

Chairman Robinson called the Subcommittee on Commerce to order at 10:15 a.m. in the City of Las Vegas Council Chambers.

MEMBERS PRESENT: Mr. Rusk
Dr. Robinson

MEMBERS ABSENT: Mr. Dini
Mr. Barengo

GUESTS PRESENT: See Attached Guest List

First to testify on S.B. 101 was George Vargas, General Counsel for the Nevada Bankers Association.

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

Mr. Vargas presented the Subcommittee with a draft of suggested amendments to S.B. 101. This draft is attached as EXHIBIT A. Mr. Vargas explained that the first sections of the amendment were addressed to the problems of "time price differential." He said that the purpose of the amendments was to permit banks to establish an annual credit card membership. He stressed that the amendments to the time price differential were not really the important parts to the bill.

Mr. Vargas explained that the amendment to Section 5 of the bill would repeal NRS 99.035, which was the definition of interest. He said this chapter was being repealed because if the ceiling on interest rates was eliminated, there would no longer need to be a definition of what interest was. Chapter 99.050 of NRS, Mr. Vargas indicated, was the section that established the 18 percent cap on interest rates in Nevada, and this section was also being repealed by the proposed amendments.

Most of the remaining amendments, through but not including Section 13, were those that had been proposed by different individuals plus a multitude of technical corrections to the bill. Section 13 specifically was a rejection of the Federal Preemption Act. The last part of the section indicates that the provisions of the bill become effective on and after the effective date of the act. This stipulation was added because it was everyone's opinion that the effects of the bill should not apply to existing or outstanding loans.

Mr. Vargas added that Section 14 of the bill, "Simply provides that Sections 1 through 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 of note." He said that it was "arguable" as to whether or not that section was necessary, and he would not be concerned if it was removed. He said the reasoning behind was that no statute had a retroactive application unless it was so specifically stated in the statute. Mr. Vargas said that statutes are generally prospective, or forward looking in their application.

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Parry Thomas, former President and Chairman of the Board of Valley Bank, gave testimony that indicated that the banks in the state had lost approximately \$500 million to out-of-state institutions because of Nevada's usury laws. He said that the elimination of the state's usury laws would be necessary for the banks in Nevada to continue operations.

Dr. Robinson indicated that he had received correspondence from Public Employees Retirement System recommending the removal of the usury ceilings in Nevada.

Mr. Ken Sullivan Jr., Chairman of the Board of Valley Bank testified that the banks of Nevada have been handling the needs of borrowers in Nevada by importing money from other states because Nevada is a "capital poor state." He said that almost all large construction in Nevada was possible only through syndication of many lenders, and the only way such investment would continue will be through making it attractive for investors and lenders to invest capital in Nevada. To make it attractive, will mean to offer the investor a better interest rate or rate of return than he can find in other areas. Mr. Sullivan added that the more investors that come into an area, the more competitive the rate will become. He stressed that the market place should be the deciding factor for interest rates.

There ensued discussion between Mr. Sullivan and Dr. Robinson concerning previous laws pertaining to usury in Nevada.

Mr. Rusk asked Mr. Sullivan for an explanation of how he perceived the removal of the interest rate ceiling would affect the average consumer.

Mr. Sullivan responded that the federal money policy was raising interest rates in order to slow down the economy, which in turn was hoped would curb the rise in inflation. Under such situations, the consumer would only borrow in situations where he had to, Mr. Sullivan said. He said, ultimately, the consumer would refuse to pay high interest rates. Mr. Sullivan added that when there are limits on the amount of interest banks are able to charge, the lenders are more inclined to forsake the average consumer and, instead, make large commercial loans.

Mr. Rusk then asked if the removal of interest rate ceilings would improve the position of Nevada Banks in relation to money market funds. Mr. Sullivan responded that it would not. He then went on to explain the effects of the Douglas Amendment on banks, which prohibits banks from crossing state lines. Mr. Sullivan also explained that another federal regulation governing banks, Regulation Q, was being phased out over the next 6 years.

There was additional discussion about monies paid for deposits.

Dr. Robinson then asked Mr. Sullivan why the banks wanted to charge membership fees for their credit cards. Mr. Sullivan

explained that the fees were to cover the bank's services and the fact that they hold funds available for the credit card customers. He added that anyone not wishing to pay the fee can choose to return the card. Mr. Sullivan also said that there was a federal prohibition against offering cash discounts to people not using credit cards for purchases, but that legislation was being introduced that would eliminate that prohibition.

Mr. Rusk argued that the bank should not need a membership fee for credit cards if they could charge whatever rate of interest they wanted to.

Mr. Sullivan responded that there were many people who used their charge cards and then paid the bill before finance charges or interest could be added, and that the fee was needed for such people. He said that the membership fee would spread the cost among all card users, not just those people who were making their payments over periods of months. At present, Mr. Sullivan said, the customers who pay their accounts in installments are paying the operation costs for the customers who pay their accounts within 30 days. He then went on to explain the costs involved in operating a credit card system.

Dr. Robinson stated that if the banks could charge annual fees for their credit cards, other institutions such as Sears, could also charge fees. Mr. Sullivan responded that they could; however, the customer had the option of not using the cards.

Next to testify was Commander Kent Clifford of the Las Vegas Metro Police Department. He indicated that he was not going to comment on the pros or cons of the bill, but that he was going to ask the Committee to put a provision into the bill that would prevent loansharking and shylocking. Commander Clifford referred to another bill in the Legislature, S.B. 271, which provides punishment for racketeering activities. He also gave examples of the types of people who might be involved with loansharks or shylocks and explained that the law enforcement agencies would be unable to assist people if the usury bill made no provision to control such loans.

Mr. Rusk asked Commander Clifford what, exactly, he would like to see put into the bill.

Commander Clifford responded that he would like to see a penalty added for unlicensed individuals who are making loans at excessive amounts of interest.

Also testifying on the bill was Thomas Lavelle, representing Caesars World. Mr. Lavelle said that testimony had not addressed itself to currently existing loans, which was the issue that he wished to discuss. He said that it was his belief that the loans should be bound by the laws in effect at the time that the loan was signed. He added that the Legislature had never before made any usury laws retroactive. Mr. Lavelle also said that he was asking the Committee to take action to override the federal pre-

emption statutes. He added that the amendments that were proposed by Mr. Vargas would make the override effective only for loans made after the effective date of S.B. 101.

Mr. LaVelle proposed the following amendment to page 6 of the bill:

The words "on and after the effective date of this act" be removed from the bill

Mr. Lavelle how variable rate loans made prior to the federal preemption act would be affected by the bill. He also commented that there were a number of borrowers who have relied on the fact that Nevada usury laws have never been retroactive, and the effect of what he was suggesting would insure that any existing loans retain the rate of interest applicable at the time they were signed.

Mr. Lavelle also said that he did not think his situation was unique.

Also testifying on the bill was Jeffrey Zucker. Mr. Zucker said that he was happy to see the repeal of NRS 99.035, but that he was concerned about the repeal of NRS 99.050, which is the general usury statute. He said that he would prefer the statute be amended to remove the interest limit rather than repealing the entire thing. He reasoned that in 1865, the Nevada Supreme held that "In the absence of a statute authorizing interest, no interest could be charged."

Mr. Zucker also expressed concern over the amendments that were suggested to NRS 677.340, the thrift company act. He added that he preferred the language in A.B. 123 to the language that appears in S.B. 101. Mr. Zucker provided the Committee with a copy of a proposed amendment to NRS 677.340(2), which is attached as EXHIBIT B. He also cautioned the Committee against placing regulations on unlicensed lenders. He said that there were many legitimate unlicensed lenders that might be adversely affected by such regulations.

Next to testify was Mel Exber, owner/operator of the Las Vegas Club Hotel. Mr. Exber indicated that his position was similar to the one described by Tom Lavelle of Caesars World. He said that to make the usury law retroactive and apply to existing loans, would be a "terrible mistake." Mr. Exber then detailed the problems that he would have with his variable rate loan if the removal of interest rate ceilings were made applicable to existing loans.

Mr. Rusk asked why language was not put into the loan that put a ceiling on the amount of interest.

Mr. Exber responded that at the time the loan was negotiated, no one ever dreamed that interest rates would go as high as they presently are and that he assumed that since the state usury

laws set the ceiling at 18 percent, the interest rate would never be able to rise above that amount. He went on to explain the circumstances surrounding his loan.

Next to testify was Charles H. Miles, Jr., representing the Nevada League of Savings and Loan Associations. Mr. Miles indicated that the controversy in the bill related to Section 13, the savings clause. He said that Section 13.1 was a general savings clause and 13.2 was a specific savings clause, which is directed to variable rate loans discussed by Mr. Lavelle and Mr. Exber. He added that the clause would save any variable rate agreements from the effect of the statutes and would cap such agreements at the 18 percent rate.

Mr. Miles went on to say that usury statutes did not create contractual rights; they create and prescribe penalties where interest in excess of the usury limits is charged. He added that the statute would not have any retroactive affect. Mr. Miles also discussed how loans between "sophisticated borrowers and lenders" were negotiated and how they were affected by usury statutes. He continued with a discourse on some of the problems with other banking statutes and said that he would like to see an out and out repeal of the usury statutes.

Next to testify was Kent M. Hansen, President of Far West Mortgage Company, Inc. Mr. Hansen's testimony is included in its entirety as EXHIBIT C. Mr. Hansen also provided the Committee with copies of several loan committment documents. These documents are on file with the Committee Chairman because they are too extensive to be reproduced with these minutes.

Mr. Hansen stated that he would support the following amendment to S.B. 101 as it applies to NRS 645B.195:

"Subsection Two hereof whall not apply to loans in excess of \$500,000, 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."

As an alternative, Mr. Hansen suggested the elimination of the entire subsection 2.

Jeralyn Clayton, with Consolidated Mortgage and President of the Nevada Mortgage Association, stated that the Association represented 45 mortgage brokers. She also said that the Association endorsed S.B. 101 and that it felt that the usury laws should be the same for all lenders in the mortgage market. She stressed that the Association supported the bill as it appears in the first reprint.

Don Brodeen, representing the Nevada Mortgage Bankers Association

and the Southern Nevada Home Builders Association, remarked, "Let's get it on," referring to passage of S.B. 101.

There being no further testimony, Chairman Robinson concluded the subcommittee hearing on S.B. 101.

In addition to the above listed exhibits, EXHIBIT D is attached as a explanation from Legislative Counsel, Frank Daykin.

Respectfully submitted,



Evelyn Edwards
Committee Secretary



Suggested Amendments to S.B. 101 as Amended

Add a new SECTION 1, page 1 to read as follows:

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.

Amend SECTION 1, line 1, page 1 to read "SEC. 2."

Amend SEC. 2, line 14, page 1 to read "SEC. 3."

Amend SEC. 3, line 23, page 2 to read "SEC. 4."

Further amend SEC. 3, line 23, page 2 by deleting in their entirety line 24 to and including line 27, and substituting in lieu thereof the following:

97.285 The limitation imposed upon time price differentials by this chapter is exclusive, and the provisions of any other law limiting rates of interest do not

apply to contracts or agreements governed by this chapter.

Amend SEC. 4, line 28, page 2 by deleting in their entirety line 28 to and including line 37, and substituting in lieu thereof the following:

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

Amend SEC. 5, line 38, page 2 to read "SEC. 6."

Amend SEC. 6, line 10, page 3 to read "SEC. 7."

Amend SEC. 7, line 30, page 3 to read "SEC. 8."

Amend SEC. 8, line 45, page 3 to read "SEC. 9."

Amend subsection 2 of SEC. 8, line 7, page 4 to eliminate the words "NRS 99.050" in lines 13 and 14 and the word "or" in line 15."

Amend SEC. 9, line 23, page 4 to read "SEC. 10."

Amend SEC. 10, line 23, page 5 to read "SEC. 11."

Amend SEC. 11, line 42, page 5 to read "SEC. 12."

Amend SEC. 12, line 43, page 5 to read "SEC. 13."

Further amend SEC. 12, line 43, page 5 by deleting in their entirety all subsections 1 and 2 thereof, from and including line 44, page 5, to and including line 6, page 6 and substituting in lieu thereof the following:

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 on or after the effective date of this act; and

2. Under section 512, Page 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 on or after the effective date of this act.

Amend SEC. 13, line 7, page 6 to read "SEC. 14."

Further amend SEC. 13, line 7, page 6 by deleting in their entirety subsections 1 and 2 thereof, from and including line 7, page 6, to and including line 14, page 6, and substituting in lieu thereof the following:

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 on or after the effective date of this act; and

2. Under section 512, Page 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 on or after the effective date of this act.

Amend SEC. 13, line 7, page 6 to read "SEC. 14."

Further amend SEC. 13, line 7, page 6 by deleting in their entirety subsections 1 and 2 thereof, from and including line 7, page 6, to and including line 14, page 6, and substituting in lieu thereof the following:

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.

Amend SEC. 14, line 15, page 6 to read "SEC. 15."

Proposed Amendment

to

NRS 677.340(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 NRS 99.050 [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."

(702) 737-0212

SUITE 314
PARKWAY CENTER
3101 S. MARYLAND PARKWAY
LAS VEGAS, NEVADA 89109

FAR WEST MORTGAGE COMPANY, INC.

May 8, 1981

The Honorable Mr. Joseph Dini,
The Honorable Mr. Robert Rusk and
The Honorable Dr. Robert Robinson
Assembly, Committee on Commerce
Carson City, Nevada

Re: NRS 645B.195
S.B. 101

Gentlemen:

To introduce myself, I am president and principal stockholder of Far West Mortgage Company, Inc. whose sole business is to procure financing for commercial and industrial real estate. These loans are almost exclusively long term first mortgages and are for a minimum amount of \$500,000. Since its inception, Far West Mortgage Company, Inc. has made almost \$200 million of such loans. In financing these projects, Far West acts as a loan correspondent for a number of leading insurance companies and pension funds. With but one exception, Far West has itself introduced all these life insurance companies to the State of Nevada.

Far West Mortgage Company, Inc. was once a licensed mortgage company. When interest rates exceeded twelve percent, Far West, with the acquiescence of then Commissioner Goddard, returned its license to the State Savings and Loan Commissioner and, in order to qualify for this exemption, ceased advertising in the media and retracted its listing in the yellow pages of the telephone book. The reason Far West did this is because the aforementioned insurance companies could no longer legally make a loan through Far West because of the controls of Subsection Two of NRS 645B.195.

I am also a minority owner in a newly-licensed mortgage company known as Guardian Financial. The principal purpose of this company is to make home owners and others first, second and third trust deeds with those investors primarily being private individuals. Guardian Financial agrees with Subsection Two of NRS 645B.195.

The different approaches to the two above mentioned companies in which I have ownership is obvious. There is one other sizeable difference, that being that Guardian Financial can now go forward in a completely competitive position, with the full support of the law. Far West Mortgage Company, Inc. cannot. It is operating within the law; however, the cost to do so is that it can never advertise and potential customers (even some existing customers) have difficulty finding it because it is not even in the yellow pages. The sole reason Far West is not listed in the yellow

pages is because of Subsection Two of NRS 645B.195.

An elaboration is needed now on our objection to Subsection Two. I can explain this by saying that Insurance Companies, Pension Funds, etc. will not provide long term financing on any of the type projects we have or will finance if they are subject to the controls of 2(a), (b) and (c). I am providing evidence from seven different insurance companies in the form of seven long term commitments we have in the past financed, all of which provide for penalties or closed prepayment. Please note that one commitment is an income kicker form of participation and is in violation of 2(c). Furthermore, this privilege is allowed in every other state in the United States. These privileges of prepayment penalties and closed prepayment are especially important now since most current financing takes its form in equity participations, income kickers or other fair forms of inflation protection.

We understand the following amendment to S.B. 101 as applies specifically to NRS 645B.195 was offered to you yesterday in Carson City and we fully support this amendment:


"Subsection Two hereof shall not apply to loans in excess of \$500,000, 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."

Gentlemen, Far West Mortgage Company, Inc. is a prolific mortgage producer with an excellent reputation and is known as such throughout the State by all financial institutions as well as a great many developers. We wish to maintain that position, of course, but we also feel it is very important that you as a committee as well as the legislature as a whole understand the difference between a licensed mortgage company as originally envisioned by NRS Chapter 645B and the type financing of Far West Mortgage Company.

We hope, therefore, for your support of this proposed amendment.

Sincerely,

FAR WEST MORTGAGE COMPANY, INC.



Kent M. Hansen
President

KMH:ktp

enclosures as
stated

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
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April 8, 1981

Assemblyman Robert E. Robinson
Assembly Chamber

Dear Doc:

Following is the short explanation you requested of the effect of section 13 of S.B. 101. As the first reprint now reads, the first 11 sections of the bill remove all statutory limits on rates of interest to be charged for money, and section 12 exercises the state's privilege to resume control of those rates after their federal preemption in 1980.

Section 13 then deals with the effect of these changes upon contracts or notes made before the act becomes effective. Subsection 1 provides that removal of the state's limitation does not affect those prior contracts or notes "regardless of any provision of the contract or note." This provision is designed to protect debtors against the provision sometimes inserted into contracts or notes that if the maximum legal rate of interest is changed the rate provided in that particular contract or note is changed accordingly. This protection is not an impairment of contract because it is the legislature's prerogative in changing (or removing) the limit on the rate of interest to decide that the change will apply only to contracts or notes executed after the change becomes effective. A similar provision was made when the general limit was raised from 12 to 18 percent: section 4, chapter 498, Statutes of Nevada 1979, at page 965.

Subsection 2 then does make a change in those contracts or notes which provide a variable rate (except those made while the federal preemption was in effect): it provides a limit of 18 percent. Again, it is the prerogative of the legislature, instead of leaving these contracts and notes wholly unchanged as in 1979 or removing the limit entirely, to prescribe a limit applicable only to them as a separate class. There is no impairment of contract, for the parties could have fixed their rate. This probably results in raising the rate on some contracts or notes executed before 1979, when the general limit was 12 percent.

Very truly yours,

Frank W. Daykin
Legislative Counsel

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