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

Seventy-Sixth Session
February 23, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:35 p.m. on Wednesday, February 23, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/76th2011/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 Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Oceguera
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Jason M. Frierson, Clark County Assembly District No. 8

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Brenda Erdoes, Committee Counsel
Andrew Diss, Committee Manager
Jordan Grow, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Nancy Corbin, Acting Commissioner, Division of Mortgage Lending, Department of Business and Industry
Sheila E. Walther, Supervisory Examiner, Division of Mortgage Lending, Department of Business and Industry
William Uffelman, President and CEO, Nevada Bankers Association
Dian VanderWell, Mortgage Banker, Academy Mortgage Corp., Reno, Nevada
Leo Poggione, Member, Nevada Housing Alliance
Corinne Cordon, President, Capella Commercial Mortgage, Las Vegas, Nevada
Darren K. Proulx, Chief Executive Officer, NewMark Investment and Loan, Inc., Sparks, Nevada
Charles A. Mohler, President, Eagle Mortgage Company, Inc., Las Vegas, Nevada
Robert Compan, representing Farmers Insurance Group
Christian Rataj, representing National Association of Mutual Insurance Companies
Jeanette Belz, representing Property Casualty Insurers Association of America and Liberty Mutual Insurance Group
Lisa Foster, representing American Family Insurance Company and Allstate Corporation
Michael Geeser, representing AAA Nevada
James Wadhams, representing Anthem Blue Cross and Blue Shield and American Insurance Association
Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
Melissa Saragosa, Justice of the Peace, Department 4, Las Vegas Township

Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada, Las Vegas, Nevada
Bob Deale, Private Citizen, Reno, Nevada

Chair Atkinson:
[Roll was called, and a quorum was present.] We have three bills today, and we will take them in order. We will open the hearing on Assembly Bill 77.

Assembly Bill 77: Makes various changes relating to mortgage lending and related professionals. (BDR 54-481)

Nancy Corbin, Acting Commissioner, Division of Mortgage Lending, Department of Business and Industry:
I am here today to present A.B. 77, which makes various changes to mortgage lending and related professionals. The bill has three main components. The first is to bring consistency within the *Nevada Administrative Code* (NAC) under the Division's jurisdiction, which includes Chapters 645A, B, E, and F, in administrative fine amounts that the Division may impose. The second component is compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) and the Nationwide Mortgage Licensing System, which was required under the Act. The third component is compliance with the Mortgage Assistance Relief Services Rule, published by the Federal Trade Commission in December 2010. This rule does not replace Nevada's requirements but appears to be in addition to Nevada's requirements. The rule applies to those licensed under NAC Chapter 645, also known as covered service providers, loan modification consultants, and foreclosure consultants. This rule prohibits licensees from making false or misleading claims about their services and, most importantly, prohibits licensees from taking advance fees.

I want to bring to the Committee's attention that we would like to delete the fourth component of this bill, striking sections 13 through 40 pertaining to establishing guidelines and limitations for the servicing or arranging of loans in which the investor has an ownership or an investor has a beneficial interest (Exhibit C). The workshops and hearings on division regulation R091, which contains like language, were all very contentious, and the regulations were viewed as being too burdensome. It is the Division's opinion that the regulation, or any law, needs to more effectively balance consumer protection while not discouraging economic growth. We feel we need to go back to the drawing board on this issue.

Yesterday, we also decided to delete language from the bill, specifically language in section 62, subsection 1, paragraph (c) that could have been misconstrued as a fee increase. This related to agent renewal fees.

Assemblyman Conklin:
Can you please go over your requested amendment one more time? You want to delete sections 13 through 40?

Nancy Corbin:
Yes, sections 13 through 40 would be deleted with our proposed amendment (Exhibit C). All sections were pertaining to establishing the guidelines and limitations for servicing.

Assemblyman Conklin:
Can you be more specific? I know you have mentioned that there needs to be better balance between business interests and consumer protection. What specifically are you concerned about in those provisions?

Nancy Corbin:
The Division held two hearings and a workshop. The input we received from the public was that the language provided for too much regulation and would have been too burdensome. I can ask Sheila Walther to speak more about this. She was present at both hearings and the workshop.

Assemblyman Conklin:
My concern here is that someone spent an enormous amount of time drafting several pages of entirely new language. I am quite sure we rank in the top five states in the nation for mortgage lending fraud and other crimes related to mortgage lending practice. I am just curious what the specific reasons are. Are there things that can be fixed? Clearly, something needed to be fixed or those sections would not have been in the bill in the first place.

Nancy Corbin:
Yes, we did spend a lot of time drafting this regulation in this bill draft. We do not intend to abandon it, but we feel we need the time to go back and refine it in consideration of the comments we received from consumers and the industry. We intend to continue with the regulation process at our next opportunity.

Assemblyman Conklin:
So from now until the next time you are allowed to write a regulation, this will go unregulated?

Nancy Corbin:
I do not believe it will go unregulated. I think through some simple changes to some of our forms we can make some of the changes that are needed in disclosures and things of that nature. Sheila may be able to add to that as well.

Sheila E. Walther, Supervisory Examiner, Division of Mortgage Lending, Department of Business and Industry:
As Nancy indicated, we can expand current disclosure forms. We amended our regulations in 2009 to have a prescribed form by the Division in lieu of an actual written form. Some of the concerns investors had expressed were that there was no accountability, the ability to find out who the other investors were on a transaction, and getting their contact information. A lot of the brokers, for privacy reasons, were not providing that. We can address that by expanding the current disclosure form so that going into an investment, an investor can authorize that his information be released. That way, when a loan does go into default, they can talk and figure out what the best options would be. We currently have regulations related to some of the information that got into this statute. For example, the law currently says they have to report on their transactions annually to the investors; that is the only form of accountability. So this is a kind of duplicate of what is in some of our regulations.

I was present at the workshop and the hearings we held. There was a lot of pushback from the industry and others. They believed this was too burdensome. It required there be trained people to respond to complaints and that they be available at certain hours. It went a little too far. There was a lot of concern that in this market, when credit in the institutional market is so tight, there will be a reemergence of private investors to help homeowners get into homes, or to get second mortgages so they can cure their first, or to take other paths. The additional regulation would be burdensome and perhaps curtail the availability of private capital from coming into the state. There were a lot of people against this. It might be better to go back and revisit this when we are able to. The sections we are proposing to eliminate affect only mortgage brokers who do third-party servicing. We have only about ten in the state who are doing this. We have a lot of brokers who do hard money loans with private investors, but the money goes directly into escrow. In a third-party deal a title company does the servicing; they do not touch the money. There really are not too many still doing it. A lot of them are no longer in business.

Assemblywoman Kirkpatrick:
Do you have some documentation from your meetings that we could read?

Sheila Walther:
Yes, we have the minutes from our various workshops. One meeting in particular included some private investors who had experienced lack of accountability from a broker who was not responsive to them. I can provide copies of the minutes to the Committee.

Assemblywoman Kirkpatrick:
I think that would be helpful. Typically during the regulation process we get to see what some of the comments are. How do Nevada's regulations compare to regulations in other states, if we take out these sections of the bill?

Sheila Walther:
I am not an expert on other states, but I understand that Nevada is unique because we treat this as a mortgage transaction rather than a securities transaction. I can try to find that information for you. Part of what is nice about being a part of the National Licensing System is that all the regulators have weekly calls, and we can pose questions to other states taking part. I will try to find out how other states are addressing this issue.

Assemblywoman Kirkpatrick:
Can you please explain the first part of section 10? I am not sure when you would both suspend and put conditions on someone's license. Also, is the fine of $25,000 consistent with fines in other states? Where did you get that number?

Sheila Walther:
Currently in *Nevada Revised Statutes* (NRS) Chapter 645B we fine $25,000. We have tried to make all chapters that we regulate consistent as far as the fine amount. I would say that is pretty consistent with other states. I do receive administrative actions being taken by other states. We share that information and I often see fines that large and sometimes larger. I do not think we are unique in raising our fine amount to $25,000.

Assemblywoman Kirkpatrick:
Can you explain in what instance we would refuse to take an application or put conditions on it? How do you revoke and put conditions on a license?

Sheila Walther:
We could suspend it for a period of time, or we could move to take the license away. We may put conditions on a license and state specific things the licensee is not allowed to do. For example, he can do only institutional loans and not private investor loans.

Assemblywoman Kirkpatrick:
You want the ability to fine a person while also putting conditions on his license? I want to understand why you would want to do both?

Sheila Walther:
There are occasions when we want to revoke and fine the entity for what it has done. Everything is reviewed on a case-by-case basis. We want the ability to take all of these steps, or one or more of them, depending on the circumstances.

Assemblywoman Kirkpatrick:
When you review on a case-by-case basis, do you still have criteria that you follow to determine the nexus on when you would apply those?

Sheila Walther:
That is correct. We are consistent. They have a right to a hearing. We issue our intent to take action, and if there is no corrective action, we will issue our order, and it gives them 20 days to request a hearing on the matter. It is fully vetted before being invoked on the party.

Chair Atkinson:
I have a question on subsection 4 of section 6, where you want to change semiannual to annual. Further down it says, "for the 6 months immediately preceding the date on which the license expires." So when is it going to be reviewed? I am assuming you are using those days for recording purposes.

Sheila Walther:
We conduct annual examinations of all escrow agencies, and part of the scope of that exam is to analyze the adequacy of their bond. We do that by looking at the bank statements of all their trust accounts, and we average it out to see what bond trigger tier they should be in. Their licenses expire annually on June 30; the package that they send in for renewal includes copies of six months of bank statements from their trust accounts. In doing so we can ensure they have the adequate bond in place.

Chair Atkinson:
So you will be looking at it annually, but you will be going back only six months? [Ms. Walther concurred.]

Assemblyman Ellison:
I have a question regarding the $25,000 fine for each violation mentioned in subsection 2 of section 2. What was the original fine amount prior to the changes being made in this bill?

Sheila Walther:
I think that is a new section that has been added to specifically address those conducting unlicensed activity. It mirrors language we currently have in NAC Chapters 645B and 645E.

Assemblyman Ellison:
I think it is extreme to go from zero to $25,000, especially because it can be used against new people for existing mortgage companies.

Can you explain the changes made in subsection 4 of section 5?

Sheila Walther:
What has happened in the licensing section is we do a background investigation to ensure they meet prescribed standards. Unfortunately, the applicants may wait months, and sometimes up to a year, to provide the information necessary to reinstate their license. The licensing staff cannot be efficient if they have things pending for an entire year. This is also bringing consistency between the law and NAC Chapters 645B and 645E. You can only reinstate a license up to two months after it expires. We are making changes to that effect because the National Licensing System allows only a two-month reinstatement period after expiration. It is an attempt to make all our chapters consistent.

Chair Atkinson:
Is there anyone else wishing to testify in favor of A.B. 77?

William Uffelman, President and CEO, Nevada Bankers Association:
We had worked with the former Commissioner during this process, and we support the bill. I had a question and Sheila answered it for me today. I think we may need a modest change. In section 44, on page 22, lines 39 through 40, it deletes a portion of the exemption that financial institutions have under Nevada law. Certain entities are exempted from Nevada licensure because they are already registered under the S.A.F.E. Act Registry. Striking this because they might be in a subsidiary takes away the federal registry and would require them to become Nevada licensees. You either have to be registered at the federal level, registered at the state level, or licensed. At the moment they are registry eligible, and when you strike this they may not be registry eligible anymore. If we add language that says individuals registered at the federal level were still eligible through their exemption, it would keep them on the list someplace and would not force them to come to Nevada, and take a test, to become licensed in the state. The simple way would be to take out the strike through, or figure out some language for an amendment. If we do not have this exemption, then I think we need allow them more time to become licensed.

Dian VanderWell, Mortgage Banker, Academy Mortgage Corp., Reno, Nevada:
I am here in support of A.B. 77. I think it is important to license and have some regulation over construction voucher control.

Assemblywoman Kirkpatrick:
Do you support the bill in its original form or the bill as amended?

Dian VanderWell:
I support the bill as amended.

Leo Poggione, Member, Nevada Housing Alliance:
Nevada Housing Alliance is a group of manufactured home suppliers, dealers, and resellers in Nevada. We have proposed an amendment to A.B. 77 (Exhibit D). We would like to take out the bricks and mortar requirement for financial institutions in Nevada, located in subsection 5 of section 75. Currently as an industry we are suffering beyond description. We cannot seem to find any lenders that will come to Nevada and lend on our product anymore. Part of the problem is that there is not enough volume for them to justify setting up an office here in Nevada. Lifting this requirement would definitely help our industry and also consumers with the resale value of their homes. Right now there are two or three lenders in Nevada with actual offices located here that will lend on the manufactured home product.

Chair Atkinson:
Are you referring to new language or old language?

Leo Poggione:
There is old language that we would like to remove; it says, "if the applicant or a subsidiary or affiliate of the applicant has a license issued pursuant to this chapter for an office or other place of business located in this State." That is the portion that requires the bricks and mortar, and we cannot seem to be able to get anyone to come into the state and set up an office. The consumers and dealers of manufactured housing desperately need more financing choices. For example there is a Warren Buffett company called 21st Mortgage, and they would come tomorrow if we lifted this requirement. They offer a wider variety of products for prime and subprime lending. It is a very niche product. There are not a lot of lenders across the country, but there are even fewer that will serve Nevada. I believe there are less than ten states in the U.S. that still have this bricks and mortar requirement.

Chair Atkinson:
I am having a problem with this. Have you had the opportunity to talk to the Division of Mortgage Lending to see what this may do to their bill?

Leo Poggione:
I know we had attempted to reach out to them, but it was during the departure of the former Commissioner of that Division. I am not sure what conversations have gone on since Ms. Corbin has taken over as Acting Commissioner.

Corinne Cordon, President, Capella Commercial Mortgage, Las Vegas, Nevada:
First of all, with the Mortgage Lending Division you can have a home-based business. So you do not have to have bricks and mortar per se to be a broker. It is my understanding that there is no requirement for a broker or a wholesale lender to have a bricks and mortar location in Nevada to operate here.

Nancy Corbin:
We do have a way a broker can maintain a home-based business. I believe we have had that in effect for the last two years. It is my understanding that a wholesale lender does not have to maintain a bricks and mortar office within the state.

Sheila Walther:
That is correct. The regulations prescribe that an entity which is merely providing a funding source for a loan that has been originated by a licensed Nevada broker does not need to be licensed. In that situation they are not triggering any licensing requirement. As long as the entity is not originating the loan, it does not need to be licensed, and therefore does not have to have an office here in Nevada. It is only the point of origination that triggers the license requirement.

Leo Poggione:
There may be some bad information out there. I have been in contact with 21st Mortgage on a weekly basis, and they have been told by the Mortgage Lending Division they need to get licensed.

Chair Atkinson:
We will not be taking action on this bill today, so we can check on that information before we bring the bill back to the Committee.

Darren K. Proulx, Chief Executive Officer, NewMark Investment and Loan, Inc., Sparks, Nevada:
I am newly licensed in the equity lending business through the Mortgage Lending Division. It was a long, grueling process that took about eight months.

I am pleased to see the elimination of sections 13 through 40; they are overbearing and burdensome. It is private capital that is going to pull Nevada out of its construction troubles. A construction loan or loans from banks are very difficult to obtain. Either the borrower is not creditworthy or the property has issues, and you cannot get funding right now. In the last downturn I started building houses, but it was only through private capital that I could obtain construction loans.

Corinne Cordon:
I am in favor of this bill. I have read the bill in its entirety, and I also support sections 13 through 40. I think there may be a few clarifications necessary, but overall I believe it is a very good bill.

Chair Atkinson:
Are you saying you would like to see sections 13 through 40 remain in the bill?

Corrine Cordon:
I do. I think they are very good. There are some logistical problems with those sections. I believe it would be to everyone's benefit to work out the problems with those sections rather than to totally eliminate them.

Chair Atkinson:
We will move to the opposition. Is there anyone wishing to testify?

Charles A. Mohler, President, Eagle Mortgage Company, Inc., Las Vegas, Nevada:
I have some concerns with the bill as written. If this bill is going to go into a work session, I would be happy to work with the Committee and the Commissioner. The bill proposes to eliminate subsection 7 of section 44, and I do not believe that should be removed. This is an exemption from licensing, where if an investor loans out his own money and does not assign it out to anyone else, he does not need to run it through a mortgage broker. So with commercial properties, this paragraph allows an investor to do that on his own.

Sheila Walther:
Mr. Mohler, I can see your point on the commercial transactions. The reason this was stricken was to bring our law consistent with the S.A.F.E. Act, which does not include exclusion for a natural person lending his own money on residential loans unless it is his own home, or someone is negotiating it on his behalf. I can see Mr. Mohler's point, and having an exemption that qualifies it to a commercial transaction with that limit might be something to discuss.

Charles Mohler:
My next concern is section 49, subsection 6. Currently there is a requirement that companies be bonded, and if there is an issue with the company, the consumer is protected and can receive money from the Residential Recovery Fund. The way I read this section is that it would allow the Commissioner or the State to go after those bond funds with priority over the consumer. My belief is that the bonding was for the benefit of the consumer, not for the state.

Section 89 tries to put the Mortgage Lending Division over construction control services. My understanding is that there already are construction control laws. More may be needed, but one little section will not do everything that needs to be done there. I question whether the Mortgage Lending Division has the resources or capabilities to take on an entire other industry.

Chair Atkinson:
Did you approach the Mortgage Lending Division with your concerns prior to our meeting today?

Charles Mohler:
We had some discussions with the Commissioner prior to his departure from the Division.

Chair Atkinson:
Did you make an attempt to speak with the new Acting Commissioner?

Charles Mohler:
No, I have not within the last week.

Sheila Walther:
Nevada Revised Statutes Chapter 627 outlines the dos and don'ts of managing construction control, and it does place a bond with the State Contractors' Board, but there is no direct regulation or financial accountability. These loans take lots of money. Private investor loans can be millions of dollars, and they are earmarked for construction and placed with companies that have very small bonds, sometimes as little as $10,000. There is really no direct oversight, regulation, or examination of these companies. Last session there was a bill to require these types of companies to become escrow agencies. They did not feel they should be included in that because it is a different business, but they were agreeable to have a licensing structure and saw the need for that at that time.

Nancy Corbin:
I would like to comment on Mr. Mohler's statement regarding section 49, subsection 6. The language added in the bill says, "The Commissioner may make a claim on a bond for money owed to the Commissioner upon entry of a final order." Yes, the consumer's interest would come first, but we have had many cases where there have been no consumer demands on the bond and, through the course of our investigations and examinations, the Division incurs thousands of dollars of expenses that go unpaid. This was simply an effort to reclaim some of those dollars owed to us.

[Janet Baldwin submitted a letter in support of the bill (Exhibit E). Todd V. Andersen, the owner of White Knight Manufactured and Mobile Home Sales, submitted a letter of support for the bill (Exhibit F).]

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else neutral who wishes to testify? [There was no response.] We will close the hearing on Assembly Bill 77. I would like to hand the meeting over to Vice Chair Conklin because I am the sponsor of the next bill.

Vice Chair Conklin:
We will open the hearing on Assembly Bill 155.

Assembly Bill 155: Revises provisions relating to changes in rates of certain insurance. (BDR 57-727)

Robert Compan, representing Farmers Insurance Group:
I thank Chair Atkinson for accepting this enormous challenge, which is a bill that has been introduced in this legislative body several times. Members of the Committee may remember this bill from 2003 and especially 2005. We would like the industry to progress with the times. Assembly Bill 155 provides that an insurer may file with the Commissioner of Insurance a proposal to increase or decrease a rate of property and casualty insurance. We wanted to make sure that this is strictly for property and casualty insurance and not for any other lines of insurance. The rate increase would be no more than 7 percent and would become effective upon filing.

Currently Nevada uses an outdated prior approval rating system for property and casualty insurance rates. Enactment of A.B. 155 will benefit Nevada consumers by encouraging more insurers to enter the market, thus enhancing competition. According to the Insurance Information Institute, a flex-rating system allows insurers to respond quickly to loss trends and other market conditions. Research has suggested that in states which use a flex-rating

system, insurance rates actually decline. Passage of A.B. 155 would be the next logical step to see that Nevada property and casualty insurance markets remain healthy and competitive. Passage of this bill will send a strong message in Nevada that we can improve and modernize our state's insurance regulation. Over the past eight years over 20 states have adopted some form of regulatory modernization, moving away from the strict prior approval law like we have in Nevada. Upon enactment of this legislation Nevada will become one of those states to implement modernization, including but not limited to New York, which just recently reinstated a flex rating after its legislature initiated it with a sunset clause. Currently there are 19 states that have some sort of use-and-file system—eight of those in property and casualty lines—allowing rates to be implemented without prior regulatory approval. There are 26 states, including Nevada, that have eliminated all rate filing requirements for some businesses, such as large commercial risks. Now Nevada is one of the most competitive commercial markets in the country.

Last session we sat in front of this Committee with the Commissioner of Insurance at our side and supported an enterprise funding bill. At that time the Division of Insurance was in jeopardy of losing accreditation with the National Association of Insurance Commissioners (NAIC), which would have been very detrimental to the state. With the support of the administration at that time, we were able to get fees from the insurance companies into statute. That allowed the Insurance Division to perform its daily operations without having to close down, which would have been the case had it lost its NAIC accreditation. We are looking at this bill as government efficiency. It is time to move forward with some kind of modernization in Nevada.

I have offered the Committee an amendment (Exhibit G) regarding some concerns the Commissioner had. We have found out the Commissioner still has some concerns regarding a possible fiscal note, that there would be no filing fees associated with this; I think it was along the lines of $35,000. It is not our intention to not have filing fees. We have every intention to still have filing fees with this rate action, so, therefore, there would not be a fiscal note attached to it.

I would like to point out that I have submitted the National Conference of Insurance Legislators' (NCOIL) model for flex rating (Exhibit H). This is a body that is made up of lawmakers of every state, and I believe Nevada participates in it. They actually drafted this model act in March 6, 2004. It has proven to be pretty successful in the states where it has been introduced. One thing we noted with the Commissioner in section 1 of the bill, along with the amendment I offered on section 8, subsection 3 (Exhibit G), was a clarity issue regarding whether the Commissioner shall or shall not require the insurance company to

file the action; we changed that to the Commission shall. Under section 1 the prior language said the insurer "may," and we would like to work with the Legislative Counsel Bureau to rectify that if it is a concern.

The Commissioner has done a great job of working with his division on the deemer provision. The deemer is basically if we file rate action with the Division of Insurance, the Division has 60 days to follow up on that rate action, to approve or deny it. If the Division does not take action, it is deemed approved. On a conference call I held with a majority of the major insurance companies here in Nevada, they said they are getting questions within the deemer period. Usually within 50 or 52 days they receive questions and then the period is extended. If I am asking for a rate, I am trying to anticipate what the market is going to be like in three months, six months, or a year from now. It is very difficult to anticipate the market when I do not know what the Commissioner will approve. Especially when it can take up to a year to be approved, I have to try to anticipate further out. Then I have to notify our customers of our intent to raise our rates so the customers have an opportunity to shop around in the competitive market. With program needs the way they are and without knowing what your rate is, and the deemer period being extended by months, you really do not know. So you are looking at six months or sometimes up to a year and half before you can notify your customers. Because you are not getting speed to market for your consumers, the sticker shock can be just incredible.

I know the Commissioner has provided you with a report (Exhibit I). I have a copy of it from his website, and he outlines the different rate actions taken by the top five insurance companies taken over the last three years. In 2008, things kind of hit the fan, and Nevada insurance companies were scrambling to get profitable as insurers and consumers were leaving the state. In auto and homeowner's insurance you saw rate increases upwards of 7 and 8 percent. Since then the market has come down. Looking at the automobile rate change for the top five companies, I note that Farmers Insurance Exchange on February 15, 2010, actually asked for a 3 percent decrease in our auto insurance. With that in mind I think it is going to be a benefit to your constituents to pass this legislation. I am willing to address the concerns of the Insurance Division and my peers so that we are able to get speed to market, give less sticker shock to Nevada consumers, and make it a healthy and competitive market for Nevada consumers.

Vice Chair Conklin:
Are there any questions from the Committee?

Assemblyman Goedhart:
You said that there are similar structures in other states where they give you that range, whether it is 5 or 7 percent higher or lower, where they do not have to have a specific rate request. How does that work for states that already have this model of flex-band rating?

Robert Compan:
Yes, that is the case. I would like to ask Christian Rataj, who represents the National Association of Mutual Insurance Companies, to answer that question.

Christian Rataj, representing National Association of Mutual Insurance Companies:
There are seven states that have flex-rating regulation systems. Of those seven states it is interesting to note two particular states, New York and Connecticut. New York had a flex-rating system and let it sunset in 2001. An extensive study was done by a financial services modernization committee to see if they should reevaluate rate modernization, since it is the trend. After an exhaustive study they concluded that it was needed. Subsequently, legislation was introduced and later passed. That legislation continues today, to the benefit of insurance consumers, and there have not been any problems. In that state you can have a plus or minus 5 percent adjustment twice a year.

Another state to consider is Connecticut, which has adopted a flex-rating system. They added a sunset provision and, after legislative consideration, keep renewing it. In 2006, it was approved by the legislature and went into effect in 2007 and was sunset in 2009. The bipartisan legislature in Connecticut agreed that two goals are very important in the U.S. economy. One is market competition and the other is consumer protection; this bill has both. In 2009 the law was continued until 2011, and there is pending legislation to once again extend it.

In Kansas, in 2008, they adopted the NCOIL model. This full model has a 12 percent range. I have been told by my colleagues that it seems to be working well and there have not been any problems or consumer outcry against it. It seems to be working well because it promotes competition.

Assemblywoman Carlton:
I learned this issue in 1999. It was explained to me that a zero percent increase means, to our constituents, that the rate can go up on one end of the spectrum by 5 percent and down on the other end 5 percent, but because those match it is considered zero. So someone's insurance goes up while another person's goes down, and we find the middle at zero. Am I correct?

Robert Compan:
Yes, you are.

Assemblywoman Carlton:
Can you elaborate on a 7 percent flex rating? I ask because zero percent gives me concern and this bill would allow 7 percent.

Robert Compan:
Any actuarial rate filing, and we have filed several with the Division of Insurance, is going to affect different spectrums and classes of insurance. So a zero or neutral rate filling can mean a percentage will be raised on some and lowered on others. But this is still going to be the same, whether we do it through prior approval or by flex-band rating. It has to do with how incremental the rate changes would be. According to this bill, this would happen only one time a year. Trends show that Nevada right now is a stable market.

Assemblywoman Carlton:
I want the new Committee members who have not had discussions about this particular issue to realize that they could have one constituent whose insurance goes down and another whose insurance goes up. So it is not something that is equitably applied across the board within your district. There already is a lot of flexibility available. As far as the NCOIL comments, all states are considered members, but if you are not a contributing member, your state does not get to vote. Nevada does not contribute because we are fiscally unable to, so even though I go to a number of the meetings, I am required to sit in the audience and I am not allowed to participate in the meetings.

My concerns are that we already have a system. One of a family's biggest bills is car insurance. If a person shops around for insurance, he or she can do well. I am concerned about the insurance companies not having to go to the regulator, who is tasked with protecting the consumers in this state, making sure that they are getting the most beneficial rate they can, and being their advocate. It takes a lot to understand car insurance, because it is difficult to read the policies. It is an expensive proposition. In the past I have been opposed to this because Nevada has an Insurance Commissioner for a reason. He is there to protect the consumers. He works for us, and the insurance companies do not. You are profiting off of us. I understand that. We want the insurance companies to make money, because then hopefully you will decrease your rates, but there is no guarantee if you are not regulated.

Robert Compan:
It has been proven that states that have implemented this model have seen their rates go down. Our customers are paramount to us; they are our constituents.

A competitive market is a healthy market and is good for Nevada consumers, and your rates will go down. If you have a healthy, competitive market, less any catastrophic laws or regulations that overburden insurance companies, it is better for consumers. It is like letting your children go out; if you tell them they have to be home by midnight, they may come home earlier. We are saying that we have been crawling for a while, but we are ready to walk, so give us a chance. If it was the desire of the Committee to pass this bill with a sunset provision on it, I would support it. I do not want to sit in front of this Committee again in two years and lose my credibility on something I have asked the Chairman to sponsor and then have to try to explain what happened. I may as well look for another job. That is how passionate I am about this legislation. I am putting my reputation on the line here; all I can give you is my word.

Assemblyman Segerblom:
Has the Insurance Commissioner ever rejected a rate increase?

Robert Compan:
The Insurance Commissioner rejected one of Farmers Insurance's proposed rate increases back in 1991, when we were extremely unprofitable. The rejection resulted in us suspending writing auto insurance in Nevada because we were bleeding financially. We had a moratorium of six months before the Commissioner agreed to give us the rate increase that we needed.

Assemblywoman Bustamante Adams:
In the article about the New York flex-rating system that you submitted (Exhibit J) it shows the flex rate there at 5 percent. Why are you proposing a 7 percent flex rate?

Robert Compan:
The NCOIL model is 12 percent, and different states have come up with different figures. In 2003, when this legislation nearly passed, it was negotiated at 7 percent. We thought, as an industry, for the members on the Committee who have been here awhile and knew the legislation from 2003, it would be easiest to keep it at 7 percent.

Assemblyman Hickey:
It seems my colleague made your point in that consumers, by shopping around, are out to find the best price. I believe in market forces rather than regulations, although there are necessary protections here. Consumers can find good prices and it probably will affect the ones that Farmers charge.

Robert Compan:
Absolutely. I would like to pass this over to Mr. Rataj because he has more experience on how this issue has affected other states.

Vice Chair Conklin:
As far as I am aware there are seven states that have flex-band rating, but my seven states are different from yours. I have Alaska, North Dakota, Kentucky, South Carolina, New Jersey, Rhode Island, and Connecticut. I also have their average flex-band rate being between 5 and 10 percent. Flex rating in those states is relatively new, with the exception of South Carolina.

Some states do not apply flex rating to automotive insurance, but rather to homeowner's insurance. There is also the curious case of Louisiana, which took up the issue of flex rating at the same time we did. In 2005, when this issue came back to the Nevada Legislature, Louisiana was one of the states we looked to for data. What was in Louisiana's experience that caused them to rescind their flex-rating action? I am using this example because in other states this provision was sunset, but in Louisiana they passed it without a sunset provision and then it was later rescinded. I was wondering if you had some data as to why they took that action.

Not every market is the same. New York is a big state with lots of people and cars. Nevada is a big state with two major cities and a lot of rural territory. What impact does that have in the determination of how flex rating will behave?

From a policymaker standpoint our system is relatively stable. That stability has the benefit of allowing our insurance premium tax, which is a General Fund source for Nevada, to be the single most stable source we have in our system. If we allow the market a little bit more free-flowing space to change those rates, what do you think we as policymakers need to consider about how that State General Fund source may increase in volatility?

Christian Rataj:
First, I will answer your question about the Louisiana experience. I think what happened in Louisiana strengthens our position. They went to greater rate modernization by going to a file-and-use system. It actually expanded the rate endorsed. If you look at the range of rate modernization, flex rating is kind of the baby step because it applies only to this initial small band of incremental increases and decreases. So the Louisiana experience is consistent and supportive of our position that the way to go is rate modernization. There are 40 states that have some form of rate modernization. The prior approval system used in Nevada is not only the exception, but it is a regulatory relic of the period before state and federal antitrust laws. It was designed to require

some oversight so there would be competition. As all these laws came into effect and competition took over; it became a burden. It does not help competition; it actually hinders it. I think the Louisiana experience is helpful to consider for support of rate modernization.

It is also helpful to look at Georgia, which is a state that has moved towards rate modernization. In 2008, their commissioner, John Oxendine, came out against it at first, but after all the discussion he supported it. It was signed by Governor Sonny Perdue, who claimed to be very consumer-oriented; he believed it was better to let competition control these rates. It makes sense that the more competition there is, the more players there are, and the more price points and options there are for consumers. It works for large and small states. In Kansas they have the NCOIL's 12 percent up or down approach.

I am not an expert when it comes to taxes. One thing to consider about premium tax, which is a huge source of revenue for most states, is that rate modernization helps you protect it in this state. There has been talk about taking more control of the regulation of the property/casualty insurance industry in Washington, D.C. The National Association of Mutual Insurance Companies is opposed to federal regulation. We believe regulation should remain at the state level, where it historically has been, and where it can appropriately address the needs of constituents in a timely fashion. One of our big concerns about some type of federal regulation was, where would the premium tax go? It would go to the federal government. To protect premium tax, rate modernization makes sense because it is one of the arguments I see thrown up against my association all the time. There are ten outlier states that have a prior approval system and do not promote competition. These states are often cited for reasons why the federal government needs to take over regulation. I want to see Nevada do what needs to be done to protect state regulation of insurance and to protect premium taxes. In terms of how flex rating would affect the calculation and collection of the premium tax, I really do not know; it is beyond my expertise.

I would like to look at the South Carolina experience. The National Association of Insurance Commissioners looked at what happened in South Carolina from 1997 to 2001, the first four years of implementation. They went from having 83 property and casualty writers to 150, which is an 82 percent increase. I am not saying that will be the same increase you will see in Nevada, or anything like that. This is a very considerable outcome. I have 1,400 member companies that are a part of my association, and when they are thinking of entering a new state they ask me about its regulatory and legislative schemes. A state with rate regulation modernization and regulatory efficiency is very helpful and encourages carriers to come here. When carriers come here, they

increase premium tax. They also bring employees, which mean all kinds of additional taxes and contributions to the economy. I cannot see how a rate regulation modernization approach would be detrimental in any way.

I would like to answer Assemblywoman Carlton's question about regulatory oversight. The National Conference of Insurance Legislators model, like this proposal, specifically states that there is regulatory oversight. My association wants it; I do not know anyone who does not want regulatory oversight. What we do not want is regulatory oversight that is not cost-effective and creates unreasonable burdens that drive up costs for consumers or delay speed to market. Consumers benefit from having the products out there. I do not just mean out there quickly; I mean new products. When you have a regulatory regime that makes it difficult for insurers to get rates approved in a timely manner, they do not introduce new products; it takes time to determine the appropriate pricing, because it is risk-based. Companies need some time to figure out how to adjust pricing, as with any product. There is clearly competition when you can get products out there, and consumers want products because there are new insurance needs every day. Rate modernization allows insurers to respond more quickly to the public's ever-changing needs and to environmental changes in the economy. So there is regulatory oversight there.

The second part of my response is that 40 states have some type of rate modernization. Those states all consider themselves to be very consumer-oriented and concerned about oversight. We are not trying to restrict oversight. We are just trying to put it in its proper place, so that it is balanced in response to the needs of the consumer, who is getting a product quickly and inexpensively. I have only one commonality among the 1,400 members of my association: they all want to take business from the other. So if you can make it so they can adjust their rates more quickly, they can do that. They can try to take advantage of some of their marketing approaches, to say, hey, I am going to take that broker's insurance policyholder and make him mine. I think that is beneficial to the consumer.

Assemblywoman Carlton:
Yes, I will admit there is a regulatory component, but the rate will be looked at after you have sent the bill to the customer. The current scheme is that the rate change is looked at before the customer receives his bill. So there is a significant difference in when the regulation happens. Is that correct?

Christian Rataj:
Yes. As a company, when you are making a decision to roll out a new product or adjust your rates, you do not want to fail; it is very expensive to fail. So you

make these decisions with the mindset that you have legitimate justification that will pass review. You do not want to have to undo things. We all know in life it is easier and cheaper to prevent than to remedy, so carriers are going to be very judicious in their decisions. The information from New York and Connecticut so far is that some have been surprised by how little activity there has been on the part of insurers using flex rating. I appreciate your concern. I think it is a pragmatic one for this Committee to consider and for me to address, but I do not see that problem.

In response to Assemblywoman Bustamante Adams, and her question about New York, they allow for a 10 percent rate change, because it is 5 percent twice a year. Connecticut allows 6 percent, Kansas allows a rate change of 12 percent, and the proposal here is 7 percent once a year.

I want to follow up on a couple of points that I think will answer some questions. There was a question about what the proposal could do to rates. Clearly no one will go on record saying it is going to do X or Y. First of all, we could not because of antitrust reasons; we want competition. In 2003, the NAIC looked at it and concluded that states with a prior approval system have a 10.7 percent higher rate on average. I think that is because the more companies you have offering policies, the more you will see some insurer saying, I am willing to write that risk at this rate because I believe I can make it work for my business. I am pleased to be here to support A.B. 155 because it is pro-competition and pro-consumer.

Jeanette Belz, representing Property Casualty Insurers Association of America and Liberty Mutual Insurance Group:
There is not much I can add that has not already been said. We are in support and have submitted a letter of support on behalf of Property Casualty Insurers Association of America (Exhibit K) because the bill really does allow insurers flexibility and promotes competitive market conditions. We also submitted an analysis of property and casualty insurance rate regulatory laws (Exhibit L). Yesterday I took the liberty of highlighting some items in yellow that I think are important and relevant. There is information about New York and its experience with flex rating, which I think is very useful. It shows how the number of insurers increased and how the rates were stable during that period of time. Also in the back, for some of the new members, there is a glossary of some of the terms we have been throwing around.

Vice Chair Conklin:
Is there a comprehensive rate study done comparing flex-rating states with non-flex-rating states?

Robert Compan:
I do not believe so.

Christian Rataj:
The difficulty in doing such a study is that rates are multivariate. There are so many aspects that go into it: the type of rate regulation system in place, tort laws, and nature of the exposure for perils. It is very difficult to analyze, and that is why you do not see studies categorically comparing apples to apples, because it is impossible to judge. I think the proof is that the states with flex rating are continuing it and renewing it. More states are moving toward flex rating. States are not moving in the opposite direction to a prior approval system. They are modernizing, because it makes sense to the consumer and to the regulators. We want regulators to look at solvency and market conduct, and make sure the insurers are doing what they should do. Let them allocate their resources toward the things that really impact consumers. Let pricing be determined by competition.

Vice Chair Conklin:
I am very familiar with the multivariate model, so I can appreciate that fact. It is curious, though, that states are continuing it without having the ability to understand what the impact truly is.

In the early 2000s, a serious concern was that such a band rating would provide an insurer the ability to mask classification practices, ratings, and price increases because the only thing we would be concerned with is the aggregate band change. For example, you could have a zero rate change, but there could be a group of people who had a 25 percent rate increase and another who had their rate decreased by 25 percent, and it would still be within the band even though the changes were substantial. What protection do we have in this bill that no one consumer sees a rate increase that is exorbitant?

Robert Compan:
There is no real guarantee that rate increases will not be exorbitant. I can guarantee there will be speed to market with this bill. I believe the increases will be minimal compared to the increases taken when we have to anticipate what the market will look like a year and half in advance. That would cause more sticker shock to the consumer than what is proposed under this bill.

Vice Chair Conklin:
I am not sure I follow you. Under this bill, because it uses the term "aggregate," the scenario I propose is a possibility. It does make practical sense based on the testimony of you and Mr. Rataj. This is an important issue to some people. Part of the reason you have emerging market competition is

because people will specialize. This will allow them to do so. I can say there is a certain group that is better for my business model than another group. So I am going to lower the rate for the group that is better for my business model, and I am going to raise the rate for those who are not. Coincidentally, the customers who see their rates increase are going to go elsewhere to get a better rate. Then, I become a more profitable company, even though I might be slightly smaller, because I am rid of a certain portion of my risk pool. The concern is that there are going to be some people in that risk pool who are too risky. We already have a problem, particularly with automobiles, with drivers without insurance. I believe there is a bill being considered that would set up a fund or specialty market for those high-risk classifications. So we know that problem already exists. I am curious what has been the experience in other states. Is it entirely necessary that the term "aggregate" be a part of the bill? Does the band have to be 7 percent plus or minus, and is that all a rate can be adjusted? Over time you will still be able to get where you want to go. It is just going to take longer because you can file only once a year. So the insurers might make smaller moves.

Robert Compan:
Looking at niche markets, my company, Farmers Insurance, acquired another firm, Bristol West Insurance, a niche market, high-risk insurance rating company, and we are profitable with that company. We put forth very competitive insurance plans for drivers with DUIs (driving under the influence), risky drivers, and youthful drivers. The language of this bill is going to provide more carriers for that type of niche market to come in and address the youthful drivers and the drivers who do not typically fit in. I agree with you; some companies will use the language to carve out niches in the market. My point is that these companies are doing this now. They do not need A.B. 155 to carve out niches for the segment of the market that they want to market to. That is why companies like mine acquire companies that have that type of niche market and can provide that service at a competitive rate.

Vice Chair Conklin:
Mr. Compan, does Farmers Insurance Group engage in commercial insurance lines? [Mr. Compan indicated yes.] So the Committee knows, in commercial lines, what is the system that you use?

Robert Compan:
The system that is used in Nevada is a nonregulated file-and-use system.

Vice Chair Conklin:
What are our rates and competition in that system for Nevada? Do you have any figures regarding that?

Robert Compan:
I do not have any figures, but from my understanding we are extremely competitive nationwide.

Vice Chair Conklin:
I would be interested to see how we are as a state.

Robert Compan:
I think the Division of Insurance may have better information on the subject.

Assemblyman Goedhart:
There has been talk about the role of the Insurance Commissioner in determining the rates. How often do you see an automobile insurer present a rate increase and have the Commissioner deny it?

Robert Compan:
I can only speak for my company. In the last year and half our rates have been approved based on our filings. In the past we have had rates denied or cut down because the Division believed it was protecting consumers by not giving them such a large increase. As a result we were unprofitable and stopped writing business in the early 1990s. We were unprofitable up until three years ago, when we had to increase our rate by so much that we lost a lot of business because we were not competitive. We could not react to the market quickly enough. So, yes, speaking for my company, it has happened.

Assemblyman Ellison:
I am pro-business. I believe in free enterprise, and anytime you can be competitive that is what makes the system work. However, I do have a few questions. In section 1, subsection 5, paragraph (b), where it says that if a hearing is not held within 45 days, "the rate shall be deemed approved," is that language anywhere else? It seems to me if there was a problem, they could not make it in that short period of time.

The bill says that an insurer may file a proposed rate change only one time a year. Is there a special provision that would allow you to ask for a hearing to raise rates after the one allotted time?

Robert Compan:
The language regarding the hearing was model language from NCOIL. It was vetted by the Legislative Counsel Bureau. We believe that 45 days is a reasonable amount of time for the Division to act after receiving the data from the insurance company.

Basically, if you want to go outside the flex rating or after that one time per year, it is still on a prior approval system. So you would have to file it with the Division, just as we do now, and then get approval prior to taking the rate.

Upon passage of this bill we could immediately implement a 7 percent increase without a hearing with the Commissioner. The Commission would have to request a hearing from us within 45 days if it sees something in the rate filings that was not sound or it had questions about. Insurance companies are not going to want to do that, because you do not want to take one step forward and then two steps back. I think you would find that the rating would be sound.

Assemblyman Ellison:
So you can implement a 7 percent increase and then six months later ask for approval from the Insurance Division to raise those rates again? I am worried about you raising rates more than once a year.

Robert Compan:
Yes, for a second rate change within that one-year period we would have to file for prior approval with the Division of Insurance.

Assemblyman Ellison:
Are there any other checks and balances in the bill to protect the consumer?

Robert Compan:
The bill outlines the responsibilities of the insurance companies. We have to provide that data to the Division of Insurance. The Division has a Consumer Services Section, which consumers can contact if they feel there is anything wrong with their insurance policies.

Assemblyman Kite:
Although I am not currently representing or employed by any insurance company, I would like to disclose to the Committee that I have an insurance license. However, I do not believe the proposed legislation would affect me in any way.

Vice Chair Conklin:
Are there any other questions from the Committee? [There was no response.]

Robert Compan:
I know the Division of Insurance has some concerns that the amendment did not cover, and we are willing to work with them to rectify their concerns.

Vice Chair Conklin:
Is there anyone else who wishes to testify in support?

Lisa Foster, representing American Family Insurance Company and Allstate Corporation:
Both of the clients I am representing are in support of A.B. 155. You have heard all the reasons why flex rating is good. It has worked in many other states, and it has worked well for consumers.

Michael Geeser, representing AAA Nevada:
We are in support of the bill. Today the ultimate judge and jury on auto insurance is the consumer. If this bill passes, nothing would change. The consumer still makes the call on what price he pays and who he does business with. The only difference is when the companies get to make changes. That is it. In the end the Insurance Commissioner still gets to make the call. We think this would be good for consumers.

James Wadhams, representing Anthem Blue Cross and Blue Shield and American Insurance Association:
I want to make sure it is on the record that this bill is not intended to affect health insurance. As often happens with bills like these, the Legislative Counsel Bureau prints only the sections that are being changed, for you to review. There are sections in the insurance law that are probably very relevant to the questions that have been raised. For example, what are the standards that rates have to meet? That can be found in *Nevada Revised Statutes* (NRS) 686B.050, and in the simplest sense it says that they have to be fair and reasonable and they have to be relevant to the riskiness of that person. As Assemblywoman Carlton pointed out, within a range of drivers some of you are far better drivers than I, and I should fairly pay a higher insurance premium than you. So we will not have the same rate, but my rate has to be reasonable and proportionate to my risk, just as yours does to you. So there are standards for these rates to be reviewed. I think the important thing for this Committee to think about is the real effect of this bill is a timing issue, not an approval issue. The power of your Insurance Commissioner to review, throw out, or modify rates is still in the law. I want to draw your attention to section 9, subsections 1 and 2; this is a vestige from the old law that was passed back when I was the Insurance Commissioner, and it says if the Insurance Commissioner disapproves of a rate, he can set a temporary rate. If he determines the rate the insurer filed is excessive, those funds go into escrow and they are paid back to the consumer. It is not a question of whether that power exists; that power is in the law today.

So the question that this Committee is being asked to consider in the so-called flex rating, or any other scheme of rating that I think this Legislature might be willing to consider, is not a question of whether the Commissioner should have that power to protect the consumers, but the timing of the exercise of that power. What this bill has offered to the Committee is a range within which the timing could be different. I think the policy questions the Committee raises are really critical. Some of those protections are in that section I have referenced and also in the NRS chapter I have mentioned. It is a competitive market, and I think the purpose is to give the consumer the quickest choice ultimately for the benefit of price.

Vice Chair Conklin:
Are there any questions from the Committee? [There was no response.] Is there anyone else wishing to testify in support? [There was no response.] We will now move to opposition.

Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:
Assembly Bill 155 proposes to amend the filing of rate increases or decreases for personal lines of insurance. This act will impact almost every Nevadan and will have very far-reaching consequences. The way the bill is written today it will effectively deregulate the rates for property and casualty insurance, including auto and homeowner's insurance. What is more concerning to me is that the proposed language appears to also apply to medical malpractices rates, workers' compensation rates, and individual health policy rates. I believe these provisions should not apply. It appears from previous testimony that this was not the intent of the bill. I do have several significant concerns with this bill.

I believe that the proposed flex rate of 7 percent is too far-reaching. The 7 percent range does not apply on an individual basis, but it does have the potential to impact the insurance premiums for thousands of Nevadans. My staff has prepared a document based upon information gathered from rate filings; these are actual rate filings from the top auto insurers in the State of Nevada, as well as home insurers (Exhibit I). This provides the actual impact of the statewide average of these rate changes and the effect they would have on different strata of our consumers. The proposed language in section 1, subsection 1 limits the insurers to cumulatively increasing statewide overall average rates of a cap of plus or minus 7 percent in a 12-month period. However, insurers are not prohibited from changing their rates multiple times within that 12-month period. There could be a compounding effect of multiple changes that raises the possibility that many Nevadans may experience multiple double-digit or triple-digit percent rate increases. In fact, a single insurer could implement all 12 of these rate insurers within a 12-month period

and still be below that 7 percent cap. That would mean our office would not be reviewing any of those rate changes because they fall below that 7 percent cap.

I believe there would be an impact on personal lines insurance regulation. Section 1, subsection 1 indicates that an insurer may file an increase or decrease in rates with the Commissioner when the rates are capped. This language makes filing with the Insurance Commissioner optional. There is not real incentive for insurers to file with my office under this bill. A review of the Division's personal lines rate filing database indicates that out of approximately 500 personal auto and homeowners with the Division since January 1, 2009, only one homeowner and one auto rate filing would have gone outside that 7 percent cap and therefore trigger a review by our office. These statistics suggest the insurance premiums for a vast majority of Nevada drivers and homeowners may no longer be regulated and reviewed for compliance with Nevada law.

Passage of A.B. 155 as written will, I think, affect a small portion of our personal lines marketplace. The amendment proposed by Mr. Compan (Exhibit G) today does alleviate some of my concerns, but I continue to have concerns with this bill. Section 1, subsections 3 and 4 restrict the Commissioner's access to supporting data only in certain circumstances, which may be a conflict of data submission requirements under section 8, subsection 3. The way the bill is written is today, if our office determined a rate was unfair or not correctly applied and we would ask the insurer to change that rate. The change would be only on a going-forward basis, and we would not be able to make the consumer whole or apply the change retroactively. Furthermore, if the insurers are not required to file the data with our office, it will be difficult if not impossible for us to respond to consumer complaints and inquiries, such as when a consumer questions why his rate went up and whether or not his rate increase is consistent with Nevada law.

I am certainly willing to work with the Committee and any other parties to see if we can work out our differences on the bill.

Vice Chair Conklin:
Are there any questions from the Committee?

Assemblyman Ellison:
I had previously asked Mr. Compan if this rate increase could be applied more than once a year, and he said "No." Now you are saying it could. I would like some clarification on this issue.

Brett Barratt:
The way I read the bill is that insurers can have multiple rate increases within a one-year period as long as the average does not exceed 7 percent.

Assemblyman Ellison:
I did not read it that way; so I wanted clarification. The other issue is the 45-day requirement; you have no problem with that?

Brett Barratt:
I understand that 45 days is the time within which the Commissioner would need to issue an order after a hearing. I think that is a reasonable period of time for my office to render a decision or issue an order after a hearing.

Assemblywoman Carlton:
Mr. Commissioner, is there a way for you to model in the future some of these rate changes and how they would affect the insurance premium tax? Could you take a few examples of changed rates with the competition that has been discussed? Would you be able to determine what a decrease of 2 to 3 percent in premium rates would cost the state in revenue and share that information with us?

Brett Barratt:
We could absolutely come up with certain scenarios where the overall insurance premium for these lines goes down different percentages and project on a premium tax basis what those effects would be.

[Jed Kincaid submitted a letter of support for A.B. 155 on behalf of Progressive Insurance (Exhibit M).]

Vice Chair Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition to the bill? [There was no response.] Is there anyone neutral on this bill? [There was no response.] We will close the hearing on A.B. 155, and I will hand the meeting back over to Chair Atkinson.

Chair Atkinson:
We will open the hearing on Assembly Bill 156.

Assembly Bill 156: Revises provisions relating to process servers. (BDR 54-667)

Assemblyman Jason M. Frierson, Clark County Assembly District No. 8:
This bill is an effort to provide the court system with the tools to evaluate affidavits and the service of process arena. When a person is alleged to have provided insufficient service of process and a claim is made, that person or the company that person works for can be issued a citation. That citation can sometimes include an order of abatement, meaning that person or company can no longer provide service of process until they correct a certain condition. This is done by the Private Investigator's Licensing Board. This bill proposes to prohibit a person or business from continuing to provide service of process while under an order of abatement. So if they are operating as a business but they do not have a business license, they can be ordered to stop doing that until they obtain licensure. This bill also adds information in the form that is typically used for service of process to give the court the tools it needs to evaluate that service of process in the event a claim is made. Lastly, the bill provides that if an entity licensed to provide the service does not comply with the requirements, the court may consider the service insufficient, that is, if it is a licensed person or business. If it is an unlicensed individual, meaning if it is simply an adult who is disinterested, that someone has to serve someone else and they are under this order of abatement, in those instances the court shall consider that service of process insufficient. This bill does not require that everyone use a licensed process server. It simply attempts to isolate the individuals who are providing insufficient service of process, and it gives the court some tools to be able to deal with it.

There have been instances in Clark County where people are receiving default judgments, and they were never served. The court is now dealing with that, because people were never put on notice that they needed to go to court or needed to respond. I believe this bill not only provides the court with the tools to evaluate those circumstances; it also puts individuals and businesses on notice that, if you are aware of a company doing your service and you know they are under an order of abatement, you should not use them, because it ultimately could be a waste of your time and money if the court determines that service of process is insufficient. The goal is to address those circumstances where people are saying that they are providing service, when in reality they are not. It goes through criteria that I believe some process servers are already including in their affidavits. For example, if someone does not know the name of the person he is serving, he can describe that person. So if there is a claim later that no one was served, at least there is a record of what the person served looked like.

Melissa Saragosa, Justice of the Peace, Department 4, Las Vegas Township:
The Las Vegas Justice Court carries the bulk of the civil cases at the limited jurisdiction level in Nevada. We process approximately 35,000 default judgments a year. The bill that is proposed today would affect mostly those cases. These are cases in which a summons and complaint are served on an individual. They are told by the summons they have so many days to respond, and if they do not respond they may request a default be issued by the clerk of the court. The default is simply an acknowledgement that an affidavit of service of process was received and no answer was made in response to it. The clerks would be able to have first review of these affidavits of service of process that Assembly Frierson has outlined. These additional requirements would be reviewed by the clerk staff before issuing a default. Once a default is issued, if the plaintiff wants to then pursue a default judgment, there is a substantive legal review that takes place by a judge before issuing that judgment. At that time, when the judge sees that default judgment application package, he or she would again look at this affidavit of service of process. It is in this review that many things were noticed in cases involving certain plaintiffs in the Las Vegas Justice Court area; I think these additional requirements would give us even more information to review those cases. In the cases I am referring to we believe there was a possible impact on 20,000 community members in the Las Vegas Township who had default judgments entered by individuals who may not have properly served them. In one case the individual has been found guilty at a jury trial. In another case an individual working for the same company pled guilty just recently. They are both pending sentencing.

Chair Atkinson:
Are there any questions from the Committee?

Assemblyman Segerblom:
Are you making any effort to go back to those 20,000 people and ask them if they were served properly? If they were not properly served, how would we set aside those defaults?

Judge Saragosa:
Therein lies the quandary that the court is placed in. We had originally considered going back and opening these cases, but they go all the way back to 2004. Many of the cases in question are closed cases because a judgment has been issued, so they have been shipped off to a warehouse. The cost to pull each one of those files individually and lay eyes on the affidavit or the service of process is immense. We had contemplated getting a jury master to allow us to go back and look at those. In the interim Nevada Legal Services filed a class-action suit in district court, looking for the same relief that the court would have been doing *sua sponte*, or on its own. It is a very awkward for the court

to be put into a position where it is required to, on its own, step into the shoes of a defendant and make a claim that the defendant could file a motion to set aside the default judgment at any time. There are a lot of those cases that have never been brought forth by a defendant complaining about the situation, so we would be guessing. We would have to go through each one individually and place it on the calendar, and that is very costly. In the meantime there is the class-action suit in district court affecting about 10,000 of those cases. We did not want to have the Justice Court taking action on cases when there was litigation pending on the very same issue in district court. So we have held back and kind of let that district court action run its course. We have not taken any action at this point. I will note in that one case there was a 2003 citation issued to the individual business involved. They were fined, but there were no other teeth to that citation. It is my understanding that they never paid the fine and yet they continued to serve service of process. The courts were not even notified that there was any sort of citation issued. We had no idea this was happening until the court noticed it on our own and turned it over to the police for investigation. I believe this bill would resolve that problem, because the court would have the power to void the affidavits.

The court is neutral on this. We do not feel we should take a position on legislation, but I can provide you with factual scenarios. The legislation in a sense does not have a direct effect on the court, but it has an impact on the constituents. I can see how it would put the court in a position of not having to make a decision to *sua sponte* respond to this scenario or let the district court class-action suit handle it; it would declare that they were void.

Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada, Las Vegas, Nevada:

We receive people at both of our locations who come in because they have had their wages garnished or had money taken from their bank accounts, and they have no idea why. They are not aware of any lawsuit against them. They were not served with process. They are not aware of a judgment being entered. That happens on a weekly basis. The first thing we do is get the court file to look at the affidavit of service of process to see what the court file contains as to how and when this person was allegedly served with process. In section 5, the bill would require the affidavit of service of process to have the name, address, and phone number of the person who performed the service. It would also require the date, time, and how they were served. All of that would be helpful and is reasonable and necessary for the creditor's attorney, the alleged debtor, and the court to try to determine the truth of whether someone was served. It is common sense to have a process server put down that kind of information when he is claiming to have served a person with process.

Also, in the interest of full disclosure, the Legal Aid Center does represent a certified class of debtors who were sued by a payday lender in Las Vegas. We believe this payday lender exclusively used the services of unlicensed process servers. This led to the situation that was described in the testimony. So we do represent an alleged class of victims of a process serving scandal in Clark County, which led, in part, to the reason for this bill. The only thing I would suggest to improve this bill would be to make these provisions retroactive.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone wishing to testify in opposition?

Bob Deale, Private Citizen, Reno, Nevada:
I am a licensed Nevada process server and I am here in opposition to this bill. I think that any licensed process server in Nevada would agree with certain portions of this bill. None of us want to see what we just heard has happened in Clark County. That is what we refer to as "sewer service" and none of us want to see it. We do think there should be some teeth in the law to take care of process servers, whether licensed or unlicensed, who commit this type of fraudulent service. What we do not like is the part of the bill which makes changes in the affidavit of proof of service. We do not feel that this will prevent any person from committing an illegal act. If someone is going to provide an affidavit stating that he served a person when he did not, it does not matter what they are required to put on the affidavit; it is a bad affidavit.

We find that parts of section 5, which include the information that would be required on affidavits, will be counterproductive to us as businesspeople. For example, we would like to see the portion that has the fee being required on the affidavit be stricken from this bill. It is a very common business practice for process servers to receive or send what we refer to as "forwarded papers." There might be a process server in Las Vegas who receives a summons complaint that needs to be served in Reno. That summons would then be sent to a process server in Reno, and they are then charged a fee. In turn, the process server in Las Vegas marks up his fee to his client to recoup the cost. It would create a situation where there is a fee on the affidavit that does not match the invoice. I believe that will make for an uncomfortable situation that none of us, as businesspeople, would like to be put in. If someone can give me a valid reason why this should be in an affidavit, I would be happy to listen to it.

The other item that is bothersome to us as a group is the requirement to put our company name, address, phone number, and license number on an affidavit of service. We all swear that we served the document. Again, we have a

situation among process servers where if we receive a process to be served from someone in Las Vegas, and then we have to put in our information, when the affidavit goes back to the party in Las Vegas and they pass it on to their client, the client will find out that he can save money by cutting the originating process server out of loop. Nobody benefits from that. I certainly understand the desire for more information. I just think that we need compromise. I would be willing to work with Assemblyman Frierson and the Committee if they would like to get some input from the process service industry. As the bill is written, most of us are opposed to it.

Chair Atkinson:
Since you are the only person from the process service industry here, we cannot allow your testimony to be representative of the entire industry.

Assemblyman Frierson:
Mr. Deale and I have exchanged emails; I was under the impression that he was no longer in opposition to the bill. I want to clarify that the process serving industry has been involved. I actually got some sample affidavits from Washoe County where they included the name of the company and the license number. The one thing that Mr. Deale and I did discuss was the fee and whether or not that needed to be there. I have spoken with Judge Saragosa as to whether that was absolutely necessary; I know some entities already do it. I have no problem with removing the fee aspect of it, and I thought that would resolve Mr. Deale's concerns. I will continue to work with him to see what language we could use to make all parties agreeable to the bill. It is my understanding that this is a matter of changing a one-page affidavit form to including these criteria and being able to check them off. It is a different form, but it is still a one-page form. It is just a matter of what information a court would find useful in order for it to be able to evaluate problems in service of process.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else in opposition? [There was no response.] Is there anyone neutral wishing to testify? [There was no response.]

Mr. Frierson, I would ask you to continue to work with all interested parties and see if you can find some type of compromise that can be brought back to the Committee. We will close the hearing on A.B. 156.

Is there any public comment? [There was no response.]

The meeting is adjourned [at 4:05 p.m.].

RESPECTFULLY SUBMITTED:

_____
Jordan Grow
Committee Secretary

APPROVED BY:

_____
Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 23, 2011 Time of Meeting: 1:35 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 77	C	Nancy Corbin	Proposed Amendment
A.B. 77	D	Leo Poggione	Proposed Amendment
A.B. 77	E	Janet Baldwin	Letter of Support
A.B. 77	F	Todd V. Andersen	Letter of Support
A.B. 155	G	Robert Compan	Proposed Amendment
A.B. 155	H	Robert Compan	Handout
A.B. 155	I	Brett Barratt	Handout
A.B. 155	J	Robert Compan	Handout
A.B. 155	K	Jeanette Belz	Letter of Support
A.B. 155	L	Jeanette Belz	Handout
A.B. 155	M	Jed Kincaid	Letter of Support