Chairman Robinson called the Commerce Committee to order at 2:29 p.m. in Room 200.

MEMBERS PRESENT: Mr. Bennett (Late)
Mr. Chaney (Late)
Mr. Dini
Mr. DuBois
Mr. Jeffrey
Mr. Kovacs
Mr. Prengaman
Mr. Rusk
Dr. Robinson

MEMBERS ABSENT: Mr. Brady
Mr. Bremner

GUESTS PRESENT: See Attached Guest List

Dr. Robinson stated that A.B. 123 was parallel to S.B. 101 and that it could be disposed of.

A.B. 123: REMOVES LIMITATIONS ON AGREED RATES OF INTEREST.

MR. JEFFREY MOVED TO INDEFINITELY POSTPONE A.B. 123. THE MOTION WAS SECONDED BY MR. KOVACS AND IT CARRIED UNANIMOUSLY OF THOSE MEMBERS PRESENT.

The Chairman then opened the hearing on A.B. 508.

A.B. 508: EXCLUDES FROM LIMITATION ON INTEREST RATE SHARE OF APPRECIATION OF REAL PROPERTY RESERVED BY LENDER.

George Vargas, representing the Nevada Bankers Association, indicated that if S.B. 101 was amended as per EXHIBIT A, there would be no reason to consider A.B. 508.

Howard Cunningham testified that he was in agreement with Mr. Vargas' comments regarding A.B. 508. Mr. Cunningham then began testifying on another bill, and Chairman Robinson asked him to restrict his comments to A.B. 508. Mr. Cunningham concluded his remarks and stated that he would return later to testify on S.B. 101.

Dr. Robinson read portions of A.B. 508 and explained that the bill expanded the definition of what is considered to be interest.

George Aker, President of Nevada National Bank, added further comments to the addition of the new language created by by A.B. 508. He stated that the bill was adding "shared appreciation," which was an item negotiated for a lower interest rate by the borrower. He stipulated that the bill said that "shared appreciation" was not considered interest.

The Chairman opened the hearing on S.B. 101.

S.B. 101 REMOVES LIMITATIONS ON INTEREST RATES FOR LOANS.

Mr. Howard Cunningham testified that the bill, as written, was unclear. Mr. Cunningham explained how mortgage brokers operate and how they brought money into the state from out-of-state insurance companies. He added that there was a need for such mortgage brokers. He also said that it was better for such brokers to be licensed rather than having to "dequalify" themselves Mr. Cunningham said that "dequalified" brokers were unable to advertise in any medium.

Mr. Cunningham said that the bill called for a prohibition against penalties for prepayment of a loan, and that his clients and other mortgage brokers simply could not live with such a prohibition.

Mr. Cunningham presented the Committee members with a memorandum concerning 645B.195 of the Usury Law. This memo with its proposed amendment is attached as EXHIBIT B. Mr. Cunningham stated that to solve the problem that mortgage brokers were having with the bill the following subsection should be added to the bill:

> Subsection 2 hereof shall not apply to loans in excess of $250,000, nor to any other loan unless the security therefor is real property on which the only building is a single family residence or a duplex, with incidental out-buildings if any.

He added that he would prefer to take all of subsection 2 of Section 5 out of S.B. 101, but if the Committee would not remove the entire subsection, he would find it acceptable with the above amendment.

Mr. Barengo indicated that a section in the actual law already excluded insurance companies from Section 5 of the bill that was being proposed.

Mr. Cunningham said that the insurance company exclusion must have just been added, because he did not see it before. He also added that the exclusion would not solve the problem of where insurance companies did not make their loans directly, instead made them through a mortgage company.

Mr. Barengo then read a section of the law which excluded mortgage companies which are licensed under the Federal National Mortgage Company.

Mr. Cunningham commented that such licensed companies were small mortage companies or companies which deal primarily in residential mortgages, and his clients would not be in that category.

Mr. Cunningham went on to explain that any business which wanted

to advertise, even if it was only in the yellow pages of the telephone book, had to be licensed as a mortgage broker. He also said that he could not understand how it would hurt anything if the Committee would add language to the bill permitting licensed mortgage companies to make loans without inhibitions placed on such loans--as long as they were for commercial property.

Mr. Cunningham also explained that he had never seen a commercial loan that did not have a penalty for prepayment in it. He said that the reasoning for such penalty clauses was to prevent borrowers from prepaying their loans so that the lenders would not have to be constantly turning over their funds. He added that by placing a prohibition against charging prepayment penalties would result in his clients getting "nothing but low-interest loans."

Next to testify on the bill was John Utter, a mortgage broker. Mr. Utter indicated that he was in support of Mr. Cunningham's amendment. He also said that all of his clients would be making loans which exceed 12 percent interest, and would therefore be included in the limitations outlined in Section 5 of the bill. He added that should the limitation remain in the law, his clients would have to discontinue bringing investment money into Nevada.

Mr. Utter also stated that to become licensed under the Federal National Mortgage Company was a rather expensive process but that such licensed lenders were: exempt from state laws, able to advertise, and able to participate in all types of mortgage loans. He went on to say that licensing by the state was severely limiting to mortgage brokers, and that he had voluntarily relinquished his state license so that he could continue doing business.

Renny Ashleman, representing American Investors Mortgage and Nevada Thrift Association, said that the document (EXHIBIT A) submitted by Mr. Vargas contained some errors. He also encouraged the Committee to give strong consideration to Amendment No. 368 which is attached as EXHIBIT C. Mr. Ashleman also indicated that there was some language in that amendment which was necessary for the racketeering bill. He said that the amendment needed some more NRS titles added to the first page, Section 5, that all of the necessary titles were not covered, but he would supply the Committee with a list.

Mr. Ashleman stated that the definition of mortgage company was not a very satisfactory one, and that it may have to be changed. He also said that it was not the intent of the mortgage industry to create problems for mortgage brokers, and he offered to meet with Mr. Cunningham and Mr. Utter to discuss a proposal that "would accommodate everyone."

Mr. Vargas then testified that the major changes to the bill were to be found on page 6 of EXHIBIT A. He noted several errors in the original bill's Section 13 and added that Section 14 had been added to point out that the bill was entirely prospective in its operation and would not affect any existing loans, which would have

to stand on their own terms and language.

Mr. Vargas stated that he had no objections to Mr. Cunningham's amendments or to a complete elimination of Subsection 2 of Section 5.

Mr. Dini read a portion of a letter from Gordon DePaoli, EXHIBIT D, in which Mr. DePaoli expressed concern over the words "on or after the effective date of this act" which were proposed by Mr. Vargas to be added to Section 13.

Mr. Vargas said that this language was added because of Mr. DePaoli's client's situation and that the section was saying, "Loans that were entered into prior to the rejection of the federal act, but pursuant to preemption of the federal act, are still existing as they stood without reference to this law. Loans made in the future in the State of Nevada would not in any way be regulated or affected by the federal preemption law."

There was further discussion between Mr. Vargas and the Committee members with respect to the effect that this section of the bill would have on existing and future loans.

There was also discussion pertaining to the loan drafted by the law firm of Woodburn, Wedge, Blakey and Jeppson and how that loan would be affected by the provisions in Section 13 of S.B. 101 in their present state and the amended versions.

Joe Midmore, representing the Nevada Consumer Finance Association, reminded that Committee that he had requested that the maximum interest rates allowed to small loan companies be left at 36 percent rather being raised to 48 percent. He said the change would have to be made to Amendment No. 368 on page 2.

Mr. Midmore then referred to Amendment No. 402 to S.B. 101, which is attached as EXHIBIT E, and suggested that the amendment not be put on S.B. 101, but instead, be added to some other bill. He said that the amendment had not been requested at any of the public hearings on S.B. 101.

Mr. Gordon DePaoli then discussed his letter with members of the Committee. He also explained how the federal preemption act affected variable rate loans that were entered into prior to the effective date of the preemption act itself.

Kenny Guinn, President of Nevada Savings and Loan, said that all of Sections 13 and 14 could be deleted from the bill without an adverse effect on the savings and loan institutions. He said the reason for this is that the bill was trying to cover all areas of lending with one bill, and it just did not work very well. Mr. Guinn went on to explain some of the differences between banks and savings and loan institutions in their lending procedures and federal regulations pertaining to both types of institutions.

Mr. Guinn added that the federal preemption act allowed only the bank commercial loans to go to 23 percent; the savings and loan companies were still limited to 18 percent at their maximum.

Mr. Vargas then stated that the banks really were not concerned with what happened to Sections 13 and 14 of the bill. He said that Section 13 had been put into the bill as a result of recommendations from someone from Mr. DePaoli's law firm.

Mr. Guinn then responded to a question from the Committee that the federal laws had preempted the State's usury law for savings and loan associations only on residential loans; commercial loans had not been preempted.

Mr. DePaoli came forward and argued that Section 13 had not been written into the bill because of his office. He also indicated that case history had established that a state legislative body could dictate how usury laws should be applied. He also said that the language on lines 3 through 6 on page 6 of the first reprint were intended by the Senate Commerce Committee to apply to loans that would be retroactively affected by the preemption.

Mr. DePaoli said that if the Legislature were silent as to the prospective application of the law, it would probably be interpreted as being prospective "anyhow"; however, those contracts that were written in such a way as to incorporate changes in the law, would probably float with the changes and "the sky would be the limit."

Mr. Guinn then stated that not all questions could be answered through legislation, and that some contracts would invariably go to the courts for legal interpretations. He also clarified his earlier remarks concerning Sections 13 and 14 by saying that when he mentioned those sections, he was referring to the sections as they appeared in EXHIBIT A and not as they appeared in the first reprint of the bill, S.B. 101.

Norman O'Kada, on behalf of the Department of Commerce, stated that loans between unregulated lenders and borrowers could not be regulated and that the Department of Commerce was in support of S.B. 101.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Evelyn Edwards

Evelyn Edwards, Committee Secretary

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/7/81

SUBJECT A.B. 123: Removes limitations on agreed rates of interest.

MOTION:

Do Pass ____ Amend ____ Indefinitely Postpone x Reconsider ____

Moved By Mr. Jeffrey Seconded By Mr. Kovacs

AMENDMENT: ____

Moved By ____ Seconded By ____

AMENDMENT: ____

Moved By ____ Seconded By ____

	MOTION		AMEND		AMEND	
VOTE:	Yes	No	Yes	No	Yes	No
BENNETT	Absent					
BRADY	Absent					
BREMNER	Absent					
CHANEY	Absent					
DINI	X					
DUBOIS	X					
JEFFREY	X					
KOVACS	X					
PRENGAMAN	X					
RUSK	X					
ROBINSON	X					
TALLY:	7	0				

ORIGINAL MOTION: Passed X Defeated ____ Withdrawn ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

AMENDED & PASSED ____ AMENDED & DEFEATED ____

Attached to Minutes May 7, 1981

CCO

ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

DATE: 5-7-81

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK FOR	AGAINST	BILL NO.
~~John UTTER~~	~~J. Hammil UTTER~~		X	SB 101
[illegible]	[illegible]	X		SB 581
Howard Cunningham	Self	For Amendment		SB 101
John UTTER	Self	X		101 - SB
[illegible]	A F [illegible]	✓		101
George W. VARGAS	Nev. Banker's Assn	✓		101
George AKER	Pres Nev. National Bk	✓		101
Gordon DEPAOLI				
Kenny C. Guinn	Pres - Nevada Savings	✓		101
Joe Midmore	Nev. Consumer Finance Assn	✓		101

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ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

DATE: 5/8/81

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK FOR	AGAINST	BILL NO.
KENT KRAUSE	FAR WEST [illegible]			
[illegible]	FAR WEST [illegible]			
[illegible]	[illegible]			
[illegible]	Self			
[illegible]	Self			
Brock A. [illegible]	Capital Nevada Mortgage			
[illegible]	[illegible]			
Harry Wald	Caesars Palace			
Thomas Lavelle	Caesars World			
Charles H. Mikes, Jr.	Nevada Savings & Loan League			
KENT CLIFFORD	LVMDA		—	
[illegible]	[illegible]			
[illegible]	So Nev Mt Brokers Assn	V		
HANK SHAW	HANK SHAW, Mtge Broker			
Jeffrey Zucker	self			
Joe Midmore	Nev Consumer Finance Assn			
[illegible]	[illegible]			

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ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

DATE: 5/8/81

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK FOR	AGAINST	BILL NO.
E Perry Thomas	Valley Bank	✓		SB 101
Ken Sullivan Jr	Clk. Valley Bank	✓		"
Leo L. Vargas	Nev Bankers Assn	✓		"
Greg Nash	Vargas & Bartlett-Vargas	✓		"
Mike Southard	National Mortgage			
D. K. Ramsey	First Nat'l Bk of Nev			

CS

ASSEMBLY [illegible]ERCE COMMITTEE

GUEST LIST

DATE: 5/8/81

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
HANK SHANK	HANK SHANK, MTGE BR			

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EXHIBIT A

SENATE BILL NO. 101--COMMITTEE ON JUDICIARY

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

SECTION 1. NRS 97.155 is hereby amended to read as follows:

"Time price differential," however denominated or expressed means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, annual credit card membership fees, delinquency charges, attorney's fees, court costs or official fees.

SEC. 2. NRS 97.195 is hereby amended to read as follows:

97.195 The amount of the time price differential in any retail installment contract [shall not exceed 1 percent of the initial balance multiplied by the number of months, including any excess fraction of a month as 1 month, elapsing between the date of such contract and the due date of the last installment, or $25, whichever is greater. In addition, such] may be any amount agreed upon by the parties. Such a contract may provide for:

1. A delinquency charge on any installment delinquent 10 days or more in the amount of 5 percent of [such] the installment or $2, whichever is greater, but not [to exceed the sum of] more than $5.

2. Reasonable collection costs and attorney's fee in the event of delinquency.

SEC. 3. NRS 97.245 is hereby amended to read as follows:

97.245 1. The rate of a time price differential on any deferred balance is a matter for negotiation between a seller and buyer. At or [prior to] before the time a retail charge agreement is made, the seller shall advise the buyer in writing, on the application form or otherwise, or orally, that a time price differential will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the time price differential will be computed, and that the buyer may at any time pay his total unpaid balance. If such information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address a memorandum setting forth such information.

2. The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or

other regular period agreed upon, in which there is any unpaid balance thereunder. [, which] The statement [shall] must set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and [at the] end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any time price differential for [such] the period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance.

[3. A retail charge agreement may provide for a time price differential not to exceed a rate of 1.8 percent per month on the deferred balance.]

SEC. 4. NRS 97.285 is hereby amended to read as follows:

97.285 The limitation imposed upon time price differentials by this chapter is exclusive, and [neither] the provisions of [NRS 99.050 nor] any other law limiting rates of interest [applies] do not apply to contracts or agreements governed by this chapter.

SEC. 5. NRS 99.035 and 99.050 are hereby repealed.

SEC. 6. NRS 645B.195 is hereby amended to read as follows:

645B.195 1. For an extension of credit which is secured by a deed of trust or mortgage of real property and which is made by or through a mortgage company, the rate of interest [must not exceed the greater of:

(a) Twelve percent per annum; or

(b) If the lowest daily prime rate at the three largest United States banking institutions is 9 percent or more, that lowest daily prime rate plus 3.5 percent.] may be any rate agreed upon by the parties.

2. If the rate of interest exceeds 12 percent:

(a) [The lender shall certify on the loan document, under penalty of perjury, what the lowest prime rate is on the date of execution of the final loan document.

(b)] The lender shall not impose any charge or penalty for prepayment of all or any part of the loan.

[(c)] (b) The lender shall not require any compensating balance or use any other device to increase the cost to the borrower of borrowing the net amount of the loan.

3. For the purposes of this section, "interest" does not include any payment made to a third party, or amount included in the obligation for payment to a third party, as consideration for the extension of credit, which is computed as a percentage of the amount of the credit extended.

SEC. 7. NRS 646.050 is hereby amended to read as follows:

646.050 1. [All pawnbrokers are authorized to] A pawnbroker may charge and receive interest at the rate of [4] 5 percent a month for money loaned on the security of personal property actually received in pledge, and a person shall not ask or receive a higher rate of interest in discount on any such loan, or on any actual or pretended sale or redemption of personal property. For any loan made, a pawnbroker may make an initial charge of $3 in addition to interest at the authorized rate.

2. All personal property [shall] must be held for redemption for [a period of not less than] at least 150 days [from] after the date of pledge with any pawnbroker.

3. [All pawnbrokers] A pawnbroker shall give to the person securing the loan a printed receipt clearly showing the amount loaned and rate of interest, together with a description of the pledged property. The reverse side of the receipt [shall] must be marked in such a manner that the amounts of principal and interest paid by the person securing the loan can be clearly designated. Each payment [shall] must be entered upon the reverse side of the receipt and each entry [shall] must designate how much of the payment is being credited to principal and how much to interest, with dates of payments shown thereon.

SEC. 8. NRS 675.060 is hereby amended to read as follows:

675.060 1. [No] A person shall not engage in the business of lending in amounts of $10,000 or less, [and contract for, exact or receive, directly or indirectly, on or in connection with any such loan, any charges, whether for interest, compensation, consideration or expense, which in the aggregate are geater than the interest that the lender would be permitted by law to charge for a loan of money if he were not a licensee under this chapter,] except as provided in and authorized by this chapter, and without first having obtained a license from the superintendent.

2. For the purpose of this section a loan shall be deemed to be in the amount of $10,000 or less if the net amount or value advanced to or on behalf of the borrower, after deducting all payments for interest, principal, expenses and charges of any nature taken substantially contemporaneously with the making of the loan, does not exceed $10,000.

SEC. 9. NRS 677.340 is hereby amended to read as follows:

677.340 1. No person doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, credit unions or persons licensed under chapter 675 of NRS is eligible to become a licensee under this chapter, nor does this chapter apply to any business transacted by any such person under the authority of and as permitted by any such law. A subsidiary of a parent corporation one or more of whose other subsidiaries is engaged in any of the activities listed in this subsection is not eligible to be licensed under this chapter. This chapter does not apply to any bona fide pawnbroking business transacted under a pawnbroker's license.

2. Except to the extent that persons enumerated in subsection 1 are expressly so permitted by law, a person shall not engage in the business of lending in gross amounts of $3,500 or more, and contract for, exact or receive, directly or indirectly, on or in connection with any such loan, any charges, whether for interest, compensation, consideration or expense, [which in the aggregate are greater than the interest that the lender would be] in any manner other than that permitted by [to charge for a loan of money if he were not a licensee under this chapter, except as provided in and authorized by] this chapter, and without first having obtained a license from the director.

3. For the purpose of this section a loan shall be deemed to be in the gross amount of $3,500 or more if the total amount or value advanced to or on behalf of the borrower, after including all payments for interest, principal, expenses and charges of any nature taken substantially contemporaneously with the making of the loan is in a gross amount of $3,500 or more.

SEC. 10. NRS 677.670 is hereby amended to read as follows:

677.670 1. A licensee may only make loans in gross amounts of $3,500 or more, but less than a gross amount of $5,000, which are repayable, except as otherwise provided in subsections 3 and 4, in substantially equal, consecutive periodic installments of principal and interest combined. [, and may charge, contract for, collect and receive interest and charges computed by either of the following methods:

(a) A charge for interest in an amount not exceeding $10 per annum, add-on per $100 of the cash advance; or

(b) A charge for interest in an amount not exceeding 1.5 percent per month on the unpaid principal balance.]

2. [The] Any charge for interest [under paragraph (b) of subsection 1 shall] must be calculated according to the

actuarial method, which is the method of allocating payments between principal and interest pursuant to which a payment is applied first to the accumulated interest and the balance, if any, is applied to the unpaid principal. A licensee may, at the time the loan is made, precompute the charge for interest at the agreed-upon rate on the scheduled unpaid principal balances according to the terms of the contract and add such interest to the principal of the loan. If the charge for interest is precomputed, payments on account may be applied to the combined total of principal and precomputed interest until the contract is fully paid. All payments on account, except those applied to default or deferment charges, [shall] must be applied to the installments in the order in which they fall due. The effect of prepayment of a precomputed loan is governed by the provisions relating to refund upon prepayment in full.

3. A borrower and licensee may agree that the first installment due date may be not more than 15 days more than 1 month [from] after the date of the loan, and the amount of [such] the first installment may be increased by one-thirtieth of the portion of the interest [authorized by paragraphs (a) and (b) of subsection 1] which would be attributable to a first installment of 1 month for each extra day.

4. A licensee may make loans which are repayable at maturity by a single payment including principal, interest and charges, if:

(a) The duration of the loan is 1 year or less; and

(b) The borrower's income is substantially greater at or soon before the maturity date than at other times.

5. When a loan contract is for more or less than 1 year, the interest [shall] must be computed at one-twelfth the annual rate for each month. For the purpose of computing charges, [whether at the maximum rate or less,] a month is that period of time from any date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date, then to the last day of [such] the following month. A day is one-thirtieth of a month when computation is made for a fraction of a month.

[6. A licensee shall not induce or permit any person or husband and wife to be obligated, directly or indirectly, under more than one contract of loan at the same time for the purpose of or with the effect of obtaining a higher rate of charge than would otherwise be permitted by this section.]

SEC. 11. NRS 678.710 is hereby amended to read as follows:

678.710 1. A credit union may make loans to members in accordance with the provisions of the bylaws upon receipt of

approval by the credit committee or loan officer at a rate of interest [not exceeding 1 percent per month on the unpaid monthly balance unless a higher rate is approved by the commissioner.] agreed upon by the credit union and member.

2. Every application for a loan [shall] must be made in writing upon a form furnished by the credit union which has been approved by the board. The application [shall] must include the purpose for which the loan is desired and the security, if any, offered.

3. A loan [shall] must not be made to any member in an aggregate amount in excess of 10 percent of the credit union's unimpaired capital and surplus.

4. A credit union may participate with other credit unions, corporations or financial institutions in making loans to credit union members.

5. A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

SEC. 12. NRS 675.290 and 675.320 are hereby repealed.

SEC. 13. By this act the legislature exercises its prerogative:

1. Under subsection (b)(2) of the Depositary Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions of subsection (a)(1) of section 501 of that act do not apply to loans, mortgages, credit sales and advances; and

2. Under section 512 of Part B of the Depositary Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions which preempt the law of this state under section 511, Part B of that act do not apply to business or agricultural loans in amounts of $1,000.00 or more, made in the State of Nevada on and after the effective date of this act.

SEC. 14. Sections 1 to 13, inclusive of this act do not apply to any contract or note made before the effective date of this act, regardless of any provision of the contract or note.

SEC. 15. This act shall become effective upon passage and approval.

EXHIBIT B

MEMORANDUM ON
SECTION 645B.195 OF THE USURY LAW OF NEVADA

PROBLEMS WITH S.B. 101 WITH PROPOSED AMENDMENTS.

As reported out of the Senate Judiciary Committee and passed by the Senate, the bill contains a provision that will make it practically impossible to get financing for construction of commercial property in the foreseeable future. This will have a very depressing effect on the economy of Nevada in general, and especially and directly on the construction industry, construction workers, suppliers, and employees of suppliers.

Section 645B.195 applies to loans secured by deeds of trust on real property, and made "by or through a mortgage company." The amended version removes limits on interest rates but provides that if the rate exceeds 12% (a) the lender shall not impose any charge or penalty for prepayment of all or any part of the loan and (b) the lender shall not require any compensating balance or use any other device to increase the cost to the borrower of borrowing the net amount of the loan.

The problems are:

1. Practically all long term loans on commercial property are made by or through mortgage companies, which either broker the loans, or make loans with funds borrowed from banks and sell them immediately after funding to long term lenders, so that most commercial loans are covered by the section.

2. Without commitments for long term loans, developers cannot get construction financing, and they should not, because they would be without means of paying off the construction loans, and so would lose their projects by foreclosure.

3. Commitments for long term loans at 12% or less are not available now, and will not be for the foreseeable future. The construction which has been done recently was done on commitments made several months before the loans were funded. Commitments still to be funded are getting fewer and fewer. Unless new commitments are made construction is going to slow down to practically nothing.

4. Long term loans will not be made under the restrictions of NRS 645B.195 as now proposed. In

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fifteen years of closing loans on commercial properties in Nevada and Northern California for life insurance companies, the main source of long term financing, I have never seen a long term or take out loan without some restriction or penalty on prepayment, and I do not expect to see any. If Nevada imposes such restrictions, they will make their loans in other states. They have too big an investment in processing each loan to permit payoff without penalty whenever the borrower finds it advantageous.

5. Many long term lenders now feel compelled to protect themselves against inflation by participation provisions. These would run afoul of the provisions against "any other device to increase the cost to the borrower of borrowing the net amount of the loan."

SIMPLE SOLUTION.

The intention behind the provisions discussed probably is to protect homeowners. There is a class of mortgage companies which does mostly secondary loans on resjdences. Availability of such loans has little if any effect on construction. There is not a great need in such loans for restrictions or penalties on prepayments, and participations would be totally inappropriate. The simple solution is to exempt loans for everything except residences of the kinds usually occupied by owners. Borrowers on commercial properties and on residential rental property do not need state protection at the expense of the depressing effect on the economy.

We suggest that there be added to NRS 645B.195 a subsection to read as follows:

> 4. Subsection 2 hereof shall not apply to loans in excess of $250,000, nor to any other loan unless the security therefor is real property on which the only building is a single family residence or a duplex, with incidental outbuildings if any.

Respectfully submitted,

Howard L. Cunningham
100 North Arlington Avenue
Suite 2
Reno, Nevada 89501
Telephone: Office 329-0252
Home 786-3966

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EXHIBIT C

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION		Assembly AMENDMENT BLANK
dopted	☐	Adopted	☐	AMENDMENTS to Senate
ost		Lost		Bill No. 101 Joint Resolution No.
ate:		Date:		BDR 8-415
nitial:		Initial:		Proposed by Committee on Commerce
oncurred in	☐	Concurred in	☐	
ot concurred in		Not concurred in		
ate:		Date:		
nitial:		Initial:		

Amendment No. 368

Resolves conflict with § 11 of S.B. 127

Amend sec. 4, page 2, line 29, after "99.050" by inserting "1."

Amend sec. 4, page 2, line 30 by deleting the period.

Amend sec. 4, page 2, line 31, after the closed bracket by inserting:

"unless otherwise provided by law.

2. Private parties may agree for the payment of any rate of interest on an amount of money due or to become due on any contract:

(a) Exceeding $10,000.

(b) Up to and including $10,000 which does not exceed the rate of 30 percent per annum.

3."

Amend sec, 4, page 2, line 35, by deleting "[Any" and inserting "4. Any".

Amend sec. 4, page 2, line 37, by deleting the closed bracket and inserting:

"5. As used in this section, "private party" means a person who is not in the business of making loans and is not regulated by chapter 97, 645B or 646 or Title 55 or 56 of NRS."

Amend the bill as a whole by deleting section 5, and renumbering sections 6 through 10 as sections 5 through 9.

Amend sec. 7, page 3, by deleting lines 30 through 44 and inserting:

"Sec. 6. The section added to chapter 675 of NRS by section 2 of chapter 48, Statutes of Nevada 1981, is hereby amended to read as follows:

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B & E
LCB File
Journal
Reprotsment ✓
Bill

Drafted by DS:ab Date 3-29-81

"1. Except as provided in subsection 3, every licensee may make loans of any amount with cash advance not exceeding $10,000, repayable except as otherwise provided in section 4 of this act, in substantially equal consecutive monthly installments of principal and interest combined, and may charge, contract for, collect and receive a charge for interest at a rate not exceeding the [equivalent of the greater of the following:

[(a) The] total of:

[(1) Thirty-six] (a) Forty-eight percent per year on that part of the unpaid balance of the amount of cash advanced which is [$300] $500 or less;

[(2) Twenty-one] (b) Thirty-six percent per year on that part of the unpaid balance of the amount of cash advanced which exceeds [$300] $500 but does not exceed [$1,000; and

(3) Fifteen] $2,000; and

(c) Thirty percent per year on that part of the unpaid balance of the amount of cash advanced which exceeds [$1,000; or] $2,000.

[(b) Eighteen percent per year on the unpaid balance of the amount of cash advanced.]

2. Except as otherwise provided in this subsection, the charge for interest must be calculated according to the actuarial method, which is the method of allocating payments between principal and interest pursuant to which a payment is applied first to the accumulated interest and the balance, if any, is applied to the unpaid principal. A licensee may, at the time the loan is made, precompute the charge for interest at the agreed-upon rate on the scheduled unpaid principal balances according to the terms of the contract and add that interest to the principal of the loan. Where the charge for interest is precomputed the face amount of any note or contract may exceed $10,000 by the amount of charges authorized by this chapter added to principal. If the charge for interest

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is precomputed, payments on account may be applied to the combined total of principal and precomputed interest until the contract is fully paid. All payments on account, except those applied to default or deferment charges, must be applied to the installments in the order in which they fall due. The effect of prepayment of a precomputed loan is governed by the provisions relating to refund upon prepayment in full.

3. On loans secured by mobile homes or factory-built housing which constitute real estate on real property as defined by NRS 361.035 the charge for interest may not exceed [18] 30 percent on the unpaid balance of the amount of cash advanced."

Amend the bill as a whole by deleting section 11.

Amend the bill as a whole by renumbering sections 12 through 14 as sections 10 through 12.

Amend sec. 12, page 5, line 44, by deleting "of the" and inserting "of section 501 of the".

Amend sec. 12, page 5, line 45, by deleting "1981," and inserting "1980,".

Amend sec. 12, page 5, line 47, by deleting "section 501 of that act" and inserting "that section".

Amend sec. 12, page 5, line 49, by deleting "subsection 512" and inserting "section 511".

Amend sec. 12, page 6, line 1, by deleting "subsection 512" and inserting "section 511".

Amend sec. 12, page 6, line 2, by deleting "$25,000" and inserting "$1,000".

Amend sec. 12, page 6, line 3, by deleting "act," and inserting "act."

Amend sec. 12, page 6, by deleting lines 4 through 6.

Amend sec. 13, page 6, line 7, by deleting "1 to 11," and inserting "1 to 9,".

Amend sec. 13, page 6, line 14, by deleting "12" and inserting "10".

Amend the title of the bill on the first line after "removing" by inserting "or increasing".

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EXHIBIT D

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EDWARD C. STEVENSON

May 6, 1981

HAND DELIVERED

Honorable Joe Dini, Jr.
Assemblyman
Legislative Building
Carson City, Nevada 89701

Re: S.B. 101 (First Reprint)

Dear Joe,

As you know I am concerned with some of the provisions of Senate Bill 101 (Reprinted With Adopted Amendments, First Reprint). I expressed those concerns to the Committee on Commerce on April 2, 1981. I have rewritten the provisions of the Bill with which I am concerned. Those rewritten provisions are enclosed. References in this letter are to the First Reprint of S.B. 101. My suggested changes in the Bill along with my reasons for those changes are set forth below.

Section 12 page 5 line 43 through page 6 line 6

Section 12 should be amended so that it will finally read as follows:

By this act the legislature exercises its prerogative:

1. Under subsection (b)(2) to section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions of subsection (a)(1) of section 501 of that act do not apply to loans, mortgages, credit sales and advances made in the State of Nevada; and

2. Under section 512, Part B of the Depository Institutions Deregulation and Monetary Control Act of

1980, Public Law 96-221, and declares that the provisions which preempt the law of this State under section 511, Part B of that act do not apply to business and agricultural loans in amounts of $1,000.00 or more, made in the State of Nevada.

The above language is taken from the amendments proposed by George Vargas at the April 2, 1981, hearing with a slight change. The amendments proposed by George Vargas provided as follows:

By this act the legislature exercises its prerogative:

1. Under subsection (b)(2) to section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions of subsection (a)(1) of section 501 of that act do not apply to loans, mortgages, credit sales and advances made in the State of Nevada <u>on or after the effective date of this act</u>; and

2. Under section 512, Part B of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions which preempt the law of this State under section 511, Part B of that act do not apply to business and agricultural loans in amounts of $1,000.00 or more, made in the State of Nevada <u>on or after the effective date of this act</u>.

As you can see I have deleted the underscored "on or after the effective date of this act." It is critical that that language be deleted. If it is left in the override of the federal law will be meaningless because with the elimination of usury in Nevada the federal law will not apply to Nevada loans made on and after the effective date of this Bill. It is my understanding that the "on and after the effective date of this act" language was added to make certain the loans made in reliance on the federal law were not affected by Nevada's override. The federal law itself adequately addresses that issue. Sections 501 (b)(3) and

512 (a) of the federal law expressly provide that the provisions of the federal law will continue to apply to loans and commitments for loans made between the effective date of the federal law and the effective date of any state law overriding the federal preemption.

Section 13 page 6 line 7 - 14.

Section 13 should be amended so that it will finally read as follows:

> Sections 1 to ___, inclusive of this act do not apply to any contract or note made before the effective date of this act, regardless of any provision of the contract or note.

As you can see I have deleted all of section 13 (2) contained in the first reprint of S.B. 101. You will note that I have left a blank space in the amendment. If no new sections are added to the Bill, the number 11 should be inserted in the blank. The important concept to keep in mind is that all sections of the Bill, except the section which overrides the federal law, should be included in the provisions of section 13. If new sections are added to or dropped from the bill, the number 11 should be changed accordingly.

It is crucial that section 13 be amended as I have suggested. It precludes the retroactive application of this Bill to contracts or notes made before its effective date. Precluding the retroactive application of changes in the interest rate statute is consistent with the Legislature's approach to this issue throughout its history. Nevada first enacted a statute dealing with interest in 1861. See, 1861 Stat. of Nev. 99. Amendments were enacted in 1913, 1975 and 1979. See 1913 Stat. of Nev. 31; 1975 Stat. of Nev. 1794; 1979 Stat. of Nev. 583. Never in 120 years has the Legislature given retroactive application to a change in Nevada's usury law. Section 13(1) of the Bill continues that sound policy. Contracts are entered into in the light of then applicable laws; the contract understanding and the expecta-

tions created thereby should not be changed by subsequent legislation.

Section 13 (2) of the Bill creates some doubt about the issue of retroactive application. It was added by an amendment proposed by the Senate Judiciary Committee. The need for that amendment was discussed in the Senate Judiciary Committee on March 5, 1981. I have reviewed the minutes of that meeting. There appears to have been a concern that existing contracts which have no minimum or maximum rate expressed (variable rate contracts) would have no limit after enactment of this Bill. The Committee minutes state that the Bill should "read that any preexisting contracts that would be relieved by passage of this law cannot exceed 18%." March 5, 1981 Minutes of the Senate Committee on Judiciary at 8-9. If Section 13 (2) was intended to cover this problem, it is unnecessary and should be deleted. Section 13(1) adequately addresses the issue of the Bill's retroactive application.

On the other hand, Section 13 (2) could be read to apply the Bill to contracts made before its effective date. If that is its purpose, it should be rejected. This legislation should be neutral on existing contracts. Deletion of Section 13 (2) will leave all parties to an existing contract or note in no better and no worse position than they would have been had Nevada's usury law not been changed. Neither a borrower nor a lender can ask for anything more. Both should receive nothing less. The deletion I suggest continues the sound 120-year-old policy of the Legislature to make changes in the usury laws wholly prospective.

If you have any questions concerning any of my suggestions or comments please call me. Thank you for your consideration.

Sincerely yours,

Gordon H. DePaoli

GHD:lk

SUGGESTED AMENDMENTS TO

FIRST REPRINT

SENATE BILL 101

Section 12 page 5 line 43 through page 6 line 6

Section 12 should be amended so that it will finally read as follows:

By this act the legislature exercises its prerogative:

1. Under subsection (b)(2) to section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions of subsection (a)(1) of section 501 of that act do not apply to loans, mortgages, credit sales and advances made in the State of Nevada; and

2. Under section 512, Part B of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, and declares that the provisions which preempt the law of this State under section 511, Part B of that act do not apply to business and agricultural loans in amounts of $1,000.00 or more, made in the State of Nevada.

Section 13 page 6 line 7 - 14.

Section 13 should be amended so that it will finally read as follows:

Sections 1 to ___, inclusive of this act do not apply to any contract or note made before the effective date of this act, regardless of any provision of the contract or note.

EXHIBIT E

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION		Assembly AMENDMENT BLANK
Adopted	☐	Adopted	☐	AMENDMENTS to Senate
Lost	☐	Lost	☐	Joint
Date:		Date:		Bill No. 101 Resolution No.
Initial:		Initial:		
Concurred in	☐	Concurred in	☐	BDR 8-415
Not concurred in	☐	Not concurred in	☐	
Date:		Date:		Proposed by Committee on Commerce
Initial:		Initial:		

Amendment No. 402

Consistent with Amendment No. 368 if this amendment is adopted first.

Amend the bill as a whole by adding a new section designated section 6.5, following section 6, to read as follows:

"Sec. 6.5. NRS 675.040 is hereby amended to read as follows:

675.040 No person doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, mortgage companies, thrift companies, savings or building and loan associations, or credit unions [shall be] is eligible to become a licensee under this chapter, nor [shall] does this chapter apply to any business transacted by any such person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under a pawnbroker's license."

Amend sec. 7, page 3, by deleting lines 31 and 32 and inserting:

"675.060 1. [No] A person shall [engage in the business of lending] not advertise that he lends in amounts of $10,000 or less , [and contract for, exact or receive,".

Amend the title of the bill, first line, by deleting "interest on" and inserting:

"the lending of"

AC13

To: E & E
LCB File
Journal
Engrossment:

Drafted by FMD:STC Date 4-1-81