

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

**Seventy-fifth Session
May 18, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 2:10 p.m. on Monday, May 18, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Warren B. Hardy II

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley (Assembly District No. 8)

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Vicki Folster, Committee Secretary

OTHERS PRESENT:

Samuel McMullen, Altria Client Services, Inc.
Rusty McAllister, Professional Firefighters of Nevada

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James M. (Jim) Wright, Chief, State Fire Marshal Division, Department of Public Safety

Ernie Adler, Reno/Sparks Indian Colony

Alfredo Alonso, Lewis & Roca LLP; R. J. Reynolds; HSBC Banking

The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court

David W. Huston, Foreclosure Avoidance Project

William (Bill) Uffelman, Nevada Bankers Association

George Ross, Snell and Wilmer; Bank of America

Ernest (Ernie) Nielsen, Washoe County Senior Law Project

CHAIR CARLTON:

We will open the meeting today with Assembly Bill (A.B.) 229, developed by Assemblyman John Ocegüera, which enacts provisions for fire-safe cigarettes. Samuel McMullen will be presenting the bill today.

[ASSEMBLY BILL 229 \(1st Reprint\)](#): Enacts provisions governing fire-safe cigarettes. (BDR 42-568)

SAMUEL McMULLEN (Altria Client Services, Inc.):

Altria Client Services, Inc. is the parent company of Phillip Morris USA. We have been strong supporters of this effort across the Country to help standardize fire-safe cigarettes. We are in a functional supportive role because it is an effort led by firefighters across the Country. If Nevada passes this law, it will become the 39th state to do so.

A fire-safe cigarette has a reduced propensity to burn when left unattended. The most common technology used by cigarette manufacturers at this point is to wrap cigarettes with paper that has two to three thin bands or rings which are less porous, acting as a "speed-bump" to slow down the burning of the cigarette. The less-porous nature of the paper provides for limited oxygen coming through the paper and shuts down the burning of the cigarette when left unattended. When the burning cigarette reaches the "speed-bump" it basically self-extinguishes. I have provided some pictures that depict the marking and packaging, and a comparison of two burning cigarettes; one with less porous rings in the paper and another without ([Exhibit C](#)).

RUSTY McALLISTER (Professional Firefighters of Nevada):

Speaking on behalf of Assemblyman John Ocegüera, who is not able to be here, he and I are both active firefighters within the Las Vegas community when we

are not working in the Legislature. In all the time we have served as firefighters in the State, the most devastating fires we have come across are ones that could have been prevented. Last year alone, in Nevada, 14 people lost their lives to smoking-related fires.

According to the National Fire Protection Agency statistics, cigarettes are the leading cause of home-fire fatalities in the United States. They kill between 700 and 900 people per year, both smokers and nonsmokers alike. Smoking-material fires killed 780 people and injured 1,600 others in 2006. Eighty-nine percent of the deaths and eight-two percent of the injuries were in home fires. Property losses related to smoking materials total hundreds of millions of dollars each year, not only in homes and businesses, but also in vehicles. There were 30,400 smoking-material structure fires in the United States in 2006. Twenty-five percent of the victims of smoking-material fire fatalities are not smokers; thirty-four percent are children of smokers, twenty-five percent are neighbors or friends, fourteen percent are spouses or partners and thirteen percent are parents. Many of the victims are the ones who caused the problem. Between 2003 and 2006, the victims of 40 percent of fatal home smoking fires were sleeping when they were injured, and 34 percent were attempting to escape, fight the fire or rescue others. From my personal experience, the vast majority of fires I go to in structures are caused by smoking. When fires occur, it is usually because the smoker will fall asleep, drop their cigarette, the fire gets into a compressed area where it generates and builds heat, such as the couch cushion or in between car seats, and it bursts into flame.

The idea behind a fire-safe cigarette is the paper design. It was developed to slow down the rate of burn to the point where, if there is no "drag" on it after awhile, the cigarette will actually go out, thus eliminating the problem. Anything we can do to cut down the number of injuries, deaths and property-damage related incidents due to fire caused by smoking is certainly to an advantage to firefighters and the community. We would certainly appreciate your support.

JAMES M. (JIM) WRIGHT (CHIEF, State Fire Marshal Division, Department of Public Safety):

I would like to speak in support of A.B. 229, as it is a very important life- and fire-safety bill. Last year in Nevada, 29 fire fatalities occurred and half of those were related to cigarette smoking. Just yesterday in the City of Sparks, there was a residential structure fire where there is a high probability it was

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smoking-related. There is a gentleman who is in critical condition in the burn center in Sacramento as a result of this fire. As your State Fire Marshal, I urge your support of this bill and feel it is a very important fire- and life-safety act.

CHAIR CARLTON:

Is the paper that is wrapped around these cigarettes made any differently than the normal paper?

MR. McMULLEN:

My understanding is it is not made differently; however it is constructed with compressed paper in bands or rings.

CHAIR CARLTON:

Do you have any comments on the costs of retooling to do these things? That always seems to be an issue whenever we have some type of mandate out there.

MR. McMULLEN:

Basically, this is something that the industry has already begun to retool for or has significantly retooled for already. Thirty-eight states currently require fire-safe cigarettes and the markings on the packaging, [Exhibit C](#). Consequently, I do not think that is an issue at this stage of the game. In great part, there is no opposition in the other House.

CHAIR CARLTON:

I was looking at [Exhibit C](#). Could you tell me where the marking is?

MR. McMULLEN:

If you look above the bar code on the cigarette package, you will see the letters "FSC" which stand for Fire Standard Compliant (FSC) and we have an actual sample of the packaging and a fire-safe cigarette to pass around to you. You can see the rings by taking a marker and drawing a line across the paper. You will note where the thicker paper is located. This is all being standardized across the Country to make it easily identifiable by enforcement and compliance officers.

CHAIR CARLTON:

This marking is more for enforcement and compliance, not necessarily for the consumer, is that correct?

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MR. MCMULLEN:

It could be for the consumer as well, but you would have to know exactly what you are looking for.

CHAIR CARLTON:

Yes, because when I looked at [Exhibit C](#), I had no idea what was on it.

MR. MCMULLEN:

I doubt that the consumer would know that the initials stand for Fire Standard Compliant and, in fact, I thought it meant fire-safe cigarette the first time I looked at it. Perhaps that is what it will mean to the average consumer.

CHAIR CARLTON:

Are there any concerns that you are putting too much on the package? Because on other bills heard during this Session, I have heard that people did not want too much information on too many packages; it makes it too confusing to the consumer.

MR. MCMULLEN:

I hope these three letters do not add so much more to the package that it would end up being confusing.

CHAIR CARLTON:

I did not think they would have been in another area either, but they seemed to cause a great consternation amongst some folks. I just want to be clear that they are all on board.

Another concern brought up by one of our staff was the absence of the definition of "brand family" and the possibility of confusion. I believe there is boilerplate definition that is used in other states, which is not in our bill. We believe it would be a good thing to put into the bill.

MR. MCMULLEN:

The Committee counsel has been very helpful and there are two amendments we agree would be helpful. One started out as a typo but took on real life as the substance of the bill did not make sense. On page 4, line 32 refers to where the first "speed-bump" should be from the lighting end of the cigarette. We believe the Committee counsel figured out that in conjunction with the model bill, that should also read 15 millimeters, not 13. Also, on page 7, line 10, there is a fee

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for the brand family of cigarettes and that is different from the brand style like Marlboro Reds or Yellows, or Camel, whatever. This is just for every Marlboro brand; you would pay the fee for that brand family. We have no objection to adding an amendment that would clarify that, because there is nowhere else in statute to find out what a brand family is.

Again, this has been through 38 states and the language is consistent throughout those states. We would submit that language in conjunction with the Committee counsel to ensure that the language is all standardized.

CHAIR CARLTON:
How many brand families are there?

MR. McMULLEN:
I think there are about 1,400 brands and I am not sure how they come down to brand families. According to the fiscal note, which I do not have with me, it was something like \$208,000 that would drive the revenue.

CHAIR CARLTON:
So a brand family would be all the Marlboro products considered as one family? Are there any generics within the Marlboro products that would still be considered within that family? Would generics or no-label, nonbrand be outside the brand family?

MR. McMULLEN:
That would be a different brand family. Each one of those would require a \$1,000 fee. This has been tuned functionally as on page 9, lines 41 and 42 with the development of the Cigarette Fire Safety Standard and Firefighter Protection Fund. This is an enterprise fund where the fees generated would cover the cost of enforcement. They have been excellent at this point in minimizing the fiscal note to get this on and to ensure it gets done. Once it passes, the fees would start generating funds that the State could draw against for either enforcement, compliance, registration, Website and other things required. That fee is tuned to provide enough money to fund this program without any other funds required for resources or expenses.

ERNIE ADLER (Reno/Sparks Indian Colony):
The Reno/Sparks Indian Colony supports A.B. 229 and it is good public policy to have fire-safe cigarettes. With some of the amendments that were put on the

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Assembly side, it is possible to go onto the Internet and look at the Department of Taxation's site to determine which cigarettes are salable and which are not. We do not believe this would create any kind of administrative problem for any retailer in Nevada, since there will be plenty of notice posted on the Internet site. This bill is the kind of bill that is going to be passed by every state in the Country eventually, and I think it is good to pass it now.

CHAIR CARLTON:
Will the Indian Colony have to comply?

MR. ADLER:
Yes.

CHAIR CARLTON:
I was under the impression that when it came to sovereignty, they would not necessarily have to purchase these cigarettes for resale?

MR. ADLER:
Yes, we will have to, because we have the same wholesalers as everybody else. Once Nevada goes in that direction, the Indian Colony will as well.

ALFREDO ALONSO (Lewis & Roca LLP; R. J. Reynolds):
We support A.B. 229 also. There were some issues over the past couple of years with respect to the paper and trademark issues and those have all been resolved. Most of the states that were holding back have all come on board now. I do not know of any manufacturer out there that is not also in support.

CHAIR CARLTON:
There being no further testimony, we will close the hearing on A.B. 229. We will open the hearing on A.B. 149.

[ASSEMBLY BILL 149 \(2nd Reprint\)](#): Revises provisions governing foreclosures on property. (BDR 9-824)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
I am pleased to be the sponsor of A.B. 149. When we met in joint hearing, we covered the overview of the bill, so I will go through the presentation briefly ([Exhibit D](#)).

The real estate boom of the early 2000s was fueled by "Creative Financing." We had unregulated mortgage originators having financial incentives to sell risky, subprime mortgages. In 2008, Nevada had the highest rate of home foreclosures in the United States; 77,693 properties were in some stage of foreclosures, a 126-percent increase over 2007, and a 530-percent increase from 2006. A total of 25,227 homes were repossessed, a 234-percent increase in 2007, and 72,157 properties are projected to be in some stage of foreclosure during 2009.

In April, Nevada continued to have the highest rate of foreclosure in the Nation as 1 out of every 68 households received a foreclosure filing, 5 times the national average. In Las Vegas alone, the number was 1 out of every 56 households. It is hard for us to drive down blocks in our districts without seeing foreclosure sale signs on every block.

The price of new homes, we all know, has declined as well and the bottom is not yet in sight. In March, the median price of a new home declined 21 percent. New home construction has fallen to its lowest level in 30 years, and overall, the net decline in home prices will result in \$84.8 billion in lost housing wealth.

We are caught in a vicious cycle, with declining real estate values that mean even homeowners with conventional mortgages, who did everything right, are now upside down and owe more than their home is worth. The next wave of foreclosures is expected to involve "prime" mortgages where individuals feel they have more incentive to walk away than to stay, because of what they owe on their mortgage compared to the value of the house. Falling home prices are leading to bank and investment losses, which are reducing capital flows, which lead to job losses. Job losses lead to more foreclosures, which lead to more falling home prices. It is a vicious cycle.

Assembly Bill 149 makes foreclosure a remedy of last resort. It applies to only owner-occupied, residential properties. It requires that a lender or mortgage servicer serve a notice of default with at least the following information: contact information for the lender, contact information for the housing counseling organization and a form explaining that the borrower has the right to request court mediation to try to reach a loan modification with the lender and allowing the borrower to elect or waive mediation.

How will it work? The Nevada Supreme Court has agreed to administer the program. With me is Chief Justice James Hardesty from the Nevada Supreme Court who will describe the meetings he has had over the last several months. He and the working group have been trying to put together some rules on how the program would operate, should this Legislature decide to implement the program.

Requests to mediate will be filed with the Mediation Administrator. The Nevada Supreme Court will establish rules governing the procedures and the requirements. Lenders or their representatives must appear or otherwise be available throughout the mediation. If the parties are unable to agree, the mediator will report that to the district court which will certify the lender's compliance with A.B. 149 and foreclosure may proceed. Should the lender fail to appear or if the lender appears but does not have authority, the mediator will report this to the district court which will enter the appropriate sanction. If the borrower fails to respond to the notice, waives the right to mediate or fails to attend the hearing, the mediator will report this to the district court which may dismiss the matter.

Other states have enacted similar legislation to help homeowners including California, Colorado and Connecticut and you can reference [Exhibit D](#) for all the different states that have implemented these programs. It is interesting; some states actually have the statutes and rules ready and when there is a crisis every 10-20 years, they just dust off the rules and implement them again. Farm states do that when there is a wave of farm foreclosures. Philadelphia does that. It is something that some set on and off whenever there is a crisis. It is the first time Nevada has looked at doing this.

Assembly Bill 149 will not stop all foreclosures; however, it will help those borrowers who are still working, ready, willing and able to enter into a loan modification if only they had a lender to talk with them. That is what A.B. 149 does.

What do we expect the result will be? The Center for Responsible Lending indicates according to their estimates, 17,700 homes will be saved from this mediation process. By enacting A.B. 149, we can help those homeowners who are desperate to work into a modification agreement with their lender, thereby stabilizing neighborhoods and stopping the vicious cycle of declining home values.

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With that, Madam Chair, I am happy to answer any questions. I have distributed a proposed technical mock-up amendment 5000 that clarifies the intent of the bill ([Exhibit E](#)). The amendment is the result of the working group that has been meeting with Chief Justice Hardesty for the past several weeks.

CHAIR CARLTON:

Assemblywoman Buckley, is the only portion of the amendment in question section 5.5, or is there something else that I missed?

ASSEMBLYWOMAN BUCKLEY:

It is in the mock-up, proposed amendment 5000 to A.B. 149, second reprint, [Exhibit E](#). It basically clarifies the bill applies to defaults after July 1, 2009. It clarifies the language on the fees and it deletes business from days on the redeem and cure of default.

CHAIR CARLTON:

I believe we had a couple of questions about whom exactly the mediator is and whom does the court actually report back to.

ASSEMBLYWOMAN BUCKLEY:

I will ask Chief Justice Hardesty to answer those questions. He should really take the credit, because he has recruited senior judges and attorneys willing to take a reduced cost to serve as volunteer mediators. I would like him to talk about his efforts.

THE HONORABLE JAMES W. HARDESTY (Chief Justice, Nevada Supreme Court):

As I have indicated on the sign-in sheet, the Nevada Supreme Court is neutral on the bill and it is a policy decision for the Legislature to make. To the extent that the policy decision is made consistent with the bill as proposed, in anticipation of its passage, I appointed a working group to help guide the Nevada Supreme Court in preparation of rules and procedures by which we could implement a very sizable program.

Make no mistake about this; the Nevada Supreme Court is facing 1,200 to 1,500 mediations per month in Clark County alone. This is a major undertaking for the judicial system. If I may, Madam Chair, I would like to identify and compliment the members of the working group who have participated in the development of the bill, but most importantly the development of the rules that will implement it. For the record, I have provided the Committee with a list

identifying the Foreclosure Mediation Working Group of judges, attorneys and staff ([Exhibit F](#)). All of these people have been working diligently to implement this program. I also want to indicate how proud I am to be a lawyer and proud of our legal profession. Over 300 lawyers have volunteered their services to participate in this program and help with these mediations. This could not happen if the legal profession did not step forward to assist in this area.

Assemblywoman Buckley and I did not have a chance to confer, but I noticed a potential typo on the mock-up. There are two areas I would like to mention for the record. I do not think there is any question about how this works, but page 1 of the mock-up, [Exhibit E](#), at line 10, references NRS 107.085 and it should be NRS 107.080. The subsection on the previous line should refer to paragraph (c), subsection 2. The point is that this is tied to the notice of default as opposed to the service process or the 60-day notice in NRS 107.085. I want to thank Ernie Neilsen for identifying this and bringing to our attention that correction.

The other area that needs to be mentioned, and we have not made any amendments or suggested any before, but on page 8, line 8 of the mock-up there is a form of notice that is given in foreclosures that says, "Your home loan is being foreclosed. In 60 days your home will be sold" It should say, "In not less than 60 days" The reason for the words in "not less than" is because it is possible that mediation could be pending at the point the notice is given. You would not want to have a conflict in that circumstance.

Madam Chair, you had asked a question about the mediators. The mediators will be provided for under rules adopted by the Nevada Supreme Court. The qualifications will be specified in the rules that are adopted by the Nevada Supreme Court if they are not senior justices or senior judges or already recognized settlement conference judges of the Nevada Supreme Court, or among the vast number of arbitration mediators who are approved in the Nevada Supreme Court's mediation programs. The mediation administrator is a direct hire of the Administrative Office of the Courts (AOC) who are in the process of refining the job description for that individual and we expect to post that position for hire prior to July 1, 2009. The position will be paid for by AOC funds reimbursed out of the proceeds from the funding for this program found in [A.B. 65](#), which is the Civil Filing Fee bill, a topic I have discussed with many of you in previous sessions of this Legislature.

ASSEMBLY BILL 65: Provides for the collection and disposition of additional court fees. (BDR 2-372)

The mediators will undergo training unique to foreclosure proceedings. The Nevada Supreme Court Rule Process will begin shortly after the middle of June. We expect to have a public hearing to address the rules. One concern I just identified within the past few days, in fact, over the weekend, is NRS 2.320 requires that certain rule changes by the Nevada Supreme Court must be given a 60-day notice before they can become effective. I may need a modification in this bill to allow the Nevada Supreme Court to give a 30-day notice rather than a 60-day notice for a rule change, because the bill would become effective on July 1, 2009, but I would not be able to effectuate rule changes for 60 days. At the pace at which the matter has been moving, I do not believe it would be possible to give a 60-day notice; we would be into foreclosure mediations well before that. I will get the NRS number and give it to Wendy Kameda, Assembly Attaché, Assemblywoman Buckley, Chair Carlton and your staff. We may need in this bill an exception to that 60-day notice period.

CHAIR CARLTON:

We would need that very quickly, because I would like to be able to do this as soon as possible with the time constraints that we are under.

CHIEF JUSTICE HARDESTY:

By the time I get to my computer, you will have it.

CHAIR CARLTON:

What we will do is, when we receive that information, we will move this bill on the Senate Floor.

On page 4, line 5, "Establishing a total fee of not more than ... \$400 ... " Is that a minimum?

CHIEF JUSTICE HARDESTY:

No, that is a maximum.

CHAIR CARLTON:

How many hours does it take to do one of these things?

CHIEF JUSTICE HARDESTY:

We think that it will average about two to four hours. It varies and depends on how much contact has existed prior to the time the mediation takes place. We are considering some differences in the fee. For example, if you are talking about a foreclosure of a home that is 5,000 square feet and worth \$2 million, that may be different from a home, like most homes, of 1,200 square feet with a value of \$200,000. It might affect the mediation fee, but it also might affect the amount of time needed. The Nevada Supreme Court wants to be able to deal with this subject by rule. We are of the view that the Nevada Supreme Court cannot independently set the fee. That has to be done by statute and we will set the range based upon the nature of the mediation.

CHAIR CARLTON:

Will all current mediators that the Nevada Supreme Court works with have the opportunity to do this?

CHIEF JUSTICE HARDESTY:

You could call it an opportunity, Madam Chair.

CHAIR CARLTON:

I hope you inspire them to think it is an opportunity.

CHIEF JUSTICE HARDESTY:

Believe me, I have been doing my best to inspire as many people as I can, but frankly, in fairness, that has not been that big of an effort. I want to mention two things. Before we started our rule process, I sent an e-mail out to the 22 senior justices and judges that are currently commissioned by the Nevada Supreme Court. I asked them if they would be willing to participate in this program at rates below what they are currently being paid. Within 24 to 48 hours I had responses of "yes" from every single senior judge and justice. Also, we have lawyers from all over the State who have contacted the commissioners and have expressed an interest to be a participant in this program and are willing to be assigned in other locations throughout the State if necessary.

CHAIR CARLTON:

Are there any questions from the Committee?

SENATOR SCHNEIDER:

Can you tell me how this works? A person bought a home in Las Vegas 3 years ago for \$350,000, and now their house is worth \$185,000. They are stretching to make payments, and now they want to use this process; what do you do?

CHIEF JUSTICE HARDESTY:

There is nothing the mediator or the Nevada Supreme Court can do unless the lender wants to cooperate in the process. This is volunteer mediation, not compulsory. It is entirely possible that through available federal programs or just through the decision of the lender there may be ways to work out a program. There have been a variety of business deals where there have been amendments to the deed of trust to accommodate it. The numbers you suggest are fairly substantial and I am not sure mediation like that would be successful. I find in talking with a lot of lenders, who have been involved with this, they are interested in finding ways to have a performing loan. I think that is going to be the thrust of the discussion. How do you maintain someone in the home who is willing to mow and water the lawn, keep the house in good repair and have a performing loan? Numbers such as the ones you mentioned will be difficult; no question about it. But at least you have the opportunity to put the parties together to see if there is a way to work out a business deal where that can occur.

There are examples, frankly, where lenders have agreed to reduce the loan, to stretch out the period of amortization, or make other modifications in order for the person to remain in the property in hopes that at some juncture the values will increase. Many families want to stay in their home and they do not want to go to this position. The unfortunate part of this circumstance, as I am sure most of you know, is that a lot of people would like to be able to mediate their loan before going into default. This bill contains a section that allows for those kinds of circumstances to exist. The Nevada Supreme Court is going to look at that by Rule 2 of the Nevada Short Trial Rules to see if we can address some interested parties. One of the biggest problems Nevadans have is that they do not know who their lender is or how to get in contact with them. Even in circumstance where they are identified, if someone shows up with authority with their documents, you may not be able to solve that case, but it may be the first instance in which the borrower was able to talk to their lender.

SENATOR SCHNEIDER:

Assemblywoman Buckley and I live in very similar neighborhoods and on my street there are three homeowners to the west of me who just walked away from homes worth \$350,000 to \$375,000. One of the homes, after sitting for 9 months, finally went on the market for \$149,900. I thought about those folks coming in, closing down the pool, covering it to ensure no one got injured and other additional costs. The lender sets the price now at \$149,900. My thoughts were if the lender would have reduced the price to \$200,000 or \$225,000 before the folks left the home, they probably would have saved the homeowner from leaving and they would have made more money than they will now. Furthermore, they now have incurred all those carrying costs, plus Realtor fees, legal fees and everything else.

ASSEMBLYWOMAN BUCKLEY:

That is one of the reasons why I am so appreciative of Chief Justice Hardesty and the judiciary taking an active role in setting this up. They will also be able to bring in the business perspective of saying it does not make sense for you to own another house in Las Vegas now because of those costs. If, through this program, we give the market a chance to "catch-up," and for some of the glut of homes to actually be sold, perhaps we will have a quicker recovery.

SENATOR SCHNEIDER:

If this goes through to the Nevada Supreme Court, will you have the authority to negotiate a reduction of principal without destroying the person's credit?

CHIEF JUSTICE HARDESTY:

The mediation is a voluntary process. It would require a mutual agreement by the lender and the borrower. A good mediator can usually bring about a decent success rate of mediation and one would hope in that process the lender and borrower could find a mutual way to resolve the dispute and reach an agreement. In some instances, a lender might say they will reduce the price or note by \$100,000 but you have to pay that if you sell the home, and then restructure the loan based on the revised amount. Even though the borrower is still underwater, at least they are still in the home; they do not have to move and there may be some adjustment.

I cannot speak about saving someone's credit. I suspect that when someone has reached this far into the process, there is an adverse-credit report entry, but certainly efforts can be made to try to reflect the fact that it was resolved

amicably, which may assist. Frankly, there is a lot of motivation on the part of homeowners to try to work this out. When someone walks away from a home like that, there will be an adverse credit rating; there will be a default judgment risk and a tax consequence; all bad news for the homeowner. The tax consequences and credit risks are still there but at least they would be in the home with a chance to recover.

CHAIR CARLTON:

Chief Justice Hardesty, if you could get us that information as quickly as possible, we can incorporate that into the mock-up and then I will present it to the Committee and get the bill moved.

DAVID W. HUSTON (Foreclosure Avoidance Project):

I have provided the Committee with written testimony and have no comment beyond my prepared remarks ([Exhibit G](#)).

WILLIAM (BILL) UFFELMAN (Nevada Bankers Association):

I appreciate the opportunity to testify today and for having the opportunity to work with everyone involved in developing the program. This is a huge change for the foreclosure in Nevada and it is a change that is responsive to some of the issues we have run into. The loss of a home is painful for the borrower and it is a painful process for the lender as well. We support [A.B. 149](#) and the amendments denoted today.

GEORGE ROSS (Snell and Wilmer; Bank of America):

Bank of America strongly supports this bill. We appreciate the opportunity to work with Assemblywoman Buckley, Chief Justice Hardesty and staff in working through this bill. It has been a very inclusive and a very thorough process. Many folks have been scared to come forward and we believe this bill will make a very big difference.

At the end of March, Bank of America had redone 255,000 mortgages and expects it to reach 600,000. We believe [A.B. 149](#) will be an important part of managing that process.

SENATOR SCHNEIDER:

You say you have redone 250,000 mortgages. In what way; did you reduce principal, adjust payments or both?

MR. ROSS:

It is a combination of factors. We used whatever seemed to work best, within limits, for the borrower.

SENATOR SCHNEIDER:

With regard to stimulus money coming out of Washington, D.C., will this offset the loss on the mortgages? Would you need less stimulus money if you renegotiate? If you had a \$300,000 mortgage and you negotiate it down to \$150,000 so the homeowner is responsible to pay \$150,000, do you take stimulus money and apply it towards the other \$150,000 so the bank's loan is whole?

MR. ROSS:

Senator Schneider, I have not gone through exactly how they account for that. I would not be able to tell you. Truthfully, having that money makes it easier, and the firm has been very diligent and thorough in working with the new program the President of the United States passed. I know they have incorporated it with what they are already doing.

CHAIR CARLTON:

Mr. Ross, did the Troubled Asset Relief Program (TARP) money make any difference in this as far as loosening up credit a little bit?

MR. ROSS:

My understanding is that it has. There was a very interesting article in the last *Economist*, an international business magazine, which pointed out that overall business banking loans are actually up, but it does not appear that way to most people because non-banking lending is way down.

MR. ALONSO (HSBC Banking):

We strongly support this bill. The HSBC has been modifying loans for quite some time now. We think this helps to bring along folks Assemblywoman Buckley indicated who will not answer their phones or are simply unavailable to get to the table. This will force both sides to the table, especially with some of the seconds. When individuals with a 125-percent loan value on their homes who cannot get the secondary bank, or in many cases the second may have been sold, to come to the table, this bill will be an efficient way of doing that, solving many problems.

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CHAIR CARLTON:

Is there anyone here representing Countrywide today?

MR. ROSS:

Madam Chair, Bank of America purchased Countrywide which is now completely under their aegis.

CHAIR CARLTON:

Are you representing both?

MR. ROSS:

Yes.

CHAIR CARLTON:

Will they be changing their position of not negotiating now that they are part of Bank of America?

MR. ROSS:

Their policies are the same as Bank of America policies now.

CHAIR CARLTON:

Folks who have had problems with Countrywide in the past should probably recontact them, hoping to get a better reception the second time around.

MR. ROSS:

I would say that is a very good idea. Folks who are making their payments who think they may fall in the future but are still doing fine, those folks have to wait in line behind the folks who have started to administer and, generally speaking, are in worse shape. It is sort of a "triage" system. They are the folks this bill will help first. But, people should definitely contact Countrywide and see what they can do.

CHAIR CARLTON:

If they skip a few payments, will they get to the top of the list to get help?

MR. ROSS:

It seems to be an unfortunate result of the way the system has been structured. Some of that is dictated by the federal laws as well.

ERNEST (ERNIE) NIELSEN (Washoe County Senior Law Project):

The Washoe County Senior Law Project provides legal services to seniors and is a federal Department of Housing and Urban Development (HUD) certified housing counseling agency. We have approximately 2.5 housing counselors who do nothing but work on resolving loans for homeowners in Washoe County. Though fairly successful, we definitely need this bill. One major benefit of this bill will be to resolve those cases which, from a logical business perspective, could result in an amendment solution, but do not. As you may know, President Obama's loan modification program uses the Federal Deposit Insurance Corporation (FDIC) formula to determine the relative benefit to the lender between the foreclosure option and loan modification option. Ultimately, the attempt on the loan modification option is to drive the relative costs to the homeowner to about 31 percent of their gross income and that program can reduce the interest rate down to 2 percent and even if that is not enough, it can put some of the principal back as a balloon payment.

In foreclosure, lenders will only recover the market value of the home, minus the foreclosure costs and the resale costs. Many of the owners' lenders primarily securitize trusts. Owners of subprime loans do not allow their servicers to negotiate if the borrower's gross income is less than the total household expenses, including the current mortgage payments. Recall that many of these mortgages began as interest-only loans and after a few years they trigger and become fully amortized, driving the household costs beyond their means. As a result of that, in these kinds of situations, the FDIC formula is never engaged.

Freddie Mac, Fannie Mae and others who use TARP funds generally do apply the FDIC rationale to loans they own and they can be resolved pretty early. The need for this mediation process is for those who refuse to negotiate for whatever reason. We strongly endorse this bill.

CHAIR CARLTON:

We need to investigate the bill we amended and passed out of the Committee, A.B. 152, dealing with loan modification and licensing loan modification consultants. I just want to make sure there is no conflict between loan mediation and loan modification. I am going to ask some folks to look into that to ensure we have no problems. We will have that addressed by the time we get the information from Chief Justice Hardesty.

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[ASSEMBLY BILL 152 \(1st Reprint\)](#): Makes various changes concerning mortgage lending and related professions. (BDR 54-787)

CHAIR CARLTON:

Committee, on the A.B. 140 mock-up amendment we discussed on Friday, we missed some language. We need to further amend the bill with a notice to tenants on the property. It was within the documents that we had, but we missed it, so we are going to further amend that if there are no objections from the Committee.

[ASSEMBLY BILL 140 \(1st Reprint\)](#): Makes various changes to provisions relating to foreclosures of real property. (BDR 2-228)

CHAIR CARLTON:

There being no further business, the Senate Committee on Commerce and Labor will adjourn the meeting at 3:07 p.m.

RESPECTFULLY SUBMITTED:

Vicki Folster,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____