MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
May 6, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:03 a.m. on Friday, May 6, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblywoman Chris Giunchigliani, Assembly District No. 9
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Shirley Parks, Committee Secretary
Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Donna Winter, Committee Secretary

OTHERS PRESENT:

Jon L. Sasser, Washoe County Senior Law Project
William R. Uffelman, Nevada Bankers Association
Thelma Clark, Nevada Silver Haired Legislative Forum

Robert Desruisseaux, Northern Nevada Center for Independent Living
Gail Burks, President and Chief Executive Officer, Nevada Fair Housing Center, Incorporated
Michele Johnson, President and Chief Executive Officer, Consumer Credit Counseling Service
Mark Thomson, Director of Government Relations, Community Financial Services Association; Moneytree Incorporated
Jim Marchesi, President/Chief Executive Officer, Nevada Financial Services Association; President/Chief Executive Officer, Check City
Natasha Fooman, Advance America
Mike Reed, Vice President, General Counsel, Loan Max
Robert Reich, Director, Consumer Lending Alliance National Organization of Affiliated Title Lenders
Joseph W. Brown, Security Finance Company
Phillip Holt, Vice President of Government Relations, Security Financial of Spartanburg, South Carolina
Sandra J. Perry, Cash Express/ Money Express Catalog Sales, Incorporated
Chris Dorman, Intern to Assemblywoman Giunchigliani
Joseph Guild, Manufactured Home Community Owners
Bob Varallo, President, Nevada Association of Manufactured Home Owners, Incorporated

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 257.

ASSEMBLY BILL 257 (1st Reprint): Provides certain protections to person who receives payments pursuant to federal Social Security Act. (BDR 55-69)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):
For the average American over 65 years old, social security makes up nearly 40 percent of their income; and for about 20 percent of Americans, social security is their only income. It gets harder and harder every day for many senior citizens to make the precious social security stretch to cover all their needs. What happens when a piece of your social security check disappears from your checking account? It can be devastating. This bill 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. I am not going to attempt to explain this bill today. I have brought

a lawyer who will explain the fine points to you. I have also supplied the Committee with written testimony from Philip K. Goldstein (Exhibit C) in support of A.B. 257.

JON L. SASSER (Washoe County Senior Law Project):
I provided some handouts (Exhibit D) that I think will explain the background of the bill. The bill incorporates into Nevada law the protection under the Social Security Act against garnishment attachment and other legal process. Other legal process includes setoff which is a process by which a bank can go in to your bank account and take money out to satisfy another debt that you owe to the bank. The right of setoff is set up in the fine print in the banking booklets which are included in Exhibit D. Over the last couple of years, there has been major litigation on whether or not you can go in to someone's account and set off monies that are owed for bank overdrafts. In Exhibit D, I gave you a description of a couple of pieces of this type of litigation. In this bill, we are not dealing specifically with bank overdrafts. In consultation with the Legislative Counsel Bureau (LCB) Legal Division, that is an area that it is preempted by federal law. We are dealing with accounts that are at the same bank as your checking or savings accounts in which you take out a loan that is unrelated to these accounts. It does not deal with overdrafts or overdraft protections. However, if you take out a loan with your bank and you default on that loan, the bank, under this bill, would have to go through the normal process that any other creditor would go through instead of simply going automatically into your account and taking out the money.

On page 2 of A.B. 257, it basically states that the bank and a loan agreement may not include a provision giving it the right to setoff or take out of your account, monies that are from your social security funds. It limits the scope of the bill to loans that are unrelated to that account. Overdraft protection or late charges that are related to your checking account are not precluded.

I worked with William Uffelman of the Nevada Bankers Association and we came up with an amendment to make it clear that if you specifically pledge, when you take out a loan, the proceeds of an account then the bill does not protect you from setoff. This is an exception to the bill and the Bankers Association is okay with that part of the bill.

SENATOR CARLTON:
Is that amendment in here?

MR. SASSER:
Yes.

SENATOR CARLTON:
Under section 1, subsection 3 of the bill you have: "The provisions of this section may not be varied by agreement and the rights conferred by this section may not be waived." I am confused, how will that component fit in with this one?

MR. SASSER:
The agreed-upon amendment is on page 2, lines 19 and 20. It is a definition: "'An account unrelated to the loan agreement' includes, without limitation, an account pledged as security under the loan agreement, unless the specific account pledged as security is conspicuously described in the loan agreement."

SENATOR CARLTON:
What does section 3 of the bill still do then?

MR. SASSER:
Section 3 of the bill states you cannot generally waive your rights under the Social Security Act in the loan agreement saying that I would allow setoff of my social security funds. The only exception to that is if you specifically pledge the proceeds of a specific account that is conspicuously described as collateral for the loan.

SENATOR CARLTON:
If I understand this correctly on page 3 of the bill, we are adding in one more to this list of things that is here.

MR. SASSER:
On page 8, lines 29 through 32, we are adding to the list under state law. We are now making the federal exemption as to social security checks part of the state law.

WILLIAM R. UFFELMAN (Nevada Bankers Association):
As Mr. Sasser related, we worked together in the Assembly to make it clear that ultimately setoff can be obtained if the setoff has the accounts to which you can take the setoff named in the loan agreement for those accounts which

are actually being provided as security, as opposed to the book of general information that is more typical now.

SENATOR TIFFANY:
Under these circumstances, would it give the bank pause to loan money or sign a contract with someone under these conditions?

MR. UFFELMAN:
The difficulty is that we are specifically prohibited from excluding social security; and by social security, I mean all of those funds that are listed on page 3 of the bill. We cannot exclude them from the consideration of your creditworthiness as a senior citizen for a loan. If every dime you have is one of those four or five items that are listed on page 3 of the bill, in theory, we could not take any of that money but cannot exclude it from the consideration. The bill as structured in effect facilitates us being able to consider the creditworthiness of a senior citizen. Basically, we are looking at a social security payment as their income.

SENATOR TIFFANY:
If social security is a senior citizen's only income, would you probably be a little hesitant to make any type of loan?

MR. UFFELMAN:
With the language that is in this bill, we can then name those accounts in effect as the collateral for the loan. You are specifically acknowledging, as the recipient of the loan, that you understand that those funds are funds that are available to collateralize the loan.

SENATOR TIFFANY:
Can you not collect against it?

MR. UFFELMAN:
Except to the extent that we have agreed, we can collect against it as provided in this bill as opposed to Exhibit D that Mr. Sasser provided to you where it states, "I pledge any account I have here at the bank." This says that you will name your money market account or any other accounts for that loan.

Section 1, subsection 2 of the bill states that you can have automatic withdrawals. That way, if your check or social security is deposited on the

third day of the month, you can make the payment automatically on the fourth day of the month. Without the language in section 1, subsection 2 of the bill, we would not have effectively been able to do that.

SENATOR TIFFANY:
So, instead of being able to go after any account, it has to be very specific and identified.

MR. UFFELMAN:
It has to be specifically identified as opposed to saying any account.

THELMA CLARK (Nevada Silver Haired Legislative Forum):
We support A.B. 257 as amended.

ROBERT DESRUISSEAUX (Northern Nevada Center for Independent Living):
We are in support of A.B. 257, recognizing that some of the numbers Assemblywoman Pierce gave you earlier show how much seniors as well as individuals with disabilities depend on their social security payments. It is relatively easy to see what a negative impact those unexpected or unanticipated withdrawals from an account could have on an individual's life, especially the 20 percent who have social security as 100 percent of their income.

CHAIR TOWNSEND:
I will close the hearing on A.B. 257.

SENATOR CARLTON MOVED TO DO PASS A.B. 257.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
I will open the hearing on A.B. 384.

ASSEMBLY BILL 384 (1st Reprint): Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
I have a PowerPoint presentation (Exhibit E). The impetus of this bill is the increasing number of people who seek the assistant of credit-counseling agencies and other community resources, including where I work. That is why I became so interested in this bill. Their problems include dozens of loans with triple- and quadruple-digit interest; payments that are greater than their monthly incomes; wage garnishment two, five or ten times the amount of the loan; threats of criminal prosecution and a never-ending cycle of debt. I hope the passage of A.B. 384 will create a more level and legitimate playing field for lenders, curb unscrupulous and egregious practices, provide remedies for those who have fallen victim to both licensed and unlicensed lenders and protect consumers from being trapped on a debt treadmill.

The debt treadmill begins when a customer takes out their first payday loan. A loan interest rate can range from 150 to 1,100 percent annually. It is not uncommon among those who seek assistance from credit-counseling agencies and legal-aid agencies to take out a second loan to pay the first and a third one to pay the second. I have met a dozen consumers who have taken out a dozen loans just to pay the interest on the other loans.

It is not uncommon for consumers to eventually fall off the debt treadmill and into the wage-garnishment machine where their meager earnings are quickly siphoned off by judgments that can double and triple the amount of the loan and which completely ignore any and all payments made. Because of the volume of lawsuits in small claims courts and justice courts, many judgments are by default and are rubber-stamped by the courts which are unable to keep up regardless of the legality or amount sought. In Las Vegas, 55 percent of all the court cases involving small claims in justice court are payday loans or high-cost loans. The overall volume for 2004 was 68,000 cases. That estimate would be over 34,000 lawsuits in the year 2004 involving payday loans. The experience is borne out in Carson City and Sparks. In North Las Vegas, it is even higher where up to 75 percent of all the court cases involve high-cost loans.

ASSEMBLYWOMAN BUCKLEY:
I would like to talk about the common abuses seen in the payday-loan industry because many of these are what are addressed in the bill. First, collection of trebled damages pursuant to *Nevada Revised Statutes* (NRS) 41.620, the bad-check statute. The checks that are used in these transactions are not given

for merchandise. The checks are a security for a loan which makes the statute not applicable, but it is still being utilized anyway. Some lenders in Nevada still verbally threaten to have consumers arrested for writing the bad check that is issued in conjunction with the loan. In the deferred-deposit transaction, there is little doubt that the customer is attempting to defraud the lender. The lender knows there is no money backing the check; that is why they are loaning money on it. Despite the laws prohibiting this practice, an Attorney General's opinion and the commissioner of financial institutions, lenders continue to threaten criminal penalties and are usually awarded treble damages in all of these court cases you see in Exhibit E. A routine clause that is added to all of these cases usually states: "for maximum damages of $1,000 as provided by NRS 41.620."

Attempting to collect and collecting illegal fees is a common practice among many of the lenders in this industry. There is an example of a collection letter and a default judgment in Exhibit E.

Another common abuse is the demand of more than one check for a single deferred-deposit loan. The payday loans require a check in conjunction with the loan transaction but some lenders will require a customer to write a post-dated check for each $100 loaned. They are able to collect more money illegally under the treble-damages statute and are able to collect $50 per check in returned-check fees. Our statute now allows $25 per returned check twice. They will get $50 for each $100 check as opposed to one set charge of $50.

Unfair loan terms are another common abuse referred to in Exhibit E. With Clark County having approximately 300 outlets, 50 pages in the telephone directory and stories in our newspapers and on television, the proliferation of payday lenders presents in our everyday life an impact on the community that cannot be ignored. Nevadans are especially vulnerable to unscrupulous tactics because so many are new to our State, and they lack the traditional safety nets in times of emergency. The industry now fills a void once filled by employers who would give payday advances. The practices this bill seeks to eliminate are hurting our communities, our senior citizens, our working poor, our military personnel and our middle-class service-industry employees.

I would like to talk about the specific provisions of A.B. 384. Because we are rewriting basically all of our high-cost payday loans, we are consolidating all of the laws into one chapter. Some of the provisions you will see in the mock-up

amendment (Exhibit F) have provisions that are currently in law but we are combining them all in one place. Sections 24, 35, 36, 43, 44, 45 and 82 are all existing provisions that are reprinted in the mock-up amendment.

In the new provisions, section 17 defines short-term loans charging more than 40 percent for less than 18 months in Exhibit F. There are three types of lenders that are captured in the bill. The first defines the deferred-deposit loan where a check is exchanged for the money. The second defines short-term lenders who may loan you money for 2 weeks or 30 days, but they do not take a check. The third defines title loans. This area of the bill defines exactly a short-term loan, because there are many installment loans and other loans governed under chapter 675 of the NRS. This just pulls out the high-cost, shorter-term loans. The other redefined provisions are in sections 23, 31, 33, 34, 35, 37, 39, 40, 42, 43, 44, 64 and 75 of the bill and are defined in Exhibit F. Section 44 sets forth the amounts the licensee may collect. This is the heart of the bill and along with the remedy section, licensees can collect principal minus payments made, pre-default finance charge, prime plus 10-percent interest after default and a returned-check fee of $25. With auto title loans, some of the provisions in the bill recognize the differences in this industry so the terms are different.

ASSEMBLYWOMAN BUCKLEY:
My last comment is that I have worked for weeks with many in the industry who are just as anxious to clean up this industry as I am, because they see their industry name being smeared by the tactics of those who are bringing a bad name to all. I have worked with lenders, some of who do not sue people at all, have never threatened criminal prosecution and have never assessed these kinds of damages. These tactics are creating an un-level playing field for them. It is hurting their competitive position and it is hurting their efforts to try to clean up this industry. I have been working with these industry groups for about a year. In the past 3 weeks, I have spent about 50 hours with them. We have worked on words and meanings; we have drafted, we have redrafted and I have tried to accommodate every good-faith business concern with this bill. Some provisions and changes that I have made I did not like, but we were trying to get you a consensus product with the limited amount of time by working with those who are just as appalled by these abuses as I am. I have submitted a summary (Exhibit G) of the sections amended in the mock-up of A.B. 384.

SENATOR TIFFANY:
You made a comment about safety net in times of emergencies and our community does not have a safety net. How would you see that being developed in the industry?

ASSEMBLYWOMAN BUCKLEY:
I would like to see some of the more mainstream banks and credit unions going back into the micro-loan business. I would like to see more employers getting involved, perhaps through credit unions or with a bank with which they associate. Also, I want the field leveled for those who are right now in this industry who do not do any of these things that were mentioned today and who offer a good product.

SENATOR TIFFANY:
Do you want to see the banks develop some type of short-term loan?

ASSEMBLYWOMAN BUCKLEY:
I would like to see more competition in the short-term loan industry on fair terms.

SENATOR TIFFANY:
Do you realize this is a high-risk group with which you are dealing?

ASSEMBLYWOMAN BUCKLEY:
Yes. I would say this industry can and does use underwriting. You will hear from the good lenders today and they are doing underwriting. One of the anomalies being created in this market is because such a large segment of the population are using the courts to add on these illegal damages, they want people to default because they are making more money when someone defaults than when they pay their loans.

SENATOR TIFFANY:
Would you like to see the short-term loan business expand a little bit? The examples you gave in your presentation that I could see were both the bad-actor lenders and the bad actors who do not pay back their debts. I saw the extreme on both sides of the examples you presented.

ASSEMBLYWOMAN BUCKLEY:
The people we see want to pay back the debt, and they do not want to file for bankruptcy. They will say they borrowed $300 and paid back $1,200. They have three other loans pending and cannot make the payments to every single one of them with the add-on charges. That is what we are trying to get to here. If you can stop the abusive pile-on charges, then people will be able to pay their debts and will be able to avoid lawsuits.

SENATOR TIFFANY:
If this was a comfortable business to be in, the banks would be in it, but this is a high-risk business. What are the existing laws today that take into consideration some of your examples?

ASSEMBLYWOMAN BUCKLEY:
Deferred-deposit loans are governed by chapter 604 of the NRS and the protections were added to our statutes in A.B. No. 431 of the 70th Session. It has a prohibitive-practice section which says you cannot threaten criminal prosecution and you cannot charge any fees that a lender cannot generally collect. Also, upon default you get prime plus 10 percent. What is not in this bill is the fair debt-collection practice, military protections, more specific protections like making up imaginary fees or adding garnishment fees of $1,200, and there is no remedy section. There is no enforcement when a bad actor does these things. These are all in chapter 604 of the NRS. Chapter 675 of the NRS is the general installment-loan chapter so any lender falls under that and there are no specific protections for high-cost, short-turnaround loans at all. The title-pawn industry provisions on the last slide of Exhibit E are all new.

SENATOR TIFFANY:
Section 44 states what a loan and default look like, the type of payback and what happens if it cannot be paid back. Is that not more like what you would want to have in the micro-loan business if it were expanded, as opposed to changing what is happening today with the deferred-deposit, short-term lenders and the title loans? Are you redefining an industry that you say is lacking?

ASSEMBLYWOMAN BUCKLEY:
Clearly, we are redefining an industry and the abuses have to stop. You can get your principal back. If you recall in the bill, there is no cap on interest rates. If someone wants to borrow $200 at a 1,000 percent interest that is still allowed, the licensee gets your principal and your agreed-upon contractual rate of

interest, but when that person defaults and cannot pay it back, that is when the licensee receives prime plus 10 percent. It is redefining the industry and the abuses will stop if the bill passes but all the folks in the room do this anyway. They want the customer to pay back the loan. They are not seeking to receive $3,900 on a $200 loan. They want to get their money back. They want to get back a reasonable rate of interest and their cost. They are not trying to get people on a debt treadmill. That is where I see the difference in the bill.

SENATOR TIFFANY:
Section 44 of A.B. 384 sets a limit at which you could have these kinds of contracts, but it also reidentifies those three categories we talked about. It looks like you are creating a micro-loan business the way you would like to see it happen.

ASSEMBLYWOMAN BUCKLEY:
We are regulating a micro-loan business that already exists.

SENATOR TIFFANY:
What are the damages against licensees today that are different than the damages in sections 73 and 74 of the bill?

ASSEMBLYWOMAN BUCKLEY:
The difference is the statutory damages of $1,000 per violation.

SENATOR TIFFANY:
What is it today?

ASSEMBLYWOMAN BUCKLEY:
There is not one.

SENATOR TIFFANY:
Does the industry agree that this is not a problem?

ASSEMBLYWOMAN BUCKLEY:
The industry would like the $1,000 more narrowly defined to certain violations. We already have laws in the book that are not working because there is no penalty for bad behavior. This amount is similar to what we utilize in other statutes. We use it in chapter 118A of the NRS, if the landlord shuts off your

power willfully, tenants are entitled to $1,000 in statutory damages. This is the statutory penalty that we usually utilize to stop egregious behavior.

SENATOR TIFFANY:
Where would you say the responsibility lies on the person who defaults on the loan?

ASSEMBLYWOMAN BUCKLEY:
The person who signs the contract is legally obligated to pay back the loan. If you do not pay it back, you may be sued.

SENATOR LEE:
Is there a cosigner provision for an 18-year-old to get a loan? Are pawn shops that now advertise non-collateral loans covered under this bill also?

ASSEMBLYWOMAN BUCKLEY:
There is no cosigner provision for an 18-year-old to get a loan. Pawn-shop activity and their loans are regulated by the pawn chapter that has a 10-percent interest cap. Pawn shops can get another license, either a payday-loan license or a license under chapter 675 of the NRS to do short-term 2-week or 30-day loans. There is no prohibition against a pawn shop from getting a dual license to offer both products.

SENATOR LEE:
How are these cases mediated for payoff in justice court?

ASSEMBLYWOMAN BUCKLEY:
A suit is filed, they are served and then a majority of the people will default. Most people who get sued acknowledge they owe the money so there is no point in contesting. They do not realize that the judgment is not going to be for $200 or $300. It will be at least quadruple the amount. They default then suffer the garnishment and it goes on to the examples you saw on the PowerPoint in Exhibit E. For those people who do show up in court, usually the judge tells the attorney there is a consumer present and together they should go out in the hallway and see if something can be worked out. The attorney will subtract about $200 from the amount owed, they will come up with a plan and go back into court and the judge will issue that amount.

SENATOR LEE:
We talked about underwriting happening at these companies. If a person borrows from one organization and cannot make payments and then borrows from another organization to pay the previous organization, are there cases of this happening in keeping these treadmills going?

ASSEMBLYWOMAN BUCKLEY:
It depends on the lender. Mark Thomson with Moneytree and Jim Marchesi with Check City, who I have been working with the past year, will check. If they see that pattern, they will not loan the money. The lenders that want to go to the garnishment mill do not care. They see the borrower's paycheck and they see that they are working. Even if the person has three payday loans by the time they get to them, they will have to stand fourth in line. The court will put through whoever gets the garnishment first. If the person is working, the lender knows they will get 25 percent of that person's paycheck and they will definitely loan them the money. The lender makes most of their profit from the abusive add-on fees.

SENATOR SCHNEIDER:
I heard the word micro-loan business but this is not. This is big business. These businesses are all over the place.

ASSEMBLYWOMAN BUCKLEY:
There are more payday-loan outlets in America than there are McDonald's.

SENATOR SCHNEIDER:
The consumers are saying that there is a demand for these payday-loan businesses. Have you heard from any attorneys that are going to court? The attorneys going to court representing these companies are manipulating the system.

ASSEMBLYWOMAN BUCKLEY:
The attorneys who do this are liable as debt collectors under the federal Fair Debt Collection Practices Act. The attorneys themselves could be liable for participating in these types of activities. I hope they will stop and if they do not stop, I hope they will be sued.

SENATOR SCHNEIDER:
I am on the board of a credit union and we are trying to do a check-cashing business. Our goal was to do the check cashing and then convert them to regular credit union members. We are not that good at the check-cashing business. You have to wear two different hats. If you are a banker or credit union, you cannot do a check-cashing business. It just does not fit under what banks and credit unions do. There is a big demand. I suggested to our board that this is a business we should start. For the Hispanic community, where they do not trust conventional-type banking institutions, we hired Hispanic clerks to speak with the people and we were just not very good at it. I do not know how we can change this industry. Your attempt is good. Do you have the support on these amendments from the good actors?

ASSEMBLYWOMAN BUCKLEY:
Yes, I do have their support on these amendments. I have been working with a lot of folks a long time as well as lobbyists who just started participating in this the past six days.

CHAIR TOWNSEND:
My question has to do with the court system. On three of your pages, you identified interest rates signed by the consumer and signed by the lender that were inaccurate. Does the court have any authority to say that document is inaccurate therefore this contract is void. What is a reasonable rate?

ASSEMBLYWOMAN BUCKLEY:
If the interest rate is off by that much, there is a defense to that loan under the federal Truth in Lending Act (TILA). The courts react to what is before them. If you file a complaint to collect on a loan with the TILA violations, it is up to the consumer to answer that complaint and to allege that the sum should not be enforceable because of violations of the federal TILA. The consumer does not know there is a violation of the TILA. The average consumer has no way of identifying the TILA act violations. They do not know they even exist.

CHAIR TOWNSEND:
Unless they had a private attorney, which obviously they cannot afford or they would not be in this position, or unless they were educated enough to try to find one of the organizations in the State like yours, they would really be without that defense.

ASSEMBLYWOMAN BUCKLEY:
Unless they are lucky enough to qualify for legal services and the legal-services entity has the resources to help.

CHAIR TOWNSEND:
I am not saying the bill should not be passed because of my question. You know when you go to court or get into trouble, you want as many arrows in your quiver as you can get. When you are charging 1,000 percent interest and not putting the accurate number down, that is doubly egregious. Is there any way to get into these communities that are using these services to explain to them to think through that when they see 1,000 percent, that might not be in their best interest?

ASSEMBLYWOMAN BUCKLEY:
Michele Johnson with Consumer Credit Counseling and Gail Burks with Nevada Fair Housing and Lending Service in Las Vegas run classes on financial counseling. They are trying to help people. My own opinion is that it is tough. If a person's truck breaks down, it does not matter whether it is 500 or 1,000 percent interest rates. They choose more on location. They do not shop for terms. They are desperate. They have to get to work.

SENATOR CARLTON:
If you would share the discussion that you had, I like the language provision that you have that if it is negotiated in Spanish, the contract would be in Spanish. If you would share that with me when the other people come up and talk about the Spanish documents, I can understand both sides.

ASSEMBLYWOMAN BUCKLEY:
We passed that last Session with regard to car contracts. It is a good consumer-protection measure. All the folks with whom I negotiated do it already.

GAIL BURKS (President and Chief Executive Officer, Nevada Fair Housing Center, Incorporated):
We are in support of A.B. 384. We conducted a study on high interest-rate loans in Nevada. A copy of the report (Exhibit H) has been given to the Committee. We looked at four basic areas: geographic distribution, market penetration, product base and collection practices.

The geographic distribution for these entities is centered in lower-income communities. Since 1998, the industry has grown from 16 branches to 381 branches in 2004. That is a 2,281-percent increase. There are 1.9 branches per 10,000 people in census tracts where people earn less than $25,000 per year. This is higher than five of our neighboring states: Arizona, California, Idaho, Oregon and Utah. It is also higher than Colorado, Illinois or Indiana. The stores are concentrated in census tracts where the minority population ranges from 40 to 49 percent.

In terms of market product, our research involved a direct survey of 105 locations; 39 percent fully answered our questions about their products, 22 percent responded partially and 34 percent refused to respond about the products that they offered to consumers. Only 10 percent of the respondents provided check-cashing services only. The finance charges per $100 borrowed ranged from 182.5 percent annual percentage rate (APR) upward to 1,303 percent APR. The median finance charge was 443.21 percent and all locations permitted rollovers.

Collection practices were the most interesting. The method used to examine this and get specific research involved justice courts selected at random to pull files for us. They pulled files for eight lenders; four of those lenders offered short-term high-interest loans, and the other four offered the check-cashing services. We took a look at the original loan amount, what the lender was asking for in the lawsuit and the outcome of the case of each file. We examined 78 cases. We wanted to determine the cost to the borrower. We compared the original loan amount to what was actually collected by the lender. Typical collection was five times more than the original loan amount and the highest was six times the loan amount.

These companies are in this business because banks will not get into it. Under community reinvestment, banks have attempted to do more. Since bank modernization, they have gotten bigger and do less but they are trying. The bankers would tell you the working families and people served are not high-risk clients.

The second point is that while education is important, I think like other predatory lending issues, we cannot put this all on the victim. If you have a good con person, it does not matter how educated you are.

MICHELE JOHNSON (President and Chief Executive Officer, Consumer Credit Counseling Service):
I have written testimony (Exhibit I).

CHAIR TOWNSEND:
The real-life examples and the effort you are making to help people is something that needs to be shared with young people before they leave high school.

MARK THOMSON (Director of Government Relations, Community Financial Services Association; Moneytree Incorporated):
We support much of what is in the bill today. I have conceptual agreement on many of the issues. Many of the changes to Nevada law will bring it in line with laws in many other states. The current version of Exhibit F that you have before you we have had very little time to review. We would need some time to review the new language and we may still have one or two small issues but we are committed to working with everyone to move this bill forward. Community Financial Services Association (CFSA) recognizes this product is in a process of evolution. Hearings and processes such as this are part of that evolutionary process.

I am a former regulator for the state of Washington. I spent 14 years regulating non-depository lenders at work throughout the 1990s with the legislature in the state of Washington to address many of these types of issues. I would get calls from the media throughout the 1990s about the rapid growth of this industry in our state. I could not figure out where the demand was coming from for this product. The demand had always been there and this size of loan had historically been made by consumer finance companies. These companies would take a lien on property or furniture in the house. Throughout the 1960s and 1970s, if someone needed this kind of a loan, that is where they would go. What happened through time as these companies' cost rose, it became more and more difficult for them to make those loans and still make a profit. By the end of 1970s and early 1980s when inflation had risen and interest rates had risen, they could no longer make a $300 loan under the interest-rate caps they operated under in most states and still make a profit.

These companies in large part turned to making home-equity loans, refinances and they entered the real estate market. Therefore, there was a market niche left open. It is a market niche where you are making a very small loan and where the cost of making that loan is very high relative to the amount of the

loan. Everything about this industry evolves from the economics of that equation. The facts are that you are making a small loan and you need to limit the cost associated with each loan and the fee has to be high enough to cover those cost to make it economically viable.

In most of the states where we operate, credit unions are trying to get into this business. They find it very difficult to make it economically viable. The more underwriting, the more disclosure and the more process there is in making the loan, the higher the cost. Banks and credit unions are in this product. Their product is called overdraft protection. It is a very different animal, legally. Under truth and lending, it is not an extension of credit and does not need to be disclosed as such. The product would not work if it was treated as an extension of credit under truth and lending. If you calculated an APR on an overdraft protection, it would be very similar to what a deferred-deposit lender charges. It is very costly to provide that credit relative to the size of the loan.

CHAIR TOWNSEND:
The only issue there is that you need to have a checking account before you need overdraft protection.

MR. THOMSON:
That is correct, and in order to get a deferred deposit loan you have to have a checking account. It is a very similar product, economically.

CHAIR TOWNSEND:
Are you trying to tell me that you have not seen the bill and you cannot comment on it? If so, how long will it take you to look at the bill?

MR. THOMSON:
We support most of the bill but need to look at certain provisions. We can look over the bill this weekend. In section 74 of the bill, it allows consumers to bring action against us and get statutory and punitive damages. Our main concern with statutory and punitive damages is that they do not become a magnet for class actions for technical violations of the statute that do not cause actual damages to the consumers. The more we can narrow that down to violations of licensing provisions and violations of the new section 44, limitations on the interest that can be collected on the back end, the better.

SENATOR TIFFANY:
In section 44 of the bill, it is reshaping the way you can collect the debt, the interest on the debt and the time on the debt and we do that statutorily. You made the comment that this is a very short-term loan with a high cost and a high-risk pool to whom you are loaning. Does section 44 regulate satisfactorily so you can stay in business and make a profit and still offer this service?

MR. THOMSON:
Moneytree is one of the companies that does not sue and it states in our loan agreement that we will not take civil action. It will not impact us but there are other good actors that have used that authority and I will pass your question to Jim Marchesi.

JIM MARCHESI (President/Chief Executive Officer, Nevada Financial Service Association; President/Chief Executive Officer, Check City):
As the bill is proposed, we have a conceptual agreement on what we could and could not live with going into it. Section 44, without having had time to look through it, I think is okay. We still have some very legitimate concerns about sections 42 and 74 of the bill, but we can continue through and work on it and work it out. I hope I answered your question.

SENATOR TIFFANY:
In order for me to vote on the bill, I would have to make sure the good actors can still stay in business. If that cuts out the bad guys the better it is, so that is what I wanted to hear from you. It sounds like you want sections 74 and 75, the penalty part, to be better defined.

MR. MARCHESI:
Yes, and some additional work on section 42 of the bill.

SENATOR TIFFANY:
What is section 42 of the bill?

MR. MARCHESI:
Section 42 of A.B. 384 is a repayment plan. When a customer now goes into default, we will work with that customer for a long time to try to get them to make the payment. For 30 to 60 days, we find operators will try to encourage the customer to repay their note. At that point you make a decision. Some

companies will continue to try to collect and others will use the court system to recoup the money.

The examples you saw today are from the bad actors. When you sit back and look at the industry, there are a few companies that have a very large portion of the market who operate 100 percent within the statute. You also have the small segment of the industry that is shared among a bunch of other players and in that bunch inevitably there will be somebody who does not live by the existing statute or is going to find the gray areas and work down the gray areas. Those practices have to stop.

SENATOR TIFFANY:
Would you like to see further movement on section 42 of the bill?

MR. MARCHESI:
Absolutely

SENATOR LEE:
I would like to ask about the underwriting process for mainstream lenders.

MR. MARCHESI:
Underwriting in the industry is very broad and different companies conduct underwriting in vastly different ways. The high underwriting company can do things from pulling credit reports to pulling tele-track. This gives you a read on the customer's repayment behavior. Those who use this service will take the information they get and use it in the decision about whether they should or should not loan.

The other end of the spectrum is that you look to see if a person has a bank account and a job and then do your underwriting through confirming other items that are on their application. The breadth of underwriting can really go quite some way. In the free market system, each operator makes that decision on their own. If you say the limited underwriter is doing the limited underwriting so he can use the back end as an income source, A.B. 384 takes care of that.

You brought up the consumer with 16 loans. The consumer has responsibility in determining what credit they use and where they use it. Our task force became an education to both sides. We helped the people who were on the task force and taught them about the business; likewise, they taught us a lot about their

concerns. Overall, the matrix of people who use the product use it responsibly. I understand the people who Assemblywoman Buckley sees in her real-world job. We want to encourage consumer responsibility. A lot of this bill is to try to get these best practices in the statute.

SENATOR LEE:
I would agree that your demographics are typically a guy in his mid-30s with a wife and child.

MR. MARCHESI:
Our customers are middle income, well educated and homeowners who are hard-working Americans. It is not the other extreme who get painted in the media a lot, the poorest of the poor, who are using the product. Looking at it from a business standpoint, would it make sense for us to loan money to people who could not legitimately have a chance to pay us back? The answer is no.

NATASHA FOOMAN (Advance America):
I want to state for the record that we really appreciate all the effort and time Assemblywoman Buckley and her staff have put into this bill in bringing the industry and consumer groups together. My colleagues and I believe in responsible lending and that is why we are here at the table today in support of this bill conceptually.

SENATOR TIFFANY:
Are you aware of anybody in the industry who provides training to high school or college students?

MR. THOMSON:
Community Financial Services Association (CFSA) has a financial literacy program called CFSA-access that is made available to whomever would like it.

SENATOR TIFFANY:
Do you reach out to do some education?

MR. THOMSON:
Yes

SENATOR TIFFANY:
I believe Wells Fargo Bank offers education, too. I know we had addressed this, Mr. Chair, because you were concerned whether there was curriculum available.

CHAIR TOWNSEND:
Maybe we need a coordination of those efforts or a real focused opportunity we can work on over the next few years to make this education available. I used to teach a Junior Achievement class in junior high school. It was one of the most enjoyable things I did. I would leave the class after teaching so excited because the kids just soak up this information. I was thinking if the students are so excited about the class, why is Junior Achievement teaching these classes instead of the school system.

MIKE REED (Vice President, General Counsel, Loan Max):
We did not know about A.B. 384 until a few days before it was scheduled for a floor vote in the Assembly. We are appreciative of the Assembly majority leader's willingness to work with us to address some of our concerns. Our company strongly supports reasonable regulation. Some concepts related to title loans were worked out between some members of the title-loan industry and the Assembly majority leader's staff. I have not had an opportunity to review that language yet but my company fully supports the concepts as they were presented to me. We look forward to working with this Committee and the Assembly majority leader to finalize A.B. 384, and we will be back on Monday.

ROBERT REICH (Director, Consumer Lending Alliance National Organization of Affiliated Title Lenders):
Our association and member companies deeply respect, want and need regulated environments. This bill goes a long way in providing a structure that really promotes a set of best practices which most title lenders in the State follow. All title lenders in the State would have a good road map and not have some of the fringe, fly-by-night operators. We agree conceptually with A.B. 384 as well.

Unlike payday loans, there can be no concept of multiple loans to a title-loan customer. There can be only one lien on a vehicle so someone cannot take that vehicle around to multiple lenders and have 18 to 20 different loans in those extreme cases.

We have just seen the language when it was handed out to Committee. We need some time to review it over the weekend. The last set of discussion happened yesterday. We just want to make sure that there are no unintended consequences in the language, and we will be studying the bill over the weekend to ensure that such is not the case.

CHAIR TOWNSEND:
Assemblywoman Smith asked me to put written testimony from Robbin Novello (Exhibit J) in the record. I will read from Exhibit J: "After some time, I received notice I was being taken to court, but even though the loan was obtained at a Sun Valley Loan store, I was taken to court in Las Vegas. Naturally, I could not take time off of work to go in the middle of the week, so of course, was 'defaulted'." Assemblywoman Buckley, is there a section in the bill that I possibly missed that deals with this type of situation?

ASSEMBLYWOMAN BUCKLEY:
I do not think that is in the bill. It would be in the prohibitive-practices section if it was and we can certainly add that.

CHAIR TOWNSEND:
I am not trying to put an amendment on this bill but I want it to be considered for Assemblywoman Smith's constituent.

MR. UFFELMAN:
I want to answer a couple of questions that you had asked unrelated to the bill. Senate Bill (S.B.) 459, which the Senate passed on April 25, 2005, and is now over in the Assembly Committee on Education, specifically deals with financial education in the school system in Nevada. The Nevada Bankers Association provides free of charge to all Nevada teachers who request it a program called "Banking Is." As mentioned, Wells Fargo Bank has a program and several organizations have free curriculum on financial responsibility. The month of April was financial literacy month and April 26 was teach children to save day. There is a wide variety of programs available to educators to teach the young about finance.

SENATE BILL 459 (1st Reprint): Requires instruction in financial responsibility in public high schools. (BDR 34-1093)

The Nevada Bankers Association appreciates Assemblywoman Buckley's actions on this bill. We are 99.99 percent ready with the bill. We have one little addition that we just presented to her in the last couple of minutes because we saw the change this morning. I have sent to Kevin Powers and Scott Young a URL for the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 1405A issued on March 1, 2005. It gives you all the details if a bank is going to do payday lending with restrictions and requirements related to it. This also applies to the credit unions. It is a tough business; it is sub-prime lending. It is an endless treadmill from the bank's side. Some of the banks that have direct deposit with customers do allow advances against the direct deposit because they know the money is coming.

JOSEPH W. BROWN (Security Finance Company):
We are regulated by chapter 675 of the NRS as an installment-loan lender. We support the bill as amended. It needs a little bit of fine-tuning and I will allow Mr. Holt to explain that.

PHILLIP HOLT (Vice President of Government Relations, Security Financial of Spartanburg, South Carolina):
Our business practice is very similar to those that have been outlined. However, as an installment lender, we do not do payday loans so we do not take post-dated checks. Some of the issues we have regarding the simple payback process and the way it is being lumped into one sum as some of the examples were laid out on the overhead today. The information (Exhibit K) I will be handing out to you today shows we are members of the American Financial Services Association which is one of the largest trade groups for lenders in the State. We are large supporters of financial literacy but the difficulty is you can only do so much. The school districts have to be willing to find time in their curriculum to do these free educational programs for the junior high and high school levels. As Mr. Brown indicated, we are very close to reaching a complete agreement with the bill and look forward to working with you.

SANDRA J. PERRY (Cash Express/Money Express Catalog Sales, Incorporated):
I am not here today to address some of the concerns that the major players within the industry have already adequately addressed. I just want to address concerns that I have as a small-business owner. I have concerns (Exhibit L) on the bill. Section 8; section 23; section 42, subsection 2, paragraph (a) and section 42, subsection 3, paragraph (a) of A.B. 384 concern default. I know the Legislators are trying to help the consumer and make it easier for all of us to

operate within the framework of the law. I do see a problem with this. The problem is addressed in Exhibit L. I have a question, how are we supposed to operate within this framework and still make a profit? We now work with our customers on an individual basis. We try to do whatever they want to do and make it work for both parties.

In the example I have given in Exhibit L, under the proposed bill as written, we would be forced to deposit the borrower's check on Saturday. This would be in the hopes of avoiding having our money out for a term of over 18 weeks. The 18 weeks would include 4 months and 15 days from date of notice of default. There is a strong possibility that by depositing that person's check on Saturday as A.B. 384 proposes, our check or others that this person has written will be returned because of non-sufficient funds (NSF). In the event our check is returned, an additional $25 will be added to their fees. At this point the borrower may be faced with numerous returned bank charges that could possibly add up to $175 or more for a small $100 loan. On a $100 loan, it would cost them 4 cents a day for 8 weeks if we charged interest. I ask you as a business owner trying to make a profit, what would you do?

I do have a suggestion for a solution. I think the period of default should not be on the day that it is due. There should be a period of at least 15 days in which to allow us to confer with our customer to possibly make an extension or work something out. We should be allowed to charge interest during this period of time. This is my request in regard to that portion of the bill.

CHAIR TOWNSEND:
Are you looking at the printed bill or do you have a copy of the changes to the bill that we faxed or e-mailed to you?

MS. PERRY:
I pulled the amended bill off the Internet.

CHAIR TOWNSEND:
There is a mock-up amended version. When I look at your section 8, it may not be the same one. What is the next section you are on?

MS. PERRY:
The next section I would like to address is section 39. My question and solution are discussed in Exhibit L.

CHAIR TOWNSEND:
You were making reference to section 39 of the bill?

MS. PERRY:
Yes.

CHAIR TOWNSEND:
I have written testimony (Exhibit M) from D.C. Younger who could not be present today.

I will close the hearing on A.B. 384 and I will open the hearing on A.B. 340.

ASSEMBLY BILL 340 (1st Reprint): Revises provisions relating to certain short-term, high interest loans. (BDR 52-126)

ASSEMBLYWOMAN CHRIS GIUNCHIGLIANI (Assembly District No. 9):
My student intern, Chris Dorman, has been working on this legislation and has worked through the changes as well as the original presentation.

CHRIS DORMAN (Intern to Assemblywoman Giunchigliani):
The bill has been reduced significantly from its original form. It addresses only two issues regarding the marginal-lending industry. It would require counties, cities and the like to set up zoning laws regarding payday-loan places and title-loan businesses. I have a proposed amendment to A.B. 340 (Exhibit N). These restrictions would not apply ideally to counties with populations under 100,000 people. If local government has already adopted regulations regarding the zoning for payday-loan businesses or title-loan businesses, it would not apply either. The city of Las Vegas, North Las Vegas and Clark County have already adopted zoning laws specifically regarding the payday-loan industry.

The second issue of the act deals with refund anticipation loans (RALs). I have handed out some articles (Exhibit O) regarding this issue. This is just a first step in what the State should do to regulate this industry. The RALs are tax preparation services like H&R Block that are willing to provide an advance to a consumer on what they believe their tax refund will be based on the work they

have done preparing their taxes. Unfortunately, most consumers actually do not understand that these are loans and if for some reason the refund is not as large as the tax-preparation service believed it would be, the consumer is required to make up the difference. Interest rates on these loans can be as high as 700 percent or even higher.

The last issue is that all payday-loan and title-loan businesses are required to prominently post at each location they do business a form which would list the number of the Commissioner. That way any complaints may be addressed to the State regarding their business' practices.

CHAIR TOWNSEND:
Is that the county commissioner?

MR. DORMAN:
It is the office of the Commissioner, Division of Financial Institutions.

CHAIR TOWNSEND:
This Committee generally does not take jurisdiction over chapter 278 of the NRS. That is done by Senator Hardy's committee, he chairs that. You made reference to three of the entities in southern Nevada that have already chosen to do that.

ASSEMBLYWOMAN GIUNCHIGLIANI:
Clark County and the city of Las Vegas have chosen to do that, but North Las Vegas is in the process of doing so. I have a copy of the ordinances if you need them.

MR. DORMAN:
I would like to add one point regarding the RALs. Currently, H&R Block is involved in several class-action lawsuits across the United States regarding their practices in advertising these RALs. It is regarded as predatory by many. I have not checked on the status of these lawsuits in the past couple of weeks, but things do not look well for them.

CHAIR TOWNSEND:
How many are there, approximately?

ASSEMBLYWOMAN GIUNCHIGLIANI:
I recall seven or eight.

CHAIR TOWNSEND:
In seven or eight states, there are class-action suits.

SENATOR HECK:
The bill ends at section 7 and the amendment starts at section 9; am I missing a page?

ASSEMBLYWOMAN GIUNCHIGLIANI:
No, I was working too fast last evening. I talked with some of the individuals who wanted me to clarify that the zoning part would not affect the rural counties and I picked up the original reprint and not the second. Section 7 is the issue with the RALs. As Mr. Dorman stated, this is a very simple step. It is not as far as we would have liked to have gone but until people are educated about the issue, at least the notice issue would be worthwhile for our consumers to deal with.

CHAIR TOWNSEND:
Section 7 of the bill deals with what we commonly think of as a brick and mortar kind of approach. I go to a tax preparer, they call me and say my return is finished and then when I get there they say we think you are going to have a refund of $1,000, would you like us to advance that? Is this done online?

MR. DORMAN:
The RALs are not done online. The payday and title loans are done promiscuously online.

CHAIR TOWNSEND:
They can e-transfer your preparation. Then, they e-transfer it back and offer you a loan. One of the things you want to make sure of is that you know the intent of the sponsor. If it is done electronically, they do all the conspicuous stuff.

ASSEMBLYWOMAN GIUNCHIGLIANI:
I think in one of our articles in Exhibit O, currently, it is starting to trend into the Internet area, but it had not been that predominant. It would make sense for the Commissioner, through regulation, to establish some kind of notice for those who deal on the Internet. I do not know what kind of control we have over that.

CHAIR TOWNSEND:
I think section 7, subsection 2 would give the Commissioner the flexibility to do that. You would want to make sure if the bill is processed that a letter goes from you as the sponsor saying this is what was discussed in Committee and we would like to make sure you include the e-commerce version of this. You do not want to have someone walk in the door and the guy does it online.

ASSEMBLYWOMAN GIUNCHIGLIANI:
In anticipation of the changes in technology, it is not a bad idea.

SENATOR HECK:
We are restricting a license at a kiosk, but the kiosk is not defined in chapter 604 of the NRS.

ASSEMBLYWOMAN GIUNCHIGLIANI:
Gaming was going to take a position to the State Gaming Control Board to prohibit any kind of kiosk trades that way. They made a decision to wait. We got a heads-up on the RALs informing us that is the new direction in which they were moving and were using kiosks in order to give people their loans. We need to double-check from what section we pulled that. We were anticipating the new trend that was going to be coming from what we were reading about the RALs. That is what the gaming commission is planning on taking a look at as well.

CHAIR TOWNSEND:
We do not use the term kiosk legally, do we?

ASSEMBLYWOMAN GIUNCHIGLIANI:
There does not appear to be a definition so we need to either make one or come up with a better terminology.

KEVIN POWERS (Committee Counsel):
> Mr. Chairman, Senator Heck is correct, there is no definition of kiosk in chapter 604 of NRS. However, in the absence of the statutory definition, all terms are given their natural and common understanding and meaning under the dictionary definition. In addition, as the administrator of the chapter, the Commissioner of Financial Institutions would have the ability to interpret the

> provisions of the chapter within that common, standard dictionary definition.

SENATOR HECK:
If we are going to use the common, customary definition, what was your intent? Is this like an automated teller machine (ATM) type device?

ASSEMBLYWOMAN GIUNCHIGLIANI:
Yes.

CHAIR TOWNSEND:
When I first read this, I thought about a kiosk being a small structure in which a salesperson stands similar to the ones they put in center of malls down the walkways.

ASSEMBLYWOMAN GIUNCHIGLIANI:
There may be a different term that we would prefer to use.

MR. POWERS:

> Mr. Chairman, I might add as well that ... A.B. 340 prohibits the Commissioner from issuing a license for a person to do business at a kiosk, whereas A.B. 384 does not have that prohibition. In fact, A.B. 384 permits that activity as long as it falls under that new regulatory chapter. So, there is a conflict between the two bills.

MS. PERRY:
I was a little unsure of what the meaning of kiosk was referring to within our industry. In an effort to try to protect my branch stores and the income I receive from those stores, I might mention my branch in Henderson is inside a Smith's store and it is with a PostNet Express. All of our business is handled through our main branch where we do all the contracts and approvals and do all the contacts with the customer so the store is utilized as simply a means to give out money and take in money. Everything else is provided from the main store by either fax or e-mail. My written concerns are stated in my handout (Exhibit P).

CHAIR TOWNSEND:
What does your store look like?

MS. PERRY:
The store is as you would see PostNet Express within a Smith's grocery. There is a counter and it is a space that is utilized for two different services. That would be express mailing and also the service of my business.

CHAIR TOWNSEND:
We would have to ask the sponsor of the bill if that is the type of thing she was including.

ASSEMBLYWOMAN GIUNCHIGLIANI:
No, it would not be.

SENATOR HARDY:
We could probably statutorily define that because I know some of the small stores like Sprint and AT&T in the malls, if you look them up in the Internet, are called kiosk stores. If we contemplate it being something other than that, we ought to define it.

CHAIR TOWNSEND:
I believe Assemblywoman Giunchigliani is trying to establish someone with substance, someone who is going to be there tomorrow, a month from now or a year from now. Longevity is what you are looking for so if a customer has a problem they have an appropriate place to go.

I have written testimony from people who could not attend today's meeting. The written testimony is from Ronald L. Barrett (Exhibit Q), Julie Cairns (Exhibit R) and Ken Indra (Exhibit S). There are also concerns from D.C. Younger on this bill in Exhibit M.

MR. MARCHESI:
The bill has three primary sections. The first is the 800 number; the industry is in support of the 800 number. The second issue is the requirement for the municipalities to form some restrictions or guidelines on how the industry ought to behave. We have worked very closely with Assemblywoman Giunchigliani on the bill we believe that should be left in the hands of the municipalities and not be dictated by the state government. Our view is that it would be an unnecessary provision at this point and allow them to do that. The third issue I want to talk about is the RALs. There are a tremendous number of federal regulations that are required anytime that you do one of those loans. In the

issue of posting the rates, there are a vast number of different ways that those products are done and I do not think there would be any objections.

I will not go into a defense of H&R Block, because I do not know anything about their lawsuits. In general, there are already a lot of federal regulations in the area of RALs.

CHAIR TOWNSEND:
I never thought about RALs in terms of what we talked about in the previous bill.

MR. MARCHESI:
It is a completely different product. My company does tax preparation; we do not do RALs. One of the things done at the end is to offer the customer an option. Do you want us to submit your return by mail, electronically, or do you want to take an advance on the return. It is not a product that we do because it is a federal product. We are just an agent of a company, Bank One, that does RALs.

CHAIR TOWNSEND:
Are you going to start offering credit cards, too?

MR. MARCHESI:
Yes, I think with the brick and mortar stores there are a lot of financial services that really make sense for those of us who have brick and mortar stores. An answer to your Internet question, yes, there are people who provide RALs via the Internet. I know they are offered because at the end of the Turbo Tax program there are options that you can select.

MR. UFFELMAN:
A kiosk is defined as a small area set off by walls for a special use.

You have recognized the need to integrate A.B. 340 with A.B. 384. We would like to urge at the minimum that the Division of Financial Institutions, Department of Business and Industry, look for guidance in the words of A.B. 384 when it comes to the definition of payday loans.

MR. POWERS:

> Mr. Chairman, to follow up on that, there are several sections in A.B. 340 that would need to be altered or incorporated in the A.B. 384 if we are going to process this bill. The reason being is that A.B. 384 eliminates chapter 604 of NRS and then payday loans are all put in the new chapter in A.B. 384; so are the provisions in 675 dealing with payday loans in A.B. 340.

CHAIR TOWNSEND:

If the Committee is interested in any provisions of A.B. 340, maybe, they should go appropriately into the other one just because it has been restructured.

MR. POWERS:

> Yes, Mr. Chairman, in my review of A.B. 340 is that sections 3 and 4 of the bill dealing with zoning could stand on their own and be unconnected completely with A.B. 384. They refer to check-cashing services or deferred-deposit services pursuant to chapter 604 of NRS but that sort of conflict can be resolved at the end of the Session. Then, section 7 dealing with the tax-refund anticipation loans, that could stand on its own in chapter 675 of NRS.

MR. MARCHESI:

One other thing for the Committee to consider is S.B. 431, which is Commissioner Tidd's bill, which also will require some integration into these other two bills.

SENATE BILL 431 (1st Reprint): Makes various changes to provisions governing financial institutions and related business entities. (BDR 55-361)

MR. POWERS:

> That is correct, Mr. Chairman. That bill also contains provisions dealing with chapters 604 and 675 of NRS. That is in the Assembly side so they would have to consider that either during their deliberations in commerce and labor or when the bills are enrolled resolving them at the end of Session.

CHAIRMAN TOWNSEND:
I will leave that up to you in terms of your workload, if you just want to leave it for reconciliation or at the end, rather than trying to fix them all at once.

MR. POWERS:
"That may be one approach. I think with A.B. 340 and A.B. 384 that can be done in this Committee as we send them out."

CHAIR TOWNSEND:
I will close the hearing on A.B. 340 and open the hearing on A.B. 437.

ASSEMBLY BILL 437 (1st Reprint): Revises provisions governing manufactured home parks. (BDR 10-1027)

JOSEPH GUILD (Manufactured Home Community Owners):
Assemblywoman Buckley was going to join me here and there is an amendment in my handwriting (Exhibit T). Assemblywoman Buckley's executive assistant is typing a version of this as we speak. For Mr. Young's purposes and for the permanent record of the Committee, you will have a typed version of the amendment (Exhibit U).

Assembly Bill 437 is a product of a collaboration between various groups of people interested in mobile home parks, tenants and landlords. Years ago, the then majority leader, Assemblyman Perkins, asked the groups to get together during the interim if there were necessary revisions to chapter 118B of the NRS, which is the mobile-home-landlord-tenant law in the State, bringing to the Legislature the consensus bill so we would not have to battle the bills, which was the occurrence for many Sessions prior to that. You have the collaborative effort before you. This is really a clean-up bill; there are no big changes here.

I will start with section 1 of the bill. If a landlord bills individually for utility charges, they must post or provide each tenant who is affected a copy of the utility bill for the park. The tenants then know what the park is paying in addition to what they are paying.

Section 3 of the bill states that when, as is required after 25 percent of the persons in a mobile home park or manufactured-home community ask for a meeting with the owner of the park, that somebody with some authority to make decisions and with an understanding of the operations of that park, meet

with that group rather than just a designated person. Here is where we have the first amendment because this was amended in the Assembly but section 3, subsection 3, paragraph (a) did not have that authorized-person language or that person-with-the-knowledge language. In the amendment, you have a clarification that in the case of a sole proprietorship, the owner, manager or duly authorized agent who has working knowledge of the park and the authority to make decisions, has to be the person to meet with the tenants.

In section 4, page 3, line 43 of the bill, there is a small change. There has to be a written, voluntary assumption of the duty by the tenant to trim trees.

Section 5, page 5, lines 41 and 43 of A.B. 437 change language a little bit to clarify exactly what is meant by the specifications for the erection of a fence in a mobile home park.

CHAIR TOWNSEND:
Am I missing something? I have one piece of paper that shows section 3 and section 8 of the bill and you keep referencing other sections.

MR. GUILD:
I am explaining the bill.

CHAIR TOWNSEND:
You are walking us through the bill. I am sorry, I thought you were walking us through the amendments.

MR. GUILD:
Section 6, page 7 of A.B. 437 relates to the application for tenancy in a mobile home park and the requirement that information to the perspective buyer be given about their tenancy, approval or not, within ten days.

Section 7, at the bottom of page 7, is similar to a section in A.B. 343. This is in response to that situation that Assemblywoman Giunchigliani was talking about, the Sky Vue Mobile Home Park. It simply states in the case of the closure of a mobile-home park, whether there is a valid state agency or governmental agency order because of health and safety violations, the park is required to pay for the movement of tenants' mobile homes or their relocation expenses. This is similar to what is in A.B. 343.

ASSEMBLY BILL 343 (1st Reprint): Revises provisions relating to manufactured housing. (BDR 10-769)

Section 7 of the bill on page 8, a prospective tenant must be served a copy of a notice if a park is to be closed or a change of use will occur within 180 days of that closure. A prospective tenant is not getting into a situation where they are moving into a park that is going to be closed or shut down.

Section 8, subsection 4 of the bill has the proposed amendment before you in Exhibit T. The changes in lines 32 and 33 are that a landlord shall not increase the rent of any tenant for 180 days before applying for a change in land-use, permit or variance affecting the mobile home park, or at any time thereafter. An example would be on the 181st day, you raise the rent and sometime thereafter, as long as you did not do it on the 180th day, you could raise the rent again. There was an ambiguity there that we feel we can change with this amendment. You would delete paragraph (b) and add the three exception paragraphs in Exhibit T.

One other change to the law is in section 10. This is not a change to NRS 118B but to NRS 489.281 which states regulations adopted by the Manufactured Housing Division concerning a limited dealer's license must not require more than two hours of continuing education per year. The head of that Division, Renee Diamond, and all of the parties agreed that two hours of continuing education were adequate for the purposes of the original legislative intent.

Assemblywoman Buckley's name is on top of those amendments because she concurs with everything I have said.

BOB VARALLO (President, Nevada Association of Manufactured Home Owners, Incorporated):
We support the bill as written. I wanted a clarification on the change to section 8, subsection 4. There we refer to change as existing that the landlord may not do a rent increase 180 days prior to the notice or anytime thereafter. This should also apply to NRS 118B.177. Is that your understanding as well, Mr. Guild?

MR. GUILD:
There is no requirement in NRS 118B.177 for, or no prohibition against, a landlord increasing the rent if in the case of NRS 118B.177 he is closing a manufactured-home park. In NRS 118B.183, it is a conversion of an existing park to another use. I do not see any requirement in NRS 118B.177 for a prohibition for not increasing the rent in the case which is described in NRS 118B.177, but it is in NRS 118B.183. It was never a part of the discussion as I understand it that the amendment was only to be to NRS 118B.183.

MR. POWERS:

> ... In section 7 [of A.B. 437], which amends NRS 118B.177 as Mr. Guild mentioned, ... if the landlord closes a manufactured-home park, there is no need to protect the residents of the manufactured-home park for rate increase because the park will be closed. I believe in section 8 which amends NRS 118B.183, the original intent of 118B.183 is to prohibit the landlord from increasing the rent to price out those residents from the mobile-home park before the local government approves the land-use change. The idea is that if the landlord is going to try and get a land-use change, he is going to try and get those residents out of the park before then by increasing the rent and this prohibits that increase. The change proposed by Mr. Guild just clarifies that the period of the rent prohibition against rent increase continues until there is a decision on that land-use map.

MR. GUILD:
Mr. Powers is right. I remember the discussions when many years ago we were talking about the intent of NRS 118B.183 and that is correct. I concur with what Mr. Powers just said.

CHAIR TOWNSEND:
Does that answer your question, sir?

MR. VARALLO:
Yes, it does at this time. I just felt it had equal application to NRS 118B.177, but I think this has clarified it.

MR. POWERS:

> Mr. Chairman, while we have Mr. Guild before us, as he mentioned, A.B. 343 contains some similar language with regard to some of these sections. I guess the question for the Committee is which language do they prefer? Then, one bill can go forward with that language and the other bill does not need to amend those sections. Either amends them the same way but it does not need to amend them with different language.

MR. GUILD:

I would defer to the Committee's wisdom on that. Whatever you want to do is okay with the parties who are present.

CHAIR TOWNSEND:

What was that section again?

MR. GUILD:

Mr. Powers is referring in the bill before us, A.B. 437, to section 7 which discusses the situation where a park being closed because of health and safety reasons and then the landlord therefore is subjected to the same requirements for compensation of the tenants or moving the tenants at the landlord's expense. In A.B. 343, section 9.7 discusses the same situation. Mr. Powers' section 9.7 in A.B. 343 amends NRS 118B.180 and section 7 of A.B. 437 amends NRS 118B.177.

MR. POWERS:

> Section 9.5 of A.B. 343 also amends 118B.177. Not to waste the Committee's time. Mr. Chairman, I think the easiest thing that is going to happen here is the two bills dealing with manufactured-home parks A.B. 343 and A.B. 427 which were amended by this Committee on last Friday, April 29. I need to make some technical corrections in those bills and I have been discussing that with the Manufactured-Housing Division administrator, Renee Diamond. I believe that it would be best if I bring all three bills back before the Committee in mock-up form so that we can see some of those technical changes and the Committee can see how they are going to be resolved. I think all three bills need to be brought back before the Committee. I will try

to do that as soon as possible if the Committee chooses to take action on this bill.

ASSEMBLY BILL 427 (1st Reprint): Makes various changes relating to manufactured homes, mobile homes and commercial coaches. (BDR 43 191)

MR. GUILD:
I would be happy to sit down with Mr. Powers and go over those bills. I am aware of a couple of technical problems, too.

MR. VARALLO:
I wanted to get a clarification on the change on page 3 of A.B. 437 when the residents desire to meet with the landlord. While going through that entire process, who would then represent the landlord at this meeting with the residents? Are we still including the manager and assistant manager? Those were some words that I heard and I would like to get a clarification on that, because we all agreed through our deliberation and consensus committee that we would not want them included in the meeting. It would have to be someone beyond the manager or assistant manager, as much as the residents deal with him on a daily basis. This would be only a special session that they would have with the owner for specific purposes. May I get a clarification on that?

MR. GUILD:
I will explain my understanding of the way this proposed wording would take into account Mr. Varallo's concerns. I understand the way I have written this is subject to Mr. Powers changing it so it comports with the statutory scheme. Since we are talking about the landlord meeting with a group of tenants in compliance with the law in the case of a sole proprietorship, it shall be the owner, the manager, the assistant manager or a duly authorized agent or representative. Then, the clause modifies everybody else who would potentially be meeting with the tenants, someone who has working knowledge of the park operations and who has the authority to make decisions. It is somebody who can make a decision and who knows what the park is doing.

MR. POWERS:
Mr. Chairman, to address the concerns of the gentleman down in Las Vegas with regard to the sole proprietorship in this list in 3(a) as the bill is existing before the Committee right now without the

amendment. It lists the owner, the manager or the assistant manager. I believe their concern is that the special meeting is intended to actually meet with someone other than the manager or assistant manager who they meet on a daily basis. We can address those concerns and Mr. Guild in 3(a) by having it the owner or a duly authorized agent or representative of the owner who has working knowledge of the operations of the park and the authority to make decisions. It would be the owner or that duly authorized representative and not the manager or assistant manager. That should address the gentleman's concerns in Las Vegas.

MR. VARALLO:
It does, thank you, I appreciate it.

CHAIR TOWNSEND:
What is your pleasure Committee?

SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 437.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
I will open the hearing on A.B. 501.

ASSEMBLY BILL 501 (1st Reprint): Revises certain provisions governing contractors. (BDR 54-636)

The State Contractors' Board brought back an amendment (Exhibit V).

SENATOR LEE MOVED TO AMEND AND DO PASS A.B. 501.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:53 a.m.

RESPECTFULLY SUBMITTED:

_____
Donna Winter,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____