MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
March 24, 2005

The Committee on Judiciary was called to order at 8:08 a.m., on Thursday, March 24, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, 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:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3
Assemblyman Scott Sibley, Assembly District No. 22, Clark County (part)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel

Carole Snider, Committee Secretary

OTHERS PRESENT:

Mark Gibbons, Justice, Nevada Supreme Court
James Jackson, Attorney-at-Law, Nevada Attorneys for Criminal Justice
John Echeverria, Attorney-at-Law, Nevada Trial Lawyers Association
Ben Graham, Legislative Representative, Nevada District Attorneys Association
Joni Kaiser, Executive Director, Committee to Aid Abused Women
Patricia Lynch, City Attorney, City of Reno, Nevada
Lori Fralick, Domestic Violence Ombudsman, Nevada Attorney General's Office
Mike Sprinkle, Member, Domestic Violence Prevention Council
Paula Berkley, Legislative Advocate, representing Nevada Network Against Domestic Violence
Laurel Stadler, Chapter Director, Mothers Against Drunk Drivers
Dino DiCianno, Deputy Executive Director, Nevada Department of Taxation
Jeremy Bergstrom, Legislative Advocate, representing Countrywide Home Loans
Bill Uffelman, President, Nevada Bankers Association
Cheryl Blomstrom, Nevada Consumer Finance Association
Jim Nadeau, Government Affairs Director, Nevada Association of Realtors
Buffy Dreiling, Legal Counsel, Nevada Association of Realtors
Maddy Shipman, Legislative Advocate, representing Southern Nevada Home Builders Association

Chairman Anderson:
[Meeting called to order. Roll taken. The Chair reminded Committee members and the audience of the Committee Standing Rules and etiquette.]

Senate Bill 27 (1st Reprint): Revises provisions governing selection of alternate jurors in criminal and civil trials. (BDR 14-851)

Senator Valerie Wiener, Clark County Senatorial District No. 3:
I seek your support for S.B. 27, which deals with jury selection. As we see more and more complex trials and jury times extended for longer periods, we run the risk of a juror, or jurors, not participating to the full extent of the deliberative process. I brought this bill because I believe if people know they're part of the process from the beginning they listen at a different level and they participate at a different level. In a traditional jury selection, the jurors know who the alternates are. Being named as an alternate, there's the potential that a

person who knows he or she is an alternate in the very beginning may listen at a different level and participate at a different level. S.B. 27 gives an option to judges in open court to make a decision not to select alternates in the beginning, but allows them to wait until just prior to deliberation to select the alternates. All of the jurors would believe they were jurors and listen accordingly. It will require attorneys to present their cases to all of those people sitting because they don't know which ones will be the jurors and which will be the alternates. I think that the process will be served more efficiently and effectively because jurors would participate at a higher level from the beginning of the process. This offers an alternative, not a mandate, to the judge in the court to randomly select alternate jurors just prior to deliberation rather than prior to the actual commencement of the trial.

Mark Gibbons, Justice, Nevada Supreme Court:
I'm not speaking for the Court, but I've done over a hundred trials and only had one case where the attorneys wouldn't stipulate to utilizing this method of selecting alternative jurors.

Both as a judge and as a member of the Jury Improvement Commission for the Nevada Supreme Court, I found that jurors want to be more involved in the case and participate. All jurors know there are twelve regular jurors in a criminal case and eight regular jurors in a civil case and any jurors above that are alternates. I would tell the jurors at the beginning of the case that there will be alternates, but we won't know who the alternates are going to be until the end of the case. At the end of closing arguments we do a random draw in the courtroom. Upon interviewing jurors after the trials are over, they said they appreciated that method because there's always speculation as to who the alternates are going to be. This way you tell them upfront they won't know until the end of the case. I personally believe people pay more attention and are more involved in the process as a result.

The two traditional methods utilized by the courts are either to formally identify the alternate jurors at the beginning of the case, so the jurors know if they are alternates, or to have the attorneys go through some sort of random selection and then the alternates are known only to the judge and the attorneys. The judges, if they use the traditional method, use one of those two. There are certain types of cases where I would concur with the attorneys that they need to know who the alternates are at the beginning of the case. That's why Senator Weiner made it discretionary at the call of the trial judge in this particular bill. I do believe trial judges should have the discretion to utilize this method to pick jurors and because the traditional method is incorporated in the NRS [*Nevada Revised Statutes*], it does require a statutory change to authorize this procedure.

Chairman Anderson:
This is a technical question relative to the jury room itself and the size of the jury boxes. I've been in several rural courts in the state of Nevada that have relatively small jury seating areas. In a criminal trial would there be room for the twelve jurors needed, plus the additional four chairs?

Justice Gibbons:
At every trial all the jurors sit together, whether they're regular jurors or alternate jurors.

Chairman Anderson:
I can see where you'd be able to do it in a civil trial because you have a smaller jury. Do you think a criminal jury would pose an unusual problem?

Justice Gibbons:
I don't, Mr. Chairman. In my courtroom in Clark County, we had fourteen chairs in our jury box. Most courtrooms had either fourteen or sixteen chairs. This legislation [S.B. 27] just authorizes you to have additional alternative jurors, which I think the District Attorneys Association wanted to have, but I don't see any logistical problems with it.

Chairman Anderson:
The second question deals with the number of peremptory challenges that would be available. Are we going to simultaneously increase the number of challenges and is the length of jury selection going to be dramatically increased?

Justice Gibbons:
I don't think it is much different than the way it is right now. In a capital case or a life imprisonment case you have up to eight peremptory challenges. In all civil cases and all other types of criminal cases, there are four peremptory challenges. You get one challenge for every two jurors; so if there are four alternates, there will be two additional peremptory challenges. I don't think the statute would have any effect whatsoever as far as lengthening the trials, other than they authorize up to six alternates. We have had cases that took a year and the judge got the attorneys to stipulate up to six alternates, even though current law only allows for four. As far as lengthening jury selection, it would be minimal, maybe an extra hour or half hour.

Assemblyman Manendo:
When you talk to people, certainly everyone is excited about participating in the jury system. Everybody wants their peers to be there for them if something were to happen, but to get people to participate seems to be challenging. Can you tell me why there is a need to have more alternates?

Senator Wiener:
That was by request from the District Attorneys Association.

Assemblyman Manendo:
Is there really a need for that part of the legislation?

Senator Wiener:
Again, that was amended in by request of the District Attorneys Association.

Assemblyman Carpenter:
Mr. Justice, when you were practicing on the district court level and you used this procedure do you know whether any of the other judges were doing that also?

Justice Gibbons:
I believe they were. I can't tell you how many, but it is utilized and preferred by some judges.

Assemblyman Carpenter:
If you can do it, then why do we have to have this statute?

Justice Gibbons:
The law, as I understand it right now, requires the alternates to be identified at the beginning of the case, not at the end. The only way you can do it now is if the attorneys would stipulate to allow them to do it at the end. This statute would give the judge the discretion to order that method at the end of the case.

Assemblyman Carpenter:
Does this take the lawyers out of it and leave it all to the discretion of the court?

Justice Gibbons:
The lawyers would participate. If it's a civil case generally you have eight regular jurors and two alternate jurors. The attorneys would still go through the entire process of qualifying those ten jurors; it's just that the two alternates would be selected at the end. I might add that you have cases where you lose two jurors during the trial for whatever reason, so there are no alternates. The eight who are left are the eight regular jurors. That does happen, people get sick, or things come up. No, the lawyers would go through the same process of picking jurors and exercising their peremptory challenges.

Chairman Anderson:
However, they do lose their opportunity at the very, very beginning to agree to the stipulation of declaring who the alternates are.

Justice Gibbons:
Yes, it would allow that to be a decision of the judge versus the attorneys. The attorneys certainly could tell the judge why they wanted to designate the alternate jurors at the beginning of the case. I might agree with them if I were a trial judge, depending on the circumstances and the type of case.

Assemblyman Horne:
If this were to pass into statute, would the number of peremptory challenges increase because you have a larger pool?

Justice Gibbons:
Using a civil case with eight regular jurors and two alternates as an example, you have four peremptory challenges for the eight jurors plus an additional peremptory challenge for a total of five. When you pick the jury at the beginning, you seat ten jurors, but you have five peremptory challenges per side. The alternates would be selected randomly at the end of the case. The preempts would increase proportionally to the number of alternates.

Assemblyman Horne:
I'm trying to see what benefit we're gaining. The only thing we're doing is shifting who gets a say. Currently, the attorneys can stipulate. If we pass S.B. 27 the judge gets to say which way we do it.

Justice Gibbons:
Right, and I think it should be the judge. The judge's role is to make sure everybody has a fair trial and to deal with the jurors, the attorneys, and everybody else. The attorneys have the duty to represent their clients to the best of their abilities. From a justice standpoint I think the court should have the ultimate say.

Assemblyman Horne:
I'm trying to figure out what harm we are trying to prevent by shifting that to the judge.

Justice Gibbons:
In the *Williams* case I had four alternate jurors who were sequestered for weeks. I personally believe it would have been a much better situation to have sixteen qualified jurors and pick the alternates at the end. Fortunately, I didn't lose anybody on the trial, but because the attorney wouldn't stipulate, my hands

were tied and I had to designate the alternates at the beginning of the case. I think it would have been far better to do it at the end of the case.

Assemblyman Mortenson:
You mentioned that the judge may have some reason to designate particular alternates. In what possible situation would he do that? It almost seems like prejudice.

Justice Gibbons:
Let's say it's a $10 million civil case with complicated issues. The lawyers may be looking toward the educational background of the potential jurors and things like that. They may have a ranking of people they prefer as regular jurors versus alternate jurors. On a very complex case I could see them making that argument to a trial judge saying, "Look, we really need to know who the alternates are right at the beginning," and I might very well agree with them. There are different types of scenarios where you would do that, but I would think in the overwhelming majority of jury trials that this method would be preferable.

Assemblyman Mortenson:
I would too. I'm wondering why we even allow an exception.

Justice Gibbons:
I think you have to have the exception. I do agree with the attorneys on that. You have to have the safety valve so the judge would have the option of using a traditional method. I think it's very important to have that.

Assemblyman Mabey:
Last session we changed the law for those that could be selected as jurors. Has that made this law more important or is that not affected what's going on?

Justice Gibbons:
I was on the jury improvement commission and we recommended getting rid of a lot of exceptions, including doctors, lawyers, judges, and the Legislature agreed. I think legislators during session are the only ones automatically exempt right now. No, I don't think there's a direct correlation, but it does empower. Our ideas are to get a broader-based jury; get them more involved in the process and participating more. I always allow jurors to ask questions. Under the law right now, it's discretionary with the trial judge whether jurors could ask written questions. I did it in almost all my trials because I believe jurors should be more involved. Some judges disagree with that. Again, that's the procedure. Whatever we can do to get the jurors more involved and still make sure each side has a fair trial, I'm for.

Chairman Anderson:
I have one person signed-in to speak in opposition to S.B. 27.

James Jackson, Attorney-at-Law, Nevada Attorneys for Criminal Justice:
I think the Justice hit on the concern that has been expressed to me by the members. We would prefer to allow the attorneys to decide how they want their trials to go forward by stipulation. We'd like to see that ability left in the hands of the folks actually responsible for conducting a trial and representing their clients.

Assemblyman Carpenter:
Is it in statute or Supreme Court rule that the lawyers can stipulate to this if they want to?

James Jackson:
I think the Justice indicated that it is not currently actually in the law. There's nothing that affirmatively says the parties can stipulate, but likewise, there's nothing that disallows parties to stipulate to most anything in a trial. As the Justice indicated, in his courtroom he encouraged the parties to do that and they often do.

Chairman Anderson:
I guess judges get to run their court rooms much the way they like unless the Legislature has laid down a specific rule or the Supreme Court has set out a specific set of guidelines for them to follow. Would that be fair to say?

James Jackson:
I think that's absolutely fair to say. Courts encourage parties to reach agreements as much as possible through stipulation. Encouraging that can shorten a trial and get the parties to the real issues.

John Echeverria, Attorney-at-Law, Nevada Trial Lawyers Association:
I'm also on the National Board of the American Board of Trial Advocates, which is a group of both plaintiffs' and defense lawyers whose mission is to preserve the right to jury trial under the 7th Amendment [of the *United States Constitution*]. On that National Board we focus very much on the method of trying jury trial cases. At the National Board we explore a lot of these processes of jury innovations and different techniques. One of the issues that is on the table is this issue of whether alternate jurors should be told or not told as to what their role is. I have some concerns about mandating the process. I think in certain cases it may be the best course of action, although in other situations it may not be appropriate.

[John Echeverria, continued.] This legislation imposes and takes away the right of litigants to participate in the decision making process as to whether or not alternates should be told what their role is prior to being sent out to deliberate. Under S.B. 27, if [the parties involved] do not want this system, this legislation would permit the judge to impose a system of jury selection on the litigants that none of them wanted. I think that's a potentially dangerous road. The situation we have now, where the parties can stipulate to it, is already in place. To tamper with it can create other problems.

I have a problem with not disclosing to the alternates who they are at the inception of the case. I personally think that's a much better process, because they then understand what their role is. One of the great disadvantages of not telling alternates who they are, is that they become disillusioned at the end of the case. Justice Gibbons says he hasn't had that finding, but studies have shown that some jurors not told they were alternates have come into the court room, done their work, listened to the issues presented in the case, and then as they're ready to deliberate they're told they're not needed. That can create resentment and disenchantment with the judicial process. I think the last thing we need right now is to create a situation where we may have disenchantment with our system.

My view is that alternates are much more receptive when they're told and understand what their role is. I know the concept is that alternate jurors don't pay attention. I haven't had that experience. I think alternate jurors pay as much or more attention as any other jurors in the courtroom. I'm more concerned with the negative aspect of those potential jurors who then feel deceived or disenchanted with the system. I don't like the concept of not telling jurors who they are, but more particularly, I think that the legislation is problematic, because it takes away the right of the litigants to decide how they want their case tried. That is the biggest problem with S.B. 27.

Assemblyman Horne:
The responsibility of the attorneys for all sides is to represent their clients and to empanel a jury favorable to those clients. I would think you would be choosing somebody who you think is going to be a good juror. The fact is that who is going to be the alternate and who is going to be the juror could be a management decision that would be in the judges' purview. Your argument is that litigants don't have control if you do it the way the statute's suggesting. Maybe that particular area of control should be the judges'.

John Echeverria:
Lawyers differ on that issue. I think some lawyers do select juries differently based upon who will be the alternate, and may actually present the case

differently, depending on who may or may not be the alternate. I think that the more prudent practice is to at least allow the lawyers and the litigants to participate in that decision making process, rather than to take that right away from them.

Assemblyman Horne:
What harm are you trying to avoid?

John Echeverria:
Two. Senate Bill 27 tends to institutionalize it by legislation. I think once we say in legislation how something ought to be done, it becomes institutionalized. There's nothing now that I know of that would prevent the Supreme Court from issuing guidelines to judges as to how to do this if they want to do an experimental program. Let's find out whether it works. The sole justification, as I understand, is that we want to get alternate jurors paying more attention. I personally don't think that's a problem. I haven't seen data that says that alternate jurors pay less attention than designated jurors. To me the harm is that we institutionalize a process that may not be needed, and we take some control over the process out of the hands of the litigants. I don't see the need to do that. We could be creating bigger problems in order to solve a smaller problem. That's the potential harm. I think something like this ought to be studied a little more thoroughly before we mandate it and take away the interactive process of the litigants and the judge deciding how best to handle a jury in a particular case.

Chairman Anderson:
Should there be an increased jury pool?

John Echeverria:
I'm going to have to claim a lack of expertise on that issue because the increase in the number of alternate jurors is in the criminal portion of this statute. I have not practiced in the criminal area, so I would not want to venture a speculation on that. As I understand the way S. B. 27 is written, it just permits up to six but doesn't mandate up to six, and so I personally don't see a problem with that. In terms of the civil end of the jury selection process, there wasn't an increase in the number of alternate jurors. I'm not saying that the litigants ought to control the process, I'm just saying the litigants ought to have a significant voice. If they don't agree that we ought to not tell alternate jurors who they are, then I think that's the way the trial ought to be run, as long as the litigants agree. If they don't agree, then the judge can make a decision, but that can happen now. The process has worked, and successfully, because Justice Gibbons has had them agree in all but one case.

Ben Graham, Legislative Representative, Nevada District Attorneys Association:
We've been working on this legislation for a number of months now, and we've not been able to come up with unanimity among our prosecutors. I'm basically neutral on it. This is a situation that would allow more alternates. What happens sometimes in criminal cases is they go on a long, long time. People start falling off the twelve pool and we may need a few more alternates in there. It looked like S.B. 27 was going to move so we tacked this provision on to it. Basically, it's the Legislature's decision.

Chairman Anderson:
We'll close the hearing on S.B. 27. Let's turn our attention to A.B. 219.

Assembly Bill 219: Creates Nevada Council for the Prevention of Domestic Violence. (BDR 18-1012)

Joni Kaiser, Executive Director, Committee to Aid Abused Women:
I believe that you all have copies of my testimony (Exhibit B). I encourage your strong support of A.B. 219.

Chairman Anderson:
My concern is that A.B. 219 is potentially going to pull money away from the operations of the Attorney General in order to fund grants. I know that we have fines and that some of the fee structure goes to help the victims, but I'm concerned about the operation of the office of ombudsman.

Joni Kaiser:
Mr. Chair, I'll let the Ombudsman, Lori Fralick, speak to that later.

Assemblywoman Ohrenschall:
I'm the primary sponsor of A.B. 219. Backtracking to the Chairman's question about financial impact, the only thing I can add at this moment is that there is no fiscal note on the bill. The Council has, up until now, been funded completely by grants and been more or less self sufficient. I'd rather expect that it will continue in that regard.

Domestic violence is an ongoing problem in Nevada, as well as across the country. A report released in 2004 focusing on domestic violence, prepared by the Violence Policy Center, showed that Nevada ranked fourth among the states in female victims murdered by males in the year 2002. Assembly Bill 219 will work toward preventing and eliminating domestic violence in Nevada by creating a permanent Nevada Council for the Prevention of Domestic Violence. The Council will be responsible for increasing public awareness of domestic violence and recommending necessary legislation relating to domestic violence. In

addition, the Council would provide financial support to programs for the prevention of domestic violence. The battle against domestic violence is a responsibility for all of us; therefore, I urge you to support A.B. 219.

[Assemblywoman Ohrenschall, continued.] This bill would create a permanent structure that will promote and attempt to deal with the problem of domestic violence. At the moment there exists in statute an ad hoc committee; however, we're proposing to make it a permanent one.

Patricia Lynch, City Attorney, City of Reno, Nevada:
I am one of the original members of the Domestic Violence Prevention Council. I can tell you, as a leader in this area, how frustrating it was to work in this area before this Council was formed. Communication was very fragmentary and disjointed and really depended on who you knew. We were working in a vacuum and often times would end up reinventing the wheel. Policies and strategies would even contradict each other at times. I have given you written testimony which gives some of the history of the Council (Exhibit C).

In 1994/1995 the Legislature authorized the sum of $2,000 to create this Council in the Attorney General's Office. The Council can apply for grants, which have been successfully parlayed into the extensive programs now available through the Attorney General's Office and through other offices like mine that fund victim advocates and domestic violence investigators.

Our "there's no excuse for domestic violence" campaign was in conjunction with the Family Violence Prevention Council fund in San Francisco. We've come a long way since then. I also found a list of items that all the people who applied to be on the original Council listed as things that they saw as problems (Exhibit D). When you look at the list you can see we've actually done quite a few of those, but there's still a long way to go. I think institutionalizing and giving this Body the stature it deserves would go a long way in helping us to continue to work in this area.

I also serve on the Committee on Domestic Violence, which is the committee that certifies batterers' treatment programs. We receive funding from the same method as is set forth in A.B. 219. We have worked very well with the Ombudsman in terms of receiving that funding, and we've never had any problems. We are not concerned about the Council being added to this bill in any terms of undercutting the funding for our Committee.

Assemblywoman Ohrenschall:
We are handing out a letter from Attorney General Brian Sandoval (Exhibit E). I just wanted to point out the last paragraph on the first page where

Mr. Sandoval states, "Expenses of the Council will be paid from money the Council receives from gifts, grants, donations, and contributions. These monies will be held and Council expenses will be paid from a separate account created within the existing Account For Programs Related To Domestic Violence. Staffing and equipment for the Council is already…"

Lori Fralick, Domestic Violence Ombudsman, Nevada Attorney General's Office:
I think my testimony may answer some of the questions that have been raised. I am very familiar with the Domestic Violence Preventions Council's work for about the last decade. The Domestic Violence Prevention Council is currently conducting a statewide needs assessment, and they have not done that in about ten years. I think the importance of the work they're currently doing is to guide the Prevention Council's work and find out what the needs are throughout the state. The process includes conducting focus groups and town hall meetings around the state. It will include professionals from many different disciplines: the public, and survivors of domestic violence and their family members. The process will try to determine where we need to go with this work and to provide recommendations. The State Action Plan was the end result of town meetings that were held ten years ago. The Council has contracted with southern Nevada area health centers to conduct this project and come up with a final report, which I'm sure will be sent to all of you.

I want to mention the funding situation. The Council operates out of the Attorney General's Office and provides the administrative support. The Council's budget is very minimal, less than $10,000 a year which is just for travel expenses, supplies, mailings, and that type of thing. We alternate our meetings between the north and south. This year we received a Violence Against Women grant of $30,000 which is going to pay for the statewide needs assessment and the compilation of that final report. The funding is not really going to cut into any other programs. We've also received some forfeiture monies and some contributions from the community.

I'm in support of A.B. 219. By formalizing the Council in statute you will endorse it and ensure its continued work and success. The Council has heightened domestic violence awareness in Nevada through many different initiatives throughout the last ten years affecting the health care field, criminal justice field, educators, counselors, and the public in general. The mission of the council is ongoing and needs to be recognized in our state law.

Mike Sprinkle, Member, Domestic Violence Prevention Council:
I'm here today in strong support of A.B. 219. I wanted you to see some of the newer people, such as myself, who have shown interest in providing this service to the people of Nevada. One of the reasons I believe it's important we

make this a permanent council is because we are continuing to have new people join the Council. We have new direction including going into the schools, working on new legislation, as well as revising current legislation, and also continuing to work with law enforcement personnel.

Assemblyman Carpenter:
The Council will be established under this legislation. Is that going to take the place of the one that is already in place? We're not going to have two of them, are we?

Lori Fralick:
Are you referring to the Committee on Domestic Violence? No, they actually have very, very separate roles. The Committee on Domestic Violence is a regulatory board that monitors, certifies, and regulates domestic violence treatment programs throughout the state. The Prevention Council does not do that work at all. Their work is much more a coordinated collaboration statewide to improve the way our state responds to domestic violence. They don't regulate, certify, or monitor any programs.

Chairman Anderson:
So the net outcome then is, indeed, we're going to end up with two councils. This advisory group that has existed in the Attorney General's Office now will become the statutory standing committee that is going to continue on regardless of who the Attorney General is.

Lori Fralick:
That's correct.

Chairman Anderson:
Ms. Berkley, do you have a letter you wish to enter into the record on behalf of Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence?

Paula Berkley, Legislative Advocate, representing Nevada Network Against Domestic Violence:
Yes, I do (Exhibit F), and we are in support of A.B. 219.

Chairman Anderson:
Ms. Ohrenschall, is this document comparing the existing committee and office of the ombudsman with the Council (Exhibit G) yours?

Assemblywoman Ohrenschall:
I requested Legal to prepare it.

Chairman Anderson:
We'll go ahead and put it on the record. In addition, I have a letter I believe was sent to you, Ms. Ohrenschall, from Dick Gammick the Washoe County District Attorney, which I've asked to be distributed to the Committee as a whole (Exhibit H). I'll ask it to be made part of the permanent record in support.

Anybody wishing to speak against the creation of this group? [There were none.] Anybody neutral on the issue? [There were none.] We'll close the hearing on A.B. 219.

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY BILL 219.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

We'll open the hearing on A.B. 221.

Assembly Bill 221: Revises provisions relating to sale and disposition of intoxicating liquor. (BDR 20-270)

Assemblyman Oceguera:
As primary sponsor of A.B. 221, I appreciate the opportunity to provide you with a few introductory remarks regarding this legislation. Currently, various counties and cities have adopted local ordinances providing that persons who serve, sell, or distribute alcoholic beverages must complete an alcohol awareness training course. Assembly Bill 221 would make the course requirement consistent statewide by requiring employees of establishments who sell alcoholic beverages to complete an alcohol beverage awareness program certified by the Commission on Postsecondary Education. The Commission, in cooperation with state and local law enforcement agencies, will develop a curriculum for an Alcohol Beverage Awareness Program. The curriculum will include instruction on such topics as clinical effects of alcohol on the human body, methods of identifying intoxicated persons, and methods of preventing and halting fights.

In addition, the administrator of the Commission will certify the program. Under the bill, the owner or operator of such an establishment must ensure that by July 1, 2006, at least one employee who has successfully completed this program is on the premise during the hours of operation. Further, after January 1, 2008, the bill prohibits an owner or operator from employing a

person to sell, handle, or serve alcoholic beverages unless the person has successfully completed an Alcohol Beverage Awareness Program certified by the Commission.

[Assemblyman Oceguera, continued.] Assembly Bill 221 also prohibits a county liquor board or incorporated city from granting or renewing a license of an owner or operator of an establishment who has violated the provisions of this bill more than 3 times in any 24-month period. Further, the bill authorizes the Department of Taxation to impose an administrative fine for violations of the bill. I'd also like to point out that A.B. 221 defines an establishment as a business that sells alcoholic beverages by the drink for consumption on the premises or that sells alcoholic beverages in quarts or sealed containers for consumption off the premises.

This measure excludes resort hotels, wholesale liquor distributors, and private clubs from the definition. Assembly Bill 221 would simply provide consistency between the counties, cities, and municipalities of Nevada by making it mandatory that employees of establishments who sell alcoholic beverages complete an Alcohol Beverage Awareness Program certified by the Commission on Postsecondary Education.

In Clark County there are the three ordinances: one for the city of Las Vegas, one for Clark County, and one for North Las Vegas and they're all different. I didn't realize that alcohol awareness courses weren't mandatory statewide. We are doing it in Clark County, but not consistently. I think it would be a good idea for us to do that consistently so someone who was working in North Las Vegas in an establishment could take that card and go to the city of Las Vegas and do the same job. I don't see a reason why it shouldn't be statewide as well. I have a letter of support for A.B. 221 from the Alcohol Management group (Exhibit I).

Chairman Anderson:
Who is excluded?

Assemblyman Oceguera:
In Section 8, subsection 3, starting with line 1 it says: "The term does not include: a resort hotel as defined in NRS...." I don't know why that was excluded. It wasn't really my intent to exclude the resorts. The resorts aren't excluded in Clark County, as far as I can tell. There is some mention of that in one of these ordinances and maybe that's where bill drafting picked that up. Also excluded are a wholesale dealer or a private club that is not open to the public.

Chairman Anderson:
Well, I guess the resort hotel definition caught me by surprise. I can understand why a private club not open to the public would be excluded. I guess if you're serving alcohol at home you don't have to do this. What happens if it's voluntary? My favorite group, the Sons of Italy, has a dinner and they serve alcohol. Do they have to have a trained bartender or a trained alcohol server?

Assemblyman Oceguera:
I'm not sure. I assume that it would have some relationship to whether you were charging a fee. Maybe there is something in the statutes in regard to gaming. I don't know why that section's in the bill.

Assemblyman Mortenson:
Will this affect grocery stores or places like Costco? Will a person who just checks a six pack of beer out have to take that course?

Assemblyman Oceguera:
Hopefully, a teenager wouldn't be selling alcohol. Yes, if it was someone of a legal age to sell alcohol and they were a clerk in a store, yes, they would have to take that alcohol awareness class.

Chairman Anderson:
One of the clerks at a grocery store would have to have taken the training, if I'm reading this correctly, but not all the clerks.

Assemblyman Oceguera:
That's correct, until 2008, and then everyone would have to take the class, I think.

Chairman Anderson:
There are many people under 21 years of age who sell products at grocery stores or stand at cash registers, but they are not allowed to sell alcoholic beverages at those registers.

Assemblyman Carpenter:
I'm not against this program, but I can see a lot of problems in its operation, especially for smaller establishments. Sometimes we only have one clerk. If somebody quits, is sick, or something and we have to try to find somebody to fill in, they may not have one of these cards. How are we going to handle this? In talking to you, Mr. Oceguera, you said that you can take these classes on the Internet, but I think it's a particular problem in the rurals. Who would be able to give these courses and who pays for them? Is there any leeway there of when they have to have the cards if they start working in an establishment? I just see

some problems out there, especially in the rural areas, unless we have some leeway in the rules and regulations.

Assemblyman Oceguera:
I think one of those problems is solved by Internet access. I'm not opposed to amending A.B. 221 to allow some type of leeway; however, it seems to work well in the convenience stores and other small stores in Clark County. I don't see the difference between a 7-Eleven in Clark County and a 7-Eleven in Elko. I would also point out I'm pretty good about allowing rural exceptions, generally speaking, but in this case, I think this is an important issue. Everyone in the state has this problem and should take a class like this to identify the folks that they shouldn't be selling alcohol to. I don't have a problem with some type of leeway as to when they have to have the class to alleviate your concern of not being able to hire somebody without having a class. If they want the job, they can take a four-hour class on the Internet at their convenience.

Chairman Anderson:
I believe Mr. Oceguera is suggesting that somebody who would be offering themselves as an employee would probably want to pick up this particular skill and put it on their resumé, if they're looking for employment in those particular kinds of locations.

Assemblyman Carpenter:
I just think there has to be some way to handle these situations, because in the rural areas, especially now, we don't have that pool of employees. Many people wouldn't go out and take this class unless they were going to be employed at a certain establishment. We just need to work it out. I'm not against it; I think it's a good idea. Now, we try to do it ourselves. We tell the employees if they see somebody coming through the checkout line who is obviously intoxicated, don't sell them any more alcohol. We do it on our own. I don't have any problem with the program but we need to have some leeway so it can be implemented in a reasonable fashion.

Assemblyman Oceguera:
I would be happy to work with Mr. Carpenter.

Assemblywoman Gerhardt:
Would this be something like what we require for food handlers? I believe that's statewide, isn't it?

Assemblyman Oceguera:
I'm not sure I understand the question.

Assemblywoman Gerhardt:
I believe people who handle food are required by the Health Department to take a class and they actually get a card that's issued to them. Is this similar?

Assemblyman Oceguera:
I'm not familiar with the food handling regulations.

Assemblywoman Gerhardt:
My point is that we already have a program like this to handle employees who handle food; it's required by the Health Department. I see this as a program that is very similar.

Chairman Anderson:
I'm of the opinion that these are local health care issues set by a particular county, rather than statewide, but we'll check into it.

Assemblywoman Allen:
Concerning enforcement and penalties, I wanted to make it clear that the owner is the one penalized and not the employee who isn't licensed or who hasn't passed this class.

Assemblyman Oceguera:
That's correct. In Section 9, subsection 3, "...The department may impose upon the owner or operator of an establishment...." I would read that as the owner/operator would be responsible.

Chairman Anderson:
Since they're his employees, he has the responsibility to make sure his employees are ready to do their jobs. The onus of hiring qualified employees is his, since that would be the standard we've set.

Laurel Stadler, Chapter Director, Mothers Against Drunk Driving (MADD):
The mission of MADD is to stop drunk driving, to support the victims of this violent crime, and to prevent underage drinking. I believe the curriculum outlined in A.B. 221 on page 4, lines 27 through 45 would definitely help to stop drunk driving by training servers to identify intoxicated patrons. It would also help prevent underage drinking when those same servers are trained on how to identify underage drinkers, be sure to card them, and learn more about fake IDs and those sorts of things teenagers use. We would like to see resort hotels added back into this bill as they are major servers of alcohol in our state.

Dino DiCianno, Deputy Executive Director, Nevada Department of Taxation:
We are neutral on the bill. In the spirit of brevity, we just have some questions in respect to enforcement.

Chairman Anderson:
The only concern I have is the definition of "resort hotel" and how that's going to impact.

Dino DiCianno:
The only concern we have is from an enforcement standpoint. Who is going to inform the Department of these violations or is it a responsibility of the Department? If there are fines assessed, there is no mention within the bill as to where those monies go. I'm presuming they go to the General Fund. Any determination of the Department is an appealable situation. We want to make sure that we have this right from the get go because it could be subject to judicial review.

Chairman Anderson:
Let us turn our attention to A.B. 215.

Assembly Bill 215: Revises provisions relating to disclosure of certain information to purchaser of residential property. (BDR 10-1004)

Assemblyman Scott Sibley, Assembly District No. 22, Clark County (part):
For the record, my wife is currently an agent who conducts foreclosure sales at the courthouse and I was also an agent that conducted the sales; however, the proposed bill affects the lenders in the transaction, not the actual agent holding the sale. This bill, A.B. 215, is the result of a bill that was passed last session, the North Las Vegas methamphetamines bill, about the disclosure on sales of real property [Senate Bill 204 of the 72nd Legislative Session]. Today, we're proposing to reinsert language that would exempt foreclosure auctions from the disclosure, because these sales are as-is, without covenant or warranty expressed or implied. The proposed change would bring the statute into agreement with current case law that the foreclosure auctions are being held as-is. Because of the change last session, the law currently states, at least ten days before residential property is conveyed to a purchaser, disclosure must be given (Exhibit J). With a foreclosure sale there is no way to know ten days prior to the auction who the purchaser is going to be. The other issue is that the bank has no right to the property before the sale. When they actually hold the sale they're acting as the beneficiary, exercising their power to sell on a defaulted deed of trust.

Chairman Anderson:
The problem about having knowledge remains. In the past there were people who had trailers and rentals and other pieces of property where methamphetamine labs had been and chemicals had spilled on the floor. The Health Department had knowledge of it, and other folks had knowledge of it, but there was no level of disclosure. In North Las Vegas a child was burned after crawling on the rug in a home whose condition was unknown. At foreclosure the sale price could be affected if it were known the home may have been [a methamphetamine lab].

Assemblyman Sibley:
The lady you referenced testified that she purchased a foreclosed property that a bank had as an REO [real estate offer] property. When the bank sold the house to her, the bank was acting like a regular seller in a transaction in that they had physical possession of the property prior to the sale, giving them the opportunity to go in, have the property inspected, and find out that this defect did exist. Under this change, they would be required to disclose on REO properties. Our amendment (Exhibit K) brings that issue forward. We want it to state when a foreclosure is being held pursuant to [NRS] Chapter 107, which is our foreclosure auctions, so that it only applies to the auction itself.

You also brought up another good point about affecting the price of the auction. Case law has held that these sales are as-is. The issue about disclosing at the time of the sale is that there have been problems with other bidders bringing documents and making statements at the sale that this was a meth house in an effort to chill the bidding process. That's why the courts have held that these sales should be as-is, because they're basically being auctioned off, like a car. When a car is repossessed it is auctioned and you don't get a warranty.

Chairman Anderson:
Mr. Sibley, you've made several references to case law. How recent is the case law?

Jeremy Bergstrom, Attorney, representing Countrywide Home Loans:
The case law Mr. Sibley is referring to has been established in the Ninth Circuit for tens of years.

Chairman Anderson:
Meth use and meth labs in trailers, rentals, and other kinds of properties, is a more recent event in our society.

Jeremy Bergstrom:
I am here on behalf of Countrywide Home Loans to voice its support for A.B. 215 as it was initially written and also now, with the amendments that will either be introduced into the record or read into the record. These amendments have been agreed to in principle by the parties. This is an important piece of legislation and a good bill. It would make good law that would make sense and be consistent with all the other states in the Ninth Circuit. It's a very important piece of legislation in the mortgage lending and foreclosure industries. The letter of the law as it now reads in NRS 113.130 cannot be complied with by mortgage lenders or foreclosure trusties. It cannot be complied with and it needs to change. Assembly Bill 215 would allow mortgage lenders and foreclosure trustees to again comply with the letter of the law in the state of Nevada regarding property disclosures; yet the bill will still provide the public with the health and safety protections intended when the current NRS 113.130 was codified in October 2003. It's important to remember that prior to October 2003, NRS 113.130 provided an express exemption to the execution and service of a property disclosure form for those properties sold at foreclosure or by way of a deed in lieu of foreclosure. That exemption was eliminated by statutory amendment codified on October 1, 2003, through adoption of Senate Bill 204 of the 72nd Legislative Session. The removal of that foreclosure exemption immediately caused compliance problems in the mortgage lending and foreclosure industries, which compliance problems continue today and those problems will continue to exist until such times as NRS 113.130 is formally amended.

In order to comprehend the legislative intent behind S.B. 204 of the 72nd Legislative Session, which was introduced in February 2003, I researched the history of that bill. Based on my research I reached the following conclusion and opinions: First, S.B. 204 of the 72nd Legislative Session was created in February 2003 to eliminate sales of residential real property that were previously used as methamphetamine labs, without first disclosing this fact to potential buyers. To achieve this goal the bill sought to remove most exemptions to the disclosure requirements, including the foreclosure exemption. The overwhelming majority of testimony on this bill, on the Senate Floor, centered upon the typical arm's-length sale and negotiated sales of residential real property from a known seller possessing title to a known and specific buyer. The actual testimony that was produced regarding foreclosure sales was limited to, based on my recollection, perhaps three or four paragraphs combined. It's my opinion that this issue was not well thought out and some of the ramifications from that language may not have been contemplated at the time that bill was codified. Frankly, I think that the problems that now face the mortgage lending and foreclosure industries were an unintended consequence of attempts to more closely regulate typical arm's-length sales.

[Jeremy Bergstrom, continued.] Testimony on S.B. 204 of the 72nd Legislative Session said this issue, the disclosure and foreclosure context, would have to be worked out with the title industry, and it was left there. Time has shown that these issues cannot be worked out. It is impossible to comply with the statute as it's currently written. That's why I'm here today and why my clients support the adoption of A.B. 215. When addressing the compliance issues, the following is initially noteworthy: There are no arm's-length negotiations in a typical trustee's sale. The seller and the buyer are not known. The seller does not know who the buyer is until after the sale is completed. The seller is not the legal title holder to the property.

The case law in Nevada in the Ninth Circuit, as I interpret it, is that trustee sales are caveat emptor. The only jurisdiction in the United States, that I'm aware of, that does not apply the caveat emptor doctrine to trustees' sales is Washington, D.C. The Ninth Circuit is uniform that the sales are held buyer beware, which means the buyer takes title at a trustee's sale in the face of known defects. Whether procedural sale defects, where the purchaser may be buying a lawsuit or the property may end up in litigation, or the property may be plagued by some sort of structural defect. That's the way it's been in the Ninth Circuit for years. That case law is well entrenched in Nevada. Specifically, the statute reads "That at least ten days before residential property is conveyed to a purchaser, the seller must complete a disclosure form regarding the residential real property. The seller or his agent must serve the purchaser or his agent with the completed disclosure form." Here are the specific examples of why the statute cannot be complied with on its face.

- A mortgage lender and a foreclosure trustee will have no idea ten days before a foreclosure sale is scheduled, who any potential purchaser may be. It is impossible to determine that information and as a result it cannot produce this disclosure form ten days prior to a foreclosure sale and convey it to a purchaser.
- The second portion I find objectionable is the statute says the seller must complete a disclosure form regarding residential real property. As Mr. Sibley said, there's an issue with regard to who the seller is. The mortgage lender is the loan beneficiary who instructs the trustee to act to sell the property, but it doesn't have title to that property.
- The seller or his agent shall serve the purchaser or his agent with the completed disclosure form. As we just said, if we don't know who the purchaser is, it is impossible to serve that person.

This statute on its face is defective and impossible to comply with; however, NRS 113.150 imposes penalties upon mortgage lenders for failure to comply with a statute that cannot be complied with. The penalties that it imposes are treble damages—punitive damages, attorney fees, and costs. It's right in NRS 113.150, subsection 4. My client is put in a precarious situation every

time one of its loans in the state of Nevada goes into default. It's faced with a statute it cannot comply with and it's faced with the imposition of punitive damages for its failure to be able to comply with that statute.

[Jeremy Bergstrom, continued.] My client is not asking for total immunity, as was stated earlier, only in the context of a foreclosure sale are we asking for an exemption. We are not asking for an exemption from the property disclosure forms in the context of properties that my client and mortgage lenders actually own. So in the scenario where a property goes to foreclosure sale and title is ultimately vested in the foreclosing lender, at that point my client readily acknowledges that it is subject to the same provisions as any other seller of property and it has every intention and can comply with the statute as it's written. We would have no problem complying with property disclosure forms in that scenario. Just to be clear, it's only in the context of a foreclosure sale that we're asking for this exemption. In conclusion, I think that A.B. 215 is sound and it makes sense. It will allow mortgage lenders to comply with Nevada law, and it will be consistent with established case law in other Ninth Circuit states. There is no other Ninth Circuit state, that I'm aware of, that imposes an obligation on a mortgage lender to make disclosures in the context of a foreclosure sale. If Nevada were to impose any such requirement, I believe it would be stepping outside the confines of its sister states.

Chairman Anderson:
Your mortgage company forecloses on what percentage of the properties you have to pick up? Twenty percent?

Jeremy Bergstrom:
Whenever a loan goes into default and it's not cured, a mortgage lender will initiate foreclosure proceedings.

Chairman Anderson:
So it's 100 percent?

Jeremy Bergstrom:
That's not necessarily true. When a loan goes into default, there will be lots of mitigation processes that will be implemented prior to the initiation of foreclosure. If loss mitigation proves to be unsuccessful, then over a period of time, after a certain number of days, yes, the property will go into foreclosure.

Chairman Anderson:
So you maintain that you have no knowledge or responsibility to find out what may have occurred at that property or to ask the health department or any other

departments that may have knowledge of what might have taken place on that property? You have no responsibility at all?

Jeremy Bergstrom:
My understanding of the law is that prior to October 2003, there was no such requirement.

Chairman Anderson:
There was not, but that's not the case currently. Would you take advantage of the opportunity to go to the Health Department to check, to find out whether there had been a clean up or any other kind of mitigating circumstances to the property itself, to find out its condition? Wouldn't you visit the property to see if it were still standing, if its doors were secured, and the windows were there?

Jeremy Bergstrom:
That's not necessarily true. Property inspections do occur on defaulted loans, so a visual inspection is made to the property. There are property inspections made prior to a property going to sale.

Chairman Anderson:
Are they external or internal?

Jeremy Bergstrom:
Generally, they're external because you've got to remember, it's not my client's property; we don't have a key. Somebody else owns that house and they're living in it, so these inspections are generally exterior.

Chairman Anderson:
Okay, they're exterior only and you haven't had them removed.

Jeremy Bergstrom:
No. At that point they have not been removed.

Chairman Anderson:
The removal of the group from the home only takes place after the sale of the home?

Jeremy Bergstrom:
That's absolutely correct.

Chairman Anderson:
What if it is an empty home because the people have been arrested or taken away, or they've abandoned the home and left it?

Jeremy Bergstrom:
There are provisions in most deeds of trust that allow a mortgage lender to obtain access to the property in the event of threat of damage to the security or threat of damage to the health and safety of the neighborhood. There are certain circumstances where entry is authorized.

Chairman Anderson:
If we were to pass A.B. 215, you would not have the disclosure responsibility of health of the neighborhood, under that provision?

Jeremy Bergstrom:
The statute as it reads and as it's going to be proposed with the amendments will provide that only in the context of a foreclosure sale will there be an exemption to the disclosure requirement. Not an REO property.

Chairman Anderson:
That's 100 percent of your business, or fairly close.

Jeremy Bergstrom:
Of the actual defaulted loans that cannot be cured, that's correct. That's our only remedy.

Assemblyman Sibley:
Prior to the recent run up that we had in the real estate market the majority of these houses that were held at sale were reverted back to the bank. In that case, they would be required to disclose when they dispose of it through a regular arm's-length transaction. My biggest concern is that if this disclosure continues, bidders and investors at the auctions will go by [the properties] and place things on the doors to try and create a perception that there's a defect that actually isn't there.

Assemblyman Oceguera:
Some of the people on this Committee know the intent [of Senate Bill 204 of the 72nd Legislative Session] because we testified about the bill. I think your amendment goes too far. If there was a way we could craft it so that if you knew about or had knowledge that this was a crack house, a methamphetamine house, you would have to disclose, at least in this narrow category. I think your amendment probably takes it a little too far and gives you complete immunity. I don't think that's right.

Chairman Anderson:
Is this your amendment, Mr. Sibley?

Assemblyman Sibley:
That amendment (Exhibit K) is from the Nevada Association of Realtors.

Chairman Anderson:
So this is not your amendment? [No.] I was just clarifying for the record because it has been distributed to the Committee and I want to make sure that we understand that it's not Mr. Sibley's amendment. I presume you were talking about this amendment?

Assemblyman Oceguera:
That's correct.

Assemblyman Sibley:
The amendment was an amendment we all came together on. The parties that are here to testify on the bill all tried to put their thoughts together.

Bill Uffelman, President and CEO, Nevada Bankers Association:
The Nevada Bankers support the concept of A.B. 215. I understand the amendment and we would support that.

Cheryl Blomstrom, Nevada Consumer Finance Association:
We support the bill; we support the amendment and concept and would be glad to work with the sponsor and folks who have concerns to make it work.

Jim Nadeau, representing the Nevada Association of Realtors:
We support A.B. 215 with the amendment that I believe has been distributed.

Chairman Anderson:
This is the amendment that you have put together and are taking responsibility for?

Jim Nadeau:
We all worked together to try to come to some agreement on the language and we stand by that agreement. We understand Assemblyman Sibley's intent and we've worked with both the builders and the consumer association to try to put together some language that we feel would include a very specific, narrow portion of foreclosure auction sales. We were concerned initially, and remain concerned, with foreclosures that are taken back by the mortgage company and then sold. We believe that this excludes that sort of a sale.

Chairman Anderson:
Ms. Dreiling and Mr. Nadeau, is the ten day requirement what you're concerned about?

Buffy Dreiling, Legal Counsel, Nevada Association of Realtors:
What this amended proposed bill does is revert the situation to what existed prior to the 2003 Legislative Session regarding only foreclosure sales. NRS 113.150 wouldn't apply because that's the remedy for not complying with NRS 113.130. One of the reasons we supported this amended language is because of that exact issue, with regard to narrowing the scope of what would be exempted from what previous [statute] had been prior to 2003. With that very narrow limited circumstance of the actual auction at the Courthouse steps, or wherever else, and that being the only exception, is one of the things that brought us to be able to support that. In reality, the disclosure is not happening anyway. In reality, what's happening is the foreclosure companies are requiring anybody who comes to bid on one of those properties to waive the requirements of NRS 113.130, which is provided for in that same statute. After the bill passed in 2003, the vast majority of the calls I got from our members were concerns that they were being put on the spot because they can't draft a legal waiver, and their client, a foreclosure company or some other circumstance, wanted somebody to waive it. That is what has happened. They're not providing the disclosures, and instead they're having everyone waive the requirements, from my understanding.

Chairman Anderson:
I buy a home at foreclosure on the courthouse steps. That is an as-is foreclosure like any other auction; you get it the way it comes. Now it's in my possession and I wish to turn it around. I go to a realtor and I put the sign out in front of the property. Now I have the responsibility of disclosing, to the best of my knowledge, what has taken place in the home. Is that correct?

Buffy Dreiling:
Yes, that is correct. What's happening now though is if you want to buy a property at a foreclosure sale the person conducting the sale says, "We're only selling it to people who will waive the requirements." So you waive those requirements for them to provide you with any disclosure. Then when you turn around and sell it, you are now under the requirements of the disclosure as is your real estate licensee.

Chairman Anderson:
If we were to adopt this amendment, that is not going to change, however.

Buffy Dreiling:
That's correct.

Chairman Anderson:
I would still have the requirement, but the only person that would be changed by this amendment would be the foreclosure company, the bank, or the institution that had conducted the sale on the courthouse steps or wherever they held the auction.

Buffy Dreiling:
That's correct.

Chairman Anderson:
It doesn't lessen the responsibility in any way of a private individual who sells. What happens if he decides to hold his own auction and advertises it in as-is condition?

Buffy Dreiling:
The way the proposed, amended bill reads, is that that person would still be required to disclose, unless he required any buyers to waive it. The way the proposed amendment is written, it would only exclude that person if the foreclosure was pursuant to Chapter 107. So just any auction or any type of bidding process would not come within that exemption.

Mr. Carpenter:
I agree with Mr. Oceguera that the amendment goes too far. But I have another question, [the proposed amendment reads] that, "A person purchasing residential property pursuant to 2(a) or (d) acquires ...." The way I read [subsection 2(d)], it is a person who takes temporary possession or control of the title of the property. It seems to me that when you do that, you have got to know what condition that property is in and so you would have to make out your disclosure form.

Jim Nadeau:
I believe that was a typo. I think subsection 2(d) of A.B. 215 was no longer included in the amendment we were considering.

Chairman Anderson:
So the amendment that has been distributed to us is, in point of fact, not really what you had intended.

Jim Nadeau:
It's what we intended, but it's not.

Assemblyman Mortenson:
I just wanted to say that I also agree with Mr. Carpenter and Mr. Oceguera that this goes too far. It just seems like we're allowing banks to do something we don't allow individuals to do. It's an unbalanced playing field.

Maddy Shipman, Legislative Advocate, representing the Southern Nevada Home Builders Association:
We were one of the groups that came up with the proposed amendment. I want to assure you that prior to the realtors coming forward with their amendment we had agreed to remove subsection 2(d) from A.B. 215. The home builders are caught in the exemption simply because we are dealt with in a different way under the laws of the state. If you look at subsection 2(c) under their proposed new language, home builders are already exempted on a first-time sale because there are other laws that deal with home builders. The concern there, essentially in the proposed amendment, was to try to codify what is existing Nevada and Ninth Circuit law as it relates to sales and foreclosure which would be that they are as-is sales and without warranty, express or implied. We support the essence of the amendment and would be happy to work with anyone and the sponsor of the bill in coming up with something more suitable to the Committee.

Chairman Anderson:
Anybody else wishing to be heard on A.B. 215? We'll close the hearing on A.B. 215. I'll and ask the author of the bill to see if these are all the amendments and to talk to Mr. Carpenter and Mr. Oceguera and see if there's any kind of language that needs to be compromised or any suggestions that could come forward so that I can take the bill to a work session. It's not necessary for you to come, unless you have a compelling need. [Meeting adjourned at 10:41 p.m.]

RESPECTFULLY SUBMITTED:

_____
Carole Snider
Recording Attaché

_____
Theresa Horgan
Transcribing Attaché

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 24, 2005 Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
A.B. 219	B	Joni Kaiser, Committee to Aid Abused Women	Letter to Committee
	C	Patricia Lynch, City Attorney, Reno, Nevada	Letter to Committee
	D	Patricia Lynch, City Attorney, Reno, Nevada	Compilation of Ranked Priorities
	E	Assemblywoman Ohrenschall introduced a letter from Brian Sandoval, Attorney General, State of Nevada	Letter to Committee
	F	Paula Berkley introduced a letter from Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence	Letter to Committee
	G	Assemblywoman Ohrenschall	Comparison by Legislative Council Bureau Legal Division
	H	Chairman Anderson introduced an email from Richard Gammick, Washoe County District Attorney, Reno, Nevada	Email to Assemblywoman Ohrenschall
A.B. 221	I	Assemblyman Oceguera introduced a letter from Catherine A. Pavick, Executive Vice President, Techniques of Alcohol Management	Letter to Assemblyman Oceguera
A.B. 215	J	Assemblyman Scott Sibley	Advertisement for a trustee's sale
	K	Assemblyman Sibley introduced a letter from the Nevada Association of Realtors	Proposed amendment