MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Third Session
April 6, 2005

The Committee on Commerce and Labor was called to order at 1:07 p.m., on Wednesday, April 6, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Oceguera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst

Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Vanessa Brown, Committee Attaché

OTHERS PRESENT:

James Jackson, Legislative Advocate, representing Voice Writers of America
Joseph Nataro, CEO, Voice Writers of America
Barbara Johnson, Nevada Certified Court Reporter No. 255, Registered Professional Reporter
Pat Murphy, Attorney, Nevada Certified Court Reporters Board
Terry Johnson, Deputy Director, Department of Employment, Training and Rehabilitation (DETR)
Cindy Jones, Administrator, Employment Security Division, Nevada Department of Employment, Training and Rehabilitation (DETR)
Keith Lyons, representing Nevada Trial Lawyers Association
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project
John Sande, Legislative Advocate, representing the Nevada Franchise Auto Association
Troy Dillard, Administrator, Compliance Enforcement Division, Department of Motor Vehicles
Ralph Felices, Northern Region Chief Investigator, Compliance Enforcement Division, Department of Motor Vehicles
Jack Jeffrey, Legislative Advocate, representing B&E Auto Auction Incorporated, Henderson, Nevada
Bob Compan, Government Affairs Representative, Farmers Insurance Group, Las Vegas, Nevada
Michael Geeser, Media/Government Relations, American Automobile Association, Nevada
Fred Haas, Legislative Advocate, representing Las Vegas Metropolitan Police Department; and the Nevada Sheriffs and Chiefs Association
Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry
Mike Harris, Officer, Nevada Collision Industry Association
Tom Wright, representing Ewing Brothers Towing, Incorporated, Las Vegas, Nevada
Clark Whitney, representing Quality Towing, Las Vegas, Nevada
Steve Holloway, Executive Vice President, Associated General Contractors of Southern Nevada
John Wiles, Division Counsel, Division of Industrial Relations, Nevada Department of Business and Industry

Barbara Wall, Deputy Attorney for Injured Workers, Attorney for Injured Workers Division, Nevada Department of Business and Industry
Dean Hardy, representing Nevada Trial Lawyers Association
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
Bob Ostrovsky, Legislative Advocate, representing Employer's Insurance Company of Nevada
Don Jayne, Legislative Advocate, representing Nevada Self-Insured Association
James Wilcher, C.R.C/C.D.M.S./C.C.M., Certified Rehabilitation Counselor, representing The International Association of Rehabilitation Professionals, Nevada Chapter
Barbara Gruenewald, representing Nevada Trial Lawyers Association
Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association
Christopher Dornan, Intern for Assemblywoman Chris Giunchigliani
Josephine Gallegos, Senior Administrative Clerk, Justice/Municipal Court, Carson City, Nevada
Berlyn Miller, Legislative and Regulatory Issues, Nevada Consumer Financial Association
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Alfredo Alonso, Legislative Advocate, representing Money Tree Incorporated
Jim Marchesi, President/CEO, Check City, Las Vegas, Nevada; and Nevada Financial Services Association
Mark Thompson, representing Money Tree; and Community of Financial Services Association of America (CFSA)
Gail Burks, President and CEO, Nevada Fair Housing Center, Las Vegas, Nevada
Azucena Valladolid, Director of Counseling, Consumer Credit Counseling Service, Las Vegas, Nevada
Ernie Adler, Legislative Advocate, representing American Massage Therapist Association, Nevada Chapter

Vice Chairman Oceguera:
[Meeting called to order. Roll called.] I'll open the hearing on A.B. 446.

Assembly Bill 446: Provides for use of voice writing by court reporters. (BDR 54-1095)

James Jackson, Legislative Advocate, representing Voice Writers of America (VWA):

The Voice Writers of America have requested this bill with the assistance of Speaker Perkins and the Assembly Judiciary Committee.

We have technical amendments (Exhibit B). They bring the bill on par with what the statute is right now and add the National Verbatim Reporters Association, which is responsible for the certification of this type of technology and certification. Currently, the stenographic reporters use the National Court Reporters Association (NCRA) standards, and this would allow voice writers to use their national association as their standard as well. In addition to stenographic notes, since voice writing does not use that same type of technology, the official verbatim record should be maintained through the eight years. Those are the amendments in a nutshell.

This bill allows for the use of this emerging technology in the state of Nevada. Our Supreme Court made a number of changes to the *Nevada Rules of Civil Procedure* that went into effect on January 1, 2005. While those changes already contemplate that voice writing can be used as a technique of recording a legal proceeding or deposition between parties, what we seek to do is only allow those who have been trained in this type of technology, possess the requisite ability, and can show the proper level of skill, to be certified in a Nevada statute. We are not asking for any different standard than what the stenographic reporters have to show with respect to their ability in terms of accuracy, knowledge, and skill. Currently, stenographic reporters have to pass the skill test with 97.5 percent accuracy, and we're asking for the same. We are asking we be allowed to take a test designed and approved by our National Accrediting Board for purposes of taking that test and nothing more. We are not seeking to do away with stenographic reporters, but we're asking to allow this technology and folks who are trained in this technology to become a part of the pool that can be used by litigants and lawyers.

Approximately 22 states have already approved voice writing as a certified method of reporting and recordation of legal proceedings, and more are in the process. You may hear some suggestions to the contrary, that this technology has not been to develop sufficiently, but not only have 22 states approved this, the United States military uses this as its approved method of recording legal proceedings. The United States Department of Labor has not only recognized the National Association for Voice Writing as the recognized accrediting body, but also that the technology and the methodology is also approved for training.

Vice Chairman Oceguera:
Which states have approved it in the Ninth Circuit; the states surrounding Nevada?

James Jackson:
The Arizona Legislature has just approved voice writing as a certified method unanimously in both houses; but for a few technical amendments, it's going to be on its way to the governor for signature in the next couple of days. In California, they have studied voice writing. It has not been certified, but there are some changes in their laws that have to take place as well.

Joseph Nataro, CEO, Voice Writers of America:
The state of Utah passed resounding legislation in March, 2004, and the governor signed it in April, 2004, allowing voice writers. Currently, we are working with the state of California to come up with some guidelines for their potential licensure. They have conducted tests, results, comparisons, and extensive studies and are ready to go forward in looking further into this as an additional resource for their state.

James Jackson:
Mr. Nataro and his organization have also submitted their license to the State of Nevada for post-secondary approval of an education facility.

Assemblyman Anderson:
Looking at these amendments (Exhibit B), I want clarity on the retention of the records, whether it's subject to judicial review. Currently, we require that for the notes, those being the original notes of somebody who has transcribed in the traditional fashion. You're adding in stenographic notes, which is a term we're using here. Whether we're transcribing or not, you'll retain the original record?

James Jackson:
That's correct. The idea is that whatever method is used, the state law requires that the notes of that record or the recordation of that proceeding be maintained for eight years so that, if at some time in the future, a question arises as to what occurred at that proceeding, there is a way to go back and reconstruct, even though they are not transcribed.

Assemblyman Anderson:
Is there currently a methodology to assure that the original transcriptions are identified in some way?

Joseph Nataro:
That particular provision was in the existing law to allow records to be kept if a transcript wasn't promulgated. A reporter must retain and protect them on behalf of the state for eight years. In the case of voice writing, the voice track and the text track are stored on a CD and must be maintained the same way stenographic notes would be kept. In today's society, most of the stenographers are going to computer-aided transcription, which is the same storage component that voice writers would have to do.

Assemblyman Anderson:
How do you determine your original versus those that might be out there that are pirated?

Joseph Nataro:
A stenographic reporter has to copy, store, and preserve their notes. This isn't a case where a transcript wasn't produced. The voice writer would do the same thing on the computer. It's not public domain and no one else has that, unless they've been engaged to produce a transcript. Those records are then kept by that reporter and available to the state for up to eight years under the current law, whether it is in a computer or stenographic notes.

James Jackson:
I want to cover the education aspect of what voice writers have to go through. They must go through virtually the same curriculum that the stenographic reporters have to go through. In 2002, the two boards standardized the curriculum. The curriculum is the same, but the difference is in the methodology in which the curriculum is done. At Mr. Nataro's facility and the one that would hopefully be opened in Nevada, it would be a 5-day week, 8-hour day curriculum, as opposed to some of the other stenographic curriculums that can take as long as one or two classes a week, stretching over 2 or 3 years. The curriculum is the same, and students are taught the same things. Their skill levels have to be at the same level. No person would be allowed to be certified in the state of Nevada until they take and pass the test we've indicated.

There's a chance someone will say we need to study this and find out if this technology works. The United States military, the United States federal government, and at least 22 other states and now Arizona coming on board very soon—this matter and technology has been fully vetted and considered. There's no reason not to allow this to occur. *Nevada Rules of Civil Procedure* already contemplate that it can occur by stipulation. We seek only to do exactly what the Nevada Court Reporters Board's mission is: to make sure the people who are doing this are certified, qualified, and are protecting the citizens of the state of Nevada by being so.

Assemblywoman Giunchigliani:
It's probably always threatening for an industry to think, "Technology is changing," but I think that's part of the encounter here. Is it still up to the judge on what type of recording they would like to have?

James Jackson:
Based on my reading of the changes in *Nevada Rules and Civil Procedure*, the parties can agree to any type of recording of a proceeding down to just punching a tape recorder and doing it that way, or not even having it recorded at all.

Barbara Johnson, Nevada Certified Court Reporter No. 255, Registered Professional Reporter, Nevada:
I believe that if this technology and voice writers are going to be allowed to be court reporters in the state of Nevada, they must go though the education necessary. That's what I went though, and it's necessary to make a good court reporter. I just retired from 24 years in the Sixth Judicial District Court as an official court reporter. I have used every bit of that education, and anything less than that would void whatever credibility we have as the recordkeepers in this state. Many students coming out of high school need much remedial English, grammar, and spelling. I'm not necessarily opposed to the technology, but I'm opposed to this technology coming in without the guidance of our State certification board and going through the rigorous testing to be sure the schooling is there. You can't do it in a matter of months. It took me three years of full-time school to go through.

Pat Murphy, Attorney, Nevada Certified Court Reporters Board:
We oppose this bill at this time. The Nevada Certified Court Reporters currently undergo approximately 1,000 class hours just on academics, which is completely independent from the technology they use. The technology includes stenographic machine versus the voice recording machine. We have correspondence from Mr. Nataro to a court reporter stating that "he can educate them in as little as three to six months." That is not what I'd quote as "virtually the same curriculum," as Mr. Jackson said. It's a substantially different period of time. The average time for a court reporter to have enough education to take the examination in the state of Nevada is two to four years. If you're going to be cranking out people in three to six months, you're going to experience a problem.

The Nevada Certified Court Reporters Board is charged with the responsibility of administering the testing procedure to all. While we believe it is noble that they are going to be required to take the exact same exam, at this point we don't even know the administrative aspects of it. We, like the state of California,

would like to study this for a period of time before we can come up with a proper test administration.

[Pat Murphy, continued.] The Nevada Certified Court Reporters Board examination is subject to external validation. The National Verbatim Voice Writers Association standards and certifications are not. We need to make sure that the same levels of safeguards are put forward. I've been practicing here in Las Vegas for approximately 24 years and I've never had a problem obtaining a court reporter for any deposition or any proceeding, nor have I ever had a problem with a transcript. As an attorney, I want to make sure we have the same levels of certification and the same types of standards that have to be met by these people. A 3- to 6-month school is not going to accomplish what is accomplished through 1,000 hours of class hours just on academics alone.

As Mr. Jackson has stated, a minority of states have accepted this. I would say that, if the U.S. government has adopted it, I'm not sure the state of Nevada wants to use the efficiency of the U.S. government as their model.

Vice Chairman Oceguera:
I'll close the hearing on A.B. 446 and I'll open the hearing on A.B. 502.

Assembly Bill 502: Makes various changes to provisions governing unemployment compensation. (BDR 53-323)

Terry Johnson, Deputy Director, Nevada Department of Employment, Training and Rehabilitation:
I'm joined by Cindy Jones, the Administrator of the Employment Security Division, who will be presenting this bill. I'm also here with the agency's counsel, Tom Susich and Donna Clark. We look forward to working with you on this bill.

Cindy Jones, Administrator, Employment Security Division, Nevada Department of Employment, Training and Rehabilitation (DETR):
[Read from Exhibit C.] The mission of the Employment Security Division is to provide a statewide labor exchange, conduct programs that promptly pay unemployment benefits, improve the employment stability of those collecting unemployment insurance, and administer an effective unemployment insurance tax system.

A.B. 502 makes various changes to Nevada's unemployment compensation law, including adoption of the federal State

Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004 (Public Law 108-295), [42 USC 503], which establishes minimum standards upon state laws to prohibit employers from manipulating their experience rating to obtain a lower unemployment insurance (UI) tax rate.

[Cindy Jones, continued.] The practice of SUTA Dumping allows employers to escape their own claims experience and "dump" their earned tax obligations on other employers and businesses in the state. This results in unfair advantages to employers who engage in this sort of activity and results in a higher tax rate as those obligations that are dumped are passed onto other businesses who don't engage in those activities.

The SUTA Dumping Prevention Act was unanimously passed by Congress and signed into law by the president in August of 2004. The state unemployment insurance programs are administered through a state-federal partnership. Because of this, state laws must be consistent with federal law to avoid sanctions. Federal sanctions could include denial by the Secretary of Labor of Federal Unemployment Tax Act (FUTA) and offset credits to Nevada employers, which would cost these employers $388 million a year.

There are four minimum requirements, which all state laws must meet in order to be found in conformance with the SUTA Dumping Prevention Act of 2004.

The first requirement calls for mandatory transfers. Under this provision, whenever there is substantially common ownership, management, or control between two employers, and one of these employers transfers its trade or business, including its workforce, to the other employer, unemployment experience must be transferred. This requirement applies to both total and partial transfers of business.

Prohibited transfers are defined in the second provision. If the state unemployment insurance agency finds that a person acquired a business solely or primarily for the purpose of obtaining a lower tax rate, the unemployment experience may not be transferred.

The third provision requires meaningful civil and criminal penalties for SUTA Dumping. The penalties must be imposed on persons who knowingly violate or attempt to violate SUTA Dumping

provisions. These penalties must also be applicable to any person, including the person's employer, who knowingly gives advice leading to such a violation.

[Cindy Jones, continued.] The last provision requires states to establish procedures to detect SUTA dumping activities.

Beginning with Section 1, A.B. 502 amends *Nevada Revised Statutes* (NRS) Chapter 612 to add a new section related to the SUTA Dumping Prevention Act. This new section meets mandatory provisions related to the establishment of procedures to identify or detect rate manipulation activities and provide civil penalties for SUTA Dumping violations.

Lines 1 through 7 on page 1 of the bill, and continuing on page 2, lines 1 through 3, requires the establishment procedures to identify activities related to the transfer or acquisition of a business for the sole purpose of obtaining a lower UI contribution rate, or the existence of common ownership, management or control between two or more business entities, indicated by activities such as the movement of workforce between the entities.

Assemblywoman Buckley:
Would you tell us which provisions of the bill are not required to conform Nevada's law to the new federal law that was passed?

Cindy Jones:
There are four other areas that have been rolled into this bill. Those related to the changes with *Nevada Rules of Civil Procedure*, changing our timelines from 10 days to 11 days, are not related to the Dumping Prevention Act. The addition of the word "covered" related to separation issues in determining eligibility for unemployment insurance is not related to the Act. The deletion of the "Job Training Partnership Act" is not related, nor is returning the returned check fee back to the control of the administrator. Those four other issues are not related; however, they are contained in the same bill. All of the other provisions, as outlined in the bill and in the testimony (Exhibit C), so relate to the Dumping Prevention Act and are required to meet conformance. The Department of Labor has reviewed our proposed language prior to it being in the form that has been distributed today while it was still in bill draft form. They found the proposed language isn't in conformance with federal law.

Chairwoman Buckley:
I read through your testimony (Exhibit C), and the only section I was not comfortable with was Section 5 with regard to adding "covered employment." For example, a worker quits a job to start a small business, which fails, and then gets a new job and is laid off. If those periods match properly, they wouldn't then qualify for unemployment and it's through no fault of their own. Similarly, with the term "misconduct," perhaps it means that they did something wrong, but there can also be circumstances where there's just a disagreement at work and then there's a subsequent job, they're laid off, and again, they wouldn't be eligible for unemployment. I certainly feel it's defeating the whole purpose of unemployment insurance by tightening it up to prevent good-faith situations where someone just finds themselves ultimately laid off.

Cindy Jones:
The intent of the Unemployment Insurance Program is to provide unemployment insurance benefits to those who find themselves unemployed through no fault of their own. In Nevada, we do look at the separation from the last employer and, depending on the length of time with that employer, that separation from the next-to-last employer. The purpose of requesting this is to tighten this loophole that is only taken advantage of by those who have in-depth knowledge of unemployment compensation law. Specifically, we find that previous employees of the Division are those who typically avail themselves of that loophole of going and finding uncovered employment to avoid disqualification. This has occurred in at least seven instances in the last couple of years. If someone is discharged from employment for misconduct, which is defined though case law as knowingly violating a policy or procedure, typically of an employer, not an inability to perform the work as required. If they were discharged for something that was considered misconduct and then worked for a friend for two different weekends cleaning their garage, and those are considered the last two periods of employment, the discharge would not be considered at all. We want to close that loophole so benefits are only paid to those who are truly unemployed through no fault of their own.

Chairwoman Buckley:
Only seven people have ever taken advantage of this?

Cindy Jones:
We don't know the number because there isn't a way to track it in our system. We know at least seven previous Division employees have taken advantage of this loophole.

Chairwoman Buckley:
Maybe you could get that data and supply it to the Committee. I also know of situations with regard to misconduct. I did a few unemployment cases a decade ago and I'll never forget one case I had, because of all the cases in my legal career that I lost, I hated losing this the most. It was a porter in a casino and the room guest kept making him go down and get more alcohol, and the guest got very drunk. The porter was African American, and the room guest said, "Come on, boy, can't you go faster?" It kept on over a long period of time. At the end, they threw him a casino chip as a tip, and he caught it and placed it on the dresser and walked out of the room. He didn't say a word. He was fired and denied unemployment because he willfully refused a tip. I tried to talk him into appealing it to the Supreme Court, but he said, "I've been discriminated against my whole life. It matters more to you than it does to me. Let's just let it go." I feel for people in this situation. He didn't mouth off. He just stood up for himself a little bit and he still got fired. I'd hate to change this so that people like him don't get denied unemployment, because I think they deserve it.

Cindy Jones:
We'll do our best to obtain the data that you've requested and provide it to the Committee. Throughout the bill, there are different sections that implement the SUTA Dumping Prevention Act. The area regarding the change of the time from 10 days to 11 days is related to change in the *Nevada Rules of Civil Procedure*. Without this change, we would find it difficult to meet our timeliness standards as established by the Department of Labor, because the new rule takes into account non-judicial days in considering the calculation of time. By adding a day, we are reducing the amount of time for a response by various parties for various deadlines related to eligibility and the payment of taxes.

The removal of the Job Training Partnership Act is the repealed section. This section is no longer applicable due to the implementation of the Workforce Investment Act of 1998 [29 USC 2801].

It is very important for us to pass this bill this session, because without it we could risk the few offset tax credits for Nevada employers at a cost of approximately $388 million.

Keith Lyons, representing Nevada Trial Lawyers Association:
In Section 1, subsection 1(b), it talks about "common ownership, management or control between two or more business entities, including, without limitation, through the movement of workforce between such business entities." In Nevada, we're a very liberal state with setting up corporations, so you have a lot of individuals who have two or three corporations for different purposes. For example, a doctor is required to have a professional corporation. The doctor

may set up a separate billing corporation simply to do his billing and may also attempt to get other doctors to use his billing service. Nevertheless, the doctor would own his professional corporation and the billing service, so you would have common ownership or management or control between the two corporations. Under this, this individual may be liable for damages for setting up something that is permissible under Nevada law.

[Keith Lyons, continued.] There are several tests that different courts have used to set out when there is liability for common ownership, management, or control. Especially in the Title 7 area, a lot of people try to start corporations to evade liability by having fewer than 15 employees. If you're going to have this type of a test, it needs to be more specific so the administrator has more guidance as to what the law is and what factors they have to use.

In paragraph 3 of Section 1, part of an attorney's role is to advise corporations on the law, including grey areas in the law. You may have liability if you do this; you may not. We can't advise someone to do something that is per se illegal, but you can interpret the law and advise your client that there may be a court challenge down the road and you could win or lose the challenge. The problem with subsection 3, Section 1, is that the administrator determines whether an attorney can advise a business entity what the law is and different things it can try to do to minimize tax liability. If the administrator comes in and says that attorney has knowingly advised another person or business entity to violate or attempt to violate any provision of this chapter, now the attorney is liable for 10 percent of the total amount of any resulted underreporting. This takes away the role of the attorney in giving legal advice by subjecting them to liability for a vague test of what common ownership is. Because of those problems, we believe that the proposed amendments should not be passed.

Another issue deals with the time periods. I recognize the problem that arose when the Nevada Supreme Court issued new rules on how to calculate days. They changed it from 10 to 11 days. That really shortens the time period. One issue we need to consider is whether we want this time period as short as possible, and leave it at the 10 days that it currently is. That may allow people more opportunity to appeal various rulings. Sometimes simply to seek counsel or legal advice could take more than the 10 days. Shortening the time period would be a hardship on individuals in particular. I recommend that it be left at the 10-day time period. It's an issue of whether to include weekends or holidays. It's not going to make a substantial difference, but any amount of time allowed to somebody to appeal a decision I think should give them the maximum benefit of the doubt.

[Keith Lyons, continued.] I share Ms. Buckley's concerns over the covered employee. I've represented individuals at employment hearings and I've run into the exact same problem she's talking about. On behalf of the Nevada Trial Lawyers Association, we believe this bill should not be passed.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
I don't take any position on any part of the bill other than Sections 5 and 6 where the issue of covered employment and self employment are added to the statute. I too have practiced in this area often over the years, and I've had the pleasure of working with Mr. Susich to summarize this law for the Division. I couldn't tell you what covered employment is and what uncovered employment is off the top of my head, so I worry there may be innocent people who work in uncovered employment and don't know one way or another who may be hurt by these provisions. This would not hurt us in terms of the federal law if those two provisions were not in the bill.

Vice Chairman Oceguera:
[Exhibit D was submitted by Ray Bacon.] I'll close the hearing on A.B. 502. We'll open the hearing on A.B. 249.

Assembly Bill 249: Makes various changes relating to vehicles. (BDR 43-136)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:
I'm pleased to present to you A.B. 249, which primarily deals with the issue of yo-yo sales. The packet (Exhibit E) overviews newspaper articles and some typical yo-yo sales complaints. A yo-yo sale is when someone goes to a car dealership and buys a car. It's usually a very long experience and at the end of it they get a hand shake and they say "Congratulations, you are now the proud owner of a brand new car." You walk out, you're happy, you show all of your friends, and life is good. Then you get a phone call about a week later saying, "Oops, sorry, if you looked at the back of your contract, it says that this contract was subject to the financing being approved, and your financing was not approved. So instead of the 12 percent in your contract, the only financing we can get you is 25 percent, and instead of the $500 down, we now need $2,000 down." Up until I worked with the car dealers a couple of years ago, it was also, "your trade-in has been sold, so when are you going to give us your money?" We've been working on this issue for several years.

Most good car dealers work in good faith to let people know what the true interest rate and the true terms would be. It's very extraordinary if something

happens to change it. For those dealers who are less scrupulous, it's part of the business model. They will make more money keeping the person on a string and stringing them back up to be able to make more profit per transaction. In situations like this, it's easy to see why dealers and used-car dealers end up most distrusted.

[Assemblywoman Buckley, continued.] The bill with the amendments (Exhibit F) is the result of a collaboration over the past year with representatives from the Nevada Franchise Auto Dealers Association, the Nevada Department of Motor Vehicles (DMV), the Attorney General's Office, The Department of Consumer Affairs, consumer advocates, and myself. We have worked on this bill for over a year. We've been to annual meetings of all the franchise auto dealers and their presidents to discuss the bill. It's a compromise in many ways, but a compromise that enacts important consumer protections while maintaining a balanced recognition of honest and legitimate business interests.

The bill deals with six discrete areas. This bill became a little bit of a vehicle for some things the franchise auto dealers and DMV wanted.

Section 1 authorizes DMV to expend money we appropriate to acquire evidence. Troy Dillard with DMV Compliance Enforcement will testify to this area.

Section 2 gives the DMV Compliance Enforcement the authority to fine, suspend, or revoke a license for deceptive trade practices as related to the purchase and sale of the vehicle, the yo-yo issue.

Section 3 will clarify current law with regard to the dealer's bond.

Section 4 will close a loophole with regard to inspection of rebuilt vehicles before they're put back on the road. Either Mr. Felices or Mr. Dillard will speak to this.

Section 5 gives DMV the authority to make regulations concerning liens on vehicles. Originally, DMV had put a number of provisions with regard to towing and the lien law. All of those have been removed and instead it allows only the DMV to enact regulation. We received a couple of e-mails from some tow companies and sent e-mails to them last night letting them know that. I'm not sure if everybody got the word, but we are eliminating those provisions.

Lastly, it provides for a new car lemon branding. John Sande with the Nevada Franchise Auto Dealers will speak to that area. The bill as amended also makes some technical but important changes to A.B. 325 of the 72nd Legislative

Session that I sponsored last session with regard to rebuilt wrecks and the exception for older vehicles.

[Assemblywoman Buckley, continued.] With regard to the yo-yo issue, giving DMV additional enforcement authority for deceptive trade practices is a very necessary tool in combating fraud associated with the yo-yo car sales because of how bad our system is right now. Right now, if a consumer feels they have been defrauded and victimized, that consumer might be told to go to the Attorney General's Office. The Attorney General will then advise them to go to DMV. DMV would take a complaint investigation, but their hands are largely tied because existing law only gives them authority to discipline a car dealer for violations of NRS 482, not 598. NRS 482 is basically the DMV licensee chapter, and NRS 598 is deceptive trade practices. After investigating a complaint, DMV would typically and ultimately write the consumer a letter saying it was a civil problem. The consumer, because it was a civil problem, would go to Consumer Affairs, which does have authority to regulate deceptive trade practices, but as a practical matter didn't have the recourses, the familiarity with car dealers, or the ability to take a license away for deceptive trade practices. On the books, theoretically, there might be some relief for someone victimized in this situation, but as a practical matter, people were just getting the runaround.

A.B. 249 places authority where it might best be used: by those who license car dealers, the DMV. The DMV is best suited to investigate and determine these trade practices. They can do investigations, they can fine, and they can suspend or even revoke a license. A.B. 249 also specifies certain practices as deceptive, specifically dealing with the yo-yo sales. With regard to the portions of the bill dealing with the dealer's bond, the bill clarifies that an aggrieved consumer has the option of going to court or bringing an administrative action held by DMV. If a consumer goes to court and the court enters a judgment on the merits against a dealer, it's binding on the surety on the bond. If the judgment against a dealer is other than on the merits, for example, by default, then surety is not bound unless it was given at least 20 days' notice and an opportunity to defend. The bill provides that if there's a settlement between the consumer and the dealer which is not paid, then the consumer can apply to DMV to have surety on the bond and pay the settlement when it was reached on good faith.

As for the inspection of rebuilt vehicles, A.B. 249 closes a loophole. Last session we created a category of vehicles known as salvage vehicles and provided an inspection before they were put on the road. We did not put it on the category separately defined as rebuilt vehicles, and A.B. 249 corrects that oversight.

[Assemblywoman Buckley, continued.] As for car lemon branding, which Mr. Sande is going to discuss, A.B. 249 uses the language of the California lemon branding law. I believe this law protects consumers and new car dealers, who can be caught in the dispute between the consumer and the manufacturer when a new car cannot be made to conform to a new car warranty where it's a lemon. Having no lemon law makes Nevada a dumping ground for brand-new car lemons, and A.B. 249 will prevent that from happening.

John Sande, Legislative Advocate, representing the Nevada Franchise Auto Association:
We have been working with Assemblywoman Buckley for the last two years and we certainly support going after anybody who would do some of the transactions she mentioned. If something like this occurs, we have agreed (Exhibit F) the responsible party would be subject to a fine up to $10,000 as determined by the DMV, which is four times what any other deceptive trade practice is subject to under Nevada law at this time. Section 35 is the lemon law provisions. We believe they're very important to protect consumers.

If you have a car that is claimed to be a lemon under Nevada law, certain provisions are set forth as to what constitutes a lemon. There may be ultimately a decision by the manufacturer to take back that car. This requires that if a manufacturer does take back that car and puts it back in the stream of commerce by selling it, a notice must be given to the consumer or the purchaser. Also, before the title is sold, it must be re-titled to say "lemon law buyback" so any future consumer would know that at one time there was a problem with the automobile.

There are provisions in here (Exhibit F) to give notice to the buyer stating the nature of the non-conformity reported by the original buyer or lessee of the motor vehicle, and what steps have been taken by the manufacturer to repair those. At least the buyer would know 100 percent that it was a lemon and they could make a reasonable determination as to whether or not they should go forward with the purchase and what they should pay for the automobile. We have amendments we are proposing (Exhibit F), and we're very close to having a very good bill. We're supportive of it as an association.

Assemblyman Arberry:
If we pass the law and it goes into effect, what mechanism are you going to use to inform the public?

Assemblywoman Buckley:
We formed a coalition where we have Consumer Affairs, the Better Business Bureau, Senior Law Project, and DMV, so if anyone has a complaint, usually

what happens is a consumer will find one of them. Before, they got the runaround as to who had jurisdiction; now we know. The consumer can make a complaint now with DMV, and they'll investigate, fine, or do a hearing.

John Sande:
The DMV is instructed to draft a disclosure form that will basically tell the consumer, "You are entitled, if this is a termination of a contract or cancellation, to a return of all consideration, including your trade-in, and you do not have to enter into any other contract and you may walk away." Having that type of disclosure statement, which the DMV can check if there ever is a complaint, will resolve a lot of the problems and nip it in the bud. There's a similar law in California that works well.

Assemblywoman Giunchigliani:
There would be nothing wrong with having a paper provided in other languages, minimally Spanish. The Chambers of Commerce could do Tagalog. We can make it available if that's the case, if that's not a problem.

Assemblyman Conklin:
If somebody goes into a dealership and falsifies information and therefore a dealer is forced to call them back, I would assume that's not considered a yo-yo and there's ample protection for something like that, correct?

Assemblywoman Buckley:
There is, and we also have protection on the flip side. One of the other bills that Mr. Sande and I worked on in this area was because we had a lot of complaints where the dealer falsified the income. It was really the salesman trying to get the commission and sometimes the manager didn't know. We also have protections against falsification from the salesman as well.

Troy Dillard, Administrator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:
The DMV is in support of this legislation, qualifying that the staffing request submitted in the fiscal note is approved. The legislation, as explained, effectively makes the DMV the single point of contact for consumer complaints relating to the purchase or sale of motor vehicles within the state of Nevada. Presently, these responsibilities are shared amongst many state entities and consumers are bounced from agency to agency, depending on specific circumstances of their complaint. This legislation assists consumers and the industry by eliminating the confusion and redundancy factors in the present system. Ms. Buckley, the affected state agencies, the auto industry, and consumers all participated in the discussions, creation, and proposed amendments of this bill. The DMV feels this legislation is beneficial to all parties

involved and would like to extend our appreciation to those entities and individuals that worked together to put this bill before the Committee today.

[Troy Dillard, continued.] Section 1 is simply some cleanup language back from the split between the Department of Public Safety and DMV in 1999. This language went over to Public Safety and did not get included in DMV statutes. As we were conducting some internal control audits, we discovered we no longer had the authority to handle the budget authority that we'd been given, and has been in our budgets for many years, to purchase evidence. This is putting that language back into the statute so we maintain that authority. The amendatory language (Exhibit F) submitted is in addition to the existing language for Public Safety. It simply allows the electronic transfer of those funds instead of a hard-check warrant to the Department and instead of the Director.

Ralph Felices, Northern Region Chief Investigator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:
I'll speak on Sections 3 through 12, which involve the definitions for the rebuilt vehicle and the components that make up the rebuilt vehicle. This is also part of A.B. 325 of the 72nd Legislative Session. This part further clarifies part of that bill and takes away some of the confusion of the inspections of those vehicles that have only those types of repairs done to them. It benefits the consumer because they are able to get these vehicles inspected without undue problems with the people responsible for doing those inspections.

The other portion of the bill I'm involved in is the section that was eliminated, Sections 26 through 33, involving Chapter 108 of NRS. This was removed because of some potential impact in the industry and some problems with the administration of the bill. A portion of the amendment to the bill allows the Department to adopt regulations and allows the industry to participate in those to make this a better working solution to the problem.

Jack Jeffrey, Legislative Advocate, representing B&E Auto Auction Incorporated, Henderson, Nevada:
My client, Bob Ellis, has worked with Barbara Buckley, the DMV, and the insurance companies. I would like to commend Assemblywoman Buckley on the work she's done on this. Assemblywoman Buckley has the ability to bring people together to straighten out an industry, and we're in full support of the bill.

Bob Compan, Government Affairs Representative, Farmers Insurance Group:
A.B. 249 in its design establishes parameters for determining whether or not a vehicle is deemed repairable. The bill establishes uniform guidelines when either

a light quality frame or a new frame is replaced on repairable vehicles. This is a spin-off of A.B. 325 of the 72nd Legislative Session. Our objective when we settle claims is to determine when a vehicle is to be restored to pre-accident condition, or the vehicle is deemed to be a total loss. Our philosophy is we want to pay what we owe, the actual cash value of the vehicle, and put it back to where it was prior to the loss. We think the bill is a very good bill. Farmers Insurance is in support of the bill. It's taken a lot of work to outline the right statutes and where things go. Were the pay thresholds amended?

Assemblywoman Buckley:
The provisions that were amended with regard to A.B. 325 of the 72nd Legislative Session were in Sections 3 through 11. We put the specific definitions that were previously in the NAC and the NRS so it could be located quicker. In Section 24, for the convenience of the insurance and collision repair industry, we specifically stated and duplicated the content of NRS 487.890(2), stating, "the cost of repair may not include any cost associated with painting any portion of the vehicle." We also included in the amendment (Exhibit F) the ten years or older vehicle with that clarification as well. We were able to address those three issues.

Michael Geeser, Media/Government Relations, American Automobile Association (AAA), Nevada:
AAA supports the bill. I've written a letter (Exhibit G).

Fred Haas, representing Las Vegas Metropolitan Police Department and Nevada Sheriffs and Chiefs Association:
We've worked actively with Assemblywoman Buckley on these issues in the past and we are specifically in support of Sections 20 and 25, which deal with the inspection a rebuilt vehicle must undergo before registering at the DMV.

Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry:
We'd like to offer our wholehearted support of this bill from the consumer's aspect. This has been a problem for many years. Nevada has progressed in the way we deal with complaints in the automotive industry in sales, leases, and repairs, but we still have a long way to go. We urge you to support this bill.

Mike Harris, Officer, Nevada Collision Industry Association (NCIA):
I would like to thank Ms. Buckley for her help over the last few years with NAC changes, as well as changes here. She's worked diligently with NCIA to make the collision repair industry better. We are in support of all the changes (Exhibit F), in particular those dealing with collision repair. We do have one final suggestion for Section 24, lines 21 through 26, which talks about ten-year-old

or older model car. This legislation was created to help a consumer who has an older car that doesn't have a lot of economic value. This issue is to relieve the 65 percent so the insurer and the insured could repair the car at a higher level if they so desired, and it would not be a salvaged title if that was the case.

[Mike Harris, continue.] When this legislation was created, it added in a few more requirements starting on page 10 line 21 after it says "ten model years old and older," it specifies "which required only the replacement of the hood, trunk lid, grill assembly"—it said "quarter panels," which has been struck—"doors, bumper assemblies" and so on, all the way down to the end of line 26, "or otherwise damaged." Our industry would like to request that those words be removed which specify only three pieces can be replaced on that car. If the car is ten years old or older and it does need more than three pieces, it's going to require a salvaged title. Our experience in southern Nevada is when a salvaged title is to be given to a consumer on their vehicle, the insurer simply totals the vehicle and it doesn't get repaired for a salvaged title. We feel the original intent was a great tool and was something that would help those who truly needed the help, but by limiting the parts that can be put on that car, it does as much damage as the good did.

Assemblywoman Buckley:
On the last page of the amendments (Exhibit F), I'm proposing that on ten-year or older cars and which only require the replacement of the hood, trunk lid, and two or fewer of the assemblies which may be bold or not. We limit it to "doors, grill assemblies, bumper assemblies, headlight assemblies, taillight assemblies, any combination thereof." We're trying to do exactly what the witness talked about and those things not related to safety, to the engine, especially on the older cars, making sure that doesn't require a salvaged title. We've worked with the auto auction, the insurance industry, DMV, and the collision industry because each one is balancing. We want to make sure we don't have unsafe cars on the road, but we want to make sure we're not salvaging cars and putting a title on unnecessarily. That's been our balance and we're going to achieve it here.

Mike Harris:
The repairing of a vehicle less than ten years old has some actual provisions you put in regarding major components, and we wholeheartedly support that. It would be simpler to repair these cars if we could have the same latitude with a ten-year-old car, with the exception of the economic issue you attempted before. If a ten-year-old car needed a hood, bumper, and a headlight, that would be the maximum number of pieces that could be put on that car. It's limited to just three parts, or if that particular vehicle needs an outer repair panel on a quarter-panel, that vehicle will have to go to salvage title or, in reality, to total

loss because it's not allowed. The criteria outline for the new model cars from one to ten years is excellent, and we felt that same criteria could be brought forward to cars no matter what their year is.

Assemblywoman Buckley:
We can run that by the 15 people who have negotiated this bill for 5 years. I'll report back to the Committee.

Tom Wright, representing Ewing Brothers Towing, Incorporated, Las Vegas, Nevada:
We do support the bill with the exception of the lines that have been stricken. Mr. Rex Ewing did receive an e-mail from Madam Chair and we're happy with the items that have been stricken.

Clark Whitney, representing Quality Towing, Las Vegas, Nevada:
I'd like to thank you for your coordination and communication with us regarding this matter; especially Ralph Felices with the DMV, who is a very reasonable man and wants to do the best for the state and for us also. I'm neutral on the bill.

Vice Chairman Oceguera:
I'll close the hearing on A.B. 249.

Chairwoman Buckley:
I'll open the public hearing on A.B. 363. Both A.B. 363 and A.B. 364 are bills coming out of the Interim Committee on industrial insurance. Mr. Oceguera was the Vice Chair of that Committee; this is not his bill, but he's carrying on the work of the Interim Committee, and we appreciate that.

Assembly Bill 363: Makes various changes relating to consolidated insurance programs. (BDR 53-252)

Assemblyman John Oceguera, Assembly District No. 16, Clark County:
A.B. 363 came out of the Interim Committee to Study Nevada's Industrial Insurance Program. A.B. 363 relates to the consolidated insurance programs. These programs are also known as owner-controlled insurance programs, or OCIPs. Depending on their set up, they can also be called contractor-controlled insurance programs. This bill stems from a fatality that occurred in June 2004 at the World Market Center in Las Vegas, which was operating under an OCIP. The Committee to Study Nevada's Industrial Insurance Program heard testimony indicating that there was no safety person on site at the time of the accident,

even though state law requires that a safety coordinator or an alternate safety coordinator be physically present while work is being performed on an OCIP project.

[Assemblyman Oceguera, continued.] A $1,000 fine was imposed by the Division of Industrial Relations (DIR) for violation of the provision that required the owner to ensure that the primary or alternate safety coordinator is physically present. A second fine in the amount of $10,000 was imposed for failure to hire and secure approval of an alternative safety coordinator for the project as required by law. Although DIR imposed these fines, the statute did not contain a mechanism to shut down the job site.

This bill provides such a mechanism. It requires an owner or principal contractor who establishes and administers a consolidated insurance program to submit a monthly affidavit to the Commissioner of Insurance indicating that the safety coordinator was on site during the preceding month as required by statute, and that an administrator of claims is also on site as required by statute. An owner may submit an affidavit indicating that there were no safety or claims personnel on a site if there was no work being done during that month. The bill further provides that if a person violates the provisions that require a safety coordinator or a claims administrator be on site while work is being performed, the Occupational Safety and Health Review Board has the authority to order the owner or principal contractor to cease all activity relating to construction at the construction site until the Board determines that the owner or principal contractor has complied with the law.

The bill imposes an administrative fine of $5,000 per day for each day that the Board determines that the owner or principal contractor failed to comply with the law. A.B. 363 provides that if the owner or principal contractor falsified the affidavit, violates the provisions that require a safety coordinator, or claims an administrator is on site while work is being performed, he is prohibited from establishing or administering a consolidated insurance program for five years after the completion of the construction project.

Steve Holloway, Executive Vice President, Associated General Contractors of Southern Nevada:
We are here in support of this bill. I did the initial draft on this bill. It was one of our contractors and one of their employees who was killed at the World Market Center, and it was us who complained that there was no safety person on that job. I want to give you some background on this statute and law that we're attempting to amend. This OCIP statute was a compromise arrived at in the 1990s, in which most of the construction community objected to OCIPs in the first place. OCIP is an insurance program obtained by an owner or, in some

cases, the prime contractor on a project. It covers all of the liability insurance in the workers' compensation. OCIPs usually don't pay for themselves unless the workers' compensation is included. There's a history of them throughout the United States and many of them have ended up in court.

[Steve Holloway, continued.] In an OCIP, because the owner is paying for the insurance, when the contractors bid the project they are asked to back out all of their workers' compensation costs and at times even their safety costs. Most contractors have their own safety work force and safety directors on a job site. As a compromise, we want the owner who purchases the owner-controlled insurance program or the insurance company to put a certified safety person on the job, and that person needs to be on the job at all times construction is underway. At the World Market Center, there was not a certified safety person on the job. The safety person that was supposedly assigned to that job was on another job in California. As an industry, we want to be assured that if there are OCIPs, a safety person is on that project at all times when work is underway. We have nothing vested in this language other than ensuring that this is done.

John Wiles, Division Counsel, Division of Industrial Relations, Nevada Department of Business and Industry:

We are neutral on this bill, but I've agreed to come to the table with Mr. Holloway because we did work with AGC [Associated General Contractors] and many others on this bill. I did bring a letter (Exhibit H) from Fred Scarpello, counsel for the Occupational Safety and Health Review Board. Mr. Scarpello has indicated to us that he does not believe it's appropriate for the Occupational Safety and Health Review Board to be involved in this bill in this fashion, and I agree with him. It seems like we can provide another mechanism for the enforcement of these important provisions. There certainly are important questions and issues for the Committee to address, primarily the issue of whether or not we should be granted authority to shut down the business because of the absence of one individual on a job site, be it a safety coordinator or a workers' compensation claims administrator. It may be a matter of a policy that you want us to do that, or the Insurance Commissioner, which could be spelled out in the bill. We would work with the proponents, the opponents, and the Committee to see that this bill is appropriately drafted and hits the target, and that we don't have a repeat performance that leads to a fatality.

Barbara Wall, Deputy Attorney for Injured Workers, Attorney for Injured Workers Division, Nevada Department of Business and Industry:

On behalf of Nevada Attorney for Injured Workers, we support this bill.

Chairwoman Buckley:
We'll close the public hearing on A.B. 363. Mr. Wiles, if you and Mr. Scarpello would try to work with Mr. Holloway and Assemblyman Oceguera and prepare any proposed suggestions for the correct oversight folks by tomorrow, I'd like it by Friday's work session. I'll open the public hearing A.B. 364.

Assembly Bill 364: Makes various changes relating to industrial insurance. (BDR 53-249)

Assemblyman John Oceguera, Assembly District No. 16, Clark County:
A.B. 364 was brought by the Interim Committee on Nevada's Industrial Insurance Program. The Committee heard testimony indicating that check stubs provided to workers' compensation pensioners do not provide information concerning why certain deductions from the gross amount of the check are taken. These deductions include such things as repayment of a prior lump-sum permanent partial disability (PPD). Many pensioners are confused because they don't understand why the deductions are taken out and when they might stop.

Section 4 of this bill requires a check issued for the payment of compensation for a permanent total disability to set forth certain information as delineated on page 2 of the bill beginning at line 27, which is designed to assist the claimant in understanding any deductions that are made. Second, the testimony indicated that in some cases, claims have been closed without the claimants having been evaluated for a permanent impairment when they clearly had injuries that should have been rated. This situation can occur if a claimant is unsophisticated concerning his rights under the law or takes bad advice not to appeal the closure of his claim, even though he has not been rated for a PPD award.

Section 5 of A.B. 364 requires an insurer to reopen a claim to consider the payment of the compensation for a PPD if certain conditions are met, including that the claim was closed without the claimant having received the PPD evaluation and that the claimant can demonstrate he was eligible to receive a PPD award at the time the claim was originally closed.

The Interim Committee received testimony that an existing provision of statute requires that if benefits for a temporary disability will be paid to an insured employee for more than 90 days, a vocational assessment must be made of the employee's ability to return to gainful employment. The testimony indicated that there are many cases where the injured employee is expected to return to work even though he will be on PPD for more than 90 days. To require a vocational assessment in most cases doesn't seem to make much sense. Section 9 of this

bill revises the provisions governing vocational assessments by making them voluntary instead of mandatory.

[Assembly Oceguera, continued.] Finally, it was pointed out in testimony that some vocational counselors may be put into difficult positions of recommending vocational counseling for an injured worker whose claim is being handled by an insurer that also is the counsel's employer. The insurer may give instructions to the counselor to make recommendations regarding vocational counseling that may differ from a counselor's professional judgment. To avoid such potential conflict of interest, Section 6 of A.B. 363 prohibits a vocational rehabilitation counselor from being assigned to a case administered by his employer.

Dean Hardy, Nevada Trial Lawyers Association:
We did participate in the Interim Committee. The bill was well thought out and we stand in support of all aspects of this bill.

Assemblywoman Giunchigliani:
I want to clarify the vocational part in Section 6. Do we not currently have them as licensed vocational counselors?

Dean Hardy:
They are supposed to be supervised by a certified counselor, but they're not required to be certified.

Assemblywoman Giunchigliani:
So this would tighten that up and make sure that a written assessment is done?

Dean Hardy:
Yes, that's my understanding.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
We participated in the Interim Committee and we would concur with Mr. Hardy and support his bill.

Barbara Wall, Deputy Attorney for Injured Workers, Attorney for Injured Workers Division, Nevada Department of Business and Industry:
We are in support of this bill as well. We think it's an important thing to address. With regard to the permanent total disability (PTD), the claimants will get a PTD award, but that can be required only up to the amount of the actual lump-sum award they have, so if it's on the check, there can be no error in what they're paying them. We're seeing so many changes in the claims adjusters. There's so much turnover here with the claimants as well, in that

they have to move a lot. This would really clear up that confusion so when the PTD award is recovered, there is no more recovery out of their check. With regard to Section 5, that's a really important feature for the insurers, TPAs [third-party administrators], and others to be in compliance with 661C.490, subsection 1, so we want to support that as well. We are also in support of the other section about vocational counseling.

Bob Ostrovsky, Legislative Advocate, representing Employer's Insurance Company of Nevada:
We did participate in the Interim Committee. With regard to Section 4, this is part of the bill that would require the insurer to provide certain information on every check stub. This section has been proposed in law because we had a single injured employee who testified that they were unable to determine where they stood relative to the amount that they owed the insurer to even-up a prior partial that later became a permanent.

I have an amendment (Exhibit I) that the insurer shall issue an annual statement to each claimant subject to the deduction for a prior PPD award. The annual statement shall include the total amount of any deduction paid, the claim number for each of the prior awards subject to a deduction, and the future balance due for each of the awards noted in paragraph (c), the prior claims. I'm suggesting not requiring every insurer to retool their payment system to satisfy a single claimant who has a problem. This claimant doesn't understand that when these awards are given, they are given documentation as to why the deduction is there and the amount of the deduction. We think an annual statement and accounting is satisfactory. If the Committee feels that something more than annual is required, we'd consider that. We think every paycheck on every paystub will be an undue burden to solve an individual claimant's problem. We just didn't hear enough testimony to support a draconian measure when something simpler and easier to do on the part of the insurance company would be adequate.

In Section 5, the problem here is it's believed that there may have been claimants who were wrongfully denied their right to a permanent partial disability evaluation and therefore may have been denied the right to a PPD award, and that's wrong. Our only concern is relative to the standard that will have to be met. In Section 5, subsection 2, the claimant "demonstrates that the time the case was closed," the word "demonstrates" is not very clear. We're afraid that we will get hundreds of claims reopened. Any claim that was subject to a violation of NRS 616D.120 would become suspect, and I don't know if that's really what the intent of the process was.

[Bob Ostrovsky, continued.] With regard to rehabilitation, we support the idea about certified counselors. We support the idea that vocational rehabilitation counselors under the direct employment of the insurance companies shouldn't be used. Our only concern is the public policy issue in Section 9, regarding whether or not they should get an evaluation within 90 days. We think this is reasonable. The rehabilitation people have other concerns and I'd be happy to work with the parties relative to that. Our concerns lie in Sections 4 and 5. I have handed out some proposed amendments (Exhibit I).

Don Jayne, Legislative Advocate, representing Nevada Self-Insured Association:
As Mr. Ostrovsky was talking about in Section 4, we also had some concerns about having to retool the check processing systems to attach this information to a check stub. Bob and I have talked about his amendment (Exhibit I), and we certainly don't have a problem with that. In the absence of that amendment satisfying the Committee's needs, perhaps an insert that goes with those checks as opposed to something that's physically attached to what prints. There should be a way to accomplish the information provision that we're looking for in here, and we're supportive of providing that information. It's a vehicle and we don't think a detachable stub is necessarily the appropriate way to do that.

In Section 5 we have similar concerns as far as the language. As Mr. Ostrovsky pointed out on line 1, the claimant "demonstrates" that. Perhaps we can tie that to some sort of information in the file at the time of closure that supports it, and in that file we can find the information that a PPD was never offered. We need some strengthening of that so we don't have broad moves against the re-opening statutes. We understand the issue as presented during the Interim Committee. We felt there were more of the obvious omissions and the extraordinary rather than every case being reviewed. Perhaps some enhancement to that language tying it back to the information in the file at the time of its closure might help that situation.

In the rehabilitation portions of the bill, we're supportive of removing the mandatory assessment that is in the current statute today. This makes it more permissive.

James Wilcher, C.R.C/C.D.M.S./C.C.M., Certified Rehabilitation Counselor, representing the International Association of Rehabilitation Professionals, Nevada Chapter:
[Read from Exhibit J.] We're in full support of the outlined bill draft. Our problem is in Section 9. Early intervention is really what we're talking about in a written assessment. When a person is injured, within 90 days a contact is made to that injured person to provide

information, to help reduce the adversarial nature of the process, to contact the physician and the employer, and to generate this return-to-work attitude. In 1996, Dr. Victor strongly recommended the 90-day assessment, making it a mandatory part of any workers' compensation program, and that was reported back to the Interim Study Committee that came about from the 1995 Legislative Session.

[James Wilcher, continued.] It comes down to economics on one point. Early intervention means that when you contact the person after 90 days of the injury, you are beginning to get that injured person to a mindset to return to work, whether that be with a pre-injury employer or another employer. Statistically, if a contact is made within 180 days, the cost can be reduced and temporary disability payments made up to $5,000 per case. Economically, it makes sense for the injured employee to be contacted and return to work in the shortest amount of time possible. If we make this optional, we are really throwing away all of the studies and statistical support for a written assessment, which was testified to in 1996 by a non-partisan group. They strongly suggested that you need to have a written assessment and there needs to be contact. My fear is that if we make it optional, in the majority of cases, it will not happen. When it doesn't happen, there is a potential for additional claim costs for these cases.

There are fewer adversarial issues when an early intervention is made, which means there are fewer litigious issues involved in this process and a smoother return to work. We want to have the best counselors helping our injured employees in Nevada to provide services that are economical, and considering contact with an employer to get that worker back with the employer of injury. The best rehabilitation that can be done is one where the injured worker goes back to the employer of injury. Sometimes a counselor is needed to develop a modified job with that employer that returns that person to work. I strongly suggest there is a much more efficient and effective way to address the concerns of the Committee.

There is a certification body in NRS 616A, the Commission on Rehabilitation Counselor Certification (CRCC). That says that a certified rehabilitation counselor must supervise any non-certified counselors and sign off on any written plans. The CRCC has a formal complaint process, and if a rehabilitation counselor violates

> an ethical standard, there is a formal process to deal with it. I do think we have this in place already and it just needs to be utilized using the CRCC, because CRCC must sign on a plan or sign an unsupervised counselor. There is a process we can use to flush these people out if the real issue is these counselors are providing opinions all the time in favor of the insurer, then there's a process and we can deal with that without eliminating a benefit that saves the state money. I ask you to work together so we can continue to make this benefit mandatory and understand the benefits of a mandatory assessment.
>
> [James Wilcher, continued.] It doesn't matter that the person is not ready for rehabilitation after 90 days of injury; you need a contact with that person. That doesn't mean you're going to go forward with vocational rehabilitation at that time, it means you're giving information to an injured employee, you're starting the process, you're contacting the employer, and you're giving an avenue to be successful.

Chairwoman Buckley:
I have a question on the rehabilitation counselors as to why the existing procedure doesn't work. Or does it work? I'm a little concerned that we have people without certification.

Dean Hardy:
There are certainly a number of vocational rehabilitation counselors in this state who provide a tremendous service to injured workers. There are an extensive number of vocational rehabilitation counselors that do not provide the type of service that Mr. Wilcher and other vocational rehabilitation counselors provide. The reason it's not working is that there are independent counselors who have marketed themselves to insurers, employers, and administrators by suggesting to those employer groups that they can limit the insurer or employer exposure to vocational rehabilitation, and the way they limit their exposure to vocational rehabilitation costs is by writing this initial assessment suggesting that someone is not eligible for vocational rehabilitation. The process is simple. If someone is injured on the job and they're injured so significantly that they cannot go back to their pre-accident employment, then a vocational rehabilitation counselor meets with the injured worker and assesses their "marketable skills." These less-than-scrupulous rehabilitation counselors just suggested in their assessments that if someone had a previous job, they said that qualified as a marketable skill and therefore they were not eligible for vocational rehabilitation services. I litigated that issue dozens of times, and we were successful in almost every instance.

[Dean Hardy, continued.] During that pendency in litigation, oftentimes our clients were not receiving vocational rehabilitation benefits. The cost savings that Mr. Wilcher speaks of are eaten up in litigation expenses and in retroactive compensation, so what was suggested through the Interim Committee was that there need not be this vocational rehabilitation assessment after 90 days because the State Industrial Insurance System couldn't keep up with their own claims. There were individuals sitting for weeks, months, and even years without having contact with either a physician, a vocational rehabilitation counselor, or a case manager, so now we have private insurance, claims examiners, and nurse case managers. These claims do not sit. To make this a permissive opportunity on behalf of employers or insurers is the option that suits everyone's benefit. To have a statute that mandates contact is almost redundant because the contact takes place through a nurse case manager or a claims adjuster if they're handling their claims appropriately, and they now have manageable numbers of claims, so mandatory vocational rehabilitation assessment is no longer necessary.

Once someone becomes medically stable and it is apparent that they're not going back to pre-accident employment, they're going to have to do a vocational assessment at that point anyway to see whether they're eligible for rehabilitation services or whether they indeed have some marketable skill that renders an injured worker ineligible for vocational rehabilitation.

Chairwoman Buckley:
Your explanation rings true with what Mr. Ostrovsky told me when I was learning workers' compensation, and that is, the best thing to do is to talk to that worker right away, because the sooner you talk to them and make sure their needs are taken care of, the sooner you'll get them back to work and the lower your costs will be.

Barbara Gruenewald, representing Nevada Trial Lawyers Association:
Further on in Section 9, the injured employee is still protected because they can request. Instead of a "shall" or "have to," it's a "may, if you want it." In paragraph 3 it says, then "if the injured worker does request it," it's our understanding "the counselor 'shall' prepare it." So, the injured worker is still protected.

Chairwoman Buckley:
I'll close the public hearing on A.B. 364. [Adjourned for five minutes. Meeting called back to order.] I'll open the hearing on A.B. 257.

Assembly Bill 257: Provides certain protections to person who receives payments pursuant to federal Social Security Act. (BDR 55-69)

Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County:
For the average American over 65, Social Security is nearly 40 percent of income; for about 20 percent of Americans, it is their only income. It gets harder and harder every day for many seniors to make that precious Social Security stretch to cover all their needs. What happens when a piece of your Social Security check disappears from your checking account?

A.B. 257 is designed to ensure that a senior citizen cannot inadvertently agree to let their Social Security monies be deducted from their bank account to pay for debts unconnected to the account.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
Page one (Exhibit K) is a copy of 42 USC 407(a), which basically says that your Social Security check is exempt from attachment, garnishment, or other legal process. We're here today to talk about other legal process, which in this case is a bank set-off. A bank set-off is the ability of a bank to take money out of your account for monies the bank says you owe them. How does the bank have this right? They have the right based upon the contract that you create with the bank when you set up your account. That's typically done in a bankbook.

On page 19 (Exhibit K), there is some description of legal process. This is for someone who sets up an electronic transfer account, in this case a senior having their Social Security check automatically deposited into their bank account. The bank reassures the senior in this paragraph that this Social Security benefit is exempt from attachment. It conveniently doesn't say anything about setoff, which is the other process. The right of the bank to setoff against your account may be described this way: "We may set off against any account you own for any obligation you owe us, whether due or not, any time and for any reason as legally allowed."

Can the banks set off against your account that contains your Social Security that is exempt under federal law? That's what this bill deals with. That question has led to a great deal of litigation in the last few years and has sparked interest in this bill. I've given you two brief descriptions of cases that have come out around this issue (Exhibit K). The first is a description of the *Lopez v Washington Mutual Bank* case. The Ninth Circuit Court reversed itself. It first said that if you have a checking account and you overdraft against that checking account and a bank takes money out of your account to cover those

overdrafts, and the account contains your Social Security check, then that would violate federal law. After that decision came down, there was a petition for a rehearing of the case. It was reheard; a number of institutions including banks filed friend-of-the court briefs, and the court reversed itself completely in 2002. It said that this practice does not violate the Social Security Act [of 1935; Title 42 USC] because the consumer is deemed, by setting up the account, to have agreed to this process and the terms and conditions of their account, which include that if they overdraw the account, the bank can automatically take money out.

[Jon Sasser, continued.] In 2004, there was a statewide class action in California filed under state law, saying that Bank of America had unlawfully taken money out of people's accounts to cover overdrafts. The San Francisco jury entered a $1 billion verdict against the Bank of America that was for $275 million in compensatory damages and an extra $1,000 for each Social Security recipient for economic or emotional harm as a result of the bank's conduct. That case is on appeal. The state of that law is in flux now.

I represent the Washoe Senior Law Project, and this happens in Nevada, too. In a case handled by our Project, a man had a car loan. Because he lost his job and defaulted on the loan, the car was repossessed and the bank took a default judgment. Later, the man opened a money market account in the same financial institution that had the judgment against him. Within a month or two, the bank, without notice, took all $4,000 out of his account. These funds were comprised solely of Social Security funds. The bank pointed to these clauses in the booklets as their justification for having done so. After the attorney for the Senior Law Project cited the Washington decision and a couple of other things, they worked out an arrangement with him and the client and got the money back. That led to the need to look at this for others who don't get to legal services or to lawyers.

We first thought we could outlaw the practice of these accounts with all this small print where seniors who don't read this typically—and I certainly didn't when I set up my account—have waived their rights to exempt Social Security benefits. The Legislative Counsel Bureau (LCB) Legal Division came back to us and said we can't do that because we can't have state law regulate bank accounts. That is a subject of federal law. Federal law preempts state's regulation of accounts, so we couldn't go that direction. We asked what we could do and they said under state law, we can regulate loans.

The language that LCB suggested is in Section 1 of the bill: "A financial institution shall not include in any loan agreement a provision that allows the institution to recover, take, appropriate, or otherwise apply a setoff against any

debt or liability owing to the financial institution under the loan agreement." This does not go to the overdraft. It talks about when you have one account that's unrelated to the other account. If you overdraw your checking account, you can't then go and empty out your savings account if it has Social Security in it. It says that under our loan law, you would not be able to waive your federal right to protect your Social Security benefit. The Lopez case dealt with this overdraft protection. There's no kind of waiting to see what the courts are going to say about that issue. This just deals with the unrelated accounts.

[Jon Sasser, continued.] Right now under state law, when you get a notice of garnishment, it lists your exemptions, including your federal exemption. This, for the first time, would add the Social Security exemption into our state law so that it would be a violation of state law if you ask for a waiver of that new state law right when you set up your account.

I've had some interesting discussions with Mr. Uffelman and Mr. Sande. Section 1, subsection 3, gives them heartburn. We asked LCB to put everything here that we can do under state law that doesn't violate state or federal law or isn't in an area preempted by federal law, which states that an account, according to what they defined it, "includes, without limitation, an account pledged as security under the loan agreement." The bank says if you pledge your savings account and security for a loan, they should be able to setoff against it.

I would make two responses in an offer to work with Mr. Uffelman around that. One, if you had a loan at another bank, any other creditor would have to go through the normal process of suing you, getting a judgment, and attaching your account. When they try to attach your account, you could try to assert that this is Social Security money and they can't take that. There's a process there to deal with it. If it's within the same bank, they go straight into your account. Since it's an unrelated account, why should they be in any different shoes than any other creditor? That's a policy decision for you to make. If you decide there is some sympathy for this pledge as security, how can we fix it? I went to Mr. Uffelman and asked, "How do I know you won't put some new language in the small print of all the accounts saying any time you get a loan from us, you have just pledged as security all other accounts you have at these banks?" Then the problem remains exactly as it today. He agreed to work with me to see if there's some way that we can say in the loan agreement that, under state law, banks would be required to have a large disclosure so people understand that they are pledging a specific account, which may include funds otherwise exempt under federal law. That would be one area that we could possibly work on together and bring back an amendment to the Committee.

Chairwoman Buckley:
The two areas you're working on is where accounts were pledged and the ability to garnish just like any other creditor?

Jon Sasser:
Just pledge as security. That's the only area we have under discussion.

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada:
Social Security is the foundation for most older adults' retirement. For well over one half of our senior citizens, it accounts for 80 percent of their total income. For approximately one third, it is their only income source. We must protect and safeguard this safety net that was a promise from the U.S. government as a means to provide for people's benefits needs and retirement. AARP Nevada supports A.B. 257 and we hope you'll pass it.

Bill Uffelman, President and CEO, Nevada Bankers Association:
Our issue concerns lines 15 to 17, in subsection 1, that if it's unrelated to the loan agreement, you can't take funds from it, but then we turn around and define in lines 15 to 17 monies that you in fact pledged towards the loan agreement are defined away. I've talked to a lot of bank attorneys about how we can work around this, whether it's a notion of you just take out 15 to 17, which takes care of the pledged issue, or you come up with a separate agreement that goes in the loan agreement. We can work with those things.

Chairwoman Buckley:
If we were able to fix it, would you support the bill?

Bill Uffelman:
Yes.

Chairwoman Buckley:
We'll close the public hearing on A.B. 257, and we'll open the hearing on A.B. 340.

Assembly Bill 340: Revises provisions relating to certain short-term, high interest loans. (BDR 52-126)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:
With me is my intern, who will be introducing himself and giving details of the bill. Christopher Dornan has chosen this wonderful, timely, consumer protection legislation to work on. [Submitted Exhibit L.]

Part of the genesis of this bill was a request for a constituent, and that's why it does say that. I had a senior citizen, Mr. Montandon, who had come to me two years ago and asked me to bring a bill dealing with usury law. That's one component within the bill. In addition to that, it contains language dealing with payday loans and some of the restrictions we believe are out there to try to protect some of the consumers with regard to that. I had A.B. 1 of the 70th Legislative Session, a payday loan bill that was one of the first ones we could not resolve. I have to commend Madam Chairwoman; you have made great deal of progress in this area, and we hope through your bill and this bill, we'll make additional progress this session.

Christopher Dornan, Intern for Assemblywoman Chris Giunchigliani:
I'm here to talk about the payday loan industry. In its current state, the industry is almost completely unregulated, and the abuses it is inflicting are numerous and abhorrent. This is not to say the entire business is corrupt, as there are those within the industry that act with honor and tact, but the abuses of the less ethical are so extreme that legislative action is necessary. In its current form, the industry is so harmful to individuals and to society, that society would be better off were the industry banned outright. But it is not our intent to destroy the payday loan industry; rather, to clean it up.

Before I get to the details of A.B. 340, let me explain what the industry does and how it works. Payday loans specialize in giving short-term loans to consumers at incredibly high interest rates. What makes them so attractive to consumers is how easy they are to get. They require no credit check and no background check. Generally, all you need is proof of income and a checking account. You write the lender a postdated check for the amount of the loan plus a financing charge, and he gives you the money. It's fast and easy. You can receive a loan in less than fifteen minutes. If you can't afford to pay back the loan at the end of the period, you can pay the finance charge again to extend the loan another two weeks. It sounds simple.

Now to the problems. We all have credit cards, and I'm sure you're familiar with how easily someone can fall into an endless cycle of debt on interest rates of 36 percent, 20 percent, or 17 percent. In Nevada, the median rate of interest for payday loans is 443.2 percent.

[Christopher Dornan, continued.] As unbelievable as that is, the interest rates charged for the loans are not the most abusive part of the industry. The late fees some businesses charge for missing a payment can be even more expensive. A late fee of 2 percent per day, and there are worse, quickly adds up to over 700 percent APR [Annual Percentage Rate]. Then there are other clauses hidden in these contracts that unfairly hit consumers hard. For example, if the lender and consumer end up in court for any reason, a miscellaneous fee of $1,000 or more is applied to the customer's account. This could be on a $100 loan. Lastly, it has been common practice for some lenders to sue for treble damages, up to $500, when collecting on defaulted loans. If you default, they'll sue for triple the original debt, plus interest and late fees. People end up declaring bankruptcy over what originally was only a few hundred dollars, but has since blossomed into thousands of dollars of interest, late fees, court costs, and damages.

While the costs imposed on individuals who enter into these loans are substantial, the costs imposed on the State are also large. These loans hit the lower classes particularly hard, and often lead to an increased dependence on state services. I'm sure you can imagine what a loan like this can do to an already pressed household. The costs to our court system are also substantial. Josephine Gallegos will be able to tell you more about that than I.

This bill, in conjunction with A.B. 384, attempts to fix some of these problems. First, A.B. 384 addresses the maximum rate of interest one should be able to charge for payday loans. We realize that a rate of prime plus 2 percent, which currently would be 7.75 percent, is completely unrealistic and would destroy the industry. This is not going to be in the final bill; it is a position to work back from, to find a compromise, and we invite input form the industry. The highest APRs we have seen are over 1,300 percent, and this is what we are seeking to prevent. The idea here is that if the interest rates are a little more reasonable, fewer people will be late on their payments or default on their debt. We realize that Nevada's old usury cap of 18 percent will never be reinstated, and that even 36 percent or 50 percent is unlikely; but over 1,000 percent? This cannot be justified.

Second, we feel that, given the terms of these loans and the tendency of these businesses to proliferate in lower-income areas, lenders should be required to have materials and contracts on hand in both English and Spanish. If someone is about to sign for a loan with an APR this high, they ought to be able to at least read the contract in their native language. They're hard enough to read in English. Furthermore, materials shall be provided with contact information indicating who to call with complaints about the business.

[Christopher Dornan, continued.] Third, the bill would prohibit any consumer from taking out any combination of payday loans greater than 25 percent of his income, as well as requiring a cool-down period of 30 days between paying off a payday loan and taking out a new one. We feel this is necessary because one of the habitual abuses of the system that makes payday loans so damaging is how certain consumers abuse the system. Short-term loans are just that: short-term. No one should rely on these loans for anything but emergency situations, and the more honorable businessmen in the industry will tell you that up-front before you even sign the loan. To get around the old cap of 33 percent of your monthly income, consumers take out loans from multiple businesses around town. Sometimes they borrow from one to pay off another. Sometimes they just need more money than a single business will give them. Whatever the reason, habitual borrowing from multiple lenders is one of the key signs that a loan will go bad. By cutting off this option, the customer is required to be more honest in his ability to pay off these debts, mitigating the eventual harm done.

The bill intends to accomplish this by establishing a statewide database for payday loans. It would list who has loans out and for how much. It would require businesses to enter clients into the database and to check the database before issuing a loan to a client to ensure the client would not exceed the limit of 25 percent of his monthly income in loans. It would be paid by service fees that loan companies would be able to pass on to the consumer. Florida and Oklahoma both have effective payday loan database systems in place, and our State system would be modeled after those. This measure is as much for the consumer's protection as the lender's protection.

Fourth, A.B. 340 would attempt to eliminate the option to rollover debt under payday loans. Like the measure regarding usury caps, this is an extreme position, and we know this. The idea is to reduce the maximum duration of these loans, as they are truly intended to be short-term loans. However, we also realize that this position is untenable to the industry, and we are willing to compromise. Perhaps we might amend it to only allow a specific number of rollovers. We invite industry to comment upon this to try to reach a compromise.

Lastly, this bill also touches upon the issue of RALs, or refund anticipation loans. These are commonly issued by tax preparation services, with H&R Block being the largest provider nationwide. How they work is, while processing your tax return, the lender offers to make an advance on the tax return based on what he estimates the probable refund to be. So in exchange for a few days extra haste in receiving your tax refund, the company keeps a sizeable portion of the return. When calculated as a loan, the APR on these transactions can surpass 1,000 percent. In addition, if for some reason the refund is less than

expected, it is a loan, and the consumer has to make up the difference. However, because of how deceptively these loans are marketed, most consumers never actually realize that these are loans. H&R Block is currently involved in several class-action lawsuits over this style of deception, and there is no reason to assume the rest of the industry is any different. This portion of the bill would attempt to increase consumer awareness that these are indeed loans. This is a small step for now, but an important one.

[Christopher Dornan, continued.] The industry says that it is just fulfilling a need of society, and that these proposals constitute an undue burden on their business. I acknowledge that there is a need for short-term financing. But if my friend has a hangnail, I don't advocate amputation. The cure is worse than the disease, and that is the state of things in the payday loan industry in the state of Nevada. Too many businesses aren't helping people out of a bad situation; they're dragging them further down. The idea is to fix this industry, not destroy it. Hopefully, the industry is willing to help, as even small cuts can get gangrene if left to fester. A balance must be struck.

Josephine Gallegos, Senior Administrative Clerk, Justice/Municipal Court, Carson City, Nevada:
[Referred to Exhibit M.] I'm here to provide some statistical information from the Justice Court jurisdiction. Out of the small claims total caseload, 40 percent are these types of cases, which means approximately one case is filed every day. About 85 to 90 percent of these small claims cases result in default judgments, which means the borrower fails to appear at all. A large percentage of those results in wage attachments, which is 25 percent of a person's net income.

Assemblyman Anderson:
Forty percent of the filings in small claims court are directly in this area?

Josephine Gallegos:
Yes, it's actually 39.7 percent.

Berlyn Miller, Legislative and Regulatory Issues, Nevada Consumer Financial Association:
We support A.B. 340 and also A.B. 384. We understand as major lenders that there is a problem in this area, and you need a better control over these types of lenders and these abuses. We do have a problem with one paragraph in the bill, and that's Section 2, subsection 1, that states that "the interest rate charged may not exceed the prime rate of the largest bank plus 2 percent." I realize that as the bill is written it does not affect my clients, but we have a concern about getting usury rate into the law again. Until 1984, Nevada had a usury law that was removed in the 1984 Special Legislative Session called by Governor Bryan

to introduce legislation to bring and invite Citicorp into the state to set up their credit card facility in Las Vegas. They had never looked at Nevada because we had a usury law. They weren't looking at any state with a usury law.

[Berlyn Miller, continued.] They moved the credit card operation out of New York City in the late 1970s because with interest rates at the time, they were losing $200,000 a day on their credit card portfolio. They passed the law in the 1984 Special Legislative Session in one day with a unanimous vote and removed the usury. We're concerned about that, because we now have 2,200 employees in that facility in Las Vegas. We have another five or six facilities employing just fewer than 5,000 people in this industry. In addition, there are some in northern Nevada. You may have attended the Harley-Davidson opening the other night. None of these companies would have moved to Nevada if we still had a usury rate in the law. Governor Guinn indicated he had a delegation in from one of the largest automobile manufacturers in the world, and they were exploring setting up a facility in southern Nevada to finance their cars in the U.S. From an economic development standpoint, it's a major consideration. We would request if you decide to move this bill that you delete Section 2, subsection 1.

Assemblywoman Giunchigliani:
That was a section that I put in for a constituent and he wants me to make a point of it. I think that's a very flexible recommendation for deletion as we negotiate the other areas with the group.

Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry:
We're very much in favor of A.B. 340 and A.B. 384. The industry refers to these types of payday loans as predatory lending because it preys upon the lowest rung of the economic ladder. We urge your support in passage of A.B. 340 because it's a necessary bill.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:
In the last two years, the growth of this industry has been apparent in all of our communities. It is frightening that you know they're multiplying rapidly because they're making huge amounts of money off of low-income people. I felt I would be remiss if I didn't come up and support both this bill and A.B. 384 because I work on low-income people's issues. We as a state are continuing to cut these services to low-income people, and yet they are forced to go to these kinds of predators and use their loans to pay off other loans. Sometimes there are five loans that are paying off each other. It's abhorrent that we are not one of the states that do not allow these at all. It's impossible to think of low-income

people going into these offices and not really understanding what they're getting into. Mr. Dornan really laid it out quite well. I would urge you to pass both of these bills to put some kind of controls in this industry because they're destroying our community. I drove up Carson Street and counted the number of payday loan offices. There are over 20 in Carson City, so I urge you to support these bills.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
I support both of these bills. Washoe Legal Services has a case that's in litigation now involving a $300-a-month loan, with $125 a month in interest and $125 a month for late fees and pledging security to a car in the same loan. It has 598 percent APR, and I would agree that this must be stopped now.

Assemblywoman Giunchigliani:
In Section 9 as well, there is something that will at least assist the local governments. There are many of these businesses on a single corner. Some of the local governments have begun to adopt ordinances, but Section 9 says that "they shall adopt ordinances" in order to get a handle on how many are appearing within a certain jurisdiction of each other because you have some false competition that's going on, so that's another component of the legislation as well.

Chairwoman Buckley:
I'll go to the opposition in Carson City.

Alfredo Alonso, Legislative Advocate, representing Money Tree Incorporated:
We clearly have a difference of opinion with Assemblywoman Giunchigliani and we'd like to discuss that at length. What we're trying to get here is the same thing. There are a lot of bad actors in this industry, and the next bill you'll hear is an attempt to get to that. I believe that this bill doesn't do that and unfortunately ends the practice altogether. You do have a need in the marketplace—you can't walk into a bank and get a $300 loan anymore. There is a market for this and there is a need. As long as it's regulated and you have the good guys in charge, you can regulate this industry. It'll serve its role in the marketplace.

Jim Marchesi, President/CEO, Check City, Las Vegas, Nevada; and Nevada Financial Services Association:
I want to give you a statistical view of the industry so you understand who the customer is and what our customer does. The Nevada Financial Services Association is made up of about 10 lenders here in the state. Many of the members of Nevada Financial Services Association are also members of the

Community Financial Services Association of America (CFSA), which is a national organization.

[Jim Marchesi, continued.] From a Georgetown study in 1981 (Exhibit N), there have been over 10 studies done in this area and they all show about the same thing. Sixty-eight percent of the customers are less than 45 years old. Ninety-four percent of them have high school educations, and 56 percent of them have college educations. Fifty-two percent earn between $25,000 and $50,000 a year. Forty-two percent own their own home and have children and a household. One hundred percent of them have to have a steady income and a bank account. The customers are middle income, middle educated, responsible, hardworking families who use the product. The target market is not by any means low-income individuals.

Why would people choose this product? The next chart (Exhibit N) shows it's because of the convenience and the speed. You can look down that list (Exhibit N) at fast approval, less expensive than other things, short-term, less hard to credit, better service than other things. It's primarily because of the speed and convenience.

The next chart (Exhibit N) is from Cypress Research Institute. They just did a study at the end of 2004 that looked at the customer satisfaction for the product. When they did the research, they talked to 2,000 individuals out of a database of 1.5 million from companies that were CFSA members. They asked people how satisfied they were with the product. They had them rank other services that were provided to them, and the payday loan industry ranked only behind grocery stores from a satisfaction standpoint. If you look at whether the customer knows what they're getting, some people say they don't understand, but in these surveys they found the customers fully understand the terms of the loan, they understand when they have to make a payment, and they understand what the costs are associated with the loans.

If you look at what satisfies them, there is 88 percent satisfaction that they have the ability to renew it; they like the ability to borrow an amount, and they also like the repayment schedule. The point of that chart is that the customer knows what they're doing and they're very satisfied with the product. We asked, "How did this product help you?" It was used primarily for expensive expenses, avoiding late charges, avoiding bounced checks, for bridge income reduction, and also for them to get something special.

These next two charts (Exhibit N) will show you the alternatives that our customers have. On average, customers have five alternatives to be able to get money for short-income issues. It comes down to, "Why do people choose

this?" It's a simple economic decision. It's a lower-cost alternative than the other options they would consider at the time. It's so simple. We listed a table there that took a $100 loan and set a 14-day run to see how much that would cost for either a payday loan or some other products.

[Jim Marchesi, continued.] Just to correct something that was said earlier, there is very significant legislation—NRS 604—that currently exists to regulate the business. The payday loan has a $15 fee, but if someone bounces a check, the average fee is $35, and you can see what that would translate into. The credit card balance and the late fee, you can see (Exhibit N) what the $27 fee goes into and, likewise, under the NSF [Non-Sufficient Funds] fees and utility late fees.

One other option that a lot of people don't look at is the ATM fee. We've chosen a very low ATM fee because in Las Vegas $1.49 doesn't get it anymore. You can get anything from $2 to $10 depending on where you do the transaction. Again, it's an even higher cost than the payday loan product.

The Cypress Research Group asked the customers, "Do you want government intervention in this product?" And the answer was overwhelmingly no. I'll let you look at those four statistics there (Exhibit N). Do you want us to look at how many loans you take per year? Do you want us to monitor your use? Of course the customer says no. What you find with all credit and financial products is the customer is making a choice on their own and they're making the choice without any undue stress. There has been extreme growth because there's been huge demand for the product. There are some exceptional people in this business. There are also some people who don't operate on an exceptional basis. We really believe that A.B. 384 will be the vehicle, and we've been working very closely on that bill to get something that's acceptable to everyone and will address most of the issues that were described earlier.

Over 5 million transactions happen annually. There are between 125,000 and 150,000 Nevada residents who are using this product. For the large number of transactions and the large number of customers we have, there are very few complaints relative to the size of the market.

Mark Thompson, representing Money Tree; and Community of Financial Services Association of America (CFSA):

We represent the payday advance industry and also Money Tree Incorporated, which operates in Nevada and is headquartered in Seattle, Washington. Prior to working for Money Tree, I was the State Regulator in the state of Washington. My job was to administer the five statutes that governed non-depository financial service providers, including mortgage brokers, finance companies,

escrow companies, check cashers, check sellers, payday lenders, money transmitters, and a variety of folks. I have seen this industry from both the regulatory side and the corporate side. It's very clear to me that this isn't a perfect product, nor is overdraft protection, as you heard in the previous bill. CFSA is eager to engage with legislators, community groups, consumer advocates, and anybody who is interested in the public policy issues that surround payday advance. We appreciate and understand the concerns that are behind A.B. 340. There's much in A.B. 340 that we agree with and certain things we have serious concerns about. We feel we are making good progress on A.B. 384 and we'll be able to reach a bill there that will address many of the concerns behind both of these bills.

[Mark Thompson, continued.] As a regulator, I used to watch this industry, and I've noted the growth. I realized that this demand had always been there. In the 1960s and 1970s it was met by finance companies, and they made $300, $500, $700, and they secured it with furniture. In most states, those loans were regulated under a usury cap, which in Washington, was a 25 percent interest rate and a 4 percent loan origination fee. That fixed the $1 return on those loans, and most of the caps were set either in the Depression era or the early 1940s.

Over time, the $1 costs of these companies grew: their rent, wages, insurance bill, water, light, and electricity all grew in $1 terms. That's one of the problems we've run into when we start talking about APRs. We play the game in dollars, not percentage. By 1980, finance companies were moving their minimum loan amounts higher and higher, and they were selling alternative products to try to make enough money out of the transaction to make it work. Two things happened in the early 1980s. Interest rates went very high and increased the cost of obtaining funds, and the loan industry died, so mortgage lending opened up. Many of the finance companies are now real estate lenders. They make first and second mortgages and home equity lines of credit. There was a niche for $500 loans that wasn't being filled, and this industry evolved to fill it.

I presented some cost data (Exhibit N) from the Federal Reserve about what a bank's cost is for making a loan. The data shows if you make a $380 instrument loan, an average payday loan, for 12 monthly payments with a 25 percent note rate and a 4 percent loan origination fee, based on the high and low costs of originating and servicing the loan from the Federal Reserve, you lost between $178 and $352. Everything about the economics of the payday advance industry comes out of the economics of these numbers: the pricing, the loan term, the APR, the delivery system, and the collection practices. People can only afford to make a loan of this size if the return is high enough and costs are low enough to make it profitable to make the loan. Our average costs are

around $35, and that comes from the public SEC [United States Securities and Exchange Commission] filings of the some of the companies that are modeling companies.

[Mark Thompson, continued.] In Section 1, the cap that's suggested, as has been noted, wouldn't allow us to make a profit. It may not be a concern that we won't make money, but the effect of that is the demand would still be there, consumers will turn to those types of products, and the Legislature will completely lose control over the consumer protection elements of those transactions. If you really want to help consumers in this state, you will maintain an economically viable, regulated industry. We're a long way from getting there without negotiations on A.B. 384.

Assemblyman Anderson:
We heard earlier that 40 percent of the local courts are clogged with failed default payments. Is that statistic representative of Washington or your experience here in Nevada?

Mark Thompson:
That statistic is indicative of a problem that needs to be solved, and we are well along the way of coming up with language that will do that in A.B. 384. One of the changes to the statute that was made in Washington while I was the regulator made it illegal to sue for trebled damages and judgments. We operate in six Western states; Nevada is the only state where that would be possible. Our contract says we won't sue you in civil court, and we won't threaten or make criminal charges against you if you default on a loan.

Jim Marchesi:
The statistic I can't confirm. I guess we have to go with the person who reported it and said that is a true and honest number. Let me address the issue of lawsuits. There have been many abuses in that area, and that's the place we need to fix as an industry. The people in the associations don't pursue that way. My company does use the courts if a person defaults, but we do it according to the statute, which tells us after they default we can only sue them for prime plus 10 percent, hard cost, and legal cost. That leaves an amount of a judgment that, if the loan was $300, we're left with a lawsuit of $400. There are filings that are found where someone will have a $300 loan and the lawsuit value will be $4,000. We have to fix that.

Vice Chairman Oceguera:
I'll close the hearing on A.B. 340 and open the hearing on A.B. 384.

Assembly Bill 384: Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:
I'm proud to be the sponsor of A.B. 384. In the interim, I work at Clark County Legal Services, a nonprofit legal aid firm. Sometimes I get inspiration for legislation from the people who walk in the door; that's certainly the case with payday lending. In Nevada, I see an industry out of control, with people walking in the door every day who borrow a small amount of money and have a judgment that is out of control. Because of what I do, I get referrals from other legislators asking what we can do to help these people. I get concerns from judges across that state expressing disbelief at the types of related cases they see in their courtrooms. A.B. 384 is an outgrowth of that. This bill represents many months of hard work and compromise between consumer advocates and industry leaders. We formed a task force awhile back with Consumer Affairs, Nevada Fair Housing, Consumer Credit Counseling, Financial Institutions, Better Business Bureau and began meeting with industry leaders about what we could do about some of these practices. This bill represents some long overdue protections to equalize the differing payday loan models that are in our community and to curb the practices of the unscrupulous and egregious lenders who have made Nevada their home.

I have handouts (Exhibit O), and I'm also passing out Gail Burks's study of the Nevada Fair Housing Center (Exhibit P). She did a study of payday loans and their impacts. Attachment 1 (Exhibit O) has information on how someone gets buried in debt. The most egregious portion of payday lending is the debt treadmill. It's not particularly egregious if a reasonably well-off person goes to a payday lender and spends 900 percent in interest to borrow money for two weeks, gets the money, pays them back, and life goes on. Life's not going to end if that practice goes on in our state, but that's not what's happening right now. Attachment 1 (Exhibit O) shows what happens after some consumers take out their first payday loan. They'll have a loan where the interest rate ranges anywhere from 200 to 1,100 percent annually. In this case, they receive a cash loan of $300 and agree to pay back $390 in two weeks with an annualized percentage of 780 percent. When they expire, they have two options to keep the loan current: they can pay it all off or roll it over for two more weeks for another $90 interest payment. After ten weeks, the consumer has already paid $300 in interest, but nothing towards the principal. After a year, they'd end up paying $2,300 in interest on a $300 loan. Oftentimes unable to make the interest payment or the full payment, consumers take out a second loan or third loan as we heard from Assemblywoman Giunchigliani.

[Assemblywoman Buckley, continued.] Right now in NRS 604, we regulate deferred deposit, which is where someone takes a check. NRS 675 regulates someone who just issues a high-cost, short-term loan, so this bill tries to level the playing field and outlaw the worst practices in both. There are a couple examples of that in Section 39, which would require lenders to follow the Fair Debt Collection Practices Act [15 USC 1601]. It would prohibit things such as using obscenities, advertising someone's debt, harassing the employer, or suggesting the person committed a crime. Unfortunately, I see these things happen every day. One employer was so frustrated with the collection efforts that she even called our offices. The lender harassed the employer hourly about why she had not garnished an employee's wages. The employer explained that she did not garnish the wages because he hadn't worked the previous week, so there were no wages left to garnish, but it didn't seem to stop the phone calls.

One of our other suggestions in the language is to have a remedy for an aggrieved consumer besides filing a complaint with financial institutions. When consumers have private remedies, they are often able to have more options. In Sections 54 and 55, we create statutory damages of $1,000 for each violation. This is similar to what we have in NRS 118A for violations of the Landlord-Tenant Act. An example of how someone might be helped with this is a woman who took out a loan with an especially egregious, unlicensed lender. Before defaulting, she was able to repay all but $212. The lender required her to sign a confession of judgment for $600 and then filed it. You can see from attachment 2, on page 7 (Exhibit O), the example of this one as well as the confession of judgment. So even though she had repaid almost the entire loan, they still started garnishing her paycheck with this confession of judgment. It's my hope that this section will benefit consumers, but also help the more reputable lenders who are not using confessions of judgments.

Section 54 states that "a contract whose provisions violate the state law makes the loan void and that the lender is not entitled to collect the principal, interest and other charges."

Sections 56 to 69 try to equalize the playing field. It changes rollovers and limits them from ten weeks to eight weeks. That's in the CFSA best practices anyway. That's the amount that's put in there. It makes it very clear that you can't collect any fees. The biggest thing this bill does is say you can't collect anything but the principal of the loan, the interest in the contract up until the date of default; after default, prime plus 10; and if you took a check, you can get $25 with a limit of twice if the bank returns the check. Additionally, it continues to allow the two-week rollovers for both short-term cash loans and payday loans; that's all they can get. As Assemblyman Anderson pointed out,

that's the reason why there are so many lawsuits. The Las Vegas number will be worse than the Carson City number. The constable told me that they serve 1,500 more garnishments every month because of the payday loan industry. The numbers are phenomenal as to how many there are. When someone goes to justice court now, if they have the unfortunate distinction of getting behind the lawyer for the payday loan industry, you have to wait hours just as they rubberstamp default after default.

[Assemblywoman Buckley, continued.] Why are so many in the backend of the court process? Because our laws are so lax, so what these companies do is sue people because we've allowed it to be a profit center for them. They're not going after just their $200 loan, as Mr. Dornan pointed out. They'll add $1,000 for their collection time and $500 for inconvenience; they just make up sums, which I call imaginary damages. The justice courts are so swamped and they don't have time to read these things, so they just rubberstamp them. I'd like to go over examples of these cases.

Let's review attachment 4, page 14 (Exhibit O). This is a contract that was signed by a young father who worked at a neighborhood casino one week before Christmas. The loan, which was due one day after Christmas, discloses an annual percentage rate of 1,095 percent, and they did the APR wrong; it's really 1,217 percent. Within ten weeks, this young man would end up paying $345 interest on a $150 loan. The same contract calls for a late fee of $5 per day, a post-default interest rate of 17.75 percent, and, if you look at page 15 at the bottom, the person was then sued on line 5 for $500 on top of that. His wages ended up being garnished, if you'll go to page 16, for $942 for a $150 loan. The use of treble damages continues to be frustrating, and this bill attempts to clarify it even more, although it's the law now. We try to make it even clearer that it's the law. We have a statement on pages 17 and 18 from the former Financial Institutions Division's Commissioner. It takes the position of one that's illegal and is still being collected.

If you look at attachment 6, on page 19 (Exhibit O), you'll see that despite this being the law, people are routinely still using that in their threatening letters. That's why we're including language to make it even clearer that it is not allowed and to put in some financial penalties which will make these folks stop.

Attachment 7 on page 20 (Exhibit O) is a default judgment entered against a casino employee. He had paid his debt in full on September 2; a lawsuit, for which he was never served, was filed on September 16; and a default judgment was entered against him for $1,598.

Attachment 8, page 23 (Exhibit O), is a contract that discloses that the consumer is liable for treble damages. It also has attached to it the largest amount of treble damages that I've ever seen, which is over $3,900. Page 24 is on a $165 loan; the interest rate was disclosed at 521 percent and was actually over 900 percent; they did the math wrong. On page 2, in addition to that are late fees of 2 percent a day; if the lender has to garnish wages, there's a flat fee of $1,250. If two consecutive payments are late, they have a right to charge a higher interest rate than 900 percent. If their phone gets disconnected for any reason, then their interest rate goes up; this is on page 1 in the second full paragraph (Exhibit O). The lender has the right to place the loan under default if their phone is either disconnected or their numbers change.

[Assemblywoman Buckley, continued.] If you wonder why we're detailing this law so much, this is why. Regulating this industry right now is like whack-a-mole. Once you feel like you make some progress, another deceptive practice comes up again. It is a plague among the working poor in Nevada. They're not going after people who don't have any money. Most of them want to garnish people because they're making so much profit on the garnishment side because our laws are so lax. I really appreciate the industry leaders. Some of the folks who were up at the table before are not engaging in these practices. They want to see these practices stop because they know, if they don't stop, the Legislature is going to ban payday lending. It's inevitable and I think they're welcoming of regulation to stop these horrible practices. We're working on a series of amendments that we think are about 98 percent done, which we'd be able to present in a future work session. I'd like to turn it over to Gail Burks in Las Vegas.

Assemblyman Anderson:
In the example that you gave us of the employee that had paid the loan and then was garnished and it was brought to court, did the court dismiss the case?

Assemblywoman Buckley:
The court grants the judgment primarily because the person who's sued doesn't know what's going on and then the court doesn't hear the other side.

Gail Burks, President and CEO, Nevada Fair Housing Center, Las Vegas, Nevada:
The Nevada Fair Housing Center is a nonprofit, and our mission is to provide education, legal representation, policy research, technical assistance, and financial services related to housing and consumer issues. We've worked with banks in this community for approximately ten years on products under community reinvestment to make sure consumers have fair and equal access to credit. [Exhibit R]

[Gail Burks, continued.] I'd like to discuss the report (Exhibit P) and talk about our findings and the methodology that we used. We looked at three main areas. We first looked at the concentrations of the payday lending facilities. We looked at the product or customer base as much as possible, given the data available. Then we looked at collection practices. From 1998 to 2004, payday lending companies increased from 16 to 381. When we went to look at where these places were located statewide, 60 percent are in low-income neighborhoods, and in Clark County, 5.3 percent are in areas where people earn less than $25,000 per year. That's 5.3 companies per 10,000 people. Fifty-five percent of these companies are located in census tracts that have a high minority population. We have about 9.1 branches for every 10,000 people. That's on pages 5 through 8 (Exhibit P).

Unlike banks, payday lenders are not required to report who they make loans to. They're not required to break it down by census tract, so it was a little more difficult to look at the customer base. We did a direct survey of the companies to try to get a feel for the products offered. We contacted 105 branches; 39 percent responded to our questions and 34 percent absolutely refused to talk about their products. In general, in the report, we've listed the average product as a loan around $200. The charges for that product will vary. The average APR is about 443 percent. When we get to the collection practices, we pulled the justice court files in Las Vegas. We looked at a total of 9 different companies, looking at 78 justice court civil files. Five of those companies were payday lenders, and the other 4 companies were short-term lenders. That's highlighted on pages 15 through 18 of the report (Exhibit P). The most abusive company we looked at was Cool Cash, which charges five times the amount of the original debt. The least abusive was Check City, which charged about two times the original debt.

I want to address the statement, "There's a need for the product." While there is a need for small loans, there are credit unions and some lenders that offer small loans, and there is not a need for loans with the high rate and the high cost. In addition, we could not find that the businesses were targeting in their marketing plans high-income or middle-income people. We could not find any data to support that argument, made earlier. We believe that A.B. 384 is needed in terms of the clients that get trapped in the debt when they're trying to purchase homes. The clients we see have had anywhere from 5 to 7 payday loans, and it takes about a year to clean that up before they can become eligible for home ownership. We encourage you to pass A.B. 384, and for the record we also support A.B. 340.

Azucena Valladolid, Director of Counseling, Consumer Credit Counseling Service, Las Vegas, Nevada:
[Read from Exhibit Q]. Consumer Credit Counseling Service (CCCS) is a not-for-profit United Way organization serving residents of the state of Nevada for over 30 years. CCCS provides basic financial and asset building services, including down-payment assistance, IDA [Individual Development Accounts], establishment of checking and savings accounts, income tax preparation, financial literacy, financial counseling, mortgage default/delinquency counseling, and debt management and repayment. We provide financial counseling to over 650 individuals and families each month. It is these clients and the disturbing trends being experienced that I would like to briefly speak about today.

As you are aware, the payday and small loan industry has grown incredibly the last few years, and we see the effects on a daily basis with consumers seeking solutions other than bankruptcy for their indebtedness. Obligations to payday or small loan companies added to an already overburdened consumer are resulting in a downward financial spiral. It also seems evident that marketing by the industry is directed to minorities, low to moderate-income individuals, and seniors. Spanish-speaking consumers sign documents in English, knowing only what they are told, which may very well not be the same thing.

In March 2005, our agency counseled 660 unduplicated individuals and families statewide. Of those, 17.4 percent owed one or more payday loans. These consumers were obligated from 1 to 17 different payday/small loans and, in over 95 percent of the clients, this debt was in addition to other consumer debt, credit card, retail, et cetera.

I spoke earlier of seniors and will provide an example which is, unfortunately, not rare. A 71-year-old gentleman came in for assistance. His total net monthly income is $1,000.25 from Social Security. He owed 15 payday and 4 small loan companies—19 creditors—with monthly payments totaling $3,627. This started out with one loan of $100. His Social Security check arrived on the third of each month. On the sixteenth, he borrowed $100 to be repaid on the thirtieth. Unfortunately, he had no income until the third, so when the loan became due, he borrowed from another payday company to pay the interest on the first, and on and on, resulting in almost $4,000 in debt. Moreover, this amount did not reflect costs associated with the legal action that was being processed.

Another example involves a Spanish-speaking client who enlisted our assistance to repay his six payday loans. On January 25, 2005, one of the companies responded in writing to our agency, accepting the proposed payment of $67 on the $400 balance. On February 26, 2005, a lawsuit was filed for treble damages, resulting in a demand for $1,978.08 plus 15 percent interest every

two weeks. All this for a $400 debt the company agreed to accept payments on.

[Azucena Valladolid, continued.] The examples could continue, as we see them daily. Consumers are being exploited, indebted to 19 creditors, as a 71-year-old was, with no possible way to repay, is exploitation. Owing $400 and liquidating the debt, as agreed upon by the payday loan company, only to be sued for almost $2,000, is exploitation. I am asking you to consider the proposed legislation to provide protection for the residents of Nevada. We are in support of A.B. 340 and A.B. 384.

Alfredo Alonso, Legislative Advocate, representing Money Tree Incorporated:
We, too, support the Chairwoman's efforts in attacking this issue. Clearly, the issue here is more that this is a new industry in a new niche that was filled by these individuals, and like any new industry, you're going to have growing pains and that's what we're seeing here before you. These are the good guys. They've been working with the Chairwoman for some time. What's going to come out of this is a good bill that's going to regulate this industry and finally get at the bad actors. This is going to be sweeping and there will be some outcry for a time, but what you'll end up with is a solid industry just like banking and other financial industries as this evolves.

Jim Marchesi, President/CEO, Check City, Las Vegas, Nevada; and Nevada Financial Services Association:
We have gone through exhaustive negotiations on this issue. I feel the product we're about to get will be an exceptional thing. We are in support in general, but there are a few things we will have to see when the bill is redrafted. In general, we're very much in support of the items that we've discussed and are going forward with. [Submitted Exhibit N.]

Mark Thompson, representing Community Financial Services Association and Money Tree, Incorporated:
I would like to thank Ms. Buckley personally and on behalf of CFSA for her leadership in bringing us together over the interim. We also are in support of most of the provisions of the bill as drafted. I think we've reached accommodation on the issues that remain and we look forward to supporting the bill going forward.

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada:
The nature of the subject and the testimony has compelled me to come forward. AARP Nevada strongly supports legislation to stop predatory lending practices. We all agree that there does need to be a place for people who

cannot go into a Bank of America to find a loan; however, predatory lending practices must be stopped. I've always been told that the average payday loan is rolled over multiple times. The current state of predatory lending needs to be controlled. The way it's designed right now is not to help out the consumer, but is purposely designed to get people so deeply in debt that they cannot get out.

Vice Chairman Oceguera:
I'll close the public hearing on A.B. 384. We will now go into work session.

Chairwoman Buckley:
A.B. 249 I should have ready by Friday, but I want to double-check with Mr. Sande on that last amendment. We could process A.B. 257 now since we have Ms. Erdoes here. The only concern on that bill was the pledge language. Ms. Erdoes, are you comfortable with how you would approach taking that out? [Ms. Erdoes answered affirmatively.] I'll open up the discussion on A.B. 257.

Assembly Bill 257: Provides certain protections to person who receives payments pursuant to federal Social Security Act. (BDR 55-69)

Chairwoman Buckley:
Do members feel like they have enough information to look at that bill, or would they like more time?

Assemblywoman Gansert:
I do have concerns with that bill. I'm concerned about someone writing a check for shopping and then bouncing that check and if the only resource they have is their Social Security check in their account, what do you do then? What do you do if someone just isn't using good judgment when they spend their money? I don't know if the amendment would cover that or not.

Chairwoman Buckley:
As I understand the bill, the bank certainly could go after the bank account on that, and I'll ask Brenda Erdoes for some help with that. We're talking about going after the money for another loan. A bank certainly could run it though again and charge whatever their fees are for bad checks; I don't think the bill prohibits that. Brenda, do you want to comment on this for us?

Brenda J. Erdoes, Legislative Counsel:
Yes, Madam Chairwoman, I believe you're correct. You could do that. I think the prohibition would apply in that case other than running it back through. I don't think there's a lot else you could do.

Assemblywoman Gansert:
So, you could continually run the check back through, but you can't just take the money? You have to go through the process of a bad check with the $25 fee and so forth? [Ms. Erdoes answers affirmatively.]

Chairwoman Buckley:
As I understood the bill, if a consumer writes a check, can the bank still try to recover that money that the bank has already paid to a merchant?

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
That would be a related account. The bill is not aimed at overdrafts or bad checks within the same account, but deals with loans in a separate, unrelated account. In Assemblywoman Gansert's example, this bill wouldn't cover it at all, as I understand it.

Bill Uffelman, President and CEO, Nevada Bankers Association:
His assessment, to the best of my knowledge, is correct.

Assemblyman Hettrick:
Somewhere along the way I've heard of accounts where you could have your money in a savings account, and then when you wrote the check the money was automatically transferred to cover it. If it was Social Security deposited in the savings account, and then they wrote the bad check, are we still okay where we are here?

Bill Uffelman:
That is an overdraft protection feature, and in effect they've connected the two accounts. You have a checking account and a savings account and you say, "If I ever overdraft here, pull the money from my savings account over to here, and there will be some service charge related to it." But it would be just as if you had your credit card tied to your checking account to provide overdraft protection. There are a number of overdraft protection vehicles available, and those would be related. It was part of the agreement and I don't believe that is what the bill is trying to reach. If an accountholder does have some obligation to the bank, like a car loan secured by the car and a checking account, and fails to make the car loan payment, because he has the blanket agreement related to the checking account, that car loan payment of $300 plus some $25 fee for doing it is taken from the checking account. I believe that is what they were trying to attack.

Assemblyman Hettrick:
I understand where they're going. I'm looking to see if there is a way it can be misinterpreted. I also wonder about somebody who authorizes automatic withdrawals from their checking account for their loan. Now we don't have a loan and could have Social Security money in the automatic, then they don't want to make the payment this month. I disagree. I'm making sure we aren't getting into something that's going to get misinterpreted. I'm not disagreeing with the intent of the bill. I think they're trying to go the right way.

Bill Uffelman:
We had that same discussion this afternoon and I asked about the automatic withdrawals. We agreed between us that was not what he was trying to attack, but it doesn't say that in here. You may need to add language that says that's agreed, but then do you run into the language that says, you can't waive your rights?

Chairwoman Buckley:
We can go two ways. We could process the bill conceptually and get the legal language back, then ask that Brenda in drafting the amendment takes out the pledging to see if it could be made clearer that we're not talking about a situation with regard to overdrafts, where there is a specific agreement allowing something to be taken out of an account and those types of variations. What we're talking about is a blank form setoff: you miss an unrelated bill and we take all your Social Security. We could try it conceptually and then we'll bring the language back; if folks have concerns, we could look at it then. Is that acceptable?

Assemblywoman Gansert:
I also need to disclose that we have an interest in a bank and this bill would not affect us any more or less than any other person.

Chairwoman Buckley:
Assemblyman Seale has the same disclosure. The amendments are clarification of the pledging issue and specific agreements to link an account.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 257.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:
We'll look at A.B. 364.

Assembly Bill 364: Makes various changes relating to industrial insurance. (BDR 53-249)

Chairwoman Buckley:
We had two concerns. One was from Bob Ostrovsky with regard to the accountings. Some parties are suggesting that on the monthly PPD check issue, they would agree to a quarterly accounting to the claimant in the form of a letter, and I have signatures by both parties. The only issue left in controversy with that bill is the vocational counselor issue. I was persuaded that it's relic of a system whose time has come, and I also was impressed that I didn't see any concern on the part of any insurers with regard to that as well. If the Committee wants time to think about this, we can hold off.

ASSEMBLYMAN SEALE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 364.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

Chairwoman Buckley:
The amendment being the quarterly accounting to the claimant in the form of a letter, as was discussed by Mr. Ostrovsky, in Section 4.

Assemblyman Hettrick:
I heard concern about the reopening provisions on the claims and some need to have something beyond the word "demonstrate." I'm concerned with that. I thought we heard there would be a significant number of reopenings that were large.

Chairwoman Buckley:
There was suggestion to make it more clear in some way.

Bob Ostrovsky, Legislative Advocate, representing Employer's Insurance Company of Nevada:
I've talked to some of the parties about it. Some people have drafted some language and it was a possibility. If you process this bill in its current form, it's

not the cleanest way to do things, but we'd be happy to try to compromise an agreement on the other side. I think we're all agreeable to try to resolve the issue that Mr. Hardy brought to the table. Crafting the language might take us some time. If you prefer, we could take it to the Senate and try to amend it there to fix that piece, if we can reach agreement. Otherwise, we could delay it and try to reach agreement before the fifteenth. I have not talked to Ms. Gruenewald about it.

Barbara Gruenewald, representing Nevada Trial Lawyers Association:
In all workers' comp, the burden of proof is 51 percent and it's on the claimant. That would attach to this also, so if you wanted to make it a different burden of proof, then it would be different than all other workers' comp laws. In other words, we think this word "demonstrates" fits within that burden of proof. The claimant has the burden to show by 51 percent of the evidence that at the time the case was closed the claimant was eligible to receive that permanent partial disability.

Bob Ostrovsky:
If we could tie that back and make sure that it was clear that was the intent, then it would be acceptable. I don't know that we have to tie it back to a specific statute or if there's any other language that would help comfort my people. If that standard could be made reference to by referring to another section of the statute that they could find, I'd be quite satisfied.

Chairwoman Buckley:
We have Brenda here to hear this intent, and maybe she'll think of a better word and we could move forward with it.

Assemblyman Anderson:
I want to make sure I understand what Ms. Gruenewald was saying. Is it 51 percent or a majority? In other words, 50 percent plus 1—there is a difference in those two numbers.

Barbara Gruenewald:
The burden of proof is on the claimant to prove the case. When somebody asks "What is that burden of proof?", you can picture the lady with the scales of justice and the balance that she's doing. As long as you prove 51 percent or more, then the claimant has met their burden of proof. That's the standard burden of proof that applies to all workers' comp cases. That's what would apply here.

Assemblyman Hettrick:
I would like to clarity that Mr. Ostrovsky referenced that it indeed is something beyond just "demonstrates," because to me that doesn't meet the level of saying it's 51 percent. I think it's open to interpretation. What "demonstrates" to one person is not the same for another, so I think it needs to be clearer than it is.

Chairwoman Buckley:
How about if the Committee's intent is that it's similar as represented in terms of the burden of the claimant and we'll allow Brenda to see if she can find a better standard so that it can be clear.

We have a motion to amend and do pass with the amendments being the clarity of language with regard to "has the burden of proof or a reasonable facsimile thereof" as it goes through drafting.

THE MOTION CARRIED. (Mr. Parks was not present for the vote.)

Chairwoman Buckley:
We'll next discuss A.B. 446.

Assembly Bill 446: Provides for use of voice writing by court reporters. (BDR 54-1095)

Chairwoman Buckley:
We had some proposed amendments (Exhibit B) from James Jackson, and some sense that the court reporters felt that it wasn't equal, it wasn't time, and it's a brand-new industry.

Assemblyman Anderson:
I saw the amendments, and I didn't have a lot of discomfort other than when I read the amendment; I was a little surprised that it reached into a different area. It left out any relationship to the State Board and appeared to go around them. It appears the bill is well intended. I think it's just a new piece of equipment and a new methodology that we have to adjust to, so with the amendments, I believe that it's a good piece of legislation.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 446.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)

Chairwoman Buckley:
A.B. 502 was the last bill we heard today that we potentially could consider moving.

Assembly Bill 502: Makes various changes to provisions governing unemployment compensation. (BDR 53-323)

Chairwoman Buckley:
This bill is from the Division of Employment Security and primarily addressed getting us in compliance with the latest acronym passed down by the federal government.

Assemblyman Conklin:
I'm okay with this bill. There was some discussion about possibly striking Sections 5 and 6. Having been to quite a few unemployment trials myself, I think that's probably a wise decision. Our system works very fairly from a business standpoint currently, and I don't see a reason to tighten that up.

Chairwoman Buckley:
The lesson is that if you work for the Employment Security Division, you might learn more tricks that most of us don't know about. That's what I got from their testimony. I don't know if we want to change the system just because of that.

Assemblyman Anderson:
I was a little concerned about Section 7. If the intention of the 11 days is to shorten the time period, it seemed to me, if anything, there needs to be more work in that area on page 5, lines 31 and 36, if the intent is to count every day rather than actually days of court, which I thought the old law did.

Chairwoman Buckley:
The general rule of thumb is that if it's under 7 judicial days, then you count the weekends, but over 7 you don't count, so I don't think the change from 10 to 11 is going to do that unless there's some other intervening federal law. I believe the testimony was they wanted to conform it to the new NRCP guidelines.

Assemblyman Anderson:
Are we cutting down on the opportunity even if it's by one day?

Chairwoman Buckley:
No, I don't think so. Paragraph 3 has to do with the employer. Now they have 11 days instead of 10 to submit to the Department their facts about what's happening with the case. In number 4, if they receive a notice of filing the protest, it goes from 10 to 11. I think it's okay. It's changed to 11 all the way throughout Section 3 on line 44 and it continues on Section 8 throughout to conform it. We could amend and do pass with the motion being to delete Sections 5 and 6.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 502.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)

Chairwoman Buckley:
We'll go now to our Work Session Document (Exhibit S). Let's look first at A.B. 66.

Assembly Bill 66: Requires reporting of certain gifts or other economic benefits provided by wholesalers or manufacturers regulated by the State Board of Pharmacy. (BDR 54-562)

Diane Thornton, Committee Policy Analyst:
The bill was sponsored by Assemblyman Conklin and heard on March 7, 2005. Under Tab A (Exhibit S), you'll find the proposed conceptual amendments proposed by Assemblyman Conklin and Barry Gold of AARP. The suggested amendments include:

- Changing the reference in the bill to fall under the Attorney General's jurisdiction.
- To adopt language giving the authority for the Attorney General to regulate the type of form for the reporting information.

- To add language for authority for the Attorney General's Office to prosecute for information not reported.
- Delete criminal penalties.
- Amend the bill for civil penalties to include ability for the Attorney General's Office to collect attorney fees and costs in addition to civil penalties.

Assemblyman Conklin:
There was testimony in Committee that it was the intention to move this from the Pharmacy Board to the Attorney General's Office for purposes of having the ability to enforce in an effort to make some of the language a little bit more palatable to some members and more in line with model legislation that's coming out of other states already. We've deleted the criminal penalties for the actions, and the other pieces, if I'm not mistaken, are really just cleanup to the bill, making it more palatable.

Chairwoman Buckley:
Are there any comments or questions? Seeing none, the Chair will entertain a motion.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 66.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION CARRIED WITH MS. ALLEN, MRS. GANSERT, MR. HETTRICK, MR. SEALE, AND MR. SHERER VOTING NO.
(Mr. Perkins was not present for the vote.)

Assemblyman Oceguera:
I'd like to reserve my right to vote no on the Floor.

Chairwoman Buckley:
We'll discuss A.B. 216.

Assembly Bill 216: Requires landlord to reduce rent for certain older persons who are tenants of manufactured home parks. (BDR 10-201)

Diane Thornton, Committee Policy Analyst:
This bill is sponsored by Assemblywoman Ohrenschall and was first heard on April 1, 2005. The bill requires a landlord of a for-profit manufactured home to reduce the rent of tenants who meet certain eligibility requirements and who request the rent reduction. There were no amendments proposed to the bill. There was a fiscal note submitted by Renee Diamond, Administrator to the Division of Housing.

Chairwoman Buckley:
I know some members of the Committee have philosophical concerns opposing the bill, and I certainly understand those. For me, this is the most important bill to my district, to one of the largest segments in my district, and I hear this every time I campaign. It's very important for Assembly District 8 and for Assemblywoman McClain's district, and I don't know that there's anything to fix it. You either like it or you don't. Are we okay with processing it? Are people ready?

> ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS ASSEMBLY BILL 216.
>
> ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.
>
> THE MOTION CARRIED WITH MS. ALLEN, MRS. GANSERT, MR. HETTRICK, AND MR. SEALE VOTING NO. (Mr. Perkins was not present for the vote.)

Assemblyman Conklin:
I would like to reserve my right to change my vote on the Floor.

Assemblyman Sherer:
I would also like to reserve my right to change my vote on the Floor.

Chairwoman Buckley:
We'll now discuss A.B. 250.

Assembly Bill 250: Provides for licensing and regulation of massage therapists. (BDR 54-733)

Diane Thornton, Committee Policy Analyst:
This bill is sponsored by Assemblyman Arberry and heard on March 30. The bill provides for the State licensing and regulation of massage therapists by creating a new board of massage therapists and establishes the structure and powers of that new board. The proposed amendments are under Tab B of your Work Session Document (Exhibit S). Mr. Adler worked on these proposed amendments with the Las Vegas Metropolitan Police Department (Metro).

Ernie Adler, Legislative Advocate, representing American Massage Therapist Association, Nevada Chapter:
I'll go through and characterize what each paragraph is. Most of these are Metro amendments.

Section 8, subsection 2, clarifies that the Board preempts local licensure for massage therapy.

Section 9, subsection 1, is an amendment that allows the Governor to appoint more than five members if he/she deems that in the best interest of the Board.

Section 13, subsection 3, requires a full staff of investigators. This amendment is necessary; Metro pointed out to the current board, not the State Board, that there are many investigations occurring now in Clark County, and they really do need full-time investigators and staff to accomplish these investigations.

Section 19, subsection 2, item 6 is a background investigation point that Metro brought up and is currently in the Clark County Ordinances.

Fred Haas, Legislative Advocate, representing Las Vegas Metropolitan Police Department; and the Nevada Sheriffs and Chiefs Association:
That is correct. All of these ordinances that we brought for the amendments are currently contained in Clark County Ordinance or Las Vegas City Ordinance.

Ernie Adler:
I think this is a good idea that they have some credible references.

Section 19, subsection 2, item 7, states the Board really digs into the information and application and makes sure it's correct.

Section 19, subsection 2, item 8, is from a county or city ordinance. It has to do with fingerprinting, arrest records, and pending litigation records.

[Fred Hass, continued.] Section 19, subsection 2, item 9, allows the board, if they can't get a handle on the person's background, as a last resort, to look into financial records to see what's going on with this individual applicant.

Section 19, subsection 2, item 10, requires that the investigation be terminated within 30 days if at all possible so that the person can get a clear response on their application and become licensed.

Section 19, item 11, is a confidentiality provision making certain these records are confidential and that only necessary people have access to them.

Section 20, subsection 2, paragraph b, requires at least four examinations offered a year to applicants, although I think they intend to have monthly examinations so it's easy for people to take the examination and become licensed.

Section 24, subsection 4, deals with the question of grandfathering this whole section. The intent is to grandfather in everyone who has a current license by a county, city, or township, but we've got a gap in the law. There are a few people who have never had a criminal background check, and it says if you don't have a criminal background check that can be verified through law enforcement, then law enforcement is going to require you to get a background check prior to being grandfathered into the system. I think that's a reasonable requirement.

Section 25, subsection 1, allows the Board to go up to $500 for a background check. Most of these are not going to approach that level of cost, but occasionally there are going to be out-of-state applicants who have a very complicated history that will require considerable money to investigate.

Section 26 requires the display of the license whenever a massage therapist is working so that law enforcement knows they're a licensed therapist and so the Board's investigators can verify that.

Section 29, subsection 3(b), looks back to prior criminal convictions over a 15-year period instead of a 5-year period.

Section 29, subsection 13, disallows deceptive advertising practices, but also requires a penalty for somebody using someone else's name, license, or is falsifying their ID.

Assemblyman Anderson:
Fifteen years? We only do seven years for DUI cases.

Ernie Adler:
This is for a background check, essentially. This is the current Clark County ordinance.

Assemblywoman Giunchigliani:
I appreciate that's in the county ordinances, but that's a bit extreme. You can seal records at 12 years, and 15 is kind of insane to go back, especially for a misdemeanor. What was the rationale on that?

Ernie Adler:
I think it was because it's in the county ordinances.

Assemblywoman Giunchigliani:
You just lifted the language that they had? Do you know what the background is, especially for a misdemeanor?

Fred Haas:
The rationale is that the misdemeanor claims, including prostitution and sexual activity, are all covered as misdemeanor crimes, and sometimes there a gap in that activity and they fall back into that same lifestyle. We want to make sure that if we're going into that business of massage therapy, that's what they're going in there for, not for other motives of other businesses.

Chairwoman Buckley:
Is the Clark County ordinance limited to felony or misdemeanor convictions concerning prostitution or other crimes emanating from prostitution, as opposed to someone who wrote a felony bad check 10 years ago? Could you find some distinction between those two such that your concerns would be alleviated?

Fred Haas:
I think that's a reasonable request if it's not related to the business in such a way that it's not necessarily considered as part of a background investigation.

Chairwoman Buckley:
Why don't we have that be the intent? I think in the original version you were trying to get at that in Section 29, page 12, lines 22 to 30, so perhaps we could just incorporate in the amendments that they would be involving prostitution or other sexual offenses.

Ernie Adler:
Or crimes of violence. What the Board would be concerned about would be crimes of violence, prostitution, or other sexual offenses. If that were tacked onto the 15, I think that's what people are concerned about.

Chairwoman Buckley:
Would that be amenable to members of the Committee, less concern about that approach? It would have to be a conviction.

Fred Haas:
We also have a problem with a trick roll, which is while you're getting a massage, or the act of prostitution, they're cleaning your pockets and your wallet out at the same time. I'd like to make sure that's also included in that background if they are convicted of a crime of burglary or robbery at that time.

Chairwoman Buckley:
Maybe we can look at the underlying offense and we know what we're talking about. We'll see what we can draft through Legal. The Committee's intent would be to try to have it pertain to prostitution, trick-rolling, or anything related, involving violence or prostitution, to make sure the industry stays clean.

Assemblyman Anderson:
I read (Exhibit S), "The Board shall also verify the accuracy and the completeness of information submitted on each application." I'm thinking about what happens if somebody comes in who was arrested when they were 18 or 21 years of age for a misdemeanor offense and it might be in this area and now they are in their thirties and there has been no subsequent event. Because it's a 7-year question, if they are 25 or 26 now, are they going to be precluded from being a massage therapist? They're not engaging in the act of prostitution, they're engaging in massage therapy.

Ernie Adler:
This just says they need to verify the application, and if they show things that are incorrect in the application, that doesn't necessarily mean that they don't get a license if it's a minor discrepancy. That's the Board's discretion, but I would imagine if it's a minor item currently under county ordinances, they still would have a shot at getting a license unless it's a major violation.

Assemblyman Conklin:
Fifteen years is too long. Somewhere between seven and ten is more palatable, and it's the standard that most employers have to abide by.

Ernie Adler:
I signaled to the Metro people in the audience and they gave me 10 as an acceptable answer.

Assemblyman Arberry:
I accept 10.

Chairwoman Buckley:
We have two more subsections you did not get to, but I'm sure the Committee has already read them by now. Are there any other concerns?

Assemblyman Sherer:
One of the things in testimony was to make sure that not one of the Board members is affiliated with a massage school. Is that in here?

Ernie Adler:
Yes, it's still in here. That was not deleted.

Chairwoman Buckley:
Subsection 3 of Section 32, which wasn't read, is an important one merging the two, and needed more because of the concern and the industry.

Ernie Adler:
Currently, this is not in the county ordinance, but to law enforcement this is a very important provision because under current ordinances and not in state law, if you catch someone violently beating a client or engaging in prostitution or some very severe act, you can't take their license immediately. If there's hardcore criminal conduct occurring, this allows us to take the license and they can go to the Board and say why it needs to be reinstated because we don't want people who are really truly bad actors practicing after they committed a serious offense.

Assemblywoman Gansert:
Looking at Section 25, the background check not less than $48 but not more than $500, the $500 just seems really excessive.

Chairwoman Buckley:
Can you discuss where the standard is?

Assemblywoman Giunchigliani:
FBI fingerprint is currently $45. There are a couple cases where they go beyond that for a specific background check, and it shouldn't exceed $300. We just

had some discussion in another Committee on that. We thought $500 is a bit extreme.

Ernie Adler:
We can go with the $300.

Assemblywoman Giunchigliani:
You need to make it $45, which is the current cost of fingerprinting.

Ernie Adler:
Most of these are not going to be $45, and very few will be $300, but some will.

Chairwoman Buckley:
On page 10 and 11, where fees are described, the original fee structure is still in as well, correct?

Ernie Adler:
That's correct.

Chairwoman Buckley:
Is there discussion on the background fee maximum being lowered?

Assemblywoman Giunchigliani:
From $45 to $300. Is that acceptable, Mr. Adler?

Ernie Adler:
That's acceptable to me.

Fred Haas:
What they charge for their background is not really a law enforcement issue. As long as they can recover their own cost and make sure the backgrounds are done in a complete manner, we're okay with that.

Chairwoman Buckley:
Any other concerns? Is the Committee inclined to move the bill? The Chair would be willing to entertain a motion to amend and do pass with the amendments being those contained in our book (Exhibit S), changing the $500 fee to $300 and changing the criminal record issue from 15 years to 10 years.

ASSEMBLYMAN SEALE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 250.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

Assemblyman Conklin:
Was there discussion to change the language on which crimes would be considered, or was that thrown out in lieu of the 10-year and anything applies?

Chairwoman Buckley:
Assemblyman Arberry, what was your intent there? We were looking at page 12, Section 29. Line 22, "...has been convicted of a crime involving violence, prostitution, or any other sexual offense, felony, or misdemeanor... within the immediately preceding five years," and then the amendment had it going to 15.

Assemblyman Arberry:
I defer to Ernie Adler.

Ernie Adler:
I think it would be adequate if we put "crimes of violence, prostitution, and other sexual offenses, burglary, robbery, or larceny from a person." Because that's what everybody is concerned about.

Chairwoman Buckley:
It sounds like the suggestion is to go right in the middle to also allow some crimes that might be used in a trick roll, such as larceny or other related offenses, but to take the broader one out to delineate those ones. Is that acceptable by the maker and the secondary? Mr. Arberry says yes; Mr. Seale is okay.

Assemblywoman Giunchigliani:
Look at lines 37 through 39 on page 12, touching the breasts; I have to have a written consent form to allow someone to massage?

Chairwoman Buckley:
Mr. Hettrick is indicating that we had written testimony on that issue.

Assemblyman Hettrick:
We had a lady testify who said breast massage was used in cancer treatment and that she didn't think it should require a one-time note from a doctor. I think we have to be careful we don't do something unintended here and prevent something that is helpful.

Chairwoman Buckley:
I have a constituent who is a registered physical therapist, and that's her entire practice, lymphadema, where she does immediate therapy right after breast surgery to ensure that your arms are able to move and you don't lose range of motion. Massage therapy is essential after breast surgery. The problem here is you're trying to regulate folks who use it as a front for prostitution and a lot of very legitimate folks who we wish we could utilize more in terms of legitimate massages and therapeutic uses.

Assemblywoman Giunchigliani:
The way it's written, at least it allows the Board to make some determinations through regulatory process, but I hope you would not restrict those types of situations because that's the whole purpose in some cases of massage.

Ernie Adler:
I think as long as it's for medical purposes, it would be permitted.

Assemblywoman Giunchigliani:
After you get your regulations written, we'll have to take a look at them.

Assemblyman Hettrick:
Reading the language, it says "Unless the person has a signed written consent form provided by the Board," and they're talking about the massage therapist. That means the massage therapist would have to have had this form in advance and available so if someone came in and asked "What's going on here?", they would be able to pull out the form and say "I've got permission from the Board and this is appropriate." I think that's probably all right the way it is written.

Chairwoman Buckley:
They would be using a written consent form provided by the Board, but not have approval by the Board, so that the patient would sign it.

Assemblyman Hettrick:
I have a problem with that because if you had someone soliciting prostitution, they'd sign the form. It has to be provided by the Board in advance.

Chairwoman Buckley:
Permissioned?

Assemblyman Hettrick:
No, it says "consent form." If you're going to go to a massage therapist and solicit prostitution, you're going to sign the consent form. I think it has to be in advance. The Board has to be available to the therapist who wants to do this, in

advance, so your friend could go to the Board and say, "I do this kind of therapy for people who have had this treatment."

Chairwoman Buckley:
This bill is really hard. For those who are engaging in it legitimately, are they really going to call the Board to say—in the case of my constituent or someone helping victims of breast cancer, do you really want them to call a State Board to say, I'm not going to massage this breast cancer?

Assemblyman Hettrick:
I meant they would have a form that would be good for a year in advance. They'd say, "I do this kind of therapy and I want the Board's consent," not per massage, but for the therapist to do that kind of massage. I think that works better than the other way around; otherwise, everyone who went in there soliciting prostitution would sign the consent.

Chairwoman Buckley:
We could add perhaps another section that would allow someone to get approval by the Board.

Fred Haas:
A massage therapist who specializes in this type of treatment would probably have this form available for clients to fill out.

Chairwoman Buckley:
The point was, who wouldn't sign that form if they were actually soliciting prostitution.

Ernie Adler:
I would think if you're going to someone for prostitution, you wouldn't want to fill out a form with your name and address on it. I also think this can be taken care of by regulation.

THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)

Chairwoman Buckley:
Let's go to A.B. 370.

Assembly Bill 370: Revises definition of "contractor" to include certain construction managers, general contractors and employment agencies. (BDR 54-726)

Diane Thornton, Committee Policy Analyst:
This bill is sponsored by the Committee on Government Affairs and first heard on April 4, 2005. The bill defines a "contractor" as a "general contractor;" as "a person who obtains a contract with a specialty contractor, subcontractor, or supplier to complete a project;" or as "an employment agency that provides skilled workmen to a contractor." Russell Rowe from the Focus Property Group proposed the amendment behind Tab C (Exhibit S).

Chairwoman Buckley:
I'll hold off processing this bill today to allow an opportunity for further testimony.

Assemblyman Parks:
Did the Carpenters Union have a proposed amendment for consideration too? I don't see it here.

Bob Ostrovsky, Legislative Advocate, representing the City of Las Vegas, Nevada:
I believe, during the original hearing, it was discussed that the Carpenters Union would meet with city representatives and try to work out an amendment with Mr. Parks. We proposed an amendment to the Carpenters Union and they haven't responded to us.

Chairwoman Buckley:
Let's pull this bill from the work session and let the gentleman who had the privilege of waiting five hours to have an opportunity to communicate with Committee members, see the work that's done on the amendment, and go from there. Let's review A.B. 254.

Assembly Bill 254: Revises provisions governing industrial insurance. (BDR 53-1080)

Chairwoman Buckley:
This was a bill we assigned to Assemblyman Conklin to see if he could coordinate between the parties and alleviate some of the concerns. Assemblyman Conklin, would you report back to us?

Assemblyman Conklin:
The subcommittee of one met; it was a lonely meeting. However, I did hear back from the parties in support and in opposition to the bill, Mr. Ostrovsky and Mr. Jayne, representing both sides. It was my impression that they came to an agreement palatable for both sides; the agreement was acceptance of the proposed amendments brought forth by Mr. Ostrovsky, which are at the top of this page (Exhibit T), and, in addition to that, deleting Section 2 from the bill. I believe that makes this more palatable. I don't think anybody is entirely happy with the bill, but everyone can live with it the way it was explained.

Chairwoman Buckley:
Section 2 was trying to limit the ability to appeal as a way of leveling the playing field for employees not being able to sue for bad faith, but that ran into some opposition and so the proposal is to delete that?

Assemblyman Conklin:
That was the proposal and, I might add, I was one of the parties who had issue with Section 2. It's not my intention to allow employers to continually appeal the hearing so that a person never gets benefits. That is a very bad practice, but Mr. Ostrovsky might be able to answer this. I think that there's a clause already available stating that, once it has been determined that they should get it at some level, it can't be denied. They might be able to continue to appeal, but they can't stop the benefits from happening.

Chairwoman Buckley:
What it does is raise the fines a bit, not to the level in the original bill, and that's basically it.

Bob Ostrovsky:
The bill, as it's constituted now, would raise the fines 50 percent from where they are now, from $1,000 to $1,500 and from $25,000 to $37,000. It would also add to the list of major violations and intentional acts and, I've now been told, there is actually a regulation being proposed that will define an intentional act that's already in process for another matter; I've seen it. I have talked to the Nevada Trial Lawyers Association who proposed Section 2 through Ray Badger; I've talked to the State's Risk Management; I've talked to the self-insured folks from Clark County and the rural areas; and they're all in agreement to support the bill if we delete Section 2. The Trial Lawyers, who requested it originally, have now said they've agreed to drop it in exchange for the support of the changes in NRS 616D.120 in the back of the bill.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 254.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins was absent for the vote.)

Chairwoman Buckley:
We're adjourned [at 5:49 p.m.]

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 6, 2005 **Time of Meeting: 1:07 p.m.**

Bill	Exhibit	Witness / Agency	Description
446	**B**	James Jackson, Voice Writers of America (VWA)	Proposed amendments
502	**C**	Cindy Jones, Employment Security Division	Employment, Training and Rehabilitation Testimony
502	**D**	Ray Bacon, Nevada Manufacturers Association	E-mail in opposition to A.B. 502.
249	**E**	Assemblywoman Barbara Buckley	Presentation written by Assemblywoman Buckley
249	**F**	Assemblywoman Barbara Buckley	Proposed Amendments to A.B. 249
249	**G**	Michael Geeser, California State Automobile Association	Letter in support of A.B. 249.
363	**H**	John Wiles, Esq.	Letter in opposition of A.B. 363.
364	**I**	Bob Ostrovsky, Employer's Insurance Company of Nevada	Proposed Amendment to A.B. 364.
364	**J**	James Wilcher, The International Association of Rehabilitation Professionals, Nevada Chapter	Position paper on Bill Draft A.B. 364
257	**K**	John Sasser, Washoe and Nevada Legal Services, and the Washoe County Senior Law Project	Exhibit in support of A.B. 257.
340	**L**	Assemblywoman Giunchigliani	Payday Loan Fact Sheet
340	**M**	Josephine Gallegos, Carson City Municipal Court	Acknowledgements and Representations.
340	**N**	Nevada Fair Housing Incorporated	Short-Term, High Interest Cash Lending In Nevada
384	**O**	Assemblywoman Barbara Buckley	Short-Term, High Interest Loans
384	**P**	Gail Burks, Nevada Fair Housing Center, Las Vegas, Nevada	Testimony
384	**Q**	Azucena Valladolid, Consumer Credit Counseling Service	Testimony on A.B. 384

340	**R**	Jim Marchesi, President, Nevada Financial Services Association	Testimony on A.B. 340
	S	Diane Thornton, Committee Policy Analyst	Work Session Document
254	**T**	Bob Ostrovsky, representing the City of Las Vegas, Nevada	Proposed Amendment to A.B. 254