them the treatment I needed to recover.

Between administrative hearings and up until we went to the judicial hearing, my legal team did not appeal, so I could pay my own medical expenses. All I wanted to do was get back to work. I paid to go to the University of California, San Francisco (UCSF) Health Center because CCMSI was not complying.

When I got to UCSF Health Center, the doctor explained to my husband and me that I had a three-year window for recovery. By then it was spreading to other parts of my body, to my limbs, trunk and neck. Because I had kept myself motivated and reading, and doing everything I could on my own, the doctor said he thought I had a chance of recovery if I went to OHSU. When I got there, on September 19, 2022, Dr. Kraakevik deemed me permanently disabled. It was too late.

CHAIR SPEARMAN:

What was your physical condition prior to the accident?

MS. FRANKEL:

Throughout my career, I was a professional cyclist. I competed at an extremely high level in ultra trail running and CrossFit competitions. In the Festivus Games, I was ranked No. 1 in the world. I was extremely fit. I did activities with my family throughout my career. That is why I am not in a wheelchair today. I am still functioning today due to my athleticism. I have worked my butt off. In 1980, I went to the Junior Olympics for track and field. That is why I became a professional athlete. I chose to become a cop because it was physically and mentally challenging. I knew that was my calling.

I am small, but I am mighty. I have held my own on the streets and I was an exceptional police officer. I was recognized with many awards, not that awards define us.

JASON LESHER (Washoe County Sheriff Deputies Association):

Kim was one of our very best deputy sheriffs and detectives in the child crimes unit. She represents exactly why we need workers' compensation reform. She is not the only person who fights and suffers with this system. Police work is a dangerous occupation. Many of our members suffer injuries while serving their

communities. But this bill is not just for police officers, it is a step in the right direction for all workers in Nevada.

The workers' compensation system can be a frustrating nightmare, as third-party administrators and city and county officials routinely delay testing and treatment, deny claims outright and endlessly appeal cases. Sometimes, these appeals go all the way to the Nevada Supreme Court. Our Association has seen two such appeals in the last five years. These treatment delays cost employees their health and careers, and so much more.

This bill seeks to level the playing field and allow employees some recourse when negligence or bad faith actions are proven to have occurred. We urge you to support this much needed legislation.

RANDY SUTTON (National Director, The Wounded Blue):

I am a retired police lieutenant from the Las Vegas Metropolitan Police Department. I worked for 34 years in law enforcement. I am the founder of The Wounded Blue, a national assistance and support organization for injured and disabled law enforcement officers. Ours is a nationwide charity that assists men and women injured in the line of duty.

Washoe County Deputy Sheriff Kim Frankel was betrayed. She was severely injured in the line of duty while serving the people she swore to protect. The patrol car she was operating was crushed. As a result, her life will never be the same. The accident was just the beginning of her personal tragedy. It was her treatment in the hands of callous and inept administrators of the corrupt workers' compensation system that not only failed to treat her properly medically but refused her adequate and competent treatment.

The tragedy here is that the injuries that Deputy Sheriff Kim Frankel suffered could have been treated. She could have lived a life free of pain and the spasms that rack her body. She could have continued to serve in the career that she loved. Her life would have been one of joy and fulfillment and promise. That has been ripped away from her. The massive injustice here is that she could have been treated, but she was not. Now years later, she is still being denied the disability benefits and medical treatments she needs.

Why? Because the very system put into place to protect workers when they get injured in the line of duty has been perverted by greed. Deputy Sheriff

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Kim Frankel and many other law enforcement officers in Nevada have had their lives torn away by people making decisions to deny their medical treatments and benefits, while building their profits. They have had zero consequences for their actions.

Third-party administrators are getting rich as they embrace profits over humanity. Just to be clear, no one who receives a full 100 percent disability in Nevada is living large. The most a person who is 100 percent disabled can receive is less than \$45,000 a year.

Unbelievably, the lawyers representing these officers take a cut of 25 percent or more, forever. Full disability is barely livable and even that meager amount is being denied Kim Frankel. This is injustice on a monumental level.

The entire workers' compensation system in Nevada needs a complete overhaul. This one measure will add accountability to a system desperately in need of consequences for misconduct and corruption. It will bring a measure of justice for Kim Frankel and hundreds of others whose job was to protect and serve the people of Nevada.

When I suffered a stroke in my police car, it ended my police career. It almost ended my life. My own department turned its back on me. I had the same treatment as Kim Frankel. This has been going on for years. You have it in your hands to make that change and to bring justice.

TOM MORLEY (Laborers Union, Local 872 and Local 169):
We support this bill.

WENDY LEONARD:

I am a retired police lieutenant with the Washoe County Sheriff's Office. I was also a lead labor representative for the Washoe County Employees Association. I am here speaking in support of S.B. 274.

I served more than 20 years in public service and over 30 years representing employees in the State. The case you heard about today is not unique. I personally have heard of dozens of extreme cases of workers' compensation failures, where the checks and balances are completely ineffective. I have also been involved in hundreds of lower level cases where Nevada employees were

refused or denied treatment resulting in long-term physical disabilities. Employers label the employees who challenge the system as troublemakers.

You are going to receive opposition to this bill. The big dollars do not want to be accountable. Your answer to them is simple: The potential negative impact on any business will be mitigated by simply providing the care and benefits that are already required by Nevada law. You can tell the bill's opponents that if their vendors inappropriately deny benefits, they can manage their vendors to reduce their risks.

This bill puts the responsibility back on the employee to prove that misconduct occurred. The only responsibility of the business or insurance vendor is to follow existing laws. Please support S.B. 274 and bring bad faith back to Nevada.

JOHN ABEL (Las Vegas Police Protective Association):

Our union represents all the metropolitan police officers. I am also the co-chair of the Las Vegas Metro Employee Benefit Trust. I have been the conduit between officers dealing with workers' compensation issues and the Trust as well.

I can tell you there are numerous issues with officers who are shot in the line of duty and have their claims denied. They must fight through appeals. There is one I am working on right now. We fully support S.B. 274.

RICK McCANN (Nevada Association of Public Safety Officers):

One thing that lawyers, litigators and legislators hate is when you have a right without a remedy. Your job is to create remedies, and sometimes to create rights. There are some rights that do not have an adequate remedy.

In this case, bad faith is a remedy. It is a deterrent. This remedy has been placed right in front of you. We are here to support S.B. 274. We ask you to support this bill.

ANJE EARL:

I am currently working for the Reno Police Department as I was when I was hit by a drunk driver on May 24, 2020. I have gone through the same thing as Kim Frankel. I have submitted written testimony ([Exhibit D](#)). Please support S.B. 274.

JANIRA VARTY:

I have submitted written testimony ([Exhibit E](#)) that I will read.

LEONARD CARDINALE:

My name is Leonard Cardinale. I live in Henderson, Nevada. For nearly 25 years, I was a lieutenant with the North Las Vegas Police Department (NLVPD). I had to retire on a permanent total medical disability for a heart condition. My claim was almost immediately denied by the third-party administrator without any specific reason. From the date of the appeal to the date I prevailed was 678 days.

We cannot "sue" the insurer or the third-party administrator in a civil action due to the exclusive remedy. The DIR in the Nevada Department of Business and Industry is responsible for ensuring that workers' compensation claims are handled correctly and in a timely manner. For me, that did not occur. I support this bill. I submitted a letter ([Exhibit F](#)) which I will read.

SCOTT EDWARDS (Las Vegas Peace Officers Association):

The Association represents the corrections officers and sergeants at the City of Las Vegas Jail. I have been a corrections officer for more than 24 years. Corrections officers have also experienced a lot of what you have heard this morning. We ask you to support S.B. 274.

WILSON CRESPO:

I have lived in the Las Vegas area since 1986. I am a U.S. Air Force veteran. I honorably served in the NLVPD for more than 25 years. I retired at the rank of lieutenant in 2015. I am here to testify in favor of S.B. 274.

In 2019, I found I had two blocked arteries in my heart. I was diagnosed with coronary artery disease. Two stents were placed in my heart to prolong my life. According to my doctor, my arteries were 90 percent blocked. My doctor told me I was lucky to be alive. I was later diagnosed as terminally and totally disabled and unable to be a police officer again.

I immediately filed a legitimate workers' compensation claim under Nevada's Heart and Lung Bill, S.B. No. 295 of the 81st Session. The third-party administrator immediately denied the claim without explanation.

My claim was not accepted for over two years after it was filed. The third-party administrator, CCMSI, refused to pay the monetary portion of my benefit. A third-party administrator should not be allowed to get away with unreasonable delay of payment or refusing to pay claims like mine. Legitimate claims like mine, where two stents had to be placed in my heart, should not be delayed unnecessarily. The third-party administrator had the resources and know-how but refused my claim. That is bad faith.

There should be accountability for unreasonable delays or refusal to pay benefits. In my case, even after the hearing officer ordered CCMSI to pay my claim last year, they still refused to pay me. Again, that is bad faith. They do it because they can get away with it without any repercussions. Keep in mind, I filed this claim almost four years ago. The third-party administrator, CCMSI, still continues to unreasonably delay paying my claim.

This bill would establish consequences for third-party administrators. Workers with legitimate claims could take civil action against the third-party administrator and hold them accountable for violating the NRS. As one of more than 13,000 aggrieved claimants, this bill would allow people like me to take civil action against third-party administrators and self-insured employers for their abuse of the system.

DALTON HOOKS (Nevada Self Insurers Association):

I am appearing on behalf of the Nevada Self Insurers Association (NSIA) and our members. I started working in workers' compensation in Nevada when I was 19 years old at the State Industrial Insurance System. From there, I became a compliance officer with Nevada Occupational Safety & Health Administration. After that, I went to law school. I have been practicing workers' compensation law for 20 years, primarily with NSIA. We have multiple concerns with S.B. 274.

First, there is a duplication of existing enforcement. The DIR already has responsibilities to enforce this under NRS 616. There were comments earlier about a requirement for intentional behavior; this is not true. The statute clearly addresses refused pay or unreasonable delay of any benefit that is due to the claimant.

We have a number of issues that arise out of reintroducing bad faith into the system. Nevada did this before. In 1995, we got rid of it. You will potentially

have disparate verdicts between the administrative process as well as the district court. It will cause delays, back and forth, each time there is a conflict. There has been a conflation of multiple issues that arise out of the system. Certainly, we have heard some awful stories this morning, but bad faith is not going to change a doctor's opinion about whether something is compensable or not. It is not going to take away litigation around that issue.

I want to make sure you understand. With Nevada workers' compensation, we do one issue at a time. If there is a determination regarding claim acceptance, that is not going to end litigation on other issues, such as scope or travel claim requests. There are a number of issues. Any determination that is issued by the administrator is appealable. So as those are appealed, you are going to have additional litigation.

Turning back to the enforcement issue. We have the DIR that is responsible for enforcement. They have put in a fiscal note indicating this will potentially increase the number of appeals. You already have the Nevada Department of Administration that oversees claims adjusters, which was added a few sessions ago.

If there are problems with the adjuster, the complaints can be filed, and the adjuster can be punished under that system. This bill goes backward. It also erodes the "grand bargain." I know this Committee has heard of the grand bargain before.

Introducing civil penalties weakens the exclusive remedy doctrine. In 1913, Nevada was second only to New York, in establishing the workers' compensation law. This State has been at the forefront on this issue. We were leaders when we decided to get rid of bad faith.

This bill is going to increase litigation costs; that is not in question. That cost will be carried over to claimants, employers, public administrators and entities. This bill will, in some cases, incentivize claimants to pursue legal action over the administrative process. Both will still exist. The potential for abuse is certainly there. Lawsuits will be filed with the intent of forcing issues. This is going to impact small businesses. Insurance rates will increase because of this legislation.

CHAIR SPEARMAN:

You say the costs will increase. Ms. Frankel is paying \$600 an hour for treatment. Will it be more than that? These individuals with unresolved issues are already paying a high cost.

MR. HOOKS:

There was a question earlier about settlements. To the extent that a third-party administrator or self-insured employer or an employer enters into a settlement agreement and does not follow through, that is already covered under NRS 616D.120.

The words bad faith have been bandied about quite a bit. An insurance company or third-party administrator pursuing its due process after appealing a determination is not bad faith. I think we need to be very careful about making the distinction between those two things as we go forward.

This is going to disproportionately affect small businesses, small third-party administrators and insurers. The bad faith provisions are going to be a boon for lawyers without very much appreciable benefit to injured workers. It is not going to change claims administration. It is going to potentially be there as a threat in terms of litigation. But again, the system that you have crafted is not perfect, as no system is, but we believe it would be a mistake to reintroduce bad faith.

CHAIR SPEARMAN:

When claimants sue, I imagine there is one claimant and one attorney. How many insurance attorneys are put forward in rebuttal?

MR. HOOKS:

If the claimant gets private counsel, it is going to be that private counsel versus one attorney on the other side. If the claimant does not choose to do that, free services are available from the Office of the Nevada Attorney for Injured Workers. They provide free services for the claimants to get attorneys to represent them. One attorney will go to court, but they have a team of attorneys that work on the cases.

PAUL MORADKHAN (Vegas Chamber):

These cases are extremely compelling, and I understand the impact it has had on the lives of Nevadans. I very much appreciate the bill sponsor for meeting with the Vegas Chamber.

The Chamber does not support the mistreatment of employees. We are committed to working with the bill sponsor to address the accountability component that has been highlighted today. Our specific concerns with the bill pertain to section 1, subsection 3, regarding the private right of action. We will work with the bill sponsor to help strengthen the regulatory system and the accountability components mentioned today.

BRYAN WACHTER (Retail Association of Nevada):

We are opposed to this bill. I echo the comments of the Vegas Chamber. These are horrible incidents. There are many instances in the NRS where the penalties may not be high enough to compensate at the level you would like.

But we strongly oppose using the legal or judicial system to compel those businesses to act the way the Legislature wants. The issues we heard about were exclusively with one company. It was fascinating to me that the employers at issue are local governments. There should be some questions as to why local governments are acting this way.

We hope the Commissioner of Insurance would have some questions because we heard a commonality among all those injured workers today. One company or one incident is no reason to completely reintroduce bad faith into the workers' compensation system in Nevada. That would have a detrimental effect on all employers.

It is not the cost from the individual or that particular incident that it is going to raise costs. It is the liability that any insurer or third-party administrator would have to reconcile with this process going forward. We would anticipate that the cost of workers' compensation could rise for Nevada businesses as we try to figure out what kind of overall general legal liability has been introduced into the system.

CHAIR SPEARMAN:

If there is a penalty for bad faith, would that be a deterrent that would reduce these problems?

MR. WACHTER:

We believe the penalties can be a deterrent. They are a deterrent throughout NRS; I would not limit it to just a workers' compensation example. There are instances where you see an overwhelming and compelling case with evidence that something is wrong. Sometimes you see a disincentive to that activity in NRS that is not coming to fruition. Then we should have that conversation.

What we did not hear this morning was any data that suggests this is a system-wide problem. For that reason, we do not think introducing bad faith back into statute is the appropriate remedy. Instead, we should review the penalties and ensure that those penalties are large enough and that the responsible agency follows the requirements. I know we have a new Commissioner of Insurance. He has a new vision for how to make sure that the Division of Insurance and the agency is doing what is required. Reintroducing bad faith is going to cause more problems for the entire system.

LINDSAY KNOX (Nevada Restaurant Association):

Since the beginning of the pandemic, we have seen food costs continue to rise. Senate Bill 274 could disproportionately affect small businesses due to the increased costs of operations and insurance. Across Nevada, restaurants and food service outlets employ 220,000 Nevadans. Rising costs will force many of our small business members to make the difficult decision of whether to close.

WARREN HARDY (Urban Consortium):

The Urban Consortium is made up of the cities of North Las Vegas, Las Vegas, Henderson, Reno and Sparks. It is difficult to sit in Committee and listen to these horrific stories. It is incumbent upon the Legislature and us, as government employees, to deal with this and find solutions to the problem.

But we have concerns. I strenuously disagree with Mr. Wachter who indicated that this is somehow unique to local government employees; that is not a fair characterization. We stand ready to work with the sponsor to find real solutions to these challenges.

MISTY GRIMMER (Nevada Resort Association):

As the largest employer in the State, we have significant exposure on the workers' compensation front. We appreciate the spirit of the bill, but we believe the remedies are already in the law.

Most of the time, the system works. We have heard some terrible stories this morning, but it is true that most of the time it does work. If we need to give more muscle or more accountability to the agencies to enforce the law, and to do it in a timely manner, then that is the conversation to have.

But changing the exclusive remedy that is currently in the workers' compensation system would completely upset the system. We encourage the Committee not to pass the bill as drafted.

CHAS NORT (Nevada Alternative Solutions):

We concur with the testimony in opposition as stated. For those reasons, we are opposed as well.

MS. OSTERBERG:

I am here representing our 1,800 members in the Henderson Chamber of Commerce, most of whom are small businesses. We understand these compelling stories. These are situations no one should ever have to suffer. Anyone eligible for workers' compensation should receive their benefits.

Our concern is that the effects of this bill might make it harder to keep insurance companies in the State, due to an increased possibility of litigation. Due to this and other previous reasons mentioned, we are opposed to S.B. 274.

JEANETTE BELZ (American Property Casualty Insurance Association):

We submitted a letter late. It lists the penalties that are already in statute.

BETH SCHMIDT (Las Vegas Metropolitan Police Department):

These stories are heartbreaking to hear. I am a commissioned supervisor for the Las Vegas Metropolitan Police Department (LVMPD). I am a police officer. I have been part of workers' compensation. It is very hard to hear this. Sheriff Kevin McMahill is committed to reviewing the entire workers' compensation system and asking, how do we make it better?

We appreciate Senator Daly, and we plan to work with him on this bill. Our concern with the bill now, as written, is the language in Section 1, subsection 3, subparagraph (a) about "unreasonably delayed payment." There are many reasons why a claim could be delayed, to include the hearing office and the appeals office. A delay would not necessarily mean a refusal to comply,

but it could be interpreted that way. That puts an unreasonable burden on the insurer and the administration.

Secondly, LVMPD is a self-insured entity and we have to use a third-party administrator. One concern is that this bill increases the risk that the third-party administrator must take on to provide these services. Our concern is that those costs could be passed on to the customer, our police officers.

SARAH COLLINS (National Electrical Contractors Association):
We agree with previous comments. Ditto.

VICTORIA CARREON (Administrator, Division of Industrial Relations, Nevada Department of Business and Industry):
The DIR is the regulatory agency for workers' compensation. We are responsible for ensuring that injured workers receive the benefits they are entitled to in a timely manner.

We are responsible under the NRS for investigating benefit penalty complaints that are submitted to us and making those determinations. Those decisions can also be appealed. We have a caseload of about 230 benefit penalty complaints that come to us annually. Currently, we have a backlog of 178 complaints.

Last year, we resolved 361 complaints. We are taking proactive steps to try to resolve them as quickly as we can. We have limited staff. We only have two investigators that investigate these benefit penalty complaints. They can only do about four per month. That has limited our ability to resolve these cases in a timely manner.

We do believe that increasing the benefit penalty amounts would increase the demand for benefit penalties. We would see an increase in the number of benefit penalty complaints by at least 50 per year. We would need additional resources for that. We have submitted a fiscal note.

TROYCE KRUMME (Las Vegas Metro Police Managers & Supervisors Association):
I am testifying in support. We represent the sergeants, lieutenants, and captains employed with the LVMPD. I am aware of multiple stories of employees who have struggled with workers' compensation to receive proper and timely treatment when they are injured on duty.

We believe that S.B. 274 is a step in the right direction to correct this. It provides support for those who step up and decide to work. The Legislature has a responsibility to ensure that those workers are protected when they get injured.

SENATOR DALY:

I have a few comments. We have the usual cast of characters with the usual reasons why we cannot move forward with these changes. I will work with everybody who wants to be involved to see if we can tighten things up to get some things added. But the system is not working. I did not hear an alternative solution today. The problems that we heard today are very real and impact people's lives. We have a responsibility here.

They did mention the grand bargain, the exclusive remedy in exchange for getting these claims paid. If that process is not working, then there is no actual remedy. I would volunteer to help the Commissioner of Insurance determine benefit penalties, but I do not think they will let me.

I need to clarify a few things regarding cost increases. Everyone said this can impact small businesses. They might have to pay more in premiums. We understand the law. They all said the laws are working, things are okay, everything is covered in statute already. People who are providing this insurance have created a premium schedule and they are charging that to comply with the law, which is to take care of injured workers.

They said insurers would have to increase premiums to take care of injured workers because past bad faith activity is already baked in. There should not be a cost increase because they have already promised to do what is required to take care of injured workers.

This might be like those sayings "figures do not lie, but liars can figure." That is how I would chalk that up. What I heard this morning is that the system is working, there is no problem. If that is true, why is it not working? You cannot have it both ways.

I can tell you—this affects more than just public employees, more than just law enforcement. I see this issue in many areas, in construction and various sectors. The cases may be few, but they are significant.

I can tell you that nobody who follows the rules has anybody to fear, or anything to fear from this bill passing. The rules are in place. If you follow the rules, if you comply with the law faithfully, if you pay the claims in good faith, you have nothing to fear from anything we put into the statute.

SENATOR STONE:

I have a question for Ms. Frankel. Did the DIR impose a penalty on the third-party administrator for defying the hearing determination in your case and appeal? Were you awarded anything?

MS. FRANKEL:

Yes, they did fine the third-party administrator, but I have not received the money, even though they were ordered to pay me within ten days. It just tied me up in the system longer because they appealed it. I have another hearing on May 24, 2023, with the DIR because Washoe County and its third-party administrator are appealing the findings. They were found to be out of compliance by 234 days.

SENATOR STONE:

I agree that the system is broken. I was not here when they reconstructed the workers' compensation system. We have rules that are in place. It is disappointing that we are not getting answers to some of these questions. There is a failure there. Maybe a new Department head and more staffing will mitigate some of these issues.

As a former resident of a State with the highest workers' compensation rates in the Country, I considered that an impediment to economic development. Costs tend to escalate when attorneys are involved. I am not discounting the need for an attorney when no other remedy is available. We have a system that took a lot of time to develop. I would like to fix that system if we can.

MS. BELL:

I would like to make a couple of relevant points. There is no public record of the companies that are fined. So as a consumer, you cannot receive data from the DIR, the regulatory agency, about how much a third-party administrator or self-insured employer or insurance company has been fined. Again, by statute, that information is protected from the public.

One reason you hear testimony about self-insured employers is that insurance companies pass losses off to the consumer. Money goes out and they change the rate, and they recover their money. They are not as prone to be a bad actor because they do not have the same incentive as a self-insured employer who is paying dollar for dollar.

There was just a very large rate decrease in the workers' compensation rates issued by the Division of Insurance. It was a 0.6 percent decrease issued on March 1, 2023. The rates keep going down.

Cost shifting is also affecting the self-insured market because they can push the costs into the benefit health programs. There is a very well-publicized trend toward cost-shifting workers' compensation expenses out of the system.

My final comment is about the third-party administrator and self-insured relationship. I was a licensed third-party administrator for a great number of years. I currently handle claims for a self-insured employer. The self-insured employer, in accordance with NRS 616B.300, is responsible for the actions of their agent.

The self-insured employer is responsible. In exchange, the third-party administrator is required to be bonded, and they are required to have errors and omissions insurance. If a self-insured employer is fined or sued because of the bad faith acts of their third-party administrator, there is already a remedy in place for that. That is through insurance products and the self-insured employer being responsible for the behavior of their agents.

CHAIR SPEARMAN:

We have heard some horrendous testimony this morning. We have seen evidence of people being wronged. I have heard the term retaliation. I believe that one of the ways to tighten this up is to add an amendment to address retaliation. I have heard a couple of people in opposition say that the fines should be increased, and I agree. My question is, are you willing to make this right for them?

SENATOR DALY:

I am not going to attempt to answer that question. The cast of characters, if you will, are all people that I know. They are my friends as well. Yes, we are

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going to have some discussions. I want to hear how we can move forward and address some of their concerns. But we must solve the problem.

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CHAIR SPEARMAN:

We will close the hearing on S.B. 274. Hearing no public comment, we are adjourned at 10:22 a.m.

RESPECTFULLY SUBMITTED:

Kelly K. Clark,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 259	C	10	Alfredo Alonso / Southern Glazer's Wine and Spirits	Proposed Amendment
S.B. 274	D	21	Anje Earl	Written Testimony
S.B. 274	E	22	Janira Varty	Written Testimony
S.B. 274	F	22	Leonard Cardinale	Support Testimony