MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 10, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:03 a.m. on Thursday, May 10, 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:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblyman John Oceguera, Assembly District No. 16
Assemblywoman RoseMary Womack, Assembly District No. 23

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Lynn Hendricks, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Gloria Gaillard-Powell, Committee Secretary

OTHERS PRESENT:

Brad Spires, Nevada Association of Realtors
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Bryan Gresh, Las Vegas Appraisal Institute; Cameo, Incorporated
Patrick T. Sanderson, Laborers International Union of North America No.169

Richard Daly, Laborers International Union of North America No. 169
William R. Uffelman, Nevada Bankers Association
James Wadhams, Nevada Mortgage Bankers Association; CITI Bank
Scott E. Bice, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Keith L. Lee, Coalition for Fair and Affordable Lending
Terry K. Graves, Koster Financial
Robert A. Ostrovsky, Nevada Lenders Association
Bill Curran, Gentry Finance
Oliver Ireland, Gentry Finance
Scott Scherer, Dollar Loan Center
April Romo
Jay McKennon
Steve Kondrup, Acting Commissioner, Division of Financial Institutions, Department of Business and Industry

CHAIR TOWNSEND:
I will open the hearing on Assembly Bill (A.B.) 365. For the record, my wife is a licensee under the Real Estate Division, Department of Business and Industry.

ASSEMBLY BILL 365 (1st Reprint): Revises provisions relating to renewal of licenses, permits, certificates and registrations issued by the Real Estate Division of the Department of Business and Industry. (BDR 54-1291)

ASSEMBLYWOMAN ROSEMARY WOMACK (Assembly District No. 23):
As a real estate agent and broker salesman, I am here to attest that every time my license is to be renewed, as stated in my handout (Exhibit C), I stand in line for up to two hours for a renewal. This bill is giving the Real Estate Division the authority to set up a secured site so agents may renew their licenses online.

BRAD SPIRES (Nevada Association of Realtors):
This bill brings us into new technology. It will save me time from driving into Carson City and back to Minden and the time of renewing the license. We support this bill.

CHAIR TOWNSEND:
It was brought to my attention that when licensees have continuing-education units they need to show proof of those when renewing the license. Could you explain how that works in the electronic commerce of this bill?

MR. SPIRES:
Mrs. Anderson will speak to your question.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):
There are education requirements of continuing education to renew a license. We have the capacity with our new data system to have sponsors submit their education rosters after course work is completed. They would submit it to the Real Estate Division and we would upload the information. That would go into the licensee's electronic file. The process will take a two-year cycle of licensing to be completed. The advantage is the licensee will be able to go into their file to a level that is not for the public and see what education requirements they have taken and what is outstanding. We will be implementing this. It will take a two-year cycle for this to be completed for all licensees to be updated and entered. We have discussed using an attestation by the licensee electronically to see they have fulfilled all of their requirements. We would then do a very aggressive audit. One of the jurisdictions did over a 90-percent audit to try to assure compliance with the education certificates. Another alternative is to request they send them in and go back through the educational section to verify they had all the education they needed. We are going to have a transition period that will require some manual coordination between the electronic online attestation requirements and sending in the certificates or auditing.

CHAIR TOWNSEND:
I did not understand the first explanation. When you take the continuing-education requirements at the end of the class, you are given a number. I thought you were going to be able to put that number in electronically. I thought this would avoid the follow-up paperwork.

MS. ANDERSON:
We are going to ask the sponsors to electronically send us a roster and we will upload. The licensee will not have to do it.

CHAIR TOWNSEND:
The person who takes continuing-education credits after July can go online and put in their registration number. Do they still need to send in the paperwork after that?

MS. ANDERSON:
You just raised an interesting point that I had not thought about, letting them put it in. We will work on the transition period. We need to figure out the best way to do the transition.

CHAIR TOWNSEND:
I think Assemblywoman Womack's and Mr. Spires' point was how we get into today's world of electronic commerce for licensees and registration. I did not even know they received a number.

MS. ANDERSON:
We have to figure out how we are going to verify for the first renewal cycle with the implementation. The language of the bill talks about creating and maintaining a secure Website on the Internet. Our new data system that was authorized in 2003 has the capacity. Once we have the funding mechanism we are ready to go. The convenience fee is the actual cost of the merchant costs. We cannot absorb them in our existing budget.

ASSEMBLYWOMAN WOMACK:
There is no fiscal note because we are only asking for the authority. When Ms. Anderson received the funds in 2003, she was given the ability to do this but not the authority. This bill is asking the Real Estate Division be given the authority to set this up.

CHAIR TOWNSEND:
In section 8, and the other sections, it says, the Division may charge a fee to implement and that is where the two-thirds majority vote came in.

SENATOR CARLTON:
Do you have any idea what the fee might be? If someone is not honest in their attestation, what is your hammer?

MS. ANDERSON:
The estimated merchant cost is about 3 percent. We will be working with the state payment engine. We do have different renewal fees ranging from $175 to $180. We will need to program into every licensing renewal fee what the fee would be and the actual cost. There would not be any additional fees. I am guessing it would be a maximum of 3 percent of the renewal fee.

The Real Estate Division in the *Nevada Revised Statutes* (NRS) chapter 645 has the ability to invalidate a license if it was not properly executed. We would not have to go through a hearing and a revocation process. We have an invalidation authority in this chapter but I am not sure it is in the other chapters. I could look at that in regulation

SENATOR CARLTON:
If I renew my driver's license or anything else online, there is no difference in the fee. But I understand this is a start-up and you need to be self-sustaining so you are looking at that. I would hope in the future with your savings of money and time, if the 3 percent is not needed, you just charge the regular fee.

MS. ANDERSON:
Yes.

CHAIR TOWNSEND:
There are many areas of commerce where you are not charged a fee for online transactions. Several airline carriers allow you to purchase tickets online but when you call on the telephone the tickets are more expensive along with other fees.

SENATOR SCHNEIDER:
When brokers make a name change on a real estate company, it used to cause a mess. Everything was done by hand. Has this been fixed? I know companies with several hundred agents would change their name and then they would be scrambling over the weekend to try to find the agents to get the name changed. I remember them sitting there filling out all information by hand. Has that procedure been changed?

MS. ANDERSON:
The system is much improved. We still do require brokers to turn in licenses, and we do reissue licenses. With the new data system, we have the capacity to make group changes, as opposed to the individual back out and in under a new name. That has been electronically simplified. More often the name change is a broker name change in a project that might involve hundreds of licensees under a time-share project. Our new system will allow the licensee to do anything that does not have a fee attached. They would not be able to change a business name, but they could change their home address.

SENATOR SCHNEIDER:
I used to have a license, and they lost it. It has never been found, and I did not renew it.

CHAIR TOWNSEND:
Ms. Anderson, you might want to talk to Wil Keane on the issue posed by Senator Carlton regarding the "hammer" that you only have in NRS chapter 645, and you do not know if it is in other chapters. The question would be do you have the authority to carry that type of regulatory over to a regulation. If you do not, then we need to put that in this bill. It would become useless if we are going to have an attestation with no penalty that you can implement.

BRYAN GRESH (Las Vegas Appraisal Institute; Cameo, Incorporated):
We are in support of this bill. The convenience factor is obvious and important. I appreciate the comments raised by Senator Carlton and the Chair. Over time, the Internet abilities might reduce the costs.

CHAIR TOWNSEND:
I will close the hearing on A.B. 365. I will open the hearing on A.B. 592.

ASSEMBLY BILL 592 (1st Reprint): Provides for contracting licenses for the abatement or removal of asbestos. (BDR 54-1200)

PATRICK T. SANDERSON (Laborers International Union of North America No. 169):
We wanted to add language to this bill. We would like to make an amendment (Exhibit D) to subsection 5, paragraph (a). We want to delete, "designating a specialty contracting classification for licenses that authorize the licensee to abate or remove asbestos and." We want to change the language to paragraph (b) to say, "for the removal of asbestos." The other language is already covered in statute and we do not need to repeat it. This is a very good bill and will provide for the safety for those working around asbestos.

CHAIR TOWNSEND:
Who offered this amendment in the other House?

MR. SANDERSON:
More research was done and it was discovered the language was doubled and not needed.

CHAIR TOWNSEND:
The proposal would read, "The board shall adopt regulations establishing a specific limit on the amount of asbestos that a licensed contractor with a license that is not classified for the removal of asbestos may abate or remove pursuant to subsection 4."

MR. SANDERSON:
Yes.

CHAIR TOWNSEND:
If you are a licensed contractor and do not have a license that is classified, then should there be a regulation to say how much you can remove?

SENATOR CARLTON:
My concern is above a certain amount of asbestos you have to be classified, but below that number you do not. I have safety concerns. I am not sure of the amount we are talking about. I will assume they will have all the safety protocols in place for removal. I would like to have an idea of the cutoff point.

MR. SANDERSON:
Mr. Daly has the exact amounts.

SENATOR CARLTON:
I support what you are trying to do.

RICHARD DALY (Laborers International Union of North America No. 169):
We want to answer your question, Senator Carlton. We are looking at a relatively small amount. For a small amount like an electrical contractor changing out a light would not have to have an asbestos license. The worker still has to be licensed. The protocols and the air quality still have to be adhered too. We were looking at ten-by-ten-foot areas for flooring or roofing. We were hoping to set the limits to a relatively small amount that is incidental. We brought the bill forward because there is a roofing contractor who does have a qualified employee that could get licensed, but they do not have to have a license. Roofing contractors are not licensed to do asbestos. The workers and the air-quality people need to be licensed in order to do the work, but the contractor does not. If you have an asbestos license, you have different insurance requirements. The insurance carrier charges a different premium for someone who has an asbestos license. The reason we went with regulation

rather than actual law is that every other classification for limitation of the contract is in regulation. It did not make sense to put something in law just for this. To meet the need, we are talking about small amounts of less than 100 square feet, which is less than a ten- by-ten-foot area on the limitation we would set. If it is outside of that size, we would get the Legislative Commission to review.

SENATOR HECK:
Since you are not proposing to delete subsection 5, paragraph (a) making a specialty classification for asbestos removal, what classification is asbestos removal under? I am looking at the list for classifications and I do not see anything that is titled for asbestos removal.

MR. DALY:
The amendment originally came out as asbestos and other hazardous material. When we explored this we felt other hazardous material was too broad. It included mold and it caused people to get on edge. In the Assembly they made it just for asbestos. It is found in the *Nevada Administrative Code* 624.150 classification A, subclassification 23.

SENATOR HARDY:
All we are doing in this bill is requiring they designate a certain amount that can be removed by anybody. The classification and requirement is already there so someone is licensed to remove large quantities of asbestos.

MR. DALY:
Yes. On the school district project we are replacing roofs on several schools in Washoe County. One contractor got a project and another got two of the other projects. One contractor took care of the asbestos removal and another one had a subcontractor do the job.

SENATOR HARDY:
That was already a violation?

MR. DALY:
It was not a violation. We made the complaint with the State Contractors' Board and they said it is incidental. It was ruled this was incidental which did not make sense to us. We think if you are going to be doing asbestos removal,

you should have the license. Everyone else down the tier has to have a license. We recognized the situation where there is an incidental amount of asbestos.

SENATOR HARDY:
Even though it was a large-scale project, it was associated with the roof and the job was to replace the roof so the removal of the asbestos was incidental?

MR. DALY:
That is what the State Contractors' Board ruled. This is the reason we came to the Legislature to clarify that and leave some area for the truly incidental circumstances.

CHAIR TOWNSEND:
I will close the hearing on A.B. 592. I will open the hearing on A.B. 375.

ASSEMBLY BILL 375 (1st Reprint): Revises certain provisions governing mortgages. (BDR 54-393)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
I am here to present A.B. 375. This bill is rather lengthy and there are a number of amendments. This bill revises statutes governing mortgage brokers and mortgage bankers. This bill exemplifies our continuing effort to ensure the integrity of the industry and protect the Nevada citizens. In 1999, we passed legislation that was recommended by our interim study to investigate the regulation of mortgage investments. The study was authorized in response to concerns expressed by investors. Many of them were senior citizens after the failure of a mortgage investment company in Clark County. The legislation passed creating a new chapter in the *Nevada Revised Statutes*, 645E, to regulate mortgage bankers and have more stringent regulatory control and licensing requirements on mortgage brokers. Since that time we have continued to fine tune the laws as necessary to address the companies that operate on the fringes of the industry. We are trying to protect those people that do not fully understand the risk and potential deception.

I think this bill will strengthen our statutes, some of which are proposed in response to a recent case in southern Nevada involving the failure and bankruptcy of a private lender that controlled approximately $962 million in investment assets. This company allegedly maintained an illusion of financial health by making payments to investors. Many of the company's loans were

actually overdue. Investors relying on the anticipated 12-percent return, found themselves in the position of losing their homes when they could not recover their investments after the company went bankrupt.

In the amendment before you (Exhibit E), section 3 of the bill prohibits the mortgage broker who is licensed or is exempt from being licensed as a broker-dealer, sales representative, investment advisor or representative of an investment advisor under the law from commingling money received from mortgage transactions with money received from security transactions.

ASSEMBLYMAN OCEGUERA:
Section 5 of the bill requires the Commissioner to establish by regulation the financial conditions for an investor to acquire that ownership of or beneficial interest in a loan. This might be controversial but I do not think it is overly burdensome to require suitable standards to protect someone who clearly should not be investing. An elderly person who is counting on that 12-percent return on his investment to pay his rent should be protected. Concerns also have been raised that potential investors will lie or misrepresent themselves to qualify under these standards. I suggest a mortgage broker may be justified if they approve them as investors not knowing of the deception.

Sections 5 and 11 of the bill require the Commissioner to establish similar limitations on loans made by mortgage brokers and mortgage bankers to directors, officers or employees of mortgage brokers or mortgage bankers. The purpose of that section is to restrict self-dealing.

Section 6 requires the mortgage broker to obtain approval of each investor before assigning his interest or part of his interest on a loan secured by a lien or real property if at the time of the assignment the debtor on the loan has defaulted in making a payment required for the loan or any portion of the loan. This section ensures openness and full disclosure in these types of business deals.

After discussion with the industry, our proposed amendment provides section 2, subsection 1, paragraph (b) and subsections 2 through 5 to be deleted. A new section amending NRS 645B was amended as section 5.5, of the mock-up, Exhibit E. This amendment inserts language that if a mortgage broker maintains an account described in subsection 1 or subsection 4, the mortgage broker shall in addition to the annual financial statement audit, submit to the Commissioner

each calendar six months, a financial statement concerning the trust accounts. The Commissioner shall adopt regulations concerning the content of those financial statements. Again, this is making sure we have full disclosure. Every six months they have to have the financial statements.

ASSEMBLYMAN OCEGUERA:
I propose that we delete section 9, proposed under section 10.5, page 8 of the mockup, Exhibit E, insert the language providing evidence to the Commissioner in such a form the Commissioner may require that the business conducted by the person in the State is expressively authorized and subject to supervision by regulatory authority pursuant to the law of the State or any other state. This is making sure that everyone is getting regulated. The provisions in this bill are important steps to protect investors and the integrity of the industry.

CHAIR TOWNSEND:
There are a number of amendments that have been brought forward. I do not know if they have been incorporated. I have one from Mr. Uffelman and I do not know if it has been incorporated into the mock-up and whether it is a friendly amendment to the sponsor.

WILLIAM R. UFFELMAN (Nevada Bankers Association)
The amendment was intended to be friendly and I believe had been shared with Assemblyman Oceguera. I do not see it in the mock-up, Exhibit E. On page 7, line 23 of the mock-up where "affiliate" was stricken from an amendment that had been put in by the Assembly. My amendment (Exhibit F) is relative to NRS 645B.015 and was to make both pieces of this parallel. The amendment goes to *Linda A. Watters, Commissioner, Michigan Office of Insurance and Financial Services, Petitioner v. Wachovia Bank, N. A., et al.* 550 U.S. (2007) (Exhibit G, original is on file in the Research Library). This case says the affiliate includes any corporation controlled by the national bank including the subsidiary. The regulation occurs through these amendments.

ASSEMBLYMAN OCEGUERA:
I agree in concept, but through our legal counsel, I felt the way my amendment read would make sure everybody was regulated without a loophole. In the Assembly there was discussion about a couple of companies that may or may not be covered by an affiliate. I believe the language should be stricken. In concept, we are almost on the same page.

MR. UFFELMAN:
I believe on the day of the hearing there was a question of failure of a mortgage lender who had nothing to do with the bank. In reading *Watters v. Wachovia,* Exhibit G, pages 15 through 17, this is an operating subsidiary as opposed to an affiliate and that ties it back into the National Bank Act and the U.S. Supreme Court's decision. As the Court pointed out in this lengthy decision, nobody knew what an affiliate was when the Act was enacted.

CHAIR TOWNSEND:
Your mock-up includes the language regarding these banks, a subsidiary or a holding company of such a bank, company, association or a union. In the NRS 645B.016 these provisions do not apply. Mr. Uffelman is making reference that the same thing should apply to NRS 645B and not just NRS 645E. You do not mind including the language in the NRS 645B.

MR. UFFELMAN:
I would not say we disagree completely. Last night our legal counsel looked at this language, and this is our legal counsel's suggested language. I think this is also language that Mr. Bice would support.

CHAIR TOWNSEND:
Would the change in the affiliate affect any of the highly publicized issues?

ASSEMBLYMAN OCEGUERA:
I do not think this is a point to that, but if we are fixing the statute, we should not leave any loopholes.

CHAIR TOWNSEND:
Mr. Uffelman, we have your amendment with regard to the NRS 645B and the debate becomes between whether affiliate should be part of this or not.

MR. UFFELMAN:
In response to Assemblyman Oceguera and the case law handed down by the U.S. Supreme Court, I think if we took in my amendment where it says "an affiliate" and change that to "an operating subsidiary or a holding company" and make the same change in the mock-up on page 7, line 23, and we will accomplish what we both want.

CHAIR TOWNSEND:
We will let the sponsor look at the proposed changes, we will read the Wachovia, and will talk to our counsel as well. We will have the dialogue over the next few days.

JAMES WADHAMS (Nevada Mortgage Bankers Association; CITI Bank):
This has been a very positive process because it has brought together for the first time in a number of years all segments of the mortgage lending industry from commercial banks, mortgage banks and private money lenders. The discussion has been very productive. I think Assemblyman Oceguera has done a commendable job of trying to work through the multiplicity of lenders that we have. I have a couple of very minor word changes. I have not had a chance to discuss them with the sponsor of the bill and would ask permission to do so before the Committee moves on this. On page 9, line 14, Exhibit E, there is a phrase, establishing limitations. I think a better word choice would be to say guidelines. That same provision appears in both chapters. It appears on page 3, line 3, which is section 5 of the bill. The same phrase, limitations, appears in section 11, which is on page 9, line 14. I am suggesting guidelines rather than limitations. This issue has come up for banks and other kinds of commercial lenders. There is a federal regulation that applies and we feel it should be guidelines rather than limitations. Otherwise, we are in support of the bill and the concept it establishes.

SENATOR CARLTON:
The language "guidelines" sounds much softer than limitations. Can you help me understand what the difference would be between the two?

MR. WADHAMS:
It expresses a broader intent that these regulations describe. For hard money lenders or those that package up investor funds, there may be a need in order to keep a loan performing properly for the mortgage broker to step in and involve himself in the project. It is not a limitation of what he can do, but a guideline on how he goes about doing it.

CHAIR TOWNSEND:
Is that term used instead of limitation?

MR. WADHAMS:
Regulation O of 12 *Code of Federal Regulations* 215 was a substantial regulation but it deals with commercial banks lending to their own officers and directors. This is a little bit of a different circumstance. This is directed to the private money lenders. They are packaging investors to lend to major projects.

CHAIR TOWNSEND:
Is the term guidelines used in Regulation O to apply to the same situation in regard to lending to their officers and directors?

MR. WADHAMS:
That question is very specific and I cannot answer it.

Scott E. Bice (Commissioner, Division of Mortgage Lending, Department of Business and Industry):
Going back to what Mr. Uffelman said in his proposal, I believe using the term operating subsidiary would solve the conflict or issue. I am here to discuss an amendment to A.B. 375 (Exhibit H). The amendment offered by the Division of Mortgage Lending establishes a few different new criteria in the laws. We are adding the words "not more than" in front of the fee areas of our current statutes. The Division has a reserve balance that we have been dealing with and can adjust the fees in statute.

Section 12, Exhibit H, addresses the education and research fund. This works with the industry to set standards for the education classes and will allow us to do consumer awareness, public service announcements and publications.

Prelicensing, education and testing of mortgage agents is also covered. The next thing it covers is the ability to change our annual examination schedule to a biennial upon certain criteria. The criteria are a satisfactory rating on the last examination, no adverse financial change, no complaints resulting in administrative action and the broker must not maintain private client trust accounts. If they take money in from the public for investments and have trust accounts, they have to be on the annual schedule. The segment of the industry that operates properly does not need to be reviewed annually. The segment that does various other functions needs to be reviewed annually. We have also requested in this amendment to change the annual financial filing requirement. Currently, for NRS 645B it is 90 days after the fiscal year-end and for the NRS 645E mortgage bankers it is 60 days. The Division normally gets numerous

requests for an extension of that financial statement. We are requesting to go 120 days. It also covers advertising; approvals only are required for mortgage brokers the first year of their licensure. After that it takes away that responsibility. The last thing it does is removes the ability for a person to be considered not doing business to do an occasional loan under the NRS 80. There was a legal counsel opinion in the 1990s that allowed for the concept of an occasional loan. The intent was for large commercial loans. It left a loophole for residential lenders to say we are making occasional loans and to circumvent the licensing requirements. It attempts to close the loophole.

These proposed amendments have been sent to the sponsor and have not been discussed in depth.

CHAIR TOWNSEND:
Regarding the issue of advertising, what is the thought behind the 12 months?

MR. BICE:
The intent was by statute and it requires us to do annual exams. The annual exam is a review of the advertisement submitted by the mortgage broker versus what the mortgage broker file contains. We were fortunate in our budget session to be able to obtain 17 new positions. On any day we could take in 120 ads. It is a voluminous process to go through. We would be examining everybody annually.

SENATOR CARLTON:
Under section 13, Exhibit H, the licensure provisions, is there a national or regional test? How are we going to evaluate the written examination?

MR. BICE:
We want to send the test out for a Request for Proposal (RFP) to cover the materials they are supposed to be learning in the prelicensure class. We would send it out to a professional testing center.

SENATOR CARLTON:
Would you establish the test and then have someone else administer the test?

MR. BICE:
Yes.

SENATOR CARLTON:
Are qualifications you have under the 30 hours of education new or just different from last time?

MR. BICE:
This is a new section. There is no up-front education required. We would want to add additional hours specifically to cover the 30 hours as opposed to leaving it open. The intent is for the test to be based upon those hours of study, and there is a slight change in the number of hours.

SENATOR CARLTON:
Are these actually attainable? When I look at the breakdown, it seems you have courses that are three credits and four credits. Is there a decent amount of ten-hour courses that they can take without having to sit through a regrind of everything else to obtain the needed credits? I also want you to explain the five hours of ethics component

MR. BICE:
From registration to licensing, there has been an increase in the amount of education available. Most of the providers we have worked with have asked to break it up in terms of two-hour increments. The five on ethics with the change is now six credits. We wanted to monitor the quality of the education as well as the quantity.

SENATOR CARLTON:
How much is it going to cost to get the education before they are able to get a license? Will this apply to the people who are already licensed?

MR. BICE:
There is a phase-in provision transition period at the end of the amendment that covers your question. I do not think the cost will be onerous.

CHAIR TOWNSEND:
In section 17 of your proposed amendment, Exhibit H, the phase-in for the prelicensing testing requirement is October 1, 2007. Is that when you would have your regulation in place?

MR. BICE:
Yes.

CHAIR TOWNSEND:
If you have been doing this a long time, could you just take the test?

MR. BICE:
That would be my intent.

CHAIR TOWNSEND:
Go to section 13 of your proposed amendment, Exhibit H. Is it your intent to have a test that reflects the percentages of the total 30 hours? Are you saying 33.33 percent would be on the relevant laws of this state; half of that would be on ethics, less than that would be on federal laws and the then rest of it on loan origination?

MR. BICE:
That is my intent. In our RFP, we would have to be specific to say the test has to be comprised on the criteria and percentages.

KEITH L. LEE (Coalition for Fair and Affordable Lending):
We are fine with the mock-up. I am not prepared to fully endorse it but I see no problems at this time on a quick read. We support Mr. Uffelman's amendment. I had some of the same questions as Senator Carlton with Mr. Bice's amendment.

CHAIR TOWNSEND:
Mr. Bice, are the two money committees familiar with the new setup being proposed?

MR. BICE:
The amendments the Division offered regarding the education have been approved in the Division's budget subject to a law that allows it.

CHAIR TOWNSEND:
The problem is we are out of time. They are closing budgets and listening to money-request bills.

CHAIR TOWNSEND:
I will close the hearing on A.B. 375. We will not be hearing A.B. 53 today.

ASSEMBLY BILL 53 (1st Reprint): Makes various changes regarding licenses for and disciplinary action against administrators of facilities for long-term care. (BDR 54-570)

CHAIR TOWNSEND:
I will open the hearing with a continuation on A.B. 478.

ASSEMBLY BILL 478 (1st Reprint): Revises provisions governing loans and loan services. (BDR 52-394)

TERRY K. GRAVES (Koster Financial)
We have presented a proposed amendment (Exhibit I) which is essentially the same one we presented to the Assembly. We have also provided a synopsis of interesting facts on the loan industry. It is about the popularity of the loan services the industry offers its customers. There is an importance of choice in the loan industry. The amendment submitted by Mr. Ostrovsky also covers our concerns.

It is important to know there is another side to this story. For all the stories of lending abuse that were offered by the supporters of the bill, there are literally hundreds of thousands of these loan contracts executed every year in Las Vegas to the mutual satisfaction of the lenders and the customers. The bill passage in the 2005 Session has not been in effect long enough to know the impact. Certainty of regulatory operating environment is important to all businesses. It is important that we achieve a solution that will stand the test of time to the industry and those businesses that support the industry. We stand ready to add provisions to the existing statute that will further strengthen consumer protections.

The only exception I had to last week's presentations was the claim that this bill in its present form would level the playing field and the industry. I submit that nothing could be further from the truth. It does not level the playing field but is anticompetitive. This gives a few selected companies in the industry a huge competitive advantage over the rest. In its present form, in the end, this bill will only serve to harm the consumer with greatly reduced choices of services and ultimately even higher interest rates. The playing field is leveled for the consumer only when there are ample services offered and the variety of financial services are offered as a choice. This bill serves to reduce the industry to provide only one type of service and that falls short of accommodating all the

various consumer financial needs. We are here to support Assemblywoman Buckley's goal of eliminating lending abuses of the type that were pointed out in the testimony. We understand the abuses are not good for the industry or for the consumer.

MR. GRAVES:
A lender cannot make money lending to clients who cannot pay back the loans. The industry is best supported by satisfied, repeat customers that do pay off their loans. While much has been made of lawsuits and court issues, going to court is not how these lenders want to be spending their time. We understand the court's concern about the industry, but a point needs to be made. The defaults occurring are not unique to the high-interest-rate industry. There are defaults occurring in every sector of financial services. Since most high-interest loans are not collateralized, the only redress the lenders have is through the court system.

We do understand the military's concern about the industry. As we stated last week, we fully support those provisions in this bill that deal with the military's concerns.

We offer to amend this bill to provide consumer protections that we mutually seek. We wish to do that in a way that does not destroy choice and competition that most benefits the consumers.

ROBERT A. OSTROVSKY (Nevada Lenders Association):
My testimony is in regard to a history of the industry (Exhibit J). The NRS 604A is the payday-lender section of the law which was created in 1997 specifically to regulate consumer services of check cashing, payday loans and deferred deposits. That is a NRS Title 52 trade regulation. The people I represent do not make deferred deposits or cash checks. Those transactions are done by the installment-lender licensees and are found in the NRS 675. Those have been in the statutes since 1959. It has been amended on numerous occasions since that time. That section of the law regulates installment-lending services by licensees. The law established in 1959 made a clear declaration of the legislative intent relative to the regulation of this industry. The purpose of the NRS 675 originally was intended to attract adequate commercial capital to the marketplace.

MR. OSTROVSKY:
We believe A.B. 478 should enhance consumer protection and provide strong and sensible regulations. This bill should encourage diversity and competition in the marketplace which we believe is good for the consumer. We do not believe it should limit the opportunities for consumers in businesses in the State because limiting that forces customers out of the NRS 675. It force customers to borrow at the NRS 604A payday-lender locations or forces them up into the arena of the financial institutions which are regulated as banks. You will find our customers have a very difficult time moving up to banks and the bank rates. We urge you not to strip those licenses under the language in the proposed original A.B. 478. This would force anybody that lends at rates higher than 40 percent down to the payday-loan market. You will see in the chart under Nevada Loan Markets, Exhibit J, we believe the purpose of the NRS 604A was to meet short-term needs on an unsecured basis. This is typically a consumer loan and not a business loan. The customers that are borrowing usually have poor credit ratings. They are not customers who would borrow from a bank. We believe the NRS 604A borrowers have a very high default rate. There are a lot of unsecured loans that have limited abilities to collect on them. Every Wal-Mart store in Nevada has the NRS 675 license mostly for check cashing. These lenders are typically called payday lenders. The NRS 675 meets short-term loans as well as long-term needs, secured and unsecured with everything but real estate. They also loan to consumers and small businesses. Their rates are $500 to $20,000. They do make loans less than $500 and operate at some of the lower loan amounts. They typically work with customers in the middle credit bracket and have lower default rates.

The chart showing market rates clearly shows the highest-cost loans are payday loans down to the lowest-cost rates which are bank rates. Everybody who is not borrowing at bank rates would prefer to, as it is market driven. If they could get a loan at the bank rate, they would. As the amount of the loan rises, the rates go down.

People are driven to the Internet. An unlicensed lender in Reno was recently fined. He had no NRS 604 license and no NRS 675 license. You can go to the Internet and Google and find 7 million-plus hits for sites where you can borrow money internationally. We do not want to drive our customers into that market. We urge you to support our amendments.

BILL CURRAN (Gentry Finance):
I am only going to introduce someone today because of the time constraints. He can provide expert testimony and insight into the issues being considered by the Committee today.

Mr. Oliver Ireland is a graduate of Yale University and the University of Texas. He is a partner in the national and international law firm of Morrison and Foerster. His practice is in the financial-services area and is based in Washington, D.C. He spent 26 years working for the federal government with the Federal Reserve System, including 15 years as associate general counsel. He has worked with consumer financial-services issues since the passage of Equal Credit Opportunity Act of 1974. He has drafted a number of consumer-protection regulations for the Federal Reserve Board and a member of the Board of Regents of the American College of Consumer Financial Services Lawyers. He is chair of the American Bar Association subcommittee on deposit accounts and payments. Mr. Ireland is a frequent witness before both the U.S. House of Representatives and the U.S. Senate. He will bring important insight to the Committee.

OLIVER IRELAND (Gentry Finance):
We are talking about what I call small loans in an effort to regulate them in Nevada under A.B. 478. I listened to the hearing last week regarding concerns over the spiraling of debt and other abuses A.B. 478 was intended to correct. Unfortunately, the key components of this bill are headed in the wrong direction and may be counterproductive in addressing some of those concerns.

I have written testimony to hand out (Exhibit K). Problems in the area of lending and financial services are not limited to small loans. We heard testimony last week on small loans. Small loans attract attention because they have what appears to be a high cost, but the benefits of small loans have also been recognized for almost 100 years.

Installment lending has been a key role in small-loan lending and recently we have seen a shift to payday lending as a popular form of small-loan lending. Small loans are often an entry into the financial-services system for people on their way up. There is a fixed-cost component in any loan origination and that component must be amortized over the amount of the loan and the term of the loan. There is a financing component reflecting current interest rates which would effectively eliminate small loans with maturity of more than 90 days from

a single lender. We think that is moving in the direct opposite of what the federal policy is moving today. We have seen actions by the Federal Deposit Insurance Corporation to encourage banks to get into small-loan lending and encouraging them to do installment loans over longer periods of time. We have seen recent regulations proposed by the U.S. Department of the Defense (DOD) under the John Warner Defense Authorization Act of 2007 which was enacted to protect members of the military and their families from predatory lending practices. Those regulations focus on short-term loans, under 90-day loans and under $2,000. Despite a very broad power given to the DOD in that legislation to pick up almost all consumer lending other than mortgages and automobile purchases, the DOD chose to exclude from the coverage of their rules and their limitations installment loans with maturity more than 90 days. That is a very significant point.

MR. IRELAND:
Under A.B. 478, a consumer needs more money than they can repay in the 90-day period to fix a car or other reasons. A consumer will need to get multiple small loans from multiple lenders. In some cases they may do that one after the other using the loan from one lender to pay off another. The fixed cost associated with each of those loans will be incurred every time the consumer borrows. If the consumer borrows four times to get in effect a one-year loan, those fixed costs are amortized four separate times. So you have four times as many fixed costs as if they had just one initial loan. You can wind up paying more for that loan. That is one of the reasons we are concerned. From the consumer side, A.B. 478 could have the unintended consequence of raising costs for credit to consumers. Other states, including Florida and Oklahoma, have tried to regulate that kind of sequential borrowing by consumers from payday lenders. That is what led up to the passage of the John Warner Act. The DOD conclusion was those legislative efforts did not work even where the state tried to establish central databases so they could track all loans to an individual consumer. They still were not effectively able to control those kinds of rollovers. We think trying to limit the term to 90 days and focus on the short end of the maturity spectrum is really counterproductive in A.B. 478.

In the hearing last time, there was concern about clogging the court system with collection efforts. You might restrict those loans by forcing consumers into less regulated and perhaps illegal sources and then create other legal problems for the court systems.

While I do recognize there could be problems in the small-loan industry in Nevada, I believe this bill is not the way to address those. They should be addressed in a more targeted basis in order to avoid unintended consequences.

CHAIR TOWNSEND:
Nationwide, do you know what jurisdiction has the most restrictive laws relative to this issue? Do they title different loan types? We are reacting to what we have done previously.

MR. IRELAND:
Right now people are all over the place. There was an effort almost 100 years ago to create a uniform small-loan act. The market has gone significantly beyond that now.

CHAIR TOWNSEND:
What percent of the NRS 604 loans are personal and what percent are for business? Also the same question in the NRS 675 category.

MR. IRELAND:
No, I do not know.

CHAIR TOWNSEND:
In previous discussions this committee has had people come forward and said they have used these types of loans in the NRS 675 for their business. The NRS 604 loan seems to be more on a personal level.

MR. IRELAND:
In looking at the credit-card area, there is a fairly wide practice of individuals getting personal credit cards and using them for business purposes. It is very hard for the creditor to figure out if the customer is using the card for personal purposes or business.

SCOTT SCHERER (Dollar Loan Center):
Under existing law, Dollar Loan Center is not a deferred-deposit lender, also known as a payday lender. Dollar Loan Center is an installment lender under NRS chapter 675. As mentioned by the previous speakers, we believe there are important reasons to maintain the distinction between the NRS chapters 604A and 675.

CHAIR TOWNSEND:
Do we have a list of all the NRS 675 and 604 licensees?

MR. BICE:
There is a list and it currently is on the Division of Financial Institutions', Website, under the NRS 604 check cashing, deferred deposit, and short-term loans/Title Loans. It is in two separate areas. I could provide a list to you this afternoon.

CHAIR TOWNSEND:
Do you have any idea how many are listed under each one of those categories?

MR. BICE:
There are 530 under the NRS 604A and approximately 170 under the NRS chapter 675.

MR. SCHERER:
Now is a good time to bring up a letter you should have from the Financial Institutions Division, (Exhibit L). This letter was sent out August 17, 2005, shortly after the passage of A.B. No. 384 of the 73rd Session. The letter pointed out the changes to the NRS chapter 604A and the distinctions between some of the lenders. It specifically asked the NRS chapter 675 lenders to choose whether they wanted to be licensed under the NRS 604A or the NRS chapter 675. It gave them 20 days to make a decision. In choosing to be under the NRS 675, we felt we were following the instruction we had been given by the Division of Financial Institutions.

Some of the distinctions between installment lenders and payday lenders include the fact the installment lenders do not take postdated checks. Payday lenders have the ability to directly access the consumers account through that postdated check. If the consumer is unable to repay the loan and redeem the check, the consumer may have to pay not only the charges of the payday-loan company but also significant charges to their own bank for a non-sufficient fund check. Consumers who rely on tip income also do not have checking accounts. Subject to a credit check, we will make loans to customers who do not have checking accounts. Many of these customers are not served by either the banks or the traditional payday lenders. Credit check is another distinction. Unlike many of the payday lenders, installment lenders do credit checks to verify that the consumer has the ability to repay the loan. Most of the installment loans are

the same. We do not charge up-front fees, application fees or prepayment penalties. Payday lenders typically charge all of their interest up-front in the form of fees, whether you keep the loan for two days or two weeks, the fee is the same. The annual percentage rate quoted on the contracts of payday lenders assumes you will keep the loan out for the entire period of the loan, typically two weeks. If you choose to pay the loan back in one week, the actual interest rate is twice what is quoted. The result is a de facto prepayment penalty even if they do not call it that. We charge interest only for the actual number of days you use the money. There are no up-front fees and if you pay the loan back early, no further interest accrues. Most installment lenders are currently following the same practice; our amendment will require all installment lenders allow prepayments without penalty. Installment lenders also accept partial payments. The typical payday lender requires the loan to be paid in full to redeem the postdated check provided by the customer. If the customer cannot pay the full amount within the time period of the loan, typically two weeks, the customer has to roll over the existing loan and pay additional fees or take out a new loan with new fees.

I wanted to cite a couple of newspaper articles. In the *Nevada Appeal,* March 6, 2007, the article stated payday lenders offer quick cash advances for a fee secured by a postdated personal check from the borrower. Customers are supposed to repay the loan once they receive their next paycheck. Borrowers who cannot pay off their loan then roll the loan over repeatedly, leading to more charges that can quickly add up and lead to a cycle of debt. Customers are drawn to lenders because, unlike banks and credit union; they do not run credit checks.

Assembly Bill 478 would require loans to be limited to 35 days for a deferred-deposit loan, 30 days for an installment loan that is not fully amortized or 90 days being the longest time period for a fully amortized installment loan. The time periods do not work for many consumers. They do not fit their financial situation or needs. Installment lenders provide longer-term loans. The payment of the principal is not due for at least a year. During that time the consumer may make full or partial payments with no prepayment penalty to reduce the amount of interest that accrues. If our amendment were to be adopted, there would be no balloon payment at the end of the year.

We have a couple of customers who came today because they feel strongly they want the option to repay loans over a longer period of time.

APRIL ROMO:
I am a customer of the Dollar Loan Center. I have previously borrowed from payday-loan centers. They are a convenient way to borrow money for a family emergency. It allows me flexibility if I am running a day or two late. I do have to pay an additional charge for a late fee, but it is not to the point where I am scared that my account will be overdrawn. It is convenient to have the year to pay off the loan. If I pay the minimum payment and an additional $2, it is working towards the principal and allows me to pay down the loan. On my current loan, I have been paying a few extra dollars and have already paid over $150, not realizing the balance was coming down that fast. This is an easier way for me to borrow money without rollovers. There is less hardship, financially. I am not eligible for bank credit due to a bankruptcy. Dollar Loan does do a credit check but I did meet their minimum qualifications. It helped me get out of a payday-loan situation.

JAY MCKENNON:
I am a customer of the Dollar Loan Center. I really like the option of borrowing money for one year. It helps me pay off the rest of the bills I have. I have paid off loans a few times so I have not overextended myself. They do have a credit check which allows me to know my credit is in good standing. They allow me to extend the loan if I need to. If I borrowed $600 and want to pay back $50, there is no problem. It is better to pay the few dollars extra and see the loan go down, and before you know it the loan is paid off.

MR. SCHERER:
I handed the secretary copies of petitions for the Committee that have been signed by 1,323 people collected in one week at Dollar Loan Centers (Exhibit M, original is on file in the Research Library). These people want the freedom of choice to borrow without providing a postdated check and want the longer period of time to be able to pay off the loans.

SENATOR CARLTON:
You were a payday loan under the NRS chapter 604, and with the 20-day option to switch, you went to the NRS chapter 675?

MR. SCHERER:
Dollar Loan has been doing installment loans. They may have done some shorter-term loans before the NRS 604 changes but they have always done the longer-term loans as well. They have provided the consumer the different

choices. When they were told they had to choose one or the other, they chose to use the NRS 675 and do the longer term.

SENATOR CARLTON:
So they did do payday loans and now they do just the NRS 675 loans?

MR. SCHERER:
They just do the NRS 675 loans now. When you say payday loans, I do not believe they did the deferred-deposit loans. They did not take the postdated checks which are typically referred to as a payday loan.

SENATOR CARLTON:
I would like to see your paperwork so I can compare it to what has been presented. This will give me a fair view of what is going on.

MR. OSTROVSKY:
I have provided the Committee with my "Summary of Proposed Amendments" (Exhibit N). They are contained in the mock-up (Exhibit O, original is on file at the Research Library). We are fully prepared to go through the mock-up in detail but I do not feel you have time to do that today. The consumer protections have been rolled into the mock-up.

CHAIR TOWNSEND:
Mr. Bice, do we have anyone in the State who has both licenses?

STEVE KONDRUP (Acting Commissioner, Division of Financial Institutions, Department of Business and Industry):
Yes. We have lenders who are licensed under the NRS 604A as well as the NRS 675.

CHAIR TOWNSEND:
Do you know the percentage of the total licensees?

Mr. Kondrup:
I do not have an answer.

CHAIR TOWNSEND:
How would one operate as a business? Do you have to list that when they come through the door?

MR. KONDRUP:
You cannot have the NRS 675 and the NRS 604A lender in the same locations.

CHAIR TOWNSEND:
What if they are side by side in a strip mall?

MR. KONDRUP:
They still have to have a dividing wall and different entrances to go into the businesses. As long as the municipality allows that then the financial institutions has no objections.

CHAIR TOWNSEND:
Section 29.5 of A.B. 478 is where we changed, "no person may engage in a business or lending." This was changed from short-term to high-interest loans. I believe that is going to be the new term under the proposed bill.

Mr. Ostrovsky, is the proposal to restrict the acts under NRS 604A going to narrow the distance between NRS 604A and 675?

MR. OSTROVSKY:
The sponsor of the bill, Assemblywoman Buckley, believes that anyone who lends anything above 40 percent should be regulated under the NRS 604A. Our amendment takes a different tact and says we want to add all the consumer protections plus some into the NRS 675 and not use the 40 percent as a defining number.

CHAIR TOWNSEND:
There are lots of views and they are extremely important. One is what is going on with our families and our school systems that are failing to educate people regarding keeping good credit and managing money. Another component appears to be some people would rather take advantage of the current structure to turn this into something that could easily be done with a little work with the customer.

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
I have had an opportunity to look at the lenders amendment, and I strongly oppose the amendment. It guts everything that is attempting to be accomplished with this legislation.

The testimony of the high-interest lenders today was, "We are not the problem." The small-loan market is different and we should have different rules. It is just as insidious to charge 900 percent whether you are doing it on a promissory note or whether you are taking a check in exchange. The only difference between these lenders and the payday lenders is the payday lenders take a check in exchange. That is why in the last Legislative Session we decided that the rules should apply to both. That is why the NRS 604A covers both deferred deposit and high-interest, short-term loans.

If you will look at this handout (Exhibit P, original is on file in the Research Library), it goes through the facts. There are 253 payday-lending facilities including high-interest loans in Las Vegas alone, with 85 McDonalds in comparison. We have quotes from all of the judges who see these cases over and over expressing their outrage and concern about what is happening to consumers. Koster Financial charged 492 percent for a 1-payment loan of 2 weeks in duration. After the bill was passed, they are still charging 492 percent, but instead of charging a finance charge of $33, their finance charge is $5,064. A person borrowed $989, paying back $200 every 2 weeks for 26 weeks then had a balloon payment due of more than they borrowed. The stories go on and on. I have copies of all of these contracts from the people you have heard about.

My second point is consumer right of choice. You heard from a couple of consumers where loans have worked out okay. That is not the norm, however. This bill preserves a consumer's right to choose. They can still go forward for the products, we are not banning them. We are saying it has to be a short term for the high interest and after that it must go down to an interest that someone can pay. Otherwise, they do not get off the cycle of debt. If we do not expand the law to those that take a check, it is easy to see what everyone will do. No one will require a check, and we will have done nothing to stop the abuses.

This is not about fair competition; it is about greed and putting people on a cycle of debt that they will never get off. If we did not mean to protect these people, then why did we extend the legislation to them last Session? This is about a loophole that someone decided they did not want to follow the law. I would urge you to keep that in mind when you process this bill.

CHAIR TOWNSEND:
On the loan documents we required the people to be notified of the percentage rate, finance charge and amount financed. It is very important people understand what is going on. In the boxes on the form it says annual percentage rate, cost of my credit as a yearly rate is 492 percent and the finance charge is listed as $5,000. The customer has responsibility to say maybe this is not in my best interest.

ASSEMBLYWOMAN BUCKLEY:
The boxes on the forms are required by federal and state law to comply with the federal Truth in Lending Act. It is similar to all loans, including in the car industry. A consumer can clearly see the interest rate but people are desperate. They say I just need money for a couple of days and can pay this off.

Looking at the same example in the far right column, you will see "Itemization of Amount Financed" the first part "Payoff" and "Other Loan to the Finance Company." They went in to just borrow a small amount of money. The interest payments were so high they could not make it. They go in to see what they can do and ask if they can make a payment. They are talked into being refinanced. Someone ends up borrowing $200 to get to the next payday and they cannot keep up with the 500- to 900-percent interest so they borrow again. Soon they refinance again and again. So for borrowing $200, they are being required to pay back $5,000. Does the consumer bear responsibility for getting into this mess? Of course they do. At what point is the abuse so high that in addition to the consumer responsibility there has to be lender responsibility and since they will not offer it, the State needs to step in?

CHAIR TOWNSEND:
The original loan now has a $989.81 payoff. Was it too high and they could not meet the payment so they refinanced the loan?

ASSEMBLYWOMAN BUCKLEY:
Yes. The rollovers are not applicable because the company changed their practice to be more than a year to evade our consumer protections.

That is how to trap someone on a debt treadmill; they cannot pay off the loan so they get offers to lend you more money at 500-percent interest. They loan it to them for more than a year so they can evade all State consumer protections.

CHAIR TOWNSEND:
I will work with Assemblywoman Buckley to find a date for a work session.
The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:58 a.m.

RESPECTFULLY SUBMITTED:

_____
Gloria Gaillard-Powell,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE: _____