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

Seventy-Fifth Session
April 3, 2009

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 12:08 p.m. on Friday, April 3, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chair
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Oceguera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

None.

GUEST LEGISLATORS PRESENT:

Assemblyman Jerry D. Claborn, Clark County Assembly District No.19
Assemblyman James Ohrenschall, Clark County Assembly District No. 12

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Greg Esposito, representing the United Association of Plumbers and Pipe Fitters Local 525, Las Vegas, Nevada
Doug Williams, Private Citizen, Las Vegas, Nevada
Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada
William Uffelman, representing, Nevada Bankers Association, Las Vegas, Nevada
Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Lief Reid, representing Southern Wine and Spirits, and the Nevada Beer Wholesalers Association, Reno, Nevada
Alfredo Alonso, representing Southern Wine and Spirits, and the Nevada Beer Wholesalers Association, Reno, Nevada
Keith L. Lee, representing the Distilled Spirits Council of the United States, Reno, Nevada:
Katie Jacoy, Western Counsel, California Wine Institute, Tacoma, Washington
Robert L. Crowell, representing Anheuser Busch Companies, Carson City, Nevada
Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada
Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada
Judy Dosse, Private Citizen, Las Vegas, Nevada
David L. Pierson, President, Sierra Mobile Park, Las Vegas, Nevada
Michael H. Phillips, representing Manufactured Home Community Owners Association, Las Vegas, Nevada

Bob Varallo, representing the Nevada Association of Manufactured Home Owners, Las Vegas, Nevada
David Goldwater, representing the Mortgage Advisory Commission, Las Vegas, Nevada
Cheryl Blomstrom, representing the Nevada Consumer Finance Association, Carson City, Nevada
Larisa Cespedes, representing HSBC North America (Household Bank), Sacramento, California
Clay Duncan, representing the Mortgage Advisory Commission, Las Vegas, Nevada
Sandra Menard, Owner, South Wind Financial, Las Vegas, Nevada
Kelly Graham, President, First United Mortgage, Las Vegas, Nevada:
Sophie Lapointe, Owner, Five Star Mortgage, Henderson, Nevada
Mindy McKay, Attaché to the Chief Program Officer, Records and Technology Division, Department of Public Safety

Chair Conklin:
[Roll called.] There is not a quorum so we will start as a Subcommittee.

We will open the hearing on Assembly Bill 411.

Assembly Bill 411: Prohibits contractors from hiring certain employees. (BDR 54-112)

Greg Esposito, representing United Association of Plumbers and Pipe Fitters Local 525, Las Vegas, Nevada:
I would like to thank Assemblyman Claborn for presenting this bill for the plumbers.

Assemblyman Jerry D. Claborn, Assembly District No.19:
After reviewing this bill, we came to the conclusion that the language is not quite right. We have agreed to pull the bill and work on it during the interim. You will probably see this bill back in a different form in 2011. I would like to let my proponent of the bill say something.

Chairman Conklin:
There is a lot of opposition. We will allow affirmative testimony because there are some issues the proponents would like to get on the record. After that, all interested parties can work through the bill sponsor and the testifier during the interim to rectify some of these problems.

[There is a quorum.]

Greg Esposito:
I am here to speak about the plumbing industry and plumbing licensing laws. Las Vegas, Reno, and Tahoe are tourism meccas where we have built small empires to provide recreation, entertainment, and fine dining to millions of people from around the world. What if something were to happen that would prevent visitors from traveling to our cities? What if a health emergency occurred that made people lose confidence in our empires and they decided not to travel here? You have all received handouts (Exhibit C) of an opening article from a publication of the World Health Organization (WHO). I remember viewing pictures in early 2003 where the citizens of Hong Kong were going about their daily routine wearing surgical masks because of a new unknown disease. This new and deadly disease was the Severe Acute Respiratory Virus (SARS).

[Read from WHO article.]

In another article, *SARS & Indoor Plumbing/HVAC,* it said, "This plume of air contaminated when the index SARS patient had a bout of diarrhea in the toilet, which he flushed, in a middle level apartment unit...."

[Continued to read from article.]

In my experience, there are typically only three ways a trap drains dry. They are: not installing a trap primer, a common plumbing tool that everyone knows needs to be installed in pea traps and floor drains; improper venting of the system where barometric changes act like sucking on a straw on a plumbing system; and siphoning due to improper drainage. If most of this is new to you, that is good. It shows that plumbing is a science. It is a delicate balance between physics and engineering. Let us take the argument from the tourism centers and bring it into the neighborhoods and the schools.

[Continued to read from article.]

When you get your hair cut or your nails done, the person providing the service has a license. Pet groomers have licenses. You would assume that someone installing and maintaining an important system like a plumbing system would have to have the same standards. Unfortunately, that is not the case.

I will reference the plumbing code that is used in Clark County.

[Continued to read from article.]

There is no standard for what quality supervision is. If you look at your hand-out, this is what the City Center will look like in the future. Theoretically, a plumbing contractor can hire an employee off of the street without knowing their qualifications who is working at position "X" while the journeyman plumber who supervises him could be far away at position "O" at the other end of the job site. This is why the United Association which is a 70-year steward of the plumbing industry in southern Nevada is bringing this bill forward. There needs to be uniformity in the law. There needs to be a standard that building departments are able to enforce. The Legislative Counsel Bureau did a great job putting this language together, but I submitted some amendments for your consideration (Exhibit D).

Once this bill was drafted, I sent it to all of the plumbing organizations in the state to solicit opinions. An amazing thing happened. Open shop contractors began to weigh in and for the first time in years, union and nonunion contractors began to talk about the issues that are damaging our industry. The amendments I submitted are the result of these discussions. While these contractors still do not support the bill as amended, all of the contractors I spoke with agree that something needs to be done to prevent unscrupulous contractors who do not follow the rules and bring the industry down with untrained, unskilled, and unsupervised workers. This is a life safety issue and we need laws in place which will enable the leaders of the plumbing industry to work by our long standing motto "a plumber protects the health of the nation."

You may hear testimony from people who are not stewards of the industry, including smaller contractors that do not really care about what is going to happen in the future. These people are more concerned with the bottom line than health and safety. It is not our intent to prevent a fair market where all contractors can thrive. This bill is not designed to put anyone at a disadvantage or out of business. It is designed to make all plumbing contractors adhere to a standard that maintains health, safety, training, and supervision. Please listen to this bill's opponents and decide for yourselves if they are motivated by a commitment to the community or a protection of their profit.

I was working on a job in Henderson when it was 110 degrees. My supervisor, who I was told was a journeyman, but was not, had only three months in the industry. We were tape checking a house which is making sure that when they pour the concrete slab the pipes will hit the walls. We were having a tough time with a two inch line and he could not get it to be where it needed to be. So he pulled on it until we heard a sickening snap. As I headed to the truck to get a shovel, he asked me where I was going. He said, "Do not worry it is in the wall now." I said that it was obviously broken under the dirt and he replied that we had already tested this house and it is not a pressurized line. The dirt

and the plastic wrap we had around it will hold in the water. I believed him and we left the job site. A couple of years later when I learned that washing machines pump lots of water into a pipe and create pressure in drainage, I kept thinking about that home owner. He may have had water damage which could have been prevented if we had fixed it originally, if the supervisor had been better trained. I wonder how often there has been a "well, that is good enough attitude" due to a lack of qualified supervision. I wonder if a lack of training and education may some day have disastrous results.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Assemblyman Claborn:
Thank you for hearing us and helping us withdraw the bill.

Chairman Conklin:
Are there any questions from the Committee? There are none. We will consider that this bill is withdrawn. Is there anyone with a compelling reason to speak?

Doug Williams, Private Citizen, Las Vegas, Nevada:
I am a 30 year contractor here in Las Vegas, Nevada. I not only support Greg Esposito in his endeavors for licensing, but I think it should be extended to all trades. If you are going to license a plumber, I think all building trades need it.

Chairman Conklin:
I suggest you follow up with Mr. Esposito and Mr. Claborn who are going to work on this issue in the interim and see what you can come up with.

Doug Williams:
Yes sir and thank you for the opportunity.

Chairman Conklin:
Is there anyone else to speak? I will close the hearing on A.B. 411.

Vice Chairman Atkinson:
We will now open the hearing on Assembly Bill 486.

[Meeting as a Subcommittee.]

Assembly Bill 486: Makes various changes to provisions relating to mortgage lending. (BDR 54-230)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:
The interim subcommittee which I chaired studied mortgage lending and housing issues, and recommended this bill on August, 4, 2008. Assemblywoman Kirkpatrick, Assemblyman Grady, and Senators Beers, Hardy, and Schneider were members of that subcommittee. The Mortgage Lending Division regulates mortgage agents, bankers, brokers, escrow agents and agencies under Chapters 645A, B, E and F of the *Nevada Revised Statutes* (NRS). The interim subcommittee received testimony on a number of points that are addressed in this bill. The points are: (1.) Witnesses said there is a lack of regulation of loan servicers in Nevada. Nevada regulates only those escrow agencies located and doing business in Nevada; collection of mortgage debt does not by statute constitute doing business in Nevada. (2.) Although the Mortgage Lending Division can fine its other licensees up to $10,000 for violating our laws, they can only fine an escrow agent or agency up to $500 per violation. (3.) Nevada, unlike many other states, does not require a mortgage broker to post a bond. (4.) Since the interest of lenders and consumers in a mortgage transaction may not be the same and since no one represents the borrower in a mortgage transaction, other states have imposed a fiduciary duty on mortgage brokers.

This bill increases the maximum fine for escrow agents and agencies to $10,000 which is consistent with the maximum fines for other licensees of the Division. It requires mortgage brokers to post a surety bond. It requires registration of out-of-state mortgage loan servicers who do business in Nevada. It authorizes administrative fines and other appropriate penalties for a person who conducts unlicensed activity for which a license is required. It establishes that a mortgage broker has a fiduciary duty to its client and it authorizes the Division to order its licensees to pay restitution to a consumer in addition to its existing authority to levy fines.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblywoman Gansert:
What is the amount of the surety bond?

Assemblyman Conklin:
Section 8, subsection 4, says each broker shall deposit a corporate surety bond that complies with the provisions of this section or a substitute form of security that complies with section 9 of this act. The bond is $25,000 for the principle office and $10,000 for each branch office. The total is not to exceed $75,000. We will hear another bill today, the Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act, which requires mortgage agents and the others to

either post a surety bond or have a mortgage recovery fund. We may have both.

Assemblyman Settelmeyer:
I understand they are trying to bring parity with other individuals who loan money. In section 9, are these the same type of remedies that are offered elsewhere in the law?

Assemblyman Conklin:
Could staff answer that?

Daniel Yu, Committee Counsel:
The language in section 15 of the bill is based on comparable language that exists throughout the NRS.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. Is there anyone to testify in support of this bill?

Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:
If the fiduciary piece of this bill was in effect three or four years ago, we would not have had half of the problems we have now with the bad loans that we see everyday in our offices.

William Uffelman, representing Nevada Bankers Association, Las Vegas, Nevada:
The Association participated in the hearings over the interim and we are comfortable with the obligations of banks and trust companies under this bill. To the extent that section 25 applies to servicers and some of the banks are servicers, we are comfortable. I urge caution by the Commissioner with respect to lines 36 and 37 on page 11 so we do not get too carried away on what is reasonable or whatever information he may require.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. Is there anyone who wishes to be heard in favor of this bill?

Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry:
I submitted a letter to the Committee (Exhibit E) with some proposed minor changes. Mr. Uffelman's comments are duly noted.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. Is there anyone else in support? Is there anyone to speak in opposition? Is there anyone to speak from a neutral position?

Assemblywoman Gansert:
I would like to ask Legal Counsel: are the penalties for actual and consequential damages, punitive damages, and attorney's fees already in law regarding other divisions?

Daniel Yu:
That is comparable language that exists throughout NRS in relation to other chapters and in relation to other regulatory bodies. It is how enforcement works in those other chapters. I cannot tell you specifically as to which other licensees or applicants that this would conform.

Assemblywoman Gansert:
Would you please provide me with examples?

Daniel Yu:
Yes, I will.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. We will close the hearing on A.B 486. We will open the hearing on Assembly Bill 378.

Assembly Bill 378: Revises provisions governing distributors of intoxicating liquor. (BDR 32-894)

Assemblyman John Oceguera, Clark County Assembly District No. 16:
This bill revises the provisions governing distributors of intoxicating liquor. Liquor distributorships in Nevada are highly regulated and this bill seeks to clarify the statutes as it pertains to wholesalers and suppliers. Representatives from Southern Wine and Spirits came to me in the interim about increasing concern over gray market sales. In 2003, the Legislature made some changes and additional protections to prevent unauthorized gray market distribution of liquor. This bill will further clarify those provisions allowing authorized distributors an increased ability to ensure that retail customers receive authentic product obtained through suppliers and established chains of distribution.

Lief Reid, representing Southern Wine and Spirits, and the Nevada Beer Wholesalers Association, Reno, Nevada:
When a liquor bill comes up, you hear about Nevada's three-tier system and the primary source law. As part of the strict regulation system that we have in Nevada, there are suppliers, wholesalers, and retailers. Pursuant to provisions in Chapter 369 and Chapter 597 of the *Nevada Revised Statutes* (NRS), there are strict prohibitions which prevent, for example, a supplier from engaging in the business of importing, retailing, or wholesaling alcoholic beverages in the state. A companion provision with that is the primary source law. That provision allows for suppliers to designate the wholesaler that has the distribution rights in the state. It is an important part of our law because it ensures that retail customers receive product that has come through authorized distribution channels, is properly handled, and is authentic. This is an important protection. This bill is prompted by a desire to further strengthen not only the three-tier system, but the primary source law. It also is prompted by the experience we have seen in the market.

Alfredo Alonso, representing Southern Wine and Spirits, and the Nevada Beer Wholesalers' Association, Reno, Nevada:
One of the issues that prompted this bill is the dramatic change in the market over the last couple of years. I remind you of NRS 597.190 which is a statement of legislative policy (Exhibit F).

[Read from exhibit.]

That is very important because many of those rights are taken for granted in this bill because the average business can do that today without any coercion or problems. In this industry, families who have owned these businesses for two and three generations have to go through hoops to simply sell a business or do many things which I think are basic rights. With the mergers, you now have large international companies that do not understand our system or why the three-tier system (Exhibit G) was put into play in the first place. They would not mind if wholesalers simply went away. I think that is a disturbing trend and should be of great concern to this Legislature. These are individuals who have put millions of dollars into their businesses, employ thousands of workers with high paying, usually union jobs, and provide health care for their employees. These are good community jobs that you cannot easily replace, particularly with consolidation.

Lief Reid:
I mentioned briefly the issue of gray market. That is receiving product through second, third, or fourth hand sources and not through the authorized distribution channels. In 2003, the Legislature strengthened those provisions to constrain

wholesalers' ability to sell products that they were not authorized by the suppliers to sell. That is still a problem. The first section of this bill which relates to "intra-company transfers," helps to strengthen that. The issue that section 1 addresses is one where there are retail customers that are requesting a product. It is generally known in the trade that there is a wholesaler that is the authorized source for the product. In circumstances where inventory could be low and orders are received from retail customers which need to be filled, this provision expands the wholesaler's ability to bring product to customers. They would do that in a very regulated and controlled way by being able to transfer a product that they have received from a supplier that they are authorized to sell both here and in the jurisdiction out-of-state where their warehouse is maintained, and bring it to their facility here. That is what this provision does. It is not a provision that would allow unauthorized product to come into the state. It is not a provision that would allow anything other than the continued distribution of authorized product by authorized wholesalers to retail customers in the state. When a wholesaler does not have the ability to transfer product it has received from suppliers from a warehouse out-of-state to a warehouse here, the suppliers turn to other sources that are not authorized. It does not protect the consumer from obtaining a product that meets the quality control standards established by the suppliers.

Section 2 has a separate purpose and it focuses on wholesalers having the ability to conduct and control their business. It has to do with the legislative policy about protecting wholesalers in the state from coercive control by suppliers. In 1997, the Nevada Attorney Generals' Office issued Attorney General's Opinion (A.G.O.) 97-04 which discussed these provisions. It says, "The purpose of the legislation found in NRS 597.120 through NRS 597.180 is to provide a measure of protection to the wholesale alcoholic beverage industry in Nevada from having their franchises terminated arbitrarily, irrationally, or unreasonably by suppliers. There was a concern at that time and the opinion dealt with efforts by suppliers because of merger activity to terminate franchises. That is still a concern. In 2008, there were major (Exhibit H) mergers by large brewers. Those mergers and consolidation activity continues. Often, outside of Nevada when these mergers occur, there is an effort to eliminate wholesalers. The Miller-Coors merger which occurred last year resulted in a flurry of activity. New distribution agreements were received by distributors throughout the country and in this state. There are numerous provisions in those agreements that requested, among other things, that the brewers have rights of first refusal over the ability to purchase wholesalers when there are attempts to sell them. That is contrary to Nevada law which prevents suppliers from engaging in the business of wholesaling or retailing because there is a separation between those tiers. Our Attorney General sent a letter on December 30, 2008, to Miller-Coors and other brewers that explains

that these efforts to consolidate and to control or direct wholesalers' rights to dispose of their businesses was contrary to Nevada law.

Section 3 of the bill further clarifies provisions that already exist in Nevada law. It provides additional teeth to the succession provisions that exist in Chapter 597 of NRS. This section has controls that allow wholesalers to dispose of their businesses, to convey their businesses to their children without approval being denied for that, and requires that suppliers not unreasonably deny those efforts. Subsection 4 provides for damages when consent is unreasonably denied. There are other provisions in section 4 that further address the legislative policy to prevent coercive control. They deal with reach-back pricing, efforts which are seen in other jurisdictions as placing limits that constrain wholesale businesses. These are especially important provisions at this time and in this economy; for example, wholesalers not being required to maintain excessive amounts of inventory, because they have to pay for it and often are unable to recover the excise tax on those products. They can only recapture that money after the products are sold to retailers.

The purpose of this bill is to strengthen the important protections that exist in Nevada law. All of these provisions are in keeping with the legislative intent to have separation between the tiers and ensure that there is not coercive control by the suppliers.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Alfredo Alonso:
We are available if there are any questions and are willing to work with anyone who has concerns if the intent and the drafting of the measure are not identical.

Chairman Conklin:
I was unclear if we allow somebody to bring merchandise in from another state, is there an opportunity to lose liquor tax revenues? Do those items still get taxed?

Lief Reid:
The bill ensures that every penny of excise tax is paid; the provision makes clear that excise tax is paid as the product is imported into the state. That is consistent with the practice in the industry today.

Chairman Conklin:
Are there any other questions from the Committee?

Assemblywoman Gansert:
In section 1, subsection 4 where it talks about the affiliate, can you explain "directly or indirectly" through one or more intermediaries?

Lief Reid:
I think the intent there is to make sure the affiliate is a related entity. As you go from state to state, the requirements of state laws are different. In Nevada, Southern Wine and Spirits of America is the company that does business. That is a company which was incorporated in Florida. They operate in Colorado and Colorado requires that the entity be a Colorado entity. The language in this bill does not require that it be the exact same corporation, because that is not always feasible under the various state laws throughout the country. It is meant to ensure that it is a related company and not product received from a third party. The language is designed to ensure that there is the continuity and authenticity in the distribution chain.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else wishing to testify in support of this bill? Is there anyone in opposition?

Keith L. Lee, representing the Distilled Spirits Counsel of the United States, Reno, Nevada:
The Distilled Spirits Counsel of the United States (DISCUS) represents about 80 percent of the distillers and manufacturers of distilled spirits in the United States (Exhibit I). We are here in opposition to all of the provisions of A.B. 378. I find myself disagreeing with friends and colleagues in most respects. I do agree with Mr. Alonso and Mr. Reid that the three-tier system and the products source rule in this state with respect to the importation, distribution, and ultimate purchase of alcoholic beverages is sacrosanct. Section 1 of this bill erodes that completely. The three-tier system has been in this state since 1945 or earlier.

In both the 2005 and 2007 sessions, there were attacks made on the three-tier system and this body in both of those sessions reaffirmed its public policy stance that the three-tier system for the importation and distribution of alcohol in this state is sound as it stands. I believe that section 1 erodes the three-tier system because it essentially says that for a multistate wholesaler of distilled spirits, it is alright to change the three-tier system to permit a wholesaler in the State of California to become his own supplier in the State of Nevada. We are violating the principle that we are going to keep separate and apart suppliers, wholesalers, and distributors. That is important because we are talking about a drastic change in policy that I do not know if this legislature is ready to adopt. It puts the single wholesaler, the person who has only a wholesale system in

the State of Nevada, at great economic disadvantage. A wholesaler in California, which has the largest market in the United States, has far greater bargaining power with the supplier and is able to get a better price for his product than in Nevada. If the wholesaler who negotiates a lesser price in California can ship that product to Nevada and pass the savings to the consumer, the small wholesaler is going to be put at a disadvantage. We feel this violates the three-tier system and puts the small wholesaler at a competitive disadvantage to the large multistate wholesaler.

We also oppose sections 3 and 4. We believe it is an interference with the contractional obligation. It says that we have to renegotiate contracts that have been negotiated and are presently in place. You are imposing additional terms and conditions on a contractional relationship that presently exists. You are also imposing terms and conditions on our future ability to negotiate with wholesalers. There is no state interest in imposing those additional conditions upon us. We believe there are protections in the law now that provide everything that the wholesaler needs. The balance of what is being attempted in these sections is to change the negotiating stance between the suppliers and the wholesaler.

In response to one of Mr. Reid's statements that the suppliers are trying to get around the wholesalers, that is not correct. Suppliers view the wholesalers as an integral part. The wholesaler is the individual within the state who has the ability to make the product placement and market the product pursuant to the terms and conditions of the agreement between the supplier and the wholesaler. There is not an intention to erode that relationship.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Katie Jacoy, Western Counsel, California Wine Institute, Tacoma, Washington:
We represent 963 California wineries of all different sizes (Exhibit J). The Wine Institute opposes this bill. As a winery from the State of California we look at each of our markets in each state separately. We allocate a supply of wine fairly to our wholesalers in all the various markets to the best of our ability. We also price that product differently from wholesalers in other states. Southern Wine and Spirits on their own has revenue projected to be almost $3 billion in the California market. With that market share, they have incredible buying power. They can then purchase in quantity discounts and at a level that allows suppliers to give them a discount in that market and then move that product into Nevada. We as the supplier have therefore lost the ability to allocate our product properly into the state. We would not know under this bill where the product would end up. That is our real concern.

Section 2 of the bill enhances the franchise law. The current law already shields the wholesalers in this state from most of the market forces who are unable except in extreme circumstances to terminate those franchises. In this section they require us to keep any successor of their choosing with little or no review of their qualifications. If you are in a partnership and the operating partner dies, it requires us to keep the other partner whether or not that person has ever been involved in the business. That is bad business practice for suppliers and could be dangerous to the people of Nevada. If that person is qualified, the suppliers will take a good hard look at him and want to keep him. We are not looking to have to start all over again, but it is a business decision. If the successors are not qualified, we should have the ability to terminate that franchise.

Chairman Conklin:
How do you control Internet wine sales?

Katie Jacoy:
It is controlled because it comes directly from the supplier. There is a direct chain to the consumer. It is ordered, identification is checked, and it is properly shipped. It is one way for wineries to sell who do not have wholesalers. There has been much consolidation between the supplier and wholesaler tiers. Wholesalers are only able to take on so many brands so a lot of wineries have been authorized in 35 states to have some direct to consumer shipping in a controlled manner.

Chairman Conklin:
You said you have control where your wine is shipped, but if it is bought from a wholesaler on the Internet, how does the wine maker have control over that? They release it to the wholesaler, but the wholesaler could be selling all of it in one place or many.

Katie Jacoy:
Only about 1 to 2 percent of all of the wine sold in the United States is sold directly. That means that 98 to 99 percent of the wine is distributed through the three-tier system. You contract with wholesalers on a state-by-state basis. They are not national contracts so we can allocate the majority of our wine to the state where we think it will be sold in a fair way so all of our wholesalers can have a certain amount of product. Wineries will sometimes only have wholesalers in one or two states. Wine that comes out of their tasting room is a small part of their business.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Robert L. Crowell, representing Anheuser Busch Companies, Carson City, Nevada:
As you probably read last year, Anheuser Busch was one of the firms engaged in the merger and acquisition process with InBev (Exhibit K). I want to assure the Committee that every one of the equity agreements that relate to our wholesalers in the State of Nevada remained intact despite that merger. Anheuser Busch is a firm committed supporter of the three-tier system in the United States and in Nevada in particular. It is the business model upon which we have sold our product. It assures us quality control from the point of brew to the point of sale. We are firmly committed to seeing the three-tier system work. That is why we are here expressing concern about A.B. 378.

Our concerns are in sections 3 and 4 of the bill. Section 3 precludes a supplier such as Anheuser Busch from any say over who purchases a business franchise that is going to sell its product. It does so by creating rather draconian penalties in addition to those already found in NRS 597.170 for delay of approval even though that delay may just be related to conducting a due diligence search on a potential purchaser. It also declares as void any part of an agreement that a supplier and a wholesaler may have that speaks to approval of qualified buyers or a right to match with another qualified buyer that exists in current contract and equity agreements. Section 4, subsection 3, arguably, precludes a supplier from changing product price unless consented to by the wholesaler despite the fact that a wholesaler retains the right to change the price to its retailers. We believe that suppliers, wholesalers, and retailers should all be free to price their products as they choose. We respect our wholesalers in the State of Nevada and welcome the opportunity to work with them.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Settelmeyer:
What section limits the price?

Robert L. Crowell:
We understand that is what it says in Section 4, subsection 3.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else to speak in opposition? Is there anyone wishing to testify from a neutral position?

Lief Reid:
With all due respect, I think a number of the concerns are unfounded. Mr. Lee's concern about how this provision would erode the three-tier system is not well grounded based on the language in this bill. Specifically, on that point in section 1, subsection 3; the bill states that the provisions of the subsection do not authorize the wholesale dealer to receive liquor from an affiliate who is a supplier. It specifically prevents the concern that Mr. Lee expressed. This bill does not change in anyway the way the system is ordered or how business is done in this state. Only authorized wholesalers who have been designated as the primary sources for suppliers to market their products in the state can avail themselves to obtain product from outside warehouses. It does not impact the three-tier system. Existing law prevents suppliers from unreasonably withholding the consent to the change in control. These provisions just expand those protections.

The concern expressed by Katie Jacoy about that point and also Mr. Crowell's concern about the suppliers being bound to make business decisions that they do not want to make about who they continue to do business with, the law already limits that and this creates more detailed protections for different scenarios. The scenario described about a partner, under the franchise agreements in the law, that partner would already be approved by the wholesalers. That is not a concern that is well grounded in the language of this bill as are the concerns about pricing described by Mr. Crowell. The concern that arises and this provision addresses is when there are efforts like a year or so ago when fuel prices increased and wholesalers determined to pass the cost to retail customers. The suppliers decided to share in that, and that would harm Nevada businesses, because it would not allow them to recover the latent cost they had. These protections are important. I do not believe the concerns are grounded in the proposed language.

Chairman Conklin:
Mr. Alonso, has the opposition talked to you about the concerns in the bill?

Alfredo Alonso:
We have spoken to several who indicate that they have concerns. In most cases I have indicated that we would be glad to work with them. Some have said that there is nothing to work with and I am hoping that will change. Clearly, I think there is some misinterpretation of some of these provisions. I am not sure why the provisions dealing with the ownership and sale of a company would be a problem if the partner is already approved. The provision uses the word "unreasonable." If there is an individual who has been convicted of a crime or has done something so it is clearly unreasonable to expect him to purchase or be handed the business, there is already a standard that everyone

can live with. This is a one Free on Board state and no one seems to be noting that the statute already says you have to treat all of the wholesalers the same and they are not doing that.

Chairman Conklin:
We will take this bill back to Committee and close the hearing on A.B. 378. We will open the hearing on Assembly Bill 454.

Assembly Bill 454: Revises certain provisions relating to housing. (BDR 10-839)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
I am here today to introduce and urge your support of A.B. 454, a necessary and important bill that concerns the rights of tenants in manufactured home parks.

I want to thank my colleagues, Assemblyman Manendo, Jon Sasser, and Ernest Nielsen for their help on this bill. You should have a mock-up (Exhibit L) of the amendment which I am proposing. All of my comments pertain to that mock-up.

Existing law requires that in the event of the closing of a manufactured home park, the landlord must pay the tenant the related costs of moving the manufactured home to an alternative location within a 100 mile radius. If the tenant decides he does not want to move to another manufactured home park, or if the home cannot be moved without being structurally damaged, or there is no park within the 100 mile radius who will accept the home and the tenant, the landlord is currently required by statute to pay the tenant the fair market value of the manufactured home. The disposal costs are the responsibility of the landlord. Sections 1 through 4 of A.B. 454 declare that the landlord upon the closure of a manufactured home park will pay the displaced tenant either $5,000 or the fair market value of the home, whichever is greater.

Years ago, when many older tenants moved into mobile home parks across the state, they could more easily locate to another park of their choosing. Because of changes in legal classifications for older manufactured homes and the closure of so many of our mobile home parks, it is no longer the case that they can easily relocate their residence which may have served them well for decades. This bill provides the security for these tenants that they will be able to afford some basic alternative transitional housing should they be forced from their current location. It establishes a uniformed minimum amount that landlords can use when calculating the cost of closing a mobile home park.

Section 5 of the bill clarifies current law to state that a rental agreement between a landlord and a tenant in a manufactured home park may only be terminated by one or more of the grounds listed in existing law, not withstanding the expiration of a period of tenancy or service of a notice pursuant to *Nevada Revised Statutes* 118B.190. This update to existing law clarifies that a tenant, who has met all of the requirements and paid their rent on time, cannot be arbitrarily evicted unless just cause as enumerated in the NRS exists. Section 6 of the bill addresses the eviction appeals process for tenants of manufactured home parks. Under existing law, in order to appeal an unlawful detainer eviction, mobile home park tenants must file a bond with two or more sureties in an amount determined by the court that is not less than twice the amount of the original eviction judgment costs. When given the option, most tenants of manufactured home parks choose not to appeal their unlawful detainer eviction judgments, simply because they cannot afford to file the required bond. It is a very unfortunate situation given the extremely serious financial and other consequences associated with being evicted.

Section 6 of the mock-up proposes to change the amount of the bond that mobile home park tenants are required to file to appeal a court ordered unlawful detainer eviction to a more reasonable amount of $250. This section will ensure that regardless of financial standing, all tenants have the opportunity to appeal an unlawful detainer eviction judgment.

There are well over 400 licensed mobile home parks that are home to thousands of Nevada citizens. It is paramount that we review and update existing laws to protect and support the interests of tenants and landlords of manufactured home parks in Nevada. Assembly Bill 454 accomplishes this through balancing the interests of both tenants and landlords.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Anderson:
What happens when the mobile home is not worth $5,000?

Assemblyman Ohrenschall:
The $5,000 is not meant to represent the value of the home, it is meant to be a minimum reimbursement.

Assemblyman Anderson:
I have some mobile home parks in my district which have homes that have been there since the 1950s. I am trying to estimate the value of the homes even if we went back to the price received the last time it was sold.

Assemblyman Ohrenschall:
It is not meant to represent the value of the home, it is meant to be a basement for when a park closes so the tenants can try to get a fresh start.

Chairman Conklin:
This is money for a person who has to move due to no fault of their own to be able to find a new place to live. Is that what you are trying to do?

Assemblyman Ohrenschall:
That is exactly what we are trying to do.

Chairman Conklin:
The question becomes, how did you determine that $5,000 is the minimum amount necessary to do it?

Assemblyman Ohrenschall:
I will defer to my colleagues at the table.

Assemblyman Settelmeyer:
Would you entertain the concept of an amendment that stated that they need to prove they actually paid $5,000 or more for the home?

Assemblyman Ohrenschall:
I do not like that amendment and think it could lead to a lot of paperwork.

Assemblyman Manendo:
Thank you for the amended portion of this bill. We worked very hard until the final hours of the last legislative session to come up with a working bill with the Nevada Association of Mobile Homeowners and the Manufactured Home Community Owner's Association. I appreciate you removing the "less the reasonable cost of moving and disposing of the manufactured home" language.

Assemblyman Ohrenschall:
That was never my intent.

Assemblyman Manendo:
I just wanted people who are listening to this hearing to know that it was not your intent to take that away. I know there were some homeowners who were nervous about that. On the other portions of your legislation, we tried to do that last session, but could not find consensus. I appreciate your moving forward with that. What is $5,000 really going to do for someone who is displaced? Where are they going to go? That is their home and their possessions. In some of the communities we represent, the homes are worth

much more and $5,000 is not very much when someone has to find a new place to live. I am thinking it may need to be higher.

Assemblyman Goedhart:
Have you seen a continuing need for this kind of legislation or has the market correction taken care of these situations?

Assemblyman Ohrenschall:
I am a native of Las Vegas and saw the World Wide Mobile Home Park close so the Mirage Hotel could be built. I think the most recent closure was in the last three years. A small park called the Horizon Mobile Home Park in District 15 closed so the Boulder Station could expand. Of all of the mobile home park closures that I have seen, I have not seen one close because it was unprofitable as a business enterprise. I have seen them close because it was more profitable to use the land for another use.

Assemblyman Goedhart:
Is there any other similar legislation for an apartment rental that is torn down for redevelopment?

Assemblyman Ohrenschall:
I believe when you look at Chapter 118B of NRS, that it was drafted this way because mobile home owners are in a unique position because they bought the home, but they do not own the land so they are stuck. The landlord has a lot of market power over the tenant.

Assemblywoman Gansert:
I was looking in section 3, subsection 1 where it talks about the closure of a park when the landlord is forced to close a manufactured home park because of a valid order of a state or governmental agency or a court order requiring the closure for health or safety reasons. If a park owner could not keep up the property, how could they afford to spend the $5,000 per tenant? There is no time frame for occupancies, so someone could buy it and be there for a short period of time and then the park is closed.

Assemblyman Atkinson:
Does the tenant pay a deposit?

Assemblyman Ohrenschall:
The landlord under current law has to give notice to all of the tenants that they plan to close the park because it will be converted to another use. They have 75 days to inform the landlord if they wish for the landlord to move them within

the 100-mile radius. If they do not, the landlord has to reimburse them the fair market value of the mobile home.

Assemblyman Atkinson:
It is your opinion that the fair market value is not sufficient?

Assemblyman Ohrenschall:
That is true because mobile homes depreciate rapidly and sometimes the tenants have lived in the home for a long time, so fair market value will not be enough for someone to land on their feet.

Chairman Conklin:
Are there additional questions from the Committee? There are none.

Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:
There was a letter sent to the Committee by the Manufactured Housing Division from Gail Anderson (Exhibit M). One of the things she cites was that in one recent closing most of the homes were valued between $700 and $2,300. That is the reason this bill needs to exist. In terms of the people getting a settlement, there has to be a 180 day notice, so there would be at least a six month time frame prior to the park closure. I believe there is a requirement that the landlord has to advise anybody coming into that park that there is intent to close. People need to understand that these mobile homes do not hold their value. I have never seen any of the contracts that have come through our office close to $5,000. Most of them are in the $12,000 range for very old mobile homes. Usually, it is a stretch for those people to make the payments and keep that mobile home. I have never seen a situation where a person invested less than $5,000. This is where people want to live and expect to live until their death and then out of the blue they learn they are going to lose their home. If their home cannot be moved, there should be a floor to recognize that these people own their homes, and have sunk their savings into it. The home is not valued at $5,000, but they need a new start. This is the least we can do for people who are being displaced.

We are not experiencing any problems with this at this time because of the poor economy, but three or four years ago we were. Hopefully, in three or four or more years we will be facing higher values.

I want to move on to the bond issue in section 6 of the bill. A mobile home which is owned by a person is subject to NRS 118B. One of the peculiarities about eviction laws for mobile homes is that the process is described in the plenary process. There is a full complaint that has to be filed with an answer.

That is different than the typical summary eviction process that is generally described in NRS 40.253 to which most tenants of stick-built housing are subject. The reason that is important to know is that there are two provisions that govern the stay bond in Chapter 40 of NRS. One of them is in the bill and the other in NRS 40.385 applies only to those evictions that are subject to NRS 40.253, the summary eviction process. In that statute you obtain a stay of execution by filing a bond of $250 to cover the expected costs. That amount is what a person in a summary case has to pay to stay the eviction during the appeal process. As you can see in NRS 40.380, the amount of the bond for a mobile home eviction would be no less than twice the amount of the judgment and costs. Costs include attorney fees under the rules of the justice court. Recently, I was involved with a mobile home fair housing case that was hotly debated. We lost at the trial level. The attorney's fees on the other side were over $10,000 which meant that the bond was $20,000. Even though we thought we had the appropriate appeal, we could not appeal because we could not get the bond. This bill makes the evictions in mobile homes on a par with those in apartments.

When you lose an eviction it may also mean it is likely the person will lose their home. When they are required to leave, the sheriff comes and makes the homeowner leave their home. The home stays. The homeowner has to find money to pay rent elsewhere. The rent for the mobile home lot continues to accrue. Typically, the owner of the park will recapture that unpaid rent by asserting a lien against the mobile home and selling the mobile home. What happens in these evictions is the people actually lose their homes and that is why there is more at stake in these mobile home cases than in rental housing. At a minimum there should be some parity between the ability to stay an adverse decision during appeal in a mobile home eviction as there is in an apartment building eviction. That is the justification for that change.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada:
Section 5 is one of those changes to the law that seems necessary from time to time. I do not think it changes the law at all. It reinforces and emphasizes the legislative intent. The law is clear that in order to evict someone and their home from a mobile home park, you can only do it for cause. There have been some justices of the peace who have interpreted the law differently and determined that by giving someone a 45 day notice to vacate, that they can evict them from a mobile home park without any wrong doing on the part of the mobile home park owner. This is very different from the law in Chapter 118A of NRS

for apartments where it is clear that with a 30-day notice, you can evict somebody without cause.

Because of some confusion five years ago, Speaker Buckley sought a legal opinion from the Legislative Counsel Bureau (Exhibit N). They concluded that you could not evict someone without cause. That should be the law today. If you give someone a 45 day notice, you also allege grounds for the eviction and prove those grounds in order to get the mobile home lot back. There was an opinion in the case of Judy Dosse in Las Vegas (Exhibit O) where the Justice of the Peace wrote a lengthy opinion that the law was not as black and white as we or the Legislative Counsel had interpreted. They found that Ms. Dosse could be evicted without cause. After that case, she contacted Clark County Commissioner Chris Giunchigliani and Speaker Buckley and they asked me to look into it. As a result, Mr. Ohrenschall included this provision in his bill. Ms. Dosse is in Las Vegas and will tell her story. This is no change in the law. This has been the law, this is still the law, and the legislature really means it.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else in support of A.B. 454?

Judy Dosse, Private Citizen, Las Vegas, Nevada:
I am here in support of A.B. 454, specifically sections 5 and 6, which would preclude an eviction like mine based solely on the 45 day notice. I am not here as a spokesperson for the Nevada Association of Manufactured Home Owners (NAMH), but I have been a member since 2002 and served as state president for two years. Chapter 118B of NRS has been the proudest achievement of NAMH. It provides legal protections for manufactured home owners who rent space in manufactured home communities in Nevada. Without the security of knowing the landlord cannot throw us out on a whim, we home owners dare not invoke Chapter 118B of NRS. Without the passage of section 5, it will be essentially useless to us.

I lived at Riviera Vegas Mobile Home Park from 1998 through September 2008. Based on my knowledge and interpretation of Chapter 111B of NRS, and my experience with NAMH in April of 2008, I declined to sign a revised rental agreement the new landowners of Riviera Vegas forced existing tenants to sign. Under threat of termination, everybody but me signed.

My objections to the new agreement are irrelevant here, but one example was an important difference between the contract under which I had been living and the new contract. The new West Coast contract omitted the provision for automatically renewing the agreement at the end of each 30 day term. That did

not matter because the judge found the language plainly indicates the defendant only has the right to remain at the property based on monthly tenancy.

Who would invest in a mobile home if they knew they could be forced to move in 30 days? Chapters 118B.140 and 118B.150 of NRS allow the landowner to raise rents with a 90 day notice and to change park rules with a 60 day notice. I can find no provision in the statute for implementing a new rental contract. The contract agreed upon originally between the parties when a person moves into the park is or was the one constant. Chapter 118B.100 of NRS says no rule or regulation may be used to impose any additional charge or to modify the terms of the rental agreement.

If the landlord had the ability to rewrite the rental agreement every 30 days and force the tenants to accept such agreements that would negate the protections in the statute regarding the 60 day notice before changing rules, and also the 90 day notice before raising rents and the obligations of a landlord to a tenant when closing a park. [Ms. Dosse read from prepared testimony and presented supporting documents (Exhibit P).]

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else wishing to get on the record in support of this bill?

David L. Pierson, President, Sierra Mobile Park, Las Vegas, Nevada:
I am in support of this bill.

Chairman Conklin:
Is there anyone else wishing to get on the record in support?

Assemblyman Ohrenschall:
To answer the Minority Leader's question, in NRS 118B.183, it does require a landlord to give a six-month notice to all tenants. It does not list any requirement that you must live in the park for a certain amount of time to be eligible to have your mobile home moved. On section 2, the one instance I can think of where a landlord was ordered to close a mobile home park by a governmental agency happened a few years ago in the City of Las Vegas which I think spurred that section of the NRS. The landlord had neglected the park and let it get so run down that the City of Las Vegas ordered it to close. I thank the Committee for their consideration for this bill that can change peoples' lives.

Assemblywoman Gansert:
If you are forced to close a park that you are taking care of, I do not know how you can afford to pay everyone in there the $5,000. Who would pay each tenant?

Assemblyman Ohrenschall:
This is conjecture, but if the tenants got attorneys, they could put liens against the real property.

Assemblyman Manendo:
When a park was closed down due to neglect in my community, it was not that they could not afford to maintain it, but that they chose not to. There are differences in each case.

Chairman Conklin:
Is there anyone wishing to speak in support of A.B. 454? Is there any opposition to this bill?

Michael H. Phillips, representing Manufactured Home Community Owners Association, Las Vegas, Nevada:
On behalf of our 16,000 spaces we would like to oppose this bill. Last session, there was a consensus bill, Assembly Bill 304 of the 74th Legislative Session. This bill would remove portions of that bill. We spoke to the sponsor and said we would like to work with him, however, in the bill's current form, we are opposed.

Chairman Conklin:
Are there any questions from the Committee? There are none. Is there anyone else to speak in the opposition of A.B. 454?

Bob Varallo, representing the Nevada Association of Manufactured Home Owners, Las Vegas, Nevada:
Our organization has been in existence since 1973 and represents the residents who occupy homes in land leased communities in the State of Nevada. The organization has contributed to the majority of the issues that are presently found in Chapter 118B of the NRS. I am listed in opposition to the bill. My original opposition had to do with a change to one of the items which we worked on last session. We worked with the Manufactured Home Community Owners Association in a bill called the "consensus bill." The issue then was who was responsible for the cost of removal and destruction of a manufactured home from a park. It was changed in the mock-up by the bill sponsor and I appreciate that. My opposition could have been avoided if there had been some

communication between our organization and the bill sponsor or others involved with this bill.

I would like to address the $5,000 payment in this bill. I have a problem with that. If I look at this from a community owner's point of view I do not believe that you can automatically decree under any condition that an individual would receive $5,000. I am not saying it should be more or less. I do not stand in opposition to other sections of the bill and my organization is not in opposition because we did not have time to study the issue. Again, it is an issue that was not brought to our attention or discussed with us prior to this hearing.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. Is there anyone else wishing to be heard in opposition to this bill? Is there any neutral testimony? We will close the hearing on A.B. 454. We will open the hearing on Assembly Bill 523.

Assembly Bill 523: Implements the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. (BDR 54-773)

Assemblyman Marcus Conklin, Clark County Assembly District No 37:
Starting in 2004, the American Association of Residential Mortgage Regulators (AARMR) and the Conference of State Bank Supervisors (CSBS) developed the Nationwide Mortgage Licensing System (NMLS) which became operational January 2, 2008 with 7 states participating. The NMLS is a registry of mortgage lending professionals similar to the nationwide central registration depository for security broker's dealers. On April 22, 2008, a CSBS representative attended the meeting of the Legislative Commission Subcommittee to study mortgage lending and housing issues and brief the Subcommittee on the NMLS. In July 2008, the United States Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 which was also known as the S.A.F.E. Mortgage Licensing Act (S.A.F.E. Act). Specifically, it is Title V of public law 110-289, the Housing and Economic Recovery Act of 2008.

The Federal Government S.A.F.E. Mortgage Licensing Act requires a residential mortgage loan originator to have a state issued license and a unique identification number issued through the NMLS and registry which is operated by the AARMR and the CSBS. It also requires employees of insured depository institutions and their subsidiaries who are exempt from state licensing to register and obtain a unique identification number. The S.A.F.E. Act establishes minimum licensing standards, renewal standards, and requirements for state supervision. If a state fails to put a conforming licensing system in place by the

deadline of the act, the United States Department of Housing and Urban Development (HUD) will administer and maintain a licensing system for originators operating in that state. In essence, we would relieve ourselves of our ability to regulate our mortgage lending industry. A state whose legislature meets biennially has until July 30, 2010, to meet the minimum requirements. We will not meet again before the standard is required to be enacted.

What does A.B. 523 do? The Committee received a mock-up of amendments from the Mortgage Lending Division (Exhibit Q). This bill as introduced creates a new licensing category called a Residential Mortgage Loan Originator (RMLO) in Chapter 645B of the *Nevada Revised Statutes.* It then makes numerous amendments to Chapters 645B, E, and F of the NRS to accommodate the new category. Nevada currently licenses corporations, partnerships, and Limited Liability Corporations (LLC) as well as natural persons as mortgage brokers. Although Nevada defines a mortgage agent as a natural person, we do at present allow them to be licensed on behalf of a Corporation or LLC. However, a RMLO under the federal act is only a natural person. One of the many challenges in drafting the bill and complying with the federal act is how to make all of the definitions work together. The bill is designed to comply with the federal act in terms of the requirement for a unique identifier which can be found in sections 7 and 11; the need for pre-licensing education and continuing education in sections 14 and 15; the required pre-licensing examination in section 16; and the requirement of the federal act for a recovery fund, a surety bond, or satisfying a minimum net worth in section 17. Confidentiality of information is dealt with in section 77. Reporting requirements are found in section 76 and the maximum administrative fines are in section 55.

The mock-up provided by the Division uses a different approach. Instead of creating a new licensing category, it adjusts the existing definitions of mortgage agent to include residential mortgage loan originators. Therefore, the mock-up does not require as many amendments to Chapters 645B, E, and F of the NRS. The mock-up repeals one section of Chapter 645B of NRS that allows mortgage agents to be licensed on behalf of a corporation or LLC and therefore, residential mortgage loan originators who are only natural persons can be folded into the definition of mortgage agent. Like the bill as introduced, the mock-up is also designed to comply with the federal act although it does leave more of the details to the Commissioner to implement through regulations. (See sections 28 and 29 of the mock-up.) Unlike the bill, the mock-up relies totally on surety bonds to meet the federal requirement which call for a recovery fund, a surety bond, or a minimum net worth. The surety bond language in sections 6 through 9 of the mock-up is borrowed from sections 8 through 11 of Assembly Bill 486 which we heard earlier today.

The intent of the bill and the mock-up are the same—compliance with the federal act—to allow Nevada to maintain control over its licensing functions rather than turn them over to HUD. The bill and the mock-up differ only in their approach.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblywoman Gansert:
Are the pre-license examination, education, and so forth that were in the original bill required by HUD and in the mock-up?

Assemblyman Conklin:
They are requirements of the federal S.A.F.E. Act. The mock-up allows the Commissioner a broad authority. The bill itself is very narrowly defined. The question for the Committee on that part of the bill, if we direct them to comply with the federal act, is going to be is there less risk of losing our ability to regulate on our own? If we offer it to the Commissioner with no control, and they do not do what is necessary to comply with the act, we are going to lose our regulatory authority.

Assemblywoman Gansert:
Is the intent to do what we need to do per the act? Will we provide the authority to the Commissioner to define the regulations, but not to expand beyond that?

Assemblyman Conklin:
The mock-up will provide broader authority and it is like expanding it on both ends. The bill in its original draft version clearly delineates the expectations. It is limited, but it is also more of a hammer to say these things must be done.

Assemblywoman Gansert:
But, we are working off of the mock-up now.

Assemblyman Conklin:
They are both for the Committee's consideration.

Assemblywoman Gansert:
I want to be sure it is not expanded too much and that it is within the limits or expectations of what is required by the federal government.

Assemblyman Conklin:
The reason for bring this forth is that it is very complex and it is two ways of looking at the same problem.

Vice Chairman Atkinson:
Are there any other questions for Chairman Conklin? Is there anyone to testify in support of A.B. 523?

David Goldwater, representing the Mortgage Advisory Commission, Las Vegas, Nevada:
I want to testify in support of this bill and have been working with the Chairman and the staff to come up with acceptable amendments to A.B. 523, which had some detrimental things in it. I think we are starting to go in the direction of a bill which accomplishes a goal that we have presented before this Committee several times. That goal is to elevate the profession of mortgage agents and mortgage brokers to make sure the people who are handling your money and doing your loans are regulated, registered, well supervised, and well educated. The mock-up of A.B. 523 goes a long way toward accomplishing that. Nevada was ahead of the federal government by registering mortgage agents since 2003. We are trying to have our statutes conform to the federal requirements. I want to thank the Chairman for all the hard work done in the interim. If we continue to move forward, we will have an excellent regulatory system in the future.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Cheryl Blomstrom, representing the Nevada Consumer Finance Association, Carson City, Nevada:
The language put in place in 2003 was developed by Mr. Goldwater and has professionalized the mortgage industry. We support the mock-up of the amendment and we are happy to work with the Chairman as the bill processes.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Larisa Cespedes, representing HSBC North America (Household Bank), Sacramento, California:
We are very supportive of implementation of the S.A.F.E. Act at the state level. We have worked closely with CSBS and AARMR on the drafting of the model language in the last year. We are interested in this bill on behalf of our state licensed company. We are looking at this from the viewpoint of individuals who are employees of a state licensed business who will now be required to be

registered as a loan originator. We have suggested an amendment (Exhibit R) that we think is clearer on achieving the goal of professionalizing the state licensed businesses and their employees. It would incorporate the CSBS model language into Chapter 645B and Chapter 645E of the NRS mortgage banker law.

We have another perspective on servicing these loans and want to make sure there is some clarity in the definition of a loan originator and it more closely mirrors the definition in the CSBS/AARMR model bill.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblyman Anderson:
Did you show your amendment to the bill sponsor?

Larisa Cespedes:
We shared that amendment earlier today.

Vice Chairman Atkinson:
The Chairman confirmed that the amendment was given to him. Are there any questions from the Committee? There are none.

William Uffelman, representing the Nevada Bankers Association, Las Vegas, Nevada:
We are supportive of the concept and implementation of this bill. When CSBS briefed members of the American Bankers Association state association's legal counsels last fall, we raised the question about non-traditional mortgage loan products. Section 66 talks about that as being anything other than a 30-year fixed rate mortgage. When we questioned that, they said there are 15-, 20-, and 40-year fixed rates and I do not know if those are non-traditional. It is more of a technical issue. We may want to fix that definition if we really mean something other than 30-year mortgages. We look forward to working with the Chairman on the bill.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Clay Duncan, representing the Mortgage Advisory Commission, Las Vegas, Nevada:
I am one of the five Mortgage Advisory Commission members and I am in my second term of service. I would like to reiterate Mr. Goldwater's and the Mortgage Advisory Commission's position to support the mock-up. I would like

to point out that section 11 has stricken the language stating "or independent contractor status," and there are two other places where that needs to occur to bring it into agreement.

I would like to speak as a Nevada resident and as a mortgage industry affiliate for 11 years. I own Southern Fidelity Mortgage, an eight year old mortgage company. I employ and supervise 45 mortgage agents. This mock-up offers increased safeguards against those who commit acts of concern in other states, including but not limited to mortgage fraud and predatory lending. For many years, I and others here today have been very frustrated because there has been no system in place to help track those would-be habitual offenders who move from state to state and company to company leaving destruction in their path. This mock-up makes significant strides to increase the direct supervisory responsibilities of the mortgage company, the mortgage broker, and the qualified employee as defined by statute.

There are three companies who were unable to attend today's hearing that wished me to convey their support of this bill. They are Mountain View Mortgage who employs 81 mortgage agents, Residential Mortgage Services who employs 84 agents, and Mayflower Mortgage who employs 107 agents. This is important to note because these companies along with those here today employ 642 active mortgage agents which is 22 percent of the active mortgage agent licensees in the state.

This bill contains good consumer protection and increases the level of professionalism we so desperately need. I am supportive of this bill, this mock-up with the amendments I suggested, and the Division being charged with regulating this legislation. I would be interested in serving on any committees formed to further discuss this bill. I would be happy to provide a rebuttal to any opposition.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Sandra Menard, Owner, South Wind Financial, Las Vegas, Nevada:
I employ 45 loan agents and processors. I am in favor of the mock-up of the bill.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Kelly Graham, President, First United Mortgage, Las Vegas, Nevada:
I am grateful to Mr. Goldwater and Mr. Conklin in their efforts in drafting this bill and particularly the mock-up of which I am highly in favor. I have owned First United Mortgage for 16 years and employ over 100 loan officers and processors. I am delighted to read the mock-up and have been concerned for years about the low standards in the State of Nevada for licensing loan officers. Mortgage brokers as outlined in Assembly Bill 486 should have a fiduciary responsibility to consumers or borrowers. I agree with that standard, however our ability to uphold those standards and protect consumers has been weakened by allowing licensed agents to be independent contractors. Employees are much more likely to uphold and sustain a company's consumer protection policy as compared to a self-employed independent contractor. Two years ago HUD, which has influence over the S.A.F.E. Act, came to this conclusion as well by mandating that all originators of Federal Housing Authority mortgages be employees. I was glad to see that the independent contractor language was stricken from the mock-up. I believe this is good public policy and I want to reiterate my support.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Sophie Lapointe, Owner, Five Star Mortgage, Henderson, Nevada:
I employ 61 mortgage originators. I am in favor of the mock-up bill. It provides good consumer protection by striking "independent contractors" so everyone would have to be an employee.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none.

Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Division of Business and Industry:
The Division supports the concept of implementing the S.A.F.E. Mortgage Licensing Act in Nevada. We do not support the current draft of the bill which forms a new category of loan licensees called residential mortgage loan originators. It is not necessary under the provisions of the S.A.F.E. Act to adopt a new category of licensees that we have built into the definition of mortgage agents and mortgage bankers in the mock-up. By doing so, we have probably cut the length of the bill by a good two-thirds.

The way the draft bill is prepared, it will deregulate licensing for residential mortgage brokers. That is because of a provision in the draft's definition of broker to only mean commercial brokers. By implication, non-commercial brokers or residential brokers will be deregulated. To the Division, that is a huge

loss of potential revenue among other things as well as forgetting the consumer protection portions of it. While we are in favor of the implementation of the S.A.F.E. Act, we oppose the concept of forming a new license category in the draft version. I submitted a letter to the Committee (Exhibit S) which has 6 or 7 bullet points of significant issues we have with the draft legislation. I am willing to work with the Committee on appropriate language.

I want to respond to Assemblywoman Gansert's comments about the education requirements. The S.A.F.E. Act is a federal law that imposes a floor on requirements, not a ceiling. A state can be stricter than the federal law. It has a 20-hour pre-licensing education requirement and the passage of an examination. Nevada law requires a 30-hour pre-licensing education or the passage of an examination. In the draft, we have changed the "or" to an "and" to conform to the S.A.F.E. Act and continued with the 30 hours which is stricter than federal law. It gives us the same regulatory authority that we currently have. By shortening the length of the bill, much of it can be put into regulatory format and does not necessarily need to be in legislation. Over the span of the next few years, I am sure the interpretation of the S.A.F.E. Act by CSBS, AARMR, and HUD will change and we will need the flexibility as well.

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. Is there anyone else wishing to testify in favor of A.B. 523? Is there anyone to testify in opposition to the bill? Is there anyone to testify from a neutral position?

Mindy McKay, Attaché to the Chief Program Officer, Records and Technology Division, Department of Public Safety:
In section 12, subsection 1, paragraph (D1) on page 4, line 4, the language says that fingerprints must be submitted to the "Central Depository." It should say the "Central Repository."

We offer to work in cooperation with the Committee to draft appropriate language in the bill to allow applicants to submit fingerprints electronically which will reduce the fee as well as the response time. The Real Estate Division has language in NRS 645.355 that you might want to consider. This wording also makes it clear that the applicant is responsible for the finger printing costs in addition to whatever fees the Division may charge for licensure (Exhibit T).

Vice Chairman Atkinson:
Are there any questions from the Committee? There are none. Is there anyone else wishing to speak in neutral for A.B. 523? The Chairman will work on this bill and will bring it back before our deadline. We will close the hearing on A.B. 523.

Chairman Conklin:
Next week we have six to seven bills each for Monday and Wednesday and a work session each day. Is there any public comment? There is none.

The meeting is adjourned [at 2:48 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 3, 2009 **Time of Meeting: 12:08 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 411	C	Greg Esposito	Supporting Documents
A.B. 411	D	Greg Esposito	Proposed Amendments and Mock-Up
A.B. 486	E	Joseph Waltuch	Letter of Support and Proposed Amendments
A.B. 378	F	Alfredo Alonso	Supporting Documents
A.B. 378	G	Alfredo Alonso	Supporting Information
A.B. 378	H	Lief Reid	Supporting Documents
A.B. 378	I	Keith Lee	Prepared Testimony
A.B. 378	J	Katie Jacoy	Prepared Testimony
A.B. 378	K	Robert Crowell	Supporting Information
A.B. 454	L	Assemblyman James Ohrenschall	Mock-Up
A.B. 454	M	Gail J. Anderson	Letter to the Committee
A.B. 454	N	Jon Sasser	Legal Opinion
A.B. 454	O	Jon Sasser	Case Summary
A.B. 454	P	Judy Dosse	Prepared Testimony and Supporting Documents
A.B. 523	Q	Assemblyman Marcus Conklin	Mock-Up
A.B. 523	R	Larisa Cespedes	Proposed Amendment
A.B. 523	S	Joseph L. Waltuch	Comments
A.B. 523	T	Mindy McKay	Suggested Language