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

Seventy-Fourth Session
March 28, 2007

The Committee on Commerce and Labor was called to order by Chair John Oceguera at 1:10 p.m., on Wednesday, March 28, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Oceguera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen Marie Koivisto, Assembly District No. 14
Assemblyman Ruben J. Kihuen, Assembly District No. 11
Assemblywoman Bonnie Parnell, Assembly District No. 40

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Judith Coolbaugh, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Jay Adams, Board Certified Dermatologist, Private Practice, Carson City, Nevada
Valerie Guild, President, Charlie Guild Melanoma Foundation
Stacey Escalante, Private Citizen, Las Vegas, Nevada
Vincent Jimno, Executive Director, State Board of Cosmetology
Jeanette K. Belz, representing the Nevada State Board of Cosmetology
Michael Brown, representing the Melanoma Education Foundation
Morgan Baumgartner, General Counsel, R & R Partners, representing the Indoor Tanning Association
Paul Reyes, Chief Counsel for Senator John J. Carona, Dallas County, Texas, Senatorial District No. 16
Patrick G. Foley, Chief Deputy Treasurer, Office of the Treasurer
Lea Lipscomb, representing the Retail Association of Nevada
George Ross, representing the Nevada Restaurant Association
Gail Burks, representing the Nevada Fair Housing Center
Michele Johnson, representing the Consumer Credit Counseling Services
Fidel Salcedo, Senior Judge, Reno Justice Court
Captain Scott Ryder, Commanding Officer, Naval Air Station (NAS) Fallon
Kathleen Delaney, Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Barry Gold, Director of Government Relations, representing the American Association of Retired People (AARP) Nevada
Dennis Bassford, President, Money Tree
Mark Thomson, Director of Government Relations, Money Tree
Luke McClanahan, Vice President, Brundage Management Company, Inc., representing the Sun Loan Company
Bill Marion, American Associates, representing Pawn Management
Craig McCall, Owner, Pawn Management

Robert A. Ostrovsky, representing the Nevada Lenders Association
Mark Mowatt, President, Keystone Financial Group, representing the Nevada Lenders Association
Scott Scherer, representing Dollar Loan Center
K. Neena Laxalt, Government Relations Consultant, representing the Pioneer Loan Center
Bill Drobkin, Owner, Pioneer Loan Center
Terry K. Graves, Graves Communications, representing Koster Finance
Chris Dornan, Private Citizen, Reno, Nevada
Farnaz Khankhanian, O.D., Private Citizen, Carson City, Nevada
Robert Crowell, Attorney at Law, representing the Nevada State Board of Optometry

Vice Chair Conklin:
[Roll called.] We are opening the hearing on Assembly Bill 238.

Assembly Bill 238: Provides for the regulation of tanning establishments by the State Board of Cosmetology. (BDR 54-969)

Assemblywoman Ellen Marie Koivisto, Assembly District No. 14:
This bill provides for the regulation of tanning establishments. The regulatory board would be the State Board of Cosmetology. Currently, tanning establishments are not regulated. To open a tanning business, you just have to get a business license and buy the necessary equipment. I have submitted a document from a number of people interested in this bill (Exhibit C), and a statement of discussion points on behalf of Kevin Kiene, M.D., (Exhibit D). We have people here today to testify in support of A.B. 238.

Jay Adams, M.D., Board Certified Dermatologist, Private Practice, Carson City, Nevada:
My office specializes in the treatment of skin cancer and melanoma. My statements are in accordance with the World Health Organization fact sheet on sunbeds, tanning, and ultraviolet (UV) exposure (Exhibit E). I have also submitted a position paper from the American Academy of Dermatology Association (AADA), which represents the majority of the nation's dermatologists who treat skin cancers (Exhibit F).

I would like to make three major points in favor of the bill to regulate the tanning industry. First, there is a scientific consensus that there is no such thing as a healthful or safe tan. Ultraviolet radiation from natural and from artificial sources is a major contributing factor to the virtual epidemic of melanoma and skin cancer that we are currently experiencing in this country. All UV radiation damages the Deoxyribonucleic Acid (DNA) structure of the skin

and contributes to premature aging of the skin. Nationwide, doctors see about 1 million cases of skin cancer yearly, and about 50,000 of those cases are melanoma. There are approximately 10,000 deaths yearly in this country from skin cancer and melanoma. We should not allow tanning facilities to advocate themselves as promoters of a safe and healthy tan. There are simpler ways to obtain adequate doses of Vitamin D other than from exposing people to UV radiation, such as nutritional supplements and very limited natural sunlight exposure.

Second, public policy generally allows informed adults to engage in dangerous and unhealthy behaviors, such as alcohol consumption and tobacco usage. Public policy usually prohibits false claims about health and safety, and requires companies to give users adequate warnings about the dangers of engaging in these activities. It also suggests appropriate safeguards, which would include such things as written and informed consent, warnings posters and labels, eye protection, limits on dosage, and a record of exposure.

Third, public policy generally protects minors from exposure to known carcinogens. Ultraviolet exposure is rated as a carcinogen by the World Health Organization, the Department of Health and Human Services, and the Food and Drug Administration. Exposure to carcinogens may be particularly deleterious to minors who are still developing. Even parental permission is usually considered inadequate to allow inadvertent exposure and risks for minors. This bill would protect people under the age of 14 entirely, but it would still allow young people under the age of 18, with written parental permission, to engage in tanning establishment activities. At least 26 states now regulate the tanning industry. It is estimated there are about 30 million visits to tanning parlors yearly. Many of these visits are made by teenage girls who are often told that this is a safe and healthful way to get a tan. In truth, tanning parlor exposure to UV radiation increases the risk of skin cancer, including life threatening melanoma. It also contributes to the premature aging of the skin, the loss of skin elasticity, and increases the risk of freckling, bruising and skin thinning. The tanning industry needs some degree of regulation, education of participants, truth-in-advertising policies, and some degree of public protection.

You are going to hear conflicting and confusing testimony. I would encourage this Committee to consult the position papers from the major medical and health organizations. I do not believe you will find support for the tanning industry from those sources. I would suggest that they are a better source of scientific and rational opinion rather than paid lobbyists or industry representatives. Legislation should be based on science and reason for the protection of the public.

Vice Chair Conklin:
Are there any questions?

Valerie Guild, President, Charlie Guild Melanoma Foundation:
I would like to thank Dr. Adams for his compelling testimony. The indoor tanning industry is a major industry. I see regulation of the industry as a consumer protection issue. In Nevada, we regulate cosmetologists, manicurists, estheticians, and hair stylists. People assume when they have an X-ray taken, the facility doing the procedure has met rigorous standards. The amount of UV radiation that is emitted by tanning bulbs is 15 times more powerful than natural sunlight. It is necessary that we assure the public that tanning operators are competent and knowledgeable, and that safety precautions at tanning facilities are in compliance. We need inspections to make sure that all regulations are being implemented. The restriction on minors speaks for itself. At this point, there are 26 states that restrict minors' access to tanning establishments. Not only the World Health Organization and the American Academy of Pediatrics, but also the American Medical Association and the National Cancer Institute strongly urge that anyone under the age of 18 be banned from using indoor tanning establishments.

Vice Chair Conklin:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
I am naïve about the process involved in going to a tanning parlor. I have never used one. I have a question on Section 4 where the scale lists the types of exposure. If you were to ask my daughter if she burns easily in ten minutes, she would not tell you the truth. Who does the determination of skin type? Is it the client?

Valerie Guild:
The determination of skin type is the operator's responsibility, and how to do it is covered in their training. The determination of skin types is done on a scale called the Fitzgerald Schedule. Training usually takes about three hours, and one of the training sections includes an explanation of exactly what the schedule means. It is supposed to be the operator who says to your daughter. "So tell me when you are out in the sun, how long does it take before your skin turns red?" Your daughter is not supposed to be an independent observer of this schedule, and she is not supposed to do her own rating.

Assemblywoman Kirkpatrick:
I am trying to understand what you do when you go to a tanning salon. Does the Fitzgerald Schedule determine the amount of time you stay in the sunbed? What exactly does the determination of skin classification relate to?

Valerie Guild:
If we go back to the example of your daughter, it hits a raw nerve for me. The Fitzgerald Schedule is just suggested guidelines. If your 13-year-old daughter went to a tanning parlor, which is permissible in Nevada, a trained operator would ask her how long it takes for her to burn. She might say it takes five minutes, but I really want to do this and here is my money. She would be permitted to use the facilities. Your daughter could go five times a week. At this point, there are no regulations that restrict minors or even require parental consent. One of the reasons you want parental consent is the law does not ban children from age 15 to 18 from using tanning parlors. With parental consent forms, the parents would receive a precise statement explaining the possible dangers of indoor tanning, what those dangers are and a copy of the Fitzgerald Schedule. The parents would then make the decision whether or not their child would be allowed to have 12 tanning sessions. After the 12 sessions end, the parents would have to sign another parental consent to allow more usage. If it was only a month after the first consent form was received and the parents get the next one, the parents would know that their child had been to the tanning parlor twelve times in one month. The bill will establish safeguards to control children's access to tanning facilities and limit their exposure to UV radiation.

Assemblywoman Kirkpatrick:
Would this bill prevent a child from making the rounds to different tanning parlors because they would need parental consent at each place?

Valerie Guild:
Yes, it would. In New York, the tanning industry requested an amendment, which they were given, that says if a child went to a tanning salon that was part of a chain of stores, the parental consent form would be put on a computer. Therefore, if the child goes to another store in the tanning parlor chain, your parental consent would be on file. However, we are not trying to encourage young people to use indoor tanning facilities. We are trying to discourage the practice because of the health risk.

Assemblywoman Allen:
I, too, have never been in a tanning establishment. I understand that spray-on tanning is now the more popular form of tanning. Is that true?

Valerie Guild:
I only wish that were true. Spray-on tanning is a very healthful alternative, and we would encourage it. The problem is indoor tanning is very inexpensive, which encourages people to use the facilities on a regular basis. It costs about $5 per visit. The sunbed tan will last about two weeks, whereas one spray-on tan is more expensive, at about $25, and it lasts only about one week. So it may not be an alternative for young people who do not have a lot of money.

Assemblywoman Allen:
So this bill does not apply to parlors that do spray-on tans. Is that correct?

Valerie Guild:
Yes, that is correct. Spray-on tans are not applied with an instrument that emits UV radiation. This bill is for tanning parlors that have the UV radiation light bulbs.

Vice Chair Conklin:
Ms. Allen, are you satisfied?

Assemblywoman Allen:
Yes, I am.

Assemblyman Settelmeyer:
You mentioned other states with laws similar to this bill. You also mentioned that melanoma is directly linked to sun tan parlor exposure. In those states that have regulation, what type of drop did they see in the incidence of melanoma?

Valerie Guild:
Most of the states have instituted these regulations on minors only in the last three years.

Assemblyman Settelmeyer:
Have any states shown any decreases in the incidence of melanoma?

Valerie Guild:
With the increase of tanning parlors in the last ten years, there has actually been a threefold increase in the incidence of skin cancer in women under the age of 40. The tanning parlors multiply at a much quicker rate than the passage rate for laws to regulate them.

Assemblywoman Gansert:
This proposed legislation is very comprehensive. Is it model legislation from another state?

Assemblywoman Koivisto:
Yes, it is model legislation from California.

Vice Chair Conklin:
Are there any more questions? Ms. Koivisto, I noticed you have a proponent for this bill in Las Vegas. Would this be an appropriate time to take the testimony? [Ms. Koivisto nodded in the affirmative.]

Stacey Escalante, Private Citizen, Las Vegas, Nevada:
I am here as a cancer survivor. I have lived in the Las Vegas valley for ten years, and up to a month ago when I had to quit I worked as a reporter at Channel 3. When I was growing up in Southern California, I loved the sun and was constantly out in it. I used to tan using baby oil. When I became a teenager, I frequented the tanning salons. After moving to Las Vegas, I went to the tanning salons more regularly. It was almost an obsession or addiction for me to be tanned. Eighteen months ago, I was diagnosed with stage three Metastatic Melanoma. I did not realize how serious my condition was. I had two surgeries in two months, and a tumor excision from my back. The cancer metastasized to my groin and my lymphatic system.

Currently, I am taking immuno-therapy shots for treatment. I have a 30 percent chance that the melanoma will return. My doctor says there is a 90 percent chance that I got the cancer because of sun exposure in my early years and because of all the time I have spent in tanning salons. Although I consider myself well-educated, I was very misinformed as a teenager and even in my young adult years about the dangers of excessive UV radiation. My story was a Channel 3 presentation. People now recognize me and come up and ask questions such as, "Is it okay to get a base tan at a salon because I am going on vacation?" I am now on a crusade to educate people about it.

One of the things people need to know is that tanning salons are not good for you. I support this bill. I speak at local schools now. At the beginning of my presentation I ask the kids to raise their hands if they use tanning salons. A lot of young girls raise their hands. After the presentation I show them the hole in my back and explain everything I am going through. At the very least, when people visit tanning salons, they need to be warned about the dangers of using the sunbeds. I have been told that if you tan ten times or more in a year, you increase your risk of getting melanoma by a factor of eight. I believe that my bad habits led to my cancer. I want to give you an analogy. My mother is a 65-year old smoker, and I "get on" her to quit. I say you know it is bad for you. Why are you not going to quit? She said, in her day and age people did not know how bad it was for you. They thought it was okay. It is the same with the practice of going to tanning salons. Down the road, there will be a big

"wake-up" call because the melanoma rates are going to increase. I have submitted an article on the risks of melanoma (Exhibit G). I would be happy to answer any questions.

Vice Chair Conklin:
We appreciate you sharing your personal story with us. Are there any questions? I have two other people signed in to testify on this bill.

Vincent Jimno, Executive Director, State Board of Cosmetology:
We did not have time to get a formal position on this bill from our Board. I will be speaking from my position and from an informal poll that I have taken from each of the Board members to see if they had concerns and issues on this bill.

Vice Chair Conklin:
Mr. Jimno, before you continue your presentation, I have Ms. Belz wishing to testify in support of the bill. You are testifying from a neutral position. It is customary to hear all those people testifying in support of the bill first. If you have a position other than in favor of the bill, I need to hold your testimony until we hear all the supporting testimony.

Jeanette K. Belz, representing the Nevada State Board of Cosmetology:
Mr. Jimno, the Board's Executive Director, and I would like to address the bill and propose a couple of amendments. We are in the position of having been "thrust" into this bill. We are generally supportive of the bill.

Vice Chair Conklin:
I have another person, Lona Cavallera, from the Nevada Cancer Institute in support of the bill. She has indicated that she does not choose to testify, but she has submitted a booklet from the Institute (Exhibit H). Is there anyone else wishing to testify in support of this bill at this time?

Michael Brown, representing the Melanoma Education Foundation:
This is a very important subject for me. My wife and I moved to the Las Vegas area in 2002. In 2004, she was diagnosed with stage four melanoma. My wife passed away on April 15, 2006. She was 31.

I am representing the Melanoma Education Foundation, and I would like to highlight some of their material. They have published an article called "Why are tanning beds unsafe?" The answer is, "...They expose you to UV radiation, which is a known carcinogen...." That is fact. Ninety percent of melanoma cases are caused by the sun. It continues that, "...UVA rays and UVB rays are the ones that hurt you...." The UVA rays go inside your skin, and the UVB rays burn you. The UVA rays create cancerous cells. In Las Vegas, one in three

children will have some type of skin cancer within their lifetimes. That is enough to scare me. The UVA rays are the really bad ones. If you are in a tanning booth, you are receiving ten to thirteen times more UVA intensity than you get from the sun. Tanning booths look like a coffin, and that is not too far from the truth.

My wife liked the sun and was out in it a little bit. As Stacey Escalante said earlier, we did not know what we know now. Many of the members of this Committee have loved ones that they care about very much. My wife was the most beautiful woman in the world, and she fought to the very end. She wanted me to get the word out to others. The sun is not your friend; it can hurt you. If you are in a sun tanning booth, the intensity of the rays is greater. My analogy would be to compare tanning and skin cancer to the relationship of smoking to lung cancer. Before you go to bed tonight, ask yourself if you had a chance to save some lives today just by looking at the statistics and what we are talking about, would you?

[Chair Oceguera presided over the remainder of the hearing.]

Chair Oceguera:
Thank you, Mr. Brown. I am sorry for your loss. Are there any questions?

Michael Brown:
Thank you very much. You can all make a difference right now and help save our children.

Chair Oceguera:
We are at the end of those people testifying in favor of the bill. We will now hear the rest of Ms. Belz's testimony.

Jeanette Belz:
I am here on behalf of the State Board of Cosmetology. Mr. Jimno is with me. Since he was previously in the midst of his testimony, I will let him continue.

Vincent Jimno:
I have been able to take only an informal poll of the Board members, so I have no formal position to offer on A.B. 238. The Board is neutral on this bill because of lack of information. I assure you that, whatever decision the Legislature makes in determining the appropriate way to regulate tanning establishments, we will do our very best to make it work for the State and for the protection of the public.

Clearly, our Board brings licensing and sanitation standards expertise to the table. We do not bring expertise in radiation and the effects of its exposure. We would have to acquire that expertise and information. I speak from a position of experience. I am a cancer survivor myself. When I was younger, I had thyroid cancer caused by excessive dental X-ray radiation. I am sympathetic to the issue and agree that some type of regulation needs to be brought forward. We have been in discussion with the Indoor Tanning Association. It is our understanding that they are going to present some amendments. Two of those amendments we specifically requested and concur with if they come forward in our agreed upon form.

We are concerned that one of those amendments requests us to put all the regulations together and gain the necessary expertise in UV radiation exposure by October 1, 2007. A better date for us to meet this goal would be October 1, 2008.

The second amendment calls for a member of the Indoor Tanning Association to be added to the State Board of Cosmetology. Our Board would be increased to eight members. The Board considers that number to be unwieldy when we are conferring on difficult issues. If the Legislature assigned us the regulatory function, we recommend that the Board be kept at seven members. The possibility exists that one of the four cosmetologists on the Board could be designated as a cosmetologist/tanning facility member. That would give the Indoor Tanning Association's interests proper representation on the Board. Other than these items, the Board has no other problems with this bill. We are in support of the bill and the amendments if they come forward in our agreed upon form. I would be happy to answer any questions.

Chair Oceguera:
Are there any questions?

Assemblyman Settelmeyer:
Some cosmetology establishments already have tanning facilities associated with them and some do not. Some people have indicated to me that it may not be a good idea to mix the two because of the issue of sunbed disease transmission. I know that current regulations require all equipment to be sterilized.

Vincent Jimno:
We are good on the sanitation side of the equation. That is not the area that concerns us. It is knowledge of the actual equipment function where we lack expertise. We do not license or inspect adjacent areas in the establishments we regulate. We are very clear where our regulatory function ends in the facilities

that we oversee. We do not get involved in other services of a business. There has to be a wall and a door to provide formal separation between the areas. This bill would include oversight of the tanning business within the facilities that we currently monitor.

Assemblywoman Kirkpatrick:
Are you saying there are no current health codes that address the issue of sanitation in tanning establishments?

Vincent Jimno:
We are very good at overseeing health and sanitation codes. We do not have expertise in non-ionized radiation-emitting equipment. We have inspectors that inspect licensed cosmetology facilities three or four times a year. The establishments are checked regularly for compliance with sanitation standards.

Chair Oceguera:
Further questions? Seeing none, we will hear from those opposed to the bill. There are none. Ms. Koivisto will work diligently to find appropriate solutions.

Assemblywoman Koivisto:
There are some people here to present some amendments.

Chair Oceguera:
We will hear from those testifying from a neutral position on this bill.

Morgan Baumgartner, General Counsel, R & R Partners, representing the Indoor Tanning Association:
We would like to thank Ms. Koivisto for her time and cooperation in working with us on these amendments. They would allow the tanning industry to be appropriately regulated so small business operators can comply with regulations and can continue to operate responsibly.

I have submitted a copy of our amendments for your review (Exhibit I). I will "walk" the Committee through our requests. In Section 2 on page 2 of the bill, we have proposed clarification language. We were unclear on the meaning of some of the definitions in the bill. We have clarified the difference between an "operator of tanning equipment" and the "operator of a tanning establishment." We are requesting that the operator of a tanning establishment be the person who is the actual license holder, and the person required to comply with the regulations set forth by the Board of Cosmetology.

The next amendment is a deletion of Section 8 of the original bill. The original bill provides for the establishment of a tanning advisory committee. We feel

that the Board will have the expertise required for appropriate regulation and enforcement of the codes without adding this extra layer of administration.

We are suggesting that Section 8 should have a new subsection 4 that would say, "Nothing in this section shall prohibit an operator of a tanning establishment from employing persons under 18 years of age, if such person is not an operator of tanning equipment." A concerned tanning operator in Las Vegas contacted us, saying he did not want people under 18 years of age prohibited from working in tanning establishments at jobs other than the operation of the tanning equipment.

We are asking that the original Section 10, subsection 1(a) have the requirement of reading aloud the warning contained in subsection 2 deleted. That language is actually on the tanning bed label. It would also be in the consent and disclosure forms that are signed by the client. That gives at least two opportunities for a person to see the warning language.

Our next amendment is to the original Section 11, subsection 2. We would like the expiration date of the written parental consent changed to one year from the existing twelve times. Once the parent has given his informed consent, we believe a one year time period is appropriate. We added clarification language to Section 11, subsection 4 on line 19 to say, "An operator of tanning equipment must be present at the tanning establishment for the entire time...."

We request that Section 12 be deleted. This is the section that requires a person under 14 years of age to have a physician's prescription to be allowed to use the tanning equipment. We believe the parental consent is sufficient to ensure the safety of the child when using indoor tanning equipment.

Our next suggested amendment is to the original Section 13, subsection 3. We would like the requirement to maintain a record of use be changed to one year from three years. A period of three years would make it difficult for small business operators to maintain the records.

There are amendments that have been requested by the Board of Cosmetology for ease of Committee review that have been included in this amendment's language. We are happy to add them on behalf of the Board. I will take any questions.

Chair Oceguera:
Questions from the Committee? Others who are neutral on this bill? We are closing the hearing on A.B. 238, and opening the hearing on Assembly Bill 279.

Assembly Bill 279: Requires the unused value of certain gift certificates to escheat to the State. (BDR 52-961)

Assemblyman Ruben J. Kihuen, Assembly District No. 11:
This bill would require the unused portion of an expired gift card be declared abandoned property. The amount would escheat to the State to be specifically used for educational programs. Under current law, unused portions of gift cards are already supposed to be handed over to the state where the issuer of the card is incorporated. In most cases, it is not in Nevada. For example, if a company is incorporated in Delaware and a gift card of the company is purchased in Nevada, the remaining balance after expiration escheats to Delaware. That means Nevada would lose the money. If a gift card is purchased in Nevada, the money should stay in Nevada.

This bill would permit Nevada consumers' money to stay in this State. It would also allow the State to generate much-needed funds for education without raising taxes or fees. I have submitted a PowerPoint presentation (Exhibit J). I have also submitted a mock-up of a proposed amendment to this bill (Exhibit K). I would like to give an overview of statistics associated with gift cards in the nation. Of the $80 billion spent on gift cards in 2006, roughly $8 billion will never be redeemed. An estimated 19 percent of the people who received a gift card in 2005 never used it. The National Retail Federation expects that Americans will buy close to $25 billion worth of gift cards this holiday season, up 34 percent from last year.

A summary of Assembly Bill No. 19 of the 73rd Session appears on page 4 of the PowerPoint presentation. It was introduced by Assemblyman David Parks. The bill's initial intent was to eliminate gift card expiration dates, but that did not happen. Instead, the bill said you can have an expiration date, but it has to be in a certain font size and shown on the back of the card. The other alternative was people could call the 800 number on the back of the card and check their gift card balance.

By federal law a business is suppose to report any unused portions of gift cards to the state where the business is incorporated unless that state has an escheat law. This was established in a ruling by the United States Supreme Court, *Texas v. New Jersey*, 379 U.S. 674 (1965). A 2005 Texas bill was used as the model for this bill. This Taxes legislation was introduced by Senator John Carona. His bill states that, "...A stored value card is presumed abandoned to the extent of its unredeemed and uncharged value on the earlier of the card's expiration date, or the third anniversary of the date the card was issued or last used...." My bill contains the same language.

Assembly Bill 279 would do three things. It would allow consumers' money to stay in Nevada; it would generate funds without raising taxes or fees; and, it would help alleviate the shortage of funds for education in Nevada. Paul Reyes, on the speaker phone from Texas, will be giving testimony in favor of the bill. He will discuss some of the successes of the bill since it was passed by Texas in 2005.

Paul Reyes, Chief Counsel for Senator John J. Carona, Senatorial District No. 19, Texas:
[Mr. Reyes testified via speaker phone.] I have submitted a brief biography of Senator Carona (Exhibit L), and I appreciate the opportunity to testify in favor of this bill. In Texas, the request for this bill was brought to Senator Carona by Texas consumers. The holiday season is the peak buying period for gift cards. In Texas, our legislative session starts right after the holiday period as yours does. Consumers found that the value of their gift cards had, unbeknownst to them, been decreased. The purchaser of the gift card was also unaware of the decreasing value. In an attempt to address this issue, we wanted to make the consumer aware of what they were getting into with the purchase and use of a gift card. It was felt that this information would not affect businesses. Texas wanted to keep those unused portions of gift card value within the State. The bill provided for consumer protection and it benefited Texas monetarily. When this bill got to the floor of our legislature, the unredeemed value of the gift cards was designated for education funding. Consumers in Texas have been overwhelmingly satisfied with the results of this bill.

Chair Oceguera:
Are there any questions?

Assemblyman Settelmeyer:
I appreciate the intent of this bill. It always bothers me that the value of a gift card can go exempt. There are two other concepts that might also be addressed. One would be a stipulation that the gift card's value cannot decline by more than 10 percent a year. Sometimes, the value lost can be up to 25 percent a year. My other concern is the concept that three years after receipt of the gift card the unredeemed value goes to the State of Nevada. Why are we taking that unredeemed value away from the consumers?

Assemblyman Kihuen:
As far as the 10 percent yearly decline in a gift card's value, Assemblyman Parks's bill introduced in 2005 prohibits decreasing the card's value for the first year. After the first year, the company issuing the gift card is allowed to charge only $1 per month. Therefore, in many instances depending on the value of the

card, the amount decreased would be less than 10 percent. I would like to invite Assemblyman Parks to discuss his bill because it overlaps with mine.

Chair Oceguera:
In just a minute. We have a question.

Assemblyman Anderson:
How did the Texas bill address restaurant gift cards or certificates with no closing date? How did the Texas bill address the issue of a company that issues gift cards then closes stores in that state, but the gift cards can still be used in the stores in other states?

Paul Reyes:
A gift card, or stored value card as they are called in Texas, of a restaurant without an expiration date is considered exempt in Texas. If a restaurant or any retailer is not going to put an expiration date on their gift cards, we do not penalize that business. The Texas Comptroller's Office assisted us with the use of out-of-state gift cards. We addressed this problem on the front-end by attempting to get the retailer of the card to take down information on the purchaser and receiver of the card and put in on the Internet. This is how we came up with the idea of the apparent owner of the gift card. The value would only escheat to the state if the owner or the apparent owner could not be located.

Assemblyman Kihuen:
If a gift card has not been used in three years, the probability of its being used in the future is very slight. If you try to use a gift card after the expiration date and it is refused, a consumer can go to the State Treasurer's Office and claim a refund of the money.

Assemblyman Christensen:
I know that banking typically falls under federal laws. Is there any provision in this bill that goes beyond gift cards to include any type of savings or investment instrument? Have the unintended consequences and effects of this bill on other financial instruments been considered?

Assemblyman Kihuen:
This bill addresses only gift cards, gift certificates, and stored value cards. The Unclaimed Property Division of the Treasurer's Office handles all other financial instruments.

Assemblywoman Allen:
How does a family member who purchases a card for a child in the family go about reclaiming the money as a third-party from the Unclaimed Property Division?

Patrick G. Foley, Chief Deputy Treasurer, Office of the Treasurer:
We would have a description that comes in with the card number and some type of identifier on the card itself. When the claimant comes in with the card, we would extract the information to show the rightful owner of the card. The claimant would then be paid as if it were a normal claim for the property itself. We would need to receive the description or card number from the issuing company when they send the information over to the Unclaimed Property Division. We would store that information in our data base and match up the card information when a claimant comes in for a refund.

Assemblywoman Allen:
If I pay cash for a gift card, how would the State track the card?

Patrick Foley:
Not through the Unclaimed Property Division at this time. Currently, stores are required to turn those unclaimed dollars over to Unclaimed Property, but those unclaimed dollars go to the state in which the store is incorporated. In most instances, the money goes to the State of Delaware. Cash purchased gift cards usually come into the Division with an "unknown owner" designation. The funds are held in Delaware under unidentified ownership. In Nevada, we have had some gift certificates come in from the Mirage Hotel. On the physical certificate there is a number. Our Division knows the number that the Mirage Hotel issued on the gift certificate because the Mirage management gave it to us. We have loaded that information into our data base. When the gift certificate arrives from the property owner, we match the number to our data base and refund the amount to the claimant.

Assemblyman Parks:
Two years ago, Assemblyman Hardy and I put our two similar bills together to get the measure passed. The premise behind the gift cards is you pay cash for them so you should get the cash value for them. We found that large fees were being charged by the issuer, which they turned into profit without providing any service. A monthly charge was imposed on the gift card. They were taking a liability and making it an asset on their balance sheets. When they issue the card, they must also record a corresponding liability for providing future service. In our bill, we wanted to make sure that people were getting what they paid for. Even after passage of Assembly Bill No. 19 of the 73rd Session, there are still a lot of gift cards that have unclear fee structures. Some of the companies still

have the fees in place. A number of them had a six month fee to use the card or else they would charge you $2.50 a month until the card was fully expired. Hopefully, those types of problems have been resolved.

In my discussions with people, they indicated that some of the worst businesses to deal with were food establishments. I recounted the story of an individual who presented a card and found out it had fully expired without his knowledge. I support this bill.

Chair Oceguera:
Are there any questions?

Assemblyman Kihuen:
I would like to recount my personal story. I showed up at a high-end restaurant a few months ago and presented my year-old gift card. I tried to use it, but the restaurant would not accept it. Unbeknownst to me, the gift card had expired the month before. There is a letter in opposition to this bill going around that says most restaurants do accept expired gift cards. That was not the case in my personal experience. How many other people has it happened to? The $100 value of the gift card I lost is supposed to be returned to the State of Nevada or to the state where the restaurant is incorporated. I would like to see a report that says they actually gave that money back. If they did give it back, it could have gone to a different state. We can use that money in this State. The Millennium Scholarship program or after-school programs could be funded with that money.

Chair Oceguera:
Are there any questions? Anyone else wishing to testify in favor of the bill?

Lea Lipscomb, representing the Retail Association of Nevada:
The Retail Association of Nevada represents about 2,500 businesses. We are speaking in support of this bill. We have worked closely with the sponsor of the bill, and we also support the proposed amendments. Typically, the Retail Association opposes "earmarking" of funds, but we support this bill because money is not diverted from the General Fund. It should be a policy decision of the Legislature to determine where this money would go after it escheats to the State.

Chair Oceguera:
Are there any questions? Others in support of this bill? In opposition?

George Ross, representing the Nevada Restaurant Association:
I compliment the bill's sponsor in continuing to find creative ways to fund worthwhile programs such as education without raising taxes. His objective is commendable. There have been several other policy initiatives in the last year that have differentially disadvantaged the restaurant industry. It is likened to collateral damage. The consequences were unintended, but the industry has taken some large "hits." For example, every time the minimum wage is increased, a typical restaurant takes about a $50,000 year loss for every dollar of increase. The anti-public place smoking initiative passed, and any restaurateur with a bar business was financially hurt. The two initiatives I just mentioned have a far greater financial impact on the restaurant industry than the amount that would be involved with gift cards escheating to the State.

However, it is one more differential impact on restaurants compared to other industries. Our Board would consider the experiences the Assemblymen related atypical of a restaurant. They would say a restaurant survives on customer loyalty, customer satisfaction, and return business. The way you do that is to accept an expired card, no matter what the expiration date is. Restaurants should do that. I am told that nearly all of them do. If that is the case, then a restaurant ends up getting "hit" twice—one time because it was required to escheat the card and the second time because it has to pay the cost of having the expired gift card used. I would like to apologize to the Assemblymen for the actions of those restaurants. The Restaurant Association does not support this bill as it currently stands. In the future when we do have admirable public policy objectives, we need to take a closer look at who might suffer financial damage and see if we can ameliorate some it.

Chair Oceguera:
Are there any questions? Others opposed? Those wishing to speak neutrally? We will close the hearing on A.B. 279. Mr. Kihuen, do you wish to make a closing statement?

Assemblyman Kihuen:
Yes, I do. I know Mr. Ross mentioned that a lot of restaurants rely on this money to pay their employees, but as I mentioned in my presentation, by federal law they are already required to give the money back to the state where the company is incorporated. These restaurants are already breaking the law. With this bill, we will ensure that the money will not go to Delaware, but will remain in this State.

Chair Oceguera:
Do you want me to reopen the hearing? [Mr. Ross answered in the negative from the audience.] We are going to take a recess. This meeting is called back to order.

Chair Oceguera:
We are opening the hearing on A.B 478.

Assembly Bill 478: Revises provisions governing loans and loan services. (BDR 52-394)

Assemblywoman Buckley:
I have submitted a PowerPoint presentation (Exhibit M). The topic of this bill is predatory lending. Some payday lenders have a track record of evading State protections, exploiting loopholes, and using sham transactions to disguise usurious lending. Predatory payday lending costs Nevadans $108,475,763 in excessive fees every year. Forty percent of all civil lawsuits in the Las Vegas Justice Court are filed by short-tem high-interest lenders. Thirty-nine percent of small claims court cases in the Reno Justice Court are filed by the short-term high-interest lenders. In one study, 70 percent of all petitioners filing for bankruptcy had more than one payday loan, and 30 percent had four or more. Predatory lending affects everyone including seniors, people starting out, people a little short on money, and military families.

The purposes of A.B. 478 are threefold. First is to close a loophole in the current payday loan law—*Nevada Revised Statutes* (NRS) 604A—which is being exploited by some high-interest lenders. Second, it will provide greater protection to members of the military, and third, it will allow the State to enforce a newly passed federal law addressing loans made to members of the military.

I would like to give a little background on the development of this measure. When Assembly Bill No. 384 of the 73rd Session was passed, it took all the short-term loans and consolidated them into NRS 604A. It created a new chapter. Three sections in that bill dealt with the three different segments of this market. The first section was for deferred deposit companies. These are companies that will lend money in exchange for a post-dated check. The second portion of the bill was called "short-term high-interest" loans. These are lenders who will lend money based on a promissory note. The third section was for title loans. The lender takes an interest or title to the borrower's property. For example, a car title could be used as security.

We created a regulatory scheme for all three types of lenders. Each of the lenders was a little different in method of doing business, but they all offered non-traditional lending practices. The borrower was not going to be serviced by a major financial institution. The bill we enacted significantly enhanced consumer protections. Those protections included such items as: a repayment agreement before suing a borrower, a right of rescission, no repayment penalty, no contacting a borrower's employer if a person falls behind in repayment, and protection upon default by moving the interest rate down to a more manageable amount when someone can no longer afford to pay. These consumer protections have been largely successful. More than 500 locations in Nevada have obtained licensing and are complying with the law, but there are still about 20 lending locations statewide that have chosen to evade the law.

How are they evading the law? Under the law that was passed, a short-term loan was defined as a loan that charges an annual percentage rate of more than 40 percent and requires the loan to be repaid in less than one year. Prior to the enactment of this law, short-term lenders typically made loans for a term ranging from one to eight weeks. A thirty-day period was the most common time frame. Now, to evade the law, some lenders are making loans for a year or more for the sole purpose of avoiding the consumer protections and regulations that were put into effect with this new law.

The economic impact of these evasions has resulted in more than 5 million Americans a year being caught in the "payday loan," or what we can now call "short-term" loan, debt trap. The loans are now made with an annual percentage rate of 500 percent or more per year. These lenders are trapping their customers in a never-ending cycle of debt. What is even worse is that some of the lenders convince their customers to sign new year-long contracts every few months. Instead of 12 months of interest-only payments, some customers now face 18 months or more. They also charge late fees and fees for post-judgment default. They also commonly refer their customers to one of their affiliates or another store in their chain for cash to make the interest-only payments on the original loan.

If you refer to the PowerPoint presentation packet distributed to you, you can see some examples of these types of loan contracts. The example contracts show a company loan prior to July 2005 and a new model from the same company used after July 2005 when the new law went into effect. It shows the amount financed to be $350 with a 521 percent interest rate. The loan contract after July 2005 shows $800 being financed at 521 percent interest. Under the payment schedule, it shows 26 equal payments in the amount of $160 every 2 weeks for 1 year. After paying all the payments, a balloon payment of $959.99 is due. Therefore, the total amount of payments on this

$800 loan would be $5,119.99. The total finance charge on the loan is $4,319.99. These charges do not include any late fees or any other fees that might be added on. There are more examples included on the following pages.

The chart in the packet shows the maximum amount permissible under NRS 604A versus the amount of interest that is actually being charged. This bill seeks to close the loophole that allows some lenders to charge interest and other fees for more than one year by redefining such a loan as a "high-interest" loan instead of a "short-term" interest loan. This bill would apply to any person who makes a loan with an annual rate of interest greater than 40 percent. It would provide that no loan greater than 40 percent will have a term longer than 90 days. It will specify that every charge or fee be included in the calculation of the annual percentage interest rate.

These usurious loan practices are affecting seniors, the working poor, and anyone in need of some immediate cash. In addition, it is affecting military families. The Department of Defense (DOD) issued a report on military readiness and listed predatory short-term lending as being one of the major threats to military readiness. Members of the military are here to testify to the seriousness of the problem. All of the predatory payday lenders surveyed by the DOD for their report listed Nevada as their home state. The DOD has asked the State of Nevada to help stop predatory "payday" lending practices directed against those who defend our nation's freedom. Members of the military are three times more likely to be caught in abusive lending. Why? They are the perfect targets. They are young and financially inexperienced. They have steady incomes, but they are struggling to support their families. They are honest; they want to repay the loan. They are easy to locate, and they risk being demoted for not paying their debt. The number of revoked security clearances has increased 1,600 percent since 2000 because of individuals' financial difficulties. Predatory lending not only harms troop morale, but troops worried about paying their bills are not focused on their mission.

This bill seeks to further address these concerns by closing the loophole and extending greater protections to members of the military and their spouses. It would require a lender to honor any proclamation by a base commander that certain branch locations are off-limits, and it would prohibit a lender from threatening to garnish the wages of a member of the military. It would prohibit collection activity when a member of the military has been deployed overseas.

Lastly, A.B. 478 will work in conjunction with the Talent-Nelson amendment to the National Defense Authorization Act to ensure that a member of the military can use the State of Nevada, Division of Financial Institutions to enforce its rights and remedies under the statute.

Chair Oceguera:
I would like to ask for clarification. Did you say a lender could not garnish the wages of a member of the military?

Assemblywoman Buckley:
Yes, it prohibits garnishing a member of the military's wages when he has been deployed.

Chair Oceguera:
The prohibition would be just during the period of deployment. Is that correct?

Assemblywoman Buckley:
Yes, it would be just during that time period. The stipulation is in the federal legislation passed to protect our military. It is not yet in effect, but when it does become effective, this bill will allow the military member to register complaints with our Division of Financial Institutions. Otherwise, the member of the military would have to go to the DOD. It is easier to deal with our Division of Financial Institutions if the problem concerns a Nevada-based lender.

Since the passage of this federal law, there are many payday and short-term lenders who have been following the law. They can make money under the law, and they can make it work. Representatives of the industry are here today to support efforts to "crack-down" on the evaders for two reasons.

One reason is the evaders give their whole industry a bad name. Lenders who are following the law would like to know that their product and good name are not being sullied by lenders who are forcing people into an endless cycle of debt. The other reason is an uneven playing field has been created in Nevada. We have lenders following the law and others who are not. We have businesses being placed at a competitive disadvantage because they are following the law. This gap in our law was created by the lenders themselves who said they would never loan money for more than a year. That is not their business model. As soon as the Legislature accepted their word, they choose to use the loophole in the law that was created for banks.

Today you will probably hear from some lenders who are following the law asking you to support this legislation. There are a couple of technical details in the law that have to be fixed. I will be compiling them, working out the details, and bringing the changes back to a work session. You will also hear from lenders who are evading the law. They will say they exist to a fill a market niche. The only niche they are creating is an endless cycle of debt. Some of the evaders will say they charge a lower interest rate. I will answer any questions.

Chair Oceguera:
Do you have some charts that you want to show us?

Assemblywoman Buckley:
We have blown-up samples of the contracts which are in the PowerPoint presentation in case members of the audience would like to see them. There are also charts and a handout on the number of lawsuits filed by payday lenders for loan defaults for each judicial district (Exhibit N). This problem is faced by consumers in every part of the State.

Chair Oceguera:
One of the first things the unscrupulous lenders will say is, "The consumer saw the contract and signed it." How would you respond to this statement?

Assemblywoman Buckley:
There are desperate people who sign contracts for as much as 900 percent interest. If you asked those people why they signed, they would say they were going to get the money to repay. They were sure they could pay it off. Most states have usury caps to protect people from falling into financial ruin. Our State chose to repeal the usury caps in a special session to attract Citibank to Nevada. It also sent a message to financial institutions that Nevada was an attractive place to do business and had a positive business climate. It is our responsibility to look after people who are unfortunate, and we have to look out for predatory practices.

Chair Oceguera:
Any questions?

Assemblywoman Gansert:
Do we have any way to penalize these predatory lenders financially? Are there fines in place?

Assemblywoman Buckley:
Yes, we do. In the last session's bill, significant fines for abusive lending practices were included. Unfortunately, the Division of Financial Institutions has been lax and indifferent to enforcement. They have failed in their regulatory function. We have a new acting head of Financial Institutions, and a new director of the Department of Business and Industry, so we hope to turn it around. We will be there to protect the consumer which we should have been doing all along. The Executive Branch will be doing a good job from now on.

Assemblyman Conklin:
Are balloon payments covered in this new law? We are changing the language to read "high-interest" instead of "short-term" as defined by interest rates of 40 percent or more. What if a lender decided to charge 39 percent with a balloon payment of double the original loan amount?

Assemblywoman Buckley:
This law says a lender can charge a high interest rate for the original 30 day period, but after that time they can no longer charge that rate of interest. Upon default, the lender cannot charge more than the prime interest rate plus 10 percent. It would be more restrictive to say a lender cannot charge more than 40 percent from day one of a loan, that they cannot have balloon payments, or further that they cannot alter the terms of the contractual relationship. We were trying to allow for the industry to still have a short-term high-interest rate loan, but not make it possible to entrap people in a cycle of debt.

Assemblyman Mabey:
How do other states handle these types of loans?

Assemblywoman Buckley:
It runs the gamut. Some states have a strict usury cap, but even some of those states have not escaped predatory lending practices. Some lenders in those states have developed "rent-a-bank" programs. They go to another state and try to rent the charter of a bank in order to come into that state to do business. Then the lender says they are exempt from all state regulations. Some states have successfully kept more of the predatory and sub-prime lending out of their markets. Other states have taken our approach, which is to try to curb the abusive practices but allow some short-term high-interest rate lenders to exist with state protections to enjoin the abuses. There are some worse problems in other states. Many states face the problems that we face. If the Legislature does not send a clear message saying we are not going to allow predatory practices and demand compliance from the Executive Branch, then the predatory lenders will feel they have a license to continue to evade the law. We are seeing a little bit of everything.

Chair Oceguera:
Further questions? Do you have an order of witnesses that you would like to have testify?

Assemblywoman Buckley:
We have two witnesses in Clark County. In Carson City, we have Judge Salcedo and members of our military.

Chair Oceguera:
We will hear from Las Vegas first.

Gail Burks, representing the Nevada Fair Housing Center:
Our organization is a private, non-profit concern that provides education, legal assistance, and financial literacy training to consumers on housing and other issues. We are in support of A.B. 478. This bill represents a much needed change to protect consumers. Without being repetitive, I would like to focus my comments on two areas. We have a chart showing the proliferation of payday loan facilities since the amendments were made in the 73rd Session. There has been an increase of 1,337 new companies. Of those, eleven companies switched their charters in the last two months of 2006 in order to evade the law, and another nine companies have followed.

The other area of my focus is product type. One of the things we are seeing is an increase in the number of military families who are seeking to purchase homes and to better their financial circumstances. The other product change we are seeing that is most egregious is the use of payday lending with attachment to a home. We ran into the first case of this abuse with one of the larger evaders in southern Nevada. Our client borrowed $50,000 at a 16 percent interest rate. The client paid $12,670 for the loan. It is a one year loan, but an interest only. Technically, it does not fall under the regulations that protect consumers and their mortgages because there is an assignment of rents attachment to the loan. This client is in default on the payday loan and now stands to lose a $294,000 home unless we can negotiate with the first lender and/or provide some government assistance to help in paying off the loan. We are seeing a new series of products that are coming about faster than anything we can think of to protect the consumer. We urge you to pass this bill which will amend both sections of the law. I will answer any questions.

Chair Oceguera:
Are there any questions?

Michele Johnson, representing the Consumer Credit Counseling Services:
We are a non-profit, United Way, Housing and Urban Development (HUD) certified agency. Much of what I would say has been said. We have seen changes in our customer base and the challenges they have been having. We provide one-on-one counseling sessions to over 1,000 consumers each month. The lending evaders have been causing more and more financial difficulties. They are targeting seniors, minorities, and military families. The Judge Advocate General's Office at Nellis Air Force base has informed us that the number one reason for military discharge is financial problems.

Our organization has also been authorized by the Executive Office of the United States Trustee to provide the necessary bankruptcy counseling that all consumers must have prior to making that choice. Of all of those clients that we counseled last year, we issued 3,436 certificates to file bankruptcy. Of those, over 40 percent had short-term high-interest loans. By getting new loans to cover old ones, they fell into a spiraling out-of-control situation. They could not handle the aggressive collection tactics or the threats of legal action. They felt there was no option for them but to declare bankruptcy. What also drives consumers to bankruptcy is the stonewalling by members of the lending industry to agree to accept payments from agencies such as ours when we are trying to work with the consumer to repay their obligations. We attempt to liquidate those obligations within four to six months, but eighty percent of our proposals to the short-term high-interest lenders are rejected. When our proposals are rejected, the end result is losses to all the financial institutions that are owed by that consumer. The consumer also suffers huge financial losses. I will answer any questions.

Chair Oceguera:
Are there any questions?

Judge Fidel Salcedo, Senior Judge, Reno District Court:
The number of lawsuits being brought to district courts by payday lenders for loan default is overwhelming the court system. The cases I wish to focus on are those that show the amount of money that is loaned, the amount of money that is being paid, and the amount of money that people are being sued for. It is important to understand this issue. For example, a loan for $800 had $950 repaid, but the borrower is being sued for $1,675 more. I have a case which shows a $600 loan with $1,024 repaid, but the people are being sued for $523 more. I have a case that shows a $1,000 loan with $600 repaid and a suit against them for $3,194. It goes on and on. There is one other case that deserves mentioning. This loan contract is for $250 with a $50 finance charge. The interest rate on this contract is 7,300 percent. The lenders say they are complying with law passed in the 73rd session, which says they can only collect the interest for a 60 day period of time. That is true. The interest rate for 60 days is $3,000.

This is what the courts are facing. Dealing with these types of cases in the Justice Courts is very time-consuming. We are a high volume court and we need to process these cases quickly. Consumers are not appearing to testify on these cases. Ninety-nine percent of these cases are being settled under default. The lenders get default judgments. It is the judges in our courts that have said enough is enough. We have to do something about the problem. The courts are looking to the Legislature to resolve this issue by passing this bill. It

addresses all of our concerns and hopefully we will have all the loopholes covered.

I know the predatory lenders are going to say a contract is a contract. The borrower signed it and is bound to that contract. Judges are supposed to render justice. This practice permits one of the biggest injustices I have seen in a long time. The courts are saying this is outrageous. It is unconscionable. We are now getting appeals on all these cases. It is tying up the court system to have to address this issue to protect the consumer. We need your help. I will answer any questions.

Chair Oceguera:
We appreciate having someone here from the judiciary to tell us how laws that we pass actually affect the court system. Are there any questions?

Assemblyman Horne:
When these cases come before you and your hands are tied under the current laws, in your capacity as a judge, what do you tell the defendant—the consumer?

Felix Salcedo:
I tell him I think the contract clause is unconscionable, and I dismiss the case. I say I will not enforce the contract. Many of these contracts have been created to circumvent NRS 604A. The lenders say they are complying with the law. They have passed the one year barrier, so they are exempt from the law. I tell them they are using subterfuge, and I dismiss the case. They appeal my ruling, and it puts a bigger burden back on the courts.

Chair Oceguera:
Further questions?

Captain Scott Ryder, Commanding Officer, Naval Air Station (NAS) Fallon:
I am here representing not only the sailors and their families that are stationed in Fallon, but also the tens of thousands of Navy personnel that come to Nevada and NAS Fallon each year to train. I have submitted a full copy of my testimony (Exhibit O), but I would like to highlight some of the details. I am also representing my compatriots, Lieutenant Colonel Green at Hawthorne Army Depot and Colonel Buckley at Nellis Air Force Base. I have spoken in depth with both of them about this bill.

I thank you for the opportunity to talk about financial literacy and how it relates to the financial health of military service men and women. Financial stress is a growing concern for our military. The financial environment our sailors

experience today is far different from what we knew even a decade ago. This issue has received attention at the highest levels of the military and my boss, Admiral Len Hering, has established a Joint Task Force to study the problem and find solutions.

Financial health is a military readiness issue. Not only does this issue personally affect military personnel, but also it affects the military's ability to respond when called upon. Incurring high amounts of debt affects military personnel arguably more than civilians. The military considers debt ratios as one factor in assessing troop readiness for deployment. Excessive debt prevents deployment of service personnel, and in turn increases the frequency or length of deployment for those service members able to deploy. Service members with excessive debt may also have their security clearances revoked. Not only do these sailors fail to contribute to the military's mission, but also their military careers are jeopardized or ended. Improving financial health is the best way we can improve the "effective pay"—or buying power—of our service members,

Today our military is challenged with financial literacy and education "triple threat" new to the American culture. One reason is our sailors see a "cosmetic of wealth" as a very important part of their lives. If they cannot be rich, they must at least appear to be rich. Another reason is today's young men and women do not talk about their finances or financial health. They do not seek advice or council, and they shy away from discussing planning for the future. They believe that financial shortcomings or challenges are somehow an admission of failure. Finally, financial marketing in our country is at an unprecedented intensity. Outside of our military bases and on the Internet, concentrations of lenders aggressively market to any service member that they can attract with fast and easy credit and with very few questions. In the Fallon yellow pages, there are a dozen short-term high-interest loan stores listed. They are all a short drive from NAS Fallon. They are not there just to supply the needs of fewer than 9,000 Fallon residents or the roughly 27,000 residents of Churchill County. They are there because NAS Fallon is there.

The Navy has developed a three-prong approach to meet these financial health and literacy challenges. They have developed a robust training and education program throughout the Navy. Classes and counselors are available to all personnel. The Navy is also looking at internal options for sailors to have available short-term financial assistance. These efforts include using the resources of the Navy-Marine Corps Relief Society for financial assistance and counseling, and the extension of no interest loans to our personnel through the Defense and Accounting Service. Financial literacy is as much about marketing as it is about education. As long as these conditions exist—a desire to appear rich, financial secrecy, and an aggressive, well-funded loan industry—we will

still have problems. The military must establish cultural change if we hope to improve the financial health of our service personnel.

Our third approach is legislative in nature. Protection must be part of the solution. This bill will give Nevada the authority to interpret, regulate, and to enforce the unique financial protections established by the federal Talent-Nelson law for active duty military. We wholeheartedly support A.B. 478. The right thing to do is to protect through legislation the financial health of those who protect our nation, especially in time of war. I will answer any questions.

Chair Oceguera:
Are there any questions?

Kathleen Delaney, Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General:
We wholeheartedly support A.B. 478. I have personally worked with Ms. Buckley and the Payday Lending Education Coalition to try to address these issues through education. Predatory lenders have made their loans through legal licensing and with the apparent authority of the State government. It has been difficult for us to find a way to address these evasive tactics. We want to emphasize the importance for us to have the ability to enforce the recent military protections that have been put into place. We want to place all the high-interest lenders in one chapter of the NRS. This method will make enforcement minimal because the deterrent effect will be maximized. For these reasons, and all the reasons previously stated, we support this bill.

Chair Oceguera:
Are there any questions?

Barry Gold, Director of Government Relations, representing the American Association of Retired People (AARP) Nevada:
We are a non-profit, non-partisan membership organization for people 50 years of age and older. On behalf of our 313,000 statewide members, we support A.B. 478. We ask that you pass it to protect Nevada families from predatory lending practices. I have submitted a complete copy of my testimony (Exhibit P).

Payday loans meet all the definitions of predatory lending, making them dangerous to borrowers. Loans are made without consideration of the borrower's ability to repay. Interest rates are exorbitant, and the loans come with balloon payments. At the end of 2005, industry analysts reported there were between 23,000 and 25,000 payday loan outlets in the United States with an annual loan volume of $40 billion, and $6 billion in loan fees paid by

consumers. By comparison, McDonalds has about 14,000 locations in the United States. The solutions for many problems associated with payday loans are contained in this bill.

Chair Oceguera:
Questions?

Assemblyman Parks:
How many members do you represent in Nevada?

Barry Gold:
We have 313,000 members.

Chair Oceguera:
Are there any questions? We will hear the testimony from those people in the industry in favor of this bill.

Dennis Bassford, President, Money Tree:
We operate 122 branches throughout the 5 western states with 28 branches in Nevada. We employ over 200 Nevadans. We are in support of A.B. 478. I would like to state that there are many companies like mine which have always attempted to comply with state laws. There are currently 37 states that have laws permitting payday lending. Without those laws, this product would be handled by off-shore Internet lenders who primarily operate without compliance to any state laws. We are better off to have the statutes on the books.

Two years ago, Money Tree, Community Financial Services Association (CFSA), which is our national association, and other members of our industry worked with Ms. Buckley to develop legislation to regulate payday loans. Those efforts resulted in the passage of Assembly Bill No. 384 of the 73rd Session. My company and many members of the industry are licensed under the law and serve our customers under its provisions. It is a good law and it provides customers with strong consumer protections like the right to rescind. It also limits fees upon default, and it has strict disclosure requirements. Part of the protections includes the elimination of oppressive collection practices. Consumers were being taken to court and judgments were collected that often exceeded the original amount of the loan by three to four times. These practices were neither engaged in by my company or members of the CFSA, nor are they condoned by our companies.

In fact, Money Tree never takes anybody to court on a payday loan. That provision is actually in our contract. Further, we always cooperate with consumer credit counseling agencies when they call upon us to negotiate terms

with their clients. Nevertheless, there are other lenders who were obtaining judgments. There is a real need to level the playing field to protect Nevada consumers. By enacting restrictions on the ability of licensees to obtain inappropriate judgments, the Legislature is acting responsibly and is in step with other state legislatures.

It is our understanding that this bill will make certain provision of NRS 604A applicable to all lenders who make high-interest rate loans regardless of the term of the loan. My company and members of the CFSA have always supported legislation such as this, and we will continue to support these efforts in the future. We are currently working with Ms. Buckley to refine some minor technical details in the bill. We appreciate the opportunity to work with this Committee to achieve the intent of this bill. I would be happy to answer any questions.

Chair Oceguera:
Questions?

Assemblywoman Allen:
I remember your involvement in the bill two years ago. Can you define which businesses are regulated NRS 604A and which come under NRS 675?

Dennis Bassford:
I would like to give that question to Mr. Thomson who is more technically competent than I am.

Mark Thomson, Director of Government Relations, Money Tree:
The NRS 675 was originally developed for consumer finance companies whereas NRS 604A was developed for short-term, small denomination loans. Some of the provisions in NRS 604A are not in NRS 675 because they were not needed in the context of a longer-term fully amortized installment loan.

Chair Oceguera:
Further questions?

Luke McClanahan, Vice President, Brundage Management Company, Inc., representing the Sun Loan Company:
We are one of the traditional lenders who went from NRS 675 to NRS 604A. We appreciate input into what is going on. I will answer any questions.

Chair Oceguera:
Are there any questions?

Bill Marion, American Associates, representing Pawn Management:
We have met with Ms. Buckley regarding the intent and impact of this legislation. We support this bill.

Craig McCall, Owner, Pawn Management:
I am here to support this bill, and I applaud the efforts of this Committee and Ms. Buckley. I own several pawn stores in southern Nevada. Because of the proliferation of check cashing and payday loan operators, I have had to include payday loan services at my locations. Pawn stores are regulated under a different statute, NRS 646. There are interest caps and other consumer protection measures built into the law. However, until the passage of Assembly Bill No. 384 in the 73rd Session, there were very few protections mandated for high-interest check cashing, payday, and title loans. That legislation was much needed, but unfortunately following its passage and implementation, some operators found loopholes in the law. This bill under consideration will close those loopholes. I take pride in my business and the service we provide to customers. No one should be forced into a spiraling cycle of debt. I encourage you to pass this important piece of legislation. I will answer any questions.

Chair Oceguera:
Are there any questions? Seeing none, are there others wishing to testify in favor of the bill? Those in opposition?

Robert A. Ostrovsky, representing the Nevada Lenders Association:
Our association has six NRS 675 lenders as members. They operate companies having one to ten stores. Based on today's testimony, they will probably be labeled as evaders. We would like to discuss how they operate, and why some people believe they are the evaders. We are operating consistently under the laws in NRS 675. I have submitted a proposed amendment to A.B. 478 (Exhibit Q). There are important differences between lenders operating under NRS 675 and those operating under NRS 604A. One is an installment lender; the other is a payday lender. There appears to be a "spill-over" between those two groups. The bill as proposed would take all the NRS 675 lenders who are not banking institutions and regulate them under NRS 604A. We do not think that is an appropriate placement.

We offer longer terms than NRS 604A lenders. We have no pre-payment penalties; we do not take post-dated checks; we do credit checks on our customers; we do not loan money to people who do not have the ability to repay; and, we do not provide check cashing services. Our business is loaning money for the long term. In Exhibit Q, there is a copy of a letter dated August 15, 2005, from the Division of Financial Institutions. The letter is written to Mr. Mowatt asking him under which statute did he choose to be

licensed. Mr. Mowatt chose to remain a NRS 675 lender. His document is attached to the letter. This is how the Division of Financial Institutions contacted the companies involved and gave them the option to choose. There are reasons customers come to us as opposed to going to a bank or using a credit card or checking account. Many of our customers do not have access to these.

There are advantages to a customer using an NRS 675 lender. They have flexibility in payment schedules; they can make principal payments; and they have varying interest rates available depending on the customers' profiles. All of these areas we do as NRS 675 lenders. The NRS 604A lenders do not do any of them. When you take out an NRS 604A loan, it has a payment amount attached to it. At the end of the time period, the borrower owes that amount. Regardless of everything I have said, we agree we need more regulation.

We have a proposed amendment that would include putting some caps on the interest rates charged on a defaulted loan. The industry has a clear willingness to abide by the standards set by the military. We have included the right to rescind. Many of the consumer protections in NRS 604A can be made operative in NRS 675 without destroying the NRS 675 industry. The industry is willing to accept interest rate caps for loans made under NRS 675, which do not exist in NRS 604A loans. We have a twelve-point proposed amendment to this bill. It is offered to the Committee in good faith on the part of the NRS 675 lenders that I represent. I would be happy to answer any questions.

Chair Oceguera:
Questions?

Mark Mowatt, President, Keystone Financial Group, representing the Nevada Lenders Association:
My company has been in the installment loan business for ten years in the southern Nevada market. I have submitted a copy of my testimony for the record (Exhibit R). We understand that some of the evader companies represent isolated examples. We are all willing to work to resolve those problems. I want to describe the difference between a classic NRS 675 lender and a NRS 604A lender. Our concern is the industry is being painted with a broad brush. Passage of this bill will sweep any NRS 675 company from making loans over 40 percent into the NRS 604A regulations. This bill proposes that all existing NRS 675 licensed installment loan companies, whose business includes any loans with an Annual Percentage Rate (APR) of more than 40 percent, will be irreversibly reclassified as NRS 604A licensees. It would force those businesses to become check cashing, deferred deposit, short-term, or title loan lenders. Since the market served by these two lenders is very different, and since

consumers benefit greatly by having the installment loan financing option, we respectfully submit to you that there is no logic or fairness in arbitrarily revoking all the NRS 675 licensees.

There is no question that the effect of such legislation would substantially restrict the availability of competitive financing for both consumers and small businesses in Nevada. This action would be in direct conflict with the intent of NRS 675. Consider the type of loan services provided by these two types of lenders. The NRS 604A licensees provide deferred deposit, short-term, and payday loan services to consumers. Primarily these loans are given in the amounts of $50 to $1,000. The NRS 675 lenders provide long-term loans and revolving credit lines to consumers in amounts in the $300 to $10,000 range. They also provide financing to small business customers up to and above $20,000. Such business financing is usually secured by business equipment, inventory, or other non-real estate business collateral, as specifically provided for in NRS 675.

The market served by NRS 675 installment lenders is quite substantial and conservatively estimated at $90 million in loan volume per year in 150 licensed loan offices. This industry has 600 full-time employees and serves an estimated 70,000 Nevada consumers and small businesses.

The history of the two statutes is very different. In 1997, NRS 604A was originated and written to regulate check cashing, payday, and deferred deposit loan businesses. The NRS 675 installment loan statute was enacted in 1959, and has been revisited and amended seven times since 1977. The legislative declaration that this body of law is based on is excerpted in full in my written testimony. We have no problems coexisting with the NRS 604A lenders. As in the case of any sizeable industry, we realize there may be concerns with some specific operating or collecting practices. We are ready and willing to resolve any such issues through appropriate amendments to NRS 675. We urge you to encourage any concerned parties to address their concerns within NRS 675. We urge you to vote "no" on A.B. 478 in its current form.

Assemblyman Conklin:
Mr. Ostrovsky mentioned that your group would be willing to accept a cap on interest rates. What kind of a cap would you be willing to accept?

Mark Mowatt:
There is a wide range between the 40 percent and the 400 percent interest levels where the payday loans currently stand. We are not ready to state what an acceptable interest rate cap would be. A lot of important business done by consumers and small businesses falls between the 40 and 400 percent interest

range. It would depend on the size and the term of the loan. We can come back with a workable number. Our concern is that the 40 percent number is strictly arbitrary. Consumers will be forced to take payday loans instead of installment loans at an interest rate in the middle ground.

Assemblyman Conklin:
The distinction between a payday loan and the types of loans you are offering is the simple fact that a payday loan is exactly that. It provides loans to people to get from Point A to Point B in a short time frame. It is usually for a small amount of money. There is a cost of doing business to obtain the loan that is fairly standard regardless of the loan time frame. If your time frame is 50 to 100 times longer, how can your rates be close to the rates offered with a payday loan?

Mark Mowatt:
Let us look at an example. Whether it is a consumer or a small business customer who wants to borrow $300 to $4,000, a company may be able to offer a rate of 1 percent a week. It may take two or three years to pay back the loan. If this bill were to pass, we could no longer offer that type of loan. We could no longer take collateral. The only collateral allowed to be held in NRS 604A is a car title. We would lose the opportunity to do any funding at any rates below that level and there are limitations on the size of the loan. Interest rates would have to be adjusted. Payday loans provide a great service for that product. To offer an unsecured loan of a couple of hundred dollars for a week or two, a lender has to charge 300 to 400 percent interest. You need to charge high interest rates because it is an unsecured loan. The solution is to work out some amendments for the traditional NRS 675 lenders within the NRS 675 itself.

Assemblyman Conklin:
Let me restate my question because my question was not addressed. The cost of a loan is relatively similar. You have brought up two issues. One is collateral. If someone has collateral to offer for a loan, the price of the loan goes down. If there is no loan collateral, but the length of the loan is extended, the interest rate would go down. How do you justify your rates when the term of the loans you offer is 100 to 500 times longer than a payday loan?

Robert Ostrovsky:
I can only ask you to look at a payday lender contract. If a business is going to lend the same amount of money for a year, extending the payday loan terms, the interest rate would far exceed what we are offering. It appears to many people that we have evaded the consequences of having to operate our

businesses under the regulations of NRS 604A. There is a role for NRS 675 lenders with those restrictions built-in. We are talking about different products.

Assemblyman Conklin:
Regardless of which statute you are referring to, and no matter how you lend the money, there should be some relevance between the amount of money borrowed and the interest rates being charged. An interest rate in the 40 to 400 percent range is not relative.

K. Neena Laxalt, Government Relations Consultant, representing the Pioneer Loan Center:
I have a client, Bill Drobkin, in Las Vegas who would like to provide testimony. I am here only to introduce him.

Bill Drobkin, Owner, Pioneer Loan Center:
I am an NRS 675 licensee. I have submitted a copy of my testimony for the record (Exhibit S). My wife and I own Pioneer Loan Center. This bill would put us out of business because it would shorten the terms of our loans and create balloon payment loans instead of installment loans secured by the title of a customer's vehicle.

I want to explain our business model because we operate differently than the lenders you are complaining about. This would not only harm us but also our 20 employees and our 7,000 customers. Our loans are the easiest way for our customers to get funds quickly and at reasonable rates. We do installment loans on the customer's clear car title. Our repayment terms range from 14 to 24 months and the payments include principal and interest. Every payment the customer makes reduces the debt because principal payments are included. We do not have balloon payments, and we do not have a pre-payment penalty. Our average loan is $1,000. Our interest rates are 10 percent per month which is slightly over an APR of 121 percent. Our loans have a five-day grace period during which no penalty is charged if the payment is made within that time.

If our customers pay after the grace period, there is a $25 penalty or 6 percent of the principal payment, whichever is greater. If the loan goes into default after 15 days, there is a $75 default charge. That pays for our research to confirm the location of the client. If the customer calls to explain his reasons for being late, we will eliminate the default fee, and we give 30 days to bring the payments current. Our loan service fulfills a vital need in the community. Banks typically provide installment loans secured by a title to those customers who have good credit ratings. They usually have a $5,000 minimum loan amount. We loan from $700 to $5,000 to people who have poorer credit

ratings. Our loans are immediate versus a bank's, which usually take several days.

We deal with a population that is not well-served by the banks. We have repeat customers who typically have temporary financial problems. We work with our customers; we do not work against them. Our customers find that our payment method meets their needs for immediate cash. We can provide this type of loan to high-risk clients only if we can hold the actual title to the car until the installment loan is completely paid off. A section in NRS 604A prohibits an installment lender to hold a title. That is one of our issues with this bill. We would like to be able to hold the title so the customer cannot use the same title to get another loan. In the State of Nevada even if there is a lien on the title, there is no way to validate if a lien-holder's lien has been signed off. If you borrow money on a car title, the law specifies it can be a 30 day loan with 6 extensions. People usually pay the minimum. If it is an interest only payment, that is what they will pay. Then suddenly they get hit with a balloon payment. This is why we have a true installment loan.

Chair Oceguera:
We have a question from a Committee member.

Assemblywoman Allen:
Does your company use the courts for non-payment of the loan?

Bill Drobkin:
We try not to, but we have. We usually go to a collection agency.

Assemblywoman Allen:
It sounds like your biggest concern is the time restriction. Is that correct?

Bill Drobkin:
Yes. There are two issues. One is an affordable APR. I believe our 121 percent APR is the lowest mentioned during testimony today. Unfortunately under A.B. 478, we would still become a high interest lender. Because we loan only on a secured car title, the amount of time needed to repay the debt is longer. A 30-day loan time period with 6 extensions is not enough. Legally we cannot make a term loan under NRS 604A. This is why we do installment loans under NRS 675.

Assemblywoman Allen:
Do you have a recommendation for the time period? What do you believe the time period should be? One year? Two years?

Bill Drobkin:
Not really. I am not prepared to present an amendment to the bill. We agree with A.B. 478. We just disagree with the provision that affects the installment lending portion of the bill.

Terry K. Graves, Graves Communications, representing Koster Finance:
I am testifying from a neutral position on this bill. I am not opposing it. Koster Finance supports the efforts to eliminate abuses in the lending industry. We are also committed to work to that end in this process. We have offered an amendment (Exhibit T). The amendment requests the deletion of Section 5, which is the 30-day time limit. Koster Finance and the other representatives who have testified have differences from the other lending institutions. Our business model provides a variety of financial programs and products to the consumer. Not all NRS 604A lenders operate in the same manner. Koster Finance loans would not work with the 30-day time limit on the loans. It is too short a time frame. We support the military provisions of the bill, and except for resolving this one provision, we are supportive.

Chair Oceguera:
Are there any questions? Others in opposition or neutral on the bill?

Chris Dornan, Private Citizen, Reno, Nevada:
I worked on this bill as an intern during the last session. There are two major contentions which have not been presented by any of the other speakers. First, in response to Ms. Gansert's prior question about "teeth" in the bill to enforce the regulations, currently lenders can completely evade the law without penalty. There is a provision in the bill that limits damages on any loan, or against any lender practicing fraudulent business methods, to damages plus lawyer costs plus $1,000. Since most people using these lenders cannot afford a lawyer, the amount would be damages plus $1,000. That is not a penalty; that is a cost of doing business. Even if this bill passes, the penalties are minor. Perhaps an amendment to increase the fine or punitive damages to $10,000 or possibly a jail sentence may put more "teeth" in the bill. I have very little sympathy for these lenders. I am in support of the bill as it stands. It is a vast improvement over the current regulatory structure, but nonetheless there are still major concerns.

Second, I feel there is an "elephant in the room" that everyone is ignoring. No matter how you regulate the industry, the problem is the high interest rates of 500, 600, 1,000, and 7,000 percent. You are going to end up with the same problems. It is causing problems in the military; it is straining our court system; it is causing damage to Nevada families who deal with these institutions. The problem will not change unless there is some sort of limit or cap on the interest

rates, or a reinstitution of a usury law. As long as the lenders are allowed to charge whatever interest rate they want, without limitation, we will be back here. It will continue to cause problems.

The federal law put a cap of 36 percent interest on any loan to active military personnel. Why not extend that provision to all loans made in Nevada, and perhaps the banking community could use 36 percent plus prime. If that figure is not acceptable, choose another figure, but place some limit or cap on the interest rates that is acceptable. The way the interest rates now stand is ridiculous. There was a time when people were burned at the stake for charging interest rates of 7 percent. Usurious interest rates were once punishable by death. This current situation is not acceptable; it is not moral; it is not tolerable. It does not matter that there is a demand for this product. There is a demand for cocaine; there is a demand for heroin. We do not legalize these things just because there is a demand for them. They are too damaging to our entire society. It is the same with this manner of lending regardless of whether or not you are following all of the laws. It is not right and it should not be allowed.

Chair Oceguera:
Are there any questions? Others wishing to testify on this bill? We are closing the hearing on A.B. 478. Ms. Buckley will be working with people to come up with some acceptable language and when we see it we will bring this bill back to the Committee. We are taking a recess.

This hearing is called back to order. We are opening the hearing on Assembly Bill 397.

Assembly Bill 397: Clarifies that the examination for a license to practice optometry consists of sections and not areas. (BDR 54-1282)

Assemblywoman Bonnie Parnell, Assembly District No. 40:
This bill is a clean-up bill. Currently, the Nevada Board of Optometry per NRS 636 uses the term "areas" when stating the requirements for Nevada licensure. I have submitted a copy of the National Board of Examiners of Optometry examination (Exhibit U), and a handout describing the scope of the examination (Exhibit V). I am going to cover the conflict in the language, and the problems the discrepancy in the language has caused people who are applying for optometry licenses in the State. The Nevada Board of Optometry uses the term "areas" when referring to the requirements for Nevada licensure. The National Board of Optometry, which is used as the basis for Nevada and national licensure, does not have "areas" tested. The terms used on the National Examination are "parts" and "sections." This bill would request the

deletion of the word "areas" from Section 1 of NRS 636.190 and insertion of the word "sections." If you look at the National Board test, you will see the terms "parts" and "sections." The word, we have in our NRS, "areas" does not even apply to exams. This word change may not seem very important, but for people trying to get licensed in the State it can add unnecessary confusion.

The National Board of Optometry requires a score of 300 or better on each of the three parts of the exam. Nevada additionally requires a 75 percent score on each section within each part. When someone looks at the current language in the Nevada law, they might assume that the "areas" refer to "parts" not the "sections" within the parts. It is confusing to someone trying to obtain a Nevada license since the language in our law has no relationship to the terms used in the National examination. As of 2005, Nevada had only 140 practicing optometrists. A question to consider is should Nevada continue to require higher standards than the National Board of Optometry? Nevada is the only state that has this additional requirement for licensure. I would like to introduce Dr. Khankhanian, who is licensed in California. She would like to share with you the confusion and problems she has had in attempting to secure her Nevada license.

Farnaz Khankhanian, O.D., Private Citizen, Carson City, Nevada:
I am a Doctor of Optometry and completed my training at the University of California, Berkeley. I recently moved to Nevada, and I have been trying to obtain a Nevada license. Although I have passed all the necessary and available examinations, the Nevada Board of Optometry is still denying me a license. I have a certificate here from the National Board of Examiners certifying that I have met the requirements for and have passed the complete sequence of examinations developed by the National Board to assess fitness to practice optometry. It is dated 2005.

In NRS 636.190, the language says the examination to get a license must be prepared and administered by the Board or a testing agency. The Nevada Board has deferred evaluation of testing to a different testing agency, namely the National Board of Examiners in Optometry (NBEO). The Nevada Board refers the testing to the NBEO, but they do not accept the results of the test from the NBEO. I will attempt to explain the testing parts and sections.

In NRS 636.185, the law discusses the scope of the examination. It states that the examination, "...must include testing in the following areas:..." These areas do not correlate with the "parts" and "sections" which is the language used by the National Board. The National Board Examination is divided into three different parts.

Chair Oceguera:
It appears that the Nevada Board of Optometry is in support of this bill. Perhaps, we could have their representative come up and testify then see if there is any opposition to the bill. If there is, I would be happy to listen to your complete testimony, but I do not know that it is necessary.

Farnaz Khankhanian:
It is necessary in a way. Although this bill would clean-up the language, there is still a problem in the way the Nevada Board is interpreting the National Board scores.

Chair Oceguera:
Let us hear from the Board of Optometry.

Robert Crowell, Attorney at Law, representing the Nevada State Board of Optometry:
We support the change in the language in A.B. 397. The change will clarify the law. I do not know the particulars of the witness's case, but I would be happy to go back to the Board and discuss it.

Chair Oceguera:
Are there any questions?

Assemblywoman Gansert:
Does this remedy the problem you are having?

Farnaz Khankhanian:
No, it does not.

Assemblywoman Gansert:
Did you bring us information that would remedy your problem?

Chair Oceguera:
Generally, we do overall policy. We do not focus on one individual. Is there anyone in opposition to this bill? There is no one in opposition, and the State Board of Optometry is in support of the bill. It looks like the bill could pass right now, so you are risking the opportunity for that to happen if you continue to testify. However, we would be happy to listen to your story.

Assemblywoman Parnell:
I would be happy to work on amendments to the bill. This bill cleans up something that has to be done because we have conflicting language. It currently is not possible to satisfy the law's requirements.

Chair Oceguera:
If you want us to hold up on passing this bill because you think there are some amendments that would further clarify the language, I would be happy to do that.

Assemblywoman Parnell:
It is fine with me if you wish to take action on the bill as it stands.

Chair Oceguera:
I will accept a motion on the bill.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS ASSEMBLY BILL 397.
>
> ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

Is there any discussion on the motion? Seeing none, we will take the vote.

> THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, ARBERRY, CHRISTENSEN, CONKLIN AND MABEY WERE ABSENT FOR THE VOTE.)

[The meeting was adjourned at 4:57 p.m.]

RESPECTFULLY SUBMITTED:

_____
Judith Coolbaugh
Committee Secretary

APPROVED BY:

_____
Assemblyman John Oceguera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 28, 2007 Time of Meeting: 1:10 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 238	C	Assemblywoman Koivisto	Statement of Supporters
AB 238	D	Assemblywoman Koivisto	Discussion Points
AB 238	E	Dr. Jay Adams, Private Practice	Fact Sheet
AB 238	F	Dr. Jay Adams, Private Practice	Position Paper
AB 238	G	Stacey Escalante, Private Citizen	Article
AB 238	H	Lona Cavallera, Private Citizen	Booklet
AB 238	I	Morgan Baumgartner, Indoor Tanning Association	Proposed Amendments
AB 279	J	Assemblyman Kihuen	PowerPoint Presentation
AB 279	K	Assemblyman Kihuen	Proposed Amendments
AB 279	L	Paul Reyes, Chief Counsel for Senator Carona, Texas	Brief Biography
AB 478	M	Assemblywoman Buckley	PowerPoint Presentation
AB 478	N	Assemblywoman Buckley	Law Suits by Judicial Districts
AB 478	O	Captain Scott Ryder, Commanding Officer, NAS Fallon	Testimony
AB 478	P	Barry Gold, AARP Nevada	Statement
AB 478	Q	Robert Ostrovsky, Nevada Lenders Association	Proposed Amendments
AB 478	R	Mark Mowatt, Nevada Lenders Association	Testimony
AB 478	S	Bill Drobkin, Owner, Pioneer Loan Center	Testimony
AB 478	T	Terry K. Graves, Koster Financial	Proposed Amendment
AB 397	U	Assemblywoman Parnell	National Board of

			Examiners of Optometry Examination
AB 397	V	Assemblywoman Parnell	Scope of Board Examination