MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 4, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:15 a.m. on Thursday, April 4, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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:

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Thelma Reindollar, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Terry Care, Commissioner, Uniform Law Commission
Kay Kindred, Commissioner, Uniform Law Commission
Kimberly Surratt, representing Nevada Justice Association
Katherine Provost, Attorney, The Dickerson Law Group
John P. Sande IV, representing Nevada Bankers Association
Alan Rabkin, Senior Vice President, General Counsel, Heritage Bank of Nevada
Joshua Hicks, representing Rialto Capital Management
Daniel F. Polsenberg, Partner, Lewis and Roca, LLP
Mark H. Fiorentino, representing Focus Property Group
Frank Flansburg III, Vice President, Marquis Aurbach Coffing
Sean T. Higgins, representing America West Homes; Olympia Companies; Carefree Holdings LP; and Industrial Plaza, LLC
Stacey Yahraus-Lewis, Private Citizen, Las Vegas, Nevada
Donny Borsack, Private Citizen, Las Vegas, Nevada
Tom McCormick, Private Citizen, Las Vegas, Nevada
John A. Ritter, CEO, Focus Property Group
Michael Joe, representing Legal Aid Center of Southern Nevada
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General

Chairman Frierson:
[Roll was called. Committee protocol and rules were explained.] We have three bills on the agenda as well as a relatively long work session. We are going to hear Assembly Bill 358 first, and I invite Mr. Ohrenschall up, along with any witnesses he is prepared to have as part of his introduction to A.B. 358. We will open the hearing on A.B. 358.

Assembly Bill 358: Enacts the Uniform Deployed Parents Custody and Visitation Act. (BDR 11-171)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
Good morning, Mr. Chairman and members of the Committee. About two years ago, I was very privileged to be appointed by the Legislative Commission to

serve as a commissioner for Nevada on the Uniform Law Commission (ULC), a nonprofit organization that is in its 119th year. The ULC has as its goal passing uniform acts around the country where uniform acts are desirable and beneficial.

Assembly Bill 358 deals with parents' rights to the custody and visitation of their children. When one or both parents are members of the military and are deployed, it becomes especially difficult for that parent who is serving our country, whether it is being deployed overseas or at a base far away from their normal home. Last session my colleague, Assemblywoman Bustamante Adams, sponsored Assembly Bill No. 313 of the 76th Session, which was a very fine piece of legislation and had very similar goals to A.B. 358 in helping a deployed parent be able to have quality time with their child and looking after the best interest of their child.

I definitely want to compliment Assemblywoman Bustamante Adams. I believe that A.B. 358 complements A.B. No. 313 of the 76th Session in terms of trying to expand the rights and protections for the deployed parent. I am very fortunate today to have two of my fellow commissioners from Nevada with us. Former state Senator Terry Care is here with me in Carson City, and in Las Vegas, I have one of my former law professors, Professor Kay Kindred, who played a pivotal role in the drafting of this act for the ULC (Exhibit C). I am going to turn it over to Commissioner Terry Care and Commissioner Kay Kindred to walk you through the bill.

Chairman Frierson:
Good morning and welcome back, Senator.

Terry Care, Commissioner, Uniform Law Commission:
Thank you, Mr. Chairman. Assemblyman Ohrenschall has caught the spirit of the act, and he said what I was going to say about the work of Assemblywoman Irene Bustamante Adams last session. Just so everybody knows, the way it works with the Conference is there is usually a study committee that meets for two years to determine whether there is a need for a uniform act. If that determination is made, then a drafting committee meets for two years and comes up with the ultimate act. This is usually a four-year process. They were doing this during the same time that others recognized the need for an act and approached Mrs. Bustamante Adams, and so that is how it happened. We continued with our project, and I have had discussions with Mrs. Bustamante Adams.

We like to think this bill, as Mr. Ohrenschall stated, complements what was done last session. It deletes many of the provisions from last session but

again, it keeps the essence and it is probably fair to say it is a little more comprehensive. In Nevada, we have Nellis Air Force Base, Fallon Naval Air Station, and the Hawthorne Army Depot, where a tragic and unfortunate incident recently occurred. So this is an important piece of legislation. The act itself contains three major components, one of which deals with the agreement because the act does encourage agreement between parents about coming up with their own way regarding the children when one of the parents is on deployment in the military. There is a section that deals with judicial procedure for granting custodial responsibility during deployment and, of course, the return from deployment. The states vary on how to handle all these issues and that is the need for the uniformity.

Before I go through the bill, there are a couple of amendments that are going to come before the Committee. Section 32 deals with an expedited hearing. The ULC is on board with this as well as others in this room. It is an extra provision for the bill. Section 36 deals with an additional factor for the court to consider on the issue of caretaking authority to a nonparent. Very briefly, the way I would like to proceed, Mr. Chairman, is to walk through the bill, give an overview of what the sections do, and then if there are questions about how particular sections operate, defer those to Professor Kindred, if I may do that.

Chairman Frierson:
Absolutely.

Terry Care:
Thank you, Mr. Chairman. Sections 5 through 22 are simply definitions to the bill. Section 23 addresses jurisdiction of the court. Section 24 is notification required of a deploying parent. Section 25 is the duty to notify everybody of the change of address. Section 26 is general consideration and custody proceedings of a parent's military service. Sections 27 through 31 address the unity agreement of custodial responsibility during deployment. Section 27 itself discusses the form of that agreement. Section 28 addresses the nature of the authority created by that agreement. Section 29 discusses the parents being allowed to modify the agreement.

Sections 30 and 31 address the issue of the power of attorney for that purpose. Sections 32 through 41 deal with the judicial procedure for granting custody and responsibility during deployment. Section 32 itself is a proceeding for a temporary custody order and has one of the amendments. Section 33 addresses an expedited hearing. Section 34 addresses testimony by electronic means. Section 35 is the effect of a prior judicial order or agreement. Section 36 addresses the grant of caretaking or decision-making

authority to a nonparent and again, the Committee will see amendments for that. Section 37 addresses the grant of limited contact.

Section 38 addresses the nature of authority created by a temporary custody order. Section 39 addresses the content of a temporary custody order. Section 40 addresses an order for child support. Section 41 addresses modifying or terminating the grant of custodial responsibilities to the nonparent. Sections 42 through 45 address the issue of return from deployment. That is a very quick overview, Mr. Chairman (Exhibit D). I would defer any questions to Professor Kindred. We are honored to have her. She was part of the drafting committee. Thank you.

Chairman Frierson:
Thank you, Mr. Ohrenschall and Mr. Care.

Assemblywoman Cohen:
I do have a couple of questions. I am really in favor of this, but I wonder if there is a way to make things a little easier on the deploying parent and the nondeploying parent in this? The agreement needs to be in writing and signed by both parties. But then it needs to be made an order of the courts, and I would imagine that when a parent is getting ready to deploy, there is a lot of activity going on and it would be a little easier if there is some creative way that they could have the agreement without having to file it, maybe if it is under a certain amount of time. I know when we are talking about an 18-month deployment, I would imagine the judges would really want that filed. I hate to think of a parent who is trying to rush to get deployed and get their home life in order before leaving, not getting this achieved, and not getting the agreement official because things fell through the cracks, maybe because the parents are already living in different states. I was also thinking about how there are a lot of online parenting tools being used by the courts now, such as Our Family Wizard.

Kay Kindred, Commissioner, Uniform Law Commission:
We understand that people will be doing things in a hurry and doing things online, but the committee felt that having the agreement filed with the court made sense in terms of enforcement later and reconciling this expedited measure with existing custody procedures.

Assemblywoman Cohen:
I also wanted to ask about the extra time the deployed parent gets when they come back.

Kay Kindred:
It is in a couple of places.

Assemblywoman Cohen:
Do we view that as make up time?

Kay Kindred:
Yes, the idea was that it was make up time in a sense, but also transitional time to give the returning parent a chance to bond or reestablish the bond with the child to ease the transition.

Assemblywoman Cohen:
Thank you. In section 30, it says, "If no other parent possesses custodial responsibility under the laws of this State other than sections 3 to 48, inclusive, of this act . . . a deploying parent by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment." I am a bit concerned with that section because, in Nevada, you can have joint legal custody of your child and not have any physical custody rights or very limited physical custody rights. If you have a parent who is the deploying parent and who is the primary physical custodian or the sole physical custodian, is the other parent's joint legal custody right being considered in that section?

Kay Kindred:
The idea is that a deploying parent can delegate the rights to the extent that he or she has them—a delegation of that parent's rights and nothing beyond what that parent has. We were mindful of the other parent's rights that may not be residential or custodial but may be legal custodial rights. It does not impair that other parent's rights. That was not the intention.

Assemblywoman Cohen:
Thank you.

Chairman Frierson:
Are there questions? I have a question and a few of us have chatted about it. How many states do we know that have actually adopted this version of the Uniform Act?

Terry Care:
Somebody has to begin; we are not the first. North Dakota has adopted it and I think Colorado has also, and maybe Montana. This was just promulgated at the annual conference in July 2012. Nevada, North Carolina, Colorado, and North Dakota have enacted it already this year.

Chairman Frierson:
Thank you, Mr. Care. And if I understood the introduction correctly, this is a continued effort to streamline the process for those being deployed. I want to make sure that the Committee is clear what, if anything, we are actually fixing and what the process is going to be in the absence of adopting the measure.

Terry Care:
There was another group that approached Assemblywoman Bustamante Adams two years ago with what is now actually Nevada law. This does not fix anything really. It is a much more comprehensive framework to do fundamentally the same thing. That is basically it.

Chairman Frierson:
Are they allowed to do some of these things now and it is just up to the individual judge to craft it and this would provide more of a format instructor for that to happen? Or in the absence of this, are some of these accommodations not being made currently?

Terry Care:
The Uniform Law Commission actually did a section-by-section comparison of Assembly Bill No. 313 of the 76th Session and this bill. The other organization did the same thing, and I think it is fair to say they liked what we had come up with because it was more expansive. I can share with you those comparisons, but those were done.

Chairman Frierson:
Do I have any other questions from the Committee? [There were none.] We will move on to those testifying in support of A.B. 358.

Assemblyman Ohrenschall:
We have some practitioners here in Carson City and in Las Vegas who want to speak to the bill and the amendments.

Chairman Frierson:
Thank you. I would invite those folks up now.

Kimberly Surratt, representing Nevada Justice Association:
We are testifying in favor of A.B. 358. To answer some of the questions that just came up, historically, we were very much involved in A.B. No. 313 of the 76th Session with Assemblywoman Bustamante Adams in crafting that statutory framework. Last time we were here, we had an extensive amount of involvement from the Department of Justice (DOJ), and we had Judge Advocate General's Corps (JAG) officers here who testified about

different circumstances. We really put the bill through the loop because we did not have the Uniform Deployed Parents Custody and Visitation Act (UDPCVA) (Exhibit E) to use as a reference in structuring language and putting everything into place. We were all in favor of it. The bill came out, and everybody was pleased with it. I, as a practitioner, have utilized it several times for active military. It is progressive, it is very effective for those members, and we were very content with it.

When the UDPCVA was presented this time, our immediate red flag was simply that we already had the law in place, and what was the UDPCVA going to do for us. The Uniform Law Commission was kind enough to go through word for word a cost comparison and what we had in place so that we could look at the nuances and the changes to make a fair assessment of it. Many of these provisions are already in place in our own law, so when we ask about certain things, what comes to mind very specifically was Assemblywoman Cohen's comment about delegating all or part of the custodial responsibility to an adult nonparent for the period of deployment. A lot of the intent behind some of that language is already put on the record of the last session. Specifically, we were trying to assure when a parent is deployed, the half-siblings and stepparents are not cut off immediately upon deployment. The entire domestic committee of the Nevada Justice Association (NJA) is in favor of this act with two amendments that have been proposed by Katherine Provost, who is seated to my left and can give much more detail about those specific amendments and why.

Chairman Frierson:
Thank you and welcome, Ms. Provost.

Katherine Provost, Attorney, The Dickerson Law Group:
Thank you, Chairman Frierson. As Ms. Surratt said, the NJA is in favor of passing this bill. To give you a little background, I am a practicing family law attorney in Clark County. As part of my practice, I primarily represent military members and military families, meaning either active duty service members or former spouses of active duty service members, in all forms of family law matters. I am also a very proud military spouse myself (Exhibit F).

When I went through A.B. 358, my initial thought was this was a great bill, just as I was pleased with the passage of A.B. No. 313 of the 76th Session. Looking at the comparison that was prepared by ULC of the two bills, I did see differences, most of them minute, meaning the passage of this bill, even though it will replace the existing Nevada law concerning deployed parents and custodial rights, would not, in daily practice, have a large change for what we do.

There are two things that exist in our current Nevada statute that were absent from the Uniform Act being proposed now. With respect to those two things, I have been working with Mr. Care, Ms. Surratt, and the domestic committee for the NJA trying to determine what is the best way to address those two things that are already present in our Nevada law and that I would have liked to see maintained.

I have proposed two amendments to this bill and have submitted them for your review (Exhibit F). The first being that a service member currently has the right to an expedited hearing upon his return from a deployment if he feels that something has occurred that is an immediate danger of irreparable harm to a child. Assembly Bill 358 has the right to an expedited hearing prior to deployment, but it did not maintain that same right for an expedited hearing upon the service member's return home. If you have a provision in this act that requires a court to have those expedited hearings upon return from deployment, we do not have service members learning of a potentially harmful situation while they are gone, being concerned about it, and then getting home and being able to do nothing about it for several months. They can maintain that right to an expedited hearing which already exists under the current law. That is the first amendment I have proposed, and it is to add subsection 3 to section 32.

The second amendment I am proposing is to section 36 which takes the language from *Nevada Revised Statutes* (NRS) 125C.050(6) and provides with specificity for the courts what exactly they are supposed to be considering when they view the terminology "the best interest of the child." For a family law practitioner, when you talk about the best interest of the child it is more than "this is a good thing for a child." There are specific factors that a court has to consider which I have proposed be added to this bill and are in existing law in NRS 125C.050(6).

This is very important. The leading case for grandparent visitation, or any third-party visitation or delegation of a relationship with a minor child is a case called *Troxel v. Granville*, 530 U.S. 57 (2000) (Exhibit G). Under the *Troxel v. Granville* case, if a parent does not want their child to associate with any third party, whether it be a grandparent, a stepparent, or anyone other than a natural parent, if that parent has an objection, that parent has what is known as a parental preference to make the decision as to who their child associates with. This is a fundamental right that parents have. Noted in our existing statute, but absent from the Uniform Act, was any recognition of this deference or fundamental parental right to make this choice as to associations.

With these amendments, I am wholeheartedly in favor of the passage of this bill. I really desire to see this passed. It definitely improves Nevada

laws as they currently exist, and it puts in place the scheme for military families and military parents to work together to deal with issues of deployment and how a military deploying parent's custodial rights, contacts, and communications with their child will be protected; how relationships between stepparents and minor children will be protected; and how relationships between stepsiblings will be protected. If the parents cannot agree because, unfortunately, in family law issues, there just simply are times where parents do not act in the best interest of their child and they cannot overcome the hard feelings that they have toward their former spouse, this gives a way for the courts to address those issues and a way that the courts can do this without facing the risk of having these orders challenged on constitutional grounds. Thank you.

Chairman Frierson:
Thank you, Ms. Provost. Are there any questions for Ms. Surratt or Ms. Provost? My one question in this area is, why is clear and convincing used as the standard?

Katherine Provost:
Chairman Frierson, clear and convincing is the standard that is applied by the United States Supreme Court in *Troxel v. Granville*. It is also the higher burden to be applied because this is a fundamental parental right to determine whether or not your child has associations with third parties. By using the clear and convincing evidence standard, you are protecting that nondeploying parent's parental right. It is also a rebuttable standard which makes it possible for the military parent to have the ability to get into court and show that this is being frustrated because of no good reason. If there was a good reason, the court could determine that, but it seems that most of the time, at least in my private practice, when a parent is objecting there is really no good reason other than his own personal animosities toward the deploying family member.

Kimberly Surratt:
On behalf of the NJA, this Committee is very familiar with and has heard extensively from me on the grandparent visitation statute that has the third-party provisions. The clear and convincing standard can also be found in that statute, which would back up a secondary source of why we need that standard.

Chairman Frierson:
Are there any questions of Ms. Surratt or Ms. Provost at this time? I see none.

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:
Thank you, Mr. Chairman. I just wanted to thank my colleague, Mr. Ohrenschall and former Senator Care for taking something we created last session, evolving it, and making it better. For my colleagues, I want to communicate that I am in support. They have been very transparent and inclusive to make sure that we are not undoing something that is working. I have appreciated that, and I did get to work with my colleague, Senator Gustavson, on this as well. We were joint sponsors; he had the same bill, and we ended up putting it together. It is a bipartisan effort, and I just want to communicate that and that I do support it. Thank you.

Chairman Frierson:
Thank you, Mrs. Bustamante Adams. Having no other questions, I will invite others offering testimony in support to come forward here in Carson City or in Las Vegas. Seeing no one, I will now open it for anyone wishing to offer testimony in opposition to A.B. 358 here or in Las Vegas. Seeing no one, I will come back and invite anyone wishing to offer testimony in neutral position both here and in Las Vegas. I see no one. With that, I will come back to Carson City and invite Mr. Ohrenschall back for any closing remarks.

Assemblyman Ohrenschall:
I want to thank my colleague, Assemblywoman Bustamante Adams, former Senator Care, Ms. Surratt, Ms. Provost, and all the other practitioners who worked very hard on this bill. I hope the Committee will consider processing it. I think this is one of those bills that really does a ton of good, and I think the unintended consequences are really kept to a minimum. I think this bill will really benefit the deployed parent and the child in terms of trying to preserve that relationship. Thank you.

Chairman Frierson:
With that, I will close the hearing on A.B. 358. I will now open the hearing on Assembly Bill 431.

Assembly Bill 431: Revises provisions governing real property. (BDR 3-979)

John P. Sande IV, representing Nevada Bankers Association:
Good morning, Mr. Chairman and members of the Committee. I have two goals this morning: first to introduce the issues of Assembly Bill 431, and next to introduce you to Mr. Alan Rabkin. I can tell you, for a fact, that he knows more about banking than I ever will know. Getting into the bill, A.B. 431, can be seen as complex. Our banking system is founded on some complex ideas. However, there is a difference between complex and complicated. I think

complicated means things are always changing and that you can never understand them completely; however, complex situations, if you narrow them down, can actually be understood. I think that is the system here. If you distill what we are talking about down to its simplest elements, we are talking about people handling money, giving money, and getting money in return for that. After all, why is a dollar worth a dollar? It is just a piece of paper with some ink on it, but it is worth a dollar because you and I believe it is worth a dollar. We all have those fundamental beliefs and understandings, and that is why our system is able to function.

One of the purposes of our system and our laws is to encourage lending. After all, Las Vegas and Reno and several businesses have been built because outside capital has thought Nevada is a good investment. Companies like International Gaming Technology (IGT) started off as a little company with an idea. They were able to turn it into a wonderful company because people were willing to lend to them and extend them credit. And that is really what we are here talking about. In that trade-off, everybody knows the ground rules going into it. The banks have the money, and they are willing to lend it to somebody who wants to use it to make more money. In exchange, they will get a relatively small return on that in exchange for less risk. They have some certainty when they make that loan and extend that credit they can get it back. The borrowers, on the other hand, are taking more of a gamble. They have tremendous upside on their projects, investments, or whatever they want to use that money for. Unlike a residential situation, commercial lenders and borrowers know the game. They are sophisticated and solvent parties that have attorneys who sit in a room weeks at a time negotiating covenants. Their clients, the borrowers, know the risks; they are going into it eyes wide open. It is a tremendously different situation than a residential loan.

That brings me into why we are here today. Last session, many of you will remember Assembly Bill No. 273 of the 76th Session. I do encourage you to look at the testimony from last session on A.B. No. 273 of the 76th Session to understand that it was really intended to be a homeowner's protection. The bankers actually supported A.B. No. 273 of the 76th Session with the understanding that it extended only to residential borrowers. It was not until after the session that commercial borrowers actually attempted to use that to protect themselves. That is why we are here today, and that is why the Nevada Bankers Association is supporting A.B. 431 and why we are opposed to Assembly Bill 274, because we believe that it only extends to residential loans.

I will give you some examples of why I believe this is bad policy. With your indulgence, I am going to use our imagination here. One of the litmus tests that

I like to use to judge policy is to assume the opposite is true, because good policy will stand on its own under all different types of circumstances. Let us assume that, instead of the worst economic downturn we have ever experienced in our lives, we had a period of the most economic prosperity. Everybody is making money. If I were here today presenting a bill, A.B. 431, that would allow banks to tap into the profits their borrowers took because they were making so much money and it was unfair that the lenders were only capped at the percentage they made the investment for, I assume the Chairman probably would not even give me a hearing on that bill. I would be laughed out of here because it is not good policy. That is what we are trying to do—we are trying to unwind transactions that have been negotiated between two sophisticated parties.

I am going to try another example. Assume that Mr. Rabkin and I were joint ventures on a real estate deal. I got my loan from Heritage Bank and Mr. Rabkin got his from Silver State Bank. We both got a $5 million loan on a $10 million project. As many of you know, Silver State Bank became insolvent and the Federal Deposit Insurance Corporation (FDIC) had to come in and liquidate its assets. Through federal law and through the process, those assets were sold off to other banks. Assume that Heritage Bank bought that loan from the FDIC after it liquidated it and, unfortunately, Mr. Rabkin's and my project did not quite see the light of day. It failed early. Now the bank has to go through the foreclosure process; it has to go through the deficiency process which the courts oversee. We have to establish fair market value and prove the amount of indebtedness which the court looks at and says whether it is accurate or not.

Under this bill, when the bank saw the deficiency, I would still owe all the money because Heritage Bank did not go insolvent, did not lose its money, and it never sold that loan. So when it tries to collect against me, it can collect its full value on that. But when it tries to collect from Mr. Rabkin, the court is going to look, if we extend A.B. 274 to commercial loans, and say Mr. Rabkin only owes half as much, or whatever the bank bought that loan for. So even if we were involved in the exact same project, we were lent the exact same money, through no fault of our own other than a bank failing, Mr. Rabkin does not have to repay. I think that inequity illustrates nicely the flaw in the policy of extending this to commercial loans.

The last point illustrates why some policies are bad. We are the only state that is even contemplating this. Georgia did contemplate this and resoundingly denied it. I think other states that have had this concept presented to them have realized the flaws in the policy behind it and have dismissed it. I would encourage you to do that as well. Thank you very much.

Chairman Frierson:
Thank you, Mr. Sande. When Georgia considered it, was it specifically for the carve-out for commercial property, or A.B. No. 273 of the 76th Session as a whole?

John Sande:
Mr. Chairman, I will have to defer to somebody else who might testify on that. Unfortunately, I did not read the language from the Georgia bill that was presented, so I do not want to misstate myself on the record.

Chairman Frierson:
I point it out only because I was a part of A.B. No. 273 of the 76th Session and there is a lot of it that is unique to Nevada because of the unique circumstances we went through for foreclosures.

John Sande:
I would like to make sure that I clarify that. At the last session, the bankers supported A.B. No. 273 of the 76th Session and the concept of applying that to homeowners. The investments are completely different. When a homeowner takes out a loan, they want to purchase a house where they are going to raise their family, play in the backyard with their dog, and all that; they are not trying to make money. In a commercial context, the only reason you take out a commercial loan is so you can make more money. We do not think the concepts of A.B. No. 273 of the 76th Session should be extended that far. We, as a bankers association, are still supportive of A.B. No. 273 of the 76th Session and the concepts and the policy behind that legislation. However, we do not agree with extending it, and that is why we are here today. Thank you.

Assemblyman Hansen:
If a bank goes into bankruptcy, other people come and purchase the assets of one of the bundled mortgages with say, a face value of $100,000, but in the purchase, you buy it for $50,000, but you want to be able to actually use the full $100,000 face value for collection purposes. Is that what we are talking about here?

John Sande:
That is essentially how it works. For example, when Silver State became insolvent, it could no longer pay its debts. The FDIC, as the regulator for the financial industry, is obligated to come in and collect the performing assets and the nonperforming assets and liquidate those assets. So the only way to liquidate it is to sell it for a reduced value, because nobody will take a risky asset with no potential for upside—you get all risk and no reward. I think that

is the concept and the balance is that you are always balancing the risks for the potential profit that you can get from that. So to encourage banks to take those loans, because the FDIC cannot keep them, they sell them for a reduced value. The bankers hope the borrowers are successful in their endeavors. That is the only way everybody can win. However, in the event those do not work out, the collateral and the personal guarantees are there so the bank can recover its assets.

Assemblyman Hansen:
This is a very interesting dilemma—we have competing bills here this morning. It will be quite an interesting hearing.

Chairman Frierson:
Elaborating on Mr. Hansen's question, A.B. No. 273 of the 76th Session was designed to prevent a person from being subjected to collections multiple times for the same value. You have your mortgage, mortgage insurance, and all these different entities that are trying to foreclose on a property and what was happening was people were being subjected to the full value of the mortgage to the bank, but also to the insurance company and sometimes, even three times over, that a person was being subjected to liability for debt. This was designed to prevent somebody from profiting off our struggling market.

It sounds like what you are saying is that it is more applicable in a residential sense. In a commercial sense the parties are aware of these risks and should not be subjected to the same scrutiny.

John Sande:
Mr. Chairman, you said it a lot better than I could say it, so I do not need to elaborate on that. I think there are a number of people who can interpret A.B. No. 273 of the 76th Session in a number of ways, but in my understanding that is exactly what the sponsor of that bill was attempting to accomplish. Honestly, the concepts in the residential situation make a lot more sense than they do in the commercial setting. Thank you.

Assemblyman Wheeler:
Mr. Sande, in the example you gave where Silver State Bank went out of business and the FDIC took them over and you each have a $5 million loan, in essence, the FDIC repaid half that loan when they took over the debts for Silver State and then sold the loan at half the value to Heritage. Is that correct?

John Sande:
Assemblyman Wheeler, if I may defer for a more thorough explanation to Mr. Rabkin, I am sure he would be able to do more justice to that answer.

Alan Rabkin, Senior Vice President, General Counsel, Heritage Bank of Nevada:
Good morning, Mr. Chairman. I have been appearing before your Committee since the 1980s when I first redrafted the Uniform Commercial Code. I am going to skip to this issue right off the bat. Actually, I can give you a real example. Heritage Bank bought Carson River Community Bank. We were one of many competitive bids for that bank. The process of buying a failed bank is a competitive bid; it is not just one bank throwing a number out or being allotted the right to buy a bank. It is many banks being given the opportunity to bid on the assets—not just loan assets, but literally the desks and the pictures on the wall. Once the successful bank receives its successful bid, it could either be with a loss reserve, or there might be another bank out there that decided to bid either a higher price without a loss reserve, or a higher price with a modified loss reserve. Whoever the best overall bid is, is the bid that both our State Commissioner of Banking and the FDIC allowed to buy that bank. Some of those loans are good as gold, and they are priced just as good as gold. Some of the loans in that portfolio are not very good, so they are priced at a very low amount. When the banks submit their competitive bids, they are making an analysis of each loan. They actually are given an opportunity to go in for one day and, as quickly as they can, survey all the loans and other assets. Usually the successful bidder has a homogenized bid, and in our case with Carson River Bank, it was very high. It was above 90 percent of the amount of the overall loan values. There is some miscommunication in the industry that banks buy failed bank loans at 20 cents on the dollar; they make some decisions. Now in our case, we threw back some loans that we did not want. Those wound up in a general FDIC pool that were sold at highly discounted rates, mainly because they were distressed loans. So I think, in answer to Assemblyman Wheeler's question, it really depends on what the successful bid is as to what price is paid, but in many cases a very high price was paid for the selected or entire loan portfolio. Thank you.

Assemblyman Wheeler:
You say that a high price was paid on some of the loans. You are giving an example that I am familiar with because I was with Carson River Bank and now I am with your bank. The fact is when you paid a higher rate for the loan you would be able to sue for that higher rate as I understand, but what you want to be able to do is sue for 100 percent of the original loan which is what I am seeing here, and I want an actual answer for why should you get that extra 15, 20, or 30 percent if the defendant can pay it when the FDIC is already taken that as part of their insurance?

Alan Rabkin:
That is a good follow-up question since I did not answer that question. I will move back to that loss share element that the FDIC guaranteed in our case with Carson River Bank. What happens is that the FDIC loss share, if it was part of the successful bid, does not really result in any monetary payout until those loans fail or do not fail, and a great number of those loans are paid as agreed. In our case, we selected the loans we wanted and most of them, if not the vast majority of them, are paid as agreed. On the few loans that do not pay out as agreed, after all efforts are taken to exhaust recovery, you can make a request to the FDIC and they will pay, in our case, 80 percent of your loss. When that happens, that loss is shifted to all the other banks in the United States through the setting of deposit premiums which are used to fund the FDIC. If the FDIC does not have enough money to pay the loss share which, unfortunately, is pretty frequent with hundreds of banks failing in the 2007 to the 2011 period, they turn to the U.S. Treasury which is really us as taxpayers, and they do a refinancing or refunding of their deposit insurance fund. That is what they did. They had a $200 billion refunding line and the FDIC, in order to honor its loss share commitments, was forced to borrow from the Treasury. It also went to the solvent banks in the United States and asked them to pay their deposit premiums three years in advance. So we did not pay our deposit premiums quarterly as we always had; we were given an order and edict from the FDIC to pay three years in advance to help them stay afloat. In the end, a lot of those borrowing lines at the Treasury have not yet been paid back, so the U.S. taxpayer becomes the responsible party on hook for the loss share. In essence, we have taken through maybe some unfortunate verbiage in A.B. No. 273 of the 76th Session and moved from solvent obligors or guarantors in commercial context and even in residential context, and moved that responsibility all the way through the FDIC to the Treasury where it currently stands.

Now just to be clear, I am not here to testify on residential lending. I think there is a different policy decision there but on commercial lending, the banks are finding it difficult to understand why we should relieve solvent obligors of their obligations and shift that obligation through loss share to the U.S. Treasury. Thank you.

Assemblyman Wheeler:
Just a quick comment, Mr. Chairman—I finally had a lawyer and a banker answer my question fully, and I want to put this day on my calendar.

Assemblywoman Spiegel:
As I read the bill, I was actually thinking of a different instance. I wonder if you could walk through a different example with me. Assume I bought

a commercial office building ten years ago for $2 million, and I was making my payments on this commercial building. Five years ago, I decided I needed to do a lot of capital improvements on this office building, so I took out a secured loan of $500,000, using the equity that I had in the office building. But then my business went into distress and the building winds up becoming foreclosed upon. If this bill would pass, what would happen, both through the primary mortgage that was outstanding and then also the junior subordinated debt?

John Sande:
I will probably defer the more technical explanation to Mr. Rabkin. The quick answer to your question is, it depends. I think that actually illustrates somewhat of the flaw in the policy in this, that no matter what you do, it depends completely on irrelevant factors that happen to your loan behind. It depends on if your bank was insolvent, the one that made the initial loan to you; if it went insolvent and it went through the FDIC process as you discussed, or whether that loan was sold to the secondary market. There is no way you can insulate yourself from that risk, and I believe that helps illustrate the flaw in that policy, but for the more technical answer, I will defer to Mr. Rabkin if I may.

Alan Rabkin:
In response to that question, and it is a good question, there are some assumptions. We assume that the property values have declined and your equity no longer exists; otherwise, you would just sell the property and get out from under the entire problem. Assuming you have bare equity or reduced equity, at that point, the bank has a tough decision itself. The bank has to decide whether it is willing to wait, timewise, to liquidate the loan; whether it can negotiate with you; whether it, in fact, could do better by maybe doing a deed in lieu of foreclosure, getting the property from you a lot quicker and then reselling it themselves because they have conduits and markets they can sell the property to.

If they decide to go the hard way—the expensive way because foreclosures are very expensive in commercial contexts because we need an appraisal to be able to prove up a deficiency—suddenly the bank is advancing a lot of good money after potentially bad money, and banks think about that before they do that. But if they do that, in your commercial example, and the bank originated the loan, they clearly could seek a deficiency after they prove up the deficiency to a real judge in a district court, having filed within six months. If they do not file within six months—no stale deficiencies allowed in this state—and they prove it to a real judge, then they get their deficiency; they can collect it subject to regular judgment rules. If, however, they miss the six-month deadline

or decide not to do that, they are barred forever from getting a deficiency. You are free, in your example, to move on.

If this were a residential loan as opposed to a commercial loan, they would most likely be barred from the deficiency, so they would never attempt it. And you wonder why banks foreclose—well, it is mainly because they cannot get in touch with the borrower in a residential context and they just need to move on with the property, but they know they cannot get the deficiency. In a commercial context, the bank not only needs to move on, but it is trying to gain the benefit of what it had agreed to originally and get the balance of its loan. Normally you see six months to a year of discussion before a bank ever forecloses on a commercial obligation. It is why you see in chains of title things like extension agreements on deeds of trust, because the bank is trying desperately not to get the property back.

The other cost to a bank is it must insure the property according to FDIC rules the minute it gets the property back. It has to secure and manage the property, which usually involves receivers. So for slight equity for the banks, sometimes the bank is just happy to work with you and to get a deed in lieu of foreclosure and just walk away from the deficiency.

Assemblywoman Spiegel:
Okay, but if the foreclosure went through on the commercial property, what would happen to that junior debt?

Alan Rabkin:
When a senior debt forecloses down on a junior debt, it wipes it out. It wipes down all debts, like a totem pole as it was described to me. If you are at the top of the totem pole, you wipe off everything junior to you if you are the senior lien foreclosing. Now the junior liens can save themselves and foreclose and, of course, once the junior liens are wiped out, they become unsecured debts. It is not like they are erased from anything other than the real property title books—they still exist as far as the promissory note, but they no longer hold security to secure the note on a junior debt. That particular holder of that junior lien that might be wiped out by a foreclosing senior lienholder could sue on the note, but they no longer have security that they can enforce. It is gone by the foreclosure and the trustee's deed that is filed with the county recorder demonstrates that. If the senior lien is filing the trustee's deed, it wipes out all the other junior liens—it passes clear title except for property taxes and a few other super liens. That does not wipe out the promissory note or maybe an underlying obligation that might have looked like it was secured by the property but no longer is because it has all been wiped clean.

Joshua Hicks, representing Rialto Capital Management:
Mr. Chairman, to answer your question about Georgia, the actual issue in Georgia was the legislation was similar to what was in A.B. No. 273 of the 76th Session, specifically section 5, the limitation on deficiencies on loans that are transferred or sold. That is the language that was being considered in Georgia that was defeated. I just wanted to make that clear for the Committee.

Chairman Frierson:
Thank you, Mr. Hicks. Do I have any other questions from the Committee at this time? I see none.

John Sande:
Mr. Chairman, if it pleases you, Mr. Rabkin actually had a few other points he wanted to make on the legislation.

Chairman Frierson:
Please proceed.

Alan Rabkin:
I will be very brief. We are one of the last remaining independent community banks in this state. There is a reason for that. Unfortunately, we lost about a quarter of our state-chartered banks in the last financial crisis. Banks like First Asian, Silver State, and Carson River are all gone; there is a much longer list. There were also some sell-offs of credit unions with WestStar being one of them as I recall. That was directly related to the loans held on the books of these banks because, as loans become bad or look to a regulator to be bad, the capital ratios of a bank decline. Once those ratios get to a certain percentage number, the bank is closed because the deposit insurance fund does not want to take the risk of a loss.

Deposit insurers are always looking to sell off bank assets equal to the amount they have to pay to depositors. You have all heard about $250,000 being the insured limit; the bank, hopefully, will pay up to $250,000 to each depositor and never take a loss if the FDIC gets involved early enough.

When A.B. No. 273 of the 76th Session was passed, a lot of confusion occurred regarding its intent and purpose (Exhibit H). There was a very good purpose behind it, so I do not criticize that. Because of the intervention of all the courts and people, being who they are, wanting to use every resource they have to defend against deficiencies, our bank found that a great amount of money was being deployed into trying to enforce deficiencies that we always considered proper, just, and appropriate to enforce and instead being met by

opposition for the first time in my three decades of experience. The opposition was being based upon A.B. No. 273 of the 76th Session.

There are three primary areas where this opposition occurred which we are trying to correct. We are not trying to correct any other areas. First is the difference between residential and commercial, which I have already explained, and we are only focusing on commercial lending.

The second is having the government involved, primarily the FDIC, which has a mission as set out by the United States Code and the Code of Federal Regulations to get the highest and best cost value out of any bank it liquidates. It is charged by the U.S. Congress, by this bid process that I have already explained, to get the highest overall price from the next buyer of that failed bank. It is hard for them to do that when we limit a deficiency because suddenly they are selling loans at par, or trying to sell them at par, and an amount is being bid for that par value loan, meaning the full value of the loan. Suddenly things changed and for that reason, the FDIC has weighed in to at least one of the two Nevada Supreme Court cases that are now pending on this issue. That argument was made in October 2012, and we have not yet had a decision. Obviously there is much discussion that is likely occurring in the Nevada Supreme Court over this same A.B. No. 273 of the 76th Session.

For that reason, it seems logical we have a United State Code governing the conduct of the FDIC and their mission. The FDIC and their *amicus* brief, filed in the *Sandpointe Apartments., LLC vs. Dist. Ct.* 59507 (Nev 2012) and *Nielsen vs. Dist. Ct.* 59823 (Nev 2012) cases, said we should not be part of this discussion at all. We, the bankers, agree that liquidation of a bank has no relationship to a solvent guarantor. It is totally a fortuitous windfall that just because the bank has failed that an obligor should suddenly be relieved of a deficiency because obviously the loan is transferring from failed bank one to good bank two.

The last area that this bill addresses, in a summary form, is in the definition that we added in the last session to the word "insurance." We use the word insurance but we did not define what we meant by insurance. I think of insurance in many ways—casualty insurance, life insurance, mortgage insurance. I believe in looking at the legislative record that we intended to want to avoid double credit, as the Chairman mentioned, by not giving a borrower fair credit for mortgage insurance. Sometimes we call that private mortgage insurance (PMI) or protection and indemnity Insurance (P&I). Typically it is required when you do not put a lot of money down on a residential loan. I think that is perfectly appropriate; I think it would be double credit not to give credit to a borrower for that. By using the broader term of insurance,

we dragged in a lot more, anything you could imagine under that category including the loss share I mentioned that the FDIC gives to the next bank that purchases this failed asset or, at least, it has been argued that it is included. Whether or not it is included is an issue before the Nevada Supreme Court. So I think those three areas are areas we need to clarify and make sure A.B. No. 273 of the 76th Session is clear. I think we can do that; I know there is some opposition to this bill and for good reason, certainly on the residential side. On the commercial side, I think there is a less rational reason for opposition. If you have solvent guarantors and solvent borrowers, it seems antithetical that one should receive a windfall and be relieved of that obligation.

That is my testimony. If you have any questions, please feel free to ask.

Chairman Frierson:
Thank you very much. Do I have any other questions from the Committee? I see none. I think we have vetted it out pretty good, at least for the start. I would invite anyone else here or in Las Vegas wishing to provide testimony in support of A.B. 431 to come forward now.

Daniel F. Polsenberg, Partner, Lewis and Roca, LLP
Mr. Chairman, I am the lawyer who argued the *Sandpointe* case that Alan Rabkin was just talking about. Mr. Rabkin raised some important points. When I read the history of A.B. No. 273 of the 76th Session, it really impressed upon me that what the Legislature was concerned about was the situation where, with the foreclosure on a residence that a bank sells the ability to obtain a default judgment and collect on that, it does not want that to be a profit center. What came up in the court on addressing A.B. No. 273 of the 76th Session was the situation that Mr. Rabkin was talking about where you have the failure of banks, the FDIC becoming involved, the transfer of actual loans, and the obligation to pay on loans, not after the foreclosure and not after the establishment of the deficiency. You have to ask the question, if we are going to pass a law—and I do not think this is what A.B. No. 273 of the 76th Session was intended to be—are we going to let people interpret *Nevada Revised Statutes* (NRS) 40.459 to be that if there is a transfer in any sense of the ability to receive loan payments that you can only recover up to the amount that you have paid? No one is going to want to do business in Nevada if there is that kind of harsh limitation. I think that the intent of the Legislature was to limit it to the situation of actual establishments of defaults after foreclosure.

The other issue I wanted to raise, and Mr. Sande brought this out and I even read from the legislative history in front of the Nevada Supreme Court, it is clear that the Assembly, this Committee, and the Legislature as a whole did not

intend for this to apply retroactively to existing contracts, and to do that would even violate the contracts clause of the federal *Constitution*. So with those few things in mind, I think I agree with the previous speakers that it is important to clarify this law. Thank you, Mr. Chairman.

Chairman Frierson:
Thank you, Mr. Polsenberg. Are there any questions from the Committee for Mr. Polsenberg? I see none. I will now invite those in Carson City wishing to testify in opposition to A.B. 431 to come forward.

Mark H. Fiorentino, representing Focus Property Group:
Good morning, Mr. Chairman and members of the Committee. I represent this morning the Focus Property Group and Mr. John Ritter. The gentlemen at the table with me, Mr. Scott Bogatz and Mr. Frank Flansburg, are two lawyers who have a substantial amount of experience in this area dealing with deficiency judgments and the issues that are embodied in both this bill and the next bill you are going to hear, Assembly Bill 274. I have asked them to join me at the table in the event that you have technical questions. They will be far more capable to answer them than I am.

We appreciate the opportunity to talk to you this morning. We are here in opposition of this bill. I think we can simplify it even further because the issues really are quite simple. You should not kid yourselves. If you adopt this bill, you are essentially undoing or repealing the substantial protections that you put in place for both homeowners and businesses when you passed A.B. No. 273 of the 76th Session.

We are going to talk in detail about that but maybe just a couple of clarifying and preliminary comments. First, and this is extremely important, A.B. No. 273 of the 76th Session had no impact on the original lender. You are not talking about circumstances where people are dealing with the banks that loaned them the money. It dealt with situations where those banks sold those loans to someone else. Sometimes they did it individually; more often, they did it in the circumstances you just heard about through an FDIC proceeding or proceedings where there were insolvent banks. So that needs to be absolutely clear, and Assemblywoman Spiegel, that directly involves your hypothetical because A.B. No. 273 of the 76th Session did not affect your hypothetical. If you were dealing with your original lender, it had no impact whatsoever.

The second point we should be very clear about is this notion that you did not intend A.B. No. 273 of the 76th Session to apply to commercial buyers. Frankly, and forgive me, that is just silliness. Whoever would present that to you did not read the bill—there are no limitations in

A.B. No. 273 of the 76th Session that would, in any way, imply it was meant only for residential buyers. Again I would say the same thing Mr. Sande said to you—you do not have to take my word for that; your Legal Division has opined that. There is litigation going on challenging A.B. No. 273 of the 76th Session because the people who did not like it, the same folks who are presenting to you this bill, filed lawsuits challenging it. One of the things they argued was you did not intend it to apply to commercial borrowers. Your Legal Division looked at that same record that Mr. Sande suggested you look at very carefully and they, at the request of the Nevada Supreme Court, filed an *amicus* brief that said exactly the opposite.

Now having said that, Mr. Chairman, we are going to ask for your indulgence this morning on two things: the first is we think in order to properly explain our opposition, we have to do a little bit of history on A.B. No. 273 of the 76th Session and walk you through some examples to explain how it came into being and why it should be kept in place. That will take probably a little more time than what we would normally do. The good news is then you probably do not have to hear that testimony again on the next bill, so we can save that time.

We are going to ask you to give us a little indulgence with the folks who are going to testify with you this morning. You are going to hear from four different business owners who are going to describe their experiences in this area. You are going to hear from a master developer, an independent homebuilder, a small real estate developer, and a retail operator. They are going to tell you real life experiences of what was taking place before you passed A.B. No. 273 of the 76th Session and what will take place again if you pass this bill that is in front of you, A.B. 431.

These are folks who, for the most part, have lived in Nevada their whole lives. They built their businesses here and, in many cases, they raised their families here. Here is the point: they are going to be nervous, Mr. Chairman; this is not something they have done before and this issue for them is emotional. I think you are going to hear some of that in their voices and we would ask that you give them some courtesy in that regard.

So what we would like to do is use this document that we had your staff hand out to you this morning and walk you through a couple of very basic examples so that we can take the lawyering out of it and make this as simple to understand as we can.

Chairman Frierson:
Thank you, Mr. Fiorentino. I will certainly indulge you with the understanding that we will not have to repeat it for the next bill just for the sake of time.

Mark Fiorentino:
Understood. In fact, I am going to go through this pretty quickly, Mr. Chairman. We mapped out for you three different examples (Exhibit I). In Example 1, this is a business commercial loan type of situation. Remember this does not apply at all, Assemblywoman Spiegel, in your example or in cases where we have our original bank involved, only where that loan was sold to somebody else. Let me give you a couple of preliminary comments: these are not real numbers; we use round numbers to make it easier to understand. It is intended to be illustrative, and they do not relate to any specific case. All of the cases involved in this are slightly different in their terms, but it is just to make it easier to walk through the numbers. In Example 1, you have a loan amount of $5 million. Someone comes in and buys that note for $1 million, or 20 percent, and they foreclose. The land at the time they foreclosed was worth $2.5 million. This is not uncommon today to see a 50 percent reduction in land values when the crash occurred. They paid $1 million for the note, so they have immediately achieved a $1.5 million profit. Assembly Bill No. 273 of the 76th Session says take that profit; it does not matter how high that profit gets. That is not where folks were stopping. They were then taking the next step, which is illustrated in the middle of the page (Exhibit I), and they were saying that they were going to sue both the borrower and, in most cases with the commercial loans, the guarantor for a deficiency because the face value of the loan is $5 million. We only got $2.5 million so we are going to sue you for the $2.5 million difference, plus interest. They go and get a judgment on that so now they have from that process a $3.3 million judgment because they get the interest plus the difference. You add that to the original value of that land and, in that case, assuming it goes all the way to conclusion, they have earned a $4.8 million profit for a loan they paid $1 million for.

What A.B. No. 273 of the 76th Session said was that you cannot do that. You cannot take that separate, second step. Now it is a good question—in fact, it is the heart of the two bills that are before you. You adopted A.B. No. 273 of the 76th Session; should you have? Why did you do that? There were sophisticated people on both sides of these transactions. What is in it for the state of Nevada to do that? We would submit to you that there were two reasons you did it and two reasons that you should protect A.B. No. 273 of the 76th Session and not, essentially, repeal it. First, if you allow this to happen, you have created a system where there is no incentive and no interest by the person who bought the note to work with the borrower and keep them alive, to keep them in the property. It is true if you are dealing with your

original lender; they want you in the property; they want you to be successful. But without A.B. No. 273 of the 76th Session, with somebody who purchased the note for pennies on the dollar, there is not that incentive and there is not that interest because their profit is all up front. It does not matter whether they wipe you out and make it impossible for you to go forward. That is the first reason why you would do that.

The second reason is because, and you will hear some testimony on this subject, essentially what you are doing in that circumstance is you are destroying the borrowers, destroying their ability to recover and rebuild. In most cases, let us not kid ourselves, they are not capable of paying these judgments when you get them for lots of different reasons, but primarily because you took the one asset they had that gave them the ability to earn money in the first place. You have already foreclosed the property and taken it away from them. So in most cases, all you are going to do, if you allow this system to run to its completion, is you have these deficiency judgments hanging over people's heads which prohibits them from stabilizing and rebuilding. That is why you passed A.B. No. 273 of the 76th Session and that is why you should continue to protect it.

Mr. Chairman, Example 2 is a homeowner but with different numbers; the result is exactly the same. I want to submit that it has been said to you that if you adopt A.B. 431, you are going to affect commercial borrowers but not home buyer borrowers, and we do not think that is true. We think if you read the bill carefully, there are a number of exceptions applying to the homeowners that essentially swallow the rule, and that most homeowner borrowers, under A.B. 431 if you pass it, would not be protected.

Finally, Mr. Chairman, Example 3 (Exhibit I) illustrates what I think is a very important point. Assembly Bill No. 273 of the 76th Session did not say to people you have to lose money when you buy loans, and that is what this example illustrates. If you paid more for the note than the land was worth when you foreclosed, then you still have a deficiency. You can still sue the borrower and you can still sue the guarantor to be made whole. We are not forcing anybody to lose money with A.B. No. 273 of the 76th Session.

Mr. Chairman, I will provide this for the record so your Legal Division and the Committee members have it. The proponents of the bill suggested to you that no one has done what Nevada did with A.B. No. 273 of the 76th Session. That is technically true, but misleading. There are, as far as our research indicates, no states that attacked it the way you did by limiting deficiencies and defining how you calculate deficiencies. In fact, ten states in the United States have gone further and prohibited deficiencies entirely in all circumstances.

We will provide those citations to you (Exhibit J). Roughly half of those states applied them both to commercial borrowers and residential borrowers. I think it is more important that you hear from the real folks who had to deal with this, and not the lobbyists and lawyers. We are going to offer the two experts and myself to answer questions and when you are done with us, we will bring up the business owners that I mentioned.

Assemblyman Hansen:
That was a very interesting presentation. I am still trying to get a grip on this whole thing. I go to a bank; I borrow $1 million on a commercial loan; my bank goes into default; I am still solvent and still owe $900,000 on it. In the meantime, that bank's assets are bought by somebody else and my loan is purchased for $500,000. In other words, there is a $400,000 difference between what I still owe and what the new purchaser paid for it. The question in my mind is why would I not still be held accountable for the full face value of that loan. In effect, why am I being removed from being responsible for paying for the amount that I agreed to with the original bank that is now in bankruptcy? Where is it that I am being taken off the hook? Along the same line, if they buy that note, am I still held to the original terms that I agreed to?

Mark Fiorentino:
That is a very good question and I am going to try and answer it, to test how good I am at this. Again it is the heart of the matter. If the person who bought your note is really interested in servicing a note and wants to step into the shoes of the bank, earn the interest rate, and keep you in business, then nothing has changed. The terms of your original loan remain exactly the same. In those circumstances, there is probably no reason to protect you because you do not need protection. You are going to hear these stories because they are working with you. They want you to continue to make money and continue to make payments.

This deals with a different situation where the business model is different, where they are purchasing the notes specifically at a discount to earn the profit on the land because in your case, the land was worth more than they paid for the note. That is the business model; that is where they want to earn the profit, not in working with you. So why protect you in that circumstance? For two reasons—the ones I explained because when you set up that system that allows them to do that, you have created a system where they, assuming again they do not want to service the loan, have no interest in keeping you alive. Why do you want to keep these guys alive? Because they are the ones who are going to rebuild Nevada; the master developers, the retail operators, and the homebuilders are going to be the ones who put people back to work and rebuild our economy if you keep them alive. So why not do that in the

circumstance where the person has already made a 300 percent return just because they bought it at less than what your land was worth.

Assemblyman Hansen:
I understand that, but the question I have is where do they come up with the right to change the terms that we had agreed to with the original bank? I am wondering how I get pulled out of my original obligation simply because my bank went into default.

Frank Flansburg III, Vice President, Marquis Aurbach Coffing:
Mr. Hansen, I think you bring up a good point and that is, does the obligation of the original loan documents change between the borrower and the lender when the FDIC takes control? The answer to that is yes. You will hear stories from real people that this affected where the loan was current; payments were being made; there was interest reserve remaining on the loan; the loan was currently unfunded; the projects that were in process were 90 percent complete; and the loans were only funded to value maybe 50 or 60 percent. When the bank failed and the FDIC came in to take over the assets, the FDIC can repudiate those loan obligations, meaning they can cut off that obligation to continue loaning money whatsoever, and that is indeed what happened. When the FDIC takes over the bank and ultimately sells it to someone else, those obligations to continue funding even if the borrower was current with the loan, even though the project was 96 percent complete, for example, there was no further obligation to continue funding, that act threw the loans themselves into default.

What I think is important is that one of the goals from A.B. No. 273 of the 76th Session was that you wanted the banks who were making these deals—selling distressed debt at ten or forty cents on the dollar—to first present that to the borrowers and the guarantors so they would have the opportunity to make those deals, but they never offered them to the borrowers or guarantors to accept and make those payments. In fact, you will hear testimony from a real person in this exact situation who went out and settled the debt with the FDIC where it was going to be paid off in full, where those terms were agreed to by the FDIC, only to be led along and astray for more than a year, or the loan was eventually sold in a bundle to a distressed buyer, such as Lennar Homes, which obviously is a competitor. The reason why you are being treated in a manner that requires A.B. No. 273 of the 76th Session, is to give you the same opportunity they are giving to the predatory financial institutions and competitors that are trying to buy this distressed loan.

Chairman Frierson:
Are there any other questions from the Committee? I see none.

Sean T. Higgins, representing America West Homes; Olympia Companies; Carefree Holdings LP; and Industrial Plaza, LLC:

Good morning, Mr. Chairman and members of the Assembly Judiciary Committee. With me today, on my left, is Ms. Stacey Yahraus-Lewis who will testify as to her situation. On my right is Mr. Donny Borsack. Seated behind me is Mr. Tom McCormick who will come up once Mr. Borsack and Ms. Yahraus-Lewis complete their testimony. We are here today in opposition of A.B. 431. This is intimately tied, obviously, to your next bill, Assembly Bill 274. The plain and simple fact is A.B. 431 seeks to undo all the progress this body made with A.B. No. 273 of the 76th Session. I was involved in that process and, contrary to what the proponents of this bill say, there was no mistake. I met with members of this Assembly and the Senate on that bill and discussed our sections of the bill involving commercial lenders. I never got any questions as to whether the Legislature understood that that was part of the intent. So I would disagree with their assertion that people here did not understand what they were voting for.

Assembly Bill No. 273 of the 76th Session was enacted to provide relief for the worst economic downturn in the United States in over eighty years; a unique situation which included the devaluation of real estate, not just in Nevada, but all over the country in excess of 50, 60 and, in some cases, 70 percent—a catastrophic devaluation. Assembly Bill No. 273 of the 76th Session, and it has been said, did not affect the ability of a primary lender to recover, nor did it affect the ability of a purchaser of that note to recover as long as the note continued performing and continued in its normal fashion. What it did was it protected borrowers when vulture lenders came in seeking deficiencies and extraordinary profits.

I forwarded to members of this Committee two days ago a video of some testimony before the U.S. House of Representatives. I do not know if any of you had a chance to look at that but if you have not, you should. You will find it very interesting, eye-opening as a matter of fact. I will quote some comments, for example, from a Congresswoman from Portland, Oregon, who asked one of the FDIC personnel with regard to the purchase of loans. I will speak specifically to this loan. There were a little more than $3 billion worth of loans that were purchased by Rialto Capital Management and the purchase price for that loan, out of their pocket, was $243 million, or 8 percent. They paid 8 percent. The federal government and we, the taxpayers, gave that company a loan for $627 million interest-free for 7 years so the total payment was less than 30 cents on the dollar for those loans, of which this lender came up with 8 cents. The Congresswoman asked a question, "Did you offer this deal to any of my constituents?" The FDIC person said, "No." The Congresswoman asked, "Do you think they would have accepted

it?" The FDIC person said, "I assume they would." Well, I am here to tell you, of course they would. That is what we are here to try to protect today, not going after people who are lenders. The people who have come into Nevada in the wake of this economic downturn are not lenders; they have no intention of lending. They are not lending anyone money; they are here to reap the profits based upon this economic downturn of the people who helped build the state of Nevada, and I am here to say you should not allow that to happen. I want to reiterate, the people you are going to hear from today never asked to be let off the hook. You are going to hear their stories. They asked to do everything they could to help make these loans performing and, at every step, were turned back by these lenders. Thank you very much. I will be happy to answer your questions.

[Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
Thank you. Are there any questions from the Committee for Mr. Higgins? I see none. Good morning, Ms. Yahraus-Lewis.

Stacey Yahraus-Lewis, Private Citizen, Las Vegas, Nevada:
Good morning. I, like you, am a resident of Nevada. I have been here most of my life. My late husband, when he was an apprentice electrician, went to school at night and got his real estate license. After a couple of years, he started a business, Daycor Properties and Development; a very small real estate business, but it was profitable. He made a living and we were in Las Vegas for 25 years. Unfortunately, 10 years ago, Don passed away unexpectedly; he had had a heart attack; he was 48 years old. At that point, we had been married 27 years. We had three children, and I had this business now.

[Chairman Frierson reassumed the Chair.]

No one could have foreseen the economy and how everything was going to turn. In 2008, Silver State Bank did go under and the FDIC took it over. The bank failed; I did not fail. I was completely current on every payment. In fact, we were ahead of schedule. I had two projects and both were 90 percent finished. The two people who worked with Don at the office for over 20 years wanted to go forward. I had never been part of the business; I just raised our children. They wanted to go on and so I said okay. What that meant was that I had to sign personal guarantees to get the loan for the projects, and so I did that. Fast forward to September 2008, and both loans that I had were construction loans with Silver State Bank, and that is the bank, in my case, that went under and failed.

At that point, FDIC took over, and we immediately were in touch with them. We immediately got another bank to take over the loan and we have confirmation of this, a written agreement, that there was a bank ready to do it. The FDIC led me to believe that that was great and was working a deal out with me. Three months passed. It was now December and everyone, the construction workers and different contractors, were hollering because the bank froze. It was a construction payment and we would get a draw every week, but they no longer gave us the next payment. I never got the money because it went to this project, so I made it whole. In December, with my own money, I paid every single bill, every single vendor, construction person, and contractor in full for all the work they had done. I had reason to believe we were going to finish this project. At the eleventh hour, the beginning of January, I found out that my two loans were sold in a structured sale as bundled loans. The FDIC told us this is a good thing, but it turned out to be anything but that.

I had renewed faith, and a relationship with Lennar/Rialto began which continued for over a year. They strung me along, leading me to believe that they were going to make a deal with me. For the whole year, I paid and kept these properties going and alive with 24-hour security because the apartments were 90 percent done. I did not want them vandalized. What I am saying is I did everything right, yet they dragged me along and led me to believe they were working with me only to foreclose on the property a year later. When I talk about the money I put in, I am talking hundreds of thousands of dollars. It was all the money I had that I could get my hands on.

Six months later, I get this lawsuit for this deficiency that they are talking about. Now it is my understanding that they got my loans at eight cents on the dollar and of that, they did not even have to pay because they have this interest-only term. The FDIC still owns 60 percent and Rialto only owned 40 percent. They are, in essence, a collection agency. They are not like a bank that wants to work with you; they had no intention of working with me. They wanted me to babysit that property, and I did. When they foreclosed, they took over and all I had left to do was put in flooring, carpet, appliances, and do the landscaping—that was on one project. The other one was a 7-Eleven which I finished with my own money because that was the one and only lease we had, and if I did not complete that, then how would we ever lease the other spots. They took it. I was on the bad end of that; I lost it and I would never see it. I would never see the money, but now they want to sue me for millions of dollars which I do not have. I really do not have it. So I have this judgment over my head which means that I have to file bankruptcy. In the meantime, forget about going on with the business; I had to close the business three years ago.

I understood A.B. No. 273 of the 76th Session to be the saving grace, so I thought okay, I lost. That is that, but at least this lawsuit would go away. We went to court and I am not clear as to what happened. Mr. Flansburg is my attorney and the law was not upheld. He appealed it and I am the one they are talking about that is in front of the Nevada Supreme Court right now. My hope and prayer is that you interpret the law the way it was intended to be so that I, and others like me, can go on with our lives. I do not have a business anymore but I was fortunate enough to remarry a few years ago. But I know so many people that have been wiped out completely. It is just not fair. I am just one little person and there are so many cases like this. By the way, anyone else who I knew that was in a similar situation with any other lender that bought their loan, they all worked it out. It is only Lennar/Rialto that did not; they have never worked with anyone; they have no intention of it.

I feel like I did the right thing at every turn; I mean, by paying everybody. I was clean; I did not owe a bill to anybody; and I did it personally out of my own money. I kept that project alive and safe for two years. I did the right thing, and I am hoping you will do the right thing and interpret the law in the way it was intended to be. Lastly, I just want to thank you for hearing me. It has been a nightmare for five years for me personally. I appreciate the time to let me say this because you have to know what is really happening. They are not a regular bank; they are what they call vultures and are only interested in foreclosing and collecting on these deficiencies.

Chairman Frierson:
Thank you, ma'am, for sharing your story. Every time we have a citizen who comes forward with a personal story, it is a level of openness that contributes to the process. We are better for having heard it and we certainly understand your perspective, so thank you for coming and sharing your story.

Donny Borsack, Private Citizen, Las Vegas, Nevada:
Mr. Chairman and members of the Committee, thank you for hearing me out about my family and our story. My family moved to southern Nevada in 1910. I am a third-generation Nevadan and happy to be one. I am sorry to see what we are all going through today and for the last four or five years. I am the retailer they were referring to. My family started a business called El Portal Luggage back in 1936 in downtown Las Vegas. My grandparents started it and my father eventually took it over. My brothers and I, with six other family members, got involved. Along the way with the retail business, we also started acquiring some land. Because of our relationships with other retailers that we were bringing to Nevada, we started developing small warehouse units that we would lease or sell to these other small businesses. We did this with my retail business supporting a lot of this, and we also did

this through all community or regional banks. The banks we dealt with were Nevada Commerce, Bank West of Nevada, Black Mountain, and Colonial, to name a few. We had phenomenal networking relationships and I think, hopefully, to this day with most of them, we still have phenomenal working relationships.

Then along came 2008, and the retail business was hit dramatically. The tourism business was substantially hit and we also saw that happening to our industrial businesses where small retailers were not moving into our city. They were not able to pay rent; they were not buying the buildings. We foresaw this and we had six or seven projects on the books. We had construction loans along with the property in 2008. We invested 30 to 40 percent of our own money in all these projects. Our family has always paid our bills for over a hundred years, and we are proud of that. We approached all of our lenders that we were working with on these properties. We had some construction loans that were part of our land loans and we approached all of them. They were ecstatic that we were proactive. We paid down the loans, in some cases, from $11 million to $3 million, from $8 million to $2 million, from $6 million to 100 percent by not going forward with some of this construction. We worked with the local banks and they were made 100 percent whole. We walked away feeling pretty good and went about trying to manage the retail business that we are in. I am a luggage person first and a developer second.

The last bank we approached was Colonial Bank, and we paid down our construction loans. We paid down some loans from $21 million to $7 million. They came to us and said that we had to pay off the land loans that were left because they said we do not have 70 percent to value. We did not have the cash to pay them off. They did appraisals and showed us appraisals on these properties that I am talking about. The appraisals were higher than what we owed them. We went to them and said that we want to make you whole, so take the property back; you have the higher value than we owe you. Let us go on to bigger and better things. They said they would consider that and we should meet in the next week or so. Two or three weeks went by and we did not hear from them, and then we read that a company called Branch Banking & Trust (BB&T) and the FDIC acquired Colonial Bank assets. So we immediately contacted Colonial Bank and met with them after several weeks in calls. Two months later, in October 2009, we met with them and explained our situation. They said, "What do you think the deficiency is?" We said nothing; here are your appraisals that are now five months old and the land is worth more according to you than we owe you. We have also paid down a lot of these other loans. They said it is not anything and they would get back to us with a proposal. We could make this go away in the next two weeks. The gentleman sitting there at BB&T, at a conference table with all of

us, said, "I want to be out of this state in two years. I have Florida; I have Arizona; I have Nevada to worry about. I do not need to worry about things like this. I want you to know, though, you are going to have to provide us financial statements with affidavits that are true and accurate."

Now I have seven family members, eleven different entities, brothers and sisters, my father, everybody involved in this business along with some other partners. We provided the financials to them within four weeks with an affidavit. My brother and I dropped them off in December 2009 to their bank office. I did not hear from them for two or three months. I called them back and asked where we were at with this; you were supposed to have a proposal. They lost our financials. They said they moved banks and they lost our financials. They never told us that, so now I have family members' financials rolling around, social security numbers, and all our personal information in an affidavit about our lives. I said that we need to move forward. It is a stressful situation and we need to get this behind us and he said yes and said to drop off some new financials. So my brother and I drove across town where they moved and dropped off new financial statements. All during this time frame, we were in communication with them about the property being a higher value. Finally we had our first meeting with a BB&T local representative in Las Vegas. We sat down with him and he said we have a small deficiency, but I think we can work it out. I asked what is the deficiency. He came up with a number and said come back to us with a proposal. We came back with a proposal.

Chairman Frierson:
Sir, I am sorry but I want to remind you that we have a long work session and another bill.

Donny Borsack:
To make a long story short, we offered the property back to them again. We provided four or five offers to them to put this behind us. Three and a half years later, just out of the blue, we get a lawsuit filed against us stating that we have a deficiency of over $4 million ourselves. We had no idea where this came from. We have tried everything; we have begged; we have borrowed; we have pleaded to meet with them. We sent people to Dallas. They have refused to meet with us. All I am asking is, for the protection of my family, for you to uphold this. We were willing to make them whole, not what they paid for the loan whatever they paid. We made an offer to make them whole and they would not even have a conversation with us. That is my story, and thank you for listening.

Chairman Frierson:
Thank you, sir, and thank you for sharing.

Tom McCormick, Private Citizen, Las Vegas, Nevada:
My company was Astoria Homes in Las Vegas, and it was a Nevada company. My story is the story that we heard earlier of being the little company with the big idea in investing, making it happen, and turning it into something. My company started in 1995 in Las Vegas as a homebuilder. We grew our company into one of the 70 largest homebuilders in the country, and we were the largest privately-held homebuilder in the state. We did that because we took the money we made and we reinvested it in our future and in the future of southern Nevada. Over 94 percent of what we made after taxes stayed in the company and stayed with the people. We grew our company to a team of 170 full-time employees, and we had over 500 subcontractor employees working for us. We were a major employer.

When the market came apart, in the case of the project that I was dealing with, it was a Silver State Bank loan. We purchased a property for $30 million and we put $13 million of our own money into that. We put in another $5 million to get the entitlements built, to meet with the neighbors, and to develop a concept that the City of Henderson wanted to see. We were ready to move forward. At the time that Silver State Bank shut down, we owed $20 million against their FDIC-approved appraisal of $35 million. The day we got the letter, we were told they would be selling our loan to somebody else but also, we could pay it off.

In 2008, as you are all aware, things were horrible. When banks fail, no new bank wants to come in. We had done a ton of work at this point, and we had over $15 million of our own money tied up in it. This was the first domino that took our company down. The FDIC told us they would get a new bank and we would move forward. We were ready to continue working and to keep people employed. It took them 17 months to get a new bank. Lennar, who happens to be one of our primary competitors, ends up purchasing the note. We contacted them immediately to ask how we could go forward. We are optimistic—they are homebuilders; they understand our business; they see the value in the project; they see the value in working with us as we have built over 7,000 homes; and we are not a fly-by-night group. They said to come to New York; bring us a business plan; come the day after tomorrow. I spent all night getting the business plan complete. It is 30 pages long, on legal-size paper. We show up and the people who are helping me negotiate these things pay my way because I am tapped out at this point. We show up, and they have taken my presentation and printed it on letter-size paper; they cannot even read what the idea was. They say to me, "I do not really care, Tom. If you have to file bankruptcy, so be it. We need you to pay us." They are not lending; they are not investing in Nevada; they are not helping us. I say, "You guys have got to be kidding me. You know I can do this. You know I have the people.

You know I have the expertise. I have entitled this. I have the neighborhood. I have done everything and I will get you all of your money." They say, "We want it now." I say, "I cannot give it to you now. No one is lending in Nevada. No one is investing in Nevada in 2010." As bad as that sounds, they wait until the end of 2010 and foreclose. At that time, two years after the bank has foreclosed, the property on their appraisal is still valued at $14 million. They paid $7.5 million with these great FDIC terms. They have turned a tremendous profit. Time goes on. I say, "Can we work something out?" I will give you a little picture here. I had 13 lending arrangements of $320 million of loans. On 12 of those, I was able to work with the bank—no judgment, no bankruptcies, settled, finished. The one loan that is sold to the vulture who does not want to work with me is the one, to this day, that I am still trying to make a deal with. You know what I am told on the street? The people locally say, "No, the market is recovering. We do not want to make a deal with Tom. We want to get our hooks into him so when he comes back, we get a piece of everything he does."

So I go back to New York. I go back to Atlanta. I meet with them two days before Christmas because that is when they want me to be in Atlanta. I have seven kids; it is Christmastime. I am leaving. I go. They say, "We are sorry. It has been so tough. We want to make a deal with you. What do you think the property is worth today?" I say, "I think it is worth a lot, but I can tell you it might cost the capital especially with this kind of stuff hanging over me. I cannot get started. I have not built a home in five years. But I can probably get you between $10 million and $15 million." They say, "Well, bring it to us and then we will talk about settling the rest." I bring them a cash offer for $12.4 million. They say, "Not good enough. We are not going to do it." I say that we need to settle and to sell me their worst properties; I will fix them; I will sell them; I will give you the money if you let me get started again. They say, "Good idea, but we do not like it." They turned around last week going to contract to sell this property for $17.5 million with a participation that if this builder, who happens to be a national builder, gets price increases, they get a substantial part of those increases. They will more than likely fully recover the $20 million.

I talked to them again on Monday saying that this is great news; they are doing better by getting $17 million plus. I say, "Can we make a deal?" They said, "Tom, the fact that we did so well does not mean anything to you. You have your problem. You still owe us $11 million. What are you going to do?"

I said, "Guys, I am not going to move. No one is going to invest with me if I have you hanging over my head. You have done phenomenal on this deal; more power to you. I will even meet with your buyer and give them everything

I know about that project if this helps you make your deal go so that we can settle." And that is when it comes back to me, "We want to get our hooks into you."

There is no incentive for them to settle with me. They will drag this thing out. I have spent time in courtrooms. I am now here, which is wonderful. I am learning a ton and I wish my kids could watch all this and see how it works. There is every incentive for them to get their hooks into me and hang on as long as they can. They told me that if we make a deal and I cannot meet every specific part of it, it is an automatic judgment; no more court cases. So that is my story. Please leave A.B. No. 273 of the 76th Session in place and let me get started again.

Chairman Frierson:
Thank you, Mr. McCormick. Are there any questions from the Committee? [There were none.] I will note, because it is 10:30 a.m., that people who want to be heard to make their point so we can ask questions and make sure that we have heard from everybody.

Sean Higgins:
We appreciate that, Mr. Chairman. This is our last prepared witness and as we have said before, our testimony here on A.B. 431 also applies to Assembly Bill 274.

John A. Ritter, CEO, Focus Property Group:
Good morning, Mr. Chairman and members of the Committee. I really appreciate your indulgence in listening to me. I would like to explain my situation because, in some ways, I have become a poster child for this issue.

I do not know many of you, so I want to give you a little background on my company and myself. I moved to Nevada 25 years ago with no financial institution backing me. When my partner and I started Focus Property Group, it was just us working in a small executive suite near the Strip. We started the company with $5,000 that I borrowed on a credit card. We built the company that, at its peak, had about 160 full-time direct employees, not to mention contract employees, consultants, and other professionals which totaled about 200 people. While we have developed apartments and shopping centers, our main business is building master-planned communities. The construction of our master plans generated about 1,500 direct jobs at the peak, and they still generate hundreds of jobs today. We are a master developer, so that means we do not build the houses but we put in everything else—roads, utilities, detention basins, parks, school sites, and reservoirs. We were responsible for the construction of over half a billion dollars in infrastructure and improvements

from 2000 to 2006. Through the purchase of land at Bureau of Land Management (BLM) auctions, our company and its partners contributed about $1.5 billion to the protection of sensitive lands and the construction of open space, trails, and parks, and other amenities through the Southern Nevada Public Land Management Act, far more than any other single company. Our company paid almost $40 million in property taxes in the last ten years. In 2006 to 2007, Focus was the second-highest property taxpayer in Clark County and in 2007 to 2008, we ranked as the fifth-highest property taxpayer in the state of Nevada. Our trust, along with various companies under the Focus umbrella, have contributed over $7 million to charitable causes, and we have also raised substantially more than that from others through collaborative philanthropy. We have also provided our time, expertise, and resources toward helping develop public policy at the local, state, and federal levels. Our team members serve on numerous community, charity, and advisory boards. I mention all this not to be boastful but to demonstrate that we have followed a philosophy that Nevada is more than just our place of business. It is a place where we take an active role in contributing to, improving, and shaping the community. We are proud of our involvement; Nevada is our home; and we are dedicated to rebuilding and continuing to contribute to Nevada's overall success.

But frankly, we need your help. It is imperative that you reject A.B. 431 and reaffirm the protections you passed with the adoption of A.B. No. 273 of the 76th Session. You are all very much familiar with the Great Recession and what our state has endured. I am sure each one of you has been touched by it in some way. It was devastating to our company. Personally, the wealth I have built my entire life has been wiped out. By 2007, we had built a company with an appraised market value of about $2.2 billion and we owed about $1 billion in total debt and other obligations, and all of that was personally guaranteed by me. Going into 2008, we had $200 million in pending sales; those sales would have more than covered our overhead and our obligation and left us with reserves. By the end of January 2008, about 90 percent of those sales were cancelled. The economy was in free fall, and we were faced with the decision to stop making our payments on our debt or be out of business by the end of that year. It was an extremely painful decision. After 25 years in real estate, I had never missed a payment. There were literally hundreds of loans that we had to default on. Our advisors told us we were in an impossible situation, that we should file bankruptcy and fold up our tent, but we never gave up. For the past five years, we have been fighting to survive and to work on solutions with our lenders. We have been able to do so in all instances where the lenders did not insist on our destruction. We have reduced our outstanding unresolved loans from about $750 million to $170 million.

A substantial portion of that remaining debt is now held by the vulture investors that you have heard about today. They acquired that debt at a steep discount because it was highly distressed, particularly in our situation, because all of our assets were land and there was nothing that lost more value than land. They are promoting A.B. 431 and opposing A.B. 274. These investors have already realized substantial profits by buying the distressed debt for far less than the real estate that secures it and is worth at pennies on the dollar. Now they are attempting to not only realize that substantial profit but also to collect far more than what they paid for the loans from guarantors like me. They are not just pursuing me though; they are pursuing lots of other commercial real estate entrepreneurs, and other entrepreneurs, as you have heard today, as well as individual homeowners, and these two groups are essential to the recovery of our state. That is why A.B. No. 273 of the 76th Session was so important, not just for me, but for our state as a whole. By prohibiting these predatory practices, A.B. No. 273 of the 76th Session has given us the ability to survive and help rebuild our economy and our state. Without its protections, it will be impossible for us to do so. So we urge you to reject A.B. 431 and approve A.B. 274. Thank you very much for your time and consideration.

Chairman Frierson:
Thank you, Mr. Ritter. Mr. Higgins, do you have anyone else that you wanted to bring forward?

Sean Higgins:
No, Mr. Chairman. That concludes our remarks at this time. I would be happy to answer any questions or have Mr. Fiorentino or any member of our group come back up and answer questions if the Committee so desires.

Chairman Frierson:
Seeing no one here with questions, is there anyone in Las Vegas wishing to offer testimony in opposition? While we certainly have indulged people here, it has been the practice of the Committee not to be read to. Because I did not say that in advance, I did not interrupt Mr. Ritter, but if you have testimony that you want to submit to the Committee in writing for us to circulate, that will be more than appropriate in the interest of time. If you do have written remarks, please summarize, or if you want to just agree with those who came before you that would be fine as well. We are two and a half hours in and need to make sure that we hear, at least, the introduction of the remaining bill and conduct the work session. I apologize for having to curtail some folks, but we certainly welcome you to submit it in writing as well for the Committee's consideration.

Michael Joe, representing Legal Aid Center of Southern Nevada:
We supported A.B. No. 273 of the 76th Session and we believe in it. In my position at Legal Aid, I am considered the homeowner person in the foreclosure department. We do believe A.B. 431 waters down protections for homeowners and for that reason, we oppose it.

Chairman Frierson:
Thank you, Mr. Joe. Just so I am clear, were you speaking both on behalf of Legal Aid and individually?

Michael Joe:
I am speaking on behalf of Legal Aid.

Chairman Frierson:
Thank you very much. Do I have any other questions from the Committee? I see none. I now invite those in Carson City and in Las Vegas wishing to offer testimony in the neutral position to A.B. 431 to come forward. I see no one. I invite Mr. Sande back up to provide any closing remarks.

John Sande:
Mr. Chairman, thank you once again for your indulgence. You have heard a lot of testimony today and can understand some of the policy considerations that you have confronting you. While we are sympathetic, each one of these stories began with a failed bank. I think it needs to be said that if we create policies that are going to create more failed banks, then it is possible we could have a lot more of these stories. It is imperative that our interstate banking system and our financial system work properly and that we can avoid some of these in the future. By curtailing a lender's ability to secure its loan and attempting to find some recovery, I think you are seeing that in a number of failed banks.

Mr. Rabkin can tell you specifically how many failed Nevada banks we have and these are small, local community banks that we are talking about. It illustrates our position a little bit more. I would encourage you once again to read the testimony on A.B. No. 273 of the 76th Session. I am not aware of any conversations that happened behind closed doors, but I will tell you that there was not one single piece of testimony in any of the committees, and the bill received a number of hearings, where there was a discussion or supporters that came and said that they really appreciated the bill because it was extending to commercial loans and would help borrowers in that context.

I think you can draw your own conclusions. A number of you were on the committee and so you can probably recall what you had heard and what you were thinking. I do not want to presume, but I think it is fairly clear from the

testimony and why we are here today. Thank you. I am available for any questions.

Chairman Frierson:
Are there any follow-up questions before we close the hearing? Seeing as there are no follow-up questions, thank you again. With that, I will close the hearing on A.B. 431 and open the hearing on Assembly Bill 274. Good morning, Mrs. Bustamante Adams.

Assembly Bill 274: Revises provisions relating to real property. (BDR 3-417)

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:
Thank you, Mr. Chairman, for having me today. I am so grateful for all the testimony that was provided in the previous bill. I think that was the history that you needed to hear; the pain has been going on and is being experienced by our Nevada business owners. Within my community, I have the privilege of representing Las Vegas' Asian business district and several other small businesses. They approached me as their representative to bring this forth. I quickly realized it went beyond the scope of our district; that it is statewide. And so in 2011, we passed a number of bills to help stabilize our economy and to provide an opportunity for new growth. One of those important measures was A.B. No. 273 of the 76th Session which protected our homeowners and businesses from devastation by a predatory financial institution.

[Mrs. Bustamante Adams continued to read from (Exhibit K).]

Assembly Bill 274 clarifies and reaffirms the original intent of A.B. No. 273 of the 76th Session.

Mark H. Fiorentino, representing Focus Property Group:
Mr. Chairman, I cannot do any better than that. We would ask you just to incorporate the record officially from A.B. 431 so the testimony that you heard on both sides would be incorporated into this. The folks who testified in opposition to A.B. 431 are here in support of A.B. 274. We would like to take a moment to thank Mrs. Bustamante Adams for her hard work and support on this issue. As you have heard, it is a critical juncture for you. We did submit a document (Exhibit L) which explains and summarizes A.B. 274. We hope that you will accept that, but we are prepared to go into as much detail as you would like.

Chairman Frierson:
Thank you, Mr. Fiorentino. It is fair to say that this bill proposes to do the polar opposite of what the previous bill proposes to do.

Mark Fiorentino:
Yes, sir. That is exactly right. You should also know that part of your record also includes a letter of support from the Governor's Office of Economic Development (Exhibit M). For the reasons you heard here today, A.B. No. 273 of the 76th Session was important to your collective efforts to rebuild the Nevada economy. Consequently, A.B. 274 reaffirms it and is equally important. I do believe there are others here who have either signed in in support and/or would like to speak. We are prepared to answer any questions you may have.

Chairman Frierson:
Thank you, Mr. Fiorentino, and thank you, Mrs. Bustamante Adams. Do we have any questions from the Committee? I see none. I will invite those who are here to offer testimony in support of A.B. 274 to come forward, taking into account those who were in opposition to the previous measure will be considered in support of this measure. Any additional testimony that anybody would like to provide, now will be the time to come forward both here in Carson City and in Las Vegas.

Michael Joe, representing Legal Aid Center of Southern Nevada:
I know I was brief on A.B. 431 and I just wanted to speak a little more about A.B. 274. As I had mentioned, Legal Aid has supported A.B. No. 273 of the 76th Session and for the same reasons we support A.B. 274. We do think it has some important clarifications that come forth, because I know some issues have arisen about it. I am going to talk about my role at Legal Aid in the foreclosure department where we have represented lots of homeowners. A lot has happened in the foreclosure world for homeowners in four years, and Nevada has led the nation. We also lead the nation on two other factors: the number of people underwater on their homes and the huge amount they are underwater, which raises that issue of deficiency. That is why we think A.B. No. 273 of the 76th Session and A.B. 274 are so important for homeowners.

A lot of homeowners have been foreclosed on. They are out of their homes and maybe that is not an issue. There are also two other groups of homeowners that I would like to talk about, one being the responsible homeowners who are still paying on their mortgages but are far underwater. The question is, what happens to them as we go forward? As the nation pulls out of the foreclosure crisis, I think Nevada is going to languish for a while and what makes us

languish is the fact that people will be far underwater because we had a huge run-up on appreciation of homes. The second group I see were those who did do some loan modifications. When they did the loan modifications, especially in the early days of the Home Affordable Modification Program (HAMP) or other in-house modifications, there really was no principal reduction so they are still underwater. Now a lot of those people are coming forward and are either being foreclosed on or are walking away from the homes and the issue of deficiency comes up.

We would like to see the protections under A.B. No. 273 of the 76th Session continue because we think it is very important for homeowners. We do see investors buying up mortgages; we see banks selling off seconds or selling the loan after they have foreclosed. We do see what has been described as vulture investors. We also see that banks have bought up loans from failed banks. We would like to see banks come to the table to try to resolve things with homeowners. We think this whole process has been to the detriment of homeowners. That is all I have. Thank you.

Chairman Frierson:
Thank you, Mr. Joe. Do I have any questions from the Committee? I see none. I will invite those wishing to offer testimony in opposition to come forward both here and in Las Vegas. If there is material that we have heard before, it is perfectly okay to mention that we have heard that same testimony.

Alan Rabkin, Senior Vice President, General Counsel, Heritage Bank of Nevada:
Mr. Chairman, to be brief, I simply incorporate my discussion on A.B. 431 into this. My last statement is that I think there is some room to look at what we did in 2011, revisit the residential side, and protect that side. I think certainly the small community banks such as Heritage Bank understand the policy decisions in the residential areas, especially a home that is owner-occupied, and when it is a first deed of trust. I think, though, there is room for compromise on both sides dealing with commercial interests and commercial loans, especially with solvent guarantors. In that situation, I would hope, just as the banks are trying to be reasonable on the residential side, that the interest favoring a complete elimination of deficiency for the commercial, even small businesses, be reasonable as well as understanding that banks can fail and will fail if their loans are not repaid. Thank you. That is the end of my testimony.

Assemblywoman Spiegel:
Mr. Rabkin, as I have listened to all of the testimony, there seems a commonality among folks on the other side of the issue. On some level, they all needed to personally guarantee all of their business loans and they could not

be shielded by their corporations. I am wondering if that is a standard business practice and if that is something that we might need to stop allowing.

Alan Rabkin:
Fortunately, there is some federal law or federal regulation on this. Regulation B posted at the Federal Reserve Board site specifically deals with this issue. What Regulation B says is, if you apply for a loan as an entity and you use the personal assets of the individuals who own the entity to support the loan and to reach the ratios that the bank is looking for in order to safely make the loan, then the bank can require that whoever supported that loan as far as finances or financial statements becomes, in essence, an applicant on the loan and that translates into becoming a guarantor on the loan. If, however, one or the other spouse, members, or anyone decides not to lend their credit or their financial worth to support the loan, the bank is precluded from taking that person as an applicant and, therefore, is precluded from making them a guarantor. They can state the reasons they are denying the loan is that there is insufficient credit backing or insufficient financial worth, but they can never, under Regulation B, require that somebody apply for a loan and become a guarantor. So in your example, with the husband and wife being the principals of a business, if the husband decides not to be part of the business, only the wife's portion of community property is offered for the loan in addition to the company itself, and the bank cannot require the husband to be an applicant or a guarantor.

Assemblywoman Spiegel:
Thank you, Mr. Rabkin. That is helpful, but I have a follow-up question. When you are dealing with these small, family-owned businesses, how often are the loans approved when the family members do not agree to personally guarantee with things like their house and all of their personal assets?

Alan Rabkin:
That is a very good question. Some records are kept on that depending upon whether or not mortgages are involved. Banks are examined for turndowns on their loans and they are looked upon disfavorably in turning down loans inconsistently. I would say that in a greater percentage than normal of loans where one or the other principals, or husband and wife team, decide not to guarantee a loan, there is a higher probability that that loan will not meet ratios that the bank is looking for and, therefore, the bank will not be able to approve it. Each bank sets their own credit standards and they are examined as to those credit standards if they are a little bit too loose. They could probably never be too tight, but the bank might not stay in business long enough making any loans. I would say you are on to something that if there is a refusal to lend one's credit as an applicant to a loan, there is probably going to be a higher percentage of loans like that turned down.

Assemblyman Hansen:
In this hearing on both bills, the banks are obviously the bad guys, but it is not the local banks. In fact, it sounds like the local banks are the ones that everybody is trying to work with. I am hoping there may be some way in these bills where we can come up with some mechanism to protect the smaller guys, because the concern I can see here is that we are going to lose more small banks which are the very ones that we need to help keep the process going. Then we have the vulture predators coming in and buying up your assets and then treating our folks horribly.

Alan Rabkin:
Mr. Chairman, just to complete my discussion, I think that is a very valid point. I think there is some room for us to address these things. I will note that where banks make their highest margin and the most amount of money is on lending. They do not make a lot of money on other things. My bank welcomes lending, but we are becoming more and more conservative the more we see that our loans might not be fully collectible. It does put somewhat of a chill on lending when a lot of roadblocks are placed in front of full repayment of the loan.

Chairman Frierson:
Thank you. Are there any other questions from the Committee? I see none. With that, I will close the hearing on A.B. 274. We are to the work session portion of the agenda, and so I will yield to Mr. Ziegler to get us started on the first bill of the work session, which is Assembly Bill 40.

Assembly Bill 40: Authorizes the State Board of Parole Commissioners to notify victims of crime of certain information through the use of an automated victim notification system. (BDR 16-346)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 40 was sponsored by this Committee on behalf of the State Board of Parole Commissioners. It was heard in this Committee on February 7, 2013. Assembly Bill 40 relates to notices provided to victims of crime. The bill authorizes the State Board of Parole Commissioners to enter into an agreement with an automated victim notification system to give a required notice when an offender requests to serve a term of residential confinement; the Board fixes the date of a parole hearing; or the board makes a final decision on the parole of an offender. [Mr. Ziegler continued to read from the work session document (Exhibit N).]

Chairman Frierson:
Are there any questions on Assembly Bill 40?

Assemblywoman Fiore:
I just wanted to be clear that the victims still get written notice. Is that correct?

Dave Ziegler:
Yes, they can still request written notification.

Chairman Frierson:
I will entertain a motion to do pass.

> ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS ASSEMBLY BILL 40.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mrs. Diaz will handle this on the floor. The next bill is Assembly Bill 55.

Assembly Bill 55: Imposes an additional penalty for an attempt or conspiracy to commit certain crimes against older or vulnerable persons. (BDR 15-337)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 55 was sponsored by this Committee on behalf of the Department of Public Safety, Director's Office. It was heard in this Committee on February 14, 2013. Assembly Bill 55 relates to enhanced penalties for crimes against a person who is 60 years of age or older or against a vulnerable person. The bill imposes the enhanced penalty on the crime of attempting or conspiring to commit an offense that presently carries the enhanced penalty. [Mr. Ziegler continued to read from the work session document (Exhibit O).]

We have received a proposed amendment from the Office of the Attorney General and it is attached.

Chairman Frierson:
Are there any questions from the Committee? There has been a request that the amendment be clarified. Mr. Kandt, if you would come up and correct me if I am wrong. That may be an amendment offered in response to some of the questions that were raised by members of the Committee including myself.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
Thank you, Mr. Chairman. You are correct. It was an amendment that was offered in the effort of compromise to address some concerns that were expressed by members of the Committee regarding the bill in its original form.

If you look at this enhancement, it is a strict liability proposition in the sense you could face the enhancement regardless of whether you targeted a victim on the basis of their age or their vulnerability. I know some of the Committee members felt the real concern was individuals who are targeted for financial exploitation and that the enhancement should apply only with regard to an attempt or conspiracy to financially exploit a senior or a vulnerable adult.

Chairman Frierson:
Thank you, Mr. Kandt. I appreciate your willingness to sit down and put some practical thought into what we are trying to accomplish here.

Are there any other questions from the Committee? There being no questions, I will entertain a motion to amend and do pass.

> ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 55.
>
> ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will assign this floor statement to Mrs. Spiegel. We will move on to Assembly Bill 60.

Assembly Bill 60: Establishes requirements for solicitation of charitable contributions by nonprofit corporations and other charitable organizations. (BDR 7-217)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 60 was sponsored by this Committee on behalf of the Attorney General. It was heard in this Committee on February 19, 2013. Assembly Bill 60 relates to the solicitation of charitable contributions. The bill prohibits a nonprofit corporation from soliciting charitable contributions in Nevada unless it is registered with the Secretary of State. To register, the nonprofit corporation must provide contact information, its federal tax identification number, a financial statement, and other information; and the corporation must renew its registration annually. [Mr. Ziegler continued to read from the work session document (Exhibit P).]

I am going to talk about how it would read if it were amended the way it was proposed to be amended on the day of the hearing. They would have to disclose whether or not the contribution or donation may be tax deductible under the federal *Internal Revenue Code*. After the hearing,

the Secretary of State submitted a proposed amendment. You will see the amendment was prepared by our office from language that was provided by the Secretary of State, and I hope that it is a faithful rendering with some formatting changes.

Chairman Frierson:
This amendment represents a significant work on trying to incorporate some of the concerns of the stakeholders who were involved. Since then I do not know that I, personally anyway, received any information that those stakeholders who expressed some concern were continuing to be concerned after seeing the proposed amendments. Are there any questions from the Committee regarding A.B. 60? Seeing none, I will entertain a motion to amend and do pass.

> ASSEMBLYMAN MARTIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 60.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion?

Assemblyman Hansen:
Yes, Mr. Chairman. I am going to be voting no on this. I have some strong objections to section 5, subsections 2 and 3. I would also point out for the Committee's benefit that under *Nevada Revised Statutes* (NRS) 82.536, the Attorney General already has all these powers that can be exercised, for the most part, on this bill. It seems to me this is a real stretch in giving way too much authority to the Secretary of State.

Chairman Frierson:
Thank you, Mr. Hansen. Are there any other questions?

Assemblyman Duncan:
I share Mr. Hansen's concerns with this bill. I am going to be voting no out of the Committee; however, I do want to take a closer look at some of the amendments that were provided and see if the others interplay with the rest of the statute. I do reserve my right to change my vote on the floor of the Assembly, but I will be voting no out of the Committee.

Assemblyman Wheeler:
I, too, want to look at the work session documents a little harder. I still saw nothing in there that has a trigger event for the Secretary of State to investigate which seems to give him a lot of power, so I will be voting no with the right to change my vote on the floor.

Assemblyman Martin:
I will be voting strongly in favor of this. I realize there might be some other issues that we could try to figure out but, overall, the protection of the public has me most concerned and that is my rationalization. I like the bill.

Assemblywoman Fiore:
I will just be voting no.

Chairman Frierson:
Thank you. Are there any other comments? I think there has been a motion and a second already.

> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, FIORE, HANSEN, AND WHEELER VOTED NO.)

I will be assigning that floor statement to Mr. Martin. We will move on to Assembly Bill 74.

Assembly Bill 74: Establishes provisions governing document preparation services. (BDR 19-84)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 74 was sponsored by Assemblywoman Flores and heard in this Committee on February 15, 2013. Assembly Bill 74 requires a person who wishes to conduct business as a document preparation service to register and post a bond with the Secretary of State. A registrant must, among other requirements, include a clear and conspicuous statement in any advertisement that the registrant is not an attorney authorized to practice in Nevada, and may not provide legal advice or representation. [Mr. Ziegler continued to read from the work session document (Exhibit Q).]

Members, there are a number of amendments. Allow me to go through them with you. The sponsor has submitted a proposed amendment and there is a mock-up included in your materials (Exhibit Q). On the day of the hearing, there were amendments from the Nevada Registered Agent Association and the CT Corporation having to do with registered agents. They are also included in your packet and I think it is fair to say that those remain unfriendly.

In addition, the Nevada Association of Realtors has submitted a very brief amendment. All it does is delete four words having to do with the definition of a document preparation service and the definition of a legal matter to remove the term "conveyance" from those definitions. It is my understanding that this is a friendly amendment.

And finally, Assemblyman Duncan has proposed an amendment which has been posted on NELIS, and we do have copies for you.

Chairman Frierson:
In light of it not being part of the original mock-up, I will give Mr. Duncan an opportunity to explain the proposed amendment as it was actually provided for the hearing.

Assemblyman Duncan:
Thank you, Mr. Chairman. I appreciate that. My amendment was a conceptual amendment and essentially exempts registered agents from being document preparers. [Mr. Duncan continued to read from (Exhibit R).]

My goals for this were a couple things. I did find the testimony compelling that we heard on the day of the hearing from Mr. Flores, a law student, who talked about the fact that the Latino community, in particular, is being taken advantage of by people who advertise themselves as *notarios*, or *multiservicios*. And so I do believe this is a problem and it is something that needs to be addressed. I looked to other states, New York for example, that put in a provision in their statutes that would protect against this sort of advertising. The parts of the bill that I think are very good include that the document preparers have to have a clear and conspicuous statement in any of their advertisements and they would have to display their certificate of registration; they have to make disclosures to the client; there is the right of rescission. There are all those things that I think protects the Latino communities and other communities that may be taken advantage of by document preparers.

Parts of the bill that I was troubled by, frankly, were the concerns that the registered agents brought up that this may cool businesses actually forming entities in Nevada. I do not think that is something that we want to do—contracts going back and forth, I think, is a problem and people might just form an entity elsewhere. Also, I think what is troubling is now if you are a document preparation service, you are subject not only to a document preparation fee, a one-time fee of $300, you are also subject to a business license fee for the renewal of a business license every year. So the renewal of a document preparation license, which includes fingerprints, the cost of bonding, and other things, seems cumbersome and burdensome to small businesses. We learned from Mr. Flores' testimony that this may actually decrease the amount of services to this community and I thought that could be a problem. My intent was to try to address the problem and I do think that the advertising is taking advantage of certain groups of people, but I also submitted this amendment to try to protect small businesses and to also address the specific policy issues. That is what the amendment does. If the amendment is

not adopted, and I know that it is unfriendly having approached the sponsor about it and sending an email several weeks ago to this Committee, I will not be supporting the bill.

Chairman Frierson:
Thank you, Mr. Duncan. I will note a few things that the amendment that was proposed by Ms. Flores was intended to cover; at least a good deal of the concerns that were expressed at the hearing, in particular, corporations such as LegalZoom that prepare documents but do not provide legal advice, and that this was intended to make sure they were not adversely impacted by it and leaving the remaining measures in. I recall that while some registered agents believed there was already authority to regulate them, there is testimony from the Secretary of State that they found this to be helpful and so I share the concern about the registered agents, but I think the fact that the Secretary of State found this to be helpful, and the overwhelming need to address the *notario* situation, gave me some comfort where there was originally some discomfort regarding registered agents. I just want to point that out as something I know we discussed and was a point of concern for everyone. Are there any other comments?

Assemblywoman Fiore:
I am a no vote.

Assemblyman Ohrenschall:
I, too, discussed this bill with the sponsor. I think it is a great bill and I think it is really important. I do have the same concerns that Mr. Duncan expressed and at this point, I am a no on the bill.

Chairman Frierson:
Are there any other comments? There being none, I would first entertain a motion to amend and do pass with the amendments provided by the sponsor as well as the realtors who coordinated with the sponsor and considered that to be a friendly amendment.

> ASSEMBLYWOMAN COHEN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 74.
>
> ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Hansen:
I would like to make a comment. With Mr. Duncan's amendment, I could support it. In the absence of that, I absolutely could not. I went through the amendment proposed by the sponsor and without going into great detail, on page 3, lines 14 through 22, there was good stuff basically being struck. On page 4 of the amendment, again, why were some of these things struck? I think there were some real problems with this and I think, while there is obviously a problem, it seems to be a cultural problem in a very specific community. I think we should be passing laws that are going to impact everybody in the state, especially adding a $50,000 bond requirement to people providing services to typically the poorest people in our communities. So I will be voting no.

Assemblywoman Cohen:
I mentioned this at the time of the hearing and I would just like to reiterate. I do not see this as a cultural issue because I have had native speaking, multi-generation Americans who have been in America forever come into my office telling me their kids were really messed up by their attorney. When they hand me their attorney's card, it is not an attorney; it is a document preparer. People do not understand—it might be *notarios* which might be a big problem in the Latino community—but it is actually an extra big problem in all the communities. I recently got some information from a constituent telling me they work next to a paralegal office and in the dumpster behind the paralegal office were tons of documents with social security numbers. So that $50,000 bond will be what helps them to repair the problems resulting from identity theft and stolen credit. If I, as an attorney, mess up someone's case, lose a document, or lose someone's social security number, that person is going to the State Bar and right now, if I am a document preparer, there is no State Bar for them to go to. That is why I am supporting this.

Assemblyman Martin:
I agree with Ms. Cohen. I actually do not think this bill goes far enough. I live this mess in tax preparation. I know this bill does not cover that, but I am hoping one day that it can be expanded, but this is about consumer protection. People cannot protect themselves. We need to speak up, and I fully support this bill.

Assemblywoman Fiore:
I would support this bill if we can amend the whole thing and just add in the language that all *notarios*, English or Spanish, put up a sign exactly the same size as a notary saying I am not an attorney, and that would fix this.

Assemblyman Duncan:
I certainly want to put on the record, again, that I do agree that there is a problem here with this. My amendment left in the parts of the bill that I think addresses the issue just like the state of New York did. And actually the language that is left in the bill in my amendment goes further than the state of New York. One thing that was compelling—and I spoke with Mi Familia Vota a few weeks ago—was how the advertisement could educate people about the good parts of the bill, and I think that would curtail the problem. My problem was just doing a balancing act of the burden on small entities and document preparers. I wanted to make that clear on the record that the amendment I had did not completely destroy the bill, but it kept the good parts of the bill and took out the parts that I thought posed a problem.

Chairman Frierson:
Are there any other questions? [There were none.] There has been a motion and a second.

> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, FIORE, HANSEN, OHRENSCHALL, AND WHEELER VOTED NO.)

I will be assigning the floor statement on A.B. 74 to Mrs. Diaz. We will move on to Assembly Bill 116.

Assembly Bill 116: Revises certain provisions concerning accessories to certain crimes. (BDR 15-135)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 116 was sponsored by Assemblywoman Benitez-Thompson and heard in this Committee on February 26, 2013. Assembly Bill 116 concerns accessories to crimes. The bill amends the law that makes a person who knowingly and with intent harbors, conceals, or aids a person who has committed a felony or gross misdemeanor an accessory to the crime. The bill removes the exception for a brother, sister, parent, grandparent, child, or grandchild, and therefore provides that only a husband or wife would not be an accessory in this circumstance. [Mr. Ziegler continued to read from the work session document (Exhibit S).]

On March 18, 2013, the sponsor submitted a proposed amendment. Members, there is an additional clean-up on the proposed amendment that came to our attention. On page 2 of the proposed amendment, the green language at the bottom goes into detail about the punishment for a gross misdemeanor and the proposal is to just strike that detail because it differs from the traditional definition of a punishment for a gross misdemeanor. So that green line in the

middle of the page would end with the statement, ". . . in which case the accessory is guilty of a gross misdemeanor."

Chairman Frierson:
I have not spoken with the sponsor of the bill and I understood that to be acceptable by the sponsor. Are there any questions regarding A.B. 116 and the proposed amendment? Seeing none, I will entertain a motion to amend and do pass.

> ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 116.
>
> ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblywoman Fiore:
I am going to vote no but reserve my right to change my vote on the floor. I am voting no on this bill because of the extent of testimony we heard—and a grandmother, God forbid, could be pulled in to this if the person went to her house—it is too complicated to just pass it, so I am going to vote no with the ability to change my vote.

Assemblywoman Diaz:
Mr. Chairman, I am going to vote for it, but I do reserve my right to change my vote on the floor. I am still weighing all aspects of this issue as I am not 100 percent certain, but I am going ahead and reserving my right to change my vote.

Assemblyman Wheeler:
I will be voting for the bill with a right to change my vote on the floor with a little more investigation.

Assemblyman Duncan:
I, too, will be voting yes in Committee; however, I do reserve my right to vote no later.

Chairman Frierson:
Thank you, and I will say that I remember the hearing on this matter shared the concerns of Mrs. Diaz and I think some family units would find it difficult to be put in a position to be held responsible and so I certainly understand their concern. With that, are there any other questions or concerns? [There were none.] There has been a motion and a second already.

THE MOTION PASSED. (ASSEMBLYWOMAN FIORE VOTED NO.)

This will be assigned to Mrs. Benitez-Thompson, with Mr. Ohrenschall as a backup. We will move on to Assembly Bill 132.

Assembly Bill 132: Provides certain immunity from tort liability to persons employed by an agency to provide personal care services in the home. (BDR 3-151)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 132 was sponsored by Assemblyman Carrillo and was heard in this Committee on March 1, 2013. Assembly Bill 132 relates to the liability of persons who provide personal care services. The bill provides that a person who is employed by a licensed agency to provide personal care services in the home is not liable for civil damages as a result of any act or omission not amounting to gross negligence if the person has successfully completed specified training in cardiopulmonary resuscitation or emergency care of a person in cardiac arrest; and renders emergency care or assistance in good faith in accordance with their training, in the course of their employment or profession, to an elderly or disabled person (Exhibit T).

On the day of the hearing, there was an amendment submitted by the sponsor and representative of the Personal Care Association of Nevada, and a copy of that is attached. Members, I believe the main thing that the amendment does is it moves the language from one chapter of *Nevada Revised Statutes* (NRS) to Chapter 449 of NRS.

Chairman Frierson:
Are there any questions on A.B. 132 or the proposed amendment? Seeing none, I will entertain a motion to amend and do pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 132.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign this floor statement to Mr. Carrillo. Next is Assembly Bill 217.

Assembly Bill 217: Revises provisions governing criminal background checks of applicants for employment with a department of juvenile justice services or an agency which provides child welfare services. (BDR 5-993)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 217 was sponsored by the Assembly Committee on Judiciary and was heard in this Committee on March 22, 2013. Assembly Bill 217 relates to personnel employed in juvenile probation and child welfare services. The bill requires a county department of juvenile justice services and an agency that provides child welfare services to obtain background information and a personal history for each applicant for employment and each employee to determine whether the applicant or employee has been convicted of specific crimes or has pending criminal charges for one of those crimes. [Mr. Ziegler continued to read from the work session document (Exhibit U).]

Mr. Chairman, there were two amendments submitted on the day of the hearing. Clark County submitted a proposed amendment which is attached. You may recall that Mr. Ken Lange testified from Las Vegas and suggested some amendments, and he followed up that day with amendments in writing which are also attached (Exhibit U). I do not believe that Mr. Lange's amendments are friendly amendments; that would be up to you, Mr. Chairman. The amendment from Clark County does have a cover sheet that describes the amendments briefly and the intent, and I think the mock-up is consistent with the cover sheet.

Chairman Frierson:
I do not believe that the amendment proposed by Mr. Lange would be a friendly one as the bill dealt with the local government facilities. I recall there being a woman testifying about her private company as well and was concerned about it being impacted, and it was clarified that hers would not be. I think it was Mr. Lange's position that he wanted to be included, but that would go beyond what the statute covered and what the bill was originally intended to cover. We do not ordinarily have testimony for a work session, but I do believe Ms. Duffy may be down in Las Vegas, if there are questions, but I do not believe Mr. Lange's amendment to be technically a friendly one. With that, and unless there are any additional questions, I would entertain a motion to amend and do pass with the amendments proposed by Clark County.

> ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 217.
>
> ASSEMBLYMAN CARRILLO SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will handle the floor statement on Assembly Bill 217. We will move on to Assembly Bill 240.

Assembly Bill 240: Revises provisions relating to civil actions. (BDR 3-1021)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 240 was sponsored by Assemblyman Ohrenschall and was heard in this Committee on March 21, 2013. Assembly Bill 240 relates to liability in cases of injury to persons or property. The bill provides that, if the trier of fact finds comparative negligence on the part of the plaintiff or the plaintiff's decedent, the liability of the defendants is several, whereas the existing law requires only that comparative negligence be asserted as a defense (Exhibit V). There were no amendments.

Chairman Frierson:
Are there any questions about the bill? Seeing none, I will entertain a motion.

Assemblyman Ohrenschall:
Mr. Chairman, there was just a technical amendment that I wanted to propose. An attorney in the northern Nevada area who had a concern about clarity on the second page had contacted the Legislative Counsel Bureau and I am fine with that amendment. It would clarify that on page 2, line 3, "in those cases where comparative negligence is asserted as a defense," that would be added to clarify the bill. I am happy to answer any questions.

Chairman Frierson:
Just so the Committee is aware, we did discuss that technical fix and in a practical sense, the judge can only instruct the jury when it is an issue. The way the law existed previously was if it was asserted as a defense, then the judge would instruct the jury, but since the bill is proposing to change it to "if the jury finds comparative negligence," then it would not make any sense for it to be instructing to the jury afterwards. Are there any questions of the Committee?

Assemblywoman Fiore:
I like the bill; I am just concerned whether this bill will penalize the responsible drivers that carry the higher limits. I really like the bill and wanted to vote yes. I just want to make sure that that is not true and maybe reserve my right to change my vote on the floor. It is a yes, and I just want to clarify that portion.

Chairman Frierson:
Are there any other questions or comments?

Assemblyman Ohrenschall:
If Assembly Bill 240 passes into law, the fault-free plaintiff will still be able to collect for his injuries jointly and severally if there are multiple defendants. The big issue with A.B. 240 is that your fault, as the injured person, would have to be proven, not simply asserted, and that is just what we are trying to clarify in this bill.

Assemblywoman Fiore:
Thank you, Mr. Ohrenschall. Then I will be a yes vote on this.

Chairman Frierson:
Are there any other questions or comments? Seeing none, I would entertain a motion to amend and do pass.

> ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 240.
>
> ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mr. Ohrenschall will handle the floor statement. Next we have Assembly Bill 262.

Assembly Bill 262: Revises provisions governing child custody and visitation. (BDR 11-951)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 262 was sponsored by Assemblywoman Cohen and was heard in this Committee on March 29, 2013. Assembly Bill 262 relates to domestic relations and actions for child custody and visitation. The bill provides that in such an action, the court may order reasonable attorney's fees, expert fees, and other costs to be paid in proportions and at times determined by the court, if costs and fees are at issue (Exhibit W). There were no amendments.

Chairman Frierson:
Are there any questions? There being no questions, I will entertain a motion to do pass.

ASSEMBLYMAN WHEELER MOVED TO DO PASS ASSEMBLY BILL 262.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Ms. Cohen with Mr. Wheeler as a backup. The next bill is Assembly Bill 311.

Assembly Bill 311: Creates the Contingency Account for Victims of Human Trafficking. (BDR 16-715)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 311 was sponsored by Assemblyman Sprinkle and concerns aid to victims of crime. It was heard in this Committee on March 28, 2013. The bill creates the Contingency Account for Victims of Human Trafficking, to be administered by the Legislature's Interim Finance Committee. [Mr. Ziegler continued to read from the work session document (Exhibit X).]

There were no amendments. The testimony was that this bill creates a mechanism for directing funds raised by nonprofits and other outside sources into the State General Fund to be used to provide aid to victims of human trafficking.

Chairman Frierson:
Are there any questions on the bill? I would entertain a motion to do pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS ASSEMBLY BILL 311.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Mr. Sprinkle, with Ms. Cohen as a backup.

And with that, we have Assembly Bill 389 that is on the agenda for work session; however, at the request of the sponsor, we are going to pull that bill back to make some minor adjustments to prevent us from having to do it after it gets out of Committee. And so, we will not be working up A.B. 389 today and hope to work that up soon.

I will allow for any public comment now both in Carson City and in Las Vegas. Seeing that there is none, today's meeting on Assembly Judiciary is now adjourned [at 11:57 a.m.].

RESPECTFULLY SUBMITTED:

_____
Thelma Reindollar
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 4, 2013 **Time of Meeting: 8:15 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 358	C	Assemblyman James Ohrenschall	Uniform Law Commission
A.B. 358	D	Terry Care, Commissioner, Uniform Law Commission	Proposed Amendment
A.B. 358	E	Kimberly Surratt, representing Nevada Justice Association	Why States Should Adopt the UDPCVA
A.B. 358	F	Katherine Provost, Attorney, The Dickerson Law Group	Testimony
A.B. 358	G	Katherine Provost, Attorney, The Dickerson Law Group	Troxel v. Granville
A.B. 431	H	Alan Rabkin, Senior Vice President, General Counsel, Heritage Bank of Nevada	Explanation of Need for Changes. . . regarding Commercial Lending
A.B. 431 & A.B. 274	I	Mark H. Fiorentino, representing Focus Property Group	Examples of Predatory Practices Prohibited
A.B. 431	J	Mark H. Fiorentino, representing Focus Property Group	State Deficiency Statutes
A.B. 274	K	Assemblywoman Irene Bustamante Adams	Information Notes
A.B. 274	L	Mark H. Fiorentino, representing Focus Property Group	Background/Explanation
A.B. 274	M	Mark H. Fiorentino, representing Focus Property Group	Nevada Governor's Office of Economic Development
A.B. 40	N	Dave Ziegler, Committee Analyst	Work Session Document

A.B. 55	O	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 60	P	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 74	Q	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 74	R	Assemblyman Wesley Duncan	Proposed Amendment
A.B. 116	S	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 132	T	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 217	U	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 240	V	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 262	W	Dave Ziegler, Committee Analyst	Work Session Document
A.B. 311	X	Dave Ziegler, Committee Analyst	Work Session Document