MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
March 27, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:12 a.m. on Wednesday, March 27, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Clark County Senatorial District No. 20
Assemblyman Andy Eisen, Clark County Assembly District No. 21
Senator Patricia (Pat) Spearman, Clark County Senatorial District No. 1

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Ann C. Pongracz, Senior Deputy Attorney General, Office of the Attorney General
Marcus Conklin, Private Citizen, Las Vegas, Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association
George A. Ross, representing Bank of America
Cheryl Blomstrom, representing the United Trustees Association
Rocky Finseth, representing the Nevada Land Title Association; and the Nevada Association of REALTORS®
Larson A. Welsh, representing Cogburn Law Offices
Philip A. Olsen, representing Civil Rights for Seniors
Scott L. Smith, representing the Law Offices of Dempsey, Roberts & Smith, Ltd.
Kristin Schuler-Hintz, Managing Attorney, McCarthy & Holthus, LLP
Sophia Medina, representing Legal Aid Center of Southern Nevada
Jeffrey Lerner, Private Citizen, Las Vegas, Nevada
Becky Harris, Private Citizen, Las Vegas, Nevada
Neshia Tobler, Private Citizen, Las Vegas, Nevada
Robert Melcic, Private Citizen, Las Vegas, Nevada
Joseph Nascimento, Private Citizen, Las Vegas, Nevada
Robin Sweet, State Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator
Dominic Pizorno, Private Citizen, Sparks, Nevada
Elvira Diaz, Private Citizen, Reno, Nevada
Z Shane Zaldivar, Private Citizen, Sparks, Nevada
Kathy Baldock, Private Citizen, Reno, Nevada
Kim Cole, Private Citizen, Sparks, Nevada
Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates
Marlene Lockard, representing the Nevada Women's Lobby
Mel Goodwin, Program Director, Gay and Lesbian Community Center of Southern Nevada

Chairman Frierson:
[Roll was taken. Committee protocol and rules were explained.]

We are going to go in order on the agenda. We have a time frame, and we have got to get through all three bills. If testimony has been provided before, and you simply want to agree with previous testimony to get you name on the record, that is fine. With that said, I was hoping to go in order, but the presenters for the first bill on the agenda are not here. I want to keep going, but I do not have my Vice Chairman either. Here he is. We are going to have to hear my bill first. [Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
We are very interested in this important measure. I will open the hearing on Assembly Bill 300.

Assembly Bill 300: Revises provisions governing real property. (BDR 9-961)

Assemblyman Jason Frierson, Clark County District No. 8:
I am here to present Assembly Bill 300, which provides amendments to Assembly Bill No. 284 of the 76th Session, which was passed by the Legislature last session. I am pleased to introduce this legislation, which takes the next step in improving Nevada's foreclosure laws. This legislation is the product of a working group organized by Attorney General Catherine Cortez Masto to address issues raised since the 2011 Legislative Session regarding implementation of A.B. No. 284 of the 76th Session.

The legislation that I am introducing today is based upon a consensus proposal developed by the Attorney General's working group through months of meetings with representatives of the Legislature, including Senator Roberson, representatives of banks, loan servicers, title companies, realtors, counselors for borrowers, and me. The 2011 Nevada Legislature enacted A.B. No. 284 of the 76th Session to amend *Nevada Revised Statutes* (NRS) 107.080 to address the robo-signing problem and to ensure Nevada citizens did not lose their homes to improper foreclosures. Assembly Bill No. 284 of the 76th Session required foreclosing parties to provide documentation in the form of an affidavit to demonstrate that they have a legal right to foreclose on the property.

The legislation I am introducing today will clarify the 2011 Legislatures' intention regarding the documentation needed to carry out a foreclosure. Enactment of this legislation will explain more clearly how foreclosing parties can comply with the personal knowledge requirements of A.B. No. 284 of the 76th Session affidavits. Establishing a means for foreclosing upon properties when the note is lost or stolen is another thing we

were attempting to accomplish with this bill. The third thing is to require the foreclosing entity to inform the borrower in writing of the amount of money that would be required to either reinstate the note or discharge the debt entirely. Next, is to require the foreclosing entity to provide the borrower with a single telephone number to call for information regarding the most current amounts due and other related information. The last thing was to clarify how a foreclosing entity must inform the borrower about their original local document, and subsequent assignments of the loan.

I deeply appreciate the hard work of the Attorney General and each of the members of the A.B. No. 284 of the 76th Session working group, which has resulted in the legislation that I introduced today. I cannot describe the importance of bringing stakeholders together in developing this bill. Last session, there were several measures dealing with the foreclosure crisis in Nevada. There was Assembly Bill No. 300 of the 76th Session, which dealt with the foreclosure mediation program; Assembly Bill No. 273 of the 76th Session, which dealt with some technical aspects of the process, and we will have another bill this session to deal with that again; and then Assembly Bill No. 284 of the 76th Session that was intended to deal with the robo-signing problem and help streamline the process.

I want to compliment the Attorney General on a masterful job of not only bringing those folks together, but also corralling the conversation and ensuring we came out with some things that we all thought would make the situation better. As I stated earlier, Senator Roberson was involved in every one of those meetings as well. We sat and listened and worked hard to come up with language that we thought would make the situation better. I am proud that we came out with something that we believe is a positive move. I do not think it is perfect, as most legislation is not, but it is far more than a starting point. Over the last several months, we have come to an agreement on some language. Recently, there have been some additional technical concerns, but I think we are willing and able to address them as we move forward.

With that, I would ask that Senator Roberson, who has been involved with the process as long as I have over the last several months, be allowed to make some introductory remarks before Ms. Pongracz goes through the actual bill.

Senator Michael Roberson, Clark County Senatorial District No. 20:
It is my privilege to join Chairman Jason Frierson as a supporter of A.B. 300. Marcus Conklin's bill, Assembly Bill No. 284 of the 76th Session, passed in 2011 with my support—and a lot of other bipartisan support—in an effort to remedy some important foreclosure issues, which the Chairman has already described. It is important to know that A.B. 300, a bill that corrects several

critical and technical issues that arose during the implementation of A.B. No. 284 of the 76th Session, is of significant importance to our economy and the real estate market within it, and should have strong bipartisan support as well. I would like to thank Attorney General Cortez Masto for convening the negotiating group and for driving it to a successful conclusion.

I am not going to repeat the Chairman's summary of the bill's principal tenets as subsequent witnesses will address each in considerable detail. However, I want to point out that I personally attended months of meetings starting last summer and witnessed some of the difficult negotiating sessions among all of the stakeholders, which included major banks, realtors, title companies, loan servicers, consumer activists, and attorneys. Each change and every nuance to the change was painstakingly debated and examined. Those of you who watched or participated in some of the foreclosure-mortgage related hearings in 2009 and 2011, and observed the stark polarization that existed then, should take the fact that those interests came together and worked for a common objective as a clear message of the importance to all aspects of the residential housing market and the technical corrections to A.B. No. 284 of the 76th Session contained in this bill. Assembly Bill 300 will enable the orderly resumption of foreclosures, will add some additional clarifications to aid the consumer, and will preserve the original and important purpose of A.B. No. 284 of the 76th Session.

Assemblyman Frierson:
If I may, it is only by virtue of time that Senator Roberson's name is not on this bill. We have worked together and I intend, at the very least, to make sure the bill is amended to reflect his name and interest in cosponsoring this measure. That has been the plan all along. As a matter of time, when the bill came out and we were getting it submitted, we did not want to risk any time challenges. He has certainly been part of it and his name will be on it to reflect that.

Ann C. Pongracz, Senior Deputy Attorney General, Office of the Attorney General:
I am appearing here today on behalf of the Attorney General in support of A.B. 300. I will take this opportunity to present the specifics of the legislation without repeating the general principles that have already been set forth by Chairman Frierson and Senator Roberson. I will note that the members of the working group are all listed in Attachment A of my testimony (Exhibit C). You can consult that if you want to see all of the folks who participated throughout the process.

As Chairman Frierson mentioned, our working group met a number of times beginning last year. During the first meeting of the working group, a consensus

was reached that certain legislation should be presented for consideration by the Legislature. Over the course of our subsequent meetings, we were able to negotiate the details of the technical amendments that we are proposing today.

As summary of the legislation, the first item that I will call to your attention is addressed in A.B. 300 and amends NRS 107.080, subsection 2, paragraph (c). That was amended by A.B. No. 284 of the 76th Session. Subsection 2(c) begins by addressing changes to the personal knowledge requirement. Assembly Bill No. 284 of the 76th Session required, for the first time, a foreclosing party to actually document its right to foreclose on the property by executing an affidavit that sets forth certain important information.

Assembly Bill 300 includes provisions to clarify that the A.B. No. 284 of the 76th Session personal knowledge requirement may be satisfied in several different ways. The first way is by information based on the affiant's actual personal knowledge. The second is that the personal knowledge requirement may be based upon a review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer, which business records meet standards of the business records exception contained in NRS 51.135. The third item is for documentation of assignments only. Let me explain what that means. In the affidavit, there is a requirement that the affiant, the representative of the entity that wants to foreclose, has to be able to document every time the property was transferred over the course of the chain of title of that piece of property. In many cases, that includes situations where the property's ownership has been assigned from one entity to another. For purposes of assignments only, the affiant may also rely upon personal knowledge based upon title information, title guaranty or title insurance issued by a title insurer or title agent, and upon records of the county in which the property is located. Those are the changes that A.B. 300 makes to the personal knowledge requirement of A.B. No. 284 of the 76th Session.

Next, A.B. 300 makes it possible for foreclosure to move forward in the event that the documentation has been lost or stolen. That is accomplished by utilizing the process set forth in current law under NRS 104.3309 that is expressly incorporated into NRS 107.080.

Third, if you look at the bill on page 3, you will see that A.B. 300 sets forth a number of items of financial information that the affiant must include in a written statement provided to the borrower. Most of this information was already addressed in A.B. No. 284 of the 76th Session, but in this bill the requirement was that all of this personal financial information actually be set forth in the affidavit itself, which is a recorded public document. What A.B. 300 requires is that the information be provided in a written document that

is provided by the beneficiary or the successor in interest of the beneficiary, the servicer, or the trustee. This written statement must be provided directly to the borrower. [Read from written testimony (Exhibit C).]

Those are the major changes that are provided for in A.B. 300. The Attorney General supports enactment of A.B. 300 because she believes it will continue to protect Nevadans from wrongful foreclosures, while at the same time facilitating issuance of title insurance and providing additional means for vendors to provide proper and complete information regarding their right to foreclose on properties.

Before I close, I have to mention that one of the members of our working group, Attorney Tisha Black, is not able to testify today in person because she is out of state. She prepared testimony (Exhibit D) which is on the Nevada Electronic Legislative Information System (NELIS), and she requests that her testimony be included in the record of the proceedings as well.

Assemblyman Wheeler:
It looks to me that this cleans up some of the problems that we had with A.B. No. 284 of the 76th Session and looks like some of the privacy issues are addressed here. I want to thank you for bringing this forward in a bipartisan matter.

Assemblyman Hansen:
I understand the intent of A.B. No. 284 of the 76th Session. Actually, I did not support it last time. We saw some of these potential problems. We currently have about 52,000 homes in the "shadow inventory," yet the realtors do not have any houses to sell at the moment because A.B. No. 284 of the 76th Session has caused such a problem that they cannot go through the process to get the houses back into the market. I am assuming one of the purposes of this bill is to eliminate some of the snags from A.B. No. 284 of the 76th Session. It will allow that shadow inventory to be brought back into the real estate world so people can start buying and selling again, and so we can get some of the real estate problems straightened out that A.B. No. 284 of the 76th Session caused. Is that what we are looking at?

Assemblyman Frierson:
As tempted as I am to go back and rehash whether A.B. No. 284 of the 76th Session was the cause of any of these problems, I will say that realtors and lenders were at the table helping to come up with this language. It is intended to deal with the impact that A.B. No. 284 of the 76th Session may have had on the issue, real or perceived. Many of us did not believe that it was a problem that A.B. No. 284 of the 76th Session required folks who were going

to foreclose to actually establish that they had the right to foreclose. We understood that some of the requirements in A.B. No. 284 of the 76th Session gave pause to some folks. The intention was to bring those folks back to the table and come up with language that would alleviate their concerns. This language came from them.

Assemblyman Hansen:
This came from the real estate people, bankers, and mortgage people, and everyone was in on this. It was a team effort to clean up what I would say was a mistake from A.B. No. 284 of the 76th Session. This looks like a good bill moving in the right direction.

Assemblyman Martin:
I think this is a great clean up, but I am curious to know, since this affects the banking industry quite a bit because it deals with the foreclosure crisis—and it should reduce their stress because they have alternative documentation procedures—have you gotten any feedback from the banks on how this might add to the stability of the credit market in terms of lending? I would like to see them state that, because of this bill, they have more confidence in lending in southern Nevada, or northern Nevada, or wherever they are, especially in the area of refinancing. That was a big issue with my constituents. I am wondering if you have had any feedback from the banks whether this bill will have a positive effect on the lending market.

Assemblyman Frierson:
I think that would be appropriate for the lenders to address. I do believe they are prepared to offer a response regarding their position on this bill. I would not presume to speak for them, especially on something specific to their market.

Vice Chairman Ohrenschall:
Are there any more questions? Is there an order for the witnesses to be called?

Assemblyman Frierson:
I have no particular order. Actually, I would be remiss if I did not mention Mr. Conklin, who is in Las Vegas, and ask that he be allowed to come up and testify. He was involved with the efforts to make the adjustments because A.B. No. 284 of the 76th Session was his bill.

Marcus Conklin, Private Citizen, Las Vegas, Nevada:
I just wanted to add a couple of comments, if I may, on the process for Assembly Bill No. 284 of the 76th Session and thank a couple of people. Assemblyman Frierson and Senator Roberson did yeoman's work over the interim, involving themselves in this process. And thanks to Senator Roberson

for working on the same issue last session and standing by the product for a long time under great peril. I appreciate your willingness to work on these issues and to do the work of the people to ensure that it gets done right.

As far as A.B. 300 is concerned, having sat in almost all of the meetings for the working group, I think this bill accurately reflects the agreements that all parties made relative to resolution on some critical issues. When I look at the bill, I do not see cleanup from A.B. No. 284 of the 76th Session as much as I see clarity. I think it represents the spirit of everything that went into A.B. No. 284 of the 76th Session, but provides some clarity, particularly on the legal front for implementation. I wholeheartedly support A.B. 300 and the group that came together to make it possible.

Vice Chairman Ohrenschall:
Is there anyone who would like to speak in support of A.B. 300 in Carson City?

Bill Uffelman, President and CEO, Nevada Bankers Association:
After more than 40 years of legislative drafting and lobbying, I know that every law can be tweaked for technical corrections. Assembly Bill 300 clearly corrects some of the technical deficiencies in A.B. No. 284 of the 76th Session. We support the bill for that reason.

Vice Chairman Ohrenschall:
Do you think the market, especially down south, is ready to absorb the extra inventory that is going to be there? I imagine there is going to be a dip in home prices.

Bill Uffelman:
I presume the market is ready to absorb it. Obviously, the market for the purchase of homes in Las Vegas is dependent on the economy in general, locally, nationally, and globally. If you have watched what is going on in other parts of the world, someone could mess everything up in a heartbeat. That said, the home price rise in existing home sales is directly related to the shortage. That said, too, no matter how many homes are foreclosed on in the process, it will be orderly. Someone is not going to suddenly dump 12,000 notices of default (NOD) on borrowers. No one has the staff to do it, or the ability to do it. It will be an orderly progression. That is part of the problem that we have had for the last two years or so. The orderly progression was not happening, so the market has gotten skewed. Will there be a price drop? It is hard to say, but it will not be significant. I would project that it will not be so significant that someone will say, "My God, what have I done." In the down market, or underwater status, that we are in, you are talking $2,000, plus or minus. It is what it is. Someone who wants to buy a home should not wait

in the wings. Someone who has decided to short sell, or who has equity and wants to sell, this might be the time to do it.

Assemblyman Hansen:
I hear numbers floating around on the shadow inventory. I have heard that there are more than 50,000 homes in this inventory. I have real estate people upset because there is a growing demand for housing, yet there are no houses in the inventory for them to sell. Because of the construction defect situation, the new builders are very hesitant to build. I wonder if this is going to actually clean this up. You said there has been an absolute breakdown in the orderly progression for the last year and a half. Is there a danger that we are going to have a big flood of houses? You addressed that a little bit. Also, was the orderly progression caused by A.B. No. 284 of the 76th Session and is A.B. 300 going to actually solve that problem?

Bill Uffelman:
Going backwards from the other end, whether A.B. No. 284 of the 76th Session was the cause or part of the issue, A.B. 300 fixes that. If you pass A.B. 300, we can move on with orderly progression. I do not know what the shadow inventory is. I see and hear those same numbers, and I talk to some of the bankers who are involved in the mortgage industry, and they give me numbers that do not add up to that, so it is hard to say. We had the National Mortgage Settlement last spring that had an impact on the Las Vegas market—and I presume some in northern Nevada also—in terms of modifying loans or encouraging short sales. The federal law on the deductibility of deficiencies in terms of not having to pay federal income tax was extended at the last minute in December. Through December 31 of this year, under certain circumstances, most people would not have to pay income tax on any forgiven deficiency. It takes four or five months to move houses. There have been a lot of short sales in the Las Vegas market. That was part of the inventory that you were seeing. It all goes together, but as I said before, in terms of staffing, I do not think any of the lenders have the ability to dump significant numbers on any given day. Physically, you just cannot process that much paper. The personal knowledge requirement in the affidavit says that you have sat and read through these documents and they are what they are and you are willing to put your name on the dotted line because, remember, we have not removed any of the penalties for false filing. I think it will work, but as to 50,000 or 10,000 or 12,000, I do not know.

Assemblyman Hansen:
Well, hopefully we will find out in a positive way.

Vice Chairman Ohrenschall:
It seems that before A.B. No. 284 of the 76th Session a lot of people thought the pendulum had gone too far one way. Obviously, the pendulum has now gone too far the other way. With A.B. 300, assuming that it passes into statute, do you feel your banks will have the same attitude that we have seen lately of trying to work with people who are trying to save their houses and still have some hope?

Bill Uffelman:
What I want to make clear is that the banks have always tried to work with the borrowers. One of the great difficulties we have had is getting the borrowers to respond to enquiries, letters, and the like. Back in January, one of the national lenders ran a save-your-home program. They sent out almost 6,000 letters to people in southern Nevada who were 90 days or more late on their mortgage payments. Only 120 people responded to that and made appointments to go in and talk about what they could do to modify their mortgage, or whatever. It is unfortunate that those statistics repeat themselves all of the time. The pendulum did swing too far, so we swing it back. Have we hit dead center? I have a feeling we are close. For that reason, A.B. 300 should help bring the market back and stabilize it. If you compare it to Arizona where they did not impose any changes in their foreclosure process, home prices are now up almost 25 percent. A couple of years ago, Arizona and Las Vegas were in a dead heat with the same problem. Now, Arizona is returning to some semblance of normalcy.

Assemblyman Martin:
I am glad to hear that you are in favor of this bill. My concern is how this affects the lending market and the refinance market. You said that a lot of people are not returning phone calls. I do financial advising and the number one issue that I hear is that the banks are telling these folks, "Sorry, you cannot afford to pay less" because they are equating the home value in the underwater situation. If people are getting that kind of reaction, they are not going to be very responsive. My question to you is, has there been a change in thinking by the banking industry in how to work with the people with the underwater homes, acknowledging their new refinanced mortgage? Are they saying, "We think you can afford less, basically because your employment is still current and some other factors"? The banks are getting away from the old model evaluation, which clearly caused the foreclosure crisis that we are seeking to avoid. I am curious to get your feedback on where the banking people are with this now.

Bill Uffelman:
The refinancing of the underwater homes is driven and dictated by federal programs. I think we are into the Home Affordable Refinance Program (HARP) 2.0, which talks about the home value versus the actual mortgage. Once upon a time, I can remember 105 percent was going to be the maximum. At that time, we were at about 125 percent in Las Vegas, and then we got to 200 percent. The ability of the lender to work within that program is dictated by the rules of that program which come from Washington, then revolves around who owns the note, whether it is Fannie Mae- or Freddie Mac-backed, FHA, or VA. You have probably all seen in the news the dictates that come down, like Fannie and Freddie will not take reductions in principal or other such things. If it is proprietary held by the financial institution, you will probably get a different response than if it is held by a noteholder that will not allow any change in the note. It is unfortunate, but it is the circumstance. Who gets the black eye? Of course, it is the lender who gets the black eye. The rules are the rules that they try to operate in.

Assemblyman Martin:
Since the provisions of this bill would take risk away from the banks—because they can now follow an alternative procedure for foreclosing—I am hoping the banks will also look at that model and say, "Okay, the risk is less over here, so we need to help the local market the best we can." I think we are going to reverse the cycle and the circle will go up instead of down. I am with you on this, but I want to hear some commitment from the banking community that they are going to respond to phone calls and work their best. Now that they are taking the risk out of one area, which is appropriate, hopefully they will restart the mortgage lending market and refinancing. I am happy that the federal programs are there, but it has to start locally.

Bill Uffelman:
As I said, it depends who owns the note as to what your ability to do anything will be. I do know that the lenders in the situations where they own the note have actually been able to exercise flexibility much more freely. The irony of A.B. 300 is that it allows the financial institutions to file NODs again without the legal concern of the personal knowledge test. The portions of A.B. 300 that deal with personal knowledge explain that it is the business record, not something that happened in 2005, five years before the person came to work there. That will do a lot in that arena. It is a very important change.

Part of the problem is that some people do not respond because there is no threat. We have all seen the ads in Las Vegas that talk about keeping you in your home. The reality is, if they cannot file an NOD, they cannot force you to do anything, so therefore pocket your payment. Prepare for the future, or think

about what you are going to do when you finally do have to pay up or leave the property. It has been difficult when you take away the sword hanging over the person's head to get them to respond. On the bank's side, part of the National Settlement and part of what has changed over time is that they have enough staff, and they have the processes in place to respond to those calls, but the trouble is they do not get the calls. Again, it is balance. Once there is a real reason to take the call, or to respond to that envelope, people will do it.

I can remember back around November that there was an article in the paper about a woman who was ignoring all of the big envelopes that came from her lender. Finally, she opened one because it was a different shape. It was a new document from the lender saying that they had unilaterally modified her mortgage. Her new payment was about $700 less than it had been, and they had forgiven this, that, and the other thing, so please sign and return. She only had hours left to send the document in since she ignored everything that came from the bank for the better part of two years. Again, with the NOD, some people will get motivated and respond.

Assemblyman Martin:
I hope we get to a model where we take a realistic approach. In exchange for this provision, the banks need to stop telling homeowners that they cannot afford to pay less. That is ultimately what is happening in the credit market. People are still paying 8 percent and 13 percent mortgages. I am not hearing the commitment yet, but maybe as a result of this bill it will happen. That is where I hope we go, and that would help solve the problem.

Vice Chairman Ohrenschall:
I think we would all like to see that commitment.

George A. Ross, representing Bank of America:
Bank of America strongly supports the concepts and work in A.B. 300. Bank of America was involved in the negotiations from the very beginning. They watched the excruciatingly painful negotiations among the diverse interests. The folks worked very hard and ultimately came up with some redrafting of key areas of A.B. No. 284 of the 76th Session in the form of A.B. 300, which we feel confident will go a long way toward correcting some technical difficulties in A.B. No. 284 of the 76th Session. Having said that, my client and I think we owe a great debt of gratitude to the Attorney General. She and Ann Pongracz ran each of those meetings. They pushed to make everyone come to an agreement, focusing on the key problems, getting away from the extraneous issues, and finding a solution that people could live with. We also owe gratitude to other members of the staff who have been involved in this.

We support this bill and think it will help in clearing up the real estate market to go forward.

Cheryl Blomstrom, representing the United Trustees Association:
In the mortgage transaction there are the borrowers, the lender, and the trustees, who are the folks in the middle that make it happen. We are very pleased to support A.B. 300. We suggested a technical correction to Mr. Frierson and he said he would consider it. Otherwise, rationalizing this process and allowing some of what we think is going on in terms of shadow inventory, and getting our real estate market back to a rational place, is something that we very much support.

Assemblyman Hansen:
I understand from A.B. No. 284 of the 76th Session that there are some criminal penalties involved. Did that affect you or was that strictly the banks that would have been impacted?

Cheryl Blomstrom:
It affects anyone who files the affidavit. When a trustee forecloses, they are oftentimes the filer of the affidavit. Yes, it had impact on the trustees as well.

Assemblyman Hansen:
Does anything in this clean that up?

Cheryl Blomstrom:
It is not that it does not clean it up. The penalty remains, but the penalty remains for a good reason. We have created ways in which you can prove the proper documentation, and if you do not prove the documentation, shame on you.

Assemblyman Hansen:
This makes it better so the burden is off of your shoulders and we can get this process moving forward.

Cheryl Blomstrom:
It absolutely does.

Vice Chairman Ohrenschall:
Do you feel the market is ready to handle the inventory that may be released?

Cheryl Blomstrom:
That is a very interesting question. My brother is an appraiser and I had a conversation with him about the market and looking forward. He thinks the

market, both north and south, is poised for a recovery. He thinks there is unmet need and demand right now because we have not been able to find inventory and houses are not moving appropriately. He thinks we are ready to recover. He is very optimistic about the real estate industry in the entire state.

Vice Chairman Ohrenschall:
Is there anyone in Las Vegas in support of the bill who wishes to be heard?

Rocky Finseth, representing the Nevada Land Title Association; and the Nevada Association of REALTORS®:
We have suggested to Mr. Frierson and Ms. Pongracz that the bill needs to be effective upon passage and approval. We have not submitted that in a formal amendment, although we are happy to do so if it is the desire of the Committee.

Assemblyman Duncan:
Have there been any estimates of the number of notices of default that may be entering into our real estate market upon passage of this bill? Do you have an idea about that? Have you done an analysis?

Rocky Finseth:
We have not done any formal analysis of what would happen in terms of the increase of NODs. As we have discussed, without any changes to A.B. No. 284 of the 76th Session, NODs have been on the uptick since October 2011 when the bill went into effect. I think I saw statistics that the last count was in the range of 1,800 to 1,900. You can peel back some of the onion and find some of those are homeowners association foreclosures. They are not all representative of lending institutions. I would suggest that my colleagues up north are in a better position to answer that specific question. My clients have not done a formal analysis of what the uptick would be.

Assemblywoman Spiegel:
You mentioned the possibility of having this effective upon passage and that got me looking at section 2, which states that this bill would only apply to entities on or after October 1, 2013. It made me think about looking back at things because the problem has existed for some time. Is that something that is possible? Can it go back to NODs that were issued recently or last month or some arbitrary date? Is that possible, and would it be more effective to help remedy the situation?

Rocky Finseth:
From my perspective, I think that is a policy call for the Legislature to make. From my clients' perspective, we feel the sooner the changes go into effect, the

quicker the market will recover. That is why we are suggesting that this is enacted on passage and approval. On section 2, that is a policy call.

Larson A. Welsh, representing Cogburn Law Offices:
Since the housing crisis hit, Cogburn Law Offices has provided representation to thousands of homeowners. Without repeating the prior testimony, and based on the recommendation of the Chairman, we would like to echo the support of the prior testimony.

Vice Chairman Ohrenschall:
Is there anyone else in Las Vegas who would like to speak in favor of A.B. 300? I do not see anyone. Is there anyone else to speak in favor of the bill? [There was no one.] I will take anyone in Carson City who is opposed to the bill.

Philip A. Olsen, representing Civil Rights for Seniors:
We advocate for civil rights for seniors. I speak today with respect to what I notice in the draft of A.B. 300 that is a possible loophole and is of concern to my client. That possible loophole appears on page 3 of the draft, beginning at line 5 and going through line 23. Under current law, the affiant has to state that the beneficiary is in actual or constructive possession of the note. Normally, the person entitled to enforce the note is in actual or constructive possession of the note. In the vast majority of cases, one would expect that to be the case. Under current law, it is required that the affiant state it is his or her personal knowledge that the beneficiary is in possession of the note.

This bill provides a second alternative, and that is in cases where, for one reason or another, the beneficiary is not in actual or constructive possession of the note. The affiant can state that the beneficiary is entitled to enforce the obligation or the debt secured by the deed of trust. That is a legal conclusion that the affiant may or may not be competent to make. What troubles me about the wording of this statute is that the affiant is not required to state whether he knows if the beneficiary is in possession of the note, or whether he has simply reached the legal conclusion through review of the beneficiary's records that, in fact, the beneficiary is someone who is entitled to enforce the note. I would suggest that the statute be amended to require, at a minimum, that the affiant state whether the beneficiary is in possession of the note, or whether it is the affiant's legal conclusion that the beneficiary is entitled to enforce the obligation. If it is the affiant's legal conclusion, at the very least, the beneficiary should make available to the homeowner, or the homeowner's attorney, the business records on which the affiant based his legal conclusion that the beneficiary is entitled to enforce the note.

I noticed that the language goes on to define what parties are entitled to enforce the note. One possibility is that the person who is seeking to enforce the obligation—the person who is seeking to foreclose—is a nonholder in possession of the instrument who has the rights of the holder.

Vice Chairman Ohrenschall:
Where are you reading? I am trying to keep up with you.

Phil Olsen:
That phrase is from page 3, line 16.

The affiant states, under penalty of perjury, that he has reviewed the business records of the beneficiary or the trustee. The affiant is stating that those records satisfy the business record exceptions of the hearsay rule included in NRS Chapter 51, and that the affiant has reviewed those records and has come to the conclusion, for example, that the beneficiary or the party seeking to foreclose is a nonholder in possession of the instrument who has the rights of a holder. Whether the beneficiary is, in fact, such a person could, in many cases, be a very complicated legal question that the affiant is obviously answering in a very self-serving way. At the very least, I think the affiant should be required to state whether the affiant knows that the beneficiary is in possession of the note or is simply drawing a legal conclusion from a review of the beneficiary's business records. If that is the case, those records should be made available to the homeowner, so the homeowner can determine whether they are in agreement with that legal conclusion.

Vice Chairman Ohrenschall:
We are always appreciative of loopholes being found and ensuring that we close them. If you have not had the time already, I would encourage you to reach out to Assemblyman Frierson and Deputy Attorney General Pongracz, and discuss this with them. I hear what you are saying.

Is there anyone else in opposition to A.B. 300 in Carson City or in Las Vegas? Is there anyone who is neutral?

Scott L. Smith, representing the Law Offices of Dempsey, Roberts & Smith, Ltd.:
I am a bankruptcy attorney who represents debtors in bankruptcy. I represent a lot of those people who have been referred to today as those who are holding on to their payments, trying to hurt our poor banking industry, and all of the terrible things that have been going on with them in this state.

While I will admit that I have run across people like that, the majority of my clients are people who are seniors on a fixed income. They are people who have lost their jobs, who are unable to work, and are at the end of unemployment or the end of disability. They have become sick or continue to be very sick, or for whatever reason have been unable to pay their mortgages. I am not here today to argue that they should never face consequences or that they should be able to keep their house indefinitely. That is certainly not in their best interest or the economy's best interest. On behalf of my clients, I would like to put a face on the shadow inventory to show it is real people who are in a really tough situation. When they are faced with the confusing myriad of documents coming to them when they can no longer make the payments on their house, and they have gone through months and months of frustrating attempts to work with their lenders, protections that the law has put in place are very important to them.

I will not repeat what Mr. Olsen said, but I will tell you that I have noticed the same loophole, and that was one of the things that I intended to talk to you about today, but I will leave his comments there. If I could touch on an area that he did not touch on, going back to page 3 of the proposed bill, he was talking to you about lines 16 and 17. I would like to look at lines 18 to 20. One of the things that the person making the affidavit can state is that he is not the person in possession of the instrument, but is entitled to enforce the instrument. It is an instrument that is pursuant to a court order issued under NRS 104.3309. This refers to the Uniform Commercial Code (UCC). The UCC, on its face, does not apply to what is called "nonmovable goods." It does not apply to real estate; it only applies to things that are movable. Nevertheless, if we want to incorporate that by reference, I would again point out that this is a situation where there is a borrower. They are talking about a negotiable instrument in the UCC. That is a contract where there is a requirement to pay, but if there is no payment, Article 3 does not talk about taking your home away. Article 3 talks about if the holder of the note cannot prove that he has it any more, these are the steps that he needs to take to prove that he is entitled to enforce it anyway. It envisions going to court and having a judge make the legal conclusion whether he, as the claim holder of that note, has a right to enforce it.

You are basically letting the fox watch the chicken coop. There is no judge in NRS Chapter 107 that is going to make a decision regarding what is legally correct and what is not in his legal conclusions. There is only the lender that gets to make this affidavit. While I cannot speak for the banking industry, what I have seen that my clients have received since the 2011 Legislature passed A.B. No. 284 of the 76th Session, these affidavits are not that forthcoming. They say the bare minimum of what they absolutely have to push this through.

Normally, the people who talk to me are not the most sophisticated in understanding what is right or wrong. If you are going to amend this law, and I encourage you to do so, I hope you will seriously consider amending the bill to allow the homeowner or borrower to see the business documents that are supposedly the basis of the affidavit. I would go one step further: rather than just giving them access, require the lender to produce them. The lenders already send this information, so send copies of the documents. Let them see, or let their attorney see, what it is they are basing this on, and then the borrower can understand that, yes, this person has the right to enforce it.

Nevada Revised Statutes Chapter 107 envisions a situation where there is no judge. This is a nonjudicial foreclosure. The purpose of NRS Chapter 107 is to make overall lending in this state cheaper. It makes it easy, if a situation arises that they need to foreclose, for the lenders to foreclose and, therefore, requires them to charge the borrowers less who are making payments on time, because there are less administrative costs for them. I do not mean to say that is a bad idea; however, I would suggest the Committee ensure the lenders provide the information to the homeowners so they know what is going on in order to make an informed decision.

One other issue that I want to clarify is that it appears to me that A.B. 300 is only going to amend NRS 107.080, the notice of default statute. It is not amending or changing NRS 107.086, the foreclosure mediation statute. If there is any clarification that can be brought forward in that, I would appreciate it.

Assemblyman Duncan:
Under your proposed amendment, if the lending institution does provide the documentation, and the homeowner disagrees with the affiant, what is your suggestion for the process from there? I think the concern is that this will slow down the process again. What do you think would be a good way to proceed?

Scott Smith:
Right now, the process is, if the borrower disagrees with the notice of default and the exercise of NRS Chapter 107, the remedy is to go to court and ask a judge to intervene, to prove what is wrong, and ask a judge to stop it. I am not suggesting that anything else be amended. That is still a high standard for most borrowers, but you, as the Legislature, need to balance the relative costs and consequences. I am not proposing a special committee or that we try to slow this down any more than it already is. If someone enters into a loan, whether they understand or not, that is the risk they take. If they have a trustee or a beneficiary who is going to do something wrong, it is up to the borrower to do something about it, like go to court. They will have to front their attorney fees for that, although they would be able to get them back from the lender later if

they are successful. The way the statute is written now would probably still be sufficient for that without creating extra time or making this a longer process than it already is.

Vice Chairman Ohrenschall:
I encourage you to reach out and address your concerns. Is there anyone else in opposition to the bill? I see no one. Is there anyone neutral?

Kristin Schuler-Hintz, Managing Attorney, McCarthy & Holthus, LLP:
I am an attorney in Nevada, and work for a multistate law firm representing mortgage lenders, servicers, and foreclosure trustees. I have been working in this industry since 1999. I have seen the harm that has come to Nevada through the almost total stoppage of nonjudicial foreclosures because of the unclear terms in A.B. No. 284 of the 76th Session. Generally, I am in support of A.B. 300. I work at this level, so I am on the ground floor, drafting documents, explaining things, and making sure that the notices of default get filed. I attend foreclosure mediations. I have some questions that may provide some clarification that will make it easier.

I understand that the intent of A.B. No. 284 of the 76th Session is to track the chain of title of the deed of trust, to put it in a format that makes it easier for homeowners to understand what is going on with their loan, and how it got there. I fully support taking the financial information out of the affidavit.

I do have one question. I do not know if you are asking us to give you the payoff on the loan, or the reinstatement on the loan. I am not sure what you are trying to track there. Generally, what is number 1 is the amount in default, so if you are searching for the reinstatement, which would be the total amount to bring the loan current and stop the exercise of sale, that is section 1, subsection 2, paragraph (c), subparagraph (4), sub-subparagraph (I). Regarding the amount in default, are you simply looking for the amount of the unpaid payments? Or is there some concern that those are two different numbers? We need clarification on that, because we do not want to make things redundant and more confusing for borrowers.

Vice Chairman Ohrenschall:
I would encourage you to reach out to Assemblyman Frierson and to the Deputy Attorney General. Your concerns can be addressed with them. Please continue.

Kristin Schuler-Hintz:
Sub-subparagraph (VI) discusses the toll-free number that the borrower can call to receive answers regarding the information contained in the affidavit.

In addition to representing mortgage lenders, servicers, and trustees, I have also represented consumers. It seems to me that this affidavit is making legal conclusions. As such, you do not want to have the borrowers contacting the person making the conclusions for answers. If the borrowers need answers or legal advice, they should be reaching out to legal professionals, such as the Lawyer Referral Service or someone within the State Bar of Nevada, or Housing and Urban Development counselors. I would encourage you to revisit that and think about putting the borrowers in touch with someone who is going to be answering questions for the borrowers as opposed to for the banks.

Vice Chairman Ohrenschall:
Do you know if the State Bar is equipped to take on that kind of responsibility?

Kristin Schuler-Hintz:
There is a lawyer referral information service and a pamphlet that the State Bar of Nevada puts out that lists a variety of legal resources, both in northern and southern Nevada. I would probably encourage that pamphlet to be included and updated each year as the Bar updates it. Sometimes the questions go past the legal effect of the affidavit. What they are really asking is, "I am in a foreclosure, so what should I do?" What they need is advice regarding filing for bankruptcy, or the short sale of the home. They need the services of an attorney who represents borrowers to explain their rights and options.

Paragraph 6 has a technical correction, but I can submit that since it is just a comma in the wrong place. Those are my comments on the bill. I do support it becoming effective upon passage. I am not sure it could be effective any sooner than that because, once the affidavits are done, the current format is substantially different than the format this proposes. It is not just a change in the way the statute is interpreted, it actually changes the form, so it would have to be effective on passage.

I have taken notes on the Committee's questions and I agree with Mr. Uffelman. I do not think the shadow inventory is as big as some people are saying. I do think the lenders and servicers are aware of the dangers in a flood of homes being released to the market. Again, they want to maximize their profits so, if they do things to drive the market down, it would also hurt them in the end. There are a lot of things that affected the foreclosure market; there are a lot of things that affect the lending market. It is not just this bill and the ability to foreclose; it is everything that is going on. Lenders have to be comfortable that their interests will be protected in this state, not just through this bill, but through other ones too.

Vice Chairman Ohrenschall:
I appreciate everyone's hard work. There is obviously no perfect solution to what Nevada is facing, but I think we all commend the hard work that has produced this measure. I will bring up Assemblyman Frierson and the Deputy Attorney General for any closing remarks they would like to make.

Assemblyman Frierson:
Thank you for your patience and questions. I will state that there is a tendency to believe that, if you are not included in a meeting, there is a bunch of legislative folks drafting stuff to tell people what to do in their own industry. I will say, however, those frontline folks were all part of the conversation even though we cannot always agree. We, as a Committee, know that we do not always agree. We had folks from across the spectrum who were part of the process of drafting this legislation.

The other thing that often occurs when people have strong, passionate feelings is that there are other areas they would like to have addressed that are not part of the intent of the bill, like a comma on page 6 when there is no amendment to page 6. I understand that effort to make existing law better is a worthy effort. I would encourage folks to reach out to the sponsor—preferably in advance since we have been working on this since last summer—to find ways that we can sing "Kumbaya." The extent of agreement that we have come to on this bill given where we started is tremendous. I am thankful to everyone who was a part of this and I will continue to be receptive to anyone who has some concerns.

Vice Chairman Ohrenschall:
This Committee and I appreciate your hard work. This is a very difficult issue and obviously the status quo cannot remain. It is a thorny issue, and we appreciate your willingness to dive into the thorns.

Ann Pongracz:
I would like to express the thanks of the Attorney General to Senator Roberson, Assemblyman Frierson, Mr. Conklin, and everyone else on the working group who participated for so many months on working on this proposal.

I have one thought I want to share in response to a point made by Mr. Smith, who expressed some concern about the inclusion of the reference to NRS 104.3309, which is on page 3 between lines 18 and 20. As Mr. Smith stated, that section does contemplate that the right to enforce would require a court order. As the Committee will see by looking at the language between lines 18 and 20, there is now a requirement in the amendment that states, if a person not in possession of the instrument seeks to enforce under

NRS 104.3309, they need to do so pursuant to a court order. The requirement of a court order is already included in the amendment.

Vice Chairman Ohrenschall:
Thank you for clarifying that. I will close the hearing on Assembly Bill 300 and turn the gavel back over to our hardworking chairman. [Chairman Frierson reassumed the Chair.]

Chairman Frierson:
I see Dr. Eisen is here so we will open the hearing on Assembly Bill 273 and invite Dr. Eisen up.

Assembly Bill 273: Revises provisions relating to the Foreclosure Mediation Program. (BDR 9-719)

Assemblyman Andy Eisen, Clark County Assembly District No. 21:
I appreciate the opportunity to present Assembly Bill 273. Assembly Bill 273 makes changes to the existing Foreclosure Mediation Program in Nevada. First, I would like to provide some background and a description of the goals of the bill, and then we will take a very quick walk through the bill.

In response to the historic spike in foreclosures in 2008, the Legislature created the Foreclosure Mediation Program in 2009, which is overseen by Nevada's Judicial Branch, specifically, the Supreme Court of Nevada. The fundamental concept of the Foreclosure Mediation Program is that, before a lender can exercise the power of sale on owner-occupied housing, the lender has to serve notice on the borrower with contact information regarding the Foreclosure Mediation Program and a form which the borrower can elect to participate in mediation, essentially to opt into the program. The lender cannot exercise the power of sale until mediation is either completed or there has been a determination from the program administrator that no mediation is required. There is a $400 existing fee for the process of mediation, which is shared equally between the borrower and the lender.

Four years ago, this was one of the first programs of its kind in the country; others have been started since. We now have about 3 1/2 years' worth of data on our program in Nevada. In the first 3 1/2 years, from July 2009 through December 2012, there were approximately 17,000 mediations, about 40 percent of which resulted in agreement between the lender and the borrower. By agreement, I mean a "soft landing" where there was a resolution other than foreclosure in which the borrower was able to retain the property or relinquish it. To give some perspective, roughly two-thirds of the time the borrower was able to remain in the property.

Another benefit of the program, which is essentially a side benefit and not one of the primary intentions of the program, is that the mediation provides the opportunity for the mediator to bring to the table for both sides all the tools that may be available to them to come to a resolution. That may include other programs that are in existence, some of which have been developed during this time period. That being said, we can do better because history has shown us that there are things that we can do to make this program better. Since the program began, only about one-quarter of eligible homeowners have elected to participate. In this last calendar year of 2012, that number is about 13 percent. We can improve the participation rate of those entering into this program that has the advantages of coming to a quick resolution. We can streamline this program a bit; that is really what this bill is about. The twofold intent of A.B. 273 is to streamline the process and to increase participation in what I believe is a very strong program, and one of which we should be proud.

One of the things that we have seen in this program is that opt-in programs, where the borrowers have to elect into the program affirmatively—to say they want to enter—have typically low participation rates. As a consequence of that, A.B. 273 changes our program from an opt-in program to one that is best described as a presumed-enrollment program. There are true opt-out programs around the country. The difference between that and what we are presenting in A.B. 273 today is that A.B. 273 still requires some action on the part of the homeowner.

The bill also creates a separation between the notice of default and the notice about the mediation program. Under the current system, homeowners often receive this information about the opportunity to elect into the Foreclosure Mediation Program in the midst of an enormous amount of paper that comes at a time of great stress for the homeowner. The bill provides separation so that the information about the Foreclosure Mediation Program and what actions are necessary for the homeowner to continue participation in that program are clearly provided to the homeowner. Lastly, we eliminate one step in the streamlining process to get a quick resolution.

To address these things, let me take a quick walk through the bill. Section 1 of the bill modifies the notice that the lender has to serve on the borrower with the notice of default. What occurs now is that this is provided along with the notice of default, but section 1 requires it be provided separately, concurrently, and under separate cover. It will help the information about the program to stand out and will draw attention to the program for the homeowner. It also eliminates the reference to the program being an opt-in program and informs the homeowners that they are presumed to be participating in the program, although they do have steps they need to take. Section 1 simply removes the

reference to opt in. Section 2, subsection 2 describes the separate notice to the homeowner and changes the election from opt-in to the presumed enrollment that I described.

What is required of the homeowner—and this is the important part—to remain in the Foreclosure Mediation Program under A.B. 273 is that they pay their portion of the mediation fee. They have to take the step of paying the $200, which is the homeowner's portion of the mediation fee, in order to continue. The idea is not to remove the homeowners' responsibility to take action to participate in the program. It is to take it out of that high-stress time, to separate it from the other information that the homeowners are receiving at this time, and to clearly identify for the homeowners what steps they need to take to continue to participate in this program.

Subsection 3 establishes the timelines under which the borrowers must act. They can affirmatively opt out of the program if they wish, or they need to pay their share of the fee to stay in the program.

Subsection 4 states, if the homeowners waive mediation or do not pay their fee, the administrator can certify to the lender that mediation is complete and the foreclosure sale can continue.

This is a program of which Nevada can be very proud. I think it has been a successful effort. We can do some things to increase participation and to make it clear to homeowners what they need to do to stay in the program. They can get a resolution so both they and the lender can move on, whether that is staying in the home through modification of the agreement, or if it is that the homeowner vacates the property and the lender is able to move on and resell the property. The idea is to allow people to move past this point in their lives by continuing in their home or starting over.

We can make some minor changes to streamline this process. One of the points that I need to be clear about is streamlining. The current system requires the opt-in be sent to the lender who then forwards that to the Foreclosure Mediation Program administrator. This bill informs the program administrator at the same time as the lender, so we are eliminating a step. I think between the streamlining and the presumed enrollment, we can increase participation and get people to resolution more quickly.

Assemblyman Duncan:
For those who currently participate in the program, do you know the average time it takes from the notice of default to the time they actually participate in some sort of mediation? Secondly, if it is a presumed opt-in or presumed

participation, and if the homeowner is nonresponsive to anything they are receiving, at what point is it presumed that they are not going to participate? How much responsibility is on the people who are sending these documents to continue to follow up, and at what point do they figure they are not going to participate?

Assemblyman Eisen:
First, in terms of the timeline, the current court rule defined the timeline under which this process has to be completed as 135 days from the notice of default to the completion of mediation. The program has kept within that guideline of 90 to 120 days. The streamlining that I mentioned, taking out a step in the process, will trim a little bit of time. It is within the rules that have been established and what we have been seeing, but I think we can trim a bit more time off of that and get everyone to resolution more quickly.

The time by which the homeowners need to act, which is on page 5 of the bill, is 30 days after the service of notice that the homeowner needs to affirmatively opt out or pay their portion of the fees. That is what separates this from a true opt-out program where the homeowner does not have to do anything and he is kept in the program. There is a point where the homeowners need to take a step. The real key here is the separation of the notice from all of the other documents that the homeowner is receiving. It is then clear that this program exists. The notice does not get buried in other paperwork and the homeowners are presumed enrolled until they say they do not want mediation or do not pay their portion of the fee within 30 days.

Assemblyman Duncan:
The 30 days start after they receive the notice of default. You said they are sent out concurrently, so theoretically they could appear on the same day. Is the 30-day time frame from when they receive it, or when it is sent out? How does that work?

Assemblyman Eisen:
It is 30 days after the service of the notice, so it would be when the notice is delivered. They could arrive on the same day. I believe that providing it under separate cover and it coming directly from the Foreclosure Mediation Program, and not from the lender, will bring more attention to it. We are not looking to require anyone to participate in mediation. They have the option to immediately say they do not want to engage in mediation and opt out, or they can simply not pay their portion of the fee within 30 days and they would automatically be taken out.

Assemblyman Duncan:
Comparing this with other states, what do you anticipate the increase in participation will be?

Assemblyman Eisen:
Any speculation would have an extremely wide range. Over the life of this program, we have had about 25 percent participation of eligible homeowners. In the last year, that has been 13 percent. The high end of true opt-out programs is roughly 70 percent, so we will be somewhere between 13 and 70 percent. I am not sure exactly where that is going to fall. We do not have a program exactly like this that we can look to. We are not a true opt-out under this bill; the homeowners do have action they need to take. I cannot tell you where exactly this is going to end up, but we are looking to increase awareness and participation.

Assemblywoman Cohen:
With homeowners who are having financial problems and cannot come up with the $400, or can come up with it but not within the time frame, do they have any other options to participate?

Assemblyman Eisen:
Under the bill as it currently stands, the homeowners would have to come up with their portion of the $400 fee, which is $200. The $400 is the full fee that is passed through the Foreclosure Mediation Program to pay the mediator for his services. That is the only way the homeowners can stay in the program.

Assemblyman Hansen:
You started out with a 25 percent participation rate, but as word about the program has spread, you have seen a substantial rate decline to 13 percent. In other words, 87 percent of the people going through foreclosure have rejected participating in the program even with word spreading. I have an issue with essentially forcing people to say "no" when the vast majority have voluntarily been saying "no" all along.

Last session I was involved behind the scenes with the Foreclosure Mediation Program and learned a lot about it. Almost half of the people who participated in the program and had successful mediations went back into default within two months. While this program sounds good, we are using it to force people to participate even though the overwhelming majority is saying "no." It seems to me that your bill is going to conflict with Assembly Bill 300. You are adding more steps to the process to block the process from going through its normal free-market functions. I wonder if you have talked to the people on A.B. 300 to see if your bill is a sticking point on that bill.

Assemblyman Eisen:
I do not know how this would interface with A.B. 300. We have talked, but I cannot go into that in any great detail. On the other issues, I have to disagree with you on a number of the premises of your question. For one, I think the presumption that there is a greater awareness now than there was early on may not be true. The fact that the program has been around longer is not necessarily evidence that it is better known by the people who are in the process at that time. Part of separating the notice about the program from all of the other documents and making sure the notice is coming from the program rather than from the lender is that one of the things we have heard from folks is, "Had I known, I would have participated, but I never saw that paper. It was buried in all the stuff that I received." The other point that I need to clarify is that it is not that 87 percent of people in the last year said "no"; it is that 87 percent of the people in the last year did not say "yes" within the time frame required. Again, that is because they may not have known the option existed.

The last important thing is for me to distinguish what the bill is proposing versus what you have characterized as "forcing" people into this. There is nothing about this bill that forces anyone to enter into mediation. There are two different ways that a homeowner would not proceed to mediation: one would be to actively opt out by saying "no"; the other would be to not pay their share of the mediation fee. If the homeowners do not act in any way, they would not be forced into mediation.

Assemblyman Hansen:
Do you have any statistics on the number of people who participated in the Foreclosure Mediation Program then later defaulted? I wonder what those numbers are.

Assemblyman Eisen:
I do not have the specific numbers on how many may have defaulted after going through the Foreclosure Mediation Program, but I would suggest it is more a matter of better training for our mediators to come to better resolutions. I do not know what percentage of those did not work out as predicted, or if it was foreseeable at the time of mediation. We all know that things have been volatile, so it may well have been the circumstances at the time of mediation. It may have appeared that things would work out well, but things may have taken a turn for the worst for the homeowners that later led to default. I do not know what the total number is, and I do not know what the circumstances were for each of those. We need to do more to ensure the determination and mediation have a better rate of success. I think the program is advantageous for both the homeowners and the lenders in getting a quick resolution, although a third of the time the outcome is that the homeowners do not stay in the

home. It is relinquished to the lender and the homeowners move on. The idea is to streamline the process and get the best outcome for all the parties involved.

Assemblyman Hansen:
I agree we need to streamline the process, but I am not sure this will work. I understand the intent, but I think it might gum it up more. It might cause the same type of problems as Assembly Bill No. 284 of the 76th Session.

Chairman Frierson:
Are there any questions before we go on? I resisted the urge to respond to A.B. 300 because it is a separate bill.

I will now invite those who are here in support of the bill to come forward.

Sophia Medina, representing Legal Aid Center of Southern Nevada:
I am here in support of A.B. 273. As Assemblyman Eisen stated, the underlying effect of a presumptive enrollment program would be the increase in homeowner participation in Nevada's Foreclosure Mediation Program. We have heard from people at outreach events, community service classes that we teach, and clients who have come into the office that would have used the Foreclosure Mediation Program but found out about it too late to participate. These homeowners have commented that, had they known about the program, they would have opted to participate. If all qualified primary-occupancy homeowners were automatically included in the foreclosure mediation process, the program participation rate would increase. [Read from written testimony (Exhibit E).]

Most of the states require affirmative action by the homeowner. Those that are judicial-foreclosure states usually require the homeowner to file an answer or take some other type of affirmative action. The states that require the homeowner to pay a fee usually require the fee before mediation and, as Nevada does, if the homeowner does not pay the fee, they are out of the program. Several of these states, including Connecticut, have made the transition from being an "opt-in" program to being an "opt-out" presumptive enrollment program. They have seen an increase in participation rates. [Read from written testimony (Exhibit E).]

Jeffrey Lerner, Private Citizen, Las Vegas, Nevada:
I am a southern Nevada resident and I would like to share my story about the Foreclosure Mediation Program, and to support A.B. 273.

In 1995 I was placed on long-term disability due to severe colitis. In 2010 I lost my long-term disability when my company placed me on early retirement, cutting my pay in half and making me pay for my medical insurance. [Read from written testimony (Exhibit F).]

Chairman Frierson:
Is there anyone else in support? Please do not repeat what has already been said.

Becky Harris, Private Citizen, Las Vegas, Nevada:
I am an attorney who practices in Las Vegas. I regularly represent borrowers in mediations. I have also served as the mediator for the Nevada Foreclosure Mediation Program. I am aware of how the program works and what the benefits are, and what the difficulties are with this process.

I do not wish to restate anything that has already been said, but the testimony that you have heard in support of this bill is pretty much the way it goes down. My typical client comes to me frequently on the very last day that they can elect into mediation. It is very stressful. I do not actually respond to the trustee. I send my client directly to the Supreme Court of Nevada so they can opt in and ensure their rights are secured.

Lenders take the Foreclosure Mediation Program very seriously and it is often the only time a borrower has an opportunity to speak to the lender. I have personally made daily phone calls to lenders for many months, never to receive a response. As we talk about dealing with the Foreclosure Mediation Program and what is going on in housing here in Nevada, it is often the Foreclosure Mediation Program that gets the attention of the lenders. For some reason they do not feel a responsibility to respond to the borrowers or their counsel. It is not until mediation that we have an opportunity to actually sit down face to face and work out the difficulties. Quite frequently, we are very successful. I can tell you that I do not have a client who has defaulted as a result of a mediated agreement.

I think this is a great program. I think the modifications that we are making to this bill are fantastic. There is so much paperwork sent to a client, and the notice is literally the second to last page in the document pile. By the time the homeowners go through the notice of default and all of the notices required by law, they are burned out and do not know what they are looking at. Because of the scams that happened early in the housing crisis, most homeowners are very skeptical and often do not understand that the Nevada Foreclosure Mediation Program is a state-run program designed to help them, and not take their money and promise them results that they cannot receive. It is often in mediation that

we receive the best resolution of a negotiated agreement with the lender. The program is fantastic, and we need to allow all homeowners who have had a notice of default served on them the opportunity to participate in this program by not excluding them and requiring them to opt in. I like the idea that they are in until they choose affirmatively not to be a part of the program.

I applaud the second notice requirement because, when homeowners get a notice from the state and not from a bank, they will better understand what it is and realize that it is not a scam. They will, hopefully, come to the conclusion that it is a program designed to help them find the assistance they need. I think we will have a lot of success with these changes.

Chairman Frierson:
Are there any questions? I see one other person.

Neshia Tobler, Private Citizen, Las Vegas, Nevada:
I am a homeowner who went through the mediation process. The part of this bill that I would love to see changed is the part where the notices are sent separately.

Chairman Frierson:
We are in the support position. Opposition means you oppose it unless something is changed. This is for support as it is.

Neshia Tobler:
I think it would be wonderful if you got a separate notice about the mediation program from the state. We received that packet and it took days and days to go through it. We got it to our attorney on the last day to have everything turned in. It became a madhouse getting the money where it needed to be to opt in to the program. I think the homeowners deserve a separate notification about this program. We did successfully get a loan modification and were able to save our home, and we have not defaulted.

Chairman Frierson:
Does anyone else want to testify in support? Please feel free to just simply agree because we are running out of time. I will have to cut off the testimony at some point if we go astray because we have a very important bill to hear.

Robert Melcic, Private Citizen, Las Vegas, Nevada:
I want to add that I support and agree with everything that was said. Most of our happy endings have come from this program. Everyone is satisfied; the lenders get their money and our clients are able to keep their homes. It is a good program and it would be good to get more people in it.

Chairman Frierson:
I would invite those prepared to testify in opposition to come forward, both here and in Las Vegas.

Philip A. Olsen, representing Civil Rights for Seniors:
Civil Rights for Seniors fully supports the notion of converting this program into a presumed-enrollment program as the proposed legislation would do. Once again, we see a potential loophole that we think should be closed. Under the current statute, if a homeowner does not elect to participate in the mediation program, the beneficiary is required to go to the mediation administrator and provide an affidavit setting forth the fact that the beneficiary provided the required notice to the homeowner. Once the beneficiary does that, the Foreclosure Mediation Program issues a certificate which permits the foreclosure to proceed. Under this bill, the requirement of the affidavit disappears, and I am looking specifically at the language on page 5, lines 31 through 38. There is no longer a requirement that the beneficiary actually state under penalty of perjury that he sent the notice to the homeowners so that the homeowners would be aware of their option to participate.

Chairman Frierson:
In the interest of time, it appears to me that the language in section 4 was moved to section 3, and section 4 cross-references that language referring back to section 3.

Phil Olsen:
I will look at that later. Our proposal is that the notice advising the homeowner of the program be sent by the program rather than the trustee (Exhibit G). As I read the language, it is the trustee who sends the notice to the homeowner. The trustee then applies to the program for the certificate for the foreclosure to proceed. We believe that the notice should come from the program itself. In that way, the program knows that the homeowner was provided the notice and the homeowner is more likely to pay attention to the notice if it comes from the state.

We have also proposed an additional amendment to the foreclosure mediation statute.

Chairman Frierson:
Have you proposed that to the sponsor?

Phil Olsen:
No.

Chairman Frierson:
I would ask that you not introduce that right now, and instead propose it to the sponsor. If you have other comments that do not pertain to the bill itself and involve mediation and the program, I would ask that you wait until public comment and get it on the record at that point so we can get through the bill and what the sponsor is trying to do. I do not want to curtail your opportunity to address those, and I am well aware of your concerns. We will hear from you on your ideas for improving the mediation program as a whole.

Bill Uffelman, President and CEO, Nevada Bankers Association:
I signed in in opposition to the bill because of the opt-out provision. That said, after listening to the conversation today and some of the things that were said, and thinking back to when this bill was crafted in 2009, it would be a good idea if the notice that the homeowner has a right to mediation comes from the administrator. I have not tried to change any of the words, but if the bill was amended to leave it opt-in and have the administrator send the notice in a separate envelope, you may see some increased participation. The idea that the people did not find the notice and did not know about the program makes me think back to words like "kinder, gentler letter." That would be a good thing. I still think having an opt-in program is much preferable to the opt-out program. This is not a judicial-foreclosure state, but all of the comments are relative to judicial-foreclosure states. It would improve the program, so with that change, I would become a supporter of the bill.

George A. Ross, representing Bank of America:
I compliment the sponsor of this bill, Assemblyman Eisen, who follows a rather distinguished series of predecessors who have all tried hard to create a system where folks can get their loans modified. In 2011, we had at least two bills that we spent a great deal of time on having to do with getting people to notice their mail. One of the bills did finally include a kinder, gentler notice that they hoped people would see.

This brings us to an issue that no one has mentioned—I will be the jerk who says it. People need to take some personal responsibility for themselves. Not everyone agrees. They are trying to save people from themselves. I am astounded at how much has been said about the poor people who do not read their mail. That is something that everyone needs to do, especially when you know you are missing your payments. There needs to be an element of responsibility.

First of all, Bank of America is concerned that this bill will slow the foreclosure process. The most important thing now for those folks who are underwater and are paying their bills is that their home equity will begin to rise again.

The Case-Shiller Home Price Indices suggest that our prices should be about 30 percent higher than they are today according to the 25-year trend. We would like to see it begin to get back there. The way to do that is to ultimately clear the market. It will take time and will not happen overnight. Anything that slows that down will slow down your constituents' equity in their homes. That is a factor.

I am saying that because we are going to assume that a great many of those people do stay in the program and go through mediation. In our minds and experience, that will not speed up the process. I know Dr. Eisen is trying very hard to make that happen quickly. He is trying to speed up the process, and we thank him for that. He has put a tremendous amount of thought into the bill, but we happen to disagree based on the experience of the bank.

I would say there are two realities out there. You can get a loan modification without going through mediation. Bank of America, through January 2013, has completed 30,633 loan modifications. We have three customer-assistance centers in Nevada. If you are behind in your payments and you have gotten a notice of default, or you are about to go into default, if you walk into a center, there are people in that office who can sit down and take you through your situation and help you, particularly if you have the documents that you need. If not, they will tell you what you need and to come back and they will help you. There are centers in Henderson, Las Vegas, and Reno.

Bank of America has conducted many events in which everyone within a certain mileage of those events is invited by mail, phone, and email several times to come. In Cashman Center, in March 2011, 34,000 people who lived within a 200 mile radius were invited; only 1,000 attended. These people were told that there would be someone there who could make a decision to help them if they brought X, Y, and Z documents. Similarly, in October 2011, 8,600 people got invited and 260 came. In 2012, there were 3,600 people invited and 190 came. There have been a number of other events with similar attendances. If you do the math, what you will come up with is 2.9 percent, 3 percent, and 5 percent. That is all the response that we got. What I am suggesting is that there may be a reason why people have not opted in to these events. Maybe they are reading their mail and it is the same psychological response that keeps them from showing up even though they know there is someone there who can help them.

I am going through this because there is another reality. It is not just people who make phone calls and never get an answer. In at least the last two or three years, our bank has made a number of major changes and the opportunity

is there for those folks who need and want help, but they need to have a little bit of personal initiative and come to an event.

I do not want to leave you with any misunderstandings. I know Dr. Eisen has good intentions and is trying to help people in foreclosure. I know he is not trying to slow the system down, and that he thinks he has some ideas that will speed up the current system—which will be back in operation assuming that A.B. 300 passes. We disagree with the impact that this will have going forward with clearing out the market. We think this will slow things down. If the data that I gave you is any indication, it may be that many folks will not want to spend that $200.

Chairman Frierson:
I am sorry. I am going to have to give everyone a chance, so we need to give everyone a few minutes. Anything you are unable to say now, please provide in writing to the Committee and I will get it to the Committee for their consideration. I want to make sure we get through it all.

Cheryl Blomstrom, representing the United Trustees Association:
In the interest of time, me too. I have been sitting here and I have an idea that might help this, but I have not talked to Dr. Eisen about it. Until I do that, I will submit it in writing, and I appreciate the opportunity.

Chairman Frierson:
Thank you, and I would encourage you to talk to Dr. Eisen as well and see what can be done.

Those in Las Vegas wishing to testify please come forward and remember that we have a short time before we need to move on to our next bill.

Joseph Nascimento, Private Citizen, Las Vegas, Nevada:
I am opposed to the bill because I do not think it is going to make a difference in what happens. I have been involved in litigation with Wells Fargo and I have been able to find out a lot of stuff that people may not know.

There are two types of loans, secured and unsecured loans. The banks do not lose anything so they will renegotiate the secured loans, but not the unsecured loans. That means the percentages are going to be close to the same as what is going on now. What happens a lot of the time is the banks make up documents if they do not have them. If you want to see how that works, all you have to do is go on YouTube and look at "CBS Atlanta Foreclosures." They are the same people who do it here. They have mills where people just sign fraudulent affidavits and turn them in.

Chairman Frierson:
I am going to ask you to do the same thing. If you have public comment that does not address the bill, I will ask you to wait so we can get through the bills. I would ask you to briefly address your feelings about the actual bill.

Joseph Nascimento:
The bill is not going to make any difference percentage-wise on how many people are going to get their loans modified. I think it is a waste of resources.

Kristin Schuler-Hintz, Managing Attorney, McCarthy & Holthus, LLP:
The burden on homeowners to get into the Foreclosure Mediation Program right now is extremely small: just open your mail, fill out the form, and send in a check. This bill decreases the burden to sending in a check. They do need personal responsibility. The trustee firm that I work with mails the "election to mediate" in a separate envelope that is marked that it contains the election to mediate, so all you have to do is look through the envelopes and you will know which one it is in. Our election rate is 8 to 10 percent. There are a lot of factors that go into whether people elect to mediate: market conditions, jobs, whether they have had a prior modification, whether their equity situation is improving, and what is happening in their neighborhood.

I can tell you statistically speaking, in 2006, 49.3 percent of the foreclosure loans referred to the trustee that I work with were closed through an alternative to foreclosure. In 2012, 23.88 percent were closed through an alternative to foreclosure. What that shows me is that market conditions and whether they fear losing their home play a big impact on what they do about it. If you are not foreclosing on the homes, there is no incentive to go and resolve the problem through a short sale, modification, or something else.

Regarding sending the notice in a separate envelope so people can find it easier, that is great if the Foreclosure Mediation Program wants to send it out, but they must meet the small burden of completing the form. I have a concern if the Foreclosure Mediation Program sends it out.

Chairman Frierson:
We do not have the ability to air ideas that are not the subject of the bill. Any thoughts or ideas that you have that are not the subject of the bill itself, feel free to submit them, but we have to get through the bill.

Kristin Schuler-Hintz:
That is all I have.

Chairman Frierson:
Is there anyone else in opposition? Seeing none, I will go to neutral.

Robin Sweet, State Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator:
We have offered an unsolicited fiscal impact that we want to get on the record (Exhibit H).

Chairman Frierson:
Thank you. We are in receipt of it.

I will ask Dr. Eisen back up for closing remarks.

Assemblyman Eisen:
I would like to thank everyone who testified for the bill. I will continue to work with all of the interested parties to ensure we address all of the concerns that were raised today. I think it is important that we make the efforts that we can to improve this program. I do not believe that the argument that we are not going to make huge changes is a reason not to make the changes that will improve the program. We need to do everything we can to help homeowners. I particularly want to thank both Ms. Medina and Ms. Harris, who are in the middle of this program every day, for their testimony and their efforts in this program.

Chairman Frierson:
I encourage you to hear from folks who have thoughts on the bill in any way that you find productive. I apologize to those people we had to cut short, but we have a limited amount of time to make sure we hear from everyone. We would be more than happy to hear from all of you in writing so we can circulate any concerns or thoughts to the Committee for consideration.

I will close the hearing on Assembly Bill 273. I will now open the hearing on Senate Bill 139 (1st Reprint).

Senate Bill 139 (1st Reprint): Expands provisions governing criminal and civil liability for certain crimes to include crimes motivated by the victim's gender identity or expression. (BDR 15-703)

Senator Patricia (Pat) Spearman, Clark County Senatorial District No. 1:
I am here to present Senate Bill 139 (1st Reprint) for the Committee's consideration.

Fifty years ago, a young pastor sat in a Birmingham jail. His crime was marching for freedom and justice. One section of his letter has a haunting reality for us today as you listen and consider support for S.B. 139 (R1). [Read from written testimony (Exhibit I).]

Can we forget the Sunday morning of September 15, 1963, when the lives of Addie Mae Collins, Cynthia Wesley, Carole Robertson, and Denise McNair were tragically and violently cut short by a bomb thrown into the 16th Street Baptist Church (Exhibit J)? Their only crime was being Negro, going to Sunday school, and staying for morning worship service. [Continued to read from written testimony (Exhibit I).]

In 2009, Angie Zapata, a transgender teen, was murdered by Allen Andrade in Colorado. After he beat Angie with his fist, he grabbed a fire extinguisher and hit her in the head several times. During his trial, when asked why he did it, he said, "I killed it." [Continued to read from written testimony (Exhibit I).]

Chairman Frierson:
Thank you for allowing those of us who are signed on as cosponsors to be a part of it. This is clearly an important issue, and one that is timely as well.

Assemblyman Hansen:
I have to tell you that I have a problem with the whole hate crime concept because, if someone comes and beats me up because they do not like short, bald, white guys, or they beat me up because they think I am a homosexual, historically in criminal law, you are not punished for what you think about someone; you are punished for the actions you commit. If someone beats me up for the wrong reason, I am actually less of a victim and the individual beating me up will receive less of a punishment because I do not fall into one of the selected categories of these types of laws. What we are really doing is creating unequal status in the law. If you beat the heck out of Ira Hansen because you do not like his political views, or you beat him up because you perceive that he is a homosexual, you are going to get different levels of punishment for the same action.

I am going to oppose this law, and I have been fighting this issue for over 20 years now because I do not think everyone should be treated differently in the eyes of the law for the same actions. We should punish people based on their behavior, not on what they might be thinking or what the motivation might be. We are essentially setting up different classes of people who may be victims of the exact same level of criminal activity toward them, but somehow the punishment is perceived differently. I do not think we should punish people because we do not like how they think. We should be punishing people based

only on their actions, whether those actions are motivated because they do not like me because they perceive I am a homosexual or because they do not like my political views or because they want to steal the money out of my wallet. The action should be the basis for criminal law.

I appreciate everything you said and I agree that those sorts of things should not be allowed, but when it comes down to criminal punishment and setting up victim status, I think everyone should be equal in the eyes of the law.

Senator Spearman:
I respectfully disagree. Let us look back in history. If we were to act based upon the logic that you have previously stated, we would not have bills regarding sexual harassment. We would not have the voting rights bill. We would not have civil rights. All of those things came about as a result of victims of a crime reporting the crime and humanity understanding. Yes, you have the right to believe whatever you want to believe, you even have the right to hate people, but what this bill says is that you do not have a right to act upon that hate. When you act upon that hate, we will not tolerate it. That is all this bill says. [See (Exhibit K).]

When you talk about short, white, bald men, with the exception of those characteristics, history has shown us that white men are actually in a protected class because they are born with some type of superiority as they say. They are born with that and you have to really opt out of it. When we talk about transgender people, when we talk about people whose sexual orientation is different, we are not talking about creating a different set of laws for different people. We are merely punctuating the promise that was given in the *United States Constitution*, "with liberty and justice for all." Everyone has a right to protection under the law—everyone. As a white man, I would be 99 percent positive that you have not experienced prejudice, that you have not experienced discrimination. I have; my sister has.

With your permission Mr. Chairman, I will say a word that we usually do not use, but I need to say that to punctuate the urgency of this bill. When I was commissioned as a second lieutenant, I went to Anniston, Alabama. One of my older sisters drove down there with me. We went to a restaurant and before we ordered the waitress came over and whispered in my ear. I remember those words distinctly, so I will quote them. "Why did you bring that nigger in here?" This was in 1978. She mistook me for being white, and I turned to her and said, "You obviously do not know that I am African American." Until we reach the day when we can love each other and respect each other for the content of our character and not the color of our skin or gender identification, these laws

will exist. Senate Bill 139 (1st Reprint) punctuates the fact that, as Nevadans, we are committed to civil rights and equal rights under the law.

Chairman Frierson:
I will say that I empathize with your frustration about protecting certain people and not others. It came up last session when there was a bill that proposed to protect participants in the legal process and I opposed it for that same reason. But I will say that I believe the rationale behind this effort is not focusing on you as any characteristic that you might have, but the actions of the accused. If it focuses on certain characteristics to the extent that it increases the danger for people who fit those characteristics, I think it rises from simply giving someone more rights as a victim to characterizing the behavior of the defendant. On the day that short, white, bald men, or any other class that is not protected right now, are systematically impacted in a way that increases their danger, I think it will be worthy of consideration at that point.

Assemblyman Hansen:
I agree with most of that, but I also believe that the Fourteenth Amendment says all laws should apply equally to all people. When we have select groups that get special treatment in the eyes of the law, or additional penalties for people who violate that particular group, I do not regard that as equal treatment in the eyes of the law.

Assemblyman Duncan:
You actually quoted Micah 6:8, which happens to be my favorite Old Testament scripture that reminds us to do justice, to love mercy, and to walk humbly with our God. That is something that I take seriously every day that we step into this building, because it is a privilege to serve the State of Nevada.

In your preparation for bringing this bill to the Legislature, were you able to look at other states that have enacted these sorts of protections from hate crimes in their statutes? Did they have a deterrent effect on crimes against transgender people, crimes motivated by gender identity, and the things that this bill adds? Would you share that with the Committee?

Senator Spearman:
Yes, I have. Unfortunately, the states that have enacted laws such as these have enacted them within the last five years. Historically, they have not kept track of crimes against transgender persons, mostly because when these persons become victims, they do not report it. The Federal Bureau of Investigation (FBI) has a few statistics and they venture to say they may have collected only 5 percent of the data. Some people's hatred of people who have physical differences permeates their being so much they act on the hate.

Yes, there are statistics out there, but there are very few. There are only a few states that have enacted laws such as this to protect all people.

Chairman Frierson:
I see no other questions. I thank you for allowing us to have this conversation, Senator. I want to give some folks who are here an opportunity to testify on this bill. I invite those who are in support of S.B. 139 (R1) to come forward at this time.

Dominic Pizorno, Private Citizen, Sparks, Nevada
I have post-traumatic stress disorder, so please forgive me. My name is Dominic Michael Pizorno. I was born Page Diane Pizorno here in Nevada. My people are Italian immigrants straight from Italy to Verdi and then, in the 1800s when they had to become educated, they moved to Reno.

I want to say that I am transgendered, and I wanted to put a face on this. Ronald Reagan was a brilliant man, and I was a young Republican at that time. Now I am a proud Washoe Democrat. At the time, I was a female Republican. I voted for Ronald Reagan twice, and he came up with the brilliant notion of the line-item veto. The reason for that was protection from bad lobbyists sneaking in a Hooter's bill on some very important legislation. You could review an important bill and take the awful things out. On page 3, line 41, you delete gender identity or expression, and I think it is one more time. There are a few other deletions of gender identity on page 4, line 36.

Chairman Frierson:
So that I am consistent, if you are in support, you are in support of the bill as it is. If you are offering testimony in a way that differs from the current form, or something that the sponsor has not accepted, that would be opposition, as much as you may be in support of the concept.

Dominic Pizorno:
I have short-term memory loss, so I am not sure. I wanted to point out that Senator Spearman and Senator Parks are brilliant people and I appreciate what they said. I wanted to put a face on the victim of being a transgender person. I was brutally assaulted twice and choked to death. I was out three to five minutes. I was strangled. It is hard for me to put a tie on because I had rope burns on my neck from being strangled in San Francisco during my transition. I also have stab wounds on my left arm. You can see them all the time. I also tried to kill myself in desperation during my 20-year transitional period. The happiest day of my life was when I turned 27 and was able to grow facial hair. I am in therapy now. I am a proud man and very brave and not afraid. I want you to represent Nevada and make a point across the globe

saying, "We support all people." Do your job. Take care of the bill, or whatever. Just pass it.

Chairman Frierson:
I appreciate your coming forward. I have to ask that everyone be mindful of our time. I want folks to be heard, but we have to stop. That means just a couple of minutes each.

Elvira Diaz, Private Citizen, Reno, Nevada:
I live in Reno, Nevada. I am a trans parent, which means I am the parent of a transgender person. First, I want to thank the Senators who have already passed this bill, by 20-to-1, I think. Also, I want to thank you for listening to our testimony.

In January, they found that I had a 20-pound tumor, so I had to have surgery. I was facing that, but my biggest concern was for my kid, because he still needs me and I still need to fight for him. To me, this bill—S.B. 139 (R1)—will help protect my child. When you have a transgender kid, you try to prevent bad things from happening. When you have someone with cancer, you do all you can. You go to therapy and you do everything to cure the cancer. My transgender kid now looks like a boy, and he is happy. I have a transgender group that I go to. I cannot prevent somebody in the long term from finding out he is transgendered. He also looks white. I cannot prevent somebody in the long term from killing my kid, or from doing what they did to Dominic. I understand we need to have equal laws, but when you are a mother like I am—I am a single mother—this is going to help provide extra protection to my kid because somebody may want to commit a hate crime against my kid. This law will be stiffer. It means that he will think twice.

Thank you for your support. I want to let you know that I am Catholic, and I want to leave this for you because we need to support love. [She held up a flag that said "AMOR" (Exhibit L).]

Z Shane Zaldivar, Private Citizen, Sparks, Nevada:
I am a former Marine, a husband, and I am transgendered. When I was in the Marine Corps, I was female. When I started my transition ten years ago, all of my friends were getting hurt and beat up. Senator Spearman was correct. None of my personal friends' crimes were reported. There were over 20 in five or six different states. Recently, one of my friends was strangled almost to death and was in the hospital. I am tired of having my phone on at 3 o'clock in the morning because I have to go to the hospital for one of my friends.

No one looks at me differently because I look male and I am fine. I have friends, employees, and customers who come into my store and never know, and think I am an outstanding citizen. The moment they find out that I am transgendered, they think I am different. If they hurt me just because they find out I am transgendered, that is not a crime of hating me because I am a person; that is a crime of hating me because my gender is not what they thought it was. I presented male, but they say I am female, and that is hate-driven, and a hate crime is a hate crime. That is not just beating someone up in a bar fight because he drank out of your pitcher, that is hate. This state should stand up and say we do not believe in hate.

Kathy Baldock, Private Citizen, Reno, Nevada:
I am a heterosexual, evangelical, registered Republican, and Christian; and I work in the very messy space between the conservative church and the gay, lesbian, bisexual, and transgender (GLBT) community for the purpose of full inclusion and full equality of my gay, lesbian, bisexual, and transgendered brothers and sisters whether they be Christian or not.

What I am seeing in my unusual position, where I have insight into the bigotries that are forming with people of faith and extremely conservative people of faith, is a rising bigotry and the continued misunderstanding of who my transgendered brothers and sisters are. Because I see this rising, and I know what is ahead for them, I am hoping Nevada will be a progressive state and put into position protections for my transgender brothers and sisters, fellow citizens, and those who visit the state as well. Keep Nevada progressive. There are 11 states that currently have added into their laws gender expression and gender identity to protect our transgender friends.

Kim Cole, Private Citizen, Sparks, Nevada:
I am a proud member of the transgender community. I have been a Nevada resident for 57 years. I absolutely love it here. I will keep this brief. Someone recently asked me what it was like to be transgendered, and my answer is that I get up in the morning, take a shower, eat breakfast, and go to work. If any of that is a reason for someone to subject me to harm, I would like to think that there is protection against that. I strongly urge your support of S.B. 139 (R1).

Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates:
There are two things I would like to put on the record in addition to our testimony, (Exhibit M), about our health center work to support the health needs of the transgender community. First, it is something that I learned at a presentation that Assemblyman Hansen also attended to learn more about this issue. There are at least 11 medical conditions that can leave a person with an indeterminate gender identity, situations where you have an additional

chromosome, or situations where people do not go through puberty. This is not a matter of choice. It is a medical reality and it is a difficult one. While we tend to think people are born one way or the other, that is not always the case.

As a Republican, I can understand the reticence to create a category of hate crimes. I certainly understand Assemblyman Hansen's point. If you batter someone, they are just as beaten up whatever the motivation was. I am not an attorney and I do not like to get into an argument with a Committee full of attorneys, but my layperson's understanding is that there is a category of hate crimes. We have established this category in America and every state has one. The reason for the categorization is not to penalize someone for what they are thinking. The creation of hate crimes and penalties for hate crimes is to prevent people from systematically terrorizing a group of people, from creating an atmosphere of fear, and from essentially limiting the sphere of activity for people who fall into a certain race, a certain sexual orientation, or, in this case, certain gender identification. As communities, we say you cannot terrorize a group of people and try to limit their participation in our community life.

Marlene Lockard, representing the Nevada Women's Lobby:
We are dedicated to equality, nonviolence, and reproductive choice. The lives of all people are inherently valuable and worthy of respect and dignity. Therefore, we actively work to remove barriers of race, class, age, gender, religion, physical ability, and sexual orientation. That is why we support S.B. 139 (R1).

Chairman Frierson:
Is there anyone else who wants to offer testimony in support?

Mel Goodwin, Program Director, Gay and Lesbian Community Center of Southern Nevada:
For the past five years, I have had the privilege of creating and managing our transgender programs at the center. I have heard all too often the stories and seen the bruises that transgender folks have come in with from living their daily lives being harassed, and sometimes beaten on the streets. I had someone come in Monday afternoon to show me her latest and greatest bruises. She is afraid and will not go to the police. She does not feel there are adequate protections in place for her to do that.

I am going to share with you statistics. The 2011 report on hate violence by the National Coalition of Anti-Violence Programs found that transgender people are 28 percent more likely to experience physical violence compared to nontransgender people. Transgender women make up 50 percent of lethal anti-GLBT hate crimes. In the 2009 National Transgendered Discrimination

Survey of 6,500 transgender people in the United State—the largest survey ever conducted—they found that 61 percent reported being victims of physical assault, and 64 percent were victims of sexual assault. On behalf of my transgender friends, colleagues, and loved ones who are not able to be here today, I urge you to support S.B. 139 (R1).

Chairman Frierson:
Anyone in Las Vegas who wishes to testify, please come forward. Seeing no one, anyone wishing to testify in the neutral position, please come forward. Seeing no one, I will go to anyone testifying in opposition. I see no one. Senator Spearman had to go to floor, but I am glad we got through all of the testimony. I appreciate your passion and I certainly appreciate the effort. I know it is not easy to not let it get personal. [(Exhibit N) and (Exhibit O) are part of the record.]

I will close the hearing on Senate Bill 139 (1st Reprint). I will open briefly for public comment as I stated earlier. Is there anyone who would like to make public comment?

Dominic Pizorno:
I wanted to say that I was not strip searched today or yesterday when I came here. I did not have to go through a metal detector, and I did not have to pull my pants down or verify my genitalia like I had to elsewhere. I was incarcerated several times. I want to say thank you, and that I felt like a human being for the last couple of days, and I got to use the appropriate bathroom. I live in fear all the time. With post-traumatic stress, I always feel like someone is going to attack me.

Chairman Frierson:
The meeting of the Committee on Judiciary is adjourned [at 11:13 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 27, 2013 Time of Meeting: 8:12 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 300	C	Ann C. Pongracz	Memorandum from the Office of the Attorney General
A.B. 300	D	Ann C. Pongracz	Testimony of Tisha Black Chernine
A.B. 273	E	Sophia Medina	Written Testimony
A.B. 273	F	Jeffrey Lerner	Written Testimony
A.B. 273	G	Philip Olsen	Written Testimony
A.B. 273	H	Robin Sweet	Unsolicited Fiscal Note
S.B. 139 (R1)	I	Senator Pat Spearman	Written Testimony
S.B. 139 (R1)	J	Senator Pat Spearman	Church Bombing Photos
S.B. 139 (R1)	K	Senator Pat Spearman	Explanation of Amendment
S.B. 139 (R1)	L	Elvira Diaz	AMOR Quilt
S.B. 139 (R1)	M	Elisa Cafferata	Letter of Support
S.B. 139 (R1)	N	Lesley R. Dickson, MD	Letter of Support
S.B. 139 (R1)	O	Vanessa Spinazola	Letter of Support