MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 1, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:08 a.m. on Tuesday, May 1, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman David R. Parks, Assembly District No. 41
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Lori Johnson, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary

OTHERS PRESENT:

Jon L. Sasser, Nevada Legal Services; Washoe County Senior Law Project; Washoe Legal Services
Steven Kondrup, Acting Commissioner, Division of Financial Institutions, Department of Business and Industry

Marel Giolito, Nevada Collectors Association
John Wanderer, Commercial Law League of America
David Stone, Nevada Collectors Association
Valerie M. Rosalin, R.N., Director, Office for Consumer Health Assistance, Office of the Governor
Mark Brewer
William R. Uffelman, President and CEO, Nevada Bankers Association
Robert L. Crowell, Nevada Association of Mortgage Professionals
Catherine L. Jackson, Nevada Association of Mortgage Professionals
Ed Rathje
William J. Birkmann, Vice President, Nevada Alliance for Retired Americans
Joseph Guild, III, State Farm Insurance Company
James Wadhams, American Insurance Association
Charles Knaus, Lead Actuary, Division of Insurance, Department of Business and Industry
Daryl Lawson, M.S., DPTSc, Director of Motion Analysis Laboratory, University of Nevada, Reno
Parley Anderson, D.R.T., Cochair, Governmental Affairs, Nevada Physical Therapy Association
Beth Altenburger, President, Nevada Therapy Association; Faculty, Physical Therapy Program, University of Nevada, Las Vegas

CHAIR TOWNSEND:
We will get started by opening the hearing on Assembly Bill (A.B.) 88.

ASSEMBLY BILL 88 (1st Reprint): Revises provisions governing the collection of debts by collection agencies. (BDR 54-630)

JON L. SASSER (Nevada Legal Services; Washoe County Senior Law Project; Washoe Legal Services):
The bill was brought forward by the Office for Consumer Health Assistance by Ms. Rosalin, and Acting Commissioner Kondrup from the Division of Financial Institutions. The bill was the subject of discussion and debate between the parties. A compromise was reached in the Assembly. What the bill does is create two new rights not present under the federal Fair Debt Collection Practices Act (FDCPA) of 1996. When there is a collection of a debt, the collection agency must let the consumer know even if a debt is beyond the statute of limitations, if they acknowledge the debt or make a payment on it, they may be waiving the statute of limitations. Also, under federal law there

must be verification of a debt if a consumer asks for it. This defines in sections 1.5 and 2 that to verify a debt, a collection agency shall obtain or attempt to obtain from the creditor any document that is not in possession of the collection agency and is reasonably responsive to the dispute of the debtor. The bill incorporates, by reference, certain provisions of the FDCPA into Nevada law, and gives the Division of Financial Institutions the ability to regulate violations of that act in Nevada.

CHAIR TOWNSEND:
Why are we doing this? What is the problem?

MR. SASSER:
The main problem to spur this was the activity in Las Vegas where University Medical Center (UMC) had a number of old, stale bad debts they sold to a collection agency. That collection agency then engaged in a series of what is considered unfair collection practices that would violate the federal act. They intimidated a number of people into agreeing to pay for debts the statute of limitations had run out five or six years ago. There were numerous complaints to the Office for Consumer Health Assistance, and they brought A.B. 88 forward as a result. There were discussions with the director of that office, and a number of representatives of the collection agencies leading to a compromise final resolution in the Assembly.

STEVEN KONDRUP (Acting Commissioner, Division of Financial Institutions, Department of Business and Industry):
Initially, when this bill was presented to me, the director of the Office for Consumer Health Assistance had concerns regarding activities of debt being sold from the UMC to a private party, and then turned over to a collection agency. The director worked with me and other members of the industry along with Mr. Sasser to put together a bill in which activity such as this would be defined and the consumer would be more protected under the FDCPA.

SENATOR HECK:
I want to clarify a comment that federal law requires the information be provided verifying the debt, if the consumer asks for it.

MR. SASSER:
You are correct, the federal law requires that. What the federal law does not do is define what verification has to be provided, so we have defined that further in state law under section 2, subsection 2.

SENATOR HECK:
That requirement is there only if the debtor asks for the information. It is not making the agency get all the information for every debt they are attempting to collect, only if the debtor asks for the documentation.

MR. SASSER:
That is correct.

MAREL GIOLITO (Nevada Collectors Association):
The industry worked with Ms. Rosalin and others to clarify this bill. Unfortunately, there are still some questions. At the top of the act it does refer to two sections of the FDCPA. All debt collectors in the United States are subject to the FDCPA. This bill references two sections, and there are 18 sections in the FDCPA. We would be happier if it gave a blanket reference to the FDCPA. We think it is not in the best interest of consumers or the industry to reference only 2 of the 18 sections.

There is a phrase where it is asking us to put additional language in our written communication with the consumer. Every initial written communication with the consumer in the United States has, what we call, the validation statement which tells the consumer their rights, how to dispute a debt, what information is provided, what is needed to verify the debt and the time line. If a debt is not verified within 30 days of contact, that debt must be removed; we must not contact the consumer again or further pursue it. That is very clear and one of the strongest points of the FDCPA. The statement would also tell the consumer that a waiver by the debtor of any applicable statute of limitations set forth in the *Nevada Revised Statute* (NRS) 11.190 that otherwise precludes the collection of a debt. If the debtor does not understand or has questions concerning legal rights or obligations relating to the debt, the debtor should seek legal advice.

We think the first section of this statement would be confusing to the least sophisticated consumer. The FDCPA, courts and juries, since the inception of the FDCPA, has been careful of consumers' rights, and also of the term "least

sophisticated consumer." If the consumer calls the agency and asked an agent to explain what that statement means, we would be in a difficult position of offering them legal advice or interpreting it ourselves. At that point, we would have to refer the consumer to an attorney, so we think it is contrary to consumer protection.

I have a problem with the words "reasonably responsive." That is a vague term open to interpretation. What I believe is reasonably responsive to a consumer, what the consumer believes, and what a judge and jury consider reasonably responsive, might be four different things. The FDCPA, although it does not say what exactly should be included in a verification, it is typically understood throughout the industry and the consumer what is a verification; that would be a statement of charges, a statement for services or products, a contract or other items involved in the presentation of the services or the product to the consumer.

CHAIR TOWNSEND:
Did you bring these concerns to the Assembly? Particularly, the one regarding section 1.5, including all the sections of the Fair Debt Collection Practice Act?

MS. GIOLITO:
Yes, we did and some concerns were addressed. At that point there was language from the FDCPA that had been inserted, but changed. I believe the word used during the Assembly hearings was "mimic." We were opposed to anything that changes any of the words in the FDCPA. It is a strong, legal document, and to change a word could change the meaning or the thrust of the intent of the FDCPA. It could lead to problems with consumers; it could lead to additional legal actions against agencies, and we did oppose it. We also opposed the insertion of the statement on the first letter, because we think that is confusing to the consumer. We have worries that it may also be challenged in court as other state issued phrases inserted on first letters that have been challenged in other states.

CHAIR TOWNSEND:
Was there a discussion at all on just putting in something to deal with the FDCPA? Did the organization to which these debts were sold by UMC violate any of the federal act?

MR. SASSER:
Yes. Maybe there was confusion about who was representing whom. The debt agency owner, David Stone, was involved in all of the negotiations and, perhaps I wrongly assumed, he was representing the lady in Las Vegas and her organization. But he had signed off on all the language that is now in this compromise. I do not think anybody would have a problem on incorporating the whole act if she wishes to do so. In fact, I proposed an amendment to adopt the act by reference and not paraphrase it, as she said. The two sections adopted are the ones at issue, and we were not proposing to go that far. I do not have a problem with adopting the whole act. In terms of the initial notice, the biggest confusion with UMC was seniors and people who were confused by being contacted five or six years after the statute of limitations had run on what is called a stale or a zombie debt; then being pressured into some acknowledgement of that debt and arguing that they had waived the statute of limitations. It was important to everybody in the Assembly that there be some notification you might be doing that.

CHAIR TOWNSEND:
That is not in the federal act?

MR. SASSER:
That is not in the federal act. That would be additional language incorporated into state law. The problem is when a consumer challenges a debt on many levels that they never got the service or never signed the contract; each situation is different. That is why we have reasonable response to that situation, rather than trying to list 50 or 60 possible situations into the bill.

JOHN WANDERER (Commercial Law League of America):
I became involved because I happened to be testifying on another bill in the Assembly committee and offered a few comments on this bill. I was sent with the proponents to see if I could help them reach an agreement, which they did. Ultimately, a bill was sent back to the Assembly committee. I was present when this bill was voted on in the Assembly committee, as was Mr. Stone and Ms. Giolito. The Assembly committee had two model bills but no one else did, so no one knew what was in them, but the committee who voted on them, not allowing for input.

The FDCPA does not contain a statute of limitations provision, however all the federal case law interpreting the FDCPA holds it as a violation of the FDCPA to

attempt to collect a debt which is out of statute; even though, under state law, it is permissible to file a lawsuit out of statute. It is an affirmative defense for a defendant to raise that issue. Under the FDCPA it is a violation, not because it is written in the statute, but because of the case law that surrounds it.

The federal law has defined the verification as producing a statement showing that the creditor's last statement shows when the account is due and amount owed. There may be instances when the debtor gets that and has further questions. Having been involved with this industry for over 30 years, I can tell you that anyone who is trying to collect a debt where they are told a statement is not sufficient, or not understood, is going to explain it or is going to obtain further documentation, because it is their objective to collect the debt. It enhances the collection of the debt if you provide the debtor with sufficient information that they might pay it. I question whether or not the verification provision, which is requested in this statute, really accomplishes a whole lot. I would also point out it refers to not a waiver of a statute of limitations set forth in NRS 11.190.

There are other statutes of limitations which are not in NRS 11. There is a statute of limitations pertaining to consumer debt in chapter 104 of the NRS. What needs to be emphasized is we now know this was brought on because of some activity at Southern Nevada Memorial Hospital.

In my opinion, the best way to have addressed what happened was to have laws and regulations pertaining to the purchase of debt, which they attempted to do in A.B. 247. They may also have enacted certain rules, maybe in the rules of procedures from the courts, making it inappropriate to try to collect a debt or to sue on a debt that is past the statute of limitations. Those things could have been done without this.

ASSEMBLY BILL 247 (1st Reprint): Makes various changes concerning billing for, collecting and bringing actions and enforcing judgments for delinquent payments for hospital care rendered at a hospital. (BDR 40 819)

The reason I am here is the Fair Debt Collection Practices Act does not apply to commercial debt. When I helped Mr. Stone draft this statute, I had a provision in it which states, section 1.5 and section 2 did not apply to the collection of commercial debt. One of the comments at the Assembly committee when they

passed this bill, which they called model 1, was they deleted that provision because they spoke with the Division of Financial Institutions who said it does not distinguish between the licensing of commercial debt versus consumer debt. The fact is, they do not distinguish the difference between licensing but the law distinguishes between the collection. Commercial debts are debts between businesses, they do not involve consumers. This is intended to be a consumer matter, and you need to restore the exception for commercial debt. It can be done by either reinserting the paragraph that was deleted or simply add to section 1.5 that this section 1.5 and section 2 shall not apply to debts defined in Title 15 *United States Code* section 1692a(5). That is the section of the FDCPA which defines debt as being a consumer debt incurred for personal use.

There are two ways to do it, but you need to do it, because most debt collection takes place by virtue of interstate commerce. You may have received a letter from the Commercial Law League or the Commercial Collection Agency Association, a division of the Commercial Law League, pointing out that their members, some 115 members, collect 70 percent of the commercial debt in this country, approximately $16 billion a year. They all do business by virtue of interstate commerce. If Nevada passes this bill now without accepting commercial debt, then you would set Nevada aside from the rest of the states that recognize the difference between the collection of consumer and commercial debt. You do not hear complaints about the collection of commercial debt. It is a different world, it is a different industry; everything about it is different. There may be some agencies which do consumer and commercial debt collection, and some follow the FDCPA on a commercial debt because it is easier than to internally distinguish which is which.

DAVID STONE (Nevada Collectors Association):
I did work with Mr. Sasser on the original draft of A.B. 88. The bill was a quagmire of problems and we spent time cleaning it up. The amendment was passed without benefit of review. If you read through the FDCPA and the cases, you will see the term "least sophisticated consumer." That term is peppered throughout case law with respect to the FDCPA. The words have to be easy enough to be understood by the least sophisticated consumer.

My concern is section 2, paragraphs (a) and (b). Those words are not easily understood by the least sophisticated consumer, in my opinion. People in the industry understand it, lawyers understand it, fairly sophisticated consumers will probably understand it, but the least sophisticated consumer is not going to

understand those words. I am not saying we should not have them in the bill, I am saying there has to be a simpler term used.

We are concerned that the "reasonably responsive" term is such a subjective determination and something needs to be done. Most of the issues with the UMC regarding violations are already covered under the FDCPA. Any of those consumers who suffered any damage or were treated unlawfully have avenues to pursue the proper entities as provided under federal law and the FDCPA.

SENATOR CARLTON:
I notice on the Webpage what people's recourse would be in Nevada. This is regulated under the Federal Trade Commission, which seems a tough place for people to go in order to have their concerns addressed; especially when so many had problems. I think part of it was to give Nevadans a few more options. I would like your opinion on the two sections versus all sections. How do you feel about citing the whole section and giving the state an opportunity to address the concerns?

MR. STONE:
You are correct. As I understand the state has no authority to pursue violations as defined under the FDCPA. We have made it clear we have no problem in incorporating 100 percent, we are already obligated to comply, and we have no problem having the entire FDCPA statute referenced under NRS 649. Our concern with A.B. 88 is that it only mimics the FDCPA. If we can have a clean inclusion into the bill, we would have no problem with it. Total inclusion of the FDCPA absolutely works for the industry.

SENATOR CARLTON:
In the interest of full disclosure, I was not involved with the UMC quagmire, but my daughter was. Since her name and mine are similar, we received a few phone calls, and were able to straighten it out. They were misleading on the phone with if you do not send us money right away this is going on your credit report.

CHAIR TOWNSEND:
Ms. Rosalin, explain section 2, subsection 2, paragraph (a) to me.

VALERIE M. ROSALIN, R.N. (Director, Office for Consumer Health Assistance, Office of the Governor):
This piece is requesting when a debtor is approached that they request from the collection agency or whoever is calling them, for proof of that debt. In the case of hospitals, frequently, if the collection agency is representing them, the medical records and other payments schedules are still with the hospital. The explanation of benefits is either from the insurance company, the provider or the hospital.

CHAIR TOWNSEND:
Who are you attempting to get at here, the insurance company or the consumer?

MS. ROSALIN:
What we are trying to get at is a fair outcome and the state have more stringent regulatory powers over the collection agencies and the consumer is responsible for their debt.

CHAIR TOWNSEND:
I have read this section several times and still do not understand how it works. If someone calls about a debt to say you owe $100, the only document that consumer is likely to produce for you, as a collection agency, is a piece of paper saying I paid this and here is a copy. Do you really think the consumer is going to send you something that says you are right and they owe the $100? We cannot put something like that in the law.

MR. SASSER:
There seems to be a misunderstanding.

CHAIR TOWNSEND:
There is no misunderstanding about what is written on the page.

MR. SASSER:
What is being discussed is when the consumer, in response to the first notice from a collection agency, sends back a letter to the collection agency saying they are seeking verification of this debt. This language deals with what the collection agency now provides to the consumer verifying the debt, which can be different depending on the type of debt. If it is a hospital debt for knee surgery in 1907 for $1,500 and here is the bill; that would be verification. This

bill is talking about, not language confusing to the consumer but the debt collection agency's obligation to supply verification to the consumer. The language was written by Mr. Stone and submitted because we agreed with it. Perhaps, the language was slightly garbled in translation. I would be willing to work with him to return it to its original form.

CHAIR TOWNSEND:
I would like our subcommittee of Senator Heck and Senator Carlton to deal with this, because this is a mess. I would like Ms. Rosalin to go on record. Will the FDCPA in all its sections help those individuals contacted by this collection agency who acquired those old debts?

MR. STONE:
I am listening to all sides, and they are all saying yes.

CHAIR TOWNSEND:
I do not want you to speak for anybody. I want our two state people to stand up, state their names and say either yes it does cover those people or no it does not.

MS. ROSALIN:
Yes, it would be.

MR. KONDRUP:
If the FDCPA, inclusive, is printed into the bill, it would protect the consumer in Nevada. Yes, sir.

CHAIR TOWNSEND:
That is not what I asked. Does the FDCPA, in its entirety, help those people that have theoretically been either abused or whatever with the charges in southern Nevada due to the UMC issue?

MR. KONDRUP:
Yes, it does; it will.

CHAIR TOWNSEND:
Now we have to figure out what is the need for the rest of the bill. If the need is, according to Mr. Sasser who has always been articulate on these matters,

that line 15 is silent in federal law and may need something. Is that your understanding, Mr. Stone?

MR. STONE:
I am not sure how to answer that question. From day one we simply requested the inclusion of the FDCPA. Under the FDCPA, trying to collect on a debt already past the statute of limitations would be a violation of the FDCPA.

CHAIR TOWNSEND:
Why are we here, if all these people who complained are covered under federal law?

MS. ROSALIN:
We do not have the language in state law. What we were trying to do is bring it into state law so that Division would have the power over the collection agencies to keep them within the federal law. The collection agencies represented here may be keeping the law, but that is not the case with others. What we are asking for is that this language be put into state law, and the collection agency would have to prove that the debt is valid. They would have to investigate further if that insurance was billed or billed in a timely manner, and that the debtor was able to appeal any type of denials that caused this debt.

CHAIR TOWNSEND:
Is there any reason that we do not simply give authority to the Division of Financial Institutions to, in fact, enforce from a state perspective the federal statute, and simply codify the federal statute at the state, and call it a day, instead of rewriting things that may be in conflict with the federal statute?

MS. ROSALIN:
That would be all we need, Sir.

MR. STONE:
If we could take away all this stuff and just include the FDCPA by reference so it falls under the Division of Financial Institutions, we would be happy.

MS. GIOLITO:
That is all we asked for from the beginning. We are more than happy to work with the Division of Financial Institutions and Ms. Rosalin's office in order to

educate and to further the relationship between consumers, agencies and state agencies to include the FDCPA.

CHAIR TOWNSEND:
Mr. Sasser, would you be satisfied if we codify the federal law and give the jurisdiction to the Division of Financial Institutions?

MR. SASSER:
That would be a great improvement over the current situation. There was some value in the other two bills, and I am sorry they were presented in a confusing way. I would prefer to work on them to make them less confusing, but if that is the will of the Chair, then it would be a great improvement.

CHAIR TOWNSEND:
We will close the hearing A.B. 88 and leave it to the subcommittee. We will open the hearing on A.B. 329.

ASSEMBLY BILL 329: Requires adoption of regulations concerning nontraditional mortgage loans and lending practices. (BDR 55-1044)

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):
This bill requires the commissioner of the Division of Financial Institutions with the cooperation of the commissioner of the Division of Mortgage Lending to adopt regulations on traditional mortgage loans, products and practices. Nontraditional mortgage loans include such products as interest-only loans and payment-option adjustable-rate mortgages. The regulation must apply to persons of institutions who make loans secured by liens on real property and who are required to be licensed as banks, other financial institutions or mortgage agents, bankers or brokers. The regulation must be substantially similar to the guidance published by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators.

The handout is the document that when I asked for the bill to be introduced, there were a couple of states that had adopted this set of guidelines. Since then, there are more than 30 state agencies have since adopted it (Exhibit C).

CHAIR TOWNSEND:
This is a unique area of the financial world. This could be helpful in that you cannot turn on the radio or television, pick up the newspaper or open the

mailbox without something about reducing mortgage payments. Not everyone reads the fine print, and that is factored into decisions.

MARK BREWER:
One question is what prompted the bill? From the way I am reading the bill, the regulations are only directed towards mortgage bankers and mortgage brokers under the NRS 645B and 645E. This creates an unlevel playing field. We do not talk about depository regulators that have these same instruments brought upon it; I refer to the guidance for the nontraditional mortgage product risks as referred to on line 11, section 1, subsection 2. It was a committee setting forth programs and policies for federal credit unions in anticipation of use of these products.

CHAIR TOWNSEND:
Did you testify in the other House?

MR. BREWER:
No, I did not have an opportunity. My main concern is this bill is trying to place into statute an area that can be used just by issuing direction, instead of statute, to the commissioner of the Division of Mortgage Lending and his superiors who have the ability to utilize information provided by the guidance of nontraditional mortgage product risk, as well as the CSBS that could be utilized within the regulatory system already provided by statute and law. In other words, we have one report we are going to be putting something into statute that gives the commissioner of the Division of Mortgage Lending 60 days to say yea or nay; there is nothing definitive here.

Additionally, a lot of the information we receive in the mail is good; a lot of information is designed to make the telephone ring. However, the information being provided and through this regulation, starts hamstringing specific loan products such as interest-only loans and adjustable-rate mortgages that have an optional payment schedule placed on it. It also excludes reverse mortgages and home-equity lines. Reverse mortgages can be self-funded using interest-only products and option payments benefiting the consumer more so than what the U.S. Department of Housing and Urban Development and the Federal Housing Administration are able to do at less cost. When you do not have regulatory oversight there is a balance between risk versus benefit. However, if somewhere down the road the CSBS states they do not like something, now we

are obligated under statute to eliminate it from the products available to the consumer.

The problem that occurs is because these products are becoming more complex. At one point we have a lack of education in Nevada, and the bar is so low with the education requirements for mortgage-banking agents and mortgage-broker agents. The only things required are a good fingerprint card that comes back clean from the Federal Bureau of Investigation and a $185 license fee.

CHAIR TOWNSEND:
The one thing I noticed is reverse mortgages which are an instrument currently in the marketplace not covered under this, is that your understanding?

MR. BREWER:
Specifically, line 5 on page 3.

CHAIR TOWNSEND:
I understand, but you say you have a concern that it does not include this?

MR. BREWER:
Interest-only loans and option-payment, adjustable-rate mortgage (ARM) loans are tools the consumer can use with other financial products; i.e., investment-grade life insurance contracts. It could be a whole life policy, some type of life policy, an annuity policy being utilized through that industry along with interest-only products and the option-payment ARM products. Using arbitrage which is what the banks use all the time to make money, this could potentially prevent the consumer from being able to do his own type of reverse mortgage. This bill recognizes the need for reverse mortgages by taking out a rifle and aiming against interest-only and option-payment ARM products that could potentially take out the Nevada areas where we have an aging population.

CHAIR TOWNSEND:
It says it does not include a reverse mortgage which caught my attention. This is a bill which simply states there will be regulations promulgated to deal with nontraditional mortgage loan products. That is all it says, and it excludes reverse mortgages. Are you saying they should be included because they are, in fact, a nontraditional mortgage product?

MR. BREWER:
It is a devolved product, so it should be included.

CHAIR TOWNSEND:
What about the home-equity line of credit other than a simultaneous second-lien home-equity line of credit?

MR. BREWER:
Before I answer that, I would like to get clarity from the writers of the bill as to their intent.

CHAIR TOWNSEND:
I am not sure I know what a simultaneous second-lien home-equity line of credit is.

ASSEMBLYMAN PARKS:
It was an attempt to mirror what the federal government had done on the federally regulated mortgage instruments. What this does is cover the state regulated and the non-federal regulated, so everybody is on an even playing field.

WILLIAM R. UFFELMAN (President and CEO, Nevada Bankers Association):
On October 4, 2006, the federal banking regulators put out a set of guidance documents covering nontraditional mortgage products. They are the mortgage products used to acquire property. Concerning simultaneous second-lien home equity lines of credit, the 80/20 mortgage where somebody borrowed 80 percent as the primary mortgage, and then took a 20-percent second mortgage to make up the entire purchase price of the property; that is included. If you got a home-equity loan separate and apart from that additional acquisition, that is not a property-acquisition mortgage product. The reverse mortgage as it is known in the industry is, in effect, cashing out equity. You are saying, lend me "X" amount of money and pay me each month. I stay in the dwelling, it accumulates, and in the end when they settle my estate, it is against the equity in the property. That is not a property-acquisition mortgage covered by the federal regulation and the state regulation.

MR. BREWER:
When we talk about simultaneous second-lien equity there are plenty of times outside of the purchase motivation that first- and second-trust deeds have

simultaneously been placed on a property in terms of a refinance. Either you are purchasing a property or if you own, it is a refinance.

The simultaneous second-lien position is not specific to neither purchase nor refinance or you could assume it would be considered inclusive upon interpretation.

CHAIR TOWNSEND:
Assemblyman Parks' intent is to simply take what occurred in this guidance area in October 2006, and have it apply to the state. What is wrong with trying to take something the federal government did and apply it here to be helpful to consumers of these products?

MR. BREWER:
Mr. Uffelman presented me with a document that is an issuance of guidance; it is neither regulations nor statute. Therefore, it does not have any lawful bearing per se, except for providing direction towards investors and lenders. Do they have a choice to ignore it? They certainly do.

MR. UFFELMAN:
Perhaps, the gentleman does not understand the system. As I said before, in October 2006, the federal regulators of the depository institutions of the banks put out federal guidance which in effect has the impact of regulation on the nontraditional mortgages done by financial institutions. This is where it gets muddy. The CSBS represents state banking supervisors. In some states, the state banking supervisors regulate both banks and mortgage lenders. In this state, we happen to have two parallel tracks which is why you wind up with the residential mortgage regulators also being involved in this joint guidance. The guidance says to the regulators, when you adopt regulations for your state, this is what it should include relative to these things. If you read this guidance, it has lots of issues or lots of expansion on what the various risks are relative to these kinds of mortgages the people, in fact, who are going to take those mortgages, should be made aware of by the mortgage lender. The guidance has spaces in it where a state can put in specific things relative to the space. The notion is that we will have a relatively uniform set of regulations about nontraditional mortgages across the nation, once all the regulatory bodies act on it. As Assemblyman Parks said, more than two-thirds of the states have now acted. There is nothing insidious about it. It is guidance for the regulators when

they are making rules that these are the things that should be considered, so when you make rules for your state, they are inclusive.

MR. BREWER:
In response, the mortgage broker and banker through what is called the secondary market cannot sell products that are already outside of this. This is not just restating, but over-regulating the same thing. If things change during that time frame, basically it refers to items of payment shock or what is considered nontraditional. What I see here are the banks, the lending institutions, that eventually service the loan documents and actually fund the money at the end of the note trail are already following these guides. There is no reason to continue to over-regulate by statute when the information is already provided and being acted upon through guidance and underwriting matrices that I am required to follow. Disclosures within a loan package represent over two-thirds of the weight of a package.

CHAIR TOWNSEND:
That is bad?

MR. BREWER:
Not necessarily that it is bad, but there are so many statements and restatements of the same thing within the loan packet itself. There are three documents alone that affirm you are going to be owner-occupied as a second or vacation home or an investment-only product.

CHAIR TOWNSEND:
I am not tracking you here. This is an opportunity for the Division of Insurance to hold a regulatory process to adopt some guidelines for those who provide these nontraditional mortgages. I have yet to see where you say we are over-regulating somebody. Am I missing something? These are regulatory guidelines, we are not regulating anybody; they are already regulated. So why do you have an objection to give guidance to those people who are providing these products?

MR. BREWER:
To state and restate comes up to different levels of being able to interpret the law down to whichever level. I as a mortgage banker would prefer to have to deal with the person I have to sell my note to, who has a better understanding of that direction. Now we are placing another level they have to be concerned

with if the Commissioner decides to interpret this direction slightly different than what is being interpreted in another area. We are now going to have conflict, and eventually harm the consumer.

CHAIR TOWNSEND:
That is the role for the regulatory mechanism. When the hearing is held, you can state that.

MR. BREWER:
I understand your point. These guides are already available to the commissioner without having to put them in statute.

CHAIR TOWNSEND:
Since the commissioner is not here, we cannot discuss whether he does or does not. Why do you think the federal government would do something like this or the Conference of State Bank Supervisors and the Association of Residential Mortgage Regulators if they thought this was already in law? Why do you think they would try to help with this?

MR. BREWER:
Let me give an example from history.

CHAIR TOWNSEND:
I do not want an example from history. Do you have an answer of why you think they are doing it if there is already authority? They are asking for guidance. They have provided these guidelines to the federal government and are asking the states to adopt them. It is coming from the industry that either supervises or provides the product.

MR. BREWER:
It is not coming directly from the industry; it is coming through the federal government.

MR. UFFELMAN:
I want to make this as clear as I can. The federal regulators that regulate the banking and depository institutions adopted a set of regulations. This now says in the states where the state regulates the mortgage bankers and mortgage brokers, this is the set that parallels what the federal regulators have already adopted relative to the banks. So that, in fact, you will have a uniform set of

regulations across the United States. It is our dual banking system and mortgage system that have developed the guidelines.

CHAIR TOWNSEND:
Do the banks already have this information?

MR. UFFELMAN:
The banks got it in October 2006. The irony in this state is the Division of Mortgage Lending will be more guided than is Mr. Kondrup's office.

MR. BREWER:
He just answered the salient question. He is more influential through this regulation than just the adoption. I, as a mortgage broker or mortgage banker, am already required to follow these regulations, because this is how the underwriters underwrite the loan packages. There is no need, because the banks have already issued their guidance that we are only going to buy paper that follows these guidelines. The banks are already self-regulating it through the guidance and matrices I am required to follow.

ROBERT L. CROWELL (Nevada Association of Mortgage Professionals):
We do support the provisions of A.B. 329. It is regulatory in nature, and a worthwhile piece of legislation.

SENATOR CARLTON:
Will this legislation make it easier for consumers who think they have been wronged to file a complaint and have it addressed at the state level rather than the federal level?

CATHERINE L. JACKSON (Nevada Association of Mortgage Professionals):
I have seen abuses with the option ARMs as a broker. What I see with this legislation is if it is disclosed properly up front, then maybe we would not have those complaints. The consumer will better understand what they are getting before they sign the documents.

SENATOR CARLTON:
By putting this in the state regulatory system, if someone feels they have been wronged, will they have an easier option to deal with this rather than dealing with it on a federal level? Or does that not apply to this?

MR. CROWELL:
This bill is more for informational purposes in terms of education for the consumer as a borrower. The actual regulatory terms that would be employed are either in current law or the legislation which will come to this Committee from the other House.

CHAIR TOWNSEND:
Mr. Kondrup, we are dealing with A.B. 329 having to do with nontraditional mortgages that affects your agency.

MR. KONDRUP:
In my discussion with Commissioner Bice of the Division of Mortgage Lending, this bill would allow the Division of Financial Institutions to work with him to also look at installment lenders that take residential property for mortgage-type lending and regulate them more accordingly so nontraditional mortgages would be able to protect the consumer. I am willing to work with Commissioner Bice in the passage of this bill.

MR. BREWER:
Consumers are also protected under the Real Estate Settlement Procedures Act, Truth-in-Lending Act, which requires all information be presented to them during the application process. It is receipted to them midway in between by the proposed lender at that point in time. In the final signing of the documentation, there are three layers placed on it as if it is a refinance, and a three-day right of rescinding for any residential property, one to four owner-occupied units, that is also considered as part of second homes. There is a series of levels of protection already in statute dealing with those areas.

CHAIR TOWNSEND:
We will close the hearing on A.B. 329 and open the hearing on A.B. 404.

ASSEMBLY BILL 404: Revises provisions governing the use of credit information by insurers. (BDR 57-1335)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):
This bill relates to ways in which accounts are used in credit reporting for determining credit scores. I have prepared testimony on the way auto insurance companies are able to use credit information to determine rates for our consumers (Exhibit D).

I am sure you are well aware this was a big issue in the 2003 Session; it is a complex issue. The thing that seemed clear is this is difficult, complicated and hard to understand and follow. The way that credit scores and information provided in credit reporting is used is complex at best, therefore, it was decided that being specific about this issue would be the best solution, that is why the bill adds one line to the current statute.

My constituent had received a postcard from his insurance company saying he was entitled to the best rates they had to offer and did he want to apply. When they did the credit workup on him, they sent a letter saying he did not qualify.

I have to read these reasons because they are mind-boggling to me. The average time your account has been open is 24-35 months. The average time of 144 months or more is best in this category. You have opened 8 or more accounts revolving installment mortgage credit line in the past 36 months; 0 to 5 is best in this category. It have been less than 6 months since you made a request for credit; 18 months or more or no request at all is best in this category. You have opened 4 or more installment accounts, credit with fixed payments, in the last 36 months; zero is best in this category.

The more I learned, the more I investigated and the more frustrated I become. I am not sure how the consumer is supposed to know how to manage his credit to get the best premium. How are you and I supposed to know this?

This is an issue that affects everyone in every walk of life. In fact, a couple of days after the hearing in the Assembly, one of my colleagues brought me a letter she received from her insurance company when she went home the weekend after her committee unanimously passed the bill. The letter explained she is not offered the best rate from her insurance company and one reason is because of the credit inquiry to rent her house in Carson City to serve in the Legislature. Got to love it!

ED RATHJE:
I am representing myself, and probably hundreds of thousands of Nevadans and maybe tens of millions of Americans in the same situation. All of us are penalized by an invisible, mostly unregulated, insurance rating system.

I first learned of this the hard way as a victim. I was able to avoid it by switching to insurance companies that did not use scoring. I feel sorry for those who are bashful about standing up against big insurance companies and suffer because of this.

The most prominent spokesperson in the scoring industry called me after I inquired about the product. He proudly represented that the scoring system "was 95-percent accurate." My point is if the marketing manager brags it is 95-percent accurate, maybe it is 80 or 85 percent, not to mention the fact that it is based on statistical correlation. I have had statistic courses in both undergraduate and graduate education, and every statistics professor will tell you correlation does not say anything about cause and effect. I was introduced to correlation in seventh grade when reading a novel by Edgar Rice Burroughs. He imagined Tarzan's primitive mind looking at the trees when they started to move back and forth in the wind. Obviously, the trees caused the wind; that is correlation.

MR. RATHJE:
If at least 5 percent or maybe 10 or 20 percent of America's auto insurance consumers are unfairly rated by a mysterious black box proprietary system, they have no say or knowledge of how it is being used. The first insurance company I was with for 41 years, up until 3 years ago, was as a driver on my own policy and 5 years before that on my parents' policy. I had almost half a century of driving history and almost no claims history, but they started using insurance board scoring. I received a statement that said, "excessive and unknown amount of auto financing." They could not explain what that meant. I had one car loan and one car, how could that be excessive? They could not explain it, and they could not put me in contact with the company that generated that statement. They referred me to the credit agency to "repair my credit record." I called Experian about my credit record. In 17 years, 30 vendors and a single 30-day late payment; yet I was put in the bottom 50 percent of rating. It took me two years to find out what was the problem. A car loan I paid off in six months was specified as balance zero, paid as agreed, but that critical word "closed" was not there. Somebody's brilliant computer program at an insurance scoring company assumed I had two car loans and one car and therefore put me in the bottom rating. The insurance company could not help me. It is a black box proprietary process.

The next year the same company wanted to raise me $128. They went through the process of finding exactly which data affected me. The two items that put me in the bottom 25 percent was that I had gotten a second credit card to buy gas for an airplane I just bought for $100,000 cash, and I had gotten my only $40,000 mortgage on a $150,000 piece of property in Utah to help buy the airplane. Only those two items put me at the bottom.

It is not credit history; it is a credit electronic Ouija board of what you might do with your credit that affects your auto insurance.

MR. RATHJE:
My point with the insurance company was if you have forty years of dots; why not connect those dots to predict what I would do in the forty-second year, instead of using a proprietary process.

The second company I went with had their own insurance scoring model. I asked for a quote last fall with the requirement that I talk to the credit department after I got the quote. After receiving the quote, I asked if I had the best rate. No. Why not? You only have 15 years of credit history. I replied that I am 63 years old; I have had credit since I was 22. They said they would adjust for that. I then asked if I now had the best rate. No, you were 22 when you got your credit card. You should have gotten a credit card when you were 18. When I was 18 in 1961, I could spend $3 cash to fill my Volkswagen and drive 300 miles; I did not need a credit card. I was being penalized because I had only 41 years of credit history. They also told me I had three strikes, this was refuted by an insurance representative last month, because when I bought my house in Reno two and a half years ago, I made two applications because I did not like the terms of the first mortgage. I shopped and obtained one mortgage and that is two strikes. A year later, I refinanced with my personal bank that lowered my rate by 0.75 percent. I did not increase the principal and my mortgage payment went down $150 a month, but that was a third strike. So being an intelligent, responsible consumer cost me three strikes on my credit history which is being used to rate car insurance.

As far as I am concerned, this is bad math on top of bad data. The first time I ran into this it became the first time I ever needed a credit report. I am divorced, my spouse's name is Steve, and he is my son. I helped him with his mortgage so they thought my spouse's name was Steve. My apartment, at that time, was described as a military base. So much for the accuracy of credit

reports. However, through the Fair Credit Reporting Act (FCRA), with due diligence, a lot of work, time and phone calls, you can get credit history corrected. But there is no FCRA for insurance scoring, so it is a black-art electronic Ouija board.

Neither state insurance commissions nor insurance or consumers have access to the logic, except in my case, Progressive's own tool. It is based on a correlation, which is false mathematics, based on, probably, bad data and the consumer has no help in correcting that data or assumptions.

You can correct credit history with the FCRA, but there is no law to help you with insurance scoring. As a layperson, an engineer, a commercial pilot and instrument instructor, I deal with facts and rationale. I found it amazing that 47 states allow an unregulated insurance scoring system to which the consumer has no access.

CHAIR TOWNSEND:
We have discussed your case several times and it is an intriguing one. I want to make sure we do not ignore it and look only at the bill or ignore the bill and only look at your case.

The sponsor of the bill would like to add to subsection 8 on page 3, paragraph (f) stating, "The number of times that the applicant or policyholder opens or closes credit accounts during any specific period." You are not talking about polling the bureau; you are talking about actually opening an account? I have always found it intriguing, not necessarily in the constructive sense, that you get a ding on your credit for simply polling a bureau.

ASSEMBLYWOMAN SMITH:
That is clarified in another section of the bill. We are strictly looking at opening and closing accounts. Although, the story I told you about our colleague who had the credit inquiry, that was not to open an account, it was only to rent a home.

If you look at Mr. Rathje's situation and my constituent's situation, it truly was about the way they had opened and closed accounts thinking they were being prudent in the way they managed their funds.

CHAIR TOWNSEND:
If you are an average Nevadan, you will get "flights" as the term used, of credit card applications in the mail. They may run for six weeks, gone for two or three months, then another raft of them for six weeks. As you know, they are blindly sent to you because the credit card companies are exempt under federal law and therefore, can receive information that no one else can get, so they are free to send these applications saying you are qualified. If the average person gets a couple of those and they want to manage their life, they are going to take those introductory offers of 0 or 1 percent for 6 months. A lot of people open those accounts; use them to the maximum and move on to the next credit card. If those are the rules, they can keep doing it. That would be taken care of under this bill where you would not get dinged for opening and closing different credit cards for use in determining the insurance rate.

ASSEMBLYWOMAN SMITH:
Right. That is the intention. I have had my own credit union called to offer an upgrade on my credit card account. But they traditionally close the old account and open a new account and that shows up on your credit report. It is those circumstances for which you are unknowingly being penalized, or for getting a better mortgage.

CHAIR TOWNSEND:
All this is doing is dealing with people who are applicants or policyholders for insurance; and the number of times those people open or close credit accounts during any specific period.

ASSEMBLYWOMAN SMITH:
The main point is the average Nevadan cannot navigate this system to figure out how to do the right thing. I was amazed when my colleague showed me the letter she had received. I wonder how many people can wade through all that information. Even if they could, you cannot navigate this information because the methodology the companies use is not something they will share with me.

CHAIR TOWNSEND:
Are you saying that in previous testimony they were not able to tell you why this is an important component of what they do?

ASSEMBLYWOMAN SMITH:
What we heard is that statistically they believe there is a correlation, but are not able to tell me that if you want to manage your credit to effect the best rates, this is exactly how you do it.

CHAIR TOWNSEND:
You know their job is to get the money and hold it as long as conceivably possible.

ASSEMBLYWOMAN SMITH:
Agreed.

WILLIAM J. BIRKMANN (Vice President, Nevada Alliance for Retired Americans):
We are asking for your support of A.B. 404 for all the supportive reasons.

JOSEPH GUILD, III (State Farm Insurance Company):
State Farm opposes this bill. I expressed my concern to the main sponsor of the bill. The citizen who spoke on this bill said a couple of interesting things and expressed familiarity with statistical models. Any statistical model, in my mind, is only as effective and accurate as the many factors it can possibly have. If this bill passes, it would take one of those factors away. That does not explain why, but it does raise an interesting point.

The proponent said this is a mostly unregulated situation. If you read the three pages of this bill, one of the volumes of our insurance code, you realize this is not an unregulated situation. There is federal law, the FCRA and other similar laws. This law in Nevada, as a result, is a model law created by the national conference of insurance regulators. There is a lot of information put into this bill.

The proponents did not say that credit scoring models are not predictive of correlated behavior related to claims filing, they just talked about the secrecy and black-box nature of the models used. That I cannot defend. This is one of the toughest issues I have ever tried to explain in a long career as a lobbyist. I cannot defend the fact that it is hard to get your hands around. What I can defend is that credit information which is part of an insurance score, though credit scoring is not a good term, is highly predictive of future claims filing and that is why insurance companies use it. They use it because it does provide the best information possible to spread the risk across the widest possible spectrum

they can so that people who do the right thing, who do not file claims and do not get into accidents get the best rates.

There is anecdotal evidence, as the individual experienced, for every possible proposition that comes before you. I cannot argue with his evidence. I can tell you in State Farm's case they invested millions of dollars in a credit-based insurance scoring system which is highly predictive. As a result, State Farm customers enjoy benefits.

One only needs to look at the *Nevada 2006 Consumer's Guide to Auto Insurance Rates* published by our Division of Insurance to see we have a competitive insurance industry in Nevada. You can compare scenarios of insureds and different cars. Every one of the carriers in the auto market is in a competitive world and tries to set their rates in a way which helps consumers while helping their business.

Arbitrary restrictions such as that proposed by A.B. 404 on the use of this accurate data will hurt the attractiveness of price competition in Nevada's marketplace.

SENATOR CARLTON:
I do not agree with you, but I can understand where you are coming from. If State Farm has spent so much money in figuring out how to correlate all this, do not you think it wise for them to spend a little money to inform the consumer on how to do this right? The most poignant part of the testimony was how does the consumer get the lowest price. It appears the information is being hidden from the consumer so they cannot get the lowest rates. Should not we be working together to let the customer know how to get the best rate?

MR. GUILD:
Coincidentally, the bill's sponsor and I recently had this conversation. If I were the dictator of the insurance world, I would tell all the people who work in public relations in all the companies of the nation they have six months to come up with a good marketing plan to explain this to consumers or they are all fired. I hope that answers your question.

CHAIR TOWNSEND:
If the average Nevadan wants to buy a new car for $30,000, and they have an average driving record and everything about them is as average as it gets for

the sake of this discussion, tell me what goes into every premium dollar sent to the company? I am not interested in your profit, but does 50 percent go to the actual mechanical repair of the car, 20 percent to the other driver? How is it generally broken out?

JAMES WADHAMS (American Insurance Association):
The American Insurance Association does not write the bulk of insurance, but writes everything State Farm, Allstate, Triple A and Progressive do not. We include companies like Fireman's Fund, The Hartford and the like. To get to your question, it is a little difficult from memory, but there are components in that premium built upon the various coverages being purchased. Everyone buys liability because that is mandatory in order to register the vehicle. When borrowing, the lender will require collision and comprehensive on the vehicle, which is damage to the car itself. That is protection for the lender's collateral. There is liability protection should I hurt somebody else in the process. There is towing coverage, if purchased and medical payments. There is uninsured and underinsured motorist coverage which is a significant portion of that premium dollar. It covers you if you are hit by somebody who is uninsured or if their insurance is less than yours, your insurance will pick up the difference to its limits. Most people usually have $100,000 limits. If you get hit by somebody who has $15,000 limit and there is a large amount of damage, your insurance company will potentially pick up to that additional $85,000. The premium is broken down and the largest portion would go to liability. A small portion would go to comprehensive and collision. The uninsured is the second largest portion of the premium.

CHAIR TOWNSEND:
Based on that, this is not about those components. This statute change is about the likelihood of an accident. Is that correct?

MR. WADHAMS:
This bill is about the element of pricing to refine that part of the likelihood of an accident. The value of the vehicle, the comprehensive and collision will be more expensive on a $50,000 Lexus than on a 1995 Toyota Corolla.

CHAIR TOWNSEND:
I want everyone to understand this is a three-dimensional cube being debated, it is not linear.

MR. WADHAMS:
The predictive notion of the likelihood of being in an accident is what these elements are designed to do. The pricing of auto insurance is trying to make that refinement as close to the risk that is statistically justifiable. That is the problem. If you do not do that, let us assume we have statewide rates, more accidents occur in Las Vegas than in Reno. The people in Las Vegas would appreciate a downward adjustment, but it is not fair because it is predictable that there would be more accidents in Las Vegas than in Reno.

MR. GUILD:
There is a predictive factor and a behavior trait that have been identified. If you have good money management skills, and that is what some of this is about, it shows up in other things people do; including driving and the propensity for an accident or to make a claim where that claim should not have been made. The models do predict that.

SENATOR CARLTON:
Good money management skills would be that I want a new refrigerator. When the price hits a certain point, I am going to get an interest-free credit card to buy the new refrigerator. I am going to pay off the credit card. That is good money management, but that ding will count against me on my insurance. One thing I have learned from this committee is why use my own money when I can use somebody else's to do it. If I do these different things, those dings on my credit could hurt the insurance rates I pay right now. I am trying to do this the smartest way possible, but yet I may be digging myself a hole in my insurance rates for my cars at the same time.

MR. WADHAMS:
The problem is that a specific example may fall within or without the statistical norm. You may have a 24-year-old daughter, a Girl Scout, excellent driver, never had a problem and yet statistically falls in a category of individuals. The predictive factor that they will have an accident is higher than it is for somebody who is two years older and married. On an individual basis that is difficult to explain, which is why I think there is a problem with this bill, it is selective based on a specific example element of a more complex system and suggesting that is not accurate.

I do not want to get into the history, but I have been watching this for a long time. An old actuary had to confess in a hearing when I was cross-examining

him, that all we can do is have indirect indicators of an individual's attitude. If we could do a profile of an individual's attitude that would be the best predictor of the likelihood of an accident they might be in or even cause; but we have to use indirect indicators.

Many years ago, one of your former colleagues, Bob Price, rapidly drove to the Nevada Test Site. He said, "My speeding tickets do not mean I am a dangerous, bad driver likely to have an accident. I am just a fast driver." Frankly, what produced this book 25 years ago was then-Assemblyman Bob Price and his complaint about why his insurance premiums were going up based upon speeding tickets, but no accidents.

The answer to the question is that we would oppose taking one element out of a system that is fully regulated. If this cannot be proven on a regular basis through the commissioner as being statistically correlated to claims for a class of individuals, it can be disapproved under the current law. This was an issue that went through in 2003; it was carefully vetted by both Houses. While it may not be perfect, it may not address any one individual example; frankly the most important suggestion was information from an insurer as to how you optimize your situation under whatever rating scheme they use.

SENATOR CARLTON:
That was an example of how people try to manage their money. The statement was people who manage their money well and who are financially responsible should have a better car insurance rate. We are talking about the same thing. You are using the same words I am using, but somehow my insurance rates are still going up.

MR. WADHAMS:
Sadly, it is a fact of life today. If I borrow money from a normal lending source, I have to check my credit score to find what is affecting it. Forget late payments, as I am not sure that is always an issue either. Credit scoring will affect my interest rate. I might be able to borrow at 5.75 percent. If I have some loan accounts that are paid off but still in place, my opportunity to draw on that credit line is still there. Frankly, up until two years ago, I did not realize that myself until I was looking to refinance. I had to work on these things, and told my wife not to cut up the credit cards, just do not use them. It is a burden of our current world and the predictive nature of that is applied in lending as well as in insurance. It is not perfect. It is an indirect indicator of somebody's

creditworthiness and somebody's attitude about property and responsibility. It is indirect, but to take one single element out and isolate it, is a sequence before you have gone back to the old way of saying no discrimination. We will try to refine the rate to people who are more likely to have accidents versus those who do not. Ultimately, it does come down to statistics.

SENATOR HECK:
As somebody who does a fair amount of medical research, I am someone who has had to take a lot of those statistics classes. What is being described is a classic regression analysis where you are taking a bunch of independent variables that will predict a dependent variable which is claims history. I would assume based on that, there has been some validation to go back and look at all the independent variables proving that it accurately predicts the dependent variable. I would like to see that. There is another thing in statistics call the "P value," which says for this to be statistically significant the P value has to be within a certain margin. I would like to see that the validation has been done and see what the P value is that proves independent variables has an actual correlation to the dependent variable.

MR. WADHAMS:
We do have those studies and will produce them for the Committee.

CHAIR TOWNSEND:
Mr. Knaus, we would like to get answers to Senator Heck's question on the P value. If you have that kind of analysis, we would like to have it.

CHARLES KNAUS (Lead Actuary, Division of Insurance, Department of Business and Industry):
I have general familiarity with the statistical terms talked about. They are not everyday things I work with. In order to give you something intelligent on them, I would have to do research. However, I am reminded what Mark Twain said, "There are three kinds of lies: lies, damned lies, and statistics." To some extent, from my position advantage, I believe all that. If I could talk about the subject of credit insurance and some of my consumer experiences, I would like to do that.

Mr. Rathje came to the Division of Insurance as a consumer claimant. I try to handle a lot of these on an individual basis to get the company to give a break to a person like Mr. Rathje. My beginning question, after 46 years of insuring him, was what do you not know about him that credit scoring enhances your

knowledge. The insurance person said, "Mr. Knaus, if we are not allowed to use credit scoring the way we use it, we are at a disadvantage in the competitive market." I had a person call me who was a minister who moved to Elko. He never had a credit card in his life. He said he had "X" hundred thousand of dollars of assets. If I want to buy a car, I wait a year and pay cash for it. I took this to his insurance company and they said they would give him the best or second best rate that we have. On an individual basis I have had some success with companies and the loopholes used in credit scoring. The Division of Insurance has taken a position of support for A.B. 404. We find no problem with it.

In looking at how the statistics might have been gathered for credit scoring, I doubt if they have any data that goes back before 1990. I doubt if they can tell you what the significance of not having a credit card is for Mr. Rathje's generation, which is also my generation. But they can tell you what the significance is for a person born after a certain time point. I would like to have the insurance industry explain some of those things.

I have a unique opportunity today I cannot pass up. I have a chance to correct something Mr. Wadhams said when he was talking about uninsured, underinsured motorists. He said this coverage comes in if your coverage limit is more than the other guys limit. The way I understand it, your uninsured motorist coverage comes in if the other person does not have enough limit of liability to cover your damages. If he has enough limit of liability to cover your damages, then there is no uninsured-motorist claim.

In this credit scoring, I think the insurance companies are applying standards in the modern world to a person who started his credit history before they were gathering data for it.

SENATOR SCHNEIDER:
I have different tools to use when renting my properties. If the person is chain smoking, I probably would not rent to him. If they have an old beat up pickup dripping oil, I probably would not rent to them. Then I also run a credit check, and over the years, I have found you can tell a lot about a person by the way they act even if they have decent credit. There are tools to use, but then I hear what happened to the gentleman from Reno, I thought about the last couple of years where I have taken out Lowe's and Home Depot cards to remodel my rentals because of the free interest for a year, plus a 10- to 15-percent discount

on all purchases. You are a fool not to do it because it is good money management.

I took advantage of an offer from Capital One in anticipation of the many flights for the Legislature. It turned out to be a bad deal, and cancelled it. But now I find out all that activity could affect my auto insurance. I probably should ask my insurance company to show how my rates are calculated. I pay cash for cars and have no more mortgages. That puts me in the same position as this gentleman, and I never looked at my insurance premiums. Now I am going to look. I encourage my son to follow the American dream and do everything right. He should be rewarded for that as I should be. If I have constituents who live like that, they should be rewarded, and if not, they should be dumped. I hate to take away an element in rating people, but it seems there is a flaw in this rating system for just applying for credit and you get dumped. I agree with Mr. Knaus that we should look a little deeper. I am not ready to vote on this today as this is something we will have to work on.

CHAIR TOWNSEND:
Are the companies telling you, as a representative of the general group, that someone in their sixties who has had one credit card with one company all their life and does not put a lot on it and pays it down, that they are less of a risk than the younger person who is actively managing their money by getting different cards and using different rates. Is that what their actuarial analysis is telling the companies as part of the factors that go into this?

MR. WADHAMS:
There may be somebody with more current information. The point Mr. Knaus made is compelling. It is the one you are asking me. Is there a differentiation for people of my age who existed before credit cards were invented? Diners Club had not been invented when I was a young adult. Now we have an era where everything is done on credit. I do not know if there is some differentiation based on that, I will certainly ask.

Senator Heck's question is also compelling. What does the analysis show? Where are the studies on the correlations? You can find variations in your rates. People should always shop, always. If you are not happy with the answer you are getting from your insurance company, I can show you a 40-percent current differential between two insurances whether you are in Carson City or Las Vegas. The ultimate answer is the one Mr. Rathje pursued; that is to search

companies until he liked the price. That begs the question raised with this bill; can you take one element out of the rating system or out of this aspect of the rating system and still have it make sense? You might, but I think you should be careful in doing it. I would suggest we bring the information and let the Committee look at it. Refining these issues is important. Whether it fits any one individual perfectly or not, begs the question of a theory of large numbers that drives us.

CHAIR TOWNSEND:
On section 1, page 1, it states, "An insurer that uses information from a consumer credit report shall not." Page 2, lines 4, 8 and 12 states, " ... unless the insurer also considers other applicable ... ." That is the term on all three lines. Why not say, "all other factors?"

MR. WADHAMS:
I cannot answer that, but I think you raised a point. This is a secondary factor.

CHAIR TOWNSEND:
Cannot you then pick and choose? It just says, "consider other factors." You could pick the one that is most disadvantageous to the consumer. Why would you not have all of them? If this is a numbers game and you want as much information as you can to give a more reflective balance then why not say, "all other applicable factors independent of credit information"?

MR. WADHAMS:
I am not sure we would have any objection to that.

MR. GUILD:
I think I misspoke before. What you have before you in the NRS 686A.680 is the model bill and a variation this Legislature put on that bill from the National Conference of Insurance Legislators. Your colleagues around the country created a model bill over the course of time. This was not created out of whole cloth, a lot of people who study this all the time had input. If you are going to adjust the formula in the way that A.B. 404 suggests, I would offer that a lot of people represented here spend whole careers dealing with this, and I am willing to help look at this in more detail than we can in a short hearing.

CHAIR TOWNSEND:
Section 1 says, "An insurer that uses information from a consumer credit report shall not: Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status or nationality of the consumer as a factor, or would otherwise lead to unfair or invidious discrimination." This means you can use the zip code so long as it is not unfair. Is that the way you read this?

MR. GUILD:
I can verify this, but on behalf of the company I represent, State Farm, their model absolutely, categorically complies with the strictures in the statute you just read. The whole idea with creating a model is to not discriminate. It is to be so statistically accurate and spread across such a broad spectrum that those factors which somebody could point to as discriminatory are not there.

MR. WADHAMS:
I do not read it that way. I think it says it absolutely precludes the use of those factors or any other that would create invidious discrimination. Those factors are not available in the model used for credit scoring.

You mentioned zip codes. Ironically, that issue came up in Las Vegas about half a dozen or more years ago. They opened the new Sunset Post Office and changed everybody's zip codes. The example was a lady who lived in exactly the same place and same house, drove to the same church and grocery store and suddenly she had a new premium. The Legislature adopted a law to deal with that directing the commissioner to adopt a regulation. The Legislature has always been sensitive to unfair discrimination but always willing to allow companies to find ways of identifying risk categories.

CHAIR TOWNSEND:
Does your statistical analysis include the high accident areas and does a new applicant get asked about where they live, work, recreate and if they drive into high accident areas?

MR. WADHAMS:
Yes. The price guide is eye-opening. If your car is primarily parked in Carson City, you will have a substantially lower auto insurance rate from any of the array of companies, than if your car is primarily parked in Las Vegas.

CHAIR TOWNSEND:
I understand that. I am talking about specific to geographic areas.

MR. WADHAMS:
Absolutely.

CHAIR TOWNSEND:
If you live in Summerlin and took the easiest way to get there by highway; is that more of a high-crash area than if they took surface streets? Would you include that into your determination when you do their premium?

MR. GUILD:
When a person seeks insurance, those things are taken into account. Where you live, how often you drive and if you have a garage are part of the application process. But, we are talking about apples and oranges. Those things are taken into account by the individual agent or whoever is writing the insurance. Using credit as part of the information to create an insurance score, those things cannot be taken into account.

CHAIR TOWNSEND:
Point taken, but that is part of the debate; what goes into getting the most accurate information and where crashes occur, I would think you would want to know. If you are crash oriented, you probably would want that person to take a new route to work. That is more important than whether they open credit accounts. What I am saying, is there a priority to how you rate people based on the information you are allowed to gather? Unless you stand up here and show us that this is the most compelling thing you have to determine, it is going to be hard for me to believe that this little thing you do on the opening and closing of credit accounts is the most compelling. I think it is the speed you drive, where you drive and the kind of car you have. Am I wrong?

MR. GUILD:
You are correct.

CHAIR TOWNSEND:
I want to be helpful to the consumer, but also let you get on the record that these are the things that are important.

MR. WADHAMS:
The credit scoring issue is a secondary factor. The primary factor is the traditional location and residence. As you know, the Metropolitan Police Department maintains accident statistics. They frequently publish in the newspaper the 16 most dangerous intersections in Las Vegas; all that drives the frequency and severity of rates. If you live adjacent to one of those intersections, your rates will be higher than somebody who does not. Credit scoring is a refinement issue; it is not the primary underwriting issue.

SENATOR CARLTON:
I was under the impression a lot of these statistics was whether you were likely to file a claim, not whether you are more likely to have an accident. Is that correct?

MR. GUILD:
It is predictive of both.

SENATOR CARLTON:
Whether I file a claim or just absorb the cost in addition to risk behavior?

MR. GUILD:
Yes.

CHAIR TOWNSEND:
Do you know how many other jurisdictions have done this?

ASSEMBLYWOMAN SMITH:
No, but I will find out.

CHAIR TOWNSEND:
We will close the hearing on A.B. 404 and open the hearing on A.B. 468.

ASSEMBLY BILL 468: Requires providers of health care to provide disclosure of certain financial interests when referring a patient to or recommending physical therapy to a patient. (BDR 54-1300)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
This small change in the law is helping medical consumers make informed decisions regarding their physical therapy. It is a statute which broadly provides

to a provider of health care, not just a physician, but can also include a chiropractor or an athletic trainer as defined in the NRS 629.031. The bill is trying to broadly cover anyone who might refer a patient to a physical therapist. I would like to turn over testimony to the physical therapists.

DARYL LAWSON, M.S., DPTSC (Director of Motion Analysis Laboratory, University of Nevada, Reno):
In the school of public health we do a lot of prevention saving the taxpayer money and a good quality of life in the school of medicine. You hear about evidence-based medicine, looking at procedures, making them better for all of us and our quality of life. We need to take this information and put it on the free market. What I mean by that is have consumers choose where they can go where all this good stuff is developed. A lot of retirees are coming here now. You may or may not know that someone on Medicare has about a $1,500 cap for physical therapy a year. With that cap they have to be judicious where they go because that money can go rapidly.

Through this bill, we hope the consumers can shop. They can look at clinical outcomes and how much it costs. If you have a $1,500 cap and are on Medicare and do not have excess money, you want to see how many physicians you can get and the best clinical outcome for the dollars you are going to spend. Also, we are trying to attract small businesses to Nevada, and a lot of them pool for their insurance money. They are good insurances, but they may have a high deductible. With this high deductible, you would want to shop to see where you can go for the best clinical outcomes, but you would also look to see how much it would cost because of having to pay the deductible. With this bill, you would have the opportunity to do that.

PARLEY ANDERSON (Cochair, Governmental Affairs, Nevada Physical Therapy Association):
I would like to point out the association did not introduce A.B. 468, but we are in strong support.

This is a simple bill with the goal of consumer protection. This bill would increase patient awareness that the referral for profit exists. That an individual referring for physical therapy might have financial motivation for referring the patient to a certain physical therapy clinic. It is for patient protection. The patient will be informed in writing when such a relationship exists. This bill supports a professional relationship between physicians and physical therapists,

based on expertise and respect, not for profit. It will help ensure physicians use quality-of-care-driven decisions, meaning they have the best decisions for the patient's health care.

Assembly Bill 468 will help ensure patient choice, informed decision making and patient education for making the best health care decisions for themselves. Finally, it will help prevent overutilization and poor quality of care. Referral for profit is associated with increased cost and overutilization of physical therapy services, often at the expense of the patient. This bill will educate and empower patients to make the best choice for themselves in regard to their physical therapy care.

SENATOR HECK:
We already have a prohibitive referral of patients provision in statute, NRS 439B.425. I wondered how that interplays with this bill, because it already says a physician cannot refer a patient to somebody in whom they have commercial interest.

ASSEMBLYMAN OHRENSCHALL:
The bill applies not only to physicians, but to providers of health care, which in the NRS 629.031 includes physician, homeopathic physician, osteopathic physician, dentist, licensed nurse, optometrist, doctor of Oriental medicine, chiropractor and athletic trainer. It expands the scope so that a patient will get more information. We know this does not happen often, but in the rare instances where it might happen, the patient ought to be told the doctor might have a 5-percent interest in Acme Physical Therapy. Doctor Lawson gave a good example when he testified in the lower House about the insurance that refers one of its covered members to a mechanic. I think most people would want to know if the insurance had a financial interest in Bob's Auto Shop; whether they would be getting the best deal or whether they would be getting the best repairs. That is one of the positive things about A.B. 468.

SENATOR HECK:
I would agree, but that same definition is in the NRS 439A.0195. There, the term practitioner is used as opposed to provider of health care, but basically it is the same definition. How would this impact a health maintenance organization (HMO) where the physician is a contractor to the HMO working their clinic, and they are going to refer somebody to their HMO physical therapy group, because it is within their insurance plan and that is where they need to be referred? Does

that physician need to disclose there is a financial relationship because they both work for the same corporation?

DR. LAWSON:
I think they sign a contract in which they have to refer within their organization. That would be okay because they signed. This bill addresses those who have the opportunity to go many different places, so they could choose. Again, my concern, being a clinician for almost 20 years, is the people on Medicare with the $1,500 cap. For them to have that opportunity, knowing they only have so much money to fix their hip or back, to spend that wisely and be able to look at different clinics.

SENATOR HECK:
I would agree. But if they are on Medicare, the fee being paid is by Medicare regardless of where they go. The Medicare fee is the Medicare fee whether you go to physical therapy group A or group B, and they are still going to run through their $1,500 just as fast. I understand the importance of the bill, I am trying to find out why we need to edit when there are provisions already in the NRS 439A that covers this topic.

MR. ANDERSON:
From my experience, the patients are not being notified when there is a financial interest at stakes for the referring party. This bill would help ensure the patients get it in writing that there is a financial interest and then the patients can make the best choice for themselves.

BETH ALTENBURGER (President, Nevada Therapy Association; Faculty, Physical Therapy Program, University of Nevada, Las Vegas):
I am in support of the bill. I would like to direct my comments to Senator Heck's question. I do not have the NRS 439A in front of me, but I do not believe there is any other statute referring the patient education portion of A.B. 468. What is important is that the patients will be given this information about financial interests by the referral source, whether it is a physician or chiropractor. As they are making their choice for physical therapy, they are aware of any financial interests or relationships between the parties involved. This is good basic business practice. When patients are choosing their health care providers, much of their choice is based on trust and confidence that they are receiving the highest quality care. Part of that decision and trust goes to the fact the referral is based solely on their needs for health care and for providing a quality

health care environment. So, if there is a financial interest and possible conflict, it should be stated up front. That should be something the patient is aware of and does not find out later, that they go in understanding that relationship. It may not affect their decision at all, but it should be made up front to the patient. I believe that is at the heart of this bill and why it is important.

CHAIR TOWNSEND:
We will close the hearing on A.B. 468. There being no further business before the Senate Committee on Commerce and Labor, this meeting is adjourned at 10:52 a.m.

RESPECTFULLY SUBMITTED:

_____
Laura Adler,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE: _____