

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session  
April 7, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:01 a.m. on Thursday, April 7, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chair  
Senator Warren B. Hardy II, Vice Chair  
Senator Sandra J. Tiffany  
Senator Joe Heck  
Senator Michael Schneider  
Senator Maggie Carlton  
Senator John Lee

**STAFF MEMBERS PRESENT:**

Kevin Powers, Committee Counsel  
Donna Winter, Committee Secretary  
Scott Young, Committee Policy Analyst  
Jeanine M. Wittenberg, Committee Secretary

**OTHERS PRESENT:**

Pilar Weiss, Culinary Workers Union Local 226  
D. Taylor, Culinary Workers Union Local 226  
Gabriel P. Caprio, President, Chief Executive Officer, Amalgamated Bank  
William R. Uffelman, Nevada Bankers Association  
Samuel P. McMullen, Modular Building Institute  
Gary Childers, Supervisory Compliance Officer, Manufactured Housing Division,  
Department of Business and Industry  
Carol Tidd, Commissioner, Division of Financial Institutions, Department of  
Business and Industry

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John Paul Ashworth, Supervisory Examiner, Division of Financial Institutions,  
Department of Business and Industry  
Mark Thomson, Money Tree, Incorporated; Community Financial Services  
Association  
Jim Marchesi, President, Chief Executive Officer, Check City  
Scott E. Bice, Commissioner, Division of Mortgage Lending, Department of  
Business and Industry  
Thomas J. Powell, President, intohomes Mortgage Services  
Spencer Judd, Home Funds Mortgage; Nevada Association of Mortgage  
Professionals  
Cathie Jackson, Nevada Association of Mortgage Professionals; Nevada  
Association of Mortgage Brokers  
Kenneth Kukuda, Vice President, Summerlin Mortgage; Nevada Mortgage  
Institute  
James C. Fitzgerald, Owner, Vice President, Nevada Loan Source, Incorporated  
Rocky Finseth, Nevada Land Title Association  
James F. Nadeau, Nevada Association of Realtors  
James Wadhams, Citigroup; Nevada Mortgage Bankers Association; American  
Insurance Association; Anthem Blue Cross and Blue Shield  
Kenneth T. Scruggs, HSBC GR Corporation  
Dennis Flannigan, Executive Vice President, Great Basin Federal Credit Union

CHAIR TOWNSEND:

I now open the meeting to Senate Bill (S.B.) 255.

**SENATE BILL 255**: Revises provisions governing acquisition of branches of  
certain financial institutions. (BDR 55-1229)

PILAR WEISS (Culinary Workers Union Local 226):

Senate Bill 255 would allow for the entrance of a unique financial institution in Nevada. This bill makes a minor change to the State's branching laws so the Amalgamated Bank (The Bank) can enter Nevada through branch acquisition. I would like to stress the change that S.B. 255 would make to the *Nevada Revised Statutes* (NRS) is minor, applying only to The Bank's unique situation in relation to federal law. The bill was carefully crafted to prevent any impact to Nevada's overall banking regulations. The Bank is a unique financial institution with a mission to specifically serve lower-income and non-English-speaking customers. The Bank is owned by the Culinary Workers Union's parent union. However, it is a standard commercial bank open to any

banking customer and is not limited to culinary members. Currently, under the NRS 666.405, an out-of-state depository institution or holding company may enter Nevada by either establishing a Nevada charter or by acquiring or merging with a Nevada depository institution or holding company. There is one exception to this rule as outlined in the NRS 666.410. In rural counties only, an out-of-state bank may enter Nevada via branching. In the rural areas, an out-of-state bank is able to either establish a de novo branch or acquire a Nevada branch without merging with the bank or otherwise acquiring the entire bank. The bank we have brought before you today is caught in a catch 22 of sorts. Section 4 of the federal Bank Holding Company Act (BHCA) prohibited labor unions from owning banks but grandfathered in banks that existed before 1957. That included The Bank. Due to the restrictions of the BHCA, specifically section 4, we have limited flexibility through our grandfather exemption with respect to interstate expansion. As a result, The Bank may only enter other states through branching. The population we think best served by The Bank is not in rural counties as outlined in the NRS 666.410. We worked with the Legislative Counsel Bureau's Legal Division to identify that rather than the de novo exception that exists in the NRS 666.410, the more appropriate avenue would be to allow The Bank the branch acquisition exception in that same section of the NRS.

Senate Bill 255 would add a new exception to the NRS 666.410 so there would now be two subsections. Subsection 1 would remain. The new subsection 2 would add that bank holding companies that own or control a bank under the exemption in section 4 of the BHCA would be allowed to acquire an existing Nevada branch. The new subsection 2 of the proposed bill would only allow branch acquisition and would not allow the de novo branching that currently exists in subsection 1 for rural counties. It is critical to note that there is only one bank in the United States that falls under the federal section 4 that I referenced, and that is The Bank. This exemption will not create a new influx of banks but addresses a particular situation where federal and state regulation is combined.

D. TAYLOR (Culinary Workers Union Local 226):

We represent approximately 50,000 members in Las Vegas and Reno, covering about 130,000 people who live in the Las Vegas Valley. Many of our members are lower-income and English is not their first language. We have found that many of our members do not use financial institutions for a variety of reasons. We want to see our hard-working members try to save their money for various

reasons and become home owners. We also want them to take up financial planning. Nevada has a highly competitive banking environment with commercial banks, national banks and credit unions. Despite the diversity of banking options, significant segments of lower-income and non-English-speaking people remain on the outside. We feel that bringing The Bank to Nevada would make some changes. First, they have a strong history of making banking services more accessible to workers who traditionally stay away from those types of institutions. They have over 80 years of experience in bringing banking basics to those types of workers who I have described. We think if workers can get into the banking system through The Bank, they will eventually become comfortable with the banking system in our State and use banks close to their residences. We view this as an entry way for them to begin using banking institutions. If The Bank does come to Nevada, it is open to anyone and is not restricted. In our membership alone there are 90 different languages spoken. I think that is reflective of the growing community that we have in Las Vegas.

GABRIEL P. CAPRIO (President, Chief Executive Officer, Amalgamated Bank):  
The Bank is a Federal Deposit Insurance Corporation (FDIC) charter-insured commercial bank chartered under New York state law. It was established in 1923 by the Amalgamated Clothing Workers of America, primarily to meet the banking needs of lower-income and non-English-speaking working men and women. To this day, The Bank's primary customer base consists of lower- and moderate-income persons, small businesses and labor organizations. The Bank currently has 12 branches located in New York, New Jersey, Washington, D.C., and southern California with over \$4 billion in assets. Today, The Bank is owned by UNITE HERE, a labor union formed in 2004 by the merger of UNITE, formerly the Union of Needletrades, Textiles and Industrial Employees and HEREIU, the former Hotel Employees and Restaurant Employees International Union. The Bank, since its founding in 1923, has provided reasonably priced banking services to lower- and moderate-income working people. The Bank has specialized in the offering of products including the unsecured personal installment loan and truly no-cost, no-minimum-balance and no-hidden-fee checking accounts. The Bank has established a number of programs to address the banking and financial service needs of lower- and moderate-income people. The Bank operates a housing loan program that provides low-cost loans to economically viable, government-supervised, low- and middle-income multi-family housing developments. We also offer courses in financial literacy on a regular basis. This is available at no cost to persons residing in the area served by The Bank regardless of whether the person is a customer. These courses are

designed to instruct on basic concepts of financial independence and financial responsibility. One of the primary purposes of The Bank's desire to enter the Nevada market is to follow our historic mission and to offer financial-service products to those who have thus far been unable to obtain such services on an easily accessible basis. We are confident that we can make a contribution to lower-income and non-English-speaking working people in Nevada once we have the ability to open a branch here.

SENATOR LEE:

I would not want to see the board of directors in New York. Do you have plans for a local board of directors?

MR. CAPRIO:

We probably would not have a local board of directors per se with the way we are organized. We would be willing to set up an advisory board depending on community requirements.

SENATOR LEE:

I would want a de novo branch to have an advisory board with local community leaders participating. It would also be important for the Culinary Workers Union to be overseeing the operation as well.

MR. TAYLOR:

I agree, and we certainly would want to have involvement.

CHAIR TOWNSEND:

Advisory boards have become common here in this State. This helps the bank better understand the local community.

SENATOR TIFFANY:

This is a narrow application to the banking laws. Have you applied or seen this done in any other state?

Ms. WEISS:

It is my understanding that in other states, where The Bank has branches, there has not existed this confluence of state and federal law.

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SENATOR TIFFANY:

The Bank is only in four states; that is not a huge expansion. Have you applied and considered expanding into other states?

Ms. WEISS:

It is my understanding that this expansion into Nevada is the first plan for expansion from the four states we currently service.

SENATOR TIFFANY:

Does anyone know when and why the rural language was put into the law?

SENATOR TOWNSEND:

In the 1980s, there was a large national bank that wanted to enter our State to open a credit card center. It became very contentious and we ended up in a Special Legislative Session.

CHAIR TOWNSEND:

This would be an opportunity to have more capital in the State for purposes of development.

I want the record to reflect that my wife periodically performs real estate consulting for the Culinary Workers Union.

SENATOR CARLTON:

I am a member of the Culinary Workers Union, and a voluntary shop steward. I want that on the record for disclosure.

WILLIAM R. UFFELMAN (Nevada Bankers Association):

The Nevada Bankers Association welcomes this. I would not want the language to limit The Bank to just one branch.

KEVIN POWERS (Committee Counsel):

... It is well established and set forth in the preliminary chapter of NRS that the singular includes the plural. ... The singular use of the term an existing branch in Nevada would, in fact, include the plural as well.

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SENATOR TIFFANY MOVED TO DO PASS S.B. 255.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIR TOWNSEND:

We will close the hearing on S.B. 255 and open the hearing on S.B. 381.

SENATE BILL 381: Enacts provisions relating to commercial coaches.  
(BDR 43-1325)

SAMUEL P. McMULLEN (Modular Building Institute):

This bill is the result of a lot of great communication and identification of issues that relate to modular buildings. Modular buildings and commercial coaches, as the term is used here, are the temporary buildings that are used for things such as school classrooms, temporary sales offices and on-site construction offices. Since they are only temporary, they fall under the definition of a commercial coach in chapter 489 of the NRS.

Working with the Real Estate Division (RED), Department of Business and Industry, we have been able to recognize some of the differences and processes that we could work on together. There is an issue associated with the current per-inspection-basis fees. The RED wants to move to a permitting system. This would provide for more efficiency and revenue. Consequently, we have requested this bill to ensure statutory authority to develop that type of permitting system by regulations of the administrator. This bill requires a two-thirds majority because we are asking for the ability to correct the fees. I do not know that the fees would actually increase, but that would be done by regulation. Currently, there are fees for the inspection process; it may just be a re-characterization of those fees. The point we wanted to make is that we are comfortable with the process of developing those fees by regulation with the RED.

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SENATOR CARLTON:

Would this impact some of the modular buildings located at schools that have been in place for years?

MR. McMULLEN:

The interesting thing about "commercial coach," as opposed to other definitions in the NRS, is that no matter how long a modular building stays on the premises, it is considered to be personal property. Although it is attached, it is not permanently attached.

SENATOR CARLTON:

Will this impact the school district?

MR. McMULLEN:

It affects those buildings, but I do not think the impact will be different than what currently takes place.

SENATOR TIFFANY:

Why do you want to add another layer of government?

MR. McMULLEN:

The point I want to clearly make is that this does not add another layer. It is actually the opposite, and is only restructuring what is currently being done for more efficiency.

SENATOR TIFFANY:

It is adding another layer of oversight.

MR. McMULLEN:

The RED currently has all of the authority. This is to change from an inspection-based system to a permit-based system.

SENATOR TIFFANY:

Are you saying that they already do this, but now they want to collect a fee for doing it through a permit system?

MR. McMULLEN:

No. It is not really changing the fee. Currently, there are fees associated with per-inspection. The inspection fees would probably be removed and the permit



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fees would take their place. This will either be equal regulation or less burdensome regulation and a good thing for the industry.

SENATOR TIFFANY:

The process stays the same for the inspection. This is asking for a change from inspection fees to permit fees. Will there be a net gain on revenue?

MR. MCMULLEN:

I think it is close to being equal. These fees are basically the revenue for this part of the RED.

SENATOR TIFFANY:

The RED always has trouble with their budget and is always looking for additional revenue sources. At one time, it was questionable if they could continue due to budget problems.

MR. MCMULLEN:

The point is that we do not expect fees to be different. We are looking for the operation to be more efficient.

GARY CHILDERS (Supervisory Compliance Officer, Manufactured Housing Division, Department of Business and Industry):

The RED is in support of this bill. It has many possibilities for streamlining and making our industry efficient.

SENATOR LEE:

Is this another layer of bureaucracy? Do you currently inspect every modular, including the school district, or does the county building permit process handle the inspection?

MR. CHILDERS:

Currently, the Manufactured Housing Division (MHD), Department of Business and Industry, inspects all commercial-coach applications with the exception of the Clark County School District (CCSD). The CCSD has their own inspection team. This bill would not impact them.

SENATOR LEE:

Do you control construction trailers that move from site to site?

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MR. CHILDERS:

Yes, we control every commercial unit, including construction units that are moved. We try to get the information out that they do require inspection each time they are moved.

SENATOR LEE:

Could you provide me with an example of the change this would make in Clark County?

MR. CHILDERS:

Currently, the MHD has licensees that do the installation on these units at job sites. That company will call us after the installation is complete and we will go to the site and inspect. In the past, we have had three to four major installers of these units. Each one of those installers gets a separate day for our inspectors to go with their representative to the site to conduct the inspection. With this bill we are trying to relieve the burden of the industry to supply someone to accompany us on these inspections. If they are able to purchase a permit with the locations on them and notify the MHD when they are ready for inspection, we can then schedule inspections in a more efficient manner. This would eliminate visiting a site three different times because there are three different installers at that site. The positive for the industry and the MHD is an increase in efficiency, and we do not anticipate fees to be impacted.

SENATOR LEE:

Is there an interlocal agreement that you have with the county for inspections?

MR. CHILDERS:

The MHD had a cooperative agreement with Clark County in the past. In the last few years, that agreement has been set aside, and the MHD is now doing all of the inspections. Currently, the county will require the MHD to do their inspection first, and the county then comes in to do a land-use type inspection. The county does retain the ability to hold the tags for the utilities so they have the final approval on the occupancy of the unit.

SENATOR TIFFANY:

Is the permit fee annual?

MR. CHILDERS:

The permit fee or the inspection fee is on a per-inspection basis. When a unit is set, an inspection would be requested. The same process is used for requesting building permits.

SENATOR TIFFANY:

It was my understanding that there would not be an inspection fee. It would be a permit fee. You would not collect a fee every time you went to inspect because you would get an annual fee for a permit. Is that correct?

MR. McMULLEN:

There would be a process up-front that per installation you would obtain a permit for the installation, take the permit to the installation and notify the MHD. This is a more efficient process. It is not a permit to be in business. It is basically transactional based on the installation. When the unit moves, then the application for the permit process begins all over again.

SENATOR TIFFANY:

The permit fee would not be annual. Would there be a permit fee every time a modular building or commercial coach is moved to a different site? Is that correct?

MR. McMULLEN:

If you refer to line 4 of the bill, it is trying to build a system for the issuance and renewal of permits for the installation, design approval, et cetera, for commercial coaches. This is not for residential housing.

SENATOR TIFFANY:

Would you have a permit fee if you are moving a commercial coach and then an inspection fee after it was moved?

MR. McMULLEN:

We are trying to clarify that there would not be an inspection fee.

Currently, someone must meet the MHD at the site with cash or a check for the fee at the time of inspection. This bill would allow for advance deposit, get permits for the installations and the process would move forward. We anticipate the fees currently charged for inspections would be equivalent to the proposed

permit fee process. This is only restructuring to make the process more efficient and effective for moving these buildings.

SENATOR TIFFANY:

The way I see it is whenever you have a permit fee, State personnel are not required to perform a function. Whereas, if you are doing an inspection, that would require personnel. I see this as money up-front for the MHD every time a move is done when there may not be an inspection.

MR. McMULLEN:

I believe the correction in what you just said is there basically is an inspection each time. It is not just inspecting the unit for design integrity. This proposed process will actually reduce the level of staff necessary. This will eliminate the need to inspect multiple days at the same site.

SENATOR TIFFANY:

Does this mean that every time someone is paying for a permit, an inspection is included without a fee?

MR. CHILDERS:

Yes, the MHD is currently inspecting every installation of a commercial coach. This bill will allow the MHD to sell a permit in lieu of the inspection fees, which will be exactly the same, and be able to sell the permit in advance so the company does not have to send a representative with payment at the time of inspection.

SENATOR TIFFANY:

Would you be able to catch everyone that moves a commercial coach and does not obtain a permit? Is this a way to identify them?

MR. CHILDERS:

Yes, it will help us tremendously in identifying those without permits.

CHAIR TOWNSEND:

I now close the hearing on S.B. 381 and open the hearing on S.B. 431.

**SENATE BILL 431**: Makes various changes to provisions governing financial institutions and related business entities. (BDR 55-361)

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CAROL TIDD (Commissioner, Division of Financial Institutions, Department of Business and Industry):

I have provided the Committee with the Division of Financial Institutions (DFI), Department of Business and Industry, proposed amendments to S.B. 431 ([Exhibit C](#)). [Exhibit C](#) corrects some issues that did not actually make it in the bill or were erroneous in the bill.

SENATOR LEE:

Could you clarify the depository and non-depository requirements of six months and twelve months? Are some of the de novo issues on the depository side?

Ms. TIDD:

Yes, the depositories would be banks, credit unions and thrifts. The non-depositories would be payday lenders, installment loan companies and all others.

JOHN PAUL ASHWORTH (Supervisory Examiner, Division of Financial Institutions, Department of Business and Industry):

Part of the reason for the difference is that a de novo bank has a considerably longer start-up process versus a check-cashing business. That is primarily the difference.

SENATOR LEE:

Sometimes, the FDIC can take a long time processing the application. Is there a way someone could prove they were doing things in a timely fashion, but the FDIC was holding them up in the 12-month regulation?

MR. ASHWORTH:

We have a good relationship with our other regulatory partners, and that includes the Federal Reserve System (FRS) and the FDIC. In that regard, when we accept an application for a state-chartered bank, we are the primary regulator. We are on top of the application process so if there are any differences on issues in that process, we are at the forefront discussing it with either the FDIC or the FRS.

SENATOR LEE:

Will you involve yourself?

MR. ASHWORTH:

We will be in agreement through the process. There may be some differences in opinion, but ultimately we will resolve any differences between the regulatory partners, and we will make the same combined statement to the applicants.

SENATOR LEE:

There was a situation in southern Nevada where a group of people were trying to establish a bank and could not raise the capital. Were they as close to the 12 months as they said they were?

MS. TIDD:

We worked with them extensively and had several meetings. We indicated to them that to move forward they had to do certain things. They simply could not get the money in the door. There were multiple problems and issues in the four-year process. We finally made the decision to terminate the process.

SENATOR LEE:

I have heard some complaints about the DFI approval process. What amount of time does it take to get approval for opening an additional bank branch?

MS. TIDD:

We are addressing that. We have had some changes in personnel. An additional bank branch must also be approved by the FDIC. We are working on streamlining those processes.

MR. UFFELMAN:

Under the current fee structure, the banks have been paying their fair share. I would hope the DFI takes that into consideration as they advance any regulatory changes in the fee structure.

MARK THOMSON (Money Tree, Incorporated; Community Financial Services Association):

I am here today representing the Community Financial Services Association of America which is a national trade group representing the payday advance industry and Money Tree, Incorporated. We are in support of the bill. One advantage of the fining authority that was mentioned by the commissioner is that good operators do not have to subsidize the enforcement against bad operators.

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JIM MARCHESI (President, Chief Executive Officer, Check City):

I am also president of the Nevada Financial Services Association. We are in support of this bill and think the bill does a lot of good things. We are thankful for the work the commissioner has done with us.

CHAIR TOWNSEND:

I now close the hearing on S.B. 431 and open the hearing on S.B. 433. After that we will go into work session.

**SENATE BILL 433**: Makes various changes relating to mortgage lending.  
(BDR 54-380)

SCOTT E. BICE (Commissioner, Division of Mortgage Lending, Department of Business and Industry):

I believe the Committee covered the reasoning for the amendments in the last bill discussed. I apologize to the Committee that our amendments are so large ([Exhibit D](#), original is on file at the Research Library). This bill is on behalf of the Division of Mortgage Lending (DML). The purpose of the bill is to rectify some of the daily issues with which we deal. It is not uncommon for the DML to receive 40 consumer phone calls daily with time-sensitive issues regarding lenders. Consumers believe that since we have licensed the companies, we have put our "State stamp of approval" on them. Part of this bill is a strengthening of education. We cover three chapters of the NRS: 645A, 645B and 645E.

Private money lending and institutional mortgage brokers are comprised within chapter 645B of the NRS. It is important for the DML to have licensees on a level playing field. We have added language to license the mortgage agents that are under 645E of the NRS.

The intent of the bill was for all holders of escrows to check licensing status prior to dispersing payments to brokers and lenders and not infringe upon the settlement process. We probably have more language to clean up on that issue.

Another issue addressed in this bill is the maximum fine, which is currently \$10,000. We would like it to be the greater of \$10,000 or the economic benefit received by the entity.

We have included language to prohibit the licensee from operating out of a residence. There is grandfather language to include those who currently operate from their residences. It is not the intention of the DML to pick on a particular cottage industry. It simply allows us to regulate and will not affect the people currently operating their business in a sound manner.

This bill calls for the licensing of contract processors. In the mortgage-lending business the processing of a loan and gathering of documentation are critical factors in the process. It is not uncommon for that function to be subcontracted out. We have found that a lot of the so-called contract processing centers are not properly licensed, or they masquerade as a mortgage origination business. This calls for further oversight of that business.

One of the things we did try to work out with industry partners on the licensing of the mortgage agents for mortgage bankers was to create a category for large companies that have net worth in excess of \$50 million. This would require that they have screening and training processes identical to the requirements of the agents who are licensed by the DML. That industry felt they could perform those functions more expeditiously than the DML. We have called for subcontracting that function to them with oversight.

Unfortunately, our State leads the nation in mortgage fraud. We have provided language in the bill that requires licensees to notify the DML of fraudulent or suspected fraudulent activity.

Other areas of "clean-up" are submission of financial statements to the DML within 120 days of fiscal year end and notification of termination of agents from 3 days to 30 days. What you will see in a lot of the licensing clean-up is that we have spelled out certain things that affect the industry and licensure requirements. We have allowed phasing-in time frames. We have requested that with the 1,350 licensees we have and 7 examiners, we do not believe we can uphold the statutory mission of accomplishing this. It has not been done in the past. We are saying that with companies that have been rated satisfactorily, we do not believe the DML needs to visit people every year who operate in a safe and sound manner. We have requested a change in language.

I would like to add commercial lending to the NRS 80.015 as an option that does not constitute doing business, so we could potentially close the loophole



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for the onetime loan that is currently allowed in the State. The onetime loan creates havoc with unlicensed activity.

SENATOR HECK:

Could you define who "qualified employee" applies to?

MR. BICE:

A qualified employee is defined in current statute. The previous division, prior to creation of the DML, had the opinion that a qualified employee could operate as a mortgage agent. When licensing of mortgage agents was instituted it was silent and there was no specific reference to a qualified employee. We are attempting to say the same requirements of a mortgage agent and those capacities apply to that qualified employee.

SENATOR HECK:

I do not see a definition in the NRS 645B.

MR. POWERS:

I would agree with you Senator Heck; you are correct. There is no definition of qualified employee in chapter 645B or 645E. I believe there is a definition of qualified employee in the regulations adopted by the commissioner in NAC 645B. ... A definition of qualified employee would be needed to add ... we would need to add a definition of qualified employee to the statute.

SENATOR LEE:

In the amendment to section 27 in [Exhibit D](#), it states " ... on the date of the establishment of the escrow, record in writing the number and the date of expiration of the license issued" then it continues "The holder of the escrow is not required to verify independently the validity of the number of the license." Is there a reason why we are forcing people to expose their license and number on a piece of paper that will never be checked by anyone because you are not verifying it to begin with?

MR. BICE:

The language taken by the Legislative Counsel Bureau (LCB) came directly from the NRS 645A. I would agree that the language does little and should be strengthened.

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SENATOR LEE:

On the top of page 7, subsection 2, administrative fines, in [Exhibit D](#) it states: "or \$10,000, whichever amount is greater"; obviously the commission is what we are talking about here. Is it \$10,000 per infraction? What is the fiduciary responsibility of the person in charge of the person that may be fined?

MR. BICE:

The DML has the authority to fine up to \$10,000 per infraction. You could take that to mean per loan or per incident depending on the infraction. That language added was to specifically discourage illegal profits.

If a company has done everything they should, implemented proper procedures but have a "rogue" loan officer, then it is the DML's intention to take action against that individual agent.

SENATOR LEE:

It bothers me that there seems to be no appeal process if there are infractions.

MR. BICE:

We have tried to be strong enforcers of the law and not cross our lawful regulatory boundaries. If we take an administrative action and issue an order against the company for an infraction or violation, they have the right to request a hearing. The hearing will be held by a third-party hearing officer that the DML has assigned. There is due process with the system, and they have the right to request a hearing.

SENATOR LEE:

Is there a way to go in front of your peers to settle the dispute?

MR. BICE:

This is a one-person commission with an open-door policy. The main goal is not to be punitive.

THOMAS J. POWELL (President, intohomes Mortgage Services):  
I will read from my written testimony ([Exhibit E](#)).

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SPENCER JUDD (Home Funds Mortgage; Nevada Association of Mortgage Professionals):

We have reviewed the bill draft and amendments proposed by Mr. Bice and agree with most of the ideas in them. There are a few items we would like to clean up.

Mr. Powell referred to the education and licensing changes that we would also like to see. There are a number of areas in the bill that refer to the 30 hours and we would like to see that cleaned up.

Section 6 of the bill refers to the requirement that escrow companies and settlement agents get a copy of the license. We would like to see title companies added to that.

In section 18 of the bill, we would like to see that when a license is issued to a mortgage broker, for the initial one-year period of their licensing they have to have advertising approved. After that, their advertising would not require approval.

In sections 20 and 26, we would like to see the education and hours cleaned up.

I do have a home-based business. Mr. Bice has included in the bill a compromise to grandfather those of us currently operating satisfactorily out of our residences. While I cannot say that I am totally in favor of requiring a commercial space for all new entrants, I do understand the concern. For those of us that will be grandfathered, I would like to see the language change so that it does not expire on October 1, 2006.

SENATOR LEE:

Are there many affluent brokers out there that lend money without a staff? Why is this necessary?

MR. BICE:

It is not uncommon for the DML to do an exam of an out-of-state person who has given us a commercial postal service address and they conduct all of their business out of state. The intent of the language was not meant to be an annual reexamination or annual ability to take the person out of their location. This is only an attempt to provide for safety and soundness of my examination staff as

well as the level of professionalism. The reality of what we see everyday is multiple applications coming predominately from Arizona, California and Utah. People want to set up in their apartment or a condominium-conversion and they really are not operating there. That just satisfies the requirement of having an in-state location. In reality, unbeknownst to the DML, their business is being conducted some other place. The reason we are addressing this is that the previous administration decided that they did not like home-based businesses and were not going to license people. I felt it was important to spell this out and address the issue.

SENATOR LEE:

I do not like grandfather clauses. Is there a way to do it for someone who is affluent, domiciled, has one employee or less and is loaning their money?

MR. BICE:

The DML does not have any hard numbers for people operating from their residences. This is not an attempt to take the people in-state and tell them they can or cannot do this. That is the reason for the grandfathering process. The majority of people operating from their residences are doing home-mortgage financing, not private-money lending. The DML in no way wants to be punitive to those who have been operating from their residence. That is the intent of the grandfather language.

SENATOR CARLTON:

What is done with the person just starting out in the industry who may have a desk in an office but all of their work is done in the field?

MR. BICE:

An agent is licensed to a location through statutes and regulations.

MR. JUDD:

To continue, section 5 amending section 8 of S.B. 433 on page 3 of [Exhibit D](#) proposes that a processor be licensed as a mortgage agent. The Nevada Association of Mortgage Professionals opposes that they be licensed as a mortgage agent. If they could set up separate licensing for a contract processor, we would be fine with that.

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On page 7 and page 11 of [Exhibit D](#), it refers to mortgage agents. We would like to see education for agents done beforehand. Testing should also be performed prior to issuance of an agent license.

CHAIR TOWNSEND:

With regard to page 7 of [Exhibit D](#), what are you referring to?

MR. JUDD:

The very bottom, the section number is blank. It starts with "To obtain a license as a mortgage agent, a person must ... ." We would like to see the education requirement in that section, if appropriate.

The other was on page 11, no section number and right in the middle. It starts with: "The division shall ascertain by written examination ... ." We would like language that states it must be done before licensing.

CATHIE JACKSON (Nevada Association of Mortgage Professionals; Nevada Association of Mortgage Brokers):

I have been involved in the legislative process for the last 10 to 15 years.

CHAIR TOWNSEND:

Mr. Powell made recommendations to Mr. Bice in [Exhibit E](#) with some changes to qualified support. Are you in agreement with this or are you taking another direction?

MS. JACKSON:

I am in agreement with him and would like to clarify a few points.

Since Mr. Bice has become Commissioner, he has done more for this industry than his predecessor. To address Senator Lee's concern on grandfathering, in the bill it states anybody only licensed less than two years would be required to take the test. We believe in testing and education in our industry, and if he wants everyone to take the test, we are in agreement.

When I was president of the Nevada Association of Mortgage Bankers, a lot of people did not think we would get to the point of licensing loan officers. As an industry, we would like to see anyone who meets with the public to take a loan application be licensed.

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Senator Lee, if someone lends their own money, they are not required to be licensed. A license is only required for lending other people's money.

There was a survey conducted for the mortgage industry that illustrated, overall, members of our industry did not think it was professional for people to conduct this business from their residences.

CHAIR TOWNSEND:

Mr. Bice, the Committee has tried to follow the recommendations of Mr. Powell, Mr. Judd and Ms. Jackson, which seem to be fairly consistent. Have you been able to follow those so that you can respond? I do not think there was anything in their recommendations that was in conflict with what you have proposed, but there were enhancements in many cases. Do you want to address any concerns you have with those recommendations?

MR. BICE:

As far as some of the minor things, I have no problem taking them into account.

CHAIR TOWNSEND:

On the residential issue, I am not asking anyone to change their position. That is ultimately a Committee decision. Mr. Powell was very specific on certain educational requirements. On Senator Lee's question of grandfathering, Ms. Jackson was very articulate that perhaps all persons should be tested. Those are more enhancements that do not seem to be in conflict with what the DML is trying to accomplish.

MR. BICE:

I would be happy to work out the details however you wish, either in a subcommittee or with certain individuals.

CHAIR TOWNSEND:

We may send this to subcommittee to produce a good product with input from everyone. We have to be respectful of the time involved and the work that staff will have to put into this.

KENNETH KUKUDA (Vice President, Summerlin Mortgage; Nevada Mortgage Institute):

I do support S.B. 433 and all of the amendments suggested. I want to address any concerns by any members of the Committee about government intrusion.

As you have heard today, there has been no indication that anyone is opposed to the education requirements. We are not looking at this as a government intrusion. This is something that we all want as part of the industry to enhance our professionalism. Otherwise the Judicial Branch of government will become involved in these issues. I encourage the Committee to support S.B. 433 and all of the amendments suggested.

JAMES C. FITZGERALD (Owner, Vice President, Nevada Loan Source, Incorporated):

I have been a mortgage-broker licensee for 15 years. I operate as a home-based business. I have written a letter ([Exhibit F](#)) and would appreciate if you would read it before you make a decision. I realize, after listening to testimony today, that my business would be grandfathered if the amendment is accepted. I would object to grandfathering on principle based on my 15-year experience of operating out of my residence. There has never been a problem with home-based businesses until last year.

ROCKY FINSETH (Nevada Land Title Association):

The Nevada Land Title Association has some concerns with section 6 and section 27 of the bill. We have spoken with Mr. Bice and will continue to work on the issues with him.

CHAIR TOWNSEND:

Mr. Bice, are you familiar with their issues?

MR. BICE:

Yes, it goes back to remarks that those two sections need some more work to make them more tolerable for the industries.

JAMES F. NADEAU (Nevada Association of Realtors):

We have had a good working relationship with Mr. Bice. In the initial regulations, there was some "spill over" into our industry. We just received the amendment this morning and have not had time to review it. I do not believe there are any implications for us.

JAMES WADHAMS (Citigroup; Nevada Mortgage Bankers Association; American Insurance Association; Anthem Blue Cross & Blue Shield):

Unless you have a regulator who will bite, it does not matter what you write. This brings me to some serious concerns about this bill and the amendments.

We talk about parity and yet we are not always making the correct discernment between the components in this business. Mortgage lending occurs in this State through a variety of "windows," if you will. From commercial banks; credit unions; employee benefit plans; mortgage banks; mortgage brokers, sometimes called hard-money lenders; wholesale lenders and then we have those who package loans and send them to those funding windows. We have compressed in this ancient statute very distinct functions. There is a clear distinction in the industries in the area of processing versus underwriting for the purpose of licensure; for example, the function of being an agent, and not necessarily a mortgage agent, but someone who is acquiring applications and sending them to an underwriter for a risk decision on whether a loan will be funded. So in the example, we have an underwriting function and a sales and marketing function. This committee is well aware of another industry I am involved in where you license, very discreetly, insurance companies who take risk versus the agents and brokers who prepare applications, so again we have an underwriting function or lending function and then we have an application-taking function.

Under federal law, a major component of the underwriting community is exempt. Federal law preempts state law with regard to banks, bank holding companies, credit unions and a whole host of entities. We have to be careful not to place an unfair burden on the local entrepreneurs that is not placed on national lending entities so we do not further create an unlevel playing field. For example, if we have to have 40 hours of prelicense education, that would not apply to an employee who is making mortgage loans for Bank of America. The distinction I am hoping to raise is that there is a difference between "raising the bar" of professionalism and "pulling up the ladder," thereby putting new entrants at a disadvantage. Senator Carlton's question was particularly pertinent in that regard. It is not just the wealthy who, under another exemption, can do their own loans. It is the person looking for an opportunity to get into an exciting business. I think the distinction must be made between lenders and those who take applications. I do not believe this bill does that. We may be able to make the appropriate distinctions in subcommittee so the different components of the industry are regulated consistently with the activity in which they engage.

CHAIR TOWNSEND:

One of the concerns this Committee dealt with, at the time your clients had a different view, was that as we began to license people in the mortgage-brokerage industry when Mr. Bice came on board, we were trying to



clean up an industry that had substantial problems. It was the intention, I believe, of the two Houses of the Legislature, the Governor and Mr. Bice to weed out those who did not deserve the privilege and honor of serving in a wonderful industry. When those licensing requirements and new educational requirements were instituted, many of the "bad actors" were driven out. In some cases, they may have found gainful employment in an area that was not as heavily regulated, at least by the State. That was a concern that I believe was articulated by some. When you refer to those who actually underwrite versus those who process, there was a concern that those who left one licensing area and went to another industry may have found homes in the areas of processing. That is why the Committee ended up making an effort to license everyone equally. Feel free to correct me if I have not characterized that correctly. Are we going to revisit that issue or are you bringing up a separate component about underwriting and those that take an application?

MR. WADHAMS:

As to the status quo, I am not quibbling with that. We are talking about a change in the status quo represented both by the bill and by the amendments.

CHAIR TOWNSEND:

Could you be specific?

MR. WADHAMS:

Under the NRS 645E.670, the issue of hiring criminals is already prohibited. I am not sure that the issue proposed in the amendments to the bill advance that cause. I am objecting to that process.

I think we have decentralized the accountability that this Committee had hoped to impose on the State by creating multiple licensing categories within the engagement of a particular principal. In other words, if a mortgage broker obtains a license holding that individual or corporation responsible for all acts done by its employees or on its behalf, that is the regulating the "head" of the body. This produces quicker accountability than having the State license the "arms, legs and hands" of that single employer. The employer then simply states, "Stamp this person as okay; I guess I am not concerned." I think it is far more efficient to focus the regulatory resource on the person accountable, that is to say, the qualified employee and the corporation that qualified with the original license.

CHAIR TOWNSEND:

The Committee may or may not agree with you. I have a view that says this industry has been such trouble to this State for so long that it was a necessary step to be preventive in nature by going to the "arms and legs" as opposed to reacting after the fact that the "head" was responsible. In this Committee, we would prefer not to see any of these issues here. It means that the competitive environment and behavior by individuals is working correctly on behalf of the consumer and those that put themselves in businesses and take risk. Unfortunately, it seemed the activity and media attention got focused on one industry for about five years, and it was crushing. There was corruption, greed and senior citizens losing their life savings; it was messy. The Committee's reaction was to perhaps be draconian, but right or wrong we addressed it. If you think the mechanism in S.B 433 does not advance that, then why not go through and point out the deficiencies?

MR. WADHAMS:

You have raised a fair policy question. If we are going to license "everybody," we ought to license everybody. Recognizing that we cannot makes us think twice about who we ought to license. For example, with Washington Mutual, we cannot make anyone be licensed in that organization so we create disparities that could be disadvantageous. I think the most effective thing that this Committee and both Houses did was provide for a "junkyard dog." Mr. Bice's action got the attention of the industry. More licenses does not mean much; a better cop does.

The definition of qualified employee is needed. The definition of contract processors is necessary because I have concerns in this era of electronic activity. If an underwriter, or even a person taking applications, seeks a credit check, does the credit bureau itself become a contract processor because someone is working on that file? I think we need a clear definition of what is intended. There is a major policy question that I think this Committee is familiar with; although, two Legislative Sessions ago it was dealt with by the Senate Committee on Judiciary. That issue is "piercing the corporate veil." These statutes allow the corporate veil to be pierced; this means individuals within corporations are personally responsible. Changing the long-standing policy of piercing the veil is something this Committee should take a long hard look at.

CHAIR TOWNSEND:

Do you mean in reference to the bill or the amendment?

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MR. WADHAMS:

It is in both; for example, page 3, lines 31 through 35 of the bill. Coincidentally, in lines 34 and 35, as Senator Lee observed, there is now a penalty substantially greater than \$10,000, which is virtually an unlimited penalty. I have two problems with that proposed change. That proposed change may be giving the powers of accord to an administrative agency which is something that requires caution. If there has been a transgression that requires such a penalty, should not that money go to someone other than the State? Perhaps, the money should go to the individuals involved in the transaction. I think there is a constitutional issue to consider on that. Why should the State benefit from the transaction rather than the individuals who are the buyers and sellers in that event?

CHAIR TOWNSEND:

In another industry, the Committee processed an identical penalty provision that you reference. It was a workers' compensation issue that allowed the money to go to the injured employee. We have done that in the past, and it may not be difficult to do.

SCOTT YOUNG (Committee Policy Analyst):

I believe you are referring to the benefit penalty sections, and I think it is in the NRS 616D.

CHAIR TOWNSEND:

We termed it "benefit penalties," so it did not go to the State but the claimant.

MR. WADHAMS:

That is the point I had hoped to make. I am really troubled by the residential-address issue for all officers and directors. We are not just speaking about small entrepreneurial entities. We are speaking about nationwide entities with hundreds of officers and directors. Page 5, lines 32 through 38, segue into the vastness of individuals, particularly for national, publicly traded corporations, who would have to report information.

CHAIR TOWNSEND:

Mr. Bice, if they are publicly traded, most of the information is required by the Securities and Exchange Commission (SEC) and others. Could not the information be obtained?

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MR. BICE:

Yes. The only thing the DML was doing was cleaning up the language from residence to residential address.

MR. WADHAMS:

My objection is to the residence or residential address in any event. It should be the business address.

CHAIR TOWNSEND:

I believe there is a misunderstanding. I believe what Mr. Bice is trying to state is that if you are operating your business out of your residence, they want to have the address. They are not looking for the home address of an officer or director.

MR. BICE:

This is not new language. It has been in statute for years.

CHAIR TOWNSEND:

It is one thing if your intent is to obtain the address of someone operating their business out of a residence. The home address of the directors of a publicly traded company is another. It is a point well taken.

MR. WADHAMS:

Hopefully, that is one of the issues we can work through. The question is not simply whether these amendments are adequate. I am raising a larger question. It is time to look at the law where someone may have to have two licenses from the same agency. I would suggest that is neither efficient nor rational. I think those issues can be sorted out in a work group.

CHAIR TOWNSEND:

We understand the multiple-license issue, and that is not the goal here. We need effective regulation, but more regulation does not mean effective. We can never confuse those two. Your point is well taken.

SENATOR TIFFANY:

Mr. Wadhams, were you referring to liability when you mentioned "piercing the corporate veil"?

MR. WADHAMS:

Yes, I think we need to look at these statutes very carefully as to conduct of licensees in a corporate forum. Who are we punishing and are we going to "pierce the corporate veil" and put the punishment on the individual?

SENATOR TIFFANY:

Under the penalty phase of \$10,000 or over and per violation, if an individual could be responsible for \$150,000 and they do not have it because the commission was already spent, then we could go after an asset?

MR. WADHAMS:

That is precisely the problem. There are people in this audience who are engaged in legitimate licensed activity who are doing relatively few transactions. These transactions are not based on lending to a home buyer, but lending to developers and commercial enterprises in which the value might be far greater than \$150,000.

Page 4 of [Exhibit D](#), under section 7 amending section 11 of S.B. 433, subsection 1, paragraph (d), subparagraph (1) requires information from every officer and director of nationally traded corporations. Information regarding any civil or criminal proceedings becomes problematic if the vice president in Baltimore, Maryland, is getting a divorce; that is not pertinent to activities here in Nevada. In paragraph (j), I would suggest that be restricted to convictions or decisions of state and federal agencies. I am not necessarily sure compilations of complaints around the United States are pertinent either. I am suggesting that the accountability should be directed towards those qualifying individuals who are responsible for the activity in the State.

Finally, regarding the level field/parity issue, the issue of net worth, there is a huge disparity in net worth. Mortgage bankers who qualify for federal-lending programs have to have a \$1 million net worth with audited financial statements. The current statute under the NRS 645B.115, requires a minimal net-worth qualification for mortgage brokers, which could be either the people who simply take applications or the hard-money lenders who take private-investor money. It seems to me that those distinctions should be carefully rethought. Commercial banks have to have a \$2.5 million net worth. As you look at leveling the playing field, some have audited financial statements and some do not. We are happy to work with Mr. Bice on the issues I have raised.

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KENNETH T. SCRUGGS (HSBC GR Corporation):

My concern with the bill is more of form rather than substance. We do not object to complying with anything that the State or regulator feels is important. As the DML has grown, the processing has become slower. We are looking for ways to streamline that process. As we discuss further expanding the role of the DML in this bill, we think it is important to take into consideration how we can do that. One of the suggestions Mr. Bice has put into his amendment under section 12, would be for large companies to streamline so we can process quicker. We would support that because we are a larger company. We support the intent of trying to clean up the industry. However, we are concerned about the cost and time involved in opening new branches and such. I would be happy to work with a subcommittee on this.

CHAIR TOWNSEND:

We will now discuss S.B. 431. This was the bill brought by the financial institutions with the amendment that Mr. Powers assured us was clean enough for him to process without going to a mock-up.

I need to disclose that I am a board member of a bank and a shareholder.

SENATOR HARDY:

I am a board member of a credit union.

SENATOR SCHNEIDER:

I am a board member of a credit union.

SENATOR LEE:

I am a board member of a bank and a shareholder.

[SENATE BILL 431](#): Makes various changes to provisions governing financial institutions and related business entities. (BDR 55-361)

SENATOR TIFFANY MOVED TO AMEND AND DO PASS S.B. 431.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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DENNIS FLANNIGAN (Executive Vice President, Great Basin Federal Credit Union):  
This bill does apply to certain minor penalties and fees for credit unions.

CHAIR TOWNSEND:  
The meeting of the Senate Committee on Commerce and Labor is now  
adjourned at 9:53 a.m.

RESPECTFULLY SUBMITTED:

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Jeanine M. Wittenberg,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_