MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
June 1, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:35 a.m., Monday, June 1, 1981, in Room 213 of the Legislative Building, Carson City, Nevada.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator William J. Raggio
Senator Jean Ford
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary

The chairman asked for approval of the minutes.

Senator Wagner moved to approve the minutes of May 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, 1981.

Senator Don Ashworth seconded the motion.

The motion carried.

ASSEMBLY BILL NO. 68--Increases statutory rate for interest on judgments from 8 to 12 percent.

Committee discussion resulted in the following motion.

Senator Raggio moved to concur with the Assembly Conference Committee on A. B. No. 68.

Senator Wagner seconded the motion.

The motion carried. (Senator Hernstadt was absent for the vote.

SENATE COMMITTEE ON JUDICIARY
June 1, 1981

SENATE BILL NO. 101--Removes limitations on interest rates for loans.

Mr. George Vargas advised the committee he had an explanation as to the changes in S. B. No. 101. He had done so section by section. See prepared testimony attached hereto as Exhibit A.

Mr. Vargas said the first three sections deal with the "time price differential" which includes credit cards and installment contracts. See page 1 of the exhibit. This would provide permission to make an annual credit card membership charge and would leave the interest rate subject to market conditions on credit cards.

Chairman Close advised the committee this was put in by the Assembly. Mr. Vargas said it is necessary for permission to charge an annual fee for credit cards to have this in the definition of "time price differential" because there is a provision in the retail installment act which would otherwise limit and prohibit an annual charge on credit cards.

Senator Raggio asked what charge could be made on credit cards. Mr. Vargas said it would be wide open, it would be market situation. The interest and the fee would be wide open, there is no limit whatsoever.

Senator Wagner asked what has happened in other states which have been allowed to have unlimited fee for the use of the credit card. Mr. George Aker said that would be the experience which has come from South Dakota which caused City Bank to move its credit card operation from the State of New York to the State of South Dakota. In like manner, the State of Delaware has changed its provision in order to be competitive and Chase Manhantan and Morgan Guarantee have announced that they are now applying to move to Delaware. The fees being charged are $12, $15 or $18 annual fee, that is the range, as compared to $35 for American Express.

Senator Don Ashworth asked how American Express gets around this law so far as Nevada is concerned. Mr. Aker stated they issue under the state from which they are domiciled as will City Bank. The net effect would be that the Nevada issuers would be at a disadvantage. City Bank circulated this state three years ago for new card holders and City Bank and Chase and Bank of America would flood the state.

Mr. Vargas said First Interstate said they would have them issued out of California. Chairman Close said there is an advantage because they are charging less than City Bank because they are charging a fee

and you are not charging a fee.

Mr. Akers said the annual fee provides an equity in the credit card because there are many users who pay at the end of the payment period and never pay interest. The vast majority of cards have an annual fee in addition to the interest rate. Currently no state issuer charges a fee for credit cards. There has been discussion in this area and consideration has been given to selling the entire operation and not being a card issuer. He felt the fee is a common accepted practice.

Senator Wagner asked what was the experience with persons dropping out when a fee was required. Mr. Akers said New York was an example where five or six of the major banks charged a fee through a foreign bank and Marine Midland chose not to charge a fee and there was a flow of business from the banks that charged a fee to those which did not. Any bank could chose not to charge a fee.

Mr. Vargas said in the experience with card holders in Valley Bank, approximately one-third of them do not pay interest. Two-thirds are carrying the cost of the program. Mr. Akers said it cost from seventy to ninety cents to process each draft and most accounts will run fifteen to twenty-five drafts per month.

Mr. Vargas said Section 4, lines 34 through 43 amends NRS 99 which deals with interest, limitations on agreed interest rates, excessive interest rate for bonds and securities and so forth. See additional testimony in exhibit.

The meeting recessed at 10:00 to be resumed after the session on the floor.

The meeting resumed at 11:30 a.m.

Mr. Vargas said Section 99.050 repeals the 18 percent maximum loan limit and leave the rate of interest to be regulated in the market place. The other section is NRS 99.035 which is referred to later in the bill which said it is repealed. He said NRS 99.035 came into the law in the 1979 legislative session because of the 18 percent limitation on interest and there should be a definition of what would be included and what not in this limitation. If S. B. No. 101 is adopted, there is no reason to have the definition of interest. It has caused some problems.

Chairman Close advised the committee that Mr. Harvey Whittemore had suggested some language to be included in the bill which says this act does not apply to any contract or note which is as of May 31, 1981, subject to any suits or legal action regarding the validity of the interest charge. Discussion resulted in this being

disregarded. Mr. Whittemore stated he withdrew his request.

Mr. Vargas stated Section 5 deals with NRS 645.B which deals with mortgages companies. Senator Raggio asked what else the assembly had done with the bill. Mr. Vargas they had taken off the 18% limit and left that as an unregulated---subject to market competition usury rate and then they have eliminated the definition of interest contained in NRS 645.035.

Mr. Rennie Ashelman, representing American Investors Mortgage Company, said the general intent of Section 5 is to restore the 3½ over prime approach to mortgage lenders. There is an exception from an extension of credit over $500,000 where that is under the regular usury section which is unregulated based on testimony from a number of mortgage brokers who represented life insurance companies and some large trust funds that were having trouble with various provisions of old NRS 645B915. That is the same reason b and c were removed because of some problems with smaller loans. They have agreed with these changes, they would have no problem with this part of the act. The reasons for staying 3½ over prime is because they have had this for four years. During those four years, there has been a successful growth. The number of mortgage brokers has grown approximately 2,000%. There has been no problem attracting captial both within and without Nevada.

Senator Don Ashworth asked why they would want to have a rate on when it could be lifted and have no rate at all. Mr. Ashelman said it forces the people making the loans to focus on the quality of the loan and the borrower, rather than a competition as who can get a person the most interest rate. Also it is a place in Nevada where some protection for the consumer can be preserved with harming the supply of money. There is no shortgage of capital in this field.

Senator Wagner asked what would be the maximum which could be charged with the points. Mr. Ashelman said the points range from 5% to 15%, most are made in the 5 to 10% range. He felt this was better for the consumer, you are talking about his home, not a commercial loan.

Chairman Close asked if he was aware of telegrams from other mortgage lenders which are saying they want to go under the straight no interest bill. Mr. Ashelman stated that particular group has changed their opinion on the bill four different times. He said at the moment some of them individually are opposing it. The state association has traditionally endorsed these bills. Some of the Las Vegas association are opposing it.

Senator Raggio stated Mr. Howard Cunningham had a concern with Section 5, section 2, subsection (b) with regard to charge for prepayment of a loan. He felt it was necessary to charge a penalty for long-term loans. He would be over to testify.

Mr. Aker stated Mr. Cunningham represented the mortgage bankers who originate the large multimillion dollar loan primarily for insurance companies. Today they are always a long-term loan for amortization, usually 15 to 25 years. They have a call earlier for economic protection but no large insurance company will lend major dollars into the state without a prepayment penalty. The borrower would refinance. Chairman Close stated that was probably so because he could not afford that much interest. He should have the right to prepay it.

Senator Hernstadt stated in a short-term market, the money would go out of state. The $500,000 limit would make a differentiation between all the loans which occur within the state on a second mortgage basis versus the long-term primary lenders.

Senator Wagner questioned the amendments attached to the bill because the original testimony of the committee did not seem to have problems with the bill. Mr. Aker stated too many different segments of the financial industry were addressed in the bill and there was a normal request from each industry. He said he had worked very carefully with the commerce committee to get a balanced situation. He felt the bill was now amended the way it would work best.

Senator Don Ashworth stated the amendments appeared to be drafted in favor of the institution, and in no way for the consumer. He questioned why the assembly would take that position. Mr. Vargas stated he did not feel that was true. From the bank standpoint, there was a lifting of the interest rate in the time price diffential situation in the bill which came from the senate. It also eliminated the 18% limit. Senator Ashworth reiterated his question. There appears to be just a small area which is helping the consumer.

Senator Close asked for changes in Section 7. Mr. Ashelman said the senate had taken the lid off of the small loan companies entirely, he had proposed some amendments which were more liberal. They were drawn down and were more favorable to the consumer.

Mr. Joe Midmore said a bill had been sent out which treated the small loan industry the same as everyone else with no limitation on their rates and he objected to Mr. Ashelman's amendment to put rates on them. One because it is the type of industry

which is forced to charge interest rates which are relatively high compared to what most people think of, when they look at the rates they are concerned. He said in his lack of wisdom, in the assembly committee, he was not concerned because of the supposed end of the session, he did not want to delay the processing of the bill. That is why the amendment is back in, they did not particulary like it but it would not put the industry in any other trouble than it is in in dealing with personal property loans.

He felt if they were going to amend anyhow, he would suggest it, but he did not want to delay the bill. If the assembly would accept it, he would favor going back to the no limitation. He would not want to length the session.

Mr. Ashelman stated there was no concern with leaving Section 7 in or out so long as the bill was not delayed.

Mr. Ashelman said everything in Section 8 was technical in nature. There were some limitations on loans. This coordinates the general lifting of the usury limitations.

Mr. Vargas stated that Section 9 deals with the Nevada Thrift Companies act. Section 10 puts credit unions on the same level as banks, savings and loans and so forth.

Section 11 is the repeal of the definition of interest in NRS 99. Section 12 said considerable changes were made because of errors in the original reprint of the bill. This is an attempt by the legislature to reject the federal preexemption which is permitted in the federal law. The original draft referred to that law as the law of 1981 when it was 1980 and it also misquoted the sections. The section would restore the 18% as written. That is why it was amended. He said section 12 is corrected to refer to the proper sections of the 1980 act and to prevent the effect of the restoration of the 18%, that is sections 1 and 2 of section 12.

Mr. Vargas stated Mr. Blaike had come in with a concern with one loan during the original testimony. This resulted in Section 13. In assembly, two lawyers asked that that provision be taken out. Then during the hearings in Las Vegas, more attorneys representing Ceasar's Palace asked that the provision be put back in.

Mr. Vargas summarized as in his remarks in the attached exhibit. He said the Nevada Bankers Association said they have no controversay one way or another regarding putting a cap on if it is going to be taken off completely.

Chairman Close stated with respect to the suggestion of Mr. Harvey Whitemore, he did not want to affect any existing litigations going on usury which existed prior to the taking off of any usury limits.

Mr. Howard Cunningham stated he represents himself but also does work for loan brokers in Nevada. He had some concern with the provisions for prepayment of loans by or through mortgage companies. Commitments have largely dried up due to the existing usury law. He supported this bill in some form or another. To get a construction loan, it requires a long-term or take-out loan. You cannot get a construction loan with a take-out and the lenders will not make loans if they cannot have prepayment penalties. He said it would be devastating to the foreseeable for the inflow of funds for major construction projects to have that provision in there. With regard to the $500,000 limitation it would largely take care of commercial loans. He said the prepayment penalty would cut out a large number of lenders.

Mr. Ashelman stated said this was put in for the accomodation of other people, if he is comfortable with a limitation of five years, he would be agreeable.

Mr. Joe Midmore said there has been a bill passed which has an interest rate application in it which is apart from this bill which is S. B. No. 695. It refers to the provision in NRS 645B which mixes mortgage brokers and persons lending their own money. In S. B. No. 695, the committee stated that people lending their own money should be treated like people lending their money in other catgeories and have no interest rate restrictions whatsoever. Mr. Ashelman had told him that this was not the intention but felt the committee was aware of what they had done. He suggested the committee be aware of a possible conflict with the bills.

The meeting adjourned 12:30 p.m. for the session on the floor to reconvene upon call of the chairman.

The meeting reconvened at 3:45 p.m.

SENATE BILL NO. 101

Chairman Close stated he wanted to review the usury bill with the committee. Senator Hernstadt felt the bill should be processed because of the apparent end of the session. Senator Raggio advised the committee he had a conflict of interest and would not vote on the bill.

SENATE COMMITTEE ON JUDICIARY
June 1, 1981

SENATE BILL NO. 101

Senator Hernstadt moved to concur with the assembly amendments to S. B. No. 101.

Senator Keith Ashworth seconded the motion.

The motion failed. (Senator Hernstadt and Keith Ashworth voted for the motion. Senators Wagner, Ford, Close and Don Ashworth voted against the motion. Senator Raggio abstained from voting.

Committee discussion of Section 1 resulted in the following motion.

Senator Keith Ashworth moved to allow a membership fee on credit cards.

Senator Wagner seconded the motion.

The motion carried. (Senator Hernstadt was absent for the vote. Senator Raggio abstained from voting.

The committee decided that Section 5 should be conformed with the way it was originally passed out of the Senate Committee.

Senator Hernstadt moved to not concur with the assembly amendment to Section 5.

Senator Ford seconded the motion.

The motion carried. (Senator Raggio abstained from voting.)

Section 7 was discussed and the committee felt that the section should be retained as the original position of the committee.

Senator Hernstadt moved to not concur with the assembly amendment to Section 7.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Raggio abstained from voting. Senator Keith Ashworth was absent for the vote.)

Chairman Close felt that the language suggested by Mr. Harvey Whitemore that this would not affect any suit based on usury which presently exists.

Senator Don Ashworth moved to include the proper language to this effect.

Senator Ford seconded the motion.

The motion carried. (Senator Hernstadt seconded the motion. (Senator Raggio abstained from voting. Senator Keith Ashworth was absent for the vote.)

The chairman advised the committee that they would concur or not concur depending on the vote of the committee to S. B. No. 101.

The meeting adjourned at 4:15 subject to the call of the chairman.

The meeting reconvened at 7:30 p.m.

SENATE BILL NO. 253--Allows district attorney to assess fees against applicant for child support or establishment of paternity who is not indigent.

The committee reviewed the assembly amendments to S. B. No. 253 with following motion.

Senator Hernstadt moved to concur with assembly amendment to S. B. No. 253.

Senator Don Ashworth seconded the motion.

The motion carried. Senator Keith Ashworth, Ford and Wagner were absent for the vote.

SENATE BILL NO. 183--Reestablishes Nevada racing commission and reenacts and amends Nevada Racing Act.

Review of the assembly amendment to S. B. No. 183 resulted in the following motion.

Senator Hernstadt moved to concur with the assembly amendment to S. B. No. 183.

Senator Wagner seconded the motion.

The motion carried. (Senator Keith Ashworth was absent for the vote.)

SENATE COMMITTEE ON JUDICIARY
June 1, 1981

SENATE BILL NO. 610--Clarifies applicability of licensing requirements where gaming interest already subject of license is placed in trust.

Senator Hernstadt moved to concur with the assembly amendment to S. B. No. 610.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Keith Ashworth was absent for the vote. Senator Raggio voted no.)

SENATE BILL NO. 658--Repeals requirement that claim against state or political subidivision thereof be presented within 6 months.

Senator Hernstadt moved to concur with the assembly amendment to S. B. No. 658.

Senator Don Ashworth seconded the motion.

The motion carried.

SENATE BILL NO. 659--Allows creation of estate in community property with right of survivorship.

Senator Hernstadt moved to concur with the assembly amendment to S. B. No. 659.

Senator Ford seconded the motion.

The motion carried.

SENATE BILL NO. 674--Establishes special guardianships for persons of limited capacity and revises procedure for appointment of guardians.

The committee reviewed the proposed amendments with the following motion.

Senator Hernstadt moved to not concur with the assembly amendments to S. B. No. 674.

Senator Wagner seconded the motion.

The motion carried. (Senator Keith Ashworth was absent for the vote.)

SENATE COMMITTEE ON JUDICIARY
June 1, 1981

SENATE BILL NO. 310--Revises procedures for release without bail.

Review of the committee of the proposed amendments by the assembly committee resulted in the following motion.

Senator Hernstadt moved to not concur with the assembly amendments to S. B. No. 310.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Keith Ashworth was absent for the vote.)

SENATE BILL NO. 654--Revises provisions governing termination of parental right.

Review of the committee of the proposed amendments by the assembly committee resulted in the following motion.

Senator Raggio moved to concur with the assembly amendments to S. B. No. 654.

Senator Ford seconded the motion.

The motion carried. (Senator Keith Ashworth was absent for the vote.)

Chairman Close advised the committee that Mr. Ned Solomon had approached him and asked that S. B. No. 578 be killed. Judge Mendoza had asked Mr. Solomon to relay the information that it is reverse planning and an eighteen month mandatory dispositional hearing goes against all good case work. The judge is going around to other states testifying about what should be done and this is going against what he is saying. Mr. Solomon said the amendments do not change the wording, it makes sure that the Judge can review it whenever he wants. Mr. Solomon said the bill is not needed in order to obtain the money. He said what was requested is the national standard and what they believe to be right. He said that the bill which was killed was what was needed. He said he would like to take the new two years and study this. Senator Raggio questioned where S. B. No. 578 came from. Mr. Solomon replied from State Welfare, they thought they needed it. Senator Raggio asked if State Welfare was agreeable to have the bill killed. Mr. Solomon said no, they think that they cannot tell a judge to review a case in eighteen months. Senator Raggio stated there is friction between the welfare department and Judge Mendoza and would not kill the bill unless they had an opportunity to reply.

SENATE COMMITTEE ON JUDICIARY
June 1, 1981

Senator Wagner said this bill had testimony that said it was needed to get $100,000 of funds. Mr. Solomon said that was what they said originally. Senator Wagner said that was what was said on this bill. Mr. Solomon said he had checked and disagreed. He said what State Welfare deems to be reviews and what he sees reviews are entirely different. Senator Ford said the law requires a review every six months. Mr. Solomon said that is how he reads it, but the welfare department does not.

Chairman Close stated he would wait until the amendments come back on the bill and call State Welfare and find out their position on the bill before a decision is made. Chairman Close told Mr. Solomon he had heard enough arguments on the bill and was aware of the position of Mr. Solomon and if the Welfare Department still wanted the bill, he would make a decision to what would be done.

Mr. Solomon said he would like to have two years to sell the judges in the state before he is locked into a law.

There being no further business, the meeting adjourned at 8:30 p.m.

Respectfully submitted:

Shirley LaBadie

Shirley LaBadie, Secretary

APPROVED BY:

Mel. Close

Senator Melvin D. Close, Chairman

DATE: June 3, 1981

EXHIBIT A

EXPLANATIONS BY SECTIONS OF S.B. 101

SECOND REPRINT

Section 1, lines 1 through 20, page 1; Section 2, line 21, page 1 through line 28, page 2; and, Section 3, lines 29 through 33, page 2; all deal with Chapter 97 NRS "Retail Installment Sales."

These sections - 1, 2 and 3 - deal with the so called "time price differential" as that subject matter is treated in Chapter 97.

"Time price differential" is defined in NRS 97.155 as being the amount which is paid or payable for the privilege of buying goods or services to be paid for in installments over a period of time. In other words, it is similar to an interest charge which is imposed specifically as a charge or price for credit. It is an add on for the failure of immediate cash payment.

It should also be made clear that under Chapter 97 there are actually two definite situations which may give rise to the use of a "time price differential."

The first is in connection with retail installment contracts. Under present law, NRS 97.195, the charge for credit (or the "time price differential") in a retail installment contract may not exceed a 12 percent add on per year. Such a "retail installment contract" is defined by NRS 97.105. It would include such things as buying an automobile, a boat, a mobile home, etc.

The second situation in which a "time price differential" becomes involved is in a so called "retail charge agreement." This term is defined in NRS 97.095 and it encompasses what is normally known as an open account, or purchases made from time to time by use of a

credit card. In the case of such a retail charge agreement, the maximum permissable rate under Chapter 97 may not exceed 1.8 percent per month on the deferred balance (NRS 97.245, subdivision 3.)

In addition, NRS 97.255 provides what the "time price differential" may currently include. "The time price differential shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved, or contracted therefor."

The foregoing explanation is required in order to explain the changes which will be made by S.B. 101 in connection with retail contract sales.

Accordingly, by reason of the limitations set forth in NRS 97.255 above, Section 1 of the bill, permitting annual membership fees for credit cards, is necessary as in the absence of this amendment such annual fees could not be charged.

Section 1.5, line 8 of the bill simply takes the 12 percent add on per annum, the interest limitation, off retail installment contracts. This will permit the marketplace to determine this interest rate or "time price differential." In the absence of this amendment, financing for retail installment contracts will be severely restricted as financial institutions are paying substantially more than 12 percent add on per annum for their funds.

Section 2, line 21, removes the 1.8 percent per month "time price differential" on the use of open accounts or credit cards. Again, this is necessary under today's economic conditions by reason of the cost of money used in the financing of credit card transactions.

This amendment will replace a statutory maximum permitted rate by rates which will be determined through competition in the marketplace. As you can see, the aforementioned maximum rates will be eliminated by the bracketed material in Section 1.5, lines 10 through 13, as to retail installment contracts and by the bracketed material in Section, subsection 3, lines 26 through 28, page 2, as to open accounts and credit cards.

Section 3, lines 29 through 33, may not be essential by reason of the fact, above noted, that the limitations upon "time price differentials" currently existing in this chapter would be removed by S.B. 101. Nevertheless, the section may serve a purpose of indicating a legislative intent that the provisions of Chapter 97, dealing with retail installment sales, are to be confined specifically to that particular subject matter.

As to Section 4, lines 34 through 43, page 2, this section amends Chapter 99 NRS, which chapter deals with interest; limitations on agreed interest rates; excessive interest rate for bonds and securities issued by the state, etc. And finally, legal investments for insurance companies, executors, etc.

Two sections of Chapter 99 are effected by this bill. Disregarding momentarily the impact of the federal preemption, Section 99.050 places an absolute ceiling of 18 percent on all loans in Nevada, other than those which are governed by specific chapters dealing with specific lenders as hereinafter discussed. Therefore, as to loans generally, the rate of interest will be regulated by competition in the marketplace in relation to such competition, as well as the cost of money and like economic factors.

Skipping over sections of the bill momentarily, the other provision which effects Chapter 99 is found in Section 11, line 28, page 6, which simply reads "NRS 99.035 is hereby repealed." This section

came into law at the 1979 Legislative Session. Because of the 18 percent limitation on interest, it was felt that there should be a definition of what would be included and what would not be included in this 18 percent limitation. As the 18 percent limitation will be removed if S.B. 101 is adopted, there is no reason to perpetuate the definition of interest which, as previously stated, was simply an attempt to tell us what was and what was not included in the 18 percent ceiling.

Section 5, commencing at line 45, page 2, and concluding at line 15, page 3, deals with Chapter 645B.NRS. This chapter deals only with mortgage companies as defined in Section 645B.010. It does not have any effect upon the operation of any financial or financing institutions other than mortgage companies. Hence, Section 5 does not effect such institutions as banks, savings and loans, credit unions, pawnbrokers, etc., but relates solely to the operation of mortgage companies. Section 5 amends 645B.195, as presently in the statute there is a specific limitation on interest rates for an extention 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. This limitation is 12 percent per annum, or 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, (this is the maximum limit which covered all loans prior to the 1979 amendment wherein the general maximum interest rate was fixed at 18 percent by the provisions of 645B.195 were retained as to mortgage companies.)

The effect of Section 5 would be to eliminate the interest rate which may be charged on mortgage company transactions only on loans "of less than $500,000.00." This amendment would then free mortgage companies to charge such interest rates as may be agreed upon between the parties in mortgage company transactions of $500,000.00 or more.

In such transactions, the rate again would be regulated by competition in the marketplace as effected by the cost of money and other economic factors.

Section 6, line 16, page 3, would amend Chapter 646NRS. This chapter deals with the single and specific subject of pawnbrokers. Presently, under 646.050, pawnbrokers may charge interest at the rate of 4 percent per month. This amendment would increase their permissable ceiling to 5 percent per month.

Subsection 2, lines 24 through 26 is pure "Daykinism."

Subsection 3, line 27, page 3, simply adds the requirement that the rate of interest must be clearly shown in the pawnbroker's receipt.

Section 7, line 36, page 3, deals with a statute adopted by this session of the Legislature. This chapter was S.B. 127, which bill deals with Chapter 675 of NRS, the "Installment and Loan Finance Act." Again, this chapter has nothing to do with banks, savings banks, trust companies, savings and loans, credit unions, etc. In common terms, this is known as a "small loan act." It is limited to dealing in loans of $10,000.00, or less, and provides that any person engaging in this business must be licensed. This business is regulated by the Superintendent of Banks. S.B. 127, now Chapter 48 of Nevada Statutes of 1981, permitted a 36 percent per year interest rate on that part of the unpaid balance of a cash loan of $300.00, or less. Lines 46 through 48, page 3, raises the amount of the cash loan upon which such 36 percent per year may be charged from $300.00 to $2,000.00.

Lines 49, page 3 the word "fifteen" and line 3, page 4, completely eliminates a category of $300.00 to $1,000.00 upon which 21 percent per year currently may be charged. Under the provisions of S.B.

127, the current law, there were two additional categories for which specific interest maximums can be charged. Fifteen percent per year could be charged on a cash loan exceeding $1,000.00, or "18 percent per year on the unpaid balance of the amount of cash advanced," (whatever that might mean.) In any event, this 21 percent, 15 percent, and 18 percent, are all stricken by this provision of S.B. 101 and the final limitation on small loans as set forth in lines 3 through 7, page 4 of the bill is 30 percent on cash loans which exceed $2,000.00.

Hence, under these provisions, the small loan companies could charge up to 36 percent per year on the unpaid balance of loans up to $2,000.00 or less, and 30 percent per year on the unpaid balance of loans of $2,000.00 up to the $10,000.00 maximum loan provided for in the "small loan act."

Finally, in subsection 3, lines 27 through 30, page 4, the permissable maximum interest rate on loans secured by mobile homes, or factory built housing, is raised from 18 percent to 30 percent on the unpaid balance.

Section 8 amends Chapter 677NRS, which is the Nevada Thrift Companies act. The first amendment is to Section 677.340. The amendment in subsection 2 simply removes consideration of the effect of the 18 percent ceiling on the requirement of obtaining a license. As the law presently stands, a person is prohibited, under and in connection with the Nevada Thrift Companies act, from engaging in the business of lending, in gross amounts of $3,500.00 or more, and contracting in connection with such loan for interest, etc., in any manner other than that permitted by NRS 99.050 without first obtaining a license. The amendment to 99.050, removing the 18 percent limit, would likewise remove consideration of that limit in subsection 2.

Section 9, still dealing with the Nevada Thrift Companies act, amends Section 677.670. This amendment removes from the Thrift Companies act a formula for computing interest charges on Thrift Company loans between $3,500.00 and $5,000.00. The effect of this appears to be that interest on such loans will not be limited by law, but subject to limitation of competition in the marketplace. These loans, however, continue to be limited by the provisions of subsections 3 and 4 set forth in lines 35 through 45, page 5.

Subsection 2, line 20, and subsection 3, line 35, page 5, appear only to involve "Daykinism" changes.

Subsection 5, line 46, page 5, simply removes the words "whether at the maximum rate or less" for the reason that the maximum rate will be eliminated under S.B. 101.

Subsection 6, lines 4 through 8, page 6, simply eliminates a restriction currently existing on the activities of a Nevada Thrift Company licensee. The restriction thus eliminated is clearly stated in the language of subsection 6.

Section 10 amends Chapter 678NRS. This chapter deals with credit unions and it simply places credit unions on the same level as banks, savings and loans, etc., in removing the 18 percent maximum interest rate on their loans and thus permitting credit unions interest rates to be determined in the marketplace.

Section 12, lines 29 through 39, is simply a state rejection of the provision of the federal law which preempted, or overrode, state law having maximum interest rates less than those provided in the federal law described in Section 12. The federal preemption permitted interest rates to raise originally to 21 percent, and now to 23 percent, thus superceding lower state interest maximums. The federal law

enacted in 1980 also permitted the states to reject it by action taken within three years of its enactment. It is commonly thought that such permissive rejection was to enable states by affirmative action to return the lower maximum rates, however, this is not crystal clear and our Senate felt that we should have a specific rejection in order that our interest rates would be governed freely in the marketplace as previously discussed. There has been discussion pro and con as to the effect of the language at the end of line 39, page 6, stating..."on and after the effective date of this act." I do not believe that this language has any real impact. With, or without, this language the general rule of statutory construction is that a bill operates only as to the future, not as to the past, unless the bill specifically states that its effort shall be retroactive. ;The purpose of this language, however, was to make it crystal clear that this rejection of the federal preemption should apply only to the future and not to existing contracts.

The final section, Section 13, appears to have its origin in a single existing loan. In its original form, S.B. 101 would not have this provision, (likewise it would not have the rejection of the federal preemption.)

In the first reprint, after hearings before the Senate Committee, the rejection of the federal preemption was added, (in extremely incorrect form), and a subdivision 2, of then Section 13, was placed in the bill. In the original hearings, before this committee, as I recall, two Reno attorneys sought to have this provision eliminated. I am of the opinion that in spite of the language of this section, its current enactment could not constitutionally effect the terms of any contract entered into before the effective date of this act. The Nevada Constitution, Article 1, Section 15, provides, "no bill of attainder, ex-post-facto law, or law impairing the obligation of contracts shall ever be passed." (Underscoring added.)

Therefore, if Section 13 has the effect of attempting to change an existing contract, thus changing or impairing the obligation of the parties, I believe it to be clearly unconstitutional.