MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 17, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:17 a.m. on Thursday, May 17, 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 Joe Hardy, Assembly District No. 20
Assemblyman John Oceguera, Assembly District No. 16

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:

Bill Welch, Nevada Hospital Association
Fred L. Hillerby, State Board of Nursing
Alice A. Molasky-Arman, Commissioner of Insurance, Division of Insurance, Department of Business and Industry

Charles B. Knaus, Head Actuary, Division of Insurance, Department of Business and Industry
Captain W. Scott Ryder, Commanding Officer, Naval Air Station Fallon
Scott E. Bice, Commissioner, Division of Mortgage Lending, Department of Business and Industry

CHAIR TOWNSEND:
I will open the hearing on Assembly Bill (A.B.) 145.

ASSEMBLY BILL 145 (2nd Reprint): Revises provisions governing the assignment of benefits for health insurance. (BDR 57-1068)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):
You are receiving the compromise language (Exhibit C) on which everyone has come to an agreement. The issue is assignment of benefits involving insurers in different states having the opportunity to pay the provider directly rather than to the insurer.

Assembly Bill 145 is simply a statement of Nevada public policy with respect to the assignment of benefits. This bill is not intended to, nor will it vest any enforcement rights, duties or responsibilities on our insurance commissioner or the Attorney General's Office. Likewise, this bill is not intended to create any private right of action for any person, business or other entity against an unlicensed insurer in this State. This bill will only allow the insurance commissioner or her designee to send a letter to an out-of-state insurer who is not licensed in Nevada, who does not license in Nevada and who does not honor an assignment of benefits designation by one of their insured to inform them they are acting contrary to our State's public policy to honor those assignments. Those insurers can choose to conform to our public policy or ignore the letter. They will not be subject to any sanctions or other actions that will in any way affect their ability to do business.

CHAIR TOWNSEND:
Mr. Young, is the proposal to remove the bill as a whole?

SCOTT YOUNG (Policy Analyst):
Yes, that is correct.

CHAIR TOWNSEND:
We are taking an insurance section, the *Nevada Revised Statute* (NRS) 679A and replacing it with NRS 449 over which we do not have jurisdiction. I do not know if we can do that.

WIL KEANE (Committee Counsel):
I would have to consult with the Legislative Counsel as to whether this amendment would comply with the germaneness requirement and also as to whether the Committee would have the authority to make such an amendment.

CHAIR TOWNSEND:
You have made a good-faith effort to resolve a problem. Please e-mail counsel and find out. The subject matter is germane but the NRS is not to this Committee whether we have the authority.

ASSEMBLYMAN HARDY:
This bill has had several different ways involving different statutes. This has become one of the ways that we could do something that would be helpful.

SENATOR CARLTON:
I am trying to understand the problem.

ASSEMBLYMAN HARDY:
Your perception is accurate. The original bill had a life of its own. We got into problems with Medicaid, and instate insurers trying to capture things that were from out of state that overlapped with instate insurers. Contracts were sensitive from a legal standpoint. We had different conflicts in different statutes. If a person is living in Nevada with an insurance policy issued in Indiana, Indiana has jurisdiction over that insurance company. The person tells the hospital, yes I assign the benefit to you after my surgery; the hospital will send the bill to the Indiana insurance company. They send the payment to the person instead of to the hospital. The person cashes the check, spends the money and then the hospital is out the money and the person has benefited unfairly. You then have a challenge trying to figure out how to bill a person that owes the money but spent it. The hospital is placed in a difficult position because the insurance company from out of state did not do what the insurer wanted, pay the hospital bill. We cannot change interstate commerce. We do not have the jurisdiction in Nevada.

SENATOR CARLTON:
I am surprised there is not some type of subrogation agreement with the hospital, doctor or insurance company. In your discussions did you have a safety valve for this particular issue?

ASSEMBLYMAN HARDY:
You are getting to the very heart of the problem. The person actually signs a statement that says, "I did not get the money," the hospital receives the money. The insurance company sends the check to the person rather than the hospital.

CHAIR TOWNSEND:
As soon as we get an answer from the Legislative Counsel Bureau we will either act on the bill or I will ask Senator Heck who sits on the Senate Committee on Human Resources and Education if he could talk to staff.

CHAIR TOWNSEND:
I will close the hearing on A.B. 145 and open the hearing on A.B. 491.

ASSEMBLY BILL 491 (1st Reprint): Makes various changes concerning the clinical education of a student in a school of nursing. (BDR 54-1339)

BILL WELCH (Nevada Hospital Association):
Questions have come up with respect to A.B. 491. Upon research, I have discovered all of our hospitals are requiring background checks for their employees. There are two regulations. There is the NRS 449.179 and also the Centers for Medicare and Medicaid Services (CMS) regulation which is 42 *Code of Federal Regulations* 483.13. These regulations require hospitals do background checks on employees that have anything to do with services for the aged population. Not knowing when an employee might give care to the aged or Medicare population, the hospitals have elected to do a background check on all employees. The federal requirement requires hospitals to do a full Federal Bureau of Investigation (FBI) background check on employees. The state regulation only requires the local, more minimal background check on employees. Hospital systems in Nevada that have hospitals in other states are requiring the full FBI background check because they have different licensing and background-check requirements. The hospitals have very specific and distinct services for nursing-home patients providing a similar policy not knowing which employee might end up working in the nursing-home portion of

the facility. Our medical-education students have no direct regulation which requires a hospital to have a fingerprint and background check. The hospitals have elected to be proactive requiring a background check on all students. They require background checks for any student that has hands-on experience. The first- and second-year medical school students do not have clinical experience and are not being required to have background checks. The third- and fourth-year students along with the residents are required in advance by the school of medicine to have background checks. When they come into the hospital, the background checks have already been completed. I hope that brings clarity and answers the questions that were brought up at the hearing yesterday.

SENATOR CARLTON:
Do you look into a person's background before the age of 18, or hold anything against them that occurred when they were a minor?

MR. WELCH:
Senator Carlton, I cannot answer that question. I will be happy to investigate and report back to the Committee. The CMS regulation nor the NRS are specific to any age limits or how far back the check is required.

SENATOR CARLTON:
That is the problem, we are doing background checks on younger and younger people. They do not have a chance to learn from their mistakes and have a clean record for five years.

MR. WELCH:
I understand your point. I will contact the hospitals and provide the information to you.

SENATOR HECK:
Right how there is a hodgepodge on who requires background checks. The statutes are not clear. I have no issues with the bill since it is permissive and we are going to put in the provision Mr. Hillerby will talk about. I would like to put into the bill that we refer this to the interim Legislative Committee on Health Care because they are already planning to do a subcommittee on professional licensing. They are going to have the greater public policy debate and see what we need to do at what level to make sure it is uniform across all these disciplines.

FRED L. HILLERBY (State Board of Nursing):
One of the reasons for the fees is the time it takes to get the background check back. The State Board of Nursing looks at the report, and we try to use discretion at the Board so we do not automatically kick out someone who would make a good nurse. I had an amendment prepared but will not hand it out yet. We are trying to make it clear if a nursing student elects to have the background check done, they would have a card to take from one training center to another. Once they complete their schooling and apply for a license, we are trying to find a way they do not have to go through the background check again. Senator Carlton had a concern that something could have happened in the three-year time span. It is thought that we could look at the state records. It is a scope check that is done. At Senator Carlton's request, we are talking to Captain P.K. O'Neill at the Central Repository for Nevada Records of Criminal History to see if we can find out how to do that without again requiring fingerprints. That request is not in my amendment, and I will get the answer to you.

CHAIR TOWNSEND:
Our legal staff has alerted me that Assemblyman Hardy's amendment is germane and is okay for us to remove the portions of the bill and replace it with his amendment.

With regard to the issue of the Legislative Committee on Health Care, they are allowed to create any subcommittees they would like. The committee can only consist of current members of the health care committee. The Legislature has to make sure the funding for the subcommittee is adequate. I would ask Senator Heck to work with staff and find out if the current chair and the incoming chair of that committee are in need of additional funding, I want to make sure it is in the budget.

MR. HILLERBY:
When the Legislative Committee on Health Care was formed in 1985, there was a funding mechanism. I believe it is still there.

CHAIR TOWNSEND:
It is one thing to have appropriations and another to have an authorization. We have to provide the authorization in order for them to spend. They could always come back to the Legislative Commission or go to the Interim Finance Committee to get it supplemented.

I will reopen the hearing on A.B. 145.

ASSEMBLY BILL 145 (2nd Reprint): Revises provisions governing the assignment of benefits for health insurance. (BDR 57-1068)

CHAIR TOWNSEND:
The recommendation of the sponsor was to delete the bill as a whole and add to it the NRS 449 with the language that was handed out by Assemblyman Hardy, Exhibit C.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED A.B. 145.

SENATOR HARDY SECONDED THE MOTION.

SENATOR CARLTON:
How can we tell an insurance company in another state that is not licensed in Nevada how to do business?

ALICE A. MOLASKY-ARMAN (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
I believe that Assemblyman Hardy had the best statement. This establishes public policy. It does not enable the commissioner to exercise any authority over an out-of-state insurer. It would enable the commissioner to go forward to a commissioner in a sister state, our Attorney General or Deputy Attorney General, those in other states that this is not what we do in Nevada. Would we have any real authority to take action? Unfortunately, we would not.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will open the work session on A.B. 375. I would like to compliment the majority leader on the work he put in during the interim. We will get back to this bill.

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

CHAIR TOWNSEND:
We will bring up A.B. 404.

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

CHAIR TOWNSEND:
The gentleman Assemblywoman Smith brought forward had a big concern. He had been covered by his insurance carrier for 30 to 40 years. He received a substantial increase in his premium relative to his coverage. He noticed the increase but there was no explanation for the charges that the average consumer could understand. That increase led to a bill about taking out credit scores. He discovered the increase had to do with pulling his credit score multiple times. This hurt his credit rating every time he pulled his score. It took months for him to get to the bottom of the problem. When he discovered the reason for the increase, it raised two questions. The first question is the consumer's ability to know what is in the bureau. A person applying for an application has their credit score pulled and their interest rate on the loan is dependent on their score. In this gentleman's case, he had no idea why it had happened and he obtained a different insurance carrier. This is a valid concern. I do not know if carrying it to the next level, credit scoring as a means of analyzing a person as a potential client for purposes of your insurance is the right thing to do.

The insurance commissioner is offering language that will address this gentleman's problem.

MS. MOLASKY-ARMAN:
We are proposing a solution we believe will deal with a universal problem. The consumer you spoke about did work with us and raised our consciousness about what is a significant problem. This proposed amendment (Exhibit D) will deal with the problem. It would delete section 1 of A.B. 404 which is the prohibition on using the number of times an individual opens and closes accounts. This would amend NRS 686A.710 which deals with the notice of adverse action. Currently, that statute deems such a notice that is provided by a credit-reporting agency to meet the standards for clear language and sufficient notice. We do not have any jurisdiction over the credit-reporting agencies. We are proposing to insert a provision that requires the commissioner's prior approval of those forms. The forms are typically vague and not informing

consumers of the appropriate reason for the adverse action. We would like to have an opportunity to review the forms before they are used. Our actuaries want to begin looking at the credit models. Our staff looked at the output and how the models affected the reading factors in insurance-rating mechanisms in setting premiums. We need to look at the input which would include the number of times a person opens and closes the credits, as well as other components that go into the models. We plan to do that with all rate filings that are submitted to the Division of Insurance. The industry has suggested coming forward with a booklet or pamphlet that explains to the consumer how credit scoring works and functions. We believe that could be improved. If the industry adopts that, we would like to adapt it and put it on our Website. We do not believe consumers are aware of their rights and of the federal Fair Credit Reporting Act. They are not aware of the laws that prohibit a false report of credit. The U.S. Court of Appeals for the Ninth Circuit recently issued an opinion that was adverse to the rights of consumers. That decision places the onus for correcting any incorrect reports of credit squarely on the member of the public. This decision makes it more important for us to educate our consumers as to what efforts they may make to improve their scores and protect their credit rating.

SENATOR HECK:
After the first hearings on the bill when we were talking about the use of opening and closing credits, I requested the actual studies that looked at how they came to their conclusions. I was surprised to receive a lot of studies in unedited form. Using the logistical regression analysis they used, I see there is a reproducible correlation between the credit scores and claims history. This validates the use of the credit scores. I echo what the commissioner stated; this bill is now going to give more information on the adverse action. We need to better inform consumers prior to the adverse action. I encourage those within the industry to develop the brochure that informs consumers in advance of what types of things in their credit history can affect their insurance.

CHAIR TOWNSEND:
Everyone became very aware insurance companies offered a good-driving premium. If you did not smoke or had a student with good grades, you would receive a break on the insurance fees. It is important for consumers to know all the components that go into the premium. I agree with Senator Heck's analysis.

You are recommending we delete the bill as a whole. We will put in 686A.710. At the bottom of subsection 2, of NRS 686A.710 take out "Standardized explanations provided by consumer reporting agencies are deemed to comply with this section." New language would be the notice required by this section.

This allows a uniform notice, but one you deem to be acceptable. The client will then understand the information provided in the notice.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 404.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR SCHNEIDER:
I have a friend in Las Vegas who owns property in Florida. Allstate Insurance cancelled his policy. They have cancelled half of all their insured in Florida. Allstate is also dropping 40 percent of their insured in California. Have you noticed that is happening in Nevada with our major companies?

MS. MOLASKY-ARMAN:
We have not received notice or concerns by insurers of that happening in Nevada. I believe the action in Florida is due to hurricanes. I am not sure of the reason in California other than perhaps the fires.

CHARLES B. KNAUS (Head Actuary, Division of Insurance, Department of Business and Industry):
We have only one minor change in Allstate's marketing in Nevada. They have withdrawn from the earthquake market. The problem in Florida is hurricane specific. The court changes the rules and the insurance company cannot predict what is going to happen if there is a hurricane. Nevada continues to have companies entering the market. State Farm has increased their homeowners' earthquake deductible from 5 percent to 10 percent. The changes in Nevada are minor compared to other states.

SENATOR SCHNEIDER:
Sometimes we try to do good things with the laws and we drive insurance companies out. I wanted to make sure nothing is happening in our State that would adversely affect our payers.

CHAIR TOWNSEND:
We will take up A.B. 478.

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

CHAIR TOWNSEND
There is a handout (Exhibit E) I have presented to everyone for discussion that would be applied to the proposed mock-up amendment 4066 (Exhibit F original is on file at the Research Library). The testimony was significant in two areas that this attempts to address. One was the length of the loan being indeterminate for the NRS 675 and the other was the accrual of interest after default. The subsection of that was for how long that term lasted. There was a concern regarding the lack of an arranged plan for payment. The handout addresses section 39 on page 21, Exhibit F, where there is a proposed term. It says a NRS 675 licensee shall not make a loan that requires a monthly payment that exceeds 25 percent of the expected gross monthly income of the borrower, make a loan of less than $1,000, make a loan that has more than 300-percent annual rate of interest or make a loan which has a term longer than 36 months which is the proposal unless the loan is secured by real or personal property. This will cover those in the business community who use the NRS 675 licensees in their business. The maximum rate of accrued interest after default is the same as permitted under the NRS 604A.485, subsection 1, paragraph (c), which is prime plus 10 percent for a period not to exceed 90 days. There also must be a mandatory effort to arrange a payment plan.

Under section 32 of the proposed amendment, Exhibit F, "Notwithstanding any other provision of law, a violation of any provision of section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation adopted pursuant shall be deemed to be a violation of this chapter."

Has there been a federal Department of Defense (DOD) regulation issue?

CAPTAIN W. SCOTT RYDER (Commanding Officer, Naval Air Station Fallon):
The DOD regulation in draft form is not unlike your suggestion. The two primary things I wanted to describe to the Committee this morning was the draft regulation and offer a perspective on it. It warms my heart to be able to be part of the democratic process. I also thank the Committee and the Assembly for their staunch support of the military's specific language in Assemblywoman Buckley's A.B. 478. I would like to provide the reasoning relayed to me for what the DOD draft regulation says right now. They want to control short–term, high-interest loans that are payday oriented, tax-refund oriented, and car-title loan oriented. They are going to do those as Assemblywoman Buckley suggested in previous testimony. They will consider those out to 90 days. They did not want to cause unintended consequences in sovereign states; 50 states who have 50 different types of regulations in association with loans. My concern was that might cause loopholes for some lenders to extend the terms of their loan and change their business principles.

As one of the 50 sovereign states, I am hopeful that despite the DOD draft regulation the loan companies will not find and use loopholes. I am for making the regulations in A.B. 478 even more stringent and restrictive that the DOD is comfortable doing today. The opportunity is there, and I am certain there are those who would appreciate it.

I am certain that those in the National Guard, personnel at Nellis Air Force Base, Hawthorne Ammunition Depot, Fallon Naval Station and more than 200,000 visitors that we get from those bases every year will unfortunately fall prey and make the mistake of taking out one of these high-interest loans. They have the potential for having problems in their careers and "deployability" affecting military readiness by getting caught up in one of these loans.

SENATOR HECK:
I appreciate the military's provisions. I know the DOD regulation will require the lenders to put a disclosure in their truth and lending documents that the individual has to sign that they either are or are not a member of the military. We are waiting for the draft DOD regulation to come around, and we may want to expedite the process to make sure it is put into the lending documentation before October 1. My other concern is honoring the proclamation. I feel it is important there is some provision that says the lending entity needs to be notified they have been put off-limits.

I appreciate that subsection 4 is much more stringent than what the draft DOD regulations stated. The draft is National Guard or Reserves while on active duty, and this as written applies to National Guard and Reserves in their inactive status. We could have the same issues with the National Guard and Reserves regarding their deployability as we do with the regular military which could pose a significant problem. This is somewhat different than what the draft DOD regulations currently state.

CHAIR TOWNSEND:
Does subsection 4 of section 33, Exhibit F, sweep in those that would not be in the DOD regulations?

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8)
In my opinion, the most important provision that protects the military and other Nevadans are general provisions of this bill. If we do not have a specified term for all high-interest lenders, a short-term in which they can charge interest and a cap on that overall amount, we will not have solved the problem. Captain Ryder can issue proclamations and attempt to have protections regarding garnishments, but in the end you do not have the protection that members of the military will be on a cycle of debt.

I delivered a copy of some analysis (Exhibit G) on the two versions of the bill. Listed are my version and the lender's version on the copy. There are points for your consideration. The terms of a loan cannot be more than 36 months. An example of 300-percent interest rate shows a person borrowing $1,000 for 13 months and they will be paying $3,439 for a 13-month loan. If you take the loan out for 36 months on the $1,000 loan, they will be paying $9,000 (Exhibit H). We decided last Session the rules would apply the same to everyone. If your concern is business loans, then exempt the business loans from the NRS 675. We are not trying to get at the business industry which can negotiate a fair interest rate; we are talking about anyone who charges less than 40 percent is still a NRS 675 lender. If you are charging a high rate of interest, you are in NRS 604A, and you cannot charge the outrageous amounts of interest for months and years.

CHAIR TOWNSEND:
You have two different licensees, the NRS 640A and the NRS 675, is that correct?

ASSEMBLYWOMAN BUCKLEY:
Yes. I do not understand what concerns are being addressed. We have to decide who stays in the NRS 675 and who goes to the NRS 604A at the outset. Last Session, we said because the short-term, high-interest lenders who did not use a check and had 30 days did not change their business model. We said you go into NRS 604A if you lend money for less than a year. The lenders changed their contracts to be more than a year. If we are fixing that to carry forward our legislative intent, we take off the timeline so they cannot bump it up by a day and go into NRS 604A where we said they belonged last time. What I think I hear them saying is let us stay in the NRS 675, but we want to be able to charge 300 percent.

CHAIR TOWNSEND
Are you saying $1,000 or more, at 40-percent interest, 3 years unless the loan is secured with all of these components?

ASSEMBLYWOMAN BUCKLEY:
If we allow 300 percent for 3 years on a $1,000 loan, the borrower is paying $250 a month for 3 years.

CHAIR TOWNSEND:
That is a consumer issue. They can go somewhere else and maybe get 200-percent interest and make the loan for 12 months or 10 days. We are trying to guess to the max.

ASSEMBLYWOMAN BUCKLEY:
That is a policy decision.

CHAIR TOWNSEND:
You do understand the consumer has a role of responsibility. I do not want anyone to misunderstand what I am saying. We cannot protect the world from themselves. Some people get into this jackpot because they legitimately had a problem.

ASSEMBLYWOMAN BUCKLEY:
That is 100-percent true. We have hundreds of thousands of Nevadans being sued, and they are in over their heads. That is why every state has gone one of two ways; usury limits or protections against abuses on high-interest loans. Nevada previously rejected a usury limit. This is an attempt to say you can

charge whatever the market will bear on a high-interest loan, but you cannot do it for more than 90 days. If you do, you are trapping someone on a cycle of debt. We said that as a state last Session.

CHAIR TOWNSEND:
What is your suggestion? Now are you saying the term is more important than the percentage, whereas I thought I heard you say before the percentage is more important than the term on the NRS 675 loans?

ASSEMBLYWOMAN BUCKLEY:
I have passed out my proposed mock-up on A.B. 478. On an existing loan, all lenders in the NRS 604A have no cap on the initial term of the loan. There is no proposed change. The lenders can charge 500 percent for the initial term of their 30-day loan. They can also roll it over if the customer requests, but no more than 90 days. Upon default, it kicks into prime plus 10 percent. They want to be able to charge the 500 or 900 percent for a year or more.

CHAIR TOWNSEND:
If we leave the NRS 604A the way we believe it was previously, where are you with term percentage?

ASSEMBLYWOMAN BUCKLEY:
Under my bill, the NRS 675 would be for lenders under 40 percent. When a lender charges a high-interest rate whether it is a deferred check, a promissory note or with a title loan, it does come under the NRS 640A. Instead of it being the length of the term determining what chapter you are in that is all gone, is now all based on rate.

CHAIR TOWNSEND:
In the original bill, did it address the issue of default?

ASSEMBLYWOMAN BUCKLEY:
Those would be identical. We do not need two chapters which have identical provisions.

CHAIR TOWNSEND:
The term affiliate is used in this bill, page 19, section 28 (Exhibit I, original is on file at the Research Library), "Is an affiliate, subsidiary or holding company of a bank." I believe there also is a reference in Assemblyman Oceguera's bill on

mortgages. The term subsidiary is used in your proposal but Assemblyman Oceguera and I have had a discussion that it becomes a problem in the mortgage lending area. I want to make sure there is no misunderstanding.

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
The term we had come to an agreement on was operating subsidiary. However, we have moved backwards from that discussion. I think we should use the term operating subsidiary. The word affiliate in the mortgage lending bill opens up a loophole.

CHAIR TOWNSEND:
If we are consistent, then this term would be an affiliate operating subsidiary or holding company.

ASSEMBLYMAN OCEGUERA:
I suggest removing the word affiliate and including the word operating subsidiary.

ASSEMBLYWOMAN BUCKLEY:
The Nevada Bankers Association has requested that word be inserted in this bill. Because the banking association does not lend on loans more than 40 percent or engage in predatory practices, I have no concern adding that word.

CHAIR TOWNSEND:
We will come back to A.B. 478 and move it today.

Staff has tried to provide to Assemblyman Oceguera all the proposals that have been presented on A.B. 375 governing mortgages. I want to make sure you have seen them all as we do not want to repeat testimony today.

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

ASSEMBLYMAN OCEGUERA:
The amendment proposed by Mr. Bice (Exhibit J), Commissioner, Division of Mortgage Lending, has been handed out.

CHAIR TOWNSEND:
We will be working from the proposed amendment mock-up 3942 (Exhibit K) which came from Assemblyman Oceguera.

ASSEMBLYMAN OCEGUERA:
I have seen Mr. Bice's amendment and I am fine with it. This amendment allows for continuing education and seems reasonable regarding biennial audits. The amendment by Mr. Lee (Exhibit L) would change the mock-up in section 10.5. That was a section that tried to fill a loophole that we thought may exist if you were being regulated by someone in another jurisdiction. We want to make sure that you provide to the mortgage commissioner that you are being regulated by somebody. I agree with Mr. Lee's amendment. I believe it does what we wanted to do and makes sure there is not a loophole.

The final amendment by Mr. Uffelman (Exhibit M) is going back to his original affiliate language that I discussed from Assemblywoman Buckley's amendment and I do not agree with that. I would agree to an operating subsidiary, but I do not agree that we should go back to an "affiliate."

CHAIR TOWNSEND:
The sponsor of the bill is working from proposed amendment 3942 which is the original mock-up from when the bill was presented. There is additional language by Mr. Bice, Exhibit J, that the sponsor has agreed upon which clarifies those issues previously discussed. Also the sponsor has agreed to Mr. Lee's submission, Exhibit L, that someone must provide evidence to the commissioner that the person is licensed and is in good standing pursuant to the laws of this State or other states. Mr. Lee provided language to cover those under the NRS 645E so they could operate under this jurisdiction as well as others.

SENATOR HECK:
I am having a hard time putting Mr. Bice's amendment into the mock-up. He is talking about amending subsections 8 and 9 of section 2. In the mock-up, we deleted most of section 2. There is no subsections 8 and 9. In trying to cross tie Mr. Bice's amendment into the mock-up, it does not work.

CHAIR TOWNSEND:
He is probably referencing the bill.

ASSEMBLYMAN OCEGUERA:
I would imagine that Mr. Bice did not have the mock-up to reference.

SENATOR HECK:
Even in the original bill or what came to us as the first reprint, there are no subsections 8 and 9 in section 2.

CHAIR TOWNSEND:
Mr. Keane, when the mock-ups are drawn up, do you sometimes put in old language?

WIL KEANE (Committee Counsel):
I did not prepare these proposed amendments, but I recognize the material in Commissioner Bice's proposed amendment. These provisions are drawn from Senate Bill (S.B.) 546, which was the Commissioner's bill. The Commissioner appears to have pulled out certain sections from S.B. 546 and then renumbered them for his proposed amendment. The sections numbered in his proposed amendment do not correspond to the section numbers of the mock-up for A.B. 375. With regard to Senator Heck's question, in section 2 of the Commissioner's document, I believe that the Commissioner is indicating that he wants the indicated changes made to NRS 645B.050. I believe that the Commission is asking for all of the changes in his proposed amendment to be blended into A.B. 375 at the appropriate locations.

SENATE BILL 546: Revises provisions relating to mortgage lending. (BDR 54-1412)

CHAIR TOWNSEND:
Senator Heck's point was not to vote to include three separate amendments and have a problem where they conflict.

WIL KEANE:
Mr. Lee's amendment proposes to amend the material in Assemblyman Oceguera's mock-up, while Commissioner Bice's amendment does not affect Assemblyman Oceguera's mock-up or Mr. Lee's amendment.

SENATOR HARDY:
I have a couple of questions for clarification. Are you talking about regulating private-money loans? As I read section 2, I am not sure that is clear enough on

the fact we are dealing with private-money loans. It looks like it pulls in all loans. I am not sure we want to jump to the assumption that mortgage brokers only do private-money loans.

The other question I had was referencing section 5, Exhibit K. We are requiring "Setting forth the requirements for an investor to acquire ownership ... The regulations must include, without limitation, the minimum financial conditions that the investor must comply with before and after becoming an investor." How can we assure that after they become an investor they are in compliance with the financial conditions? It seems like a pretty difficult standard. I also had questions regarding establishing limitations. We are really talking about guidelines so maybe we could add reasonable limitations and guidelines in the bill.

ASSEMBLYMAN OCEGUERA:
That area is difficult because anyone ought to be able to invest in what they want. We need to protect people from making any payday loans. That is why it is written as regulations. I agree with the Senator Hardy, if someone comes to invest their total savings of $9,000 and you see they probably could not make their house payment looking at their financial situation, you should not be giving them money.

SENATOR HARDY:
I have no problem with that. I think reasonable limitations would be appropriate. This last concern was e-mailed to me. Apparently in section 6, subsection 2, where it talks about obtaining the approval of the assignment from each investor, it requires greater than 51 percent of the investors. One investor cannot veto by himself. Is that the reason we said it has to be each investor instead of the standard of a majority of greater than 51 percent?

ASSEMBLYMAN OCEGUERA:
No. This is a critical component of this bill. This is the exact problem in some of the high-profile cases that you have heard about in the news. This section obtaining the approval of each investor is so you are protected. You know if the loan is assigned to someone else, you are not going to have to be notified.

SENATOR HARDY:
The distinction is this is private money. If we clarify in section 2 we are talking about private-money loans and not all loans, it will resolve my issue.

ASSEMBLYMAN OCEGUERA:
I thought from the agreement between the parties that we were making that fairly clear.

SENATOR HARDY:
I think it is fairly clear now we are talking about private-money loans. The issue that concerns me is how we are going to make sure someone is in compliance with the financial conditions for an investor after he become an investor. I think there is an obligation on the front-end to make sure they are eligible as investors, but how do we do that? If we could put establishing reasonable limitations or guidelines on a loan, it would give me a lot more comfort. Do you have position on the after? Is there a compelling reason or was that a drafting issue?

ASSEMBLYMAN OCEGUERA:
That is a drafting issue. I think you do need to consider all factors.

SENATOR HARDY:
My concern is the before and after becoming an investor.

ASSEMBLYMAN OCEGUERA:
I am okay with this.

SENATOR HARDY:
I will let the testimony on section 2 stand that we are talking about private-money loans and not all loans. If you will not object to the other change, that would make me feel a lot more comfortable.

SENATOR HECK:
Are you providing Mr. Bice a vehicle, or are you in support of backing all of these concerns? This Committee did not process this original bill, and we have significant concerns with a lot of the provisions including the newly formed mortgage lending education and research fund. Are you in support of these or is it just a vehicle?

ASSEMBLYMAN OCEGUERA:
A little bit of both. I understand there were some issues on the bill originally brought forward. It was my belief that the majority of the amendment was acceptable language that would work for everyone.

SENATOR HECK:
Would you have a problem if his amendment was not included in your bill?

ASSEMBLYMAN OCEGUERA:
I think the initial education, continuing education and allowing the mortgage lending commissioner to have leeway on the good-guy provision is important.

CHAIR TOWNSEND:
We are going to process Assemblyman Oceguera's bill. We have already had discussions about this amendment. There is an entire provision starting in section 11, Exhibit J, about the mortgage lending education and research fund. Why are we doing this, and why should we let Mr. Bice or his Division do this when we do not do it for anyone else?

SCOTT E. BICE (Commissioner, Division of Mortgage Lending, Department of Business and Industry):
That section of S.B. 546 was carried over to this amendment and was put in place because we have an education issue in this State with regard to the number and types of classes available. The Division believes it would be similar to the way the education program in real estate is run. There you have one central point to process. The intent was not to create additional monies or any kind of slush fund, simply to be able to have consistency in education. I have handed out our agency's estimates of the revenues and expenses (Exhibit N). We wanted to strengthen the standards for people to be in the industry and participate as loan originators.

I would hate to lose provisions of this bill that are needed, especially dealing with the reserve fund and adjusting fees. The education is important to have a central point, but it is not the most important issue of our amendment.

CHAIR TOWNSEND:
There are things of value this Committee discussed. You are trying to accomplish that the Division shall not issue an initial license as a mortgage broker or agent to a person unless they have the 30 hours training credits. I would ask my colleagues if they are comfortable with stating exactly what the hours should be. I read there would not be an increase in the fee but a redirection of $20 a licensee to the fund. I do not understand the need to conduct research related to mortgage lending. Why would we need a fund for

that? I am not sure the Committee would be comfortable diverting money that should go to audits. I am not comfortable with section 12 the way it is drafted.

SENATOR CARLTON:
If you look at section 12 in connection with section 9, and we delete the language "by regulation increase" and just go to the word adjust, we usually allow them to go up to a cap. That way they could adjust up or down, but this is an open-ended adjustment.

SENATOR HECK:
I believe when Mr. Bice first testified on the bill the idea of adjustment was so they could go down. Senator Carlton's point should be by regulation adjust, if they desire. I agree with Chair Townsend on the issue of a fund. On Mr. Bice's amendment, Exhibit J, sections 11 and 12 be removed, section 13 is changed so they can do education but develop the education for regulation so the stakeholders have an ability to give their input as to what they think is important. Also, I suggest removing section 15 because that refers back to the fund.

CHAIR TOWNSEND:
Mr. Bice, is your boss authorized to bring this forward to Assemblyman Oceguera's bill, or has that discussion already taken place?

MR. BICE:
I have addressed this with my supervisor, Director Mendy Elliott, Department of Business and Industry. I would suggest, as Senator Heck said, if the research and recovery fund is causing the Committee issues, then I would suggest we strike that. There are too many other provisions in the bill that are important.

CHAIR TOWNSEND:
We have Mr. Bice's original bill which was S.B. 546. The fiscal note had an expense of $5.2 million with a revenue increase of $5.3 million. There would be a net loss in the first year of $160,000. Would that go away if we took all of that out?

MR. BICE:
If the recovery and research was approved, it would have added one full-time position. I am confident to say that would go away. If that is not passed, the

position that was approved in the closing of the budget would go away. I do not think there would be a fiscal issue.

CHAIR TOWNSEND:
I would not put something in this amendment that would send the bill to the Finance Committee, or it would end up as a veto.

To bring this to a close, the proposal would be Assemblyman Oceguera's amendment Exhibit K, mock-up 3942, taking Mr. Lee's language, Exhibit L; then on Mr. Bice's proposal, Exhibit J, removing sections 11, 12 and any references that are specific to education, putting in a provision that the Division shall draft the regulations and education requirements they deem appropriate for individuals who wish to be licensed. We will strike section 14 and have the diversion of the money to a specific fund.

SENATOR HECK
Wherever it says "by regulation" increase where it is stricken and then inserts "adjust." I recommend wherever that appears have "by regulation, adjust."

SENATOR HARDY:
We clarified for the record that we were talking about private-money loans, not all loans. In addition, the sponsor said it would be okay on section 5, subsection 2, paragraph (a) subparagraph (1), Exhibit K, to say financial conditions that the investor must comply with before and strike "and after" becoming an investor. I do not know how you would establish that. Below that in subparagraph (2) "establish reasonable limitations and guidelines on loans made by the mortgage broker," I would like to use the word reasonable.

SENATOR CARLTON:
I do not want us to overlook the amendments submitted by Mr. Lee that Assemblyman Oceguera did agree upon. We want to make sure that is part of the motion also.

CHAIR TOWNSEND:
Mr. Young and Mr. Keane, did you understand what has been discussed?

WIL KEANE:
Instead of deleting section 14, it would be deleting section 15 from Mr. Bice's amendment, Exhibit J.

SENATOR SCHNEIDER:
What about Mr. Uffelman's amendment from the Bankers Association?

CHAIR TOWNSEND:
I do not believe the sponsor accepted that amendment.

SENATOR SCHNEIDER:
I would like to have the amendment in mock-up form and bring it back to the Committee so Assemblyman Oceguera can also look at it.

CHAIR TOWNSEND:
Is it possible to get a mock-up by tomorrow?

The plan is to amend and do pass A.B. 375 with Assemblyman Oceguera's mock-up amendment to include the portions previously discussed by Mr. Bice's and Mr. Lee's amendments.

> SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 375 AS AMENDED.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
I will open the work session on A.B. 478. This bill was prepared by Assemblywoman Buckley. I will ask Assemblywoman Buckley, how did you come up with the 40 percent?

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

ASSEMBLYWOMAN BUCKLEY:
That percentage is a range between 36 and 40 percent that are standards considered throughout the country as being under the standard 36 percent. The

36 percent was used at the federal government level with the Talent-Nelson Amendment. It is considered to be the median used throughout the country.

CHAIR TOWNSEND:
In section 33, Exhibit I, where it states the amendatory provisions of this act do not apply to loans entered into before July 1, 2007, is that to correspond to section 35 which says the effective date is July 1, 2007? Have you had discussions on how long it would take to accommodate the changes in the law?

ASSEMBLYWOMAN BUCKLEY:
Many times the Legislature will use October 1 if we feel there has to be some time for business processes to be reengineered. I would have no opposition to that date to make sure there is an orderly transition.

SENATOR HARDY:
We are not only talking about high-interest loans but also high-risk loans. My concern is this type of loan is serving an underserved portion of the community and this type of loan will not be offered anymore. I do not see a way to reformulate to continue to offer these loans. Have you considered that?

ASSEMBLYWOMAN BUCKLEY:
This amendment is placed on the existing legislation that we passed last Session. That would still allow in the NRS 604A for a short-term loan of a higher-interest amount. This would include rollovers. The NRS 675 will be 40 percent, but under the NRS 604A, they still can charge what the market will bear for an initial term of 35 days with 2 extensions being allowed. They will still offer these loans but only for a short period of time. The businesses that have been supporting this legislation and following the law can provide a service and still have a limit on how long the interest accumulates.

CHAIR TOWNSEND:
I think Senator Hardy's point is important, not for changing the bill but monitoring this over the next two years. Those of us in business want to make sure we do not create the unintended consequence of having individuals who do not qualify under these provisions forced to another way to meet their needs. We should make sure we monitor what comes through your office, Las Vegas Metropolitan Police Department, Clark County Legal Services, Clark County Social Services and all the other entities that might see consequences from this bill.

The implementation portion of the bill is also important. I would recommend the effective date be placed at October 1. I would suggest a letter provided by the Legislative Counsel Bureau go to licensees stating you have been given the opportunity to be in compliance with this bill. The other issue left to discuss is what the percentages will be.

SENATOR HARDY:
I understand the short-term loan is wide open, but this says high-interest loans would be installment loans. What about the person who needs a longer-term loan for a vehicle? If the market cannot give them a short-term loan at an interest rate that makes sense, then they will not be able to get a long-term loan. That is my concern from a market perspective.

ASSEMBLYWOMAN BUCKLEY:
By nature of my business during the interim, I see consumers every day with every type of loan there is, even with the worst car rates that are at 35 to 36 percent.

There are certain entities that we cannot regulate from a state perspective because the federal law preempts us. I met with the acting director of the Division of Financial Institutions, Department of Business and Industry, at the beginning asking if there was anyone under the NRS 675 who charges more than 40 percent that is not a high-interest lender. He said he did not know of one person.

SENATOR HARDY:
Are you confident that any category of consumer will have access to loans they need across the board? I want to make sure we do not infringe upon the market forces that an individual has to have a certain level of return to be able to justify a certain level of risk. I want to make sure we do not have a market ripple effect that there will be a category of consumers that will not have access to money. If you are satisfied this bill will not eliminate a certain consumer from having access to money, I am okay with this.

ASSEMBLYWOMAN BUCKLEY:
I am satisfied. The last thing this Legislature wants to do is shrivel up access to credit when needed. On page 19 of the bill, A.B. 478, it sets forth the exemptions from the NRS 675 that which we do not regulate. Based on my research, I do not believe there will be any instances where we will say we

should not have included this category, but did. We even did a search on the Internet of everyone licensed under the NRS 675. We did a survey of every type of lender currently regulated. Based on the existing law and the framework, I am satisfied there will not be any unintended consequences.

SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 478 AS AMENDED.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY VOTED NO.)

* * * * *

CHAIR TOWNSEND:
We will adopt proposed amendment 4079 and have the effective date moved from July 1 to October 1 at the end of the bill.

SENATOR CARLTON:
I want to send one message to the municipalities. They can control their zoning. When I drive through my district and see these loan centers right next to each other, I hope the municipalities would start looking at how we zone these businesses and how close together they are located. I know we have no control over it but would like to send that message to start paying attention to the neighborhoods and what we place in them.

SENATOR SCHNEIDER:
This is not a collateral loan. The car loans may be 40 percent but there is collateral attached to the loan. You can go after the car, sell it and get your money back. This is a tough business after we repealed the usury law. We are back trying to fix a problem. My concern would be driving some of this underground. We are above ground right now; if we tighten it down, does it go underground?

SENATOR HARDY:
I think there are some important portions of this bill, particularly as it relates to our military personnel. I am still concerned. I voted no on the motion, but I may likely change my vote on the floor. I need to satisfy my mind regarding this issue.

CHAIR TOWNSEND:
The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:54 a.m.

RESPECTFULLY SUBMITTED:

_____
Gloria Gaillard-Powell,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____