MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
April 12, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 7:44 a.m. on Tuesday, April 12, 2011, 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/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Patrick T. C. Smith, representing Veolia Transportation
Richard E. Rabs, Vice President, Claims and Risk Management, Veolia Transportation
D. Lee Roberts, Jr., Weinberg Wheeler Hudgins Gunn and Dial
Alex Ortiz, Department of Finance, Clark County
Matthew L. Sharp, representing Nevada Justice Association
Vonne S. Chowning, Private Citizen, Las Vegas, Nevada
Michael Joe, representing Legal Aid Center of Southern Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Jon Sasser, representing the Washoe County Senior Law Project
Bill Uffelman, President and CEO, Nevada Bankers Association
Paul Terry, representing Community Associations Institute, Nevada Chapter
Garrett Gordon, representing Southern Highlands Community Association
David Robman, Private Citizen, Las Vegas, Nevada
Pamela Scott, representing Howard Hughes Corporation
Russell M. Rowe, representing Oasis Legal Finance; and Preferred Capital Lending
Brian T. Garelli, President, Preferred Capital Lending, Chicago, Illinois
Eric Schuller, Director of Government and Community Affairs, Oasis Legal Finance, Northbrook, Illinois
Keith L. Lee, representing Preferred Capital Lending
Patricia Parker, Private Citizen, Las Vegas, Nevada
George Ross, representing Las Vegas Chamber of Commerce
Tray Abney, Director, Government Relations, Reno Sparks Chamber of Commerce
James Griffin, Legal Aid Center of Southern Nevada
Bradlie Baggett, Private Citizen, Las Vegas, Nevada
Robert L. Compan, Government and Industry Affairs, Farmers Insurance Group
Michael Geeser, Media and Legislative Representative, AAA Nevada
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry

Pete Ernaut, representing Nevada Resort Association
Richard Perkins, representing Rational Services
Chris Ferrari, representing Concerned Homeowners Association Members Political Action Committee:
Kyle Davis, Political and Policy Director, Nevada Conservation League and Education Fund
Terrill Pollman, Private Citizen, Las Vegas, Nevada
Tracey Donley, Private Citizen, Las Vegas, Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Jason Mattson, Private Citizen, Las Vegas, Nevada
David Rodman, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Southern Highlands Community Association; and Alessi & Koenig
Angela Rock, President, Olympia Management Services, representing Southern Highlands Community Association
Keith L. Lee, representing First American Default Services; and Lawyers Title Insurance Corporation

Chairman Horne:
[Roll was taken.] We have four bills on the agenda today. We will begin by opening the hearing on Assembly Bill 415.

Assembly Bill 415: Limits the liability of certain independent contractors. (BDR 3-1072)

Assemblyman Mark Sherwood, Clark County Assembly District No. 21:
I present for your review A.B. 415, which is an act relating to civil actions, limiting the liability of certain independent contractors, and providing other matters properly relating thereto. This is a very straightforward bill. Indeed the Legislative Counsel's digest of the bill is only four lines which read, "Existing law limits the tort liability of state employees and certain independent contractors. Section 1 of this bill includes within the limitation of liability an independent contractor who has entered into a contract with a regional transportation commission to provide transportation services."

I would like to introduce Patrick Smith who represents Veolia Transportation. He will give a background on existing public-private partnerships (PPPs) with the Regional Transportation Commission of Southern Nevada (RTC).

Patrick T. C. Smith, representing Veolia Transportation:
This bill extends the liability coverage of the RTC to independent contractors. Las Vegas has an 18-year contract with Veolia Transportation which operates

the fixed route systems. Veolia has an internationally renowned transportation system that flawlessly operates around the valley. I would now like to introduce Richard Rabs, who will review the bill.

Richard E. Rabs, Vice President, Claims and Risk Management, Veolia Transportation:
Since 2005, Veolia has had more than 3,500 claims filed, 190 lawsuits, and more that $27 million spent in association with the fixed route service in Las Vegas. Due to the nature of commercial insurance, these costs are paid by the insured who then passes them on to their customers, in this case the RTC. Our service fees are paid by the RTC whose revenue comes from bus-riding, fare-paying passengers, and the taxpayers. Our goal is to reduce the costs to the taxpayers.

Assemblyman Frierson:
Who typically files these lawsuits? What are the circumstances? I would like a little more detail on the type of lawsuits that have been occurring and how this bill would address them.

Richard Rabs:
Typically, these lawsuits name the RTC, Veolia, the operator of the vehicle, and any other parties that may have participated in the cause of the event. The lawsuits range from frivolous to serious. There is no one description of the type of lawsuits that are filed.

Assemblyman Frierson:
Are suits filed by people who slip and fall on the bus? Are they filed by people who got hit by a bus? Are they filed by people who got mugged at a bus stop? What is the breadth of these claims?

Richard Rabs:
We have vehicles cut off buses, buses make sudden stops, and people fall out of their seats. We have had people hit at bus stops when a vehicle accident occurs, not necessarily a vehicle owned by the RTC. We have accidents where a bicyclist and a bus collide. We have intersection collisions. We have street accidents, passenger accidents, and we have nonaccidents.

Assemblyman Frierson:
Who pays the insurance premiums? Is there a concern about rates going up if the coverage is expanded to include independent contractors?

Richard Rabs:
Ultimately Veolia is the company that writes the check for the insurance premiums. Our rates in southern Nevada are double the national average per vehicle. That is because of the costs we have here; those costs are charged back to RTC. That is the nature of commercial insurance. It is pay me now or pay me later. You do not see insurance companies building those nice tall buildings because they are losing money. Those costs are reflected in our bids. In order to be competitive and stay in business, we must share those costs with our customer. Obviously, if we are able to reduce those costs, we could be more competitive and reduce those costs back to the RTC.

Chairman Horne:
If this bill passes, what benefit is it to Veolia? Will you be immune or will you be capped on your liability for accidents?

Richard Rabs:
We would have certain immunities that essentially give us a cap. There are thresholds that allow lawsuits to go beyond the caps. Veolia has an 18-year PPP with the RTC. In the last year, the economy has put pressure on everyone, and we have been asked to reduce our costs. Obviously, when we reduce our costs, we pass those savings back to the RTC. The real benefit to us is the continued partnership with the RTC.

Patrick Smith:
To follow up on that, we are not the only ones named in lawsuits. We are one of many, however, we are often the last one to be named.

Chairman Horne:
Suppose there is a lawsuit where someone is injured on a bus operated by Veolia, with six named defendants. If all six defendants have limited liability, do they share in the suit? If there is a $50,000 cap, is it $50,000 per defendant, or per lawsuit?

Richard Rabs:
If all six of the defendants have the same immunity, it would be per defendant. I think what Mr. Smith was alluding to is that often in a vehicle collision, the first defendant may have less than adequate limits for the damages. Veolia typically has the deeper pocket.

D. Lee Roberts, Jr., Weinberg Wheeler Hudgins Gunn and Dial:
I defend Veolia, and through an indemnity arrangement, often also defend the RTC in civil litigation arising out of operating the bus system in Clark County. When Mr. Rabs mentioned that he would like me to share a few thoughts with

the Committee, I was told the proposed legislation was to expand tort immunity to contractors who work with the RTC. I initially thought that does not make sense. Why should Veolia and other operators of public transit have tort immunity when other contractors do not? Then I realized that the legislation is consistent with the purpose of the immunity that has already been adopted by the Legislature.

The decision has already been made to have tort immunity to some extent, to have reasonable caps imposed on liability of the state. When the state contracts a function, such as transit, to a private contractor, it pays through its liability, although the policy remains the same. The state is going to pay through increased insurance premiums passed on to it when it would not pay that much money if it were to do these services directly. This puts the state in a conflict of being forced to choose between the management expertise, the efficiency, and the economies of scale by using companies like Veolia, and essentially waiving tort liability and bearing the cost of that.

To put those accidents in context, it seemed like a lot of claims and a lot of accidents, but this is a very safe system. We are talking about 20 million passenger-miles a year in Clark County, which is one of the largest systems in the country. So as a percentage of passengers, the claims rate is low, but the exposure is severe.

The insurance premiums that Veolia has to pass through in its bid are approximately $5 to $6 million per year, which are borne by the public authorities. In considering this and the counterarguments that injured people should be fully compensated for their damages, I believe you should also consider that we already have a little bit of a lottery system. This state has very low minimum liability limits for private citizens. People are injured and killed in car accidents in Clark County all the time. If that person happens to be hit or injured by someone with minimum limits, he receives a very small settlement. If he happens to be hit by a company with large limits, he receives millions of dollars. That might seem fair on its face. If a company has the ability to pay, then it should pay. The costs are already being passed through, but also the way our system works, Veolia, and the RTC by extension, are paying for other people's negligence because of the large limits that Veolia carries. We have joint and several liability in this state. If someone runs a red light, and a Veolia bus is doing five miles per hour over the speed limit, for example, a jury might allocate 95 percent to the person who ran the light and 5 percent to Veolia. If there is a $4 million damage award, the person who runs the light pays his $25,000 limit and Veolia, even though only slightly at fault, would pay the millions of dollars. We had another situation that I handled for Veolia recently where a tourist from another country looked the wrong way

before stepping in front of a bus. The driver of the bus, who no longer works for Veolia, did not show up for his deposition twice, and he was sanctioned for not cooperating. As a result, liability was imposed on Veolia, even though it was a defensible case and was apparently not the driver's fault.

If you consider the millions a year in insurance that is ultimately paid by the taxpayers and the benefit that this tort immunity could give to agencies that are now struggling with budget cuts, it makes sense to extend the policy that the Legislature has already adopted to the companies working for the state as well as to the state.

Chairman Horne:
You mentioned that Veolia and other independent contractors have indemnity clauses in their contracts with these private entities. What good is an indemnity clause if everyone in the contract has immunity?

Lee Roberts:
You would be indemnifying up to the cap. The indemnity clause remains the same. The massive insurance costs really do not flow from the actual indemnity agreement because our indemnity is obviously limited to the tort immunity cap that is currently in place for the governmental authority. Veolia's insurance costs are driven by their own independent exposure as the operator of the system. One of the things that has been in the news recently is a liability cap that was imposed on rail. The Amtrak Reform and Accountability Act of 1997 imposes a cap of $200 million on a single accident. Obviously that is a much larger cap than we are discussing, but in considering that legislation, in order for it to be effective, and recognizing that the costs get passed through, that federal cap also applies to any contractor working for and operating the commuter rail system for the public authority.

Assemblyman Brooks:
Currently, the insurance is going through the RTC, but Veolia is paying for the insurance. Correct?

Lee Roberts:
No, the insurance is obtained by Veolia from private insurance companies. When Veolia costs out their contracts, they do detailed line items supporting their bid proposals. We have full transparency, and the RTC knows the amount Veolia is paying for insurance on this contract. It is, in essence, passed through as part of the bid, and marked up for overhead and profit.

Assemblyman Brooks:
If your rates go up, at what point will it affect the RTC?

Lee Roberts:
It is my understanding that it only costs the RTC more money indirectly through the price they pay to the contractor for operating the buses. If immunity is passed, it will lower Veolia's costs, which will be passed through as contract savings to the RTC.

Assemblyman Brooks:
So lowering costs will not just be seen as profit to Veolia, you will in fact lower the amount you charge the RTC.

Lee Roberts:
Absolutely. It is my understanding that Veolia has made a firm commitment to do that.

Assemblyman Brooks:
What kind of caps are we talking about?

Lee Roberts:
I believe the limit would be $75,000, under the current caps. That is what they would get if they sued the RTC.

Chairman Horne:
Are there any questions? [There were none.] Are any RTC employees here to support this bill?

Assemblyman Sherwood:
I spoke with RTC. They acknowledge that this would be a cost savings, and are not opposed to the bill.

Chairman Horne:
Anyone here wishing to testify in favor of A.B. 415?

Alex Ortiz, Department of Finance, Clark County:
I have spoken to the sponsor of this bill about providing a friendly amendment that would extend these provisions to the Clark County Department of Aviation to include airport transportation services at the airport. For example, the car rental facility, buses that travel to and from the airport, and the automated transit system (Exhibit C).

Chairman Horne:
Any one else wishing to testify in support of this bill? Anyone opposed?

Matthew L. Sharp, representing Nevada Justice Association:
We are opposed to A.B. 415. I would like to give a brief background on the concept of immunity, or limited liability for a governmental entity. The concept dates back to the old common law in England. Over the years, this state has had immunity or limitation of liability for a governmental entity which was originally $25,000 per person. It was raised to $50,000 and is now at $75,000. That means, for example, if a father of two, who is the sole economic provider of his family, were killed in an accident caused by a governmental entity, his family would receive $75,000. Even if his loss of future income were in the hundreds to millions of dollars, his family would get $75,000. The effect of that is that someone else bears the burden for this family who can no longer support themselves because the person who killed their father is not being held fully responsible. Ultimately, those costs go back to the public through Medicaid, et cetera.

Public policywise, this was intended for governmental entities only. An independent contractor, a profit-making business, is now seeking immunity or a cap of $75,000 for reasons that I do not think have been articulated to this Committee. I am sure anyone can save money if he is not held responsible for his conduct. People who are involved in bus driving accidents are generally severely injured. Using my same example, if it is a bus driver who runs over the father of two, under current law, that bus driver is held fully responsible because he is an independent contractor, he is not employed by the state or county, and he is not entitled to that governmental immunity. Under that situation, the family would receive full compensation and get some justice for the loss of their father.

Under this bill you cap a private entity at $75,000. I submit there is no public policy justification for that. There are some points that the proponents made in support of their bill; I would like to briefly address them. First is the idea that an increased premium is being passed to the customer, and somehow if the premiums are decreased through a $75,000 limitation of liability, that decrease will pass through to the customer also. I do not see that in the bill, and I do not see any concrete figures as to what the actual cost is that is supposedly being passed on to the public. The proponents gave an extreme example of a situation where a bus driver would be held 5 percent responsible and have to pay 100 percent of the verdict. The whole concept of joint and several liability is, basically, if you are involved in an accident due to no fault of your own, and that accident is caused by two people, the law says that the innocent party should not bear the burden of being hurt due to no fault of his own. The people that caused the accident are held responsible. In our state, if I am involved in an accident and I am at least 1 percent at fault, joint and several liability is out the window. Under the example the proponents gave, if I am 1 percent at fault

and the bus company is 5 percent, the bus's liability is 5 percent. We have joint and several liability only when the person injured is not at fault for the accident. I believe this is a very slippery slope bill, and there is no public policy to support the rationale that a private company should get a $75,000 windfall.

Assemblyman Hansen:
The $75,000 cap would also substantially limit the contingency fee a lawyer would get representing someone, would it not?

Matthew Sharp:
I am not sure of the pertinence of that question. I do get paid for my services. The contingency fee is a significant part of providing access to the courtrooms. Indirectly, I suppose that could affect the contingency rate.

Assemblyman Frierson:
If I were hit by an average person with a 100/300/100 policy, I would be able to sue him and his insurance company. This bill proposes to make the driver of a bus less liable for the exact same conduct. Is that correct?

Matthew Sharp:
Yes, the example would be if you were injured by a highway patrolman who ran a stop sign and injured you. The liability is limited at $75,000. This bill would limit the liability for the bus driver, under the same example, at $75,000.

Assemblyman Frierson:
I am also concerned about the vitriol against trial lawyers. In these instances, where there is a cap of $75,000, the plaintiff's attorney would, in most instances, get a contingency fee, meaning he gets paid a percentage if he wins. The defense attorney gets paid hourly, regardless of whether he wins or loses.

Matthew Sharp:
That is correct. I am not ashamed that I collect money on a contingency fee. I am proud of it.

Assemblyman Ohrenschall:
Many people have been injured in things like bus accidents. Would they be able to afford to hire someone hourly? Without this contingency fee option, would they even be able to have an attorney represent them?

Matthew Sharp:
I can give you an example that I face every day. Under current federal law, if you get health insurance through a private employer, that health insurance company intentionally denies a claim, and as a result the person has extreme

complications, and the family is left with $15,000 in unpaid bills, I cannot charge that on a contingency fee. I constantly tell people that they need to make a cost-benefit decision. He can pay me $15,000 to get $15,000. Most people do not hire an attorney because they cannot afford it and it does not make economic sense. Contingency fees are part of making the system fair, and I would say it promotes efficiency as well.

Chairman Horne:
We have gotten off in the weeds here. This bill is not about contingency fees and how attorneys make their living. This bill is about immunity, limited liability, and who should have the umbrella of immunity. Do you know the number of entities or professions that enjoy a limited liability in the State of Nevada?

Matthew Sharp:
Other than what is in the bill as an independent contractor with the state pursuant to *Nevada Revised Statutes* (NRS) 333.700, and contracts to provide medical services for the Department of Corrections, I am not aware of any. There are many entities; construction companies contract with the state to build highways. Do they get a free pass for injuring somebody?

Chairman Horne:
University Medical Center (UMC) has immunities, so there is limited liability there. Government entities, physicians under certain circumstances, et cetera, also have limited liability.

Matthew Sharp:
The key feature is governmental entities or employees of governmental entities. UMC, as example, is a governmental entity, and it enjoys sovereign immunity or limitation of liability. The doctors who are independent contractors with the hospital that are not governmental employees do not enjoy that immunity; they are held responsible pursuant to their own statutes.

Assemblyman Hammond:
A bus is slowing down, and a bike pulls in front of the bus, the driver stops short and someone falls out of his seat and hits his head. Ninety percent of the fault might go to the cyclist, and what this bill is seeking is to limit the damages the bus company would have to pay because most of this accident was not the bus driver's fault. Is that correct? Is that what your objection is?

Matthew Sharp:
That is not what this bill does. This bill would protect the independent contractor even if the contractor is 100 percent at fault. If, in your example, the bike rider is doing nothing wrong, and the bus driver hits him, the bus driver

essentially gets a free pass. Under your example, first you would have to show that the bus driver was negligent, and I do not see that in your example. Negligence, basically, is the failure to exercise reasonable care. He was trying to avoid harm to someone, and something happens. That does not necessarily equate to negligence. Assuming you get over that threshold, and in your example the bicyclist is not at all responsible, that person would be entitled, under current law, to get all of his damages. If the bicyclist was somewhat responsible, then the independent contractor, the bus company, would share in liability.

Chairman Horne:
Are there any questions? [There were none.] Anyone else here to testify in opposition of A.B. 415? Anyone neutral?

Assemblyman Sherwood:
In closing, the total scope of the problem is the number of claims. The number of claims since 2005 is 3,507. A claim is a lawsuit in embryo. Of those claims, only 191 actually became lawsuits. Every day, there are two claims filed against the RTC, and the vast majority of them are frivolous claims. The bus stops and only one person falls out of his seat. That one person is going to file a lawsuit. When there is nothing to lose, why not roll the dice? When a person is seriously hurt, and there is serious negligence on the part of the bus driver, you can pierce the sovereign immunity. If there is a real issue and real negligence, there is not an impregnable veil of sovereign immunity. As far as public policy, what we do not realize is there is no free lunch. When we pay out millions of dollars in defending and settling these cases, that gets passed on to us.

The other public policy would be helping those people who are hurt. This is not unprecedented; there are a number of states that already have this, most recently in Texas and Louisiana. When the New Orleans Regional Transit Authority does not have to deal with tens of millions of dollars in added drag on the economy, that makes New Orleans conventions more attractive than Las Vegas conventions. We end up paying for this. I would rather see the money put back into the RTC in the form of extended routes, keeping 1,200 people employed, et cetera.

Finally, there is no limitation to claims that are negligent. We have the greatest judicial system in the world, and we would like to enhance it. We would like to have a little less drag on the RTC.

Chairman Horne:
Thank you. I will now close the hearing on A.B. 415 and bring it back to Committee. I will now open the hearing on Assembly Bill 388.

Assembly Bill 388: Revises provisions relating to real property. (BDR 10-568)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
Assembly Bill 388 has an amendment in NELIS which will replace the text of the bill as introduced (Exhibit D). I have worked very closely on this amendment with former Assemblywoman Vonne Chowning. She served in this body for 14 years and is the former Chairwoman of the Transportation Committee. She is a realtor and broker in Las Vegas and has a lot of experience with people going through foreclosures and short sales. She brought this problem to my attention and has some ideas on how to remedy it and try to keep people in their homes. According to <www.realtytrac.com>, Nevada posted the nation's highest state foreclosure rate for the 50th straight month in February 2011. One in every 119 Nevada housing units had a foreclosure filing during that month. That is despite a 22 percent decrease in foreclosure activity from the previous month. There were a total of 9,553 Nevada properties with a foreclosure filing in February 2011. That is down 13 percent from February 2010. I believe that banks and mortgage companies should not foreclose on someone's home until the bank clearly informs the homeowner whether he qualifies to modify his loan at an affordable level that he would be able to meet based on their income.

I was helping a constituent in 2009 who did not speak English well, but he came to me and showed me a letter from his bank stating that his application for a loan modification had been approved, and he just needed to wait for nine weeks to hear from them. Everything seemed fine. Unfortunately, one week before he got that letter, his house had already been sold. The two branches of the bank were working simultaneously. One branch was attempting to grant him a loan modification, the other branch was proceeding with the foreclosure on his property. The amendment to A.B. 388 will try to ensure that people have every opportunity to modify their loan, if possible, before they go through the foreclosure process.

Chairman Horne:
Are there any questions? [There were none.]

Vonne S. Chowning, Private Citizen, Las Vegas, Nevada:
It is an honor to speak to you today regarding A.B. 388, as amended. As you know, there are many homeowners who really are not the full owners of their homes because they are borrowers. They are trying very hard to make their

payments, but the downturn in the economy has made it extremely difficult. Many people, whether due to illness, loss of their job, or some other reason try to get help known as a loan modification. As Assemblyman Ohrenschall stated, they have not always been treated in a fair manner. While a homeowner is trying for a loan modification, the proverbial rug is pulled out from under him, and his property is sold. All parties lose. This bill attempts to prevent wrongful foreclosures, whether in a loan modification situation or a short sale situation.

I would like to give you a couple of examples of short sales with clients that I have worked with. In the first case, the notice of default was filed, and the following month the property was put on the market in a short sale. When property is put on the market for a short sale, it is almost always agreed upon by the lender. This is not something that the lender is unaware of. We entered into a fully accepted contract of sale between the seller, who is the borrower, and the prospective purchaser. Three months later, the approval was granted by the lender, meaning the lender agreed to the short sale of the property. They agreed to take less for the property and release the borrower from the difference. This was on April 26, 2010. On April 30, 2010, the notice of trustee sale was filed. One branch of the lender did not know what the other branch was doing. This lack of communication is what is so appalling to Nevadans. Fortunately, in this case, the purchaser had cash and was able to beat the deadline of the trustee sale. How many people have cash? If they have cash, they are probably going to be purchasing properties that are already repossessed. Fortunately, both parties in this instance were winners.

In another example, my buyer was purchasing a home. The seller already had the agreement from the lender to try to sell the home in a short sale. Both parties were simply waiting for approval. The property was sold right from under them. Everyone lost. The seller did not get an opportunity to short sale the home, and the buyer was absolutely devastated when he was not able to complete the sale. When I told the buyer that the property was sold, he could not understand. This is logical in our minds, and we cannot understand why they do not communicate within the lender's organization.

I will now review the proposed amendment to A.B. 388. The first part of the amendment discusses the duties of a lender prior to recording a Notice of Default (NOD). It goes through several steps that the lender must complete before the NOD is filed. They must offer the borrower a chance for a loan modification. In other words, the borrower must be told yes or no. This does not drag the process on for a long period of time; it gives reasonable deadlines. The longest is 45 days. In my mind this will speed up the foreclosure process, while at the same time give fairness to the borrower. It also addresses the borrower who chooses not to engage in a loan modification.

The lender will not force someone to apply for a loan modification. Different from the current process, he must provide loan modification options for the borrower before he can record a notice of default.

The second part is duties of a lender simultaneous with the recording of an NOD. When a lender files an NOD, he also must record what the process has been. Has the borrower been given ample time to decide whether he wants a loan modification? Has the lender given the borrower sufficient opportunities to respond? Has he contacted the borrower three times? Has he been offered a Home Affordable Modification Program (HAMP)? Very importantly, the lender must attach proof of ownership with the NOD. No more robo-signing, at least in Nevada. The lender must also send the borrower an all-inclusive list of the charges. The lender has to show all the payments that have been made, all the charges that have been made. I am sure you have heard horror stories from many of your constituents that this has not been provided. A homeowner says, "I have proof that I have made several payments." The lender claims payments were never received. This would prevent this from happening in the future.

The third part of the amendment deals with sanctions against lenders. If a borrower is eligible to apply for a loan modification and the lender records an NOD without completing an evaluation of the borrower's timely application, there can be sanctions against the lender. The sale could be stopped; there could be damages with a maximum of $15,000 that the borrower could receive. The sale could be voided. The lender has the right to cure. The lender has the opportunity to halt the NOD. These are protections, not only for the borrower, but for the lender. Finally, after the NOD is filed, and if the short sale is agreed upon by the lender, the borrower, and the prospective purchaser, then the lender cannot file the notice of trustee sale. We are trying to have fairness for borrowers. We are trying to prevent wrongful foreclosures.

Chairman Horne:
Are there any questions? [There were none.] Thank you.

Michael Joe, Legal Aid Center of Southern Nevada:
As we all know, Nevada is number one in foreclosures. At Legal Aid Center of Southern Nevada, I am the foreclosure guy. I have been very busy. I have heard several stories from homeowners about being foreclosed on at the same time as doing a loan modification. This bill addresses one of those issues that still remains. I do not want to say that all lenders have not been doing what they are supposed to be doing. I think it depends on the lender. I do believe there are many lenders who do not offer homeowners the opportunity for a loan modification. I see homeowners who have their notices in hand that say they have been approved for a loan modification at the same time that their house

has been sold. We see that routinely. It seems unfair to the homeowner that the loan modification department is trying to do a loan modification at the same time the foreclosure department is doing a foreclosure. We think that this bill will give the homeowner an opportunity to consider a loan modification. I also think it is a nice companion to the mediation bill. If you go back to the main reasons for the mediation bill and what we tried to accomplish, it is so that most homeowners who want a loan modification get that opportunity. Pushing the process back to the bank to offer the loan modification before mediation ensures the fairest chance for the homeowner to get a loan modification.

Chairman Horne:
Are there any questions? [There were none.] Anyone else wishing to testify in favor of A.B. 388, as amended?

John Radocha, Private Citizen, Las Vegas:
I am in favor of this bill; however, I am a little upset about page 4, line 37, which states, "Even if the amount is in dispute." You get fined or billed even though you have actual written documents that prove payments have been made.

Chairman Horne:
Do you realize that the sponsor of the bill is suggesting that we basically delete the bill introduced and replace it with a proposed amendment?

John Radocha:
No, sir. Thank you for informing me of that.

Chairman Horne:
Anyone else in favor of A.B. 388?

Robert Robey, Private Citizen, Las Vegas, Nevada:
I realize that Assemblyman Ohrenschall has changed the bill. It is an opportunity to keep people in their homes. What a dramatic event. I am in support of this bill.

Jon Sasser, representing the Washoe County Senior Law Project:
The Washoe County Senior Law Project has a grant which allows them to help people who are in foreclosure work on modifications, mediations, et cetera. We also support this bill as amended. I particularly like the fact that in addition to making some nice changes, this law actually has some teeth in it, some enforcement mechanisms that would allow us to ensure that these positive changes actually take place.

Assemblyman Hammond:
You mentioned this bill has teeth in it. What parts do you particularly like that you believe will give the homeowner a little advantage?

Jon Sasser:
I like the sanctions against lenders. If you have a process that has gone awry, you can ask the court to stay the foreclosure until the requirements have been followed. This bill provides for damages if the lender is not following the law and can actually void a sale if it happens in a manner which does not follow the law.

Chairman Horne:
Anyone else wishing to testify in favor of A.B. 388? Anyone opposed?

Bill Uffelman, President and CEO, Nevada Bankers Association:
We are opposed to the amendment to A.B. 388. In many ways this amendment replaces by replication several pieces of the modification loan process. If one were going to process A.B. 388 as amended, we ought to repeal the loan modification statute that we have had in place for the last two years. The amended bill requires the lender to contact the delinquent borrower and send him letters in an attempt to collect a debt. We send the borrower emails, make phone calls, and send letters in an attempt to make contact to work with him. Many of the issues that are encompassed in A.B. 388 already occur. Perhaps not in the exact order, but the reality is, if you have a borrower who wants to make an effort to save his home, these items are discussed and offered to him throughout the process preceding the NOD. When the first payment is missed, we send a letter and make phone calls. When the second payment is missed, we send a letter and make phone calls. There are multiple attempts to reach out to the borrower to have the kinds of discussions that are required under A.B. 388.

When all those attempts fail, the lender proceeds with the NOD and election to sell. Under the current law, that would initiate the mediation process. At the same time as the NOD, we send a notice that the borrower has the right to request mediation. The way this amendment is structured, we go through this entire process and when the mediation process starts, we go through it again. This is a redundant process. Ultimately, if all of this fails, we file the notice of election to sell. We go through the sale process, and once again, we are required to repeat the entire process.

As an organization, we are opposed to robo-signing. The documentation is a requirement. I will concede that the lender does have an obligation to have proof of ownership with the mortgage note and the deed of trust. Regarding

the requirement of complete analysis of all payments if there is an allegation that the borrower has made payments that have not been credited, I would presume that issue has been resolved long before we get to the notice of sale position. The continuity of having all those documents for all lenders that have been involved up to that time could become a very difficult process.

With all of that said, we are opposed to the amendment of A.B. 388. Certainly if you process this, then you need to give serious consideration to eliminating the mediation legislation that was enacted two years ago.

Assemblyman Frierson:
To clarify, you do not support either this amendment or the foreclosure mediation program as policy?

Bill Uffelman:
I support the mediation process and have since 2009. The reality is, mediation is the law of the State of Nevada and we are committed to working within that mediation process.

Assemblyman Frierson:
I understand you support the process, but I do not recall you supporting the bills. You are saying that you will comply if enacted, but you do not support either bill.

Bill Uffelman:
I supported the changes with the amendment filed on your bill. If this bill will improve the mediation process, we will support this legislation also.

Assemblyman Hammond:
If I understand your testimony, you are not in favor of the amendment as a whole. Is there anything in the amendment that you think would help with this process?

Bill Uffelman:
I did not see the amendment until this morning. I fully support the notion that the borrower and the lender need to have a discussion. That is the process that we have, even before we get to the mediation process. I feel that what we have here is a preforeclosure mediation, then we have another mediation. At some point, it either succeeds or fails. I do not approve of the times when you think you are making a deal and are waiting approvals, and a foreclosure gets filed. I would argue that under the great volume, human error exists. For every one that goes bad, there are many others that do not.

Assemblyman Hammond:
I am glad that you recognize that there are a lot of homeowners who go to the banks to try and save their homes, recognizing that many are not making payments, but are trying to. A lot of these homeowners go in one day to make an agreement for a loan modification, and two to three days later, they receive an NOD. This happens quite often in my district. I feel that we need to satisfy the needs of these people who really do want to stay in their homes.

Bill Uffelman:
Ideally, I would like to see sequences. The reality is, many things move on parallel courses. There are also timing issues. A homeowner may have reached an agreement on Wednesday, but on Thursday he gets a foreclosure letter. The foreclosure letter may have been generated last Tuesday. I cannot tell you how to change that process. Presumably, everyone is trying to find better ways. Nevada has financial institutions that have what are called workout centers. There are several of them in the Las Vegas area. A homeowner makes an appointment, comes in and meets with the people responsible for the mortgage. I know of at least one institute that assigns a person to a particular mortgage as opposed to the old system where everyone could help anyone. How it is proceeding today versus just one month ago is quite different. It is an evolving process that is correcting what we find wrong. Clearly, there are a lot of problems. In many cases it is sheer volume and it has overwhelmed the system. What we have found over the last three years is that the borrowers who work most closely with consumer credit counseling services and receive a loan modification are far more successful then those who try to do it alone. This is a system that is developed around experience. This new legislation will, in effect, be starting over.

Assemblywoman Diaz:
You stated that banks currently implement some of the things that are presented in this bill. Would this policy give banks the sequence of events by which to document that the banks are acting in good faith? Also, could this bill help banks be better prepared for the mediation process? I do not think all banks function in the same manner. Would this amendment ensure they do?

Bill Uffelman:
I suggested to a banker a few weeks ago that maybe he should take the computer file and print it out to bring in all the paper that represents one file, one mortgage. I have the HAMP program, and we all have a general view of it. The reality is you can get to step two and realize that someone does not qualify for HAMP. Do I have a proprietary workout program within the bank that I can use? Yes, I do. Some of these workout programs are built into the computer

program. I put in your income and other necessary information and push a button. The computer tells me what you are eligible for.

Assemblywoman Diaz:
The sequence of steps we take sometimes does not alter the end result. If this becomes policy and you already do it, it is just about training the people in the field. Is the biggest issue for the banks the time frame?

Bill Uffelman:
When a borrower has gone 30 days delinquent, I send him the first letter and that initiates the process. He misses the second payment at 60 days, and the third payment at 90 days. Between day 30 and day 90, all of these things happen before I file the NOD. That presumes I immediately file on the 90th day. Internal policy varies, but one of the things that happens is we all assume on the 90th day we are going to go full tilt. The reality is if the homeowner is attempting to provide documentation, he will get the 90-day letter, but it is still an open file. We are both still making an effort. He told me he was going to catch up next month, he was going to make a payment on the 1st and the 15th. On the 15th, he does not make a payment, the process starts all over. If this bill becomes the new way, and the only way, then I suppose I should go full tilt. In 60 days I should have all of these steps out of the way and then file the NOD. I do not know that having a statute-structured time frame will make life any better.

Assemblywoman Diaz:
If all the parties involved know what to expect and know the flow and sequence, then everyone is informed and there are no surprises. When everyone is using the same information, it can be a less frustrating process.

Paul Terry, representing Community Associations Institute, Nevada Chapter:
I signed in opposition to Assembly Bill 388; however, we applaud Assemblyman Ohrenschall's amendment. We withdraw our opposition.

Garrett Gordon, representing Southern Highlands Community Association:
Ditto to the last speaker. We signed in as opposed. With the amendment, we are now neutral.

David Robman, Private Citizen, Las Vegas, Nevada:
For clarification, does this mean that A.B. 388 has been deleted?

Chairman Horne:
The recommendation is to delete the entire bill as written and submit it with the new amendment.

Pamela Scott, representing Howard Hughes Corporation:
I signed in as opposed to A.B. 388 as it was introduced. We are now neutral.

Chairman Horne:
Anyone else wishing to testify as neutral?

Assemblyman Ohrenschall:
We were working on the amendment until late last night and I did not have the opportunity to speak with Mr. Uffelman. I apologize to him.

According to the Center for Responsible Lending, banks and servicers often pursue a modification and foreclosure at the same time, commonly referred to as dual tracking. Because it is difficult to stop the foreclosure process after it starts, even if the borrower qualifies for a loan modification, the homeowner can still lose his home. I am sure you have talked to many people who have stopped making mortgage payments to try to get the bank or the servicer to start talking about a loan modification, not necessarily because they cannot afford the payment. Word on the street is the only way to get the banks attention is to stop making payments. I believe that, as amended, A.B. 388 is about communication. It forces the banks to begin communicating with the homeowners before the foreclosure process.

Should a married couple start marriage counseling after filing for divorce, or should they start talking before? If we can get the banks and homeowners to start talking about manageable payments and how to avoid foreclosure beforehand, then we will all save money in the long run. I hope this Committee will consider the amendment. I would also like to thank Vonne Chowning for all of her assistance with this amendment.

[Written testimony was submitted for A.B. 388 (Exhibit E), (Exhibit F), (Exhibit G), (Exhibit H), and (Exhibit I).]

Chairman Horne:
Thank you. I will now close the hearing on A.B. 388. We will take a brief recess.

[Meeting recessed at 9:18 a.m. and reconvened at 9:38 a.m.]

We have two more bills on the agenda. Assemblyman Ohrenschall will conduct the hearing on Assembly Bill 465.

Assembly Bill 465: Enacts provisions relating to consumer legal funding. (BDR 56-815)

Assemblyman William Horne, Clark County Assembly District No. 34:
Assembly Bill 465 is the consumer lender funding bill**.** During the interim, Mr. Rowe approached me and asked for a Committee bill for the purpose of consumer lending funding. There are some experts in the industry who are going to testify how consumer lending legal funding works. I know there is some opposition to this bill. People say it is going to extend lawsuits, cause people not to negotiate, and prolong the settlement process. I disagree.

The reason I agreed to introduce this bill is because there are instances where a person is injured through no fault of his own. He is suffering from an injury, missing days from work, and not paying bills because of the injury. He has a legitimate claim, but the process takes time. In the meantime, the banks are not willing to wait for the negotiations. The legal funding companies assess the value of his claim and provide him with an amount of funds to help him through the process. Yes, they make a profit if they assess a claim correctly, and will get a percentage of the claim when it is settled. I also agreed to bring this bill forward only if there was adequate regulatory framework. This bill proposes to regulate this industry. Currently there is no regulation. There are bad actors who could, for instance, give someone $50,000 to assist him in paying his bills while he is in litigation. At the end of the day, that sum turns into five, six, even seven times the amount they loaned. I find that practice unacceptable. If we are going to have this industry, I believe we should regulate it. There should be rules and procedures and caps. If any of those are not present, then I would not support this bill.

The people in this industry came to me wanting to be regulated. They recognize there are bad actors out there. They have done this in other jurisdictions and it has worked very well. If we are going to have this business, then we need to tell those people out there who are stuck between a rock and a hard place that we will provide some protections to them. They will need to make a tough decision on giving up a percentage of the settlement amount in order to make ends meet until they have justice due to an injury that they incurred. Mr. Rowe will now walk you through the bill.

Vice Chairman Ohrenschall:
Are there any questions? [There were none.]

Russell M. Rowe, representing Oasis Legal Finance; and Preferred Capital Lending:

Oasis Legal Finance and Preferred Capital Lending engage in consumer legal funding in Nevada. First and foremost we would like to thank the Chairman for agreeing to provide us with this legislation. This is the rarest of rare occurrences in the Legislature. There are representatives of an industry seeking to be regulated. We understand that alternative funding products like this have potentials for abuse. We know there are things occurring in this relatively new industry that are not appropriate because consumers who seek these services are often in a very difficult position. Our product is for a very limited circumstance where someone is injured, out of work, out of money, and out of options. He cannot go to a bank to get a loan to cover his bills. He cannot get a payday loan, because he does not have a paycheck. He could get a title loan on his car, but the risk is if his case does not settle, he is still responsible for the loan. If he does not have family or friends to help, he is in a very difficult position, through no fault of his own. These situations occur because of an auto accident, disability injury, et cetera. This product provides funding to the individual with the only contingency being that if his claim settles, then the company will get repaid, plus the fee. If the case does not settle, there is no recourse. The funding company eats that loss. That is the benefit to the consumer. There is much less risk to the consumer. He does not have to pay the funding back if his case does not settle. That is articulated in our clients' contracts. I cannot say that about everybody, hence the need for regulations.

The other reason we need regulations is that it is not clear under traditional lending statutes where this industry falls within that jurisdiction. There is a very strong argument that it does not fall within existing *Nevada Revised Statutes* governing lending. This is similar in many other states. There has been a trend of about five states that have regulated this industry and have recognized that it is not a traditional loan because there is no guarantee of repayment, so it does not fall under the installment loan provisions under the law.

What is before you in A.B. 465 mirrors the most recent state to adopt regulations on this industry, which is Ohio, which unanimously adopted the legislation about a year ago. It came to our attention that there were some problems occurring in Nevada. These problems also came to the attention of the Division of Financial Institutions, Department of Business and Industry. They were looking at a company in Nevada that was engaged in this business. That is how my clients became aware of some of the concerns in Nevada. Nevada has been very proactive in this. We met with the Division and told them, "We want to be regulated. What can we do to help you regulate the industry?" Originally, A.B. 465 was drafted in regulatory form in language that we gave to the Division of Financial Institutions. We were told that they did not

feel they had sufficient statutory authority to fully regulate the industry. That is when we reached out to the Chairman asking whether he would consider legislation authorizing the regulation of the industry.

I would now like to introduce some people who are here to give a little more background on the industry itself, and how their mechanisms operate. They will also review the key provisions of the legislation that we think is critical to ensure that people who engage in this business do so in a proper manner; where there is transparency, where there is reporting requirements, where there are caps on fees, and provisions to ensure those who do engage protect Nevada consumers.

Assemblyman Frierson:
You mentioned that Ohio recently passed legislation regulating the industry. Are you aware of any states that have decided not to pass legislation or even ban this type of work?

Russell Rowe:
I am not aware, but perhaps my clients can answer that question for you.

Brian T. Garelli, President, Preferred Capital Lending, Chicago, Illinois:
My company does business in four states: Illinois, Missouri, Nevada, and Ohio. I am the largest lawsuit lender in Nevada. I would like to tell you how I came to be here. I am from Chicago and grew up in a working class family. My parents put my three brothers and me through college. I then went to law school; I graduated very high in my class. I went to work for a large law firm in Chicago. I was on the defense side, representing insurance companies and large corporations. I saw a trend occurring. The companies that I represented would send me files, I would call the plaintiff's attorney, and we would resolve many of these cases very quickly. Then I saw a shift in how insurance companies and corporations were handling these claims. They decided to fight the cases till the end. They were forcing people to wait, drag out the cases, and many people were not able to afford to wait. They settled their cases. The ones who could wait, we would settle, but not until the eve of the trial.

I saw this occurring throughout the 1990s and I had an idea. I thought if this sticks, there will be a lot of people who need money while their case is pending. One day when I was in Chicago, I had a case against a friend of mine who was the plaintiff's personal injury lawyer. I had authority on the case that was 5 percent of what the case was worth. I called him and he settled. When we met later I asked him why his client took the settlement. He said, "My client was about to be evicted, his power was about to be shut off, and he decided to take the settlement. He could not afford to continue." That was when

I realized there was a business here; someone could have helped him. He did not need a lot of money. He is not getting rich, but I could allow him to hang in there and at least get a fair value for his case. I do not help a person with more than his case is worth, but I allow him some staying power so he does not have to take a 5-cents-on-the-dollar settlement.

After nine years at a large law firm, I left and started a company to lend money to people who have lawsuits. I have been doing this for 13 years in Illinois. I opened in Nevada 4 years ago. I have done over 50,000 of these transactions. I am proud to say I have never had a consumer complaint. The reason is that I try to do business the right way. I see a lot of companies which do not do business the right way. In the interest of full disclosure, I do have a lending license in Nevada. I am doing loans to people tied to their lawsuits under that license. I would like this legislation to pass because I see people every day who have gotten into a transaction with another party who is doing whatever because there is no regulation. I have seen rates at 15 percent a month, compounded. Because these people are desperate, they sign the transaction and take an advance. By the time they come to me, they have already borrowed $2,000 and they owe $10,000. Oftentimes, I cannot get them out of the transaction because the balance has gotten too high. I understand this need to be regulated. That is why regulations have passed in other states.

In most states it is not considered a loan because it is nonrecourse. It is not an unconditional obligation to pay. My typical transaction is lending someone $2,000. He is not going on vacation, or cashing in early. I am literally helping him to just avoid eviction. He may have no other option, because usually at the time of the accident he is working. He has a job, but is unfortunate enough to be in an accident. Now he cannot go to work. Employers in this economy are not too forgiving. If he does not show up to work for a few days, he gets fired. He has medical bills. He needs to feed his family. He burns through his savings quickly, then goes to friends and family, but that only lasts for a while. Then he comes to me. I am very careful about how much I give him. I am just trying to get him through to the end. That is the typical situation, and I give him a place to turn. As noted, he cannot go get a payday loan and he cannot go to a title loan company. This is an option where he is not getting into any cycle of debt because he is taking a small advance on his case and there are no payments required until the case settles, so we are not digging him into a deeper hole. When the case settles, he owes us what we gave him, plus a fee. We do not take a percentage of the case. We do not want to be involved in running the case; this is just a straight fee we get on top of what we lent him. We want no involvement in the case. We review the case to ensure it is valid, and then we will advance him a little money ahead of time.

As I said, I am here to try to regulate the industry. It is something I believe is important. This bill addresses the concerns I have seen in the industry. One bad apple can ruin this for everyone. This has become my livelihood. It is my business. I do not want one bad company doing a transaction where it gives someone $1,000 and it wants $15,000 back two years later. I actively became involved to get the legislation passed to eliminate that. As long as it is done the right way, this is a very good product that helps people. If allowed to keep operating the wrong way, it is not good, and has negative impact on my business.

Vice Chairman Ohrenschall:
Let us say I am one of your customers. I have a promising case, and you lend me $5,000 so I do not get evicted. My case settles for $500,000. What would your fee be?

Brian Garelli:
Currently, in most states I charge between 40 and 50 percent per year. If I gave you $5,000 that was out for a year, you would owe me $7,000. If it goes another year, that would be another $2,000, and you would owe me $9,000. Right now I do them as loans, and they keep accruing year after year. Under this bill, we would cap these loans at three years. If the case went on for five years, you would not keep accruing interest. It is somewhat expensive when compared to a bank loan, but for the risk we are taking, it is commensurate.

Vice Chairman Ohrenschall:
It is not collateralized, correct?

Brian Garelli:
It is not collateralized in the respect that it does not create a lien. The borrower directs his lawyer to pay me out of the proceeds of the case when it settles. The normal protections are in place, and everyone else gets paid before me. The doctors, the liens, and the attorney fees all come ahead of me. I come right ahead of the borrower.

Vice Chairman Ohrenschall:
Okay, you gave me the $5,000, it turns out my case does not settle and is dismissed. Would you still collect?

Brian Garelli:
Right now, as I operate in Nevada, I could collect because I am a recourse lender. The people I lend to do not want me to do it as a loan. The reason is he does not want to take the risk that if he loses his case, he still has to pay me back. If that case goes bad, I can collect from him. If I cannot collect from him, I issue him an IRS Form 1099 as a forgiveness of debt. So he now gets hit with a tax liability.

If I operate under this bill, as a funding company, there is no recourse. If the case is lost, he walks away, that is the risk I take. Also, I do not have to issue a Form 1099, because it is a nonrecourse advance. These folks, who do lose their cases, are now getting an IRS Form 1099 from me, creating a tax liability with the IRS. The loan system does work but I believe the funding system is much better for these situations.

Assemblyman Brooks:
I am confused, if this is a $500,000 settlement or a $20 million settlement, it does not appear to me that $5,000 is going to last very long. What are you really loaning, and what does that amount to? By regulating you, does that make you the only game in town?

Brian Garelli:
My average loan size to a borrower is $2,400. It does not sound like a lot of money. The typical situation is that someone gets hurt. He has a little savings; he goes through that, then goes to family and friends. The case has progressed, it is getting closer to the end, and he needs just a little money to get through. Many times this is just to cover some utility bills that he has fallen behind on. Or, he fell behind on his bills, but is able to get back to work; he just needs to catch up. I am simply filling that gap for him. Over the 50,000 transactions I have done, I had one that I loaned over $100,000. Most of these cases are people just trying to get by.

Would we be the only game in town? In the states where this legislation has passed, many companies apply for these licenses. In Nebraska, there are four companies there. Ohio has several companies, between five and ten. Anyone would be free to apply and operate. With any regulation, a situation is created to where it will be limited to the people willing to subject themselves to the regulation. Those people are the good players, the ones who want to be regulated. The other people operating now on the fringe do not apply. They stop operating. This legislation will narrow the market, but it narrows it to the good players.

Assemblyman Brooks:
So, that makes you two the only game in town?

Brian Garelli:
I do not believe so. There are others operating now in Nevada, but there are about 20 companies throughout the country that I consider good players. By opening it up, my guess is there will be five to ten companies apply. That is a good number to create a good market with price competition, which will force the rates down. I know that 40 percent sounds like a lot, but for the risk we are taking, it is not a high rate. Payday and title lenders are much higher. We are lending to people at a much lower rate who cannot even qualify for a payday loan.

Assemblyman Sherwood:
We get your track record that consumers are happy, but on the flip side, the attorneys are the quarterbacks in these situations. When there is not enough to cover all the liens, you are okay with the attorney saying the case did not settle like we thought, you get 20 percent of your payment, and forget about the IRS Form 1099. Is that correct?

Brian Garelli:
If done as a funding loan, I am fine with that. I do that now when there is not enough money to go around. My right to pursue a lawsuit afterwards is very limited. These people are in a very tight spot. If a case does not work out, I normally cannot collect.

Assemblyman Sherwood:
Are attorneys referring them to you? Are you fine with attorneys driving the process?

Brian Garelli:
Yes, I am. My company gets 80 percent or more of its business from attorney referrals. When a client cannot pay his rent, his attorney will refer him to me.

Eric Schuller, Director of Government and Community Affairs, Oasis Legal Finance, Northbrook, Illinois:
Oasis is one of the largest legal funding companies in the country. We currently operate in 45 states. There are some bad actors who charge high interest rates. One of the other things that some of these bad actors do is never inform the attorney until after the funding transaction is complete. The attorney will not know until the consumer already has the money and there is an obligation to pay. This legislation clearly states the attorney has to sign off on the transaction and be informed prior to the loan.

There was a case in North Carolina a few years ago in which a woman was suing the owner of the Charlotte Hornets for sexual harassment. Without telling her attorney, she received $200,000 in funding. She turned down an offer for over $1 million. The case went to court and she lost. She received nothing. Her attorney asked why she did not accept the offer. It was because of the $200,000 funding on the case. She now owed almost $700,000 to the funding company. The attorney did not know about the loan, and he sued the funding company. He won because the funding interfered directly with the case. The funding company told her not to settle the case. The funding company did not inform the attorney of the situation. That is exactly what this legislation will prevent. The attorney will know about it, there will not be any hidden surprises when the case is settled, and there will be full disclosure all the way across the board.

We have a step and time cap on the fees that can be charged. Under the current standard provisions of a 40 percent cap, if a case goes on for 4 to 5 years, the consumer is worse off than if he had received the legal funding. Even at the three-year mark, if the funding company compounds monthly, he is worse off at that point as well. With this legislation, starting on day one, the consumer and his attorney will know the maximum amount the consumer will have to pay back. Right now that is not disclosed.

Opponents to this bill believe this promotes litigation and frivolous lawsuits. That is not possible. In order for a consumer to come to us, he already has to have a valid legal claim. He already has to have an attorney. It is not the reverse of that where we are funding someone and telling him to go have an accident. Over 67 percent of the cases we fund are at least seven months since the date of the accident. One of the issues made very clear in this legislation is that we cannot receive a percentage of the case. If a case settles for $10 thousand or $10 million, our fee is exactly the same. We cannot interfere with the case at all. We have no right to tell the attorney to accept a settlement or not.

This legislation has the most comprehensive rules in the country. This will be the first state to enact rate caps. It will also enact caps on administrative fees. The last state to propose this type of legislation was Nebraska, which passed in 2010. The sponsor of the bill was a personal injury attorney. When he gave testimony on the Senate floor to describe the bill, he said, "When I have a client who comes to me for advice on funding, I tell him no. I tell him to go to his mom and dad, go to his neighbor, get a bank loan. In cases where he cannot do that, there needs to be protection in place for the consumers to ensure they have the ability to settle their case properly."

Vice Chairman Ohrenschall:
Are there any questions? [There were none.]

Keith L. Lee, representing Preferred Capital Lending:
I would like to walk you through A.B. 465. First let me reemphasize what we are not; what consumer legal funding is not. It is not a loan in any legal sense of the term. My clients, as the entity with the money, enter into a very explicit contract. There is not an unconditional obligation on behalf of the consumer to repay all or any portion of the money that is extended to him by my client. The obligation to pay back is determined solely on whether there is a settlement or final judgment reached in the litigation that the consumer is involved with. There are doctor's liens, chiropractor's liens, and many other liens that are paid before my client gets paid. My client gets paid just before the consumer gets paid, and only to the extent that funds are available. Hypothetically, if my client is due $5,000 at the settlement of the case, and there is only $2,500 available, that is all my client gets. Again the significant difference is the consumer protection in the proposed regulatory scheme that the consumer has no legal obligation to repay, unless there is a settlement, and unless there is sufficient funds after repayment of all liens in that settlement. Most importantly, if there is not sufficient money, there is no IRS Form 1099 sent to the consumer who must include that on his tax return.

The first 38 sections of this bill set up the regulatory scheme. Sections 2 through 15 are various definitions that we are proposing be used. The regulatory scheme that is set up in sections 16 through 38 suggests that the Division of Financial Institutions would be the regulatory agency. It sets up an application process. It sets up fees. It sets up requirements of maintenance of records and making them available to the Division of Financial Institutions.

Beginning with section 39, we go into what we call the do's and the do not's of what licensees can do and more importantly what they cannot do. Beginning with section 39, it deals with what the contract should look like. The contract must be in 12-point bold type. We must set forth an itemization of all the fees. We have to set forth what the total cost would be in 180-day incremental periods. All interest ceases to accrue after 36 months. If there is no settlement within 36 months, we accrue no further interest.

It is also important to note that there is an unconditional right for the consumer to cancel this agreement within five days of entering into it. At the point where the plaintiff's attorney has to sign the contract, we encourage the consumer to take the contract to his lawyer as quickly as possible so the lawyer can give counsel on the contract. I think it is also important to note that this money goes to the consumer. It does not go to the consumer's lawyer. It pays off

daily and monthly obligations of the consumer as he continues to live. Also, we have no involvement and are prohibited from having involvement or discussions with the lawyer about whether a case should settle. There are no ongoing discussions and there are no suggestions to the lawyer regarding the settlement of a case.

We do not find potential plaintiffs and suggest they have a lawsuit and that they should file. We only get involved after a consumer has gone to a lawyer and it has been determined that there is a claim. Even then, we go through an underwriting process to determine, to the best of our ability, what the value of the claim is before we make any extension of money to the consumer.

Other things that we cannot do under the proposed statute are: we are prohibited from paying a commission or referral fee to any lawyer, doctor, or anyone else who may refer a client to us. We are prohibited from accepting commissions as well. We do not refer to lawyers. We cannot falsely advertise. We are prohibited from knowingly funding a consumer who has previously entered into an arrangement with another company. We cannot fund that person without first paying off the previous obligation. On several occasions, Mr. Garelli has been unable to help a person because that person comes to him with an outstanding obligation that is too big. Mr. Garelli cannot afford to pay it. It is very important to note that the provisions of this proposed chapter prohibit our extending money to anyone involved in a class action suit. In fact, our clients are restricted to personal injury, disability, and workers' compensation. We are willing to have that put into statute that those are the only areas we are involved in. All other areas, whether it is products liability, mass tort, employment discrimination, et cetera, we do not fund. We are agreeable to have that put in statute if it would add a comfort level to what we are doing. We are not looking to finance lawsuits and we are not looking to further encumber the legal and judicial system with frivolous lawsuits.

Assemblyman Brooks:
I am reviewing this $1,000 funding chart (Exhibit J). If a consumer borrowed $1,000 under the current guidelines, by the end of year two he would owe $960 back. By the end of the third year, he would owe $1,744, correct? Under A.B. 465, the cap would be what?

Keith Lee:
Under current guidelines, interest would continue to accrue and be compounded for the entire duration of the loan.

Assemblyman Brooks:
So, after five years, that $1,000 would potentially be $4,378. Under the breakdown of A.B. 465, it would be capped at three years at $2,000 correct?

Eric Schuller:
Yes, the maximum would be $2,000 at the three-year mark. So if the lawsuit went out to five years, the amount is still only $2,000.

Assemblyman Brooks:
So, currently, the first year he would owe $400, but with the proposed bill, he would owe $800?

Eric Schuller:
Correct. The risk is much higher because these are nonrecourse transactions. Under the current guidelines, if he did not win his case, he still owes the money.

Assemblyman Brooks:
So the proposed bill is actually at 80 percent?

Eric Schuller:
That is correct for the first year. As the cases go on, the annual percentage fee drops. At the 60-months mark, the annual percentage fee is at 24.6 percent.

Assemblyman Brooks:
It does not appear that it increases after three years. Is it capped?

Eric Schuller:
It is capped at the 3-year mark.

Assemblyman Segerblom:
How do you decide how much to loan? Do you look at policy limits of the defendant's insurance?

Brian Garelli:
Yes. The average case for me is an automobile case. I would look at the police report to ensure there is an at-fault party. Then I would look at the amount of the medical bills, and determine a case assessment, what I think the case will settle for. From there, I lend a small percentage of that.

Assemblyman Segerblom:
What percentage is that?

Brian Garelli:
It is usually around 10 percent. I also look at the insurance policy in determining the value of the case.

Assemblyman Segerblom:
Is that 10 percent of what the plaintiff will recover, or 10 percent of the case?

Brian Garelli:
It is 10 percent of the value of the case.

Assemblyman Segerblom:
So if the plaintiff is going to recover 50 percent, that would be 10 percent.

Brian Garelli:
Correct. The cap I lend is 10 percent of the value of the case. My initial loan may be much less than that, 2 to 3 percent. I usually do these loans in installments. Even if someone could qualify for $10,000, I initially only give him $1,000. I try to budget him to help him get through this.

Assemblyman Segerblom:
If they pay back the first $1,000 in a month, is it at 8 percent?

Brian Garelli:
Right now, correct. It is 40 percent on a monthly basis.

Assemblyman Segerblom:
With this bill it is a yearly rate, so it would be one-twelfth of 40 percent. Are they free to pay you back at any time?

Brian Garelli:
Correct. There is no restriction that they must pay back out of the lawsuit. There is no penalty either way.

Assemblyman Brooks:
For clarification, it is 40 percent now, but under the new law it would be 80 percent, correct?

Brian Garelli:
That would be the new cap in the first year, correct. In most states, the market sets the rate. That would be the highest amount someone could charge. The assumption would be that companies would charge at the highest. My experience has been just the opposite. The market sets the rate. There are

multiple companies and we are all vying for the same business. We are all offering only one product to the consumer, that is money.

Assemblyman Brooks:
So these charts are the highest case scenario, based on the proposed bill.

Brian Garelli:
Correct. This is the first state that we are requesting a cap be put in. Once again, we are trying to eliminate those bad players who are charging 10 to 15 percent a month. This would set the ceiling on what to charge. The companies will set the actual rate that is charged.

Assemblyman Brooks:
So, you loan $1,000, and at the end of one month, they owe you $800 plus the $1,000?

Brian Garelli:
No. Currently the statute is in six month increments. So, the first six-month increment was around 40 percent, so it would be $1,400 due if it is resolved within that six months.

Assemblyman Brooks:
And the second six months it would go to $1,800?

Brian Garelli:
Correct. Once again, that is the highest amount someone could charge and be under the proposed bill.

Assemblyman Brooks:
Would you stick with where you are now?

Brian Garelli:
That is my plan. This bill does not impact my business. I can continue to operate either way. The reason I am the largest lender in Nevada is because I keep my rates low. I plan to continue to do that so I make the product available to the most people at the most economical rate so that lawyers feel free to refer their clients to me.

Assemblyman Brooks:
Under the current law you can charge 40 percent annually. If you were to break it in half, it would be 20 percent the first six months, and 20 percent the next six months.

Vice Chairman Ohrenschall:
Is there anyone else in Las Vegas wishing to testify?

Patricia Parker, Private Citizen, Las Vegas, Nevada:
I am in support of this bill because I have been in this situation. On October 1, 2006, I was permanently injured by a taxicab that hit the side of the vehicle I was in. I spent two months in the hospital, four years of rehabilitation, and had four surgeries. I have been through the mill physically, mentally, and emotionally. I also have thousands and thousands of dollars due in bills. The driver of the taxicab was speeding, it was his fault, but the insurance company does not agree with that. Therefore, this has gone on from 2006 until now and is still going on. Since the time I got out of the hospital, I lost my apartment, and my savings was used up. I lost everything. My entire life changed from what it was. Emotionally and financially, this has brought me to the level of poverty.

I went to live with my son. From there I moved to my aunt's home. She supported me for a year until the Medicare and Medicaid started. For the first five and a half months I had no money. After that, all I receive is my social security and disability. It is a minimum amount per month. The medical bills are currently being paid by Medicare. Should I win this case, they will have to be paid back. The attorney's fees and investigator's fees all need to be repaid. What Preferred Capital Lending has done for me is save my life. It has given me a life. I have had a life for the last four years because now I can afford to pay my rent. I am able to buy the necessities of groceries and not be out on the street. This company is not only compassionate, but logical as to what could or could not happen.

My attorney referred me to Preferred Capital Lending. The two girls who took care of me in the office told me everything that I had questions about, without even asking the questions. They let me have time to read over the contract. Coming from a political background, I was raised to know a lot about the law. I read the contract, but the young lady reinforced what the rules of the contract were. I not only had the chance to review the contract myself, but also was told in layman's terms what this contract says, including the interest amounts and the dates of the contract. The only thing I did not know until my attorney told me was in the event I lose the case I did not have to pay back the money. In this day and time, I have never heard of any banks, payday loans, or anything else that you do not have to pay back if you lose. I have lived this way for four years and it has been a rough life compared to the life that I had. I can no longer drive. This company shows compassion not only by allowing me to have money to live on, but also the help I receive from their employees.

These people represent exactly what their company is about. They do it from the heart. I am so thankful for them and what they have done for me. They gave me dignity and brought my life back to a life close to what I was living before this accident. I totally agree with the cap. I totally agree with the fact that they divide it into six-month increments, because it helps me manage the money correctly, properly, and carefully. I think that Mr. Garelli has done a fantastic job with his own particular rules for his company. I believe he has put himself and his company on the line by stating that if I lose my case, I do not have to pay back the money I received. They risk taking a loss. I know this is silly, but it is understandable and agreeable to pay back the attorney and all the other people involved in my care for over four years, but to not have to pay back Preferred Capital Lending if I lose my case is just unbelievable. I believe they deserve this bill and have everything stated as it is. This is a benefit to the consumer enabling him to have a life and dignity until the case closes. While some people take that for granted, I certainly do not. Having to go through the struggle and hardship of being almost at poverty level is unbelievable. It is amazing that a company and its employees can be that compassionate and lend to you without any real collateral. I thank God for them, and I hope you will consider passing this bill.

Vice Chairman Ohrenschall:
Thank you for your testimony.

Assemblyman Sherwood:
As we were listening to that testimony, I could not help but think, why not be the best player in this arena, and let the market work. Any other incidentals could be regulated through the Supreme Court. We would not have to go through this scheme and all the expense to regulate. Then the strong will survive and the best consumer advocate gets all the business. I would cut a commercial with the testimony by Ms. Parker.

Brian Garelli:
That sounds great in principle. I wish it were true that I could be the best player in the market and get 100 percent of the business. I do think I have driven many bad players out of the market in Nevada. However, what is happening now is the bad companies used to have the lawyers sign off on the contract also, now they just do not tell the lawyer, and send a lien letter afterwards. They are giving the person money, and then noticing the lawyer about the lien. These people are desperate, and if they find a bad company and the lawyer does not have the ability to intervene, these bad things happen. I saw a contract last week where someone had borrowed $1,000 and the lending company wanted $10,000 back in under a year. When I looked at the case, I could not buy out the deal. The consumer is being taken advantage of.

Insurance companies are not settling cases any more. Cases are being dragged on for years and people are being put in a tough spot. I am filling a need, but I will not get 100 percent of that need no matter how good a player I am.

Assemblyman Sherwood:
I did not say you would get 100 percent, I said let the free market work. If you got 30 percent we would all be happy for you.

Brian Garelli:
I think that would be great for me. The problem is you would still have 70 percent who are getting into a bad contract if this is not regulated. I see people being taken advantage of, and I do not like that.

Assemblyman Brooks:
How long do cases normally take?

Brian Garelli:
The average, in most jurisdictions, from the time of accident to resolution is five years.

Assemblyman Brooks:
So, in that five-year period, hypothetically, someone would be receiving around $1,000 a month?

Brian Garelli:
Each case is different. I try to keep the person on a budget and give him a small amount each month to get him through, as opposed to giving him the entire amount on day one.

Assemblyman Brooks:
So, currently, if a person gets $1,000 the first year, by the fifth year it is up to $4,378 owed. That is for each $1,000 they receive. Under A.B. 465, he would be capped at $2,000 after year three.

Brian Garelli:
Correct. The interest would be $2,000 so he would owe me a total of $3,000. Under the scenario of a loan, I would have lent $1,000, the interest would be $4,378, and he would owe me $5,378. That is why the loan system can work, but it is not the best scenario. I am willing to be capped at three years, and I will take the risk the case could go longer if I can get something in place that regulates this industry and forces people to do business the right way.

Vice Chairman Ohrenschall:
Anyone else wishing to speak in favor of A.B. 465? Anyone neutral? Anyone opposed to A.B. 465?

George Ross, representing Las Vegas Chamber of Commerce:
Las Vegas Chamber of Commerce believes that this alternative legal litigation financing which we are confronting today presents such significant challenges to the American legal system that rather than just be regulated, it probably ought to be not permitted at all. There is a reason why we have not seen this much before, and there is a reason why it is not much regulated. For centuries, under the English Common Law, this was not even allowed. The idea that a third party would have a financial stake in the outcome of litigation was seen as a perversion of justice.

My understanding is that the Nevada Supreme Court rules do not allow Nevada attorneys to engage in this practice. These attorneys operate under a very strict code of ethics and professional behavior. People operating under these rules are not allowed to engage in this behavior. We believe that alternative litigation financing transforms the courtroom into a stock exchange and makes litigation a commodity. It shifts the focus of the courts from promoting and administrating justice to serving as a forum that allows an investor to wager on its investment. In Nevada terms, this essentially turns the courtroom into a casino in which an investor gambles on the outcome of a case.

This really changes the whole nature of the legal system in America. In our system it is felt that the parties obtain the best result when a plaintiff and a defendant each have a personal stake in the outcome and in the interest of seeking justice, not just dollar signs.

There are additional problems with this practice. In particular, it drives plaintiffs to walk away from settlements. Without such financing it would be very normal and reasonable, but because they have to pay off not only their own needs, and their attorney, they also have to repay the loan. This drives settlements higher and higher than they otherwise would be, which has a direct effect on legal expenses. There are many other arguments against this that Mr. Sasser will be able to articulate better than I.

Tray Abney, Director, Government Relations, Reno Sparks Chamber of Commerce:
My testimony is largely a "me too" to Mr. Ross. I am frequently in front of this Committee opposing any bill that would drive up the legal cost to my members. This would drive up the chance for more lawsuits to be filed against my members. Obviously we are very concerned that the more money my members

and businesses have to pay in legal costs and settlements, the less money they have to hire people.

Jon Sasser, representing the Legal Aid Center of Southern Nevada:
Legal Aid Center Director, Barbara Buckley, has been in conversation with the bill's sponsor for a number of weeks. We have not been able to work out our concerns about the bill, and she informed the Chairman that we would be appearing in opposition today. The threshold question is one that Mr. Ross raised. It is a policy question. Will we recognize and legitimize in Nevada a business which may, under present principles of common law that are still recognized in Nevada, be invalid? The Old English common law term is champerty. It is a law created in the 1600s where Lord A would try to go against his enemy, Lord B, by finding a peasant who might have a lawsuit against Lord B. Lord A would help finance that peasant's lawsuit so that he could improve his power against Lord B. That practice became fairly widespread. You have someone who does not have a legal stake in the lawsuit investing in the outcome of that lawsuit. Attorneys cannot do that under our ethical rules. This allows another body to do that.

There are a number of states which no longer recognize this principle, but Nevada does. Perhaps that is one reason we have not been the first place these companies have come to. Are you going to take a business that may be illegal under our present law and legalize it by blessing it in statute and giving it a legitimate status?

If you decide to go forward and legalize this business, then I would raise a number of questions about the bill, which is portrayed as a consumer protection bill. Section 16, subsection 2, paragraphs (c) and (e), which seem to say that if you are licensed under NRS Chapter 675 as an installment loan company, or under NRS Chapter 604A, payday loans, then you do not have to be licensed under this Chapter. It would seem to me if people want to engage in this very new and unique business which has been described as not a business of lending money, then you ought to be licensed under this Chapter and regulated under this Chapter. Simply because you are able to hang up a shingle saying you are a 675 or a 604, you should not be able to operate in this arena.

The bill does create some enforcement mechanisms with the attorney general, but there is no private right of action. So if a consumer is hurt by one of these companies, he cannot bring a lawsuit. There should be a private right of action with statutory damages and other severe penalties if you are going to go forward to allow this type of business to exist.

Also, there are no prohibitions on arbitration clauses, forum selection clauses, or choice of law clauses; so that the contracts may specify that the law of another state might govern any dispute between a consumer and these companies. I ask you to take a very close look at the sections which go through how much is allowed to be charged. Mr. Griffin, in Las Vegas, has spent some time working up what it would cost to repay loans in various amounts in what would now be the allowable limits if you blessed them in this statute.

First of all, there is a 15 percent administrative fee that comes off the top of each loan. Mr. Garelli mentioned that he liked to dole out the money $1,000 at a time. This bill looks as though he would be able to charge a 15 percent administrative fee on each $1,000, in addition to the interest that would be charged. Moreover, if you have loans over time that roll over, each roll over would be another 15 percent administrative fee. So, if you have a $10,000 loan, you would have $1,500 in administrative fees. If the case is resolved 180 days after the funding date, you would have an additional $4,500, for a total of $16,000 at that point. The annual percentage rate would be 122.35 percent. If the case is resolved 181 days later, but short of one year, there would be 0.8 times the funding amount. That would be $18,000 plus the administrative fee, or an annual percentage rate of 96.5 percent. If the case is resolved 361 days past the funding date but before 541 days, that would bring the total to 1.5 times, so the total recovery would be $26,500. You have set some caps on fees, but are these actually reasonable caps?

Assemblyman Brooks:
Currently, this is borderline illegal. What you are saying is if in fact someone is loaned $4,000, after five years, if he lost in court, he would not have to pay it?

Jon Sasser:
Even though someone may have a license under NRS Chapter 675 to lend money, if he entered into one of these agreements, the borrower might have grounds to legally challenge that contract, and claim that contract is void and is against public policy in Nevada. That is what happens if you are found guilty of champerty under our common law. This whole scheme may be illegal under Nevada law.

Assemblyman Brooks:
Do you know how many times this has been challenged?

Jon Sasser:
Champerty has been recognized by Nevada courts a number of times. I am not aware of anyone challenging this very specific situation, though it may happen.

James Griffin, Legal Aid Center of Southern Nevada:
There is not much more that I can add that Mr. Sasser has not already touched on. Let me just say that at its worst, A.B. 465 allows an annual percentage rate on litigation financing of 215 percent, which is anything but reasonable. My client, Mr. Baggett, would like to testify on his experience with litigation financing.

Bradlie Baggett, Private Citizen, Las Vegas, Nevada:
My son was killed in 2003. I had a prominent growing company doing work here in the United States. When my son was killed it put a dagger in my back. It wiped me out. My company closed down. In the interim I had a little money. A few years later I found myself in dire straits. My girlfriend was sick, my mother became ill, and I was left with a lot of bills that I could not pay. My mind deteriorated. My son was my soul, and my strength. I saw an ad on television, and I reached out to get some extra funding. One of the companies took my case telling me it would help me. I needed about $40,000 to fund a project that would help me excel and make a living for myself. About two weeks later, the company told me it had an interview with my lawyer and had a private conversation with him. As soon as I contacted my attorney, the company contacted me back stating it could not loan me what I wanted, but would give me a little money to help me out. I took about $10,000, which I signed under duress. It did help me pay my immediate bills. Things fell apart, I had legal fees, and I had no income. I was just devastated. The company assured me when I borrowed $10,000 that it would help me out and loan me more money. Being a businessman, that was a good answer and I would accept it on a handshake. When it came to loaning me more money, the company told me $10,000 was their limit, and they passed my loan on to a new company. The amount that I owed the original company for a six-month period was $23,000. The new company bought the contract plus it loaned me another $12,000. Now I owed $35,000. After the second loan, that company sold to another company, and I then owed $70,000. The new company loaned me $15,000, then I owed $85,000. My case was still pending, so the company loaned me another $15,000. I went through five different companies. My son's case was won in court in August, 2009. It was a unanimous decision that the other person was at fault. I was awarded $897,000 plus back interest, which came to about $1.5 million. The week after, I received a bill of $990,000. During that week, the defending attorney filed a claim, which lasted another two years, before I would receive any money.

So, I owed $990,000. I received $79,000 over the three-year period that I borrowed the money. I spoke with my attorney, he advised me it will be another year and a half before we go back to court. I lost everything. I lost my kid, I lost my mom, I lost my home. I decided to file bankruptcy. My lawyers

deserved some money, so I chose to settle my case. We settled at approximately $402,000, in order to pay my lawyer.

These people are not my friends, they are not your friends, they are loan sharks. They pretend to help you. The only thing they help with is they milk you out of the money that you are due. I will never see a penny. The only thing I got was the $79,000 that I borrowed. The only reason I borrowed it is because my bills were extensive. I am here to say those people befriended me, they led me to believe they would help me. The only thing they helped was to line their pockets. The reason I had to settle early was because I was forced into bankruptcy because I had lost everything.

Vice Chairman Ohrenschall:
Thank you for sharing your story. Anyone else here to testify in opposition to this bill?

James Griffin:
I believe Mr. Baggett's story illustrates why these agreements are dangerous. Even though this bill specifically states that these companies are not supposed to be behind the scenes pulling the strings of litigation, just the mere fact that someone is in one of these contracts determines their decisions regarding the course of litigation. Mr. Baggett chose to settle early. He potentially had a recovery of over $800,000. He knew he would not see a dime of that money due to his contract. Someone stated a case from South Carolina where the woman chose to continue to litigate instead of settle because she was in one of these agreements. Just the mere fact that somebody is in an agreement is an interference with the attorney-client relationship. Again, Mr. Baggett received $80,000. His case ultimately settled for $400,000, but he still owes the litigation finance company over $1 million. Mr. Baggett has expressed to me that he would be more than happy to pay back the $80,000 at a reasonable interest rate.

Assemblyman Segerblom:
I am curious why Mr. Sasser would oppose this bill but not the pawnbroker bill in Commerce?

Jon Sasser:
I do not remember making that decision.

Robert L. Compan, Government and Industry Affairs, Farmers Insurance Group:
I have written testimony that has been posted on NELIS (Exhibit K). I would also like to discuss a few notes. Litigation financing introduces a stranger into the mix. As much as the proponents say there is no mix between client and

attorney, we feel that is a critical part of the attorney-client privileges. The proponents say that when they do lending, they look at what the policy limits are. Basically, they cherry-pick. If a consumer has a minimum limits policy of 5/30/10, that is $15,000 of legal liability. These companies are probably not going to want to loan on that. They are looking at the big fish, the claims that will go on for a long time in adjudication. They want to cherry-pick to see what a limit is. When they are doing this, they are already doing something that is restricted in statute, that is, attorney-client privilege. We provide what the limits of liability are on a policy as a courtesy to the plaintiff's attorney in turn for receiving the medical documentation so we can properly evaluate the claim.

This bill came up so quickly, it was difficult for us to react. I went out to my peers and looked at litigation. Basically, this is a wave of legislation that is hitting the country right now. The bills are being introduced late in sessions, so that it is hard for us to get some legitimate defense to discuss the bill.

I did what most of you probably did. I got on the Internet and found a lot of information about this legislation. Most of it was commentary in newsprint. I was told I could not present it due to copyright infringements. *The Chicago Tribune*, the *New York Times*, and the *New York Law Journal* all contain information on this. I could not find anything about this being good legislation.

I saw one study by Julia H. McLaughlin, titled *Litigation Funding: Charting a Legal and Ethical Course*. A quote from this study says, "Free market advocates might celebrate lending financing corporations as a triumph of innovation. Upon closer inspection, however, the litigation-funding industry carries heavy costs borne by the injured litigants and society. Plaintiffs trade future financial security for immediate cash, and thereby provide to the lending financing corporations a rate of return that far outstrips the average profit available in traditional investment markets such as bonds, CDs, and even the stock market, when profit is adjusted over time."

We believe this bill legitimizes what should be against the law. I noticed that these companies look at what the litigation standards are. Usually for a liability case in Nevada, the litigation statute of limitations is two years. We are finding that it is taking close to two years to get some kind of defense or plaintiff verdicts and adjudicating these cases within the statute of limitations. Fighting these lawsuits actually becomes harder because you enter a third party into the mix. What is happening is that many of these people are getting stuck with the fees and costs. By the time the case is adjudicated, the plaintiff will not have anything left. For most cases in Nevada, the attorney fees are going to be 33 percent. If adjudicated and the case goes to trial, it will be 50 percent of the

settlement. Along with that, the plaintiff will be paying these outlandish fees, and he will have nothing left. He may have fallen behind on his living expenses during the interim, but it is not in his best interest to borrow from these companies. If the companies had simple loans with simple interest, they would no longer exist, because they would not be making the exorbitant profits. We encourage this Committee to vote no on A.B. 465. We would be happy to work with any member who would like to introduce some legislation that would outlaw this practice in Nevada.

Assemblyman Hansen:
Would you favor restoring usury laws? Since this practice already exists in Nevada, short of outlawing it completely, would we be wise to regulate it?

Robert Compan:
Regarding your first question, I would need to research usury laws and cannot comment on what our position would be on that. Secondly, I think regulating it is legitimizing it. The regulation as spelled out in this bill is onerous, it puts a heavy burden on plaintiffs, and it encourages the plaintiffs to not settle cases. The proponents of the bill say these cases have to be represented by a lawyer. That does not mean there has to be a lawsuit filed. This would encourage the filing of lawsuits to put it into the court system to increase the litigation costs on a claim.

Assemblyman Brooks:
Unless we outlaw this, it is happening anyway, people are getting abused. I do not understand; if we do not have a bill to outlaw it, and we leave it the way it is, would that not be worse?

Robert Compan:
This is such a new business; I did not realize this was happening until a few weeks ago. Is it against the law? No, it is not. Again, I believe by legitimizing this, you build a platform to keep building on this action through statutes. I think the possibility of outlawing the usage of it is a better option.

Michael Geeser, Media and Legislative Representative, AAA Nevada:
For the sake of time, AAA Nevada opposes this bill.

Vice Chairman Ohrenschall:
Any questions? [There were none.] Anyone else in opposition to this bill?

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here to testify that the Division of Financial Institutions opposes this bill as submitted for a number of reasons. I have submitted those reasons as written testimony (Exhibit L). [Read from written testimony.]

Vice Chairman Ohrenschall:
Regarding your fiscal note, is that based on 60 applicants in the next two years? I heard there may be only four or five companies applying.

George Burns:
We are looking at an estimated 50 applicants for the first year and 10 applicants for the second year in order to encompass the entire biennium. We based those figures upon what our traditional experience has been with new types of licensees, whether they are collections agencies, debt adjusters, et cetera. I do not know whether that will occur in this case. There is some belief that if we open these gates, there will be a flood.

Vice Chairman Ohrenschall:
As far as I am aware, there are only five companies doing this.

George Burns:
The information I have is that there are five companies doing this business legitimately in the State of Nevada under NRS Chapter 675.

Vice Chairman Ohrenschall:
If this becomes law, would the Division of Financial Institutions be able to regulate it?

George Burns:
Our concern is that it would be difficult to regulate this in accordance to the way it is written. Our resources are extremely strained. That is why we have projected an additional full time employee. The other issue is there is nowhere in the legislation that establishes a statutory mandate for how often these companies should be examined and at what rate or cost they should be examined in order for the Division to recoup the expenses incurred in attempting to regulate it.

Assemblyman Hansen:
Are there laws in Nevada regulating interest rates?

George Burns:
There is no overall usury law in the State of Nevada. However there are interest rate caps that are established statutorily by the types of lending. In the case of installment lending, the cap for that is 40 percent.

Assemblyman Hansen:
After usury laws were dropped, we saw an explosion of pawn shops in Nevada. Do you anticipate something similar to that with this bill?

George Burns:
I would anticipate there would be an explosion. This legislation also says that any business coming to this State may also be licensed in order to conduct their business in other states. This could become a base for these types of businesses to launch, possibly avoiding usury laws in other states.

Vice Chairman Ohrenschall:
I see no further questions. Thank you for your testimony. Anyone else in opposition. Assemblyman Horne, would you like to make closing comments?

Assemblyman Horne:
The purpose of this bill is to prevent, to the best of our abilities, those circumstances in which the gentleman in Las Vegas articulated in his testimony about how he was harmed by unregulated industry. This bill is here so we do not have those kinds of stories about being taken advantage of. Also, I would give a caution of an insurance industry that claims it is trying to protect the attorney-client privilege. You must remember also that in instances of litigation, particularly in personal injury, that when you have a plaintiff that is destitute, or near destitute, the offer that is made in settlement seems like the golden ring. The insurance company offering the settlement knows this. My second father was an insurance claims adjuster. One of the things that bothered him was offers that he made to people which were below what the case was worth. His job was to make an offer the plaintiff would accept. He knew the people who would accept the offer and the people who would not. This bill, I think, allows for a more even playing field for those persons who are trying to make ends meet while their case is proceeding forward. This allows them not to make desperate decisions to settle their case. It allows them the comfort to pay their bills, and gives them their rightful place to go forward with a suit when they feel they have been harmed.

This bill will regulate the practices that are currently happening where people are being harmed by this practice. With respect to Mr. Burns, I did not know of his concern and this fiscal note until this morning. He did not contact me. I find it curious that a Division would come in opposition to a proposed bill that

is a policy bill. The question for the Division is, can you or can you not regulate this if we put it into law. His testimony should have been yes we can do this, or no we cannot do this, or we can do this but it will cost money.

[Also submitted as exhibits are Exhibit M and Exhibit N.]

Vice Chairman Ohrenschall:
I will bring the bill back to the Committee and close the hearing on A.B. 465.

Chairman Horne:
We are going to take a quick break.

[Recessed at 11:41 a.m. and reconvened at 12:03 p.m.]

After much work, we have an agreement on Assembly Bill 258, the Internet poker bill.

Assembly Bill 258: Enacts provisions governing the licensing and operation of Internet poker. (BDR 41-657)

Pete Ernaut, representing Nevada Resort Association:
I am very proud today to not only present but support A.B. 258 as landmark legislation ensuring that Nevada is the leader of the emerging industry of online poker, both as an operator and as the regulatory standard bearer. The amendment that we are presenting is the product of many days of negotiation under the direction of Chairman Horne. That is appropriate because this is important. The gravity of the situation and what it represents warranted getting this right. It represents, on behalf of the Nevada Resort Association, an important public policy statement to Washington, D.C., and beyond, that the Nevada gaming industry will soon be ready to lead the worldwide online poker industry.

Richard Perkins, representing Rational Services:
It has been a long negotiation. I, too, am proud of the work that has been done on this bill. It was an extraordinary amount of negotiation and compromise and I would suspect that neither side got everything it wanted. As we say, if everyone is relatively unhappy, it must be good public policy. It also gives me great pride that Nevada will remain the leader in the world in its gold standard of gaming regulation and be the leader in the cutting edge technology as the gaming industry expands in this arena. Again, with the time spent on this, the parties involved are very excited to have come to a conclusion. It may not be perfect, but it is a good product.

Pete Ernaut:
This amendment is an omnibus amendment that replaces the existing bill [Exhibit O]. Section 2 is what we call the findings section. This is more of a preamble to set up the public policy direction in the sections below. They are all straightforward and without opposition between all the sides that have been part of this bill. Section 3, subsection 1, paragraph (e), simply allows for the current definition of online poker to be integrated into the existing interactive statutes. Section 4 has the first major issue, which is the effective date and giving direction to the Nevada Gaming Commission. As you will notice in section 4, subsection 2: "The Commission shall provide that regulations governing the licensing and operation of interactive gaming adopted pursuant to subsection 1 do not become effective until; (a) A federal law providing for the licensing of Internet poker is signed into law or the United States Department of Justice advises the Board or Commission that it is permissible to license Internet poker operations." Simply put, this says that Nevada can get ready to go, it can do its rule making, it is directing the Commission to begin now. There was some discussion earlier that the State Gaming Control Board and Commission have existing regulations that would allow them to begin this process. That is true; this simply directs them to begin now. It also says that the provisions by which online poker begins would not be permissible until the federal action takes place, or the Department of Justice would change its opinion of this issue. That provides for the fact that if a federal court decision came before any federal congressional action, then Nevada would be in a place where we had a bill that would not be able to be enacted. This bill is trying to have a belt and suspender approach to ensure we are available to start, maybe not a minute before this federal action, but certainly a minute after.

Next is section 4, subsection 3, paragraph (d), that strikes the provisions that created the tax in the original bill. The reasoning behind that is we believe there is no doubt that any federal legislation would include a tax provision. There is no reason to believe the federal government would do this without taxing someone. The object of the bill is not in lieu of or on top of the federal tax provisions. Section 4, subsection 5 paragraph (a), subparagraph (3), says: "The establishment has held a nonrestricted license for at least five years prior to filing of the application." This deals with a few things. We wanted to ensure that any online poker activity was done in a partnership with an existing and established Nevada nonrestricted licensee. This would preclude someone from buying a distressed property, or a new establishment merely for the operation of online poker. This is in keeping with the federal bill that is going to be moving forward later this year. It also allows for that partnership to happen not only with a bricks and mortar nonrestricted licensee, but also the affiliate. That allows for the innovation that will undoubtedly happen in this industry in which

interactive and online companies will exist as part of an ongoing gaming operation, but not necessarily within the four walls of an establishment.

Section 4, subsection 6, states: "The Commission may issue a license to operate interactive gaming to an applicant that meets the qualifications established by federal law regulating the licensure of Internet poker operators." This essentially establishes Nevada as the federal standard of regulation and allows Nevada to license entities operating in other states once it is allowed and authorized on the federal level. The federal bill that was unsuccessful in the lame duck session contained one provision that we undoubtedly believe will be in any federal legislation, and that is Nevada and New Jersey would be the two states that set the regulatory standard. This merely provides for that as it happens.

Sections 5, 6, 7, and 8 are all the effective dates. The reason these are segregated is understanding that the most important effective date of when bets can actually take place would be upon the creation of federal regulatory standards that allows for online poker but clearly we want the rule making, licensure standards and such to begin immediately. Section 5 essentially synchronizes the state and federal efforts, laws, and effective dates. It allows also for cleanup if by chance some of the provisions do not exactly synch up once the federal bill is passed. Clearly we are looking into a crystal ball and making a very educated guess. On the off chance that something does change in the federal process, we allow for this bill to be flexible. Section 6 not only mandates the Commission to start, but it also gives it a time frame to complete its action by December 31, 2011.

Section 7, makes section 3 effective on the federal action. Lastly, all the other provisions as we discussed in rulemaking and licensure standard creation would become effective upon passage and approval of the bill. That concludes the major changes that this amendment represents to the original version of A.B. 258.

Chairman Horne:
I know there is still a question on whether or not intranet poker would be permitted. We wanted that to be included if there is no opposition. Would Legal need to tighten up the language to allow intranet poker to be conducted?

Pete Ernaut:
The intention is to allow for an intranet system. This is set forth in finding number 6. The bill also purposely allowed that to be done in the system of rulemaking within the Control Board and the Nevada Gaming Commission. We did not want to tie their hands in the creation of that system.

Richard Perkins:
In summary, what I think this bill accomplishes is giving direction to the regulators to promulgate the regulations, to begin their licensure process when the regulations are in place, and holding those licensure processes to the same high standard that Nevada has always been known for. This is an opportunity to pursue the intranet games and the findings of various pieces for clarifying language or direction to regulators and the like. What is different in this amendment is the discussion of play with the rest of the world. That is then delegated to the discussion with the federal government. The language that would water down the gold standard that Nevada has, is stricken as well as the negotiations requiring a bricks and mortar partnership in order for this to move forward.

I think we all recognize the decades and billions of dollars that our gaming industry has invested in this state, and also the creation of our current gaming regulation and environment. That became part of the negotiation and what was agreed to as well. Regarding the striking of the tax provisions, every bill that has been introduced at the federal level had various sorts of taxing provisions. The lame duck bill had a sharing of those taxes with the states, particularly with the lead states in the regulatory process. This bill puts Nevada at the forefront of that. The revenues realized from that, we believe, would be shared with this state.

Pete Ernaut:
Back to our original testimony, I would say that we believed that online poker and this emerging industry was inevitable. We wanted Nevada to be the leader of that effort. We wanted to put together a smart bill that made sense for everyone moving forward; both our existing gaming industry and the online poker industry, so that Nevada would be the leader both operationally and regulatorily. I would like to commend you, Mr. Chairman, because through your efforts I believe we have succeeded. As this bill moves through the Senate and to the Governor, we will be proud of the fact that we were a part of a bill that I believe sets forth a landmark public policy and a new frontier for this State in gaming.

Chairman Horne:
Thank you. I would like to thank you, Mr. Ernaut, Mr. Perkins, and Morgan Baumgartner for your work and tireless efforts in getting a good bill. I would also like to thank Governor Sandoval for being available to me. Are there any questions pertaining to A.B. 258? I will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 258.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Horne:
I will handle the bill on the floor. [Work session document submitted for the record (Exhibit P).] I will now open the hearing on Assembly Bill 394.

Assembly Bill 394: Revises provisions relating to common-interest communities. (BDR 10-346)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
Assembly Bill 394 is a very important measure for Nevada citizens who live in common-interest communities and are facing or are involved in a foreclosure by the association. However, A.B. 394 is about more than foreclosures by homeowners associations (HOA). The bill will rein in unreasonable collection costs which victimize homeowners. According to the Nevada Real Estate Division's website, Nevada has 2,967 HOAs. That comprises 474,604 homes within HOA communities. Assembly Bill 394 is one of several bills this session that I have introduced that involve people who own property in common-interest communities. As you know, common-interest communities are governed by HOAs organized as corporations and headed up by an elected board of directors.

I am sure you also know, common-interest communities have the extraordinary power to place liens on, and in certain circumstances foreclose on, someone's home. Just as important as it is that we ensure that banks treat citizens fairly, it is critically important to ensure that the process around any foreclosure by a common-interest community is fair, equitable, and transparent. Like many of you, I have heard frequently from angry and tearful homeowners in HOAs. Some are unable to restore themselves to a paid-in-full status because of excessive collection fees. Others are tormented by the threat of foreclosure by a collection agency. Assembly Bill 394 will put forth strict guidelines that HOAs must follow in order to protect the homeowners and, most importantly, it will put a cap on some of these excessive collection fees that in many cases solely benefit the collection agency. They take advantage of both the HOAs and the homeowners. They often stop real estate transactions. In many cases, they hurt everyone in our state.

I was first inspired to introduce this legislation last year when I had a constituent who lived in Sunrise Mountain who was not able to pay her mortgage. She was being foreclosed on by the bank. She availed herself of our mediation program. She went through mediation, and they worked out a new payment plan—a payment that she could afford. As far as I knew, everything was fine and she saved her home. A few months later she called me and said, "I am being foreclosed upon. Not by the bank but by the collection agency on the arrears HOA dues." While she was trying to work out her mortgage and save her home, she had stopped paying her HOA dues. The balance of what she owed was in the hundreds of dollars, but the bill that was presented to her for which she was being foreclosed on was in the thousands of dollars. That is what inspired me to introduce this bill, and that is how I got in touch with the other folks who have been working on this legislation.

Chris Ferrari, representing Concerned Homeowners Association Members Political Action Committee:

I was approached by Concerned Homeowners Association Members Political Action Committee (CHAMP) last year with an issue. I was reluctant to represent real estate investors trying to get sympathy for their plea on the matter. I spoke with some pro bono attorneys and to some consumer credit counseling services and they had the same problem as the investor community.

Thus far we have some pretty interesting allies in this fight. We have written testimony from the National Association for the Advancement of Colored People (Exhibit Q), and the Consumer Credit Counseling Service (Exhibit R). This is impacting all of your constituents on a very broad level. Many people have said they have worked on this issue for quite some time on the Senate side, it is now getting here and we are happy to inform you of our progress thus far.

Many people have said investors are greedy. They purchase homes at foreclosure, at auction, and at short sales. Oftentimes entire kitchens have been removed from these homes. The purchaser must then make all the repairs to make it sellable before they can put it back on the market. They hire local contractors to do the work. They hire local realtors to get those homes sold. These investors are a vital part of rejuvenating our economy and should not be confused with real estate speculators.

Assembly Bill 394 is offering some very significant and very real homeowner protections. We have a proposed amendment (Exhibit S). At the request of some of your counterparts in the Senate Committee on Judiciary, we have put together a line-by-line breakdown of what this entails. Many of the conversations have been driven around how much is being charged, what is a

collection fee cap going to look like, and how are you arriving at those numbers. We worked with several different collectors and attorneys practicing in this area and came up with a hard cap of $1,475. The attorneys represent Fannie Mae and Freddie Mac on a national level for their business in Nevada. They also represent private homeowner associations. You will hear mention of the $1,950 fee cap proposed by the Commission for Common-Interest Communities and Condominium Hotels. They also believe that we should do something through this cap rather than through statute. The challenge with that cap is that is has a few holes in it. One for significant attorney fees, and another that says they can recoup any costs in connection with a described activity. So, the $1,950 is just addressing letters along the way and everything else is on top of that which makes for a very significant expense, and there is no real reform. Some examples on NELIS, marked exhibits A, B, and C (Exhibit T) show some of the issues we are trying to curb. [Read written documents.]

Now if you will turn your attention to the screen, we will review the slide presentation (Exhibit U). [Presented slide show.]

We are asking for your support on A.B. 394. We believe it is a reasonable bill. Our amendment does away with the current fee cap within the bill which was based on a sliding scale and was much more aggressive. Our cap is somewhere between what is being asked in the Senate of $1,800 and ours which is now $1,475. This is a very real problem. Someone you will not hear from today is the Commissioner of the Division of Financial Institutions, who is charged with not only regulating these agencies but also receiving consumer complaints. The Division and that individual personally, were sued by one of the folks opposing this measure in December 2010. Based on that pending litigation, he is not able to provide comment. We are asking for some reasonableness in this process so we can continue to have a vital economy and to help these homeowners who are struggling.

Assemblyman Frierson:
Your proposed amendment refers to $975. Am I looking at the right amendment?

Chris Ferrari:
The $975 is in section 1. On page 3, lines 14 and 15, it states, "The total reimbursable costs outlined in section 3 (a) and (b) shall not exceed $500." The $975 plus $500 equals $1,475. The Commission for Common-Interest Communities and Condominium Hotels was proposing $1,950 dollars for the series of letters. Another bill proposed $1,800. We are proposing a hard cap of $1,475.

Chairman Horne:
Any other questions?

Assemblyman Carrillo:
Regarding the cap, a homeowner may get caught up once, and then faces another hardship. Is the homeowner subjected to the cap each time?

Chris Ferrari:
Will the cap apply each time someone finds himself behind? Yes, sir.

Assemblyman Sherwood:
Do you have a sense of how much money that is being collected goes back to the collection agencies? Is it most of the money collected? If yes, why would you need the services of a collection agency?

Chris Ferrari:
That is certainly a question for this body to debate. You make a good point in that NRS Chapter 116 only allows homeowner associations to collect nine months of past-due obligations. Therefore, in the $50 per month example, no matter how much above the $450 for those nine months that are collected on behalf of the association, they still will only receive $450. So regardless of the amount of the lien, the only amount the association will receive is $450.

Assemblyman Sherwood:
There should not be any more money collected on top of that when the house sells. By law, the association will get its nine months. Anything above that is just dragging down the system, right?

Chris Ferrari:
We agree. Homeowner Associations are overwhelmed, and consist of voluntary boards. I can imagine that often it is challenging for them if there are 200 to 300 homes with these past-due assessments, to try to figure out how to manage the process. A collections company can bring a level of expertise, but the fees charged in conjunction with that service should be commensurate with the service provided.

Assemblyman Frierson:
I have discussed this issue with several people who always bring up the purchase and sale of property. This also deals with regular folks that are in their home and got behind on their HOA fees. I have seen some cases where a $300 balance became a $3,000 balance simply by the HOA referring it to a collection agency. This is not just about the sale and purchase of homes, these

are still folks that are not being foreclosed on, they just got behind in their HOA dues, correct?

Chris Ferrari:
That is correct. This is happening every day. Once the file is turned over to the collection agency, there really are no regulations on what can be charged at that juncture.

Assemblywoman Diaz:
The fees charged for letters is separate from the $1,475?

Chris Ferrari:
With the proposed amendment, the total amount that can be collected for anything is the hard cap of $1,475. All the letters and collection efforts are included.

Assemblyman Carrillo:
Is this bill dealing with out-of-pocket money for the investor who is flipping these houses?

Chris Ferrari:
Certainly on an investor level, there is a disproportionate impact. My clients are buying houses on a monthly basis. I think the overarching policy issue is that this affects both the purchasers and the homeowner who gets behind on his bills. For example, one of your colleagues in this body went to purchase a home, and there was less than $400 due in back assessments on that home, yet there was a lien for $6,000. Again, the HOA would receive less than $400 in its assessments; the rest of the money was borne by the buying and selling realtors who had to split that fee. There is also a member of this body who may have been on vacation for a month or two and missed a payment. He came back to find that from the few hundred dollars in payments that were missed, he now owed several thousand dollars. This is affecting everyone who is transacting real estate or is living in an HOA.

Chairman Horne:
Any other questions? [There were none.]

Kyle Davis, Political and Policy Director, Nevada Conservation League and Education Fund:
I am here today to speak in support of this bill, specifically to section 3 of the bill that will allow for the use of clotheslines in HOAs. These are small issues that we deal with every session in terms of things that homeowners should be

able to do for energy efficiency and for the use of reusable energy. This is one case where it makes sense that people should be able to use clotheslines.

Chairman Horne:
Any questions? [There were none.]

Terrill Pollman, Private Citizen, Las Vegas, Nevada:
I am here to testify in favor of what appears to be the comic relief in this bill, but is an important common-sense provision that will help the people of Nevada. I am in support of clotheslines. About 6 percent of electricity used in residential homes goes to running a clothes dryer. In southern Nevada, we not only pay to run the clothes dryer, we also pay to cool the house at the same time the clothes dryer is heating the house. I hope you will consider this common sense proposal. Colorado, Florida, Utah, Maine, Maryland, Vermont, and Hawaii have all passed similar provisions.

I also want to note that the language of section 3, subsection 2, paragraph (e), also allows for HOAs to reasonably restrict the use of a clothesline so we do not have to worry about unsightly clotheslines in the front yard. The provision in Florida has been interpreted to show that in condominiums you cannot hang clothes over the terrace. I fully support this provision and hope that you pass it.

Chairman Horne:
Thank you.

Michael Joe, Legal Aid Center of Southern Nevada:
There are strange bedfellows in support of this bill. Legal Aid and real estate investors have joined together. We are interested in the justice of this bill. We see the injustice. Just because there are rich investors does not mean there is not an injustice being done here. At Legal Aid, we represent the regular folks. These are homeowners trying to save their homes. What we see are people who get fines of $20 to $40, miss a payment or two, and find themselves owing thousands of dollars and struggling with a system that will not let them save their homes. I do not want to say that all collection agencies are bad apples; I do not think they are. There are some bad actors out there, and I think this legislation is directed towards them, towards reining in that bad activity. Normally, I do foreclosures. A common story that I find difficult to deal with is that of someone who got a loan modification, after successfully negotiating with the bank, then found out that he owes thousands of dollars to their HOA and were still being foreclosed upon. I have a hard enough time dealing with the banks, but I have to deal with the HOAs as well.

In general, we agree that HOAs should be able to collect the dues they need to represent all the homeowners and to collect the fees to run the association. At the same time, we do not feel that charging $3,000 in fees for a $20 fine is appropriate.

In general, we support three things. One, an overall cap, the lower the better. The second is we think there should be perspective. If you owe $20, you should not be charging thousands of dollars worth of fees to collect that debt. There should be some relationship between the amount you owe and the amount spent to collect the debt. The last thing is, we are very concerned about the loopholes. The loophole I am most concerned about is the attorney loophole where, in the definition of collecting costs, it says that attorney fees are not included in that. We think that they should be. Whether you are suing and charging $300 to write a letter, or just writing a letter as a collection agency, it is still the same egregious act we are trying to control.

In the past, Legislature gave a super priority lien to the HOA. That is a tremendous asset for them to use, but it was not intended to be used as a sword against the members of the association. That is what I see. I asked the advocates at Legal Aid how often we see these cases. They told me every couple of weeks we see a case where someone owes thousands of dollars based upon an infraction that was fairly minor. There are cases where people are trying to work it out with their association and taking a few months to do that. The collection agencies charge $300 to write the letter, and another $500 to keep the case open, et cetera, and by the time you are done it is $3,000, no matter where it starts. That is not fair. We support an overall cap, and we support keeping in perspective the amount you can charge on collecting a fee, depending on how much you owe. I want to ensure we close the loophole associated with attorney's fees. [Proposed amendment submitted by Michael Joe (Exhibit V).]

Chairman Horne:
Is there else anyone in Las Vegas to testify? Please come forward.

Tracey Donley, Private Citizen, Las Vegas, Nevada:
I am here to represent the people who are trying to short sale because they do not have a job, and because they are trying to keep their credit in good standing. They are trying to avoid foreclosure. As a real estate broker, I have had several people forced into foreclosure by the collection agencies with a game of chicken. One notable case, my client owed $2,700 to the HOA which represented approximately 18 months of payments, but the collection agency bill was over $9,300. I wrote letters and the homeowner wrote letters trying to negotiate with the collection agency. Ultimately, they would not negotiate.

The HOA was advised by the collection agency not to negotiate. The homeowner was forced into foreclosure. This homeowner was a military member with high security clearance, fully approved for a short sale. This is not an isolated incident, this is the norm.

I spoke to one of the owners of the collection agency. He actually admitted that the default rate is between 10 and 20 percent, but he makes a lot more money on the people who do pay up. That is a terrible attitude to have. I agree with the member who stated that if a home is going into foreclosure, and their HOA is entitled to 9 months super priority lien, why on earth should a collections agency be entitled to collect anything once the property goes into foreclosure? As a real estate broker with 30 agents, if my agents do not sell a house, they do not get paid.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I think clotheslines are a great idea. I do not think it should be allowed in front of a house, or hanging from a terrace. It costs $14 to place a lien on a home using an online form from the recorder's office. This has been done by an association in Sun City. In NELIS, under A.B. 448, there is a copy of the lien. I concur, if the HOA is only getting nine times the monthly assessments, and the collection agencies are getting the lion's share, something is wrong. Rather than nine months, increase it to a 12-month super priority, where the HOA would get more money. Also, the Cooper Castle Law Firm does the same work for Fannie Mae and Freddie Mac for $600.

John Radocha, Private Citizen, Las Vegas, Nevada:
I have one comment on this bill, page 7, line 16. I believe the words "timely manner" should be removed. This is a very subjective and argumentative statement. My association started out with a due date of 15 nonbusiness days to pay your bill. Now it is down to 10 nonbusiness days. This month the 10th day was on Sunday. The association does not work on Saturday. This reduces the time to 8 days. This puts people on a fixed income in a bind. I suggest you remove the words "timely manner" and change it to "15 working days."

Jason Mattson, Private Citizen, Las Vegas, Nevada:
I represent many short sale clients in Las Vegas. Everyone has heard how tough it is to negotiate a short sale with the banks. On top of that we have the HOA collection agencies, which I would say are as bad if not worse than the banks. For example, I have a short sale that I spent 1-1/2 years negotiating with the bank to finally come to terms, only to find out the HOAs had gone into collections over a fee of $450 owed to the association. That bill has now turned into $4,500. We called the collection agency to try to negotiate that

down. They gave us a blanket statement, "No, we do not negotiate our fees." The property went to foreclosure and was bought by an investor for about $20,000 less than what we had offered to the bank. I understand why there are super priority liens for the association so they can collect their fees and keep the neighborhoods in good standing, but to have the collection agencies be able to jump in and use the super priority lien as a defense is absurd. This is extortion.

David Robman, Private Citizen, Las Vegas:
I am concerned that the driving force of this bill is to punish all collection agencies because of a few bad apples. If people followed the rules and met their obligations, we would not have a need for collection agencies. Every business has its share of unethical or even criminal practitioners. It is a fact of life and regulations should be strict enough to keep this sort of thing to a minimum. But to lump them all together is wrong. Collection agencies are obviously needed because financial obligations to an HOA must be met. To curtail a collection agency's ability to do this is foolish. They are the specialists. If I have a heart problem, I do not go to my dentist. If my teeth hurt, I do not go to my orthopedist. Legal Aid talks about injustice. What about the justice for us? Why should our community suffer and our budgets not be met, our common areas not maintained, or our services curtailed? This bill would make it even harder to collect assessments, thus impacting the quality of life in our community and the paying homeowners. Why should these rule-abiding homeowners, like me, have to make this sacrifice? If all we can charge is a recording fee, no collection agency will take the account. In effect, the HOA would have to wait indefinitely for the violator to pay up. Everyone knows times are tough. I have been out of steady work for four years. My savings has taken a huge hit, but I am current with my assessments and mortgage. Others are not so lucky, many through no fault of their own. But an obligation must be met. My HOA is cognizant of this and we repeatedly tell our homeowners to come to us and discuss payment plans to avoid collections. We are still 25 percent down on our monthly dues.

This bill would cause the discussions to come to a standstill. You have heard how procedures work in obtaining assessments; everyone misses a payment now and then. Statements are misplaced and we do not realize it until sometimes we get a second notice or a phone call. Our HOA does not charge a late fee for 30 days. Major fines do not happen for 60 or 90 days. We hear all the time in compliance meetings that someone did not get his notice, or he was out of town, or he does not live here so how was he supposed to know his weeds were too high. Every homeowner knows, coming out of escrow, that he has obligations, both for maintenance and financial. To ignore them is absurd. Simply put, by the time an account reaches collections, the homeowner has

resisted his obligation for quite some time and has acted in bad faith toward the HOA.

I am bewildered when I hear claims that homeowners have accrued high collection fees before they knew they were in collections. Assembly Bill 394 states that in order to have a collection policy at all, it must be approved by two-thirds of the total number of the voting members. Do any of you live in an HOA? Have you ever tried getting two-thirds of the owners to agree on anything? If you sent out a notice that you would be giving each homeowner a $100 bill if he came to the main gate on Tuesday, you would only get 30 percent. A simple collection policy is no different than making the pool rules.

Of course there are mistakes made. If an account has gone to collections incorrectly, or paid up and not recorded properly, then restitution should be made. Maybe Legislature should be looking at how that can be regulated so we do not have people saying it went to collections and there is nothing we can do. That is wrong also. I do not know whether caps are the answer, but fees should be commensurate with the severity of the violation. Regarding the concern about fraudulent or gouging collection agencies, get rid of the bad apples; do not toss out the whole barrel.

Chairman Horne:
I do not believe that this bill is proposing to eliminate collection agencies. It is questioning certain practices like a $300 fine to an HOA which becomes a $3,000 bill to collect. We have laws all the time where the bad actors are addressed, even though the majority of us are not within that group. Does anyone else in Las Vegas wish to testify in opposition to this bill?

Paul Terry, representing Community Association Institute:
With respect to the clothesline in section 3, that is certainly an issue that can be discussed in the concept of renewable energy. With all due respect, we do not believe it belongs in a bill involving collections. We could support it in a different context. I think the primary issue that we want to emphasize is that number one, we support a cap. However, this issue arose in the last legislative session. The Legislature directed this issue to the Commission for Common-Interest Communities and Condominium Hotels which is established and has expertise in this area. That Commission held hearings for over a year, took testimony and evidence from all of the stakeholders, and at the conclusion of that extensive investigation came up with a schedule and regulation number R199-09 that established a cap at $1,950, based not on one side's analysis, but based on input from all of the sides and based on a substantial amount of expertise in the industry. We think the Legislature should defer to the

commission which it created that has expertise in this area and not attempt to second guess the decision that the commission made after all of that testimony from all the parties, as opposed to what is going on here now.

Chairman Horne:
As a reminder, legislative bodies have the prerogative to revisit any legislation that we pass in previous sessions. It is difficult to bind a subsequent legislative body to the wills of those who came before us.

Assemblyman Frierson:
Would you oppose making the regulation a statute?

Paul Terry:
We would be in full support of that. The only reservation is that once you make it a statute, it becomes very difficult to make adjustments. If the alternative is between a statute and leaving it as a regulation, we would fully support the statute.

Assemblyman Frierson:
I agree, once you make it a statute, it is pretty difficult to undo it as well, which is part of the value of making it a statute.

Chairman Horne:
Anyone else in opposition to this bill?

Garrett Gordon, representing Southern Highlands Community Association; and Alessi & Koenig:
I think it is important to come to the table with all three different interests. Angela Rock represents both an association and a management company. We have been working closely with Mr. Alessi to understand these ideas. We have been on the Senate side for the last 3 weeks, and a lot of these issues have been discussed both in testimony and in the hallways. There is no dispute from my clients that a cap is necessary. We agree there should be a cap. We agree there have been egregious examples of collection agencies turning a $300 assessment into a $6,000 bill. There is no excuse for that. I think the first key question is what should that cap consist of, and should the cap be a state law, or should it be in a regulation? I would agree that this issue has been with the Commission for over 15 months. It does cap it at $1,950. This cap does not mean that if you are a month or two behind, you now have a bill for $1,950. There is a series of steps, close to 300 days go by before you would eventually get to that point. I would submit to you that most folks who get to that point have either given up on their mortgage payment, or decided to spend their money on other things besides assessments that they are obligated to pay.

There is some working room for the homeowner who gets in arrears and is trying to crawl back out legitimately. I understand that there is a need for the association to balance a budget, and there are obligations like security, landscaping, water, and funding reserves that have to be done. If 10 percent of homeowners are not paying for assessments, how does that budget get balanced?

Angela Rock, President, Olympia Management Services, representing Southern Highlands Community Association:

Many important points have already been covered. We have submitted our testimony for the record (Exhibit W). I would like to hit on a few highlights. Section 5, subsection 1, paragraph (b) requires a two-thirds vote to adopt a collection policy. In a community the size of Southern Highlands, that is akin to prohibiting collection altogether. We would need roughly 4,667 people to vote in favor of a collection policy, something that is already set forth in the declaration, and something I would imagine most people believe is our fiduciary responsibility to do. I do not think we could give away a trip to Disneyland and get that many people to respond. I would in fact ask that the statute stay as it is and allow an association to adopt a collection policy and mail it to the homeowners. I feel that is important. We are for transparency, and I believe people have a right to know the ramifications of a failure to pay.

We do support a cap. At Southern Highlands, our fees do not get nearly to the point you have seen today unless there are multiple occurrences on a single property or multiple foreclosures. I am not saying that has not happened, but we do work with the homeowners. Certain things with the cap may be important. Payment plans are an extremely important tool that allows individuals who have fallen into arrears to stop the train. Requiring that associations be required to accept a payment plan if someone is making a diligent effort to pay within a twelve-month period, may be a tool that one could use to stop this train.

I would like to address section 8, subsection 3, beginning with line 43. We strongly object to this provision. It carves out and removes an association's right to bill for collection costs that have already been incurred in the process. We have heard a lot of testimony about the nine-month super priority; why an association even needs to engage in collection activity.

One thing that is important to note is an association is not always put on notice when there is a pending foreclosure. A board of directors does not know why an individual is not paying. Maybe the homeowner has decided to stay and not pay. If the cap is too low, or there is a method by which to avoid collection

costs altogether, people could simply stay and not pay. There needs to be a method by which the association can encourage payment.

I believe section 9, subsection 1, paragraph (b), is an attempt by the sponsor to ensure that the individual has notice of a pending foreclosure. We have heard horror stories of people who have gone out of town and come back to a foreclosure. At Southern Highlands, the process can take up to 10 months. If you are out of town for 10 months, then you should be on automatic withdrawal for your association payments. Requiring an association to personally serve an owner is onerous, burdensome, and nearly impossible if that owner is trying to dodge service. The homeowner is required to get certified mail, are required to get regular mail. An association is required to mail to any mailing address that unit's owner selects. Truthfully, I do not see why someone is not getting mail. If the homeowner takes steps to ensure the mail is coming to him, then the current statute should be sufficient. Furthermore, that provision is onerous because it somehow requires an association to determine the difference between an owner occupant and a tenant occupant.

Finally, section 10, subsection 2, frankly I do not understand this section. This bill was promoted to all of us as a way to encourage homeowners to stay in their homes, protect homeowners, and protect consumers. This section reads, "If the sale does not occur within 120 days . . ." then an association may not foreclose. I simply do not get that. At Southern Highlands we want people to enter into payment plans. We want to help them if they are in a short sale. If we have no method to collect assessments, or if we do not foreclose within 120 days, you are forcing the association to go full tilt.

Chairman Horne:
Since HOAs have super priority lien, if they have outstanding fees owed to them, and they know a property is in foreclosure, instead of using a collection agency, why not wait for the foreclosure to take place? The HOA will get the outstanding fees off the top.

Angela Rock:
Essentially that gets to the heart of what has been comingled here. An association is not put on notice when the first mortgagee is foreclosing. Often those foreclosure sales are undertaken without our knowledge. Frankly, we had a bill last session requiring the homeowner to notify us within 30 days after the foreclosure sale. That is not even happening. As an association, we would love to know whether a home is about to go to foreclosure. We could stop our activity and wait for the super priority. The super priority only comes into play if the first mortgagee is foreclosing. If someone is doing what we call stay and not pay, that issue is not resolved by the nine month super priority.

Chairman Horne:
Any questions? [There were none.] Anyone else here to testify in opposition?

Keith L. Lee, representing First American Default Services, and Lawyers Title Insurance Corporation:
We are the people who get involved after the notice of default for the homeowner's lien under NRS Chapter 116. Everyone who is in the chain of title on the unit and anyone who requests special notice must be given notice of the notice of default and attempt to sell when that comes forward. My client is contacted by whoever is trying to collect the debt owed to the HOA, and we issue a trustee sale guarantee which is a chain of title that is guaranteed to a certain amount depending on what schedule is selected to ensure that is accurate information.

We are licensed by the Division of Insurance of the State of Nevada. We file a rate schedule with the Insurance Division. With respect to trustee sales guarantee, that is a sliding scale depending upon the amount that is being foreclosed upon within certain limits, which can range between $290 up to $450.

Our objection to the bill is in section 1 and how the cost of collection is defined. As I read section 1, we are included in that as we have a title search and lien fee, so we would be included in the cost of collection. We also object to section 5 which caps those costs of collection at an amount that would not necessarily include the amount of our fee. This is a continuing objection that I have had with all the HOA bills.

Chairman Horne:
I see no questions. I would ask those in opposition to this bill to continue working with Assemblyman Ohrenschall because I see there is some common ground here. The figures may not be agreed on yet, but it has been articulated that there are some abuses that need to be reined in. Those persons, both in favor of A.B. 394 and in opposition to A.B. 394 who did not get an opportunity to testify, email your remarks and they will be made part of the record.

Assemblyman Ohrenschall:
We have heard many instances of how the back dues have skyrocketed; sometimes tenfold or sometimes fifteenfold. The Commission on CommonInterest Communities has worked very hard at what it does, but as I understand it, the Commission started work on promulgating the regulation in December 2009, and just a few months ago had it ready for the Governor. I think the time has come for us to act to ensure we stem this problem. I am all for homeowners' associations collecting reasonable, legitimate dues that benefit

the association. These skyrocketing fees do not benefit the association, they benefit the bill collectors. I believe these fees victimize the members of the association and in many cases unfairly penalize honest homeowners for trying to do the right thing. I hope the Committee will consider this bill.

[Also submitted as exhibits are (Exhibit U), (Exhibit V), (Exhibit W), (Exhibit X), (Exhibit Y), (Exhibit Z), (Exhibit AA), (Exhibit BB), (Exhibit CC), (Exhibit DD), (Exhibit EE).]

Chairman Horne:
We will now close the hearing on A.B. 394.

This meeting is adjourned [at 1:24 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 12, 2011 **Time of Meeting: 7:44 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 415	C	Clark County	Proposed Amendment
A.B. 388	D	Assemblyman Ohrenschall	Proposed Amendment
A.B. 388	E	Nevada Association Services, Inc.	Written Testimony
A.B. 388	F	John E. Leach	Written Testimony
A.B. 388	G	Todd Schwartz	Written Testimony
A.B. 388	H	Angela Rock	Written Testimony
A.B. 388	I	Robert Robey	Court Case
A.B. 465	J	Keith Lee	What a $1,000 Funding Looks Like to the Consumer
A.B. 465	K	Robert Compan	Written Testimony
A.B. 465	L	George E. Burns	Written Testimony
A.B. 465	M	American Legal Finance Association	Industry Best Practices: Code of Conduct
A.B. 465	N	National Association of Mutual Insurance Companies	Written Testimony
A.B. 258	O	Pete Ernaut	Proposed Amendment
A.B. 258	P	Dave Ziegler	Work Session Document
A.B. 394	Q	National Association for the Advancement of Colored People	Written Testimony
A.B. 394	R	Consumer Credit Counseling Service	Written Testimony
A.B. 394	S	Concerned Homeowners Association Members Political Action Committee	Proposed Amendment

A.B. 394	T	Concerned Homeowners Association Members Political Action Committee	Demand Letters by Collection Agencies
A.B. 394	U	Concerned Homeowners Association Members Political Action Committee	Slide Presentation
A.B. 394	V	Michael Joe	Proposed Amendment
A.B. 394	W	Angela Rock	Written Testimony
A.B. 394	X	Concerned Homeowners Association Members Political Action Committee	State by State Fee Schedule
A.B. 394	Y	Concerned Homeowners Association Members Political Action Committee	Homeowners Association Collection Timeline
A.B. 394	Z	Concerned Homeowners Association Members Political Action Committee	Proposed Fee Table
A.B. 394	AA	Nevada Association Services	Written Testimony
A.B. 394	BB	Anita KH McFarland	Written Testimony
A.B. 394	CC	John E. Leach	Written Testimony
A.B. 394	DD	Todd Schwartz	Written Testimony
A.B. 394	EE	Concerned Homeowners Association Members Political Action Committee	Slide Presentation