**MINUTES OF THE MEETING**
**OF THE**
**ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fifth Session**
**March 27, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:17 a.m. on Friday, March 27, 2009, in Room 3138 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 Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

**COMMITTEE MEMBERS ABSENT**:

None

**GUEST LEGISLATORS PRESENT**:

Assemblyman Marcus Conklin, Clark County Assembly District No. 37

**STAFF MEMBERS PRESENT**:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

**OTHERS PRESENT**:

Robert Faiss, Adjunct Professor for Gaming Law, William S. Boyd School of Law, University of Nevada, Las Vegas; Attorney, Lionel Sawyer & Collins, Counsel to Cantor G & W (Nevada), L.P. (aka Cantor Gaming); and Private Citizen, Las Vegas, Nevada
Brin Gibson, representing the William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada
Matthew Stafford, Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada
John Piro, Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada
Leslie Niño Fidance, Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada
Dennis K. Neilander, Minden, Nevada, Chair, State Gaming Control Board
Lee Amaitis, Chief Executive Officer, Cantor G & W (Nevada), L.P. (aka Cantor Gaming), Las Vegas, Nevada
Phillip Flaherty, Consultant, Cantor Gaming, Las Vegas, Nevada
John Griffin, Kummer Kaempfer Attorneys at Law, Reno, Nevada, representing Wynn Resorts, Limited, Las Vegas, Nevada
Kevin Tourek, Senior Vice President and General Counsel, Wynn Las Vegas, Las Vegas, Nevada
Alfredo Alonso, Attorney, Lewis and Roca, Reno, Nevada, representing the Nevada Pari-Mutuel Association, Las Vegas, Nevada
Anthony Cabot, Attorney, Lewis and Roca, representing the Nevada Pari-Mutuel Association, Las Vegas, Nevada
Geoff Walsh, Staff Attorney, National Consumer Law Center, Boston, Massachusetts
George Ross, Snell & Wilmer Law Offices, Las Vegas, Nevada, representing Bank of America

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada
Michelle Johnson, President and Chief Executive Officer, Consumer Credit Counseling Service, Las Vegas, Nevada
David Huston, Legal Aid Center of Southern Nevada, Las Vegas, Nevada

**Chairman Anderson:**
Let us open the hearing on Assembly Bill 218.

**Assembly Bill 218: Authorizes the Nevada Gaming Commission to prescribe the manner of regulating governmental entities that are involved in gaming. (BDR 41-603)**

**Robert Faiss, Adjunct Professor for Gaming Law, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada:**
I bring with me appreciation from the students, the faculty, and the Dean, John Valery White, for the tremendous role you have played in creating a gaming law studies program, which is now the largest and most diversified program offered in the world; with special commendation for Chairman Anderson who has a very close relationship with the school and, in recognition of that, was appointed as the Assembly member on the Gaming Law Advisory Council, which has been of utmost importance.

Today you will hear from the best and the brightest at the Boyd School of Law. They represent a seminar in legislative advocacy in gaming law policy taught by former Governor and United States Senator Richard Bryan and me. The students in gaming law learn that becoming a lawyer is more than learning about and practicing the law. You need to know how it is created, and in doing so, learn about the people who are responsible for creating it. Each session, our students identify the need for, write, and lobby a bill that enhances the Nevada Gaming Control Act [Chapters 463, 463A, 463B, 464 and 465 of the *Nevada Revised Statutes* (NRS)].

Last session, you will remember, with the supervision of the Chairman, the students wrote a bill that changed the law so that never again will we have an outgoing and incoming governor appoint two different persons to the same seat on the Gaming Control Board. The students especially learn about legislators. Most attorneys learn about judges—they do also—but for them the highest court of appeal is not the Nevada Supreme Court, it is the Nevada Legislature. Except for constitutional issues, you may overrule that court. In doing so, they learn about you, and you are a group that is often overlooked when people talk about what a tremendous success the Nevada Gaming Control Act and its splendid administration have been.

At the last term of our class, I assigned a class on the creation of the Nevada Gaming Control Act, highlighting the legislators who created it. Two of those legislators, Republican Senator Carl Dodge and Democratic Senator Peter Echeverria, later became chairs for the Nevada Gaming Commission. They were followed, in distinctive fashion, by a chair of this Committee, Brian Sandoval. Also, the Dean and the Oral History Program are coordinating the creation of a 50-year history of gaming control in this state, and a special aspect of it will be, as we examine each decade of that history, the legislators who helped shape the course of gaming control. On Monday, at the salute to the Nevada Gaming Commission on its 50th anniversary, Dean John Valery White will announce the creation of the Boyd Nevada Regulator Hall of Fame. One of the categories considered for induction consists of legislators who have been instrumental in directing the course of gaming law.

For those of you who knew him, I bring greetings from my father, Senator Wilbur Faiss, who this year will be a contender for the title of oldest living former legislator as he celebrates his 98th birthday. And for those who knew Senate Hall of Fame member Jim Gibson, I am pleased to note that the first voice you hear from Las Vegas for the Boyd School of Law will be that of gaming law attorney and gaming law studies coordinator, and his grandson, Brin Gibson.

**Brin Gibson, representing the William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada:**
Thank you for allowing us to appear before you today in support of Assembly Bill 218. It is my privilege, in my first appearance before the Nevada Assembly, to be able to introduce three of the Boyd Law School's finest gaming law students. Matthew Stafford has lived in Nevada since 2004 with his wife, Lisa. He is currently a second year law student at Boyd School of Law. Last fall, he was a legal intern for Justice Michael Douglas of the Nevada Supreme Court. While in Nevada, he has represented health care workers at University Medical Center in contract negotiations and government relations.

The second student is John Piro. He is a 23-year Nevada resident and a graduate of Durango High School and the University of Nevada, Las Vegas (UNLV). After high school, he served in the United States Army as a sergeant in the medical platoon for the Second Battalion, 27th Infantry. He is currently a second-year student at the Boyd School of Law, is president of Phi Alpha Delta International Law Fraternity, and works as a legal extern at the Juvenile Public Defender's Office in his spare time.

The final student is Leslie Niño Fidance. She is a 26-year Nevada resident and graduate of Rancho High School and UNLV. She received the law school's

2008-2009 community service scholarship, and she is the author of a published article entitled, "The Mob Never Ran Vegas." After graduation, she secured a two-year clerkship with Judge Roger Hunt in the federal district court. As always, the students' comments are their own and should not be attributed to the Law School.

**Matthew Stafford, Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada:**

I am currently a second year law student at the Boyd School of Law. It is a pleasure and an honor to address you today. Last semester, in our introduction to gaming law class, taught by Professor Bob Faiss, assisted by Professor Jennifer Roberts, and coordinated by Lauren Calvert Arnold, a group of students posed the timely question of how a sovereign entity interested in investing in the State of Nevada would approach the Nevada Gaming Commission and navigate the licensing process.

Out of this and subsequent discussions, the decision was made by students to put forth an amendment to the Nevada Gaming Control Act. The responsibility of advancing this amendment fell to the students of this semester's advanced advocacy, legislative policy, and gaming law class taught by Senator Richard Bryan and Professor Bob Faiss, with Brin Gibson serving as our class coordinator.

The language of A.B. 218 parallels NRS 463.643(5), which provides the Commission with the same specific discretion with respect to public companies of foreign countries. I want to emphasize that A.B. 218 would in no way alter the authority that the Gaming Commission and the Gaming Control Board currently possess. Rather, A.B. 218 affirms specific discretion, in addition to the general discretion, the Gaming Commission holds regarding applicants that are government entities or that are owned or controlled by foreign governments. Assembly Bill 218 makes the investigative procedure predictable for the Board, the Commission, and the government applicant involved. This will reduce costs and time. Any foreign government entity that can satisfy the exacting standards of the Nevada Gaming Control Act is welcome to join the Nevada gaming industry. By adopting A.B. 218, the Legislature will keep Nevada on the forefront of global gaming and business by encouraging diverse investment and allowing the Commission flexibility to craft the necessary requirements for these unique entities. Our presentation will continue with brief reports on sovereign wealth funds and Native American tribes presented by two of our school's finest students, Leslie Niño Fidance and John Piro. At the conclusion of their presentations, we would welcome any questions.

**John Piro, Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada:**
I am honored to appear before you this morning. Assemblyman Ohrenschall, it is actually good to see you outside of the classroom. I hope winter break has treated you well, and it is good to see you in your official capacity. Additionally, Assemblywoman Dondero Loop, I am actually one of your constituents, so I am honored to have the chance to speak before you this morning. [Read from written testimony (Exhibit C).]

**Leslie Niño Fidance, Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, Nevada:**
[Read from written testimony (Exhibit D).]

**Chairman Anderson:**
Let me thank all three students for their timely remarks and the accuracy of their statements. Mr. Stafford or Ms. Niño Fidance, in your opinion, I gather that we are not expanding what we perceive to be the authority of the Gaming Control Board but putting into the statute some element that probably should have been taken care of some time ago, correct?

**Matthew Stafford:**
You are not expanding or contracting any power that they currently hold. They already have the general discretionary power in dealing with these applications. This merely delegates specific discretion that is already encompassed by the Gaming Commission's general discretion. You are correct in your statement.

**Assemblyman Mortenson:**
I am looking at this bill, and it is so short, concise, and informative—that is very "unlawyerlike."

**Assemblyman Segerblom:**
If we turned this down, could that not be used as an indication that the Legislature does not intend to have these types of government entities allowed under our regulatory scheme?

**Matthew Stafford:**
As students, we would probably defer to Chairman Neilander or Professor Faiss to answer that question.

**Robert Faiss:**
The answer is whatever the Committee decides. In doing so, I am sure you would state why.

**Chairman Anderson:**
If we are really trying to speak specifically to federal and Indian lands, do you think it is necessary for us to include that language in the bill so that our intent is clearly understood?

**Dennis K. Neilander, Minden, Nevada, Chair, State Gaming Control Board:**
With respect to your specific question, if I understood it correctly, you are asking whether it would be beneficial to include specific references to sovereign nations, being tribes as well as, potentially, foreign entities? My suggestion to the Committee is to not limit it in that fashion because there may be other types of capital pools that the state may want to consider in the future, which do not particularly exist right now or may exist in some transformed form over the years, that may be suitable as an investment vehicle for the gaming industry. I would suggest that you would want to leave it more open.

**Assemblyman Ohrenschall:**
I want to compliment my fellow classmates: it was an excellent presentation. I want to tell Mr. Piro it is good to see him outside of the classroom. He had to suffer with having a candidate for election as a classmate last semester, and seeing how neurotic I could get before and during the election. I have a question. It seems pretty straightforward when the Gaming Commission wants to investigate a natural person or a corporation for a license, but I imagine there must be some special challenges when you have a sovereign wealth fund or a Native American tribe. Could the students discuss that at all?

**Matthew Stafford:**
The issue is that a sovereign wealth fund benefits all of the citizens of that country, or a Native American tribe obviously benefits the members of that tribe, so the task of licensing all persons involved, either the citizens or the tribal members—obviously, there would be people under 21, felons, and so forth—would be too large and too complicated. Where sovereign wealth funds and Native American tribes are investing, they operate much like corporations do; the Gaming Commission and the Gaming Control Board can license those that they determine to be appropriate.

**Assemblyman Carpenter:**
I guess this question is to Mr. Faiss or Mr. Neilander: it seems to me that, where they define "governmental entity" as a "government or a political subdivision of a government," I do not know if that includes Indian tribes or even foreign corporations? Also, there is gaming in various airports, so how are they able to become licensed? Is it the airport that is licensed or some slot machine operator who is licensed?

**Dennis Neilander:**
With airports, both in the north and the south, the airport authority is the landlord, and there is a slot route operator that is providing and operating gaming on the premises of the airport. From a licensing perspective, the slot route operator is the licensed operator. The airport authority is the landlord, and the landlords are discretionary. They are not in a mandatory licensing position, so in this case we gather background information on the airport. As long as there are no red flags that come up during that process, we would not license the airport authority. They simply are leasing space to the slot route operator and have no operational involvement in the gaming operation.

**Chairman Anderson:**
Same as the 7-Eleven.

**Dennis Neilander:**
Yes, it is a space lease arrangement, which is the term that is used. With respect to the definition of governmental entity, certainly Native American tribes, because of the sovereign definitions that are contained in federal law, could qualify as a governmental entity under the language in this bill. We have to do a little bit more research in looking at foreign entities, but there are general descriptions of the term "government" found in Chapter 0 of NRS, as well as other places within the NRS and in federal and other state law that we would look to in terms of what is, by definition, a government.

**Chairman Anderson:**
Mr. Neilander, let me take your testimony on this bill.

**Dennis Neilander:**
I have no prepared testimony today. I appear in support of this legislation, which provides for lawyers and others who may have a situation where there is a sovereign nation that is interested in investing in the gaming industry, a specific place in the statute they can look to that grants specific authority, rather than having to go through the general powers that exist within the Commission. I think it is appropriate to have that specific language set forth in the statute as a way of clarifying the Nevada Gaming Control Act. I am prepared to answer any questions the Committee may have.

And I would also like to commend the students who have prepared this particular bill. It is short and to the point, and I think the reason for that is none of them are billing by the hour, yet. If they were billing by the hour, I suspect we would have a 100-page document in front of us. They have done a great job, and they have been professional and thorough in their research and

presentation of this matter, in front of the Gaming Control Board, the Commission, and now this body.

**Chairman Anderson:**
It is kind of strange because I have always been under the impression that the hardest part of the job was the research that went into it, and the final written document was just a bit of wordsmithing; therefore the actual billable time really rests in the huge amount of preparation for the presentation, rather than the actual presentation. Is that not where billable stuff usually comes from, Mr. Faiss?

**Robert Faiss:**
I put in months of work on this bill, and I charge nothing.

**Chairman Anderson:**
But that is because you are very, very generous with your time to many, many groups, and we all appreciate it.

**Assemblyman Segerblom:**
In the case of Dubai World, who did you have to investigate?

**Dennis Neilander:**
If I could try to answer that without getting into too much of the detail, with Dubai World, the government has a system whereby a number of different funds finance different activities and investments. In this case, there is a fund called Infinity World, which generally handles most of their real estate investments. That is the fund through which the money that was invested in MGM flowed. That fund is essentially controlled by four individuals. Those individuals have contractually defined roles in terms of what they do with those funds. In looking at Dubai World and trying to determine the necessary way to protect the state, we do what the Gaming Control Act does in a variety of different ways, which is to get at who actually controls the investment. In this case, we licensed Infinity World, a number of subsidiaries of Dubai World, and the four individuals who actually oversee those funds and have the ability to control the funds. We licensed them in probably much the same way we would a publicly traded company that has control vested in the board of directors, the shareholders, or some combination of both. We used the public company model, and we got to the point where I believe we were able to fully license the entity as well as the individuals who control that entity.

**Assemblyman Gustavson:**
As we all know, our government in the United States, and in Nevada, is established to govern, not to be in businesses. I know some entities do get to

dabble a little bit in different types of businesses. I am wondering if we really want to let foreign governments—I understand about Indian tribes as a sovereign nation, but they are within our country and that has been established—run our casinos. I have a little bit of concern with that. Could you help me with my concern?

**Dennis Neilander:**
Dubai World was not licensed to operate a casino in Nevada. That particular entity was licensed to be able to make an investment as a shareholder in a Nevada publicly-traded company. Dubai World currently has an application pending before the Commission to participate as a partner in a joint venture involving CityCenter. When they are asking to become an operator, it triggers a different set of standards that we look to in terms of simply investing versus conducting the gaming. So those would be factors we would absolutely consider in that context.

**Assemblyman Gustavson:**
I understand that, even if we were to allow this, they would still be under the rules and regulations of the Gaming Control Board, which I know is one of the best in the country and probably the world. I do not want to open up a can of worms that we should not be opening.

**Dennis Neilander:**
I understand.

**Chairman Anderson:**
There was a book published recently called *The Flat Earth* [*The World Is Flat* by Thomas Friedman], which talks about the international trading relationships that are currently going on in terms of the how the world economy has changed the dynamics of trade. I guess we have to recognize the fact that not all of the big bucks are in the United States.

**Assemblyman Hambrick:**
If a foreign nation does want to make application, do the U.S. State Department or international treaty obligations come into play? Explain to me the process because I do not understand the process. Do we have to go and beg permission from the federal government, or do we have the authority on our own to deal with an international body without worrying about treaties?

**Dennis Neilander:**
Two federal laws in particular come into play. The federal government does have some jurisdiction over foreign investments. As part of the investigation of Dubai, we did have to check with the federal government to determine whether

a non-permitted entity was investing. In this case, the particular entity, Dubai World, is not such an entity. That is part of what we check during the course of an investigation. There is some federal jurisdiction over these sovereign entities with respect to their investments.

**Assemblyman Carpenter:**
We have been hearing rumors, and maybe it is not rumor, that MGM might be filing for bankruptcy. How will that affect this situation with this other entity that has been mentioned here?

**Chairman Anderson:**
I am worried about the answer here in terms of trying to make sure that we do not disclose confidential information. I know you will have to walk a very tight line because you may have information that the rest of us are not privy to.

**Dennis Neilander:**
That is correct. There is certain information that is confidential under state law. I would be glad to address those questions with you privately, outside of the public context. The short answer is that, if any entity were to file for bankruptcy—I am not speaking of any particular company—the investors, and how they are handled as creditors in the bankruptcy context, would be treated no differently than any other creditor. The short answer is I do not believe it would affect the way that a normal bankruptcy would play out.

**Chairman Anderson:**
That caveat would be the same regardless of which gaming property we would be speaking of?

**Dennis Neilander:**
I do not believe that your question would be answered any differently were it asked in the context of any industry that is facing possible bankruptcies or debt restructuring. It is not something that is unique to the gaming industry.

**Chairman Anderson:**
Mr. Faiss, is there anybody else you feel is necessary to get on the record?

**Robert Faiss:**
No, Mr. Chairman. As always, thank you. We hope that the students before you are going to have glorious careers in gaming law. No matter what they do, they will remember today.

**Chairman Anderson:**
I did not get to yell at them, so they may not remember it. Thank you very much students for an excellent presentation.

Is there anyone in opposition to the bill or neutral on the bill? [There were none.]

I will close the hearing on A.B. 218.

> ASSEMBLYMAN HORNE MOVED TO DO PASS ASSEMBLY BILL 218.
>
> ASSEMBLYMAN KIHUEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMEN CARPENTER AND GUSTAVSON RESERVED THE RIGHT TO CHANGE THEIR VOTES ON THE FLOOR.)

Let us turn our attention to Assembly Bill 388.

**Assembly Bill 388: Makes various changes relating to gaming. (BDR 41-711)**

**Chairman Anderson:**
This is a piece of legislation that I requested after having a conversation with Mr. Faiss. Mr. Faiss, please present the bill.

**Robert Faiss, Attorney, Lionel Sawyer & Collins, Las Vegas, Nevada, Counsel to Cantor G & W (Nevada), L.P. (aka Cantor Gaming), Las Vegas, Nevada:**
[Read from written testimony (Exhibit E).]

**Chairman Anderson:**
Mr. Amaitis, we are honored that you would come to Nevada, and that you have made such a sizeable investment here; more importantly, we are impressed with the success of the promise that you made to us. We look forward to your presentation.

**Lee Amaitis, Chief Executive Officer, Cantor G & W (Nevada), L.P. (aka Cantor Gaming), Las Vegas, Nevada:**
[Read from written testimony (Exhibit F).]

**Chairman Anderson:**
I referenced the book earlier in large part because of Cantor Fitzgerald's ability to facilitate the movement of large sums of money around the world. While the

gaming part of Cantor's holdings is not in that particular part of the business, it is still part of a very substantial corporation that moves billions of dollars, and your involvement in Nevada has been important to the continuing development of new technology in gaming.

**Robert Faiss:**
Mr. Chairman, I have further comments that may be of interest.

**Chairman Anderson:**
Please continue.

**Robert Faiss:**
[Continued to read from written testimony (Exhibit E) on page 2.]

**Chairman Anderson:**
This bill seems to be an important piece of legislation in recognizing the expansion of the nature of gaming to make sure that somebody who wants to bet on the outcome of a legitimate game has the opportunity to do so. We should statutorily do that.

**Assemblywoman Parnell:**
When we look at the term "or other events," those would be defined by the acceptance of the Gaming Control Board or the Commission, correct?

**Robert Faiss:**
Yes, you are absolutely correct.

**Chairman Anderson:**
I guess private wagering, which is still not going to be regulated by the Gaming Control Board, would not be changed by this.

**Assemblywoman Dondero Loop:**
Do "other events" include people? For instance, in a poker tournament, would I bet on the outcome of the game or on the person?

**Robert Faiss:**
The answer to what the event is will be whatever is approved by the Gaming Control Board. One of the suggestions is that, indeed, you vote on people, such as in the World Series of Poker, the leading members of which have worldwide followings and are very attractive as potential objects of wagers.

**Chairman Anderson:**
I believe we have heard stories, Ms. Dondero Loop, that while the World Series of Poker is a Nevada-kind of event, it has worldwide attention, and many people bet on it in other countries. But we do not allow it here in Nevada.

**Phillip Flaherty, Consultant, Cantor Gaming, Las Vegas, Nevada:**
I am really here just to support the bill and also to be available to answer any questions that may come up.

**Assemblyman Manendo:**
I am wondering if you can let us know what "other events" you have in mind.

**Lee Amaitis:**
It will be based upon what the public is interested in. I think that, as Mr. Faiss pointed out, the World Series of Poker has become a very popular event. As the Chairman pointed out, it is probably wagered on in every part of the world, other than Nevada, because of its popularity. It is an event that was born in Nevada and has taken wagering revenue away from Nevada. It is not part of the system of being an "other event." Billiards is another one. I think there are a number of different ways people could place wagers on events. Primarily, it will be presented by people or groups who will say that something has the public interest and a verifiable result, so you could actually create a wager around it.

**Assemblyman Manendo:**
As an example, the National Finals Rodeo (NFR), the races?

**Lee Amaitis:**
One example that comes to mind is something in the area of fantasy sports, where a group of people get to pick their teams. Now, that does not necessarily mean that, if you are wagering today on the National Basketball Association (NBA), you would be betting on the Dallas Mavericks versus the Houston Rockets. You can put five of the best of the East against five of the best of the West and then have a price made on that where people could make that wager. We could see that happening, as well. I think that sports books would be perfectly able to post those odds and that would have a lot of interest. Mostly, my knowledge about this is based on the fact that in the United Kingdom you can literally bet on anything. As a patron, you could literally call the bookmaker and ask for a price on anything that is involved in the world. Whether he can give you a price that is accurate enough is up to you. Generally, what we are speaking about are things that hold the public interest, where people will gather to watch and have the results posted.

**Assemblyman Manendo:**
Such as if the Legislature will finish in 120 days.

**Dennis K. Neilander, Minden, Nevada, Chair, State Gaming Control Board:**
I would only add that, as Mr. Faiss indicated, there is a provision in Regulation 22 which presently allows for the consideration of "other events." Because it is not specifically reflected in the statute, we think it is a good idea to have it there in the event that someone may later argue that there was something allowed outside the bounds of the law. I think it creates clarity of the issue and eliminates a potential argument that could occur down the line. I do not have any other testimony but would be glad to answer any questions the Committee may have.

**John Griffin, Kummer Kaempfer Attorneys at Law, Reno, Nevada, representing Wynn Resorts, Limited, Las Vegas, Nevada:**
In support of A.B. 388, specifically section 3 in the bill, there is currently a statutory minimum which is set on slots and gaming salons in Nevada. The amendment in section 3 deletes the statutory limit and allows the Gaming Control Board to set the limit. This would bring slots in line with how table games are currently regulated within gaming salons. We have worked with the industry and the regulators on this language. One change suggested by the Gaming Control Board, which we have discussed with the Chairman, is to delete section 4 of this bill, which states the bill is effective on passage and approval. With that, the effective date would revert to October 1 and allow the Commission time to adopt regulations if it so chooses.

For a more detailed explanation on slots and gaming salons, I would defer to Kevin Tourek.

**Chairman Anderson:**
Before we go there, let me ask a question: have you talked to the folks from Cantor Gaming, who are concerned about the other parts of the language of the bill, and Mr. Faiss about the removal of the "on passage and approval" effective date? My understanding was that the "other events" provision of the bill was to go into effect immediately. I would presume that Mr. Neilander would have concerns about it.

**Dennis Neilander:**
We suggested that the effective date be delayed if the Commission adopts regulations establishing a minimum wager. This would also hold true with respect to section 2 of the bill. As I stated earlier, the language in section 2 is already in the regulation, so even if the statute is not immediately effective, we believe we already have the authority to do that. With respect to "other

events," it would be the Board's intention to work with the Commission to develop a regulation that would further refine what "other events" would be acceptable. We have contemplated how that might work, and I would expect that an additional regulation will be adopted that further refines the process for Board and Commission consideration of what "other events" would be appropriate. If you move the effective date, it would be applicable to both sections 2 and 3.

**Kevin Tourek, Senior Vice President and General Counsel, Wynn Las Vegas, Las Vegas, Nevada:**

I am here on behalf of Wynn Las Vegas to express our support for A.B. 388, specifically the edit to *Nevada Revised Statutes* (NRS) 463.0193 that would remove the statutory provision requiring that the Nevada gaming regulations provide that a minimum wager for slot machines in private gaming salons must not be less than $500.

Wynn Las Vegas is the only resort in Nevada to have received the Mobil Five Star Award, the AAA Five Diamond Award, and the Michelin Five Red Pavilion Award. The combined Wynn Las Vegas and Encore at Wynn Las Vegas Resorts currently offer 4,750 rooms and suites, over 100,000 square feet of retail space, and 39 food and beverage outlets. In addition, the combined Wynn and Encore Resorts have over 180,000 square feet of public gaming space, offering 230 table games and 2,770 slot machines. Each of Wynn and Encore has eight private gaming salons for our high-end and most exclusive customers.

Our private gaming salons are operated in accordance with the regulations promulgated by the Nevada Gaming Commission and the Nevada Gaming Control Board. Our gaming salons cater exclusively to our high-end net worth, table-games customers who play primarily baccarat, blackjack, and roulette. Currently, we do not offer slot machines in our gaming salons primarily due to the $500 minimum bet.

Under NRS 463.0193 and Regulation 5.200, there is no minimum bet for table games in private gaming salons. However, NRS 463.0193 and Regulation 5.200 prescribe a $500 minimum bet for slot machines. We believe that removing the statutorily required minimum bet for slot machines and having the Gaming Commission establish the parameters for the use of slot machines in gaming salons is proper. The Gaming Commission currently has the same authority to do that with table games in gaming salons.

It is important to note that if the change to the statute is approved, there will not be any immediate change to the way private gaming salons are operated currently, inasmuch as the gaming regulations currently require, in

Regulation 5.200, a $500 minimum bet for slot machines in private gaming salons. However, if the proposed change is made to the statute, the gaming industry will have the opportunity to work with the Gaming Commission and the Gaming Control Board to determine whether any modifications should be made to the current regulations.

Speaking on behalf of Wynn and Encore, we believe that the change to the regulations could have a positive impact on the amount of revenue generated from our gaming salons by extending the play of our primary salon patrons. To be clear, the majority of our primary salon patrons do not play slots. The benefit of lowering the amount of the minimum bet would be to the guests of the private gaming salon patrons. If the guest would prefer not to play table games but would prefer to play at a slot machine, we would like to offer that amenity at something less than $500. We believe that if the guests are playing the slots, the primary patron will play longer.

**Chairman Anderson:**
When we initially talked about private gaming salons several sessions ago, one of the major concerns was making sure that gaming in Nevada was open and not discriminating based on place of origin, race, or any other factor, and that when we set financial minimums, recognizing these salons were going to be rather unique, the big selling point was the anonymity of the individuals who might want to play, and that was the reason why salons came into existence. The large sums of money that were going to be wagered somewhat justified the salons. By removing this cap, do we not approach that question again of the potential for exclusion of a person based on outward appearance?

**Kevin Tourek:**
I do not believe so. The current regulations already provide for a $500 minimum bet. The removal of the cap would not change the current practice of the gaming salons.

**Chairman Anderson:**
But it does take out the legislative prerogative to set the minimum level to which the Gaming Control Board could go.

**Kevin Tourek:**
That is correct.

**Assemblyman Horne:**
I was concerned about this when I first saw it—I was not here when the salons were first created. My concern is that these salons are supposed to be exclusive; it seems to me that by removing the minimum, it will have some type

of effect because you are making them just like all of the other slots everywhere else. Some people, slot route operators, for instance, will be upset by this, will they not? I do not know what the testimony was back then, but it seems that if these guests you allude to want to play slots at less than $500, they can go out into the other portion of your casino and do that.

**Kevin Tourek:**
Currently, the gaming salons have to have a primary patron to open the salon, and that primary patron has to have either cash or credit of at least $300,000. The vast majority of our salon patrons do not play slots. This, for us, would be an amenity that we could offer to the salon patron for his guests who happen to accompany him into the salon. Yes, it is true that his guests could play out in the public slot area, but our feeling is that if his guests are happy playing slots in the salon, it may cause him to stay in the salon longer and game longer.

**Assemblyman Horne:**
I heard that in your testimony. I still have concerns. There are reasons why we put the minimums there. That argument could have been made when salons were first created: we do not want a limit on the slots because we would like their guests to be comfortable and play with the main patron. I am going to need to ask around and gain some comfort.

**John Griffin:**
In response to Assemblyman Horne's question, I would only add that there is no statutory limit currently set for table games. The regulations adopted by the Gaming Control Board and the Gaming Commission are such that they maintain the exclusivity of gaming salons. Simply removing the statutory cap on slots does not *per se* mean that we are going to have penny slots. I think the Gaming Control Board and the Gaming Commission are still charged with the policy of maintaining the exclusivity of these salons.

**Assemblyman Horne:**
I did not suggest that you were going to have penny slots. I heard your first testimony, and I am allowed to go and ask and find out and get comfort.

**Chairman Anderson:**
I realize that we do not set a minimum wager on slots or table games in the general play area; we allow the establishment to set that. But I thought we were pretty specific when dealing with this specialized area, and that was why the statute setting up these gaming salons came into existence. We were trying to create a special wall that was going to accomplish that, and the dollar question was very much a part of the issue at the time. In fact, I believe that the Committee argued about a figure that was higher than $500. I understand

the issue is whether there should be slots in there. I can only imagine a 50-way penny slot machine that would be converted to $500 per bet, but that might be a bit of a reach.

**Assemblyman Manendo:**
I was here in 2001 when we waded into this area, and we did, in fact, wrestle with those figures. Some folks came into my office and talked to me about this, and I expressed my concern with specifically this portion of the bill. Just thinking back, I thought we had a $500 minimum on everything, including the table games. So I guess I have to do a little bit more research. I, too, am not comfortable with section 3 of the bill right now, Mr. Chairman.

**Assemblyman Segerblom:**
What are the regulations right now as far as table games are concerned?

**Dennis Neilander:**
Could you repeat the question, please?

**Assemblyman Segerblom:**
Do you, by regulation, have a dollar limit on table games in these salons?

**Dennis Neilander:**
The regulations originally had a minimum wager for table games. One of the things that we had not considered back in 2001, at the time this legislation was enacted and when we later went through our rulemaking process, was the betting patterns of some of these high-net-worth individuals. They may get on a cold streak. During the course of that cold streak, these individuals want to drop down to a much lower amount than is their normal betting pattern. Because of the minimum wager that was established, some of the licensees experienced having customers who were forced to place a wager at a minimum level, when they were on a bad streak, and they would simply quit playing. When they were winning, they were betting greater amounts, and when they were losing, they would bet less. It really affected the desires of those patrons. Based upon that testimony, the Nevada Gaming Commission eliminated the hard minimum amount that existed with respect to the table games.

**Assemblyman Horne:**
I do not know if it is possible, but could you anticipate where you would regulate slots if we were to remove the minimum wager?

**Dennis Neilander:**
I suspect it would be fairly low because—and I hate to venture a guess, but I will try to be as responsive as I can, not having any data and not having studied

it—my guess is that the patterns of even the slot players who may be qualified to be in that room, because of their net worth, are probably similar to the table-game-betting patterns: if they feel that they are on a cold streak, they will want to lower the amount of the wager until they feel like they are back on a hot streak. I do not know that for sure. We have not had a lot of play on these slots in the salons. In fact, I think as Mr. Tourek pointed out, at least at his property, no one has attempted to deploy any slots in these rooms. There is not a lot of data, but my guess is there may be a correlation between betting patterns on slots and the betting patterns we saw with the table games. But I do not know for sure.

As a follow-up, the way these rooms are regulated is that there is a notification process to the Board that occurs when the room is about to open. We have prior notice. There are both pan-tilt and zoom cameras that are wired in to the Board's offices, and we can control the surveillance in those rooms in real time from our offices. It would just be a matter of wherever the slot machine is physically located, ensuring that the surveillance is installed and properly maintained for the Board's and the licensee's purposes. In terms of how we regulate it, the minimums really do not have an impact. We will still regulate it the same way.

**Assemblyman Horne:**
To Mr. Tourek, Mr. Neilander just stated that he was not aware that there were slots in these salons, at least in the Wynn Resorts. I do not know if that is correct. If that is true, is it your position today that should we delete this minimum requirement, you would then move slots into your salons?

**Kevin Tourek:**
We would most likely move slots into the salons if our primary table-games patron requested it. We have very few patrons who would qualify to be in a salon who are slot players only.

[Chairman Anderson left the meeting, and Vice Chair Segerblom assumed the Chair.]

**Assemblyman Horne:**
But, currently, you do not have them in there?

**Kevin Tourek:**
No, we do not.

**Assemblyman Horne:**
From your earlier testimony, it sounded like you had them but they were not being used.

**Assemblyman Carpenter:**
Could this have something to do with the general economy, that there is not so much money around any more, and they might play the slots if they could do so at a lower minimum? Or do these people still have big bucks?

**Kevin Tourek:**
It really does not have anything to do with the general economy; it is really our wanting the ability to offer this amenity to the salon patrons for their guests.

**Vice Chair Segerblom:**
On table games, you can obviously raise the amount of money you spend on a hand. With a slot machine, I am not sure how much you can raise on any given pull, but I am sure there is technology out there that can do that.

**Robert Faiss, Private Citizen, Las Vegas, Nevada:**
I appear on behalf of no client. I was the attorney for the original bill on gaming salons. My recollection is that everything Chairman Anderson said about the bill is correct. In particular, the Committee was concerned, in giving authorization to close areas to the general public, that they not turn into slot arcades. The $500, as I recall, was to make sure that that would not be done. The way the regulation has evolved, that could never happen, regardless, because the salons have to be individually licensed and their business plan is part of the investigation by the Gaming Control Board. Any attempt to turn a gaming salon into one that is contrary to the established policy would not happen.

**Alfredo Alonso, Attorney, Lewis and Roca, Reno, Nevada, representing the Nevada Pari-Mutuel Association, Las Vegas, Nevada:**
We have before you an amendment to A.B. 388 (Exhibit G). Currently, you allow for wagering on dog racing, but you do not allow for off-track pari-mutuel wagering. You are the only state that does allow dog-race wagering but does not allow for pari-mutuel, which is essentially pooling. This amendment has simply two pieces to it. First, it would include horse or dog racing, as you can see in section 5. Just above that, in section 4, subsection 6, paragraph (c), one of the issues that came up was some race tracks were asking for higher rates to be charged to the books for those that are doing interstate versus intrastate wagering, and all we are doing in this amendment is to require that the rates have to be the same. Mr. Cabot is in Las Vegas if there are any specific questions about the policy. I will answer any questions that you have, as well.

[Chairman Anderson returned to the meeting and resumed the Chair.]

**Anthony Cabot, Attorney, Lewis and Roca, representing the Nevada Pari-Mutuel Association, Las Vegas, Nevada:**
I am here to help explain the bill or answer any questions you may have.

**Chairman Anderson:**
Could you please explain the amendment?

**Anthony Cabot:**
Sure. The amendment covers two different sections of the bill. Nevada has been conducting pari-mutuel wagering for over 20 years. The Legislature established a rate committee back then to negotiate the rates that our race books could pay to tracks in order to receive the broadcasts of the races and to accept pari-mutuel wagers on those races. These rates apply to all 87 race books that are a part of the Association and are licensed to conduct pari-mutuel wagering. There is no discrimination between any book: the largest book, like Wynn, will pay the same rates as the smallest book, whether it be in Elko, Ely, or anyplace else. The idea was that this rate committee would set a rate, and that rate would be equal for all folks across the state.

The Off-Track Pari-Mutuel Wagering Committee, which is appointed by the Nevada Gaming Commission, requested that we, the Pari-Mutuel Association, approach the Legislature for a simple change to require that Nevada race books pay only one rate for pari-mutuel wagers accepted in the state. There are two ways you can place a wager on a horse race in the State of Nevada: in person or by telephone. Some of the tracks have been pushing us for higher rates for telephone wagers. The problem with this is twofold. First, it affects some books unequally. It disrupts that balance we had where everybody pays the same, because some books can accept more telephone wagers than others. Second, if there were higher rates for telephone wagers in the state, a lot of the books would stop doing it because it would cost too much. This would have an impact on patrons in rural areas who do not have access to a nearby book, on homebound persons, and on people generally, because people who wanted to use it for convenience could not use it. That is why the committee said we want something that equalizes the playing field, so that when we negotiate with the tracks, the rate for in-state wagers would be the same regardless of how that wager was placed.

The second amendment would permit pari-mutuel wagering on greyhound races. As Mr. Alonso said, 24 of the states have some form of wagering on greyhound races, and of those 24, 23 allow common pari-mutuel pooling; Nevada is the only state that does not. All we are asking for is that when we take a bet on a

greyhound race, we can take it on a pari-mutuel basis. On a pari-mutuel basis means the book effectively takes a commission on the bet. Once it takes a commission on the bet, called a take-out, the book gets to keep the commission, and the rest of the wager then goes back to the winning betters by way of a payout.

By doing this, we are not booking the race, so to speak. We are not taking the risk, which allows the book to take higher bets and the players to make higher bets without having to worry about risk management. Taking risk management away from the race books allows them to concentrate more on customer service than on other administrative duties. Those are the two amendments that we are seeking as the Association.

**Assemblyman Horne:**
I am curious as to why dog races were not included initially. I know that greyhound racing has been around for quite some time. Why the change now?

**Anthony Cabot:**
Back in 1989, I think the impetus for the passage of the statute was to get involved in pari-mutuel horse racing. I do not think there was as much of an interest in the dogs at that time. Subsequently, we have investigated the idea of doing pari-mutuel dog racing, and I do not want to speak for Chairman Neilander, but I think the Board was less comfortable with it until it got legislative authorization because of some issues that had come up ten years ago with regard to the Department of Justice and their interpretation of all pari-mutuel wagering, not just on dogs. We had already been doing horse racing for ten years, and dog racing was just raised at that time.

I think we are coming back to revisit it now primarily because of the state of this economy. The race-book managers are desperately looking for ways to try to maintain their handle—that is the amount of revenue they get—because of declining wagers and declining numbers of betters. It seems that dog racing is a way to supplement what is a declining market.

**Chairman Anderson:**
I would remind Mr. Cabot that we had a dog track in Nevada in the 1970s or 1980s, which we were trying to encourage people to go to rather than going outside of the state. There was a substantial investment related to that endeavor at the time.

**Assemblyman Segerblom:**
Are you saying that the Off-Track Pari-Mutuel Wagering Committee asked you to bring this legislation?

**Anthony Cabot:**
They requested the legislation with regard to the equalization of the rates.

**Dennis Neilander:**
The Board has reviewed the amendment. Mr. Cabot is correct. Over the years, as horse racing began to be pooled, dog racing was not pooled in Nevada. The primary reason for that was there had been a couple of interpretations under prior federal administrations as to whether it was a violation of the Federal Wire Act to pool wagers with respect to dogs. There is a specific federal law that addresses interstate horse racing and allows for interstate pooling. As Mr. Cabot indicated, there are 23 states that allow pooling. We are the only state that does not. The primary reason we have not done it by regulation is that our attorneys had expressed some concern about doing it via regulation as opposed to statute. We indicated to Mr. Cabot and his clients that they would need to seek specific legislative authorization. As he indicated, all of these other states are comfortable that there would not be a potential problem, but our attorneys advised us as they did, I think out of an abundance of caution, because this area was somewhat gray ten years ago when we looked it. Under the Clinton Administration, there were certain amendments to the law, and the Justice Department later indicated they may take a different position on how the law was interpreted. We felt that, in order to go forward, it would best be done if there was specific legislative authorization.

**Assemblyman Segerblom:**
What about with respect to the in-state versus out-of-state issue?

**Dennis Neilander:**
That really does not raise any regulatory issues. That is purely a business decision. As Mr. Cabot indicated, the rate committee handles that. It is a negotiation tool between the tracks and the books; we do not get involved in what that committee does, and so we take no position on that matter.

**Chairman Anderson:**
Is there anyone else you feel needs to speak, Mr. Faiss?

**Robert Faiss:**
No, Mr. Chairman.

**Chairman Anderson:**
Any in opposition to or neutral on A.B. 388? [There was none.] I will close the hearing on A.B. 388. I think there are some open questions that some of the members have. We will take up A.B. 388 in our work session next week.

[The Committee stood in recess at 10:03 a.m. and was called back to order at 10:13 a.m.]

**Chairman Anderson:**
We are moving ahead to Assembly Bill 471. We have a quorum.

**Assembly Bill 471: Revises provisions relating to the award of deficiency judgments after a sale of real property. (BDR 3-1138)**

**Geoff Walsh, Staff Attorney, National Consumer Law Center, Boston, Massachusetts:**
By way of background, in my prepared statement (Exhibit H) I have given a brief summary of the type of work we do. In particular, I work on editing and authoring our annual manual on foreclosures, and we have just issued a new report where we did a state-by-state analysis of state foreclosure laws. It is available on our website at www.consumerlaw.org.

On A.B. 471, in our view the bill, which would create a bar on deficiency actions and deficiency judgments arising from the foreclosure of mortgages where the mortgage had been held by an occupant of the property, is a reasonable consumer protection measure that is consistent with similar laws and model statutes that are in effect in many other states. In particular, there are laws similar to the provision you are considering in effect in Alaska, Arizona, California, Hawaii, Montana, North Dakota, Oklahoma, Oregon, and Washington. In addition, Minnesota legislation bars deficiency actions in all cases where the lender requests a shortened redemption period, and that occurs in almost all cases. New Mexico has recently enacted a bar on foreclosure deficiency judgments that disallows deficiencies in cases of borrowers whose income was 80 percent or below their state's median income. This particular legislation fits well within the parameters of many of those other laws.
States have been enacting statutes that have limited or barred deficiency judgments, particularly since the 1930s when there had been a significant decline in property values. In a series of Supreme Court decisions from the 1930s, those laws were routinely upheld as being constitutional and not impairing rights of contracts. Most recently, the states of Alaska and Hawaii enacted statutes, similar to the one that you are considering here, that barred deficiency judgments after residential mortgage foreclosures.

In my written statement, I mentioned some of the articles and debates that have been published that contain a lot of the policy analysis that was discussed for the pros and cons of the legislation in Hawaii and in Alaska. I think it is also important to keep in mind that there are two significant model state foreclosure statutes that have been the subject of a lot of work by industry experts and

scholars over a period of time. The National Conference of Commissioners on Uniform State Laws had developed a uniform land security interest act, which is a model foreclosure law, during the 1980s and 1990s. That model statute provides for a bar on deficiency judgments after residential mortgage foreclosure. It is essentially what you have in your bill under consideration now. Additionally, the Uniform Nonjudicial Foreclosure Act has a provision in it that would bar deficiency judgments from residential mortgage foreclosures.

There is a scholarly treatise by Grant Nelson and Dale Whitman, a multivolume text that is sort of a bible on real estate financing laws. They are the primary authors of the model uniform statute. Their articles have outlined a lot of the pros and cons regarding state legislation that would bar deficiency judgments after residential foreclosures. They have consistently concluded that the harm caused by deficiency judgments outweighs any benefit that may accrue from continuing to keep those laws in effect.

I can outline seven or eight of the policy rationales in favor of barring deficiency judgments. I have outlined them in my written statement as well. One of the primary rationales in support of deficiency judgments is a belief that allowing them is going to encourage homeowners to make mortgage payments on time, and without that stick held over homeowners' heads, they are going to allow homes to be foreclosed or be more lax in keeping up with contractual obligations. I think there are two problems with that rationale, and that has been the policy conclusion most of the experts who have considered this issue have reached as well. One is that homeowners generally are not aware of the existence of the ability of lenders to take deficiency judgments until after foreclosures take place. They do not happen too often in one individual's life. The other is that homeowners tend to be foreclosed based on situations well outside of their control. They tend to be because of things like a job loss, an illness, a marital separation, or simply because the loans were unaffordable products that they should not have gotten into in the first place. You do not often see homeowners who are planning to be foreclosed upon. The rationale for deficiency judgments, that there is some possibility in the future that they may encourage payment of home loans on time, generally does not work as a practical matter.

A second problem with deficiency judgments is that homeowners really do not have control over the primary cause of large deficiency judgments, a generally declining real estate market. High deficiency judgments are typically caused by falling real estate prices where the obligations under the contract stay the same. That is typically not an event that homeowners have a great deal of control over. So most legislation that has looked at this issue has tended to impose the risk of that declining value in home prices more on the lending industry, which

has more expertise and more power to take some of those factors into account when they grant loans.

A third problem is that—and I think one of the most significant ones—deficiency judgments will significantly impede former homeowners' recovery and ability to start their lives over again in new housing. There are implications for higher state expenses in caring for homeless families who are losing a significant portion of their income to pay deficiency judgments. Deficiency judgments can remain on credit reports for seven or eight years, interest can double the amount of deficiencies in perhaps ten years, and wages can be garnished sometimes up to 25 percent under state laws such as Nevada's. Many of the states that have considered this issue have come to the conclusion that the harm to the public from these overwhelming deficiency judgments, which can be well into the tens of thousands of dollars, outweighs any real benefit that comes from allowing lenders to pursue them.

A fourth problem is that deficiency judgments lead, almost inevitably, to personal bankruptcies. If the concern is that we want to encourage debtors and borrowers to pay their debts, allowing for a collection on a kind of obligation that almost inevitably leads to bankruptcy does not really encourage the policy of promoting the payment of debts; in many ways, it has the reverse effect of encouraging a bankruptcy on all debts that the consumer has. That has a similar effect on other creditors. It can have the effect, which has been documented in a significant number of bankruptcies, of increasing credit costs for all consumers.

Related to that, deficiency judgments can have the effect of taking income out of a particular community, out of local communities, where that income would have been used to pay local creditors and comply with local obligations, and, instead, channeling a great deal of that income to pay deficiency debts to more distant creditors, to investors in mortgage-backed securities and investments of that nature.

Other concerns about deficiency judgments have focused on the basic unfairness of them. For example, in Nevada you have the neighboring states of California, Arizona, and Oregon where the whole issue of deficiency judgments for homeowners will not come up. The residents of Nevada, because of the nature of state law at this time, are likely to be faced with a choice, if they are foreclosed, between an overbearing debt burden and election of bankruptcy. Therefore, most states that have considered the issue have concluded that the fairest thing—where you do have declining property values as is occurring now and will likely occur again at some point in the future, where lenders are in a better position to prepare for and assess those losses, and where someone has

to bear the harm from significant declines in property values across the board in a particular region—is to have that burden imposed on lenders in terms of limiting rights to collect deficiency judgments, rather than imposing the burden on former homeowners.

Finally, a point that I think is particularly pertinent now: holding out hope that some benefit might accrue to mortgage holders from pursuing a deficiency judgment against a former homeowner in the future in many ways discourages a realistic consideration of loan modifications. The heart of loan modifications, which are being encouraged by the mortgage-lending industry and the federal government at this point, is to have the lending industry, servicers, and mortgage holders look realistically at the value of the property and make adjustments to loan obligations that are realistic based on the current value of the property. Deficiency judgments have the opposite effect of looking at inflated prices for property and attempting to put some value on speculative rights to collect that inflated amount at some point in the future. So in many ways, barring deficiency judgments from residential foreclosures is an action that would further realistic considerations of affordable loan modifications as an alternative to foreclosure in the future.

I want to comment that, to the extent that there are arguments raised along the lines that lenders would raise interest rates or impose more unfavorable loan terms in the future if deficiency judgments are barred, there simply is not any evidence to support those claims. Those claims are often raised when this issue comes up or when homeowner protections or borrower protections are advocated through legislation. I would urge the members to look with care on claims that interest rates for everyone are going to go up a specific amount if legislation along these lines passes. If studies are referred to, you will see that they do not pertain to this issue. It is extremely difficult to make comparisons from state to state based on what effect one particular piece of legislation, focused on one aspect of mortgage lending and foreclosure, is going to have on future credit terms. There has been plenty of time to study that. Many states bar deficiency judgments. The most populous state of California has barred deficiency judgments since 1872, and I would think if someone could come up with a study that showed that that has had a harmful effect on lending practices in California, it probably would have happened by now. We are not aware of any studies that have specifically shown any harm to future credit terms from the enactment of laws along these lines. To the extent that there have been studies, particularly with respect to bankruptcy modifications, they have shown that there really is not any identifiable effect from limiting creditors' rights to recover the value of the collateral, which they should have appraised and assessed when they made the loan in the first place.

Those are my basic comments, and if there are any questions, I would be happy to answer them.

**Assemblyman Segerblom:**
With respect to the states where this kind of law has been on the books for a long time, it is my understanding this would impact existing mortgages. Is there a concern that this would be some type of impairment of contract rights or that the banks would have some right to argue that this was illegal?

**Geoff Walsh:**
I was not clear, from the version of the bill that I have, whether your proposed legislation applies only prospectively or to existing contracts as well. For some reason, I was under the impression that it applied only prospectively; in that case, there is definitely not any constitutional problem at all.

**Chairman Anderson:**
Let me ask the sponsor if he wishes to respond.

**Assemblyman Conklin:**
I will go into this in my testimony, but I will respond only because Mr. Segerblom has asked about it. We are going to request that the bill be amended so it is clear that it is prospective only for loans that are entered into after the effective date, so that banks have an opportunity to reassess their risk, if necessary, to operate under a new environment. It has absolutely nothing to do with any existing contract or any contract entered into prior to the effective date of the bill. It has raised some questions, and we want to make sure that the Committee will clarify the language. It is probably a tough drafting issue, but I am sure Mr. Anthony is up to it.

**Assemblyman Cobb:**
A problem I have with the testimony is that a lot of the focus was on hardship and the idea that a lot of times individuals get into situations where they cannot pay off a deficiency judgment or they stopped making their mortgage payments. It does change a little bit now that it has been made clear that this is going to apply only prospectively, so that the banks would clearly understand the risks associated with going into a deal on a mortgage. The problem I have is that there is no requirement of a showing of hardship to be able to use this section of statute, yet those are the examples that are being used. This does not stop an individual from simply walking away from a mortgage and any associated deficiency debt. My main concern is that this is going to dry up any type of lending funds for those who otherwise would want to be in that situation and follow through and pay their debts.

**Geoff Walsh:**
What you find is that the consequence is going to be a bankruptcy case because the deficiency judgments are never going to be in amounts that are simply something that someone can pay off. They are going to be in the tens of thousands of dollars, and this bill is only pertaining to loans that were used to purchase a home. These are going to be homeowners, not business people, and, for the most part, they are not going to be speculative transactions where somebody went into them expecting to make money. These are homes that people purchased to live in. In the overwhelming majority of cases, these are not going to be loans where it is going to be affordable for anyone to pay them back, under any kind of reasonable terms, over any reasonable length of time, after they incur a deficiency judgment. That is why they end up in bankruptcy court. They are simply not the types of debts that it is likely anyone will be able to pay off, as much as we might like them to. The reality is that these are cases that are going to end up in bankruptcy court. The effects of bankruptcy are going to have a more negative effect on future credit terms for all consumers. As far as the moral obligation that we want to encourage people to pay debts back, it is actually having the reverse effect of encouraging the discharge of all debts, as opposed to entering into a transaction where it is known from the beginning that there is no personal liability and the security, the collateral, is the lender's recourse.

I understand the concern about encouraging this debt, but it just does not work that way in reality for deficiency judgments because of the nature of the debt and the budget of the individuals we are dealing with. I do not think you could set up a standard where there would have to be some type of individual determination of hardship in every case. I do not know of any legislation that has been crafted in that way, and I think it would be unworkable.

**Chairman Anderson:**
It does not appear that we will get to Assembly Bill 398 today; therefore, it will be rescheduled.

**Assemblyman Conklin:**
I just want to back up and go through my testimony, if I may. It is very brief.

**Chairman Anderson:**
Okay.

**Assemblyman Conklin:**
As has already been mentioned by Mr. Walsh, this bill bars deficiency judgments in certain circumstances. [Read from prepared remarks (Exhibit I).]

I would turn your attention, at this time, to an amendment that I have provided (Exhibit J). This is to delete lines 26 and 27 on page 2 of the bill. We feel that the piece of language is redundant. The bill is very clear without it.

The second thing, and this is not in the amendment, is that we want to make it very clear that this is prospective, for loans after the law goes into effect. No loan currently in the hopper or signed between now and passage of the bill is subject to its provisions. There are other things that are being passed in both Houses that affect current loans, primarily Assembly Bill 149, which is the Speaker's bill dealing with foreclosure law.

Mr. Chairman, just so the Committee understands, the prospective application is important, not only for contract law but also because there is a phenomenon, although it is very rare, that the industry refers to as "jingle mail." This is when a person takes the keys, drops them in the mail, sends them back to the lender, and says, "Sayonara." That is not something that happens with most people. Usually, it is somebody who has ample assets to afford the loan, but they are just walking away because they do not like the position they are in. They walk away with maybe a Hummer, a boat, and a motor home, and they go buy a house down the street at new market value. They like their neighborhood, they just do not like the investment they purchased at that given time. Changing this to apply prospectively, and making sure that it is clear, allows the banks an opportunity to assess risk in the future for those types of loans but does not allow people to get off the hook in the current environment. We believe that we have reasonably addressed that issue, and I think, hopefully, that there may be a bank or two that will come up and support the bill with that proposed amendment.

To make clear, this is designed to deal with purchased money mortgages: a primary residence where a person takes out a loan on his house, he lives in his house, and he does not refinance. Refinancing disqualifies him for this because he is assuming that there is a risk associated with his house—he recognizes that the value of the house can go up, which means he also recognizes that the value can go down. He is willing to accept that in the refinance.

**Assemblyman Hambrick:**
Do you have any historical, empirical data looking at the Denver or Houston examples, where, in the past 10 to 15 years, they went through a horrendous time and had a lot of "jingle mail" in those communities? Do you know if these communities or states have adopted the anti-deficiency judgment perspective, and, if so, has it affected their recovery efforts?

**Assemblyman Conklin:**
I would ask Mr. Walsh. He may know about those states. I am not sure how much "jingle mail" there was in Houston, because the state of Texas has a no-cash-out policy where you cannot borrow more than 80 percent of the house's value on a second loan. The state of Texas has enjoyed far less radical growth than we have, but their housing values are far more stable in light of the current conditions nationally because of that policy. I do not know how much "jingle mail" they have received in Houston, but they have certain market conditions, which are probably far more restrictive than these from a lender's and builder's standpoint.

**Geoff Walsh:**
There has not been any anti-deficiency legislation enacted in Texas, with the exception of some unusual legislation that applies to a small segment of land installment sale contracts. I do not think that is relevant. The answer would be, no.

**Assemblyman Segerblom:**
I want to commend Mr. Conklin for bringing this legislation, although I would have preferred that this legislation be retroactive. Is there any way we can put that back in or is that a nonstarter?

**Assemblyman Conklin:**
I would think that is a nonstarter for a variety of reasons. I would prefer that it go with the amendment I requested.

**George Ross, Snell & Wilmer Law Offices, Las Vegas, Nevada, representing Bank of America:**
With the amendment making this bill apply only to prospective loans, Bank of America supports the bill.

**Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada:**
To echo Mr. Ross, having talked with Mr. Conklin this morning, with his prospective-only amendment, we are in support of the bill.

**Chairman Anderson:**
Without it, you feel it creates an undue burden on the banking industry even though they have been able to do it in our neighboring state to the west for the last 100 years?

**Bill Uffelman:**
I suspect that, given California's state of affairs for the last 100 years, folks grew up with it that way; Nevada grew up a different way. Our concerns include the impairment of contracts and other issues that were raised, for example, the "jingle mail." There are folks in my neighborhood in Summerlin who have gone down the street, have a new house, and have now returned keys, and issues like that. Those are the very issues, as were raised, that we object to.

**Assemblyman Carpenter:**
In the handout that we have (Exhibit H), it says, "Unlike many states, Nevada does not provide for a statutory right to reinstate a defaulted mortgage up to the time of sale." I know in Nevada we mostly use—at least in my area—deeds of trust. Is that statement correct that sometime during the process, everything becomes due and payable? Do you know?

**Bill Uffelman:**
As I understand the process in Nevada, with the deeds of trust and the like, literally until the moment of the sale you have the ability to fix it. Obviously, it requires getting the attention of the trustee to be able to make that happen. Given the whole process—from the time of filing of the notice of default, through the 21-day notice of sale, right up to the moment of sale, when it could be withdrawn from sale, a satisfactory arrangement between the mortgage holder and the borrower could be worked out—the statement in the handout I think is somewhat wrong relative to Nevada.

**Assemblyman Carpenter:**
Maybe we will have our legal staff check that. I always believed that too, that if you paid the amount in arrears, the sale stopped. Maybe we need to check that.

**Chairman Anderson:**
Mr. Anthony, is there a question for Legal?

**Nick Anthony, Committee Counsel:**
I did consult with another attorney in the office, and just based on quick, preliminary research, it does not look like there is a statutory right in state law. I think it might be a matter of the practice of the lender, and certainly the lender could make that arrangement up until the time of sale, if the defaulting party wishes to cure.

**Assemblyman Carpenter:**
I think that is very important that you be allowed to stop that sale if you bring the deed of trust current. Maybe we could discuss it a little more.

**Michelle Johnson, President and Chief Executive Officer, Consumer Credit Counseling Service, Las Vegas, Nevada**
We are a not-for-profit organization serving consumers throughout the State of Nevada for more than 37 years. We are also approved by the U.S. Department of Housing and Urban Development (HUD) to provide comprehensive housing counseling services, which we have been doing since October 1990. We have eight physical locations throughout the state, in rural, suburban, and urban areas. Ours is the only organization in Nevada providing face-to-face housing counseling and education services throughout the state.

As we are all aware, Nevada is now, and will continue, facing a crisis with regard to housing which will last much longer than most of the country, as we have been disproportionately affected given the huge growth experienced in the past five years. Most Nevadans who purchased their home between 2004 and 2007 have suffered a loss in the value of their home averaging 50 percent or more.

**Chairman Anderson:**
Ms. Johnson, let me make this easier on you. We will take your three-page written statement and make it a part of the record (Exhibit K).

**Michelle Johnson:**
Since you have received the testimony, the only fault that I can see with A.B. 471 is that it cannot be made retroactive. I will take Assemblyman Conklin's words that A.B. 149 will address those issues as a good thing. I would welcome any questions anyone might have.

**David Huston, Legal Aid Center of Southern Nevada, Las Vegas, Nevada:**
I have prepared written testimony for the Committee (Exhibit L). I would ask that it simply be made a part of the record.

**Chairman Anderson:**
It will.

**David Huston:**
With respect to the Assemblyman's question about whether there is a time after which you cannot, as a matter of statute, bring the mortgage current, the answer is yes, there is such a limitation. After 35 days, according to *Nevada Revised Statutes* (NRS) 107.080 you cannot bring it current. That is

for the private right of foreclosure. Of course, if you agree with your lender, you could bring it current. The statute says that after 35 days it is all due and payable.

I have worked on both sides of these issues. I have been practicing law here in southern Nevada for 30 years. I have had a lot of experience with NRS 40.455, and its fair market value qualifying sections. Basically, there was not much use of that statute for most of those 30 years. It is only in the last three years that market values have plummeted and homeowners are now at risk; whereas in previous years there really was no reason for lenders to file a lawsuit under NRS 40.455 because they would have to show that the fair market value was exceeded by the debt. That was something that normally was not happening for 27 of those 30 years.

Now, we have an avalanche of under-water properties. The last witness testified that more than 50 percent of the properties in Las Vegas are underwater. I would join Assemblyman Segerblom's comment that, if there is a way to see about making this statute retroactive, it would be extremely helpful. I am available for your questions, and thank you for your time and attention.

**Chairman Anderson:**
Unfortunately, Mr. Huston, we will not have an opportunity to review either your or Ms. Johnson's writing in the short two seconds we have left.

Anybody else feel compelled to get their information on the record? [There were none.]

We will see if we can put this bill into the work session. We will also look into amending the effective date so it goes into effect immediately on passage and approval.

I close the hearing on A.B. 471. Are there any more suggestions for amendments? Mr. Carpenter is waiting for an explanation on some issues.

**Assemblyman Segerblom:**
I have asked Legal to research the question of whether we could make this bill retroactive.

**Chairman Anderson:**
Okay.

**Assemblyman Cobb:**
I request that Legal also examine the possibility of requiring a showing of hardship to qualify for the provisions of the bill.

**Chairman Anderson:**
Mr. Cobb is looking to determine if any other states require a showing of hardship.

[Discussed Committee business.]

With that, we are adjourned [at 11:09 a.m.].

RESPECTFULLY SUBMITTED:

_____
Sean McDonald
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

## EXHIBITS

**Committee Name: Committee on Judiciary**

**Date: March 27, 2009 Time of Meeting: 8:17 a.m.**

| Bill | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda. |
| | B | | Attendance roster. |
| A.B. 218 | C | John Piro | Written testimony. |
| A.B. 218 | D | Leslie Niño Fidance | Written testimony. |
| A.B. 388 | E | Robert Faiss | Written testimony. |
| A.B. 388 | F | Lee Amaitis | Written testimony. |
| A.B. 388 | G | Alfredo Alonso | Proposed amendment. |
| A.B. 471 | H | Geoff Walsh | Written testimony. |
| A.B. 471 | I | Assemblyman Marcus Conklin | Prepared remarks. |
| A.B. 471 | J | Assemblyman Marcus Conklin | Proposed amendment. |
| A.B. 471 | K | Michelle Johnson | Written testimony. |
| A.B. 471 | L | David Huston | Written testimony. |