MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 10, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 8:19 a.m. on Wednesday, April 10, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Ben Kieckhefer, Senatorial District No. 16
Senator Michael Roberson, Senatorial District No. 20
Senator Debbie Smith, Senatorial District No. 13
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Patricia Devereux, Committee Secretary

OTHERS PRESENT:

Ernest Figueroa, Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Venicia Considine, Staff Attorney, Legal Aid Center of Southern Nevada

Katherine G. Pentogenis
Barry Gold, AARP Nevada
Marlene Lockard, Nevada Women's Lobby; Retired Public Employees of Nevada
Clay Duncan, Advisory Council on Mortgage Investments and Mortgage Lending
Scott Smith
Howard Watts III, Progressive Leadership Alliance of Nevada
Keith Lynam, Nevada Association of Realtors
Thomas L. Blanchard, Nevada Housing Stabilization Program
Keith Tierney, Civil Rights For Seniors
Mary Law
Bill Uffelman, President and CEO, Nevada Bankers Association
George A. Ross, Bank of America
Karen D. Dennison, Vice Chair, Real Property Law Section, State Bar of Nevada
Julia S. Gold, Legislative Committee, Probate and Trust Law Section, State Bar of Nevada
Layne Rushforth, Legislative Committee, Probate and Trust Law Section, State Bar of Nevada
Danny L. Thompson, Executive Secretary Treasurer, Nevada State AFL-CIO
Richard Bryan, XL Steel, Inc.
Robert A. Conway, Business Agent, Ironworkers Local 433, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO
Randall Bulloch, Owner, Alpine Steel LLC
Sean Jory, Alpine Steel LLC
Robert Smith, Alpine Steel LLC
Tim Taylor
Thomas Kirsch
Florence Jones
James G. (Greg) Cox, Director, Department of Corrections
Brian Connett, Deputy Director, Industrial Programs, Department of Corrections
Terry J. Care
Brittnie Watkins
Nick Donath
Chris Frey, Washoe County Public Defender's Office
Steve Yeager, Clark County Public Defender's Office
Diane R. Crow, State Public Defender
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys
David W. Clifton, Reno/Verdi Township Justice Court, Department 5, Washoe County
John T. Jones, Jr., Nevada District Attorneys Association

Tom Conner, Chief Administrative Law Judge, Office of Administrative Hearings, Department of Motor Vehicles
Pat Conmay, Chief, Records and Technology Division, Department of Public Safety
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts
Connie S. Bisbee, Chair, State Board of Parole Commissioners, Department of Public Safety

Chair Segerblom:
We will open the hearing on Senate Bill (S.B.) 321.

SENATE BILL 321: Enacts a "Homeowner's Bill of Rights." (BDR 9-748)

Senator Justin C. Jones (Senatorial District No. 9):
In 1995, my grandparents, Paul and Twila Heavener, purchased a modest ranch-style home in southeast Las Vegas that was intended to be their retirement home. As their retirement savings dwindled after the 2008-2009 financial market collapse, my grandparents were unable to make their mortgage payment. They tried to reenter the workforce, but health issues prevented that.

My grandparents were too proud to ask for help, but after my grandmother broke down in tears, my mother asked me to help them with their loan. I gathered their mortgage paperwork and contacted their loan servicer, Ocwen Financial, for information about its loan-mitigation programs. I naively thought that because I am a lawyer, I might get the company's attention. However, I got the same runaround as my grandparents and that so many Nevadans have gotten from their mortgage companies over the past few years.

It was challenging to figure out who even held the mortgage, as Ocwen was merely the servicer of a transferred, filtered and securitized loan. My grandparents' stress was tremendous. While my grandfather underwent tests for pancreatic cancer and my grandmother's Alzheimer's disease progressed, they received a notice of breach of contract and election to sell. My grandfather died soon afterward, and the bank foreclosed upon the house that my grandparents had lived in for more than 15 years.

My grandparents' story is tragic, but it is all too familiar to homeowners and former homeowners across the State, particularly in southern Nevada. You have a copy of my handout (Exhibit C) listing the number of foreclosure notices filed

in the Senatorial Districts of Committee members. Tens of thousands of homes were foreclosed upon or received foreclosure notices from 2009 to 2012 just in our districts. Senate Bill 321 seeks to stop some of the more egregious practices of banks, which five of the largest U.S. lenders abandoned by signing the National Mortgage Settlement (NMS).

Assemblywoman Marilyn Kirkpatrick (Assembly District No. 1):
Nevada has one of the worst foreclosure rates in the Nation. Each day, I get calls from my constituents about the crisis. In the Las Vegas area, there are more than 16,000 homes in the foreclosure process, 4,000 of which are in North Las Vegas. In my district, 263 out of 1,000 homes—1 out of every 5 homes—are in foreclosure. The situation has many ramifications. When property taxes are not being paid, public services are not funded, so communities less than 5 years old are blighted. The Aliante Real Estate development was supposed to be one of North Las Vegas's most prestigious properties. However, on every one of its streets, two to three homes are in foreclosure because mortgages were issued during the high-priced bubble time. My office has been trying for 4 years to keep constituents in their homes, but it is not as simple as it sounds. Homeowners have been jumping through hoops for a long time, and sometimes the foreclosure process takes up to a year to finalize. My district has the highest foreclosure rate of all the Assembly districts and is in the top five highest rates in Assembly and Senate Districts in Clark County. We need to do something important to ensure constituents that we want to keep them in their homes or provide an avenue to leave their homes so other buyers can take them over. The blight on new communities is a long-term problem for the City.

Senator Jones:
Senate Bill 321 could increase Nevada's predictability for all parties involved in the foreclosure process and provide strong, fair accountability measures by protecting all residential mortgages written in the State.

In February 2012, 49 state attorneys general, including Catherine Cortez Masto of Nevada, and the federal government announced an historic joint settlement with the Nation's five largest mortgage servicers: Ally Financial, previously known as GMAC Inc.; Bank of America; CitiBank; JPMorgan Chase; and Wells Fargo. The settlement provided up to $25 billion in relief for distressed borrowers and benefits to people whose loans are owned by those banks and to homeowners whose loans they service.

Homeowners whose loans are serviced by other companies do not enjoy the same protections or relief. My grandparents were just two of the many people who would not have benefitted from the NMS. The primary purpose of S.B. 321 is to apply those protections to all borrowers. Similar legislation recently passed in California and is working through legislatures in Colorado, Florida, Minnesota, Illinois and other states.

Sections 1 through 7 of S.B. 321 define terms used throughout. "Residential mortgage loan," in section 7, means a loan primarily for personal, family or household use "which is secured by a mortgage, deed of trust or other equivalent, consensual security interest on owner-occupied housing." Sections 8 through 16 of the bill impose additional restrictions on the exercise of trustees' power of sale and judicial foreclosures on residential mortgage loans. Section 10 requires that at least 30 days prior to recording a notice of default and at least 30 days after the borrower's default, the mortgage servicer must send a preforeclosure notice to the borrower with information about the loan and options to avoid foreclosure. Section 11 prohibits mortgage servicers from starting foreclosure proceedings without contacting or attempting to contact homeowners via telephone and mail to evaluate them for other loan modification options.

Section 13 prohibits mortgage services from "dual tracking," sending the file to the foreclosure department while the homeowner is being considered for a loan modification. Section 13 also requires loan servicers to give loan applicants a response with an explanation before the servicer commences foreclosure. Section 13, subsection 5 prohibits mortgage servicers from charging fees for the modification application process or during a trial planned for lost mitigation options.

Section 14 requires mortgage servicers to have a single point of contact for borrowers seeking information about their loans and throughout the modification process. If my grandparents had a single point of contact, they would not have been subjected to such stress. Section 15 requires mortgage servicers to dismiss certain civil actions and withdraw default notices if borrowers accept permanent foreclosure prevention alternatives. Default notices must be recorded within 9 months or if a foreclosure sale has not been conducted within 90 days after the notice of sale is recorded. Section 16 provides civil remedies for material violations of the bill and designates them as "deceptive trade practices." Section 16, subsection 5 clarifies that loan servicers that were

signatories to the NMS that comply with its terms are not liable under sections 2 through 16 of the bill.

Section 18 of S.B. 321 allows the defendant in an owner-occupied home's judicial foreclosure action to participate in a foreclosure mediation process. Sections 21 through 29 and section 31 have been deleted by amendment after Senator Hutchison introduced similar legislation regulating foreign loan servicers, which passed in the Senate Committee on Commerce, Labor and Energy. Section 30 states that sections 2 through 16 only apply to trust agreements with a notice of default recorded on or after October 1, and to judicial foreclosure actions begun on or after that date.

I still regret I was unable to find a way to keep my grandparents in their long-time home. If the Homeowner's Bill of Rights gives someone else's grandparents, parents, sons or daughters the tools to stay in their homes and work more directly with their lenders, I will feel some solace for what I could not achieve for my Nana Ty and Grandpa Paul.

Senator Hutchison:
Does S.B. 321 contain provisions that differ from those in the NMS?

Senator Jones:
There are a couple of additions. The judicial foreclosure can go to mediation, which was not in the NMS because it did not apply. The provision about stale defaults was also added. In a homeowners' forum hosted by me and Chair Segerblom, a circumstance arose in which people were served with notices of breach of contract; and then 2 to 4 years later, they received notices of sale. The concept is foreclosure notices cannot just sit out there forever. Homeowners must be notified again that foreclosure proceedings will start within 120 days.

Senator Hutchison:
Was anything removed from the NMS? Did other states adopt the NMS and then add a few things based on their individual needs?

Senator Jones:
That is true for California, but the other states are still working on their legislation. The bills are out to capture and regulate the 40 percent of mortgage servicers that did not sign the NMS.

Senator Hutchison:
As the NMS was implemented, have any unintended consequences surfaced which could benefit Nevada?

Ernest Figueroa (Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):
You have a copy of my written testimony (Exhibit D). The national mortgage servicing standards were the result of yearlong negotiations with the Country's top five servicers, taking into account unique circumstances common to all jurisdictions that were signatories of the multistate NMS. Certain tweaks could be made to those standards, but their adoption provides a good starting point to gather data about their efficacy and whether they should be modified.

Senator Hutchison:
Does anything stand out in the national model as a revision that you would recommend for S.B. 321?

Mr. Figueroa:
Every tweak entails a countertweak. The national standards provide a good foundation for Nevada's law.

Chair Segerblom:
Would you recommend any additional changes?

Venicia Considine (Staff Attorney, Legal Aid Center of Southern Nevada):
You have a copy of my written testimony (Exhibit E). We quickly noticed that many banks or loan servicers transferred their servicing rights after signing the NMS. For example, Ally Financial sold or transferred all of its servicing rights. Bank of America sold $10 billion in rights to Nationstar. Although the top five companies signed the NMS, its provisions do not follow through once servicing rights are transferred.

Senator Hutchison:
Did the signatories transfer their servicing agents to companies that were not signatories? That means Nevada loans from signatories are no longer under the obligations of the National Mortgage Settlement.

Senator Jones:
Correct.

Katherine G. Pentogenis:
You have a copy of my written testimony (Exhibit F). I am a 20-year resident of Nevada and a retired teacher. After my husband had a stroke, I had to stop working to care for him. He is now in a wheelchair after a diagnosis of cancer. Our income is two pensions and social security payments. We have owned our home for nearly 10 years. In 2007, we obtained a loan from Countrywide Mortgage. We paid on time and never missed a payment. Bank of America was the servicer.

In 2011, we asked Bank of America if we could refinance to lower our interest rate for a more affordable payment. Our request was approved, and an appraiser was sent to our home. We owed about $278,000 on the mortgage; the home is now worth $255,000. We received a letter from Bank of America denying us the refinance for which we had been told we qualified because we had no equity. We then received notice that the servicer had been changed to Green Tree. We called to ask that our refinancing request be reviewed. Green Tree told us it only collects debts and does not do refinancing.

We tried to short-sell our home, which required us to stop paying the mortgage. Green Tree rejected all of the offers we received and notified us it was going to foreclose on the home. I had read about services that help people in our situation. We were sent a package for a 3-month trial period plan with a lower mortgage payment, which we began to pay on time every month. Green Tree had contracted with Western Union to automatically withdraw the payment out of our bank account.

I kept getting statements and letters that we owed $10,000 to $12,000. When my attorney called Green Tree, he was told we should ignore those notices. However, when we asked to have that directive in writing, Green Tree refused. We spoke to people in different departments, including supervisors. After Western Union Holdings took a final payment from our account, Green Tree sent us a letter demanding a double payment, claiming the final payment had not been received.

My husband is ill, and being told that we owe thousands of dollars while we were in a trial plan for a permanent loan modification increased the stress on both of us. If Bank of America had not transferred us to Green Tree, we may have been able to refinance and avoid the constant fear over the status of our loan. Even if Bank of America had refused to refinance, it could not have

demanded more payments while we were in a trial loan modification plan. Please pass S.B. 321 to help ensure that all mortgage servicers must follow the same guidelines as do the NMS signatories.

Mr. Figueroa:
I am a State attorney who has recently worked on mortgage-related issues. I was involved in the Nevada portion of the NMS settlement and Bank of America servicer litigation. I am the Nevada designee for the national monitoring committee of the NMS.

The Office of the Attorney General supports S.B. 321. As the bill's preamble states, "Nevada has been severely affected by the mortgage foreclosure crisis and consistently ranks as one of the top states for underwater home mortgage loans, mortgage defaults and foreclosures." The preamble also recognizes that Attorney General Catherine Cortez Masto has been involved in litigation settlements with entities over loan servicing that ultimately resulted in the National Mortgage Settlement requirement to adopt servicing standards.

An important takeaway from the NMS standards is they sunset after 3 years and only apply to the top five servicers. This has created a situation in which some Nevada homeowners have considerably fewer rights than those with loans serviced by the top five companies. Ultimately, these homeowners have no State administrative agency to turn to when faced with unfair and dishonest treatment.

I will enumerate the necessity of the NMS servicing standards. Prior to the NMS, Nevada servicers routinely promised people that they would act upon modification requests within a specified period. Instead, servicers caused many homeowners to be stranded for 6 months to a year without answers on their modifications status. Servicers often discouraged homeowners to seek foreclosure mediation and routinely ensured them their homes would not be foreclosed upon while their modification requests were pending. Despite those promises, servicers continued to send foreclosure notices, schedule home auctions and sell houses while the homeowners awaited the modification decisions.

Servicers often staffed their modification departments with employees who lacked training, skill, expertise, authority and information necessary to carry out company commitments despite representations to the contrary. Servicers

routinely inflated loan reinstatement figures and default-related fees and hid other costs and lump-sum demands without itemized fees. Servicers that ultimately granted loan modifications promised homeowners certain terms, but last-minute agreements significantly altered terms to the detriment of borrowers. Some servicers never responded to homeowners' telephone messages or subjected them to automated call systems lacking opportunities to speak to live representatives.

These unfair and dishonest servicing practices caused many Nevadans awaiting loan modifications to continue to make mortgage payments they could not afford by depleting their savings, retirement funds and children's education funds. People waited anxiously for months, while calling servicers and submitting duplicate paperwork, not knowing if they would lose their homes. Regardless of their circumstances, these homeowners suffered the stress of going through the servicing gauntlet while trying to act responsibly by talking to their lenders. They deferred short sales and did not take other steps to mitigate their losses because of the servicers' actions.

Unfortunately, the aforementioned practices continue with servicers that did not sign the NMS. Senate Bill 321 will help deter the practices by codifying servicing standards. It could prevent unfair and deceptive tactics by servicers and ensure Nevadans are treated fairly and honestly during the foreclosure process. You have a letter (Exhibit G) of support for S.B. 321 from the Center for Responsible Lending and the Consumers Union.

Senator Brower:
How much did Nevada receive from the NMS?

Mr. Figueroa:
The Settlement had three portions totaling $20 billion. It is estimated that Nevada would receive about $1.5 billion in credit. Another portion of the Settlement was a direct payment of $57 million to our residents. The final portion was a direct payment to the State of $57 million.

Senator Brower:
Constituents have asked me how much they can expect to receive. How much will the typical affected Nevadan receive?

Mr. Figueroa:
That depends on the nature of homeowners' loans and which servicer is handling them. The Settlement details how servicers must treat certain loan packages. Former North Carolina Commissioner of Banks Joseph A. Smith Jr., who is overseeing the Settlement, published two reports specifying the amount Nevadans have received, broken down by those who received some principal modification, those who received refinancing and those who received short-sale deficiency relief.

Senator Brower:
Constituents also ask me how much the private attorneys representing the State will receive. Do you know?

Mr. Figueroa:
No. A stipulation in the NMS prohibits settlement funds from going to private law firms.

Senator Brower:
Are any private firms receiving any percentage of any settlement funds?

Mr. Figueroa:
The NMS stipulated that no Settlement funds could go to private law firms.

Senator Brower:
Constituents have told me that individual Nevadans will receive about $2,000 at most, while one law firm will receive millions from the NMS. Is that correct?

Mr. Figueroa:
The reference to the range of about $57 million total going to Nevada is part of a national distribution. The Settlement was modeled on a 40 percent participation rate nationally, so the average individual payment would be about $2,000. As part of the NMS and Nevada's participation, no outside law firms received Settlement funds.

Senator Brower:
Are there any other settlements from which outside law firms are receiving a percentage?

Mr. Figueroa:
Some other Settlement funds went to outside law firms. I do not have that information readily available.

Senator Jones:
Senate Bill 321 would not give Settlement money to outside law firms.

Ms. Considine:
If a homeowner's loan is owned and serviced by an NMS signatory, he or she may be eligible for a principal-reduction loan modification, and he or she would then receive NMS money. It would be negative money from a principal reduction. Wrongfully foreclosed-upon homes are gone. Under the NMS, those homeowners received documents informing them Settlement money was coming to Nevada specifically for them. If every recipient responded by January 18, he or she would receive about $2,000.

Senator Brower:
My constituents are correct about the money going to individuals, but are wrong about millions of dollars going to private law firms.

Ms. Considine:
Part of the NMS money went to the Home Again Nevada Homeowner Relief Program to assist State homeowners with U.S. Department of Housing and Urban Development (HUD) counseling and the Legal Aid Center of Southern Nevada's services. It does not matter which companies are homeowner loan owners or servicers. I do not know if that money is disbursed annually or through the Legislature.

Senator Hutchison:
Do we have perspectives on the bill from the Office of the Governor or any agencies under the Governor's control?

Senator Jones:
No. The Office of the Attorney General has managed the NMS and the Home Again Program.

Senator Hutchison:
Mr. Figueroa, do you know how the Office of the Governor feels about the bill?

Mr. Figueroa:
At a February 13 meeting, members of Governor Brian Sandoval's staff and the Executive Branch asked for additional authority over loan servicing issues.

Ms. Considine:
Passage of this bill would help all Nevadans because it requires servicers to reach out to homeowners before foreclosure to determine if anything else can be done. It requires things to be done quickly, even though it takes several months for banks to complete foreclosures. Timelines could not be dragged on or extended. If homeowners know about options up front, they can accomplish them and may avoid the cost of notices of default and the entire foreclosure process. If options are unavailable, homeowners can talk to servicers or trustees about leaving their homes.

Senate Bill 321 could increase the home market supply once people get a foreclosure determination. Distressed homeowners tell the Legal Aid Center of Southern Nevada, "We have sent in all of our documents, but we only get a phone call asking for more documents. We don't get an answer for a year." This bill would significantly shorten that time so answers are found one way or the other.

If a notice of default was filed 2 years ago and nothing has happened, the bill would require the bank to follow through with the notice of sale or start again. This would benefit the marketplace, the community, people who can stay in their homes and people unable to stay by offering them options for leaving.

A Legal Aid Center of Southern Nevada client applied for a loan modification from PNC Mortgage. He submitted his documents in January 2012, but PNC then called periodically to request additional documents. He did not get an answer until November 2012. The modification request was denied because PNC claimed it had not received a complete documents package. From January to November 2012, late, ancillary and drive-by inspection fees piled up on his mortgage, causing it to increase exponentially. Eventually, this will make it impossible for him to keep his home. Had PNC been subject to the provisions of S.B. 321, our client would have had an answer within 30 days about his modification, and the issue would have been resolved.

Unfair and illegal practices are still pending. One of our clients sent in a complete loan modification package in March and has a confirmation it was

received. He did not hear from the servicer until he received a notice of default and election to sell his home. He called the servicer, and the first person who answered told him the entire package had been received. However, that person said she could not answer questions and transferred our client to different departments and overseas operators. He was told to call back, because the person listed on his file was absent. This was his final answer after spending an hour on the phone. He asked for that person's name and direct number to leave a voice mail. He was told the individual lacked a direct line or voice mail and that he would have to keep calling until the individual was available. This situation occurred this week.

A major reason why S.B. 321 is needed is that even if a homeowner's servicer is an NMS signatory, the probability is high that the servicer is no longer one of the top five banks. In June 2012, Bank of America transferred more than $10 billion worth of servicing rights to Nationstar. In January, it sold 20 percent—about 2 million loans worth $306 billion—of its residential mortgage servicing to Nationstar and to NewCastle. In February, Ally Financial transferred all of its servicing to Ocwen Financial and Green Tree, so it no longer services residential loans. In November 2011, JPMorgan Chase sold 82,000 mortgages worth $15 million to Ocwen. In February, it sold its residential servicing to Wingspan Portfolio Advisors, LLC. None of the new servicers are required to follow NMS guidelines.

A recent *New York Times* article stated some of the top five banks are still failing to provide single point of contact access. They are also still doing dual tracking and enacting foreclosures while reviewing loan modification requests. In the article, Joseph A. Smith said, "There are still problems around single point of contact and dual tracking." The bill would give Nevada the ability to follow through and enforce the NMS guidelines.

Senator Ford:
My review of the bill indicates it is not entirely the onus of loan servicers or banks to make the NMS provisions happen. Homeowners must meet documentation requirements and risk not taking advantage of the bill's provisions if they do not submit documentation within a specified time frame.

Senator Jones:
Homeowners would still have to jump through a lot of hoops, but they will know that if they do so, there will be something at the end. In the past, they

could not figure out which hoops to jump through and still lost their homes. The bill would provide clarity about the path to obtain a resolution through mitigation efforts or a foreclosure. Homeowners would not get dual-tracked while foreclosures are proceeding.

Barry Gold (AARP Nevada):
You have a copy of my written testimony (Exhibit H). Nevada neighborhoods are plagued by empty, foreclosed-upon houses and families faced with losing their homes. We need to protect people and keep them in their homes. We hear a lot about servicers and lenders foreclosing upon homes without giving owners the chance to modify their loans or other options. Lenders and servicers must play by the rules, some of which are vague and do not offer specific language about notification of options.

Senate Bill 321 could help stop these practices and help Nevadans who qualify for loan modifications avoid foreclosure. Giving borrowers who submit complete loan modification packages simple yes-or-no decisions with an explanation before starting foreclosure sounds simple. The bill could prevent people from having the rug pulled out from under them when they think they are following the rules and doing everything correctly. Having a single point of contact is another simple solution to help people facing the loss of the biggest investment of their lives. Knowing whom to call and not having a maze of locations and confusing array of phone numbers will increase homeowners' sense of control and prevent mysterious responses from servicers like, "I don't know who you talked with before. We don't have a record of that."

Seniors may be especially vulnerable to foreclosure and need specific guidelines to help them understand their options and what to expect. Senate Bill 321 would make lenders and servicers accountable. Reducing foreclosures will help stabilize the State's housing market and limit the terrible impacts of the foreclosure crisis on families, communities and our economy. On behalf of the 309,000 AARP members across the State, I urge you to pass S.B. 321.

Marlene Lockard (Nevada Women's Lobby; Retired Public Employees of Nevada):
I agree with Mr. Gold's comments in support of S.B. 321.

Clay Duncan (Advisory Council on Mortgage Investments and Mortgage Lending):
You have a copy of our proposed amendments (Exhibit I) to sections 27 and 29 of S.B. 321, which we support. However, in the mock-up of proposed Amendment 7922 to S.B. 321 (Exhibit J), prepared for Senator Jones, those sections have been deleted.

Scott Smith:
I am a debtors' attorney representing southern Nevadans in foreclosure mediations and bankruptcies. Senate Bill 321's section 18 would require judicial and nonjudicial foreclosures to go through mediation. My clients consider mediation an excellent tool to allow them to speak to someone about solutions to their problems. Mediation requires lenders to have someone available to make decisions, at least via telephone.

I have two clients in foreclosure mediations. Through their own negligence, their lenders had lost my clients' documents and lacked proper security interests. The lenders chose the judicial foreclosure to avoid mediation so they could seize my clients' homes without required proof. The main reason for judicial foreclosures is for lenders to circumvent the Legislature's will and State law, which allow mediation. Section 18 would allow mediation in judicial foreclosures. This will free up our clogged court systems. The section would require lenders to enter into a process that allows homeowners some kind of resolution.

Howard Watts III (Progressive Leadership Alliance of Nevada):
We support S.B. 321 for all of the other testifiers' reasons. We are considering including it in our Racial Equity Report Card on the Governor. According to research by the Center for Responsible Lending (Exhibit K), from 2004 to 2008, African Americans and Latinos were 1.6 times more likely than whites to have mortgages with one or more risky elements, which are not just adjustable rates. African Americans were 2.8 times more likely than whites to have high interest rates, and Latinos were 2.3 times more likely to have prepayment penalties. This is predatory lending. Those communities are twice more likely than whites to have suffered foreclosures or be seriously delinquent on their mortgages. Senate Bill 321 could give these people a clear path to keep their homes or negotiate arrangements agreeable to both them and their servicers.

Keith Lynam (Nevada Association of Realtors):
The Nevada Association of Realtors (NVAR) supports S.B. 321 as an effort to support Nevada's homeowners and housing market. Market recovery is impending, and the decisions we make now will have unprecedented, long-lasting ramifications. We must learn from past mistakes. The NVAR likes portions of the bill, specifically section 13; section 13, subsection 5; section 13, subsection 6; section 15; section 16, subsection 4; and sections 23 through 29.

Section 13, which would eliminate dual-tracking, is extremely vital to Nevada homeowners. It would give them the security of knowing that when they are doing their best to work something out with financers, they will be allowed to have that process work itself through. This would also be vital for real estate agents and brokers, as it is frustrating for us to work through a tenuous short-sale process only to find out the home will be foreclosed upon in a few days. Section 16, subsection 4 would provide protection for bona fide home purchasers. This would give them the security of knowing the home titles are clear.

The NVAR has some concerns about S.B. 321. We have learned that sometimes the best intentions have consequences and that all affected parties must work out solutions before bills are passed. We have learned that affected industries sitting on the sidelines, while others negotiate, can cause serious problems for State homeowners. The NVAR has a role to play in the foreclosure crisis, and we cannot allow it to happen again.

The NVAR is concerned about sections 10 through 13, but we are working on them with Senator Jones. We need clarity in the Nevada housing market for homeowners and lenders. We must make certain S.B. 321's provisions have a shelf life because we cannot afford to have notices of default without end dates. Lenders also need to be clear on the process. Nevada's housing market is on the mend, but what we need now is certainty in our processes.

Thomas L. Blanchard (Nevada Housing Stabilization Program):
You have a copy of my written testimony (Exhibit L), which includes a proposed amendment for S.B. 321. As broker-owner of 1st Realty Group, I specialize in distressed and foreclosed-upon properties and have provided expert testimony on the housing crisis on a national level. I have been a member of the Greater Las Vegas Association of Realtors for 18 years.

It is time to move beyond myriad, costly, taxpayer-funded, short-term solutions that have failed to keep worthy Nevadans in their homes. Until we restore the vitality of our housing market and acknowledge the impacts of toxic mortgages, the magnitude and duration of the crisis will continue to harm Nevada children, local businesses, employment, neighborhood stability and economy.

My proposed amendment specifically addresses the underwater mortgage problem, highlighted by Department of Business and Industry Director Bruce Breslow before the 2011-2012 Interim Finance Committee. Mr. Breslow cited the NVAR publication *Nevada's Face of Foreclosure* analysis of hardships imposed by underwater mortgages. The Home Means Nevada Home Retention Program has identified 57 percent of State homes as underwater and states we are the epicenter of the housing crisis. We have the highest per capita rate of underwater mortgages in the Nation.

We must understand the reality of the incentives severe underwater mortgages provide for default and the downward pressure they continue to exert on home values. The Stabilizing Urban Neighborhoods Initiative program in Massachusetts provides a path Nevada could follow, and my amendment is patterned after it. The amendment would allow private sector nonprofits and government-related nonprofits to join to address the underwater issue. I would exempt banks and lenders from requiring long affidavits in short-sale home purchases by nonprofits. Qualified homeowners would be able to repurchase their homes immediately, which would provide legitimate, long-term incentives to pay mortgages and keep families in homes.

This option far exceeds settling for leaseback with purchase option programs, which do not benefit homeowners. Such programs highly favor the investors who fund them, which is why so many programs are beginning in Nevada. Only 5 percent to 10 percent of participants actually repurchase their homes. The other 95 percent to 90 percent of homeowners continuing as renters end up paying more in rent and fees than they would have paid had they continued paying their mortgages. I am certain this Committee and the Legislature does not intend to turn Nevada into a rental state.

The benefits of homeownership are important to our immediate recovery and long-term development. Those benefits impact property tax revenue and our economy. Too many homeowners are barely hanging on, faced with mortgages that offer no foreseeable equity. Many will be forced to walk away from their

homes, uproot their children from schools and friends and abandon community and business relationships. Senate Bill 321 does not address underwater mortgages.

Senator Ford:
Have you discussed your proposed amendment with Senator Jones?

Mr. Blanchard:
No.

Senator Ford:
Absent your amendment, do you support the bill as written?

Mr. Blanchard:
I support the bill, as per Mr. Lynam's testimony.

Keith Tierney (Civil Rights For Seniors):
We continue to get letters from seniors in situations similar to that of Senator Jones's grandparents. The State of Nevada Foreclosure Mediation Program Website has a list of documents homeowners may be asked to send servicers. An 80-year-old senior diabetic received a form in the mail from a Texas-based servicer. Twenty-one boxes were checked for him to fill out, which would have required him to fill out a Housing Assistance Payments Contract from the HUD. The servicer also gave the senior a blank form to allow it to distribute all of his financial information, including tax returns, to any person or agency the servicer thought fit.

I have helped many seniors file injunctions to stop foreclosure sales. In Washoe County, homeowners must post a $1,000 bond to do so. I would like to see S.B. 321 limit that bond amount. To give homeowners more bite, the language in section 16, subsection 2 should be changed so if a material violation and a presumption arise against the servicer, beneficiaries of the deeds of trust have to rebut the claims. That burden of proof should not be on the homeowners.

Mary Law:
I live in Senator Brower's district, but my neighborhood was not among those hardest hit by the foreclosure crisis. That does not mean we do not have horror stories. My mortgage is so deeply underwater that any loan modification lacking

a significant principal write-down and interest reduction would be another predatory loan and leave me in worse financial shape. I use the HUD definition of "predatory loan" as one that deprives a homeowner of equity.

I am one of the 15,000 to 25,000 Nevadans living in limbo. I have been to mediation twice, defended myself in district court in a foreclosure mediation program and petition for judicial review, and stood on the courthouse steps to prevent my home from being sold illegally. We need an inexpensive and easy path of recourse. I keep asking why the money I paid for my house has less value than the money paid by the banks. Everyone wants to protect his or her own interests at the expense of mine. We do not need net present value analysis of loans. We need simple loan calculations of the principal and interest amounts and the loan's terms. Middle-class homeowners are being deceived by lenders and need justice from courts.

Bill Uffelman (President and CEO, Nevada Bankers Association):
When Nevada enacted foreclosure mediation in 2009, we were among the first states to enact a bill like a Homeowner's Bill of Rights. The National Mortgage Settlement still controlled by the judge who oversaw its enactment can be changed by him. Senate Bill 321 contains contradictory directives for lenders about the same documents and for people to achieve the same ends. If the bill is enacted, foreclosure mediation should be repealed. Everything in the bill's first 17 sections will duplicate existing provisions of *Nevada Revised Statutes* (NRS).

In regard to mediation prior to judicial foreclosures, judges are great mediators, so that is unnecessary. If the judicial foreclosure is the result of failed mediation, that is a different scenario. Mediation before judicial foreclosure is a waste of scarce resources and effort. Nevada has two community, state-chartered banks issuing residential mortgages. The irony is Nevada State Bank's mortgages go directly to Zions First National Bank in Salt Lake City, Utah, for processing, and Heritage Bank of Nevada's loans are in Reno for half a day before they are shipped out of state. They are the only two banks, other than national institutions, doing mortgages in the State. Nevada State Bank and Heritage Bank follow the Consumer Financial Protection Bureau's mortgage rules and processes.

We are increasing burdens on banks struggling to stay afloat and continue services. Across the Nation, community banks have left the mortgage business.

It is a volume business, and community banks simply cannot do it with all of the new rules. It is ironic that banks so close to communities cannot give mortgages to their own neighborhoods.

Senator Ford:
I am sympathetic to your concerns. My law practice is in your area, and I typically represent banks. Senate Bill 321 is appropriate because it puts an onus on homeowners to complete things that need to be done. I have dealt with programs in which homeowners who lacked necessary documents should not have been allowed to prolong the process. The bill would impose deadlines and consequences to allow banks to proceed in those circumstances. Have you talked to Senator Jones about making the bill more palatable for you?

Mr. Uffelman:
I spoke to him, but not about repealing mediation.

Senator Ford:
Do you disagree with the premise that homeowners experiencing dual-tracking and improper notices of default need additional help?

Mr. Uffelman:
I agree with that. We created and modified a process and are now creating another one. Are we creating more confusion? Everyone has been trying to improve matters since the State enacted mediation in 2009. Anecdotally, the impact of the NMS on the Nevada housing market has been positive. We went from foreclosures to short sales, which benefit all parties.

George A. Ross (Bank of America):
Our main concern with Senate Bill 321 is provisions of the NMS can be changed by one judge. That is not exactly solid. The Consumer Financial Protection Bureau is releasing reams of regulations on how mortgages and foreclosures should be conducted. The rules fulfill the fondest dreams of the bill's proponents. Senator Jones crafted it as closely as possible to match the NMS. As soon as you litigate an aspect of Nevada lending laws, a district court judge makes a ruling, which can be unpredictable. I am concerned the bill would create three different, conflicting sets of rules, and people may inadvertently break laws or regulations and be unable to comply with them.

As of 4 months ago, Bank of America's contribution to the NMS toward principal reductions and other fees was more than $500 million. If you divide that by $200,000—the amount of many principal reductions—you get 2,500 affected houses. This gives a sense of the enormity of the finances of the problem. The Bank of America has 22,900 loans in default. How much do you think it costs to forgive all of that principal?

Senator Hutchison:
Could you give us your perspective on the bill's intent? Committee members are sympathetic to the challenges facing many of our constituents, but we need to hear about potential unintended consequences of S.B. 321.

Mr. Ross:
We believe the bill would inevitably mandate competing, contradictory laws that require multiple actions on the same issue. Statistically, the majority of homeowners who opt for mediation eventually default. All it usually does is delay an already slow process.

Mr. Uffelman:
I concur with Mr. Ross.

Senator Jones:
Mediation or other alternative resolutions are encouraged by courts. The bill's emphasis on mediation is not out of the ordinary. The Consumer Financial Protection Bureau's new regulations do not require verbal answers or letters to explain documents. Mr. Uffelman has not discussed S.B. 321 with me. I asked Mr. Ross to give me a written list of Bank of America's concerns. I indicated section 16, subsection 5, which explains that if a bank is a signatory to a complaint judgment in the NMS, the rules in that subsection apply to it. I told Mr. Ross I could clarify or tinker with that provision, but he did not respond. I want to remind the Committee that the numbers and statistics we have heard are actually people: moms, dads, grandparents like my own and your constituents.

Chair Segerblom:
We will close the hearing on S.B. 321 and open the hearing on S.B. 356.

SENATE BILL 356: Revises provisions relating to real property. (BDR 9-824)

Senator Michael Roberson (Senatorial District No. 20):
Karen D. Dennison of the State Bar of Nevada will explain the bill's intent.

Karen D. Dennison (Vice Chair, Real Property Law Section, State Bar of Nevada):
Senate Bill 356 is a technical amendment bill regarding existing real estate laws about loans. The bill has been approved by the State Bar of Nevada Board of Governors. All but two sections are identical to S.B. No. 402 of the 76th Session, which passed both Houses of the Legislature but was ultimately defeated due to an unrelated amendment added in conference committee.

Sections 1 and 2 of Senate Bill 356 deal with optional covenants adopted in deeds of trust. The first amendment is about how covenants must express counsel fees as a percentage. Generally, counsel fees are expressed in terms of reasonable counsel fees. We want to ensure that option in statute.

Our second proposed amendment was not in S.B. No. 402 of the 76th Session. This covenant relates to how a trustee under a deed of trust is substituted. We have removed the requirement that a corporate resolution be in place. The normal way to substitute a trustee is simply to record for the beneficiary of the deed of trust the substitution of trustee.

Section 3 of S.B. 356 involves a clarification of assumption fees. Currently, the covenant states that the assumption fee must be stated in the deed of trust. Generally, assumption fees are a percentage of the unpaid balance of the loan. Section 4 is entirely new. It concerns NRS 40.458, implemented after the 76th Session. Our minor amendment concerns short-sale agreements in section 4, subsection 1, paragraph (d). If there is an agreement on short sale and the deficiency is waived, NRS states the agreement just needs to be signed by the debtor. We believe that to properly complete the short-sale agreement, the financial institution must also sign it as the party that will be charged.

Section 5 of S.B. 356 deals with combining two sections of law in NRS 100 and NRS 106 about requirements for impounds. The substantive change involves impound requirements regarding refunds and account deficiencies only in residential loans.

SENATOR HUTCHISON MOVED TO DO PASS S.B. 356.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Segerblom:
We will close the hearing on S.B. 356 and open the hearing on S.B. 307.

SENATE BILL 307: Revises provisions relating to trusts, estates and probate. (BDR 12-179)

Senator Ben Kieckhefer (Senatorial District No. 16):
You have a copy of the proposed amendment (Exhibit M) to S.B. 307 from the Legislative Committee, Probate and Trust Section, State Bar of Nevada.

Julia S. Gold (Legislative Committee, Probate and Trust Section, State Bar of Nevada):
Senate Bill 307 was endorsed by the Board of Governors of the State Board of Nevada. The bill pertains to trust and estate administration, Titles 12 and 13 of the NRS. The bill's intent is to clarify and amplify processes relating to probate and property transfers.

The State Bar of Nevada's Probate and Trust Section Legislative Committee is comprised of attorneys for the northern and southern halves of the State. We work to promote legislation to clarify ambiguous statutes and make trust and probate administrations less costly and more certain for individuals. We have also promoted legislation that has put Nevada in the forefront of being a jurisdiction favored for trust administrations. You have a packet of material (Exhibit N) and a letter from Steve Leimberg (Exhibit O), comparing Nevada trust administrations to those in Alaska, Delaware and South Dakota. *Nevada Revised Statutes* 166 concerns spendthrift trusts, the use of which is one of the main reasons Nevada is well regarded.

Most of S.B. 307 is clarifications and technical corrections to NRS 132 and 133. Definitions will help provide certainty with respect to standing and who qualifies as an "interested person." Other sections clarify and codify people's fiduciary duties. Concerning NRS 166, the spendthrift trusts chapter, a recent

unpublished opinion in California found that state's fraudulent conveyance transfer statute—analogous to our NRS 166—does not apply.

Layne Rushforth (Legislative Committee, Probate and Trust Law Section, State Bar of Nevada):
You have a copy of my written testimony (Exhibit P) and a summary of comments on the bill (Exhibit Q). There have been several cases of elder abuse in which people stuck documents like wills and deeds to sign in front of mentally incapacitated seniors or people subject to undue influence. In the 76th Session, Legislators protected them by creating a presumption that documents favoring a person who produces such documents—which leave something after death from someone subject to undue influence—should be void. The 2011 effort did not deal with lifetime gifts, just on death transfers. One of the provisions of S.B. 307 would expand that. If an attorney or caregiver gets someone to put his or her name on a lifetime transfer of assets, if certain protocols are not followed, the presumption would be that the bill would prohibit people from taking advantage of others.

Definitions needed to be clarified in S.B. 307, and Ms. Gold's and my proposed amendment, Exhibit M, addresses that. We moved two definitions in the bill to NRS 132 and provided clarification of the definitions of "court" and "district court" for purposes of probate.

Chair Segerblom:
Was your amendment approved by the Board of Governors of the State Board of Nevada?

Ms. Gold:
The bill was approved in its original form.

Mr. Rushforth:
That approval took place when our amendment text was part of NRS 166, as per the Legislative Counsel Bureau bill drafters. We are asking that it be returned to NRS 132.

Senator Hutchison:
I am looking at two proposed amendments to S.B. 307. Which one is yours?

Ms. Gold:
Our amendment, Exhibit M, concerns definitions. Another proposed amendment (Exhibit R), submitted by Robert Armstrong, concerns family trust companies. It did not come through the Legislative Law Committee, so I cannot address its issues. Mr. Rushforth and I do not oppose it.

Chair Segerblom:
We are considering the State Bar's bill and its amendment prepared for Senator Kieckhefer.

> SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 307.
>
> SENATOR HUTCHISON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Segerblom:
We will close the hearing on S.B. 307 and open the hearing on S.B. 478.

SENATE BILL 478: Revises provisions relating to the employment of offenders. (BDR 16-1202)

Danny L. Thompson (Executive Secretary Treasurer, Nevada State AFL-CIO):
Most of S.B. 478's recommendations were made by Richard Bryan. He will tell you why the Nevada AFL-CIO supports the bill.

Richard Bryan (XL Steel, Inc.):
Senate Bill 478 addresses two issues: the fiscal responsibility it seeks to establish through oversight by the Legislature and the potentially unfair competition it could create. XL Steel, Inc. lost two contracts—to a Department of Corrections Silver State Industries program—when the contractor said, "We would really have preferred to work with you, but, frankly, we can't meet your price." We shared our concerns on the matter with the interim Committee on Industrial Programs in October 2012 and have appeared twice before the Board of State Prison Commissioners, which consists of the Governor, the Attorney

General and the Secretary of State. They strongly support ensuring Silver State Industries (SSI) programs do not compete unfairly with the private sector.

We want to enhance the transparency provisions in NRS 209.461. We have recommended to the Board of State Prison Commissioners and Department of Corrections Director James G. (Greg) Cox that if other firms are to avoid what happened to XL Steel, there need to be more specific mechanisms to ensure transparency. Silver State Industries makes agreements for interstate and intrastate jobs. Interstate work requires compliance with federal standards, which would also be appropriate for intrastate work. Before contracts are entered into with SSI, assurances must be written so the operations will not displace private sector workers. Wages should be somewhat comparable so there is not unfair competition with the private sector. Before SSI is awarded contracts, there should be written proof of consultations with local private industries and labor organizations that could be financially impacted. I do not think the Board of State Prison Commissioners objects to these recommendations. At its last meeting, the Board told Director Cox to modify a proposed regulation Board members are considering.

At the October 22, 2012, interim Committee on Industrial Programs meeting, an issue on the agenda that did not involve XL Steel dealt with waste recycling that could potentially impact private industry. Someone in the audience said his company had heard nothing about it, so the item was removed from the agenda. Prospectively, private sector industries that might be impacted should be notified; representatives from the Department of Corrections should state that the private sector would not be impacted and attempts should be made to reach out to affected private industries and labor groups.

Senator Debbie Smith (Senatorial District No. 13):
I began paying attention to the issues in S.B. 478 through my budget work on the Interim Finance Committee and a Silver State Industries subcommittee. We do not have a good handle on several aspects of SSI that need to be fixed.

Senate Bill 478 would set up safeguards to ensure prisoners are not taking jobs from regular citizens; establish guidelines for what must be done if a State-sponsored prison industry is losing money; and set up mechanisms ensuring the State will be paid by outside companies using prison labor and facilities. The bill would provide better criteria to ensure we are following commonsense rules about prison labor issues.

There was a recent, high-profile case in which a company was more than $400,000 in debt to the State and $80,000 behind on salary payments to prison workers. To protect the State's assets, the bill provides for surety bonds and personal guarantees. We should not subsidize a money-losing prison project, so section 1, subsection 5 of the bill addresses how the director of the Department of Corrections will reevaluate and fix money-losing industries.

Mr. Thompson:
Prison labor was used to construct a bridge over Interstate Highway 15. Steel structures for Wet'n'Wild Las Vegas water park are being constructed by prisoners while 300 Ironworkers Local 433 members are out of work. Like XL Steel, we cannot compete against slave labor. We pay benefits and taxes. Senate Bill 478 is critical to solving the problem because the company mentioned by Senator Smith owes the State $438,000, and there is no viable way to collect that money. The workers are certified to weld certain things. We asked for the certifications of that business but have yet to receive them.

Robert A. Conway (Business Agent, Ironworkers Local 433, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO):
I agree with Senator Smith and Mr. Thompson. Business and labor organizations need an opportunity to be surveyed about the bill's issues before SSI Industries begins new enterprises. In addition to the steel industry, many other businesses are being unfairly challenged by laborers being paid $1 per hour.

Randall Bulloch (Owner, Alpine Steel LLC):
Silver State Industries workers do not get paid $1 per hour. They receive at least minimum wage in a market in which people on the street can be hired for nearly that. Alpine Steel LLC has not displaced union ironworkers, and I know of no steel fabrication shop in the State that employs them. The bridge over I-15 was built according to highest standards, and all of our workers have full certifications.

Alpine Steel LLC was invited to participate in SSI programs 9 years ago, but we decided it was not a good fit for our company. After further conversations with the deputy director of the Department of Corrections, we decided there were mutual advantages and entered into agreements in 2006. Less money is saved by using prison labor than the public perceives. There are significant logistical issues in traveling to and from prisons and going in and out of their sally ports. The paperwork, inspections, waiting for prisoner counts for up to 4 hours,

corrections officers' salaries and lockdowns that prevent work for many days may be onerous. We have employed up to 130 workers, with a maximum in the SSI program.

Chair Segerblom:
Could you address the bill specifically? Do you oppose increased transparencies in your contracts?

Mr. Bulloch:
Senate Bill 478 would decimate the Silver State Industries program. A few clients participate now, and it would be impossible for the State to attract private businesses if the bill passes. There is no motivation for a company to post a $1 million bond and then endure many logistical issues and other hardships. If there is a perception of unfair advantage, it would be difficult to get competitors and labor organizations to sign off on projects. A good program for the State that helps inmates, the prison system and private industry would be imperiled. We have hired ex-offenders without much success, but when we hire and train current inmates, they are excellent employees after their releases.

Chair Segerblom:
What aspects of S.B. 487 would prevent you from following your current practices?

Mr. Bulloch:
I would never participate in the program if I had to comply with the bill's provisions. The cost of providing a $1 million bond would be prohibitive. I doubt that I could get labor organizations and competitors to sign off on my projects. Providing a written analysis of the displacement of private sector workers would be prohibitive. The 2006 boom days of Clark County construction are significantly different from today's times. I think the displacement of private workers by prisoners is minimal, but others perceive it differently.

Sean Jory (Alpine Steel LLC):
I am representing the inmates working at Alpine Steel LLC. I have worked there for 5 years, with the first 18 months through Silver State Industries. Upon my release, I was offered continued employment and have worked as an executive assistant, project coordinator and information technology manager; I am now being trained as a project manager. Senate Bill 478 would make the requirements for private businesses to hire prisoners too onerous. Its provisions

would pose great disadvantages for the State, the Department of Corrections and inmates.

Robert Smith (Alpine Steel LLC):
I was incarcerated by the Department of Corrections for 10 years. I participated in the Silver State Industries program, in which I learned skills I took back to society after my release. I am now gainfully employed by Alpine Steel. Because of the opportunities offered to me through this program, it would be naïve to say people would take advantage of the program. Even if one inmate did so, the program still makes a difference in many lives.

Tim Taylor:
I am a former inmate who benefitted from the SSI program. I agree with the testimony of Mr. Jory and Mr. Smith.

Thomas Kirsch:
I am a former inmate who benefitted from the SSI program. I agree with the testimony of Mr. Jory and Mr. Smith. Any restrictions on the SSI program in the northern half of the State would impact those of us who are products of that environment.

Chair Segerblom:
Trust me, we will work to ensure inmates have training so they can obtain jobs upon their releases.

Florence Jones:
I am the mother of two people incarcerated for a total of 32 years. I oppose S.B. 478.

James G. (Greg) Cox (Director, Department of Corrections):
My Department is neutral on S.B. 478.

Mr. Bryan:
Previous testifiers suggested companies that get notice of Silver State Industries projects could veto them. The bill only seeks notice of projects in the spirit of transparency.

Senator Hutchison:
Do you think the practical effect of S.B. 478 would be that SSI labor will not be used in private enterprises? If so, could not the Committee make a policy decision to that effect?

Mr. Bryan:
Our purpose is not to impede the operation of SSI. Testimony indicates that it has beneficial consequences in terms of managing prisons and giving jobs to inmates. The part of the bill most important to us is those assurances to contact impacted private industries and labor groups. There must also be analysis of contracts proposed by the State Board of Prison Commissioners so projects do not impact the private sector. In 2006, this was not an issue. XL Steel lost 20 contracts to unfair competition.

Senator Hutchison:
If this is a policy decision, would the Committee state that SSI labor would not be used? There will always be unfair competition when prison labor provides services at so much less cost than do private sector employees. I cannot imagine that such a policy decision will not adversely affect the private sector.

Chair Segerblom:
I agree, but the reality is when times are tough economically, private sector jobs must be retained. If the State had the money, it could pay SSI to train inmates to learn job skills. The reality is that prisoners compete against union members, which is unfair competition.

Senator Hutchison:
I agree that the idea of governments providing subsidized labor for private industries at a discount is a bad idea unless there are collateral benefits like prisoner rehabilitation. Given the current tough times, the Committee could make a policy decision that the State will no longer provide discounted labor to private industries. That would be the net effect of such a policy decision.

Senator Brower:
I would have a hard time supporting S.B. 478 without knowing Department of Corrections Director Cox's opinion, even though he has stated he is neutral.

Mr. Thompson:
Part of the proposed policy decision revolves around the fact that a company owes the State $438,000 and the State has no way to collect it. At a State Board of Prison Commissioners meeting, Governor Sandoval said no Silver State Industries projects will go forward until something is done about that unpaid debt. Perhaps the State could put liens on the I-15 bridge and Wet'n'Wild Las Vegas projects because that is how the private sector recovers money.

Brian Connett (Deputy Director, Industrial Programs, Department of Corrections):
I am neutral on S.B. 478.

Chair Segerblom:
We will close the hearing on S.B. 478 and open the hearing on S.B. 395.

SENATE BILL 395: Enacts the Uniform Collateral Consequences of Conviction Act. (BDR 14-22)

Senator Tick Segerblom (Senatorial District No. 3):
Senate Bill 395 is known as the Uniform Collateral Consequences of Conviction Act. I also sponsored a similar bill, S.B. No. 87 of the 76th Session.

Senate Bill 395 from the Uniform Law Commission seeks to identify all of the consequences of pleading guilty to a crime. You have a handout (Exhibit S) from the Uniform Law Commission that explains the issue and why such a bill is needed. The Legislature passes bills that mandate gross misdemeanor and felony convictions and category offenses. It is easy to add penalties but difficult to remove them. When a defendant's attorney urges him or her to plead guilty, the consequences of doing so are unknown.

Statutes are full of provisions that bar felons from certain licensed professions like hairdresser, barber or dentist. Senate Bill 395 tries to identify all collateral consequences of the guilty plea so people can be advised exactly what a guilty plea entails and to remove postplea restrictions. Just because you are a felon, your life should not be ruined. After 10 years, convictions are sealed, and felons should have the right to enter certain professions. There is a national movement to pass this type of bill in several states (Exhibit T). This critical issue will have to be addressed at some point because we have a huge, unemployable population because of guilty pleas entered by young offenders.

Senator Kihuen:
The bill tackles the employment side of the issue. Why did not S.B. No. 87 of the 76th Session pass?

Senator Segerblom:
There were concerns about the implementation cost. Both bills require a study of all of the collateral consequences, although a mechanism to do so would cost the State nothing.

Terry J. Care:
Senate Bill 395 is not intended to be a procriminal defendant bill. Some people go to prison and then are released; others are convicted and never do time yet still suffer consequences. Society must reintegrate felons at some point. The bill would ensure that people convicted of crimes understand the consequences of a guilty plea or sentencing.

Sections 4 through 11 of Senate Bill 395 contain definitions. Of two types of collateral consequences in sections 5 and 8, "collateral sanction" and "disqualification," the former, in section 5, is:

> a penalty, disability or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability or disadvantage is included in the judgment or sentence.

Examples of this are the right to serve on a jury or hold office and the loss of other rights not necessarily contained in the penalty. In section 8, "disqualification" means:

> a penalty, disability or disadvantage, however denominated, that an administrative agency, governmental official or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

This affects the granting of professional licenses. If judges do not prohibit offenders from obtaining licenses, a regulatory agency might.

Section 12 lists the limitations of the bill's scope. Noncompliance does not render a plea or conviction unfair. Section 13 would require the Attorney General to identify parts of the Nevada Constitution, the NRS and the *Nevada Administrative Code* that impose collateral sanctions or authorize the imposition of a disqualification. In section 13, subsection 1, paragraph (d), the Attorney General must rely upon disqualifications and sanctions contained in a study by the National Institute of Justice. That study has been completed for Nevada.

Section 14 of S.B. 395 concerns notice of collateral consequences and pretrial proceedings in a guilty plea at the arraignment or at a defendant's initial court appearance. The notice in section 14 is deliberately flexible and does not say which agency will deliver the information. It could be the court, court clerk, pretrial services, the prosecution or jail authorities. Section 15 concerns notice of collateral consequences at sentencing and upon release. These sections ensure released defendants understand prohibitions like the right to bear arms, so they do not do something stupid.

Section 16 is the authorization required for collateral sanctions and addresses ambiguities therein. Section 17 stipulates that the decision to disqualify would be made by a regulatory authority. It gives discretion to the decision maker to impose a disqualification. Section 18 deals with effective convictions by other states or the federal government. If there is a misdemeanor conviction by another state, it will be treated as a misdemeanor in Nevada. The same is true for felony convictions.

Section 19 of S.B. 395 is the order of limited relief:

> At or before sentencing, an individual convicted of an offense may petition the sentencing court for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing.

In section 19, subsection 2, the individual can request a limited order of relief by establishing three requirements with a preponderance of evidence. The petition must materially assist the individual with obtaining or maintaining employment, education, public benefits, occupational licensing or housing. The person must have a substantial need for the relief. Granting of the petition must not pose a safety or welfare risk to the public or individual. The court does not

have to automatically consider these factors, with the burden of proof on the petitioner.

Section 19, subsection 3 lists the circumstances specified in the NRS in which the order of limited relief would not be applicable. Section 19, subsection 8 deals with the issuance, modification or revocation of limited relief if a prosecutor thinks there is just cause. Section 20 states an order of limited relief may be introduced as evidence of a person's due care if a proceeding occurs as a result of hiring an ex-convict. It gives protection to private and public entities transacting with people who have orders of limited relief.

Senator Ford:
It is a good idea to give offenders notice of postplea collateral consequences. Is it true that only North Carolina has enacted legislation like S.B. 395?

Mr. Care:
Yes. It has also been introduced in the legislatures of New Mexico, New York and Connecticut.

Senator Ford:
How old is the concept of the bill? Why have only one state enacted and four states introduced similar bills?

Senator Segerblom:
In 2011, Nevada was the first state to advance its precepts. That is why so few states have adopted them.

Mr. Care:
The primary concern has been the fiscal impacts. The estimated cost of implementation in Nevada would eventually be more than $400,000 (Exhibit U).

Senator Brower:
The bill presents an interesting idea, but the concept is already captured in defense counsels' duties to inform clients about all consequences of the guilty plea. Why is that not true?

Mr. Care:
The last time I was involved in sentencing, before my clients entered into a plea agreement, the judge asked them a litany of questions. One consequence was

denial of the right to bear arms if the conviction is for domestic violence. In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the U.S. Supreme Court said that if counsel is competent, one test at the sentencing hearing is whether the counsel advised the defendant that a guilty plea could pose the risk of deportation.

Senator Brower:
Padilla exempts the risk of deportation from statute, which does not require anything else to be placed in a defendant's record as part of the plea colloquy. New Mexico Governor Susana Martinez vetoed a similar bill for that and other reasons. Only North Carolina has implemented such a bill. Because defense counselors are already required to advise clients about everything under discussion, why should Nevada implement S.B. 395?

Senator Segerblom:
We are trying to identify many current practices. Competent counsel cannot potentially advise clients about collateral consequences because they are unknown and have not been properly catalogued. Senate Bill 395 would allow ex-convicts to get out from under the consequences. This is its most important aspect, as it is one thing to know what you cannot do, but it is also critical to find a vehicle to eventually do things you want to do. The State must figure out a way to bring thousands of felons back into society, or they will be a burden on the public and themselves.

Senator Ford:
I generally agree with Senator Brower's reluctance to require practices that already exist. However, not all counselors do what they are supposed to do. Many times, people make uninformed decisions on things about which they ultimately have no recourse to change. Outside of the bill's fiscal impacts, I cannot see any harm in requiring notice that consequences will apply before a guilty plea is entered. What problem would there be with such a policy decision?

Brittnie Watkins:
I am a student attorney in the Family Justice Clinic at the University of Nevada, Las Vegas, William S. Boyd School of Law. I have witnessed firsthand the impacts of collateral consequences on families. Civil penalties not imposed at trial severely limit people's access to employment, housing, education and other life necessities simply due to criminal convictions. The Family Justice Clinic provides civil representation and support to low-income families in Las Vegas

and surrounding communities. They confront many challenges, foremost being a high probability of having family members struggle with the aftereffects of criminal convictions.

There is stigma associated with convictions. In paying their debt to society, many offenders realize only after being jailed or accepting a guilty plea that their access to jobs, occupational licenses, housing, public benefits and other things will be sharply limited. These consequences are invisible at the time a crime is committed or at sentencing hearings, but they are not collateral. Rather, they impact families' well-being and may directly determine whether ex-offenders can establish themselves in communities with jobs to support their children or get housing to obtain some measure of stability.

Access to critical life supports may determine whether people can successfully reintegrate as law-abiding citizens or be caught up in a cycle of incarceration and crime, becoming a resource drain on society through constant recidivism. All social science research on this topic reveals that the most critical things an individual needs to stay out of jail are access to employment and family support.

Criminal defendants should be made aware of collateral consequences and lasting effects of convictions before accepting plea bargains or sentencing. This information is especially important to defendants considering guilty plea bargains who might otherwise invoke their constitutional right to a fair trial. Such an unenlightened choice to make a plea bargain is especially disconcerting when considering the large number of plea-bargained cases.

Nick Donath:
I am a student attorney in the Family Justice Clinic at the William S. Boyd School of Law and a third-year law student. I am an intern in the field of criminal justice. My extracurricular service work involves working with many people with criminal backgrounds—misdemeanors and felonies—as a result of alcohol and drug convictions. I know many people suffering from collateral consequences.

In my intern capacity, I met a single mother pursuing degrees to obtain better employment. The State charged her with several criminal counts involving misdemeanor drug possession. Because it was a first offense, the district attorney told her if she pled guilty, she would receive a single misdemeanor conviction of possession with no intent to sell drugs, pay a fine and be required

to stay out of trouble. In lieu of additional jail time, she could do community service work and take a short drug counseling class.

When I presented this offer to my client, she adamantly rejected it because she did not have a drug conviction on her record. If she did, she would automatically become ineligible for student loans. I had no idea this was true, but the district attorney did. He changed the offer to pleading guilty to misdemeanor disorderly conduct. Most defendants have no idea what collateral consequences lie ahead. Many newer district attorneys might not feel they had the authority to modify their offers.

I and many others will benefit from the resources proposed in S.B. 395. It would make me a better lawyer. As a business owner, I know families and the State economy suffer when society double-punishes criminals, their loved ones and—ultimately—ourselves. The awareness and relief the bill would bring will be a first step to a healthier community and return to the State far more than the few hundred thousand dollars it will cost to implement it.

Chris Frey (Washoe County Public Defender's Office):
We fully support S.B. 395.

Steve Yeager (Clark County Public Defender's Office):
We fully support S.B. 395. Collateral consequences can be more significant than a criminal defendant's loss of liberty. A resource like the bill would give us a better handle on the consequences, of which there are many. We do the best we can with limited resources.

Diane R. Crow (State Public Defender):
I have been a public defender for 23 years and do not know all of the collateral consequences of guilty pleas. For particular defendants, I may know some of them. If someone wants to go to beauty college or barber school, I know he or she cannot get a State license. Senate Bill 395 would be a great resource to make my job easier.

Brett Kandt (Executive Director, Advisory Council for Prosecuting Attorneys):
You have a copy of my written testimony (Exhibit V). I submitted two general plea agreement documents (Exhibit W) from Clark and Washoe County district courts. Note that the direct consequences of convictions and sentences and the collateral consequence of possible deportation upon individuals who are not

U.S. citizens are already laid out. Those are the only consequences required to be disclosed under the Nevada Constitution.

Senator Ford:
What do you specifically object to in S.B. 395?

Mr. Kandt:
I will meet with you individually as I cannot quickly summarize my objections.

David W. Clifton (Reno/Verdi Township Justice Court, Department 5, Washoe County):
I have been involved in the criminal justice system for 29 years, including 25 years as a prosecutor, 3 years as a defense attorney and 2 years as a Reno justice of the peace.

You have a list (Exhibit X) of problems I foresee if S.B. 395 is implemented. I am worried about drastic and unintended consequences. There is a huge difference between direct and collateral consequences. Only the former are required to be in a plea canvass. The bill would place the obligation on the court to ensure a defendant understands the notice of collateral consequences. Indeed, it would establish limited relief hearings to go on *ad infinitum* to determine if courts should give such relief from collateral consequences. That is well beyond the court's provenance in determining if pleas are voluntary and imposing direct consequences. Courts would go far beyond their jurisdictions and overstep the bounds of appropriate government agencies trained to be involved in collateral consequences.

In just a half-hour, I listed 26 collateral consequences, without referring to the NRS. Courts and defense attorneys should not decide whether a defendant will get consequences relief or be involved in the discretion. A Nevada Supreme Court opinion, *Nollette v. State*, 118 Nev. 341, 46 P.3d 87 (2002) stated,

> Because collateral consequences of a criminal conviction are often limitless, unforeseeable or personal to the defendant, requiring an advisement with respect to every conceivable collateral consequence would impose upon the trial court an impossible, unwarranted and unnecessary burden.

Much more than the cost of implementing the bill worries me. The bill could be a nightmarish headache and unwarranted, according to the above quote. Section 12 of the bill acknowledges no legal requirement to disclose collateral consequences. It contains U.S. Constitution issues, specifically with the Fifth and Sixth Amendments.

John T. Jones, Jr. (Nevada District Attorneys Association):
Senate Bill 395 could result in longer prison stays and detention. It would virtually eliminate the ability of prosecutors or defense attorneys to accept early offers at arraignment. The bill states there would be no new requirements for the defense, but that is untrue. The judge must canvass whether the defendant understands the collateral consequences; if not, his or her defense attorney will have to explain them.

Section 19 states defendants may apply at or before sentencing for limited relief. The defense and district attorneys and justices of the peace are put in the position of representing the points of view about particular consequences of various agencies, boards and counties. As a district attorney, I have no understanding of why the State Board of Cosmetology would put a particular consequence on a defendant. I cannot adequately articulate for the Board or State why, in each instance, relief should be granted from specific consequences.

Tom Conner (Chief Administrative Law Judge, Office of Administrative Hearings, Department of Motor Vehicles):
You have a copy of my written testimony and a proposed amendment (Exhibit Y) to S.B. 395. Section 19, subsection 3, paragraph (b) would establish an anomaly, because the more severe the infraction, the less likely a person is to obtain a restricted driver's license or the restoration of driving privileges. People not allowed to have restricted licenses could petition the court for an order of limited relief. We do not oppose the bill's general principles, just its specific language involving the Department of Motor Vehicles.

Pat Conmay (Chief, Records and Technology Division, Department of Public Safety):
My Division houses the Central Repository for Nevada Records of Criminal History. Our only concern with S.B. 395 is the requirement in section 19, subsection 10, paragraph (a) that courts must notify the Repository if there is relief from a consequence. We do not get much disposition information, and

without a time frame for that notification, we are not sure we would get it. If that happens, we cannot comply with the bill's provisions.

John McCormick (Rural Courts Coordinator, Administrative Office of the Courts):
I will give the Committee a written history of S.B. 395 and similar bills from other states.

Mr. Care:
The Committee has a grasp on what the bill does and does not do. There are fiscal concerns to take into account.

Senator Kihuen:
We will close the hearing on S.B. 395.

Chair Segerblom:
We will open the work session.

Mindy Martini (Policy Analyst):
Senate Bill 104 would eliminate the State Board of Parole Commissioners' psychological review panels (Exhibit Z).

SENATE BILL 104: Revises provisions governing parole. (BDR 16-241)

State Board of Parole Commissioners Chair Connie Bisbee submitted a proposed amendment that would eliminate psychological review panels, Exhibit Z. Instead, the Department of Corrections would evaluate each prisoner convicted of a sexual offense using an accepted standard of assessment. The Static 99-R method was discussed by the Committee. The assessment must be given to the Board prior to the parole hearing. The proposed amendment also states the Department of Corrections must ensure employees are trained to assess prisoners and establish procedures to correct errors and ensure accuracy. Chair Segerblom submitted an oral proposed amendment to S.B. 104 that any completed assessment of whatever standard is decided must be considered by the Board.

Connie S. Bisbee (Chair, State Board of Parole Commissioners, Department of Public Safety):
Director Cox told me the Department of Corrections fully supports S.B. 104 with our proposed amendment and Senator Segerblom's oral amendment.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 104.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Mr. Cox:
I want to get my support of S.B. 104 on the record.

Chair Segerblom:
Seeing no other business before the Senate Committee on Judiciary, we are adjourned at 11:18 a.m.

RESPECTFULLY SUBMITTED:

_____
Patricia Devereux,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	2		Agenda
	B	9		Attendance Roster
S.B. 321	C	9	Senator Justin C. Jones	Presentation: Foreclosure Impact
S.B. 321	D	2	Ernest Figueroa	Written Testimony
S.B. 321	E	2	Venicia Considine	Written Testimony
S.B. 321	F	2	Katherine G. Pentogenis	Written Testimony
S.B. 321	G	3	Consumers Union and Center For Responsible Lending	Letter of Support
S.B. 321	H	1	Barry Gold	Written Testimony
S.B. 321	I	1	Advisory Council on Mortgage Investments and Mortgage Lending	Proposed Amendment
S.B. 321	J	24	Senator Justin C. Jones	Mock-up of Proposed Amendment 7922
S.B. 321	K	20	Howard Watts III	Closing the Gaps: What States Should Do to Protect Homeowners From Foreclosure
S.B. 321	L	3	Thomas L. Blanchard	Written Testimony and Proposed Amendment
S.B. 307	M	3	Senator Ben Kieckhefer	Proposed Amendment
S.B. 307	N	24	Julia S. Gold	A Comparison of the Alaska, Delaware, Nevada, and South Dakota Trust Laws and Asset Protection Trust Statutes
S.B. 307	O	24	Julia S. Gold	Steve Leimberg's Asset Protection Planning Email Newsletter—Archive Message #202
S.B. 307	P	4	Legislative Committee of the Probate and Trust Law	Written Testimony

			Section of the State Bar of Nevada	
S.B. 307	Q	7	Legislative Committee of the Probate and Trust Law Section of the State Bar of Nevada	Comments to SB 307
S.B. 307	R	1	Julia S. Gold	Proposed Amendment from Robert Armstrong
S.B. 395	S	4	Senator Tick Segerblom	Uniform Law Commission, Why States Should Adopt UCCCA and Collateral Consequences of Conviction Act Summary
S.B. 395	T	3	Senator Tick Segerblom	National Inventory of the Collateral Consequences of Conviction
S.B. 395	U	4	Terry J. Care	Fiscal Note
S.B. 395	V	4	Brett Kandt	Written Testimony
S.B. 395	W	12	Brett Kandt	Examples of General Plea Agreements
S.B. 395	X	3	David W. Clifton	Problems with SB 395
S.B. 395	Y	6	Tom Conner	Written Testimony and Proposed Amendment
S.B. 104	Z	4	Mindy Martini	Work Session Document