Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests Present:

Virgil Anderson	Triple A Insurance
Loretta Bowman	Clark County Clerk
Seymore Brown	Chief Judge, City of Las Vegas
Daryl Capurro	Nevada Franchised Auto Dealers Assoc.
Steve Dollinger	Judge, Reno Municipal Court
Bill Dunseath	Publich Defender, Washoe County
Dan Fitzpatrick	Clark County Manager's Office
Virgil Getto	Assemblyman
Dick Ham	Bureau of Alcohol and Drug Abuse
Pete Kelley	Nevada Retail Association
Brent Kolvet	District Attorney's Association
John Mendoza	Chief District Court Judge of the Eighth Judicial Court, Clark County
Gene Milligan	Nevada Association of Realtors
Don Rhodes	Deputy Research Analyst
Michael Rowe	Chief Criminal Deputy, City Attorney's Office
George Vargas	General Counsel, Nevada Bankers Assoc.
Lloyd Zook	Court Administrator, City of Las Vegas

Chairman Hayes called the meeting to order at 8:10 a.m.

ASSEMBLY BILL 46

Requires that certain agreements to which consumers are parties be written in plain language.

Assemblyman Virgil M. Getto, stated that AB 46 came about by people who were frustrated by legal terminology. Mr. Getto presented his testimony to the Committee, see Exhibit A.

AB 46

Mr. Don Rhodes, Deputy Research Analyst, said there is a movement in several other states that is focused primarily on insurance contracts requiring definitions of readability in those contracts. Mr. Rhodes said there are presently 15 states moving in the direction of expanding this type of language to all consumer contracts, usually set at an amount less than $50,000. Assemblyman Getto's bill, which is patterned after the New York law, makes certain statements about the understandability of the language and deals specifically with the consumer contracts.

Mr. George Vargas, General Counsel, Nevada Bankers Association, presented his testimony to the Committee, see Exhibit B.

Mr. Daryl Capurro, Nevada Franchised Auto Dealers Association, felt the problems with AB 46 with respect to contracts that automobile dealers are involved with are myriad. Mr. Capurro said that if you took a standard contract that is in use for the sale of vehicles and removed the requirements that are contained in Regulation Z, Truth and Lending, you would only have blank lines with the signature at the bottom. Mr. Capurro was not sure that by incorporating this into Nevada law it would solve the kind of problems that we now have in reading whether it's an insurance contract, real estate transaction or whatever.

Mr. Pete Kelley, Nevada Retail Association, stated that NRA opposes AB 46 simply because it places a burden on sellers and lenders of knowing what the common and everyday meanings are. Mr. Kelley asked if "common and everyday meanings" apply to college graduates, high school graduates or graduates of elementary schools. The bill is written to assume that words today have a common and everyday meaning. If AB 46 is to move Mr. Kelley suggested an amendment which would make AB 46 more practical, see Exhibit C.

Mr. Virgil Anderson, Triple A Insurance, stated that with respect to insurance contracts, they recognize the problem is very real but much of the language they have in the policy is mandated by statute. There is a substantial volume of law governing insurance and must tract that language in policy with statutes.

Mr. Gene Milligan, Nevada Association of Realtors, stated this was a good attempt to solve a problem that does exist. Mr. Milligan felt the bill drafter did not do justice to Mr. Getto's attempt. Mr. Milligan said that realtors have looked at their contracts and have standardized the contracts so that everyone is using the same form. The Nevada Association of Realtors do oppose the bill because they feel it does not do the job it was intended to do.

ASSEMBLY BILL 186

Limits to district courts authority to order civil commitment of alcoholics and drug addicts charged with crimes and makes plea of guilt condition of defendants' eligibility.

Mr. Brent Kolvet, District Attorney's Association, gave the Committee members copies of the proposed amendments to AB 186, see Exhibit D. These amendments were prepared by Mike Malloy, Washoe County District Attorney's Office. This bill would require: (1) anyone who wishes to take advantage of the diversion procedure would have to have been under the influence of alcohol or drugs at the time the act was committed; and (2) have to have been adjudicated as guilty of the crime prior to electing treatment. The original amendment required guilty plea and there were some constitutional questions as to that type language. These amendments would permit either a guilty plea or trial but in any event there would be an adjudication of guilt. Under Section 2 of the proposed amendments, page 1 and Section 3 on page 2, note that it has been specifically provided for that the district judges and municipal courts would have jurisdiction of the cases. Mr. Kolvet stated that the municipal and justice courts are in favor of this bill if the amendments are added. In addition the proposed amendments to the bill would specifically permit continuing or deferring of sentence after adjudication of guilt until such time as the alcohol diversion procedures have been completed. As it provides for continuation of the sentencing date rather than a probationary setting it will probably satisfy the constitutional prohibition against justice and municipal courts granting probation. Mr. Kolvet said that once treatment procedures have been completed the court may dismiss the charges. This would therefore allow for the satisfaction of some objections stated earlier. Mr. Kolvet said the person would be under conviction at the time, however at the completion of the treatment program the conviction would be erased.

Mr. Seymore Brown, Chief Judge Municipal County, City of Las Vegas and Lloyd W. Zook, Court Administrator for the Municipal Court, City of Las Vegas, addressed themselves to the proposed amendment. Judge Brown stated there must be some alternative other than fine or jail when dealing with first offenders and problems in lower courts. Judge Brown said they have court counseling staff that works with alcoholics, drug abusers, prostitution, petty larceny, to try to understand what the problem is and get them into a counseling situation. Judge Brown stated that in his court, if it is a first offense, charges are dismissed because he feels there must be a prize at the end of their six months or year. Judge Brown stated that he liked the language "may be dismissed" because it should be left up to the judge because he knows what the circumstances are concerning that person. Judge Brown felt it was very important that we have a program to help people.

AB 186

Lloyd Zook addressed the bill as originally proposed and pointed out if passed in this form it would virtually eliminate the lower court counseling that is now in operation in municipal court. See Exhibit E for Mr. Zook's testimony. Mr. Zook stated that in the whole justice system, be it municipal court or other courts, one of the goals and purposes is to change the behavior of the defendant. People do what they do for a reason, if they are to be allowed to continue their program in the lower court counseling, should be able to furnish the judge with the necessary information that he needs to make proper judgement but should be able to confront the real issue, the problem the individual has. Mr. Zook stated that if they are not able to do this it then becomes a treadmill situation where we will keep seeing that person repetitively through the court. Mr. Zook felt that with the lower court counseling program they are able to address the issue and really get to the heart of the problem.

In response to Mr. Fielding's question as to where treatment centers are located Mr. Dick Ham, Bureau of Alcohol and Drug Abuse stated there is a treatment facility in Fallon, Nevada which is operated by the Churchill Counsel, which is a two week treatment facility. From Fallon the person is referred back to the community for continued treatment. Mr. Ham said the greatest number of referrals come from the municipal courts and the district courts in Washoe and Clark County. Mr. Ham said the judges in the small counties will contact the Bureau to see whether or not a particular facility has been approved. An evaluation of the person will be done to determine whether that person would benefit from treatment. In the small counties the judges there tend to use Ward 10 of the Nevada Mental Health Institute. This is solely for the use of alcoholism and drug abuse and is a program whose usual period of time runs six months. Mr. Ham said there were also counsels in Ely, Tonopah, Carson City, Elko and Hawthorn. These are basically counseling services themselves which means that if in the opinion of the person doing the evaluation and the opinion of the judge that this will suffice, fine, but because of lack of actual residential facilities then the judge, by necessity, elects to have the person sent to an outside area.

Judge Brown stated that he did not feel charges should not be automatically dismissed merely because someone has come through the program successfully. Suggested changing line 3, page 3, from "will be dismissed" to "may be dismissed" and should be up to the discretion of the judge. Judge Brown felt with this amendment it would give authority to three types of courts; municipal, justice and district courts, so that they can use the treatment programs.

AB 186

Mr. Steve Dollinger, Judge, Reno Municipal Court representing the Nevada Judges Association, stated they were in favor of the amendments but opposed to the original bill because 458 is the only rehabilitative statute that they can use at the present time. This statute is usually used with the person who is living in the community, who has a family and a steady job. Mr. Dollinger stated that was why they believed rehabilitation is so important. Mr. Dollinger stated that under his program an individual who has indicated he believes he may have a problem with alcohol is first evaluated. The agency determines whether or not he is an alcoholic and the judge then determines whether or not he should go into the program. Mr. Dollinger said that the person is usually instructed to attend weekly counseling, which is paid for by the individual, and must stay in counseling until a licensed substance abuse counselor certifies to the judge that the person is no longer a danger to himself or society as a result of his use of alcohol. If the individual is successful in the program, which in Judge Dollinger's court is no less than three years, the charges may be reduced or dismissed depending on how the statute will come down. If that person can go three years without any alcohol related arrests or convictions plus getting certified from a counselor, then he is rewarded at the end. Mr. Dollinger stated that in regard to points on driver's license, in their court they do not send points down until the person falls off the program. Mr. Dollinger stated he receives a monthly report from the counselor on the individual's participation in the program, as soon as the court finds out he is drinking he comes back in, is prosecuted and gets the points.

Mr. Michael Rowe, Chief Criminal Deputy with the City Attorney's Office, pointed out to the Committee that the City of Reno had 4,200 cases in 1976, one-half of which were alcohol related; in 1978 they had 11,000, he does not see this problem slowing down. Mr. Rowe stated the main thing they would like to see is that this become a post trial situation. The problem they are having is that putting a misdemeanor case on after three years, the police may be gone, witnesses left the area, they would not be able to prove the case at that time. Mr. Rowe said he would like to see a change in the language so that there is a trial immediately, that way they can finish carrying the case and then go on to prosecute others as they come up. If the amendments are not approved, Mr. Rowe felt most defendants would not have an attorney to represent them, therefore they could not get to district court on appeal; if the amendments are not approved these people would be deprived of any rehabilitation.

AB 186

Mr. Bill Dunseath, Public Defender Washoe County, had difficulties with the present bill which stemmed from the fact that it will not allow municipal courts to operate in this program. Mr. Dunseath spoke against the bill as it presently stands but stated he would be happy with the amendment.

ASSEMBLY JOINT RESOLUTION 1 OF THE 59TH SESSION

Proposes to remove requirement that county clerk be ex officio clerk of court.

Judge John Mendoza, Chief District Court Judge of the Eighth Judicial Court in Clark County and President of the Nevada District Judges Association, gave his support of AJR 1. Judge Mendoza stated that when talking about the county clerk's function that office is divided into two divisions: the court function and the other executive functions of that particular office. Judge Mendoza stated that we are now dealing particularly with the Las Vegas and Reno areas. We have been given a mandate from the people that we unify the court systems. We have also had imposed upon us by that constitutional mandate the administrative directions from the Supreme Court. The Supreme Court has recently enacted a provision whereby judges in the various five regions of the state are required to form themselves into judicial counsels. Judge Mendoza stated that as he viewed the testimony, the court clerks have taken the position that they have a mandate from the people to keep the records for the district courts in order to control them. The municipal court clerks are appointive and under the jurisdiction of the judge in the courts. The justice of the peace court clerks are under the courts and subject to their jurisdiction. The district court is the only court system of the four systems of the state that has this peculiar provision which authorizes a member of the executive branch to keep our records. Judge Mendoza stated that if you look at the statutes of the State of Nevada they are not county clerks records they are court records, she is custodian of the court records. It is important that you secure that information to be able to plan your setting of cases. There is no mandate in the statutes giving the clerk the power to set cases for you, to control the case flow. The only authority the statute gives her is to maintain our records. In some jurisdictions the judges have opted to allow their clerks to really get into case setting and case management but there is no legislative mandate that she can do so. The mandate is upon the courts to manage their files and to manage their system. Judge Mendoza stated they were recently requested by the Senate Judiciary Committee to give additional statistics on case load management as far as the courts were concerned because we had requested them to consider our request for additional judges for Clark County. Judge Mendoza stated that his administrator went to the clerk's office and was unable

AJR 1 of the 59th

to secure those statistics because that is not the way they keep their statistics. Judge Mendoza said they have pleaded to the point where they do not bother to call the clerk anymore, when such things as matters are not on calendar and lawyers come and request to be put on the calendar and documents not filed; we have to continue the proceedings and send away the litigants, the lawyers and everyone else in order that we continue the matter so that we can have an opportunity to do so, matters which are miscalendared, orders which are lost, its to the point of complete frustration. Judge Mendoza felt these were basically the problems they have within the system. Every study that has been performed by the American Bar Association or anyone else on the most recent standards on court organization is that the clerk should not have control of that function, that is a court function. The court should have control of their own records. Courts will continue to be inefficient as long as this continues. Judge Mendoza said there would be no increase in cost, he stated that no where has there been any increase in cost when the courts have taken over the clerk's functions. Judge Mendoza asked the Committee not to vote on this particular concept at this time simply because of the fact the judges want you to; asked that the Committee release this and send it to the floor. Judge Mendoza stated that Judge Brown, Past President of the Nevada Judges Association was in support of this bill.

Mr. Zelvin D. Lowman, Court Administrator, Eighth Judicial District Court, presented his testimony to the Committee, see Exhibit F.

Judge Seymore Brown stated that in every one of their lower courts they manage and handle their own cases. They have a court clerk's office with approximately fifty personnel. The cases are completely under the control of Judge Brown and three other judges, they have complete control over the cases and the management of those cases going to trial, etc.

Mr. Dan Fitzpatrick, Clark County Manager's Office representing the Board of County Commissioners of Clark County, stated that on January 26 testimony was presented by Loretta Bowman, Clark County Clerk, on the fiscal impact to Clark County taxpayers if the clerk functions were split from the responsibilities of the county clerk. The Committee members at that time questioned these figures and asked Commissioner Broadbent if he would have his staff prepare an analysis of the projected cost expenditures. Mr. Broadbent came back and assigned this to the county manager and the county manager assigned the project to Ardel Kingham, a budget analyst. On February 14 a copy of these findings were distributed and the study does demonstrate clearly that the splitting of these functions would be very costly to Clark

AJR 1 of the 59th

County taxpayers. The analysis showed the costs were at least equal or greater than the figures quoted in an earlier report. The Board of County Commissioners finds these additional costs unwarranted and unacceptable. Mr. Fitzpatrick stated that 80% of the paperwork that flows through the office relative to the clerk of the court functions is never seen by the judges, only 20% of the work finds its way to the judicial system. The Board as well as the voters believe Mrs. Bowman is doing a good job and the citizens of Clark County are receiving an excellent service from the county clerk. Mr. Fitzpatrick stated that the Board wanted to know what new or expanded services were going to be provided to tax payers to warrant this resolution and its intended increased expenditures. If there is a problem between the judges and the county clerk it would seem to be administrative in nature or possibly simply a communication problem and should be resolved around a conference table in Las Vegas. Both the Board of County Commissioners of Clark County and the Nevada Association of County Commissioners are opposed to AJR 1 of the 59th Session and urge the Committee not to amend the state constitution.

Mrs. Loretta Bowman, Clark County Clerk, read a letter from the Nevada Land Title Association opposing the provisions of AJR 1, see Exhibit G. Mrs. Bowman said this was a very drastic step considering changing the constitution of the State of Nevada to believe that you could be giving better service to the people who are involved with the courts. The clerks have only one duty and have stressed it for years and that is to serve the courts and to serve the public to the best of their ability. Mrs. Bowman said the problems have not been addressed to her personally and her feelings are that there are no problems with the courts or the public, she feels that communication is the problem and thinks there should be training sessions for the clerks in the State of Nevada. Mrs. Bowman said that if the judges of the courts have problems the clerks should be the first to know. Mrs. Bowman felt the courts do not know the problems in record keeping. The judges have been invited on many different occasions to come and see the operations but have not done so.

Mr. Coulter stated that he was associated with a major title company in Reno and has spoken with the president of the company about this particular bill. He stated that the title companies were only concerned that they continue to have access, beyond that point they could care less, Mr. Coulter felt this reflected the opinions of the people mentioned in the letter Mrs. Bowman read earlier. Mr. Coulter said he could not accept the letter because that was the only concern.

AJR 1 of the 59th

Mr. Horn questioned Mrs. Bowman as to the cost to the taxpayers. Mrs. Bowman's figures indicated an initial and ongoing cost of $750,000, which is an additional cost, not transferred. Mrs. Kingham's figures showed an initial cost of $906,000 with an ongoing cost to the taxpayer of approximately $447,000 per year for additional personnel. Mr. Fitzpatrick stated the scope and nature of the transfer would be very severe.

Mr. Horn further stated that he found it very disappointing and somewhat offensive that both sides could not resolve the problem without bringing it to the legislature for us to resolve.

Chairman Hayes adjourned the meeting at 10 a.m.

Respectfully submitted,

Sharon L. Day

Sharon L. Day
Secretary

A.B. 46

ASSEMBLY BILL 46 WOULD PROVIDE FOR A PLAIN LANGUAGE LAW. THE BILL IS SIMPLE AND TO THE POINT. IT SAYS THAT CONSUMER CONTRACTS MUST BE WRITTEN IN A CLEAR AND COHERENT MANNER.

THE BILL AFFECTS EVERY WRITTEN AGREEMENT INVOLVING LESS THAN $50,000 WHICH HAS AS ITS SUBJECT MONEY, PROPERTY OR SERVICES USED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

A.B. 46 PROVIDES FOR RECOVERY OF ACTUAL DAMAGES AND A PENALTY OF $50 FROM PERSONS WHO FAIL TO COMPLY WITH ITS PROVISIONS. A $10,000 LID IS PLACED ON RECOVERABLE DAMAGES.

WHY DO WE NEED A.B. 46? PERHAPS SIR JOHN FORTESCUE, CHIEF JUSTICE OF THE KINGS BENCH, KNEW PART OF THE REASON. LONG AGO, IN 1458, HE SAID:

> SIR, THE LAW IS AS I SAY IT IS, AND SO IT HAS BEEN LAID DOWN EVER SINCE THE LAW BEGAN.
>
> AND, WE HAVE SEVERAL SET FORMS WHICH ARE HELD AS LAW, AND SO HELD AND USED FOR GOOD REASON, THOUGH WE CANNOT AT PRESENT REMEMBER THAT REASON.

EXHIBIT A

PURVEYORS OF LEGAL DOCUMENTS HAVE CHANGED THEIR WAYS REMARKABLY LITTLE IN THE 521 YEARS SINCE CHIEF JUSTICE FORTESCUE CONFESSED THAT NO ONE, NOT EVEN THE JUDGES WHO MAKE THE LAW, KNOWS WHY THE DOCUMENTS ARE WRITTEN AS THEY ARE.

ALTHOUGH LITERACY HAS INCREASED MEASURABLY SINCE THEN, THE AVERAGE CONSUMER TODAY STANDS LITTLE BETTER CHANCE OF UNDERSTANDING THE "SET FORMS" OF THE DOCUMENTS NECESSARY TO CONDUCT BUSINESS THAN THE RUDEST PEASANT IN THE REIGN OF HENRY VI.

INSURANCE POLICIES, PROMISSORY NOTES, SECURITY AGREEMENTS, STOCK PERSPECTUSES, WARRANTIES AND SCORES OF OTHER FORMS ARE VIRTUALLY UNREADABLE. UNTIL RECENTLY THEIR PONDEROUS PROSE WAS ASSUMED TO BE AN UNAVOIDABLE HAZARD OF MODERN LIFE. BUT DURING THE PAST FEW YEARS, A NUMBER OF BANKS, INSURANCE COMPANIES, AND OTHER BUSINESSES THAT DEPEND ON A STEADY SUPPLY OF CONSUMERS WILLING TO ENTER INTO LEGAL CONTRACTS HAVE BEGUN TO QUESTION THE ASSUMPTION THAT THE LANGUAGE OF THE LAW MUST REMAIN FIXED AND INCOMPREHENSIBLE.

THERE HAS BEEN SOME HELP IN THIS REGARD FROM THE STATE LEGISLATURES.

ACCORDING TO MATERIAL I HAVE RECEIVED FROM THE NATIONAL CONFERENCE OF STATE LEGISLATURES SEVERAL STATES, INCLUDING ARIZONA, DELAWARE, FLORIDA, MASSACHUSETTS, MINNESOTA, PENNSYLVANIA AND TEXAS HAVE PASSED LAWS OR REGULATIONS

DEALING WITH INSURANCE CONTRACT READABILITY.

THE ARENA IS NOW GROWING LARGER.

ON JUNE 1, 1978, THE NATION'S FIRST PLAIN ENGLISH LAW FOR CONSUMER CONTRACTS WENT INTO EFFECT IN NEW YORK STATE. UNDER THIS HISTORIC LAW, ALL CONSUMER CONTRACTS MUST BE WRITTEN IN UNDERSTANDABLE, EVERY DAY LANGUAGE WITH HEADINGS THAT ARE IN LOGICAL ORDER. A.B. 46 IS PATTERNED AFTER NEW YORK'S LAW.

THE NEW YORK LAW HAS STARTED A TREND. AT LEAST 14 OTHER STATES HAVE RECENTLY CONSIDERED PLAIN LANGUAGE LEGISLATION (CONNECTICUT, ILLINOIS, IOWA, KENTUCKY, MARYLAND, MICHIGAN, OHIO, MASSACHUSETTS, NEW JERSEY, NEW MEXICO, PENNSYLVANIA, VERMONT, WASHINGTON AND WEST VIRGINIA).

IF YOU HAVE EVER SUFFERED FRUSTRATION, OUTRAGE OR DESPAIR OVER YOUR INABILITY TO UNDERSTAND YOUR INSURANCE POLICY, LEASE, WARRANTY OR INSTALLMENT LOAN CONTRACT, DON'T FEEL ALONE. EVEN THE SPECIALISTS ADMIT THAT THEY CAN'T UNDERSTAND THE GOBBLEDEGOOK. SUCH CONFESSIONS HAVE HELPED TO LAUNCH THE PLAIN LANGUAGE MOVEMENT, WHICH IS FOCUSING ON THOSE LAWYERS WHO MAKE A BUSINESS OUT OF LINGUISTIC OBSCURITY.

A.B. 46 WOULD PUT AN END TO THE GOBBLEDEGOOK!

NOW, YOU ARE GOING TO HEAR ARGUMENTS THAT, "READABLE CONSUMER CONTRACTS MAY PRODUCE EXCESS LITIGATION UNTIL THEIR MEANINGS ARE CLEARLY ESTABLISHED," AND THAT, "PLAIN LANGUAGE CONTRACTS WILL BE OVERSIMPLIFIED AND THUS MISLEAD CONSUMERS."

I SAY BUNK!

WHETHER BECAUSE OF LAZINESS, A DESIRE TO IMPRESS BY COMPLEXITY, OR LACK OF COMPETENCE, THE LEGAL PROFESSION TURNS OUT TOO MUCH VERBOSE AND CONVOLUTED WRITING. MOST OF THE FAT IN LEGAL PROSE COULD, WITH A LITTLE EFFORT, BE CARVED AWAY ENOUGH FOR THE OUTLINES OF A HIDDEN THOUGHT TO EMERGE.

I THINK THE TIME HAS ARRIVED IN NEVADA FOR PLAIN LANGUAGE IN CONSUMER CONTRACTS.

I URGE YOU TO CONSIDER SERIOUSLY AND CAREFULLY THE PROVISIONS CONTAINED IN A.B. 46.

THANK YOU.

EXHIBIT A

STATEMENT IN OPPOSITION TO A.B. 46

A.B. 46 is the so-called "plain language bill" effecting and controlling every written agreement involving less than $50,000 which has as its subject money, property or services used or acquired for use primarily for personal, family or household purposes and to which a "consumer" is a party. Any such agreement must be "written in a clear and coherent manner using words with common and everyday meanings" and appropriately divided, with explanatory headings for various sections.

There are no other definitive or specific guidelines. Failure to comply with this very loose and ambiguous general directive would give rise to a lawsuit involving a recovery of "any actual damages sustained plus a penalty of $50."

Seemingly, there is no maximum limit on recovery by an individual consumer, excepting the $50 penalty. This is likewise true in any class action or series of class actions where there is a limit only on the penalty of $10,000.

The final provision of this act is that a violation of Section 3 does not render the agreement void or avoidable and does not constitute a defense to any action to enforce the agreement or to any action for a breach of the agreement.

Consequently, it would appear that this act does nothing but create an additional area of litigation for damages and penalties for alleged violations of the act. Insofar as this proposal is concerned, a consumer would still have to comply with the agreement. Such a consumer could not claim a misunderstanding by virtue of violation of Section 3 to protect against any action to enforce the agreement or to protect against any action for breach of the agreement. It could be, however, that a consumer might claim as an offset in either an action to enforce the agreement or for breach of the agreement, damages claimed to have been sustained by failure of the agreement to be "written in a clear and coherent manner using words with common and everyday meanings." However, there is a substantial question as to whether or not this could be done as claiming an offset may constitute an entire, or at least a partial defense to an action to enforce the agreement or for breach of the agreement when this proposal by a specific language completely prohibits such a defense.

EXHIBIT B

What would be the impact of this type of legislation upon numerous state transactions which are subject to federal backing such as normal local small business loans, FHA financing, etc. A large question arises as to whether or not this proposal would aurhorize class actions, or series of class actions, simply for the recovery of penalties. There is substantial doubt as to whether or not such type of litigation is currently permissible in Nevada.

There have been all sorts of problems and questions arising in connection with the New York law including one suggestion that a panel of semi-illiterates should be established to test the forms.

Lawrence Qusack, President of the New York County of Lawyers Association, comments that at the present time "The difficulties with it as a piece of legislation still exists. The future will tell. We still feel the law is badly in need of revision." The New York State Law Review Commission is currently examining the law and is expected to report to the New York Legislature next January with recommendations for amendments. Wilbur Friedman, Chairman of the New York County of Lawyers Special Committee on Consumer Agreements, states "Things that were bad with the law are still bad." He considers the bill poorly drafted and states that some documents are lengthy, driving up costs of printing and recording. There seems to be a general agreement that only time will tell as to whether the law will actually accomplish any real benefit.

In view of this situation, I firmly believe it would be very bad public policy for the legislature to now inflict this vague statutory dictatorship upon the daily trade and commerce of Nevada when (a) it completely remains to be seen whether this experiment will ultimately result in any benefit: (b) when it appears that before any such conclusion can be reached there may well be a multitude of lawsuits; and finally, (c) when there has been no factual basis established and presented for the practical need, at this time, of such a statutory mandate in this thinly populated and fairly well-educated state.

George L. Vargas
General Counsel
Nevada Bankers Association

NEVADA RETAIL ASSOCIATION
POST OFFICE BOX 722, CARSON CITY, NEVADA 89701 • 882-1943

If AB 46 is to move I respectfully suggest an amendment which would ~~make~~ AB 46 ~~in accord with a model bill suggested by the Legislature's Research Council~~ more practical.

That amendment ~~should appear~~ is suggested at lines 16 and 17, deleting both those present lines and substituting the following:

"This section does not prohibit the use of words or phrases or forms of agreement required by court decision or defined, or required or permitted by Federal or State Statute, Rule, Regulation or published interpretation".

The reason for the addition of court decision and the published interpretation is that there is a developing body of case law in all the consumer protection area and of staff interpretations, particularly at the Federal Level which are being relied upon by corporations in developing necessary forms.

EXHIBIT C

PROPOSED AMENDMENTS TO A.B. 186

SECTION 1. NRS 458.300 is hereby amended to read as follows:

458.300 Subject to the provisions of NRS 458.290 to 458.350, inclusive, an alcoholic or drug addict who was under the influence of alcohol or drugs at the time the act was committed, and who is charged with a crime and has been adjudged guilty thereof is eligible to elect treatment under the supervision of a state-approved alcohol or drug treatment facility [instead of prosecution] unless:

1. The crime is a crime against . . .

2. The crime is that of selling a . . .

3. The alcoholic or drug addict has . . .

4. Other criminal proceedings . . .

5. The alcoholic or drug addict is . . .

6. The alcoholic or drug addict is . . .

SECTION 2. NRS 458.310 is hereby amended to read as follows:

458.310 1. If the district, justice's or municipal court having jurisdiction of the case . . .

2. At the hearing the court shall advise him that sentencing [shall] will be postponed if he elects . . .

(a) If he elects to . . .

(b) During treatment he may . . .

(c) If he satisfactorily completes the treatment, as determined by the court, the charge or charges [shall] will be dismissed, but if he does not satisfactorily complete [such] the treatment, he will be returned to court

EXHIBIT D

for sentencing; and

[(d) [such] election constitutes a formal waiver of the right to a speedy trial.]

SECTION 3. NRS 458.320 is hereby amended to read as follows:

458.320 1. If the district, justice's or municipal court having jurisdiction of the case . . .

2. If the court, acting on the report or other relevant information, determines that [such] the person is not an alcoholic or drug addict, or that he is not likely to be rehabilitated through treatment, he [may] shall be [held to answer the charge] sentenced as otherwise provided by law.

3. If the court determines that [such] the person is an alcoholic or drug addict and is likely to be rehabilitated through treatment, the court may defer [trial] sentencing [until such time, if any, as resumption of prosecution is authorized pursuant to NRS 458.330,] and place [such] the person under the supervision of an approved alcohol or drug treatment facility for treatment for a maximum of 3 years. The court may require such progress reports on the treatment of the person as it deems necessary.

4. No person may be placed under the supervision of a facility under this section unless the facility accepts him for treatment.

SECTION 4. NRS 458.330 is hereby amended to read as follows:

1. Whenever a person is placed under the

supervision of a treatment facility, sentencing on the criminal charge shall be continued [without final disposition] and the charge may be dismissed if the treatment facility certifies to the court that the person has satisfactorily completed the treatment program.

2. If, upon the expiration of the treatment period, the treatment facility has yet to certify that [such] the person has completed his treatment program, [the pending criminal proceeding may be resumed. If,] and the court believes that [such] the person will complete his treatment on a voluntary basis, it may, in its discretion, dismiss the criminal charge.

3. If, before the treatment period expires, the treatment facility determines that [such] the person is not likely to benefit from further treatment at such facility, it shall so advise the court. The court shall then:

(a) Arrange for the transfer of [such] the person to a more suitable treatment facility, if any; or

(b) Terminate the supervision and conduct a hearing to determine whether [the prosecution should be resumed] final sentence should be imposed. Whenever [a criminal proceeding is resumed] final sentence is imposed in such a case, time spent confined in institutional care shall be deducted from any sentence imposed.

SECTION 5. NRS 458.340 is hereby amended to read as follows:

The determination of alcoholism or drug addiction

and [civil] commitment pursuant to NRS 458.290 to NRS 458.350, inclusive, shall [not] be deemed a criminal conviction until it is dismissed pursuant to NRS 458.330. The results of any tests or procedures conducted by the treatment facility or supervisory aftercare authority to determine alcohol or drug dependency may be used only in a further proceeding pursuant to NRS 458.290 to 458.350, inclusive. Such results shall not be used against the person examined in any criminal proceeding.

EXHIBIT D

TESTIMONY OUTLINE Re: A.B. 186

Lloyd W. Zook
Court Administrator
Las Vegas Municipal Court

March 23, 1979

I. INTRODUCTION

A. Purpose - To show that passage of A.B.186 would virtually eliminate a vital part of the Municipal Court program - Lower Court Counseling.

B. A.B.186, as proposed, limits authority to order civil commitment of alcohol and drug addicts to the District Courts.

1. As written, particularly lines 23 and 27, the bill could be construed to eliminate the capability of Municipal Courts, or any lower court, to avail themselves of alcohol and drug treatment programs within the Court program, or from the community.

II. MY POSITION IS:

1. The statute (NRS 458.300) should be left to stand as is, with no amendment.

2. If the proposed amendments are to be considered, then the words, "a district" in lines p. 1-23 and p.2-27 should not be added to this statute, thus permitting the lower courts, more particularly the Municipal Courts, to continue use of statistically proven programs of rehabilitation and treatment.

III. SUPPORT FOR MY POSITION:

A. Lower Court Counseling Program provides rehabilitative services to misdemeanor offenders referred by the Municipal Court of Las Vegas, Clark County Justices' Court and North Las Vegas Municipal Court.

EXHIBIT E

1. Focusing on persons charged with Driving Under the Influence of Alcohol and/or Drugs, persons charged with Petit Larceny, Prostitution, Battery, Assault.
2. The program's services include counseling group sessions and referral to other community agencies.

B. Program began operation in July of 1975, through an LEAA grant that was designed to provide a number of new services to the Lower Courts.

C. Goal of the Lower Court Counseling Program is to divert first-time misdemeanor offenders from the criminal justice system and to utilize in-house services and community resources to effectively deal with the problems that brought the individual into the system.
1. Program further provides lower court judges a third alternative to the traditional sentencing options, resulting in formal supervision in lieu of incarceration and/or fine.
2. Program provides lower court judges with additional information about offenders referred and offers general recommendations as to sentencing.

D. As of February 28, 1979, approximately 5,150 clients have been referred, 5,145 of that total being referred by the Lower Courts of Clark County.

E. Of the 5,150 persons referred,
- 1,871 (36.33%) were for DUI
- 39 (.75%) were for Possession of Controlled Substance.

F. Presently, 180 offenders are referred to Lower Court Counseling each month.

G. Statistical proof of effectiveness:
Recidivism:
1. 19.4% recidivism rate on those who complete the program. (11% re-arrested on the same or similar offense.)
a. Comparison to similar programs:
1. Project Crossroads, Wash., D.C. = 21%
2. Dade Co. Pre-trial Intervention = 19.8%
3. Manhattan Court Employment Project = 25%
4. Court Employment Program of New York = 22%

H. A.B.A. Standards:

1. "The sentencing court should be provided in all cases with a wide range of alternatives, with graduations of supervisory, supportive, and custodial facilities at its disposal so as to permit a sentence appropriate for each individual case."
2. ABA standards further assert that "the sentencing court should be required to obtain and consider a presentence report supplemented by a report of the defendant's mental, emotional and physical condition prior to the imposition of a minimum term or imprisonment, a consecutive sentence as a habitual offender or a special term based on the exceptional characteristics of the defendants."

IV. CONCLUSION:

1. A.B.186 should not be passed.
2. If passed, the words, "a district," should be deleted from the amendment.

V. RESPONSE TO QUESTIONS:

TESTIMONY ON AJR 1 OF THE FIFTY-NINTH SESSION

BY ZELVIN D. LOWMAN, COURT ADMINISTRATOR
EIGHTH JUDICIAL DISTRICT COURT
BEFORE THE ASSEMBLY JUDICIARY COMMITTEE
March 23, 1979

Madam Chairman and Members of the Judiciary Committee:

As a result of the letter written to this committee by Commissioner Robert Broadbent on February 14, my office was requested by Assemblyman Nick Horn to prepare a budget on which it would expect to operate the functions of the Clerk's office, which are directly related to the court if AJR 1 is passed by this legislature and voted affirmatively by the electorate.

It has been extremly difficult for me to find the information necessary to prepare such a budget. I have finally determined that the Clerk's office has two Time and Attendance reports monthly, one for personnel supporting the court functions and another for other employees of the office. The Time and Attendnace for "Court Services" carries only 64 people as compared to the 70 named by Mr. Broadbent's letter and the 89 mentioned in this capacity by County Clerk Loretta Bowman's testimony before this committee on January 26.

We have analyzed this Time and Attendance report in my office and have found there are ten grant employees whose functions we have been unable to determine. Consequently we removed them from our budget entirely, set up an organization chart which makes administrative sense to us, applied the present pay schedule and step as paid by the Clerk's office and now give you the budget attached to your copy of this testimony. I should like to briefly explain this budget to you.

Please note that no new personnel are anticipated to do the job. In fact, we would expect our present Administrative Assistant to take on additional accounting and personnel functions, becoming the Accounting Supervisor. All of the other section supervisory jobs, including that of Chief Court Clerk, would be filled by personnel currently assigned to "Court Services", and you can see by the attached organization chart that we have analyzed the job to be done and the availability of qualified personnel and matched as necessary. In two instances there are more people

reporting to one supervisor than I would prefer, but we propose to work this out with the 54 people available if AJR 1 becomes a reality.

As you can see, we do not propose additional personnel cost impact on the County Clerk. If she has 110 employees, as her testimony indicated on January 26, the removal of 54 for "Court Services" would still leave her with 56 to carry out the other work of her office.

We would expect to have the desks, typewriters and other office equipment presently assigned to the 54 employees in "Court Services", but there should be no reason for the Clerk to replace them since the functions and space would be assigned to the Court. We would also expect that the microfilm machines, printers and viewers currently being used for court related functions would be released for court use. However, I have determined that there would be no need for the court to have the data processing machines currently in the Clerk's office, since we can achieve the data processing functions with less expense and in a more efficient manner by arrangement with the county-wide data processing system.

Thus it seems incongruous to us that an additional $500,000 will be required to replace the 85% of the Clerk's present equipment to run her other "state mandated responsibilities". Another incongruity is the $906,963 as the "first-year separation cost" in the budget analyst's report. Nor does there seem to be any justification for the continuing $447,393 per year following that. Perhaps there would be some minor remodeling in the Clerk's present office spaces to separate the two functions, but it is adjacent to the Court Administrator's office and with proper supervision could begin functioning shortly after AJR 1 might take effect. At today's prices we would estimate a need for approximately $1,000 to do this minor remodeling.

Overall, it appears that we could save $75,433 annually in personnel costs to those presently being spent on "Court Services" (please see budget). Adding the $1,000 estimated for remodeling, we would expect to save money rather than incur the enormous cost proposed by the budget analyst in Commissioner Broadbent's letter.

PROPOSED PERSONNEL BUDGET FOR COURT SERVICES
EIGHTH JUDICIAL DISTRICT

		# Positions	Salary
Chief Court Clerk	Sch. 23	1	$ 15,568
Account Clerk II	Sch. 11	3	$ 27,720
Clerk Typist	Sch. 9	1	$ 10,927
Courtroom Clk. Supv.	Sch. 19	1	$ 14,969
Courtroom Clk. II	Sch. 16	13	$161,160
Courtroom Clk. I	Sch. 13	3	$ 30,346
Calendar Clk. Juv.	Sch. 13	3	$ 34,680
Sr. Calendar Clerk	Sch. 13	1	$ 10,519
Calendar Clk.	Sch. 11	2	$ 20,375
Legal Filing Supv.	Sch. 19	1	$ 15,568
Evidence Clk.	Sch. 13	1	$ 9,716
Appeals Clk.	Sch. 13	1	$ 9,716
Sr. Legal Process Clk.	Sch. 11	5	$ 51,358
Legal Process Clk.	Sch. 9	2	$ 17,672
Index Clk.	Sch. 9	3	$ 27,745
Micro Film Supv.	Sch. 11	1	$ 10,519
Micro Film Clk.	Sch. 9	4	$ 39,718
Jury Commissioner	Sch. 13	1	$ 12,788
Deputy Commissioners	Sch. 9	3	$ 30,856
Family Support Supv.	Sch. 13	1	$ 12,291
Clk. Typist	Sch. 11	3	$ 28,434

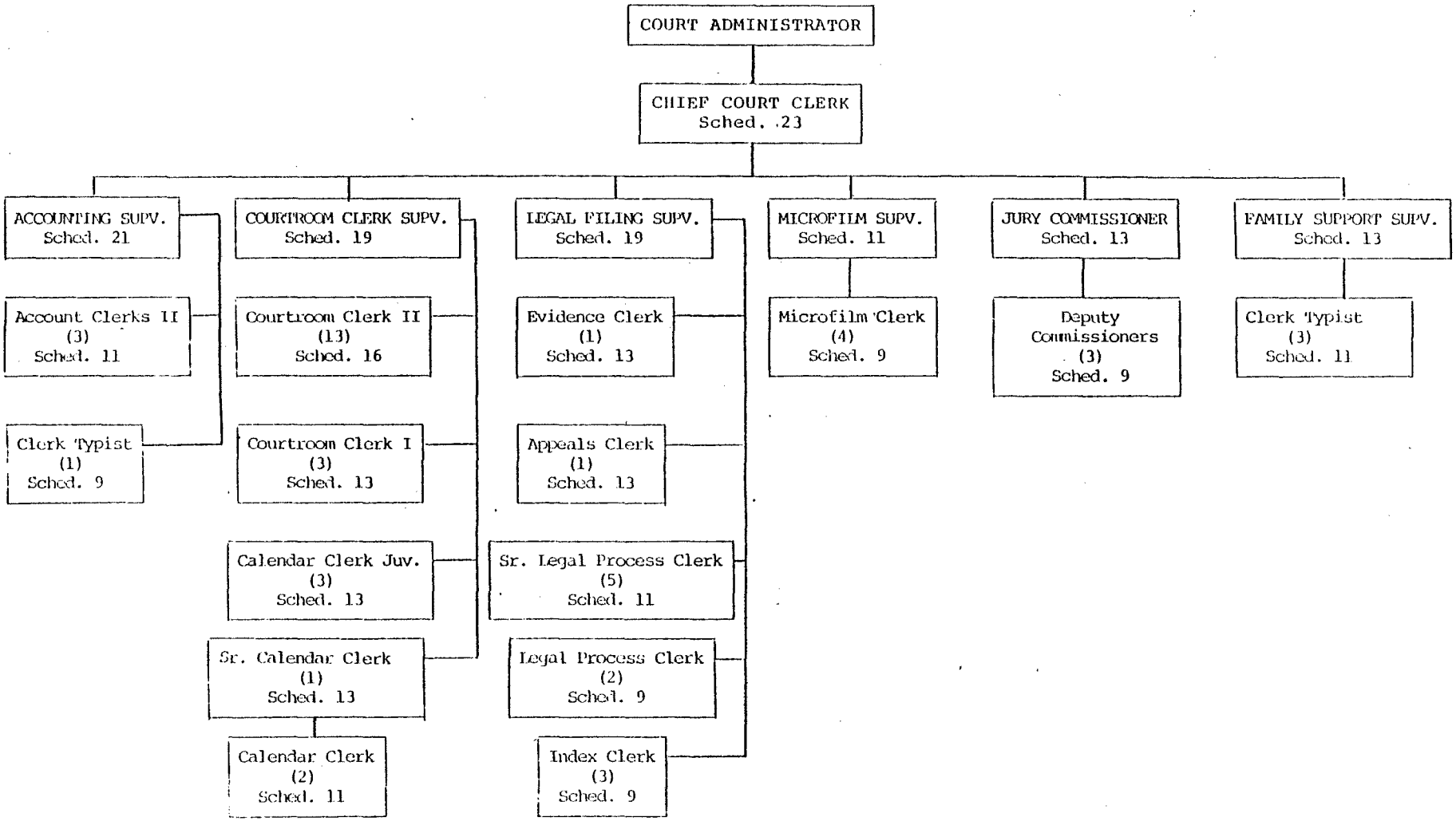
	Persons	54	$592,645
	Fringe	23%	$136,308
	TOTAL		$728,953

Present Court Services Payroll for 64 persons			$653,972
	Fringe	23%	$150,414
	TOTAL		$804,386

Difference $ 75,433

EXHIBIT F

EXHIBIT F


COURT ADMINISTRATOR
CHIEF COURT CLERK
Sched. 23
ACCOUNTING SUPV.
Sched. 21
COURTROOM CLERK SUPV.
Sched. 19
LEGAL FILING SUPV.
Sched. 19
MICROFILM SUPV.
Sched. 11
JURY COMMISSIONER
Sched. 13
FAMILY SUPPORT SUPV.
Sched. 13
Account Clerks II
(3)
Sched. 11
Courtroom Clerk II
(13)
Sched. 16
Evidence Clerk
(1)
Sched. 13
Microfilm Clerk
(4)
Sched. 9
Deputy
Commissioners
(3)
Sched. 9
Clerk Typist
(3)
Sched. 11
Clerk Typist
(1)
Sched. 9
Courtroom Clerk I
(3)
Sched. 13
Appeals Clerk
(1)
Sched. 13
Calendar Clerk Juv.
(3)
Sched. 13
Sr. Legal Process Clerk
(5)
Sched. 11
Sr. Calendar Clerk
(1)
Sched. 13
Legal Process Clerk
(2)
Sched. 9
Calendar Clerk
(2)
Sched. 11
Index Clerk
(3)
Sched. 9

NEVADA LAND TITLE ASSOCIATION

March 21, 1979

Committee Members of Assembly
Joint Resolution Number 1
(1977 Legislative Session)
Carson City, Nevada

Dear Committee Members:

This letter is being written on behalf of the Southern Nevada contingent of the Nevada Land Title Association, comprised of the following member Companies:

Chicago Title Insurance Company;
First American Title Company of Nevada;
Land Title of Nevada Inc;
Lawyers Title Company of Las Vegas, Inc;
Nevada Title Company;
Nevada Southern Title Company;
Stewart Title of Nevada;
Title Insurance and Trust Company;
Title Insurance Company of Minnesota;

The above Title Companies collectively oppose the provisions of Assembly Joint Resolution Number 1 (AJR#1) providing for a Court appointed administrator of all Court Records and files.

To expedite transactions involving real property ownership it is essential that Court Records be readily available for review and examination purposes. Under the present system of these records being under the custody and control of the County Clerk's Office, these requirements have been time tested and proven and we are unable to ascertain how a change in the present system would be of benefit to the citizens of the State of Nevada.

Thank you for your consideration in this matter.

John W. Woods, President
Nevada Land Title Association

JWW:pjg

EXHIBIT G

Member American Land Title Association