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3300 W. Sahara, Suite 250  
Las Vegas, Nevada 89102  
(702) 486-4120

**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION**

1755 East Plumb Lane, Suite 243  
Reno, Nevada 89502  
(775) 688-1730

Re:

Hudson Cook, LLP on behalf of  
Earnest Operations, LLC

Petitioner.

**DECLARATORY ORDER REGARDING  
EXEMPTION OF INTERNET LENDERS  
FROM IN-STATE OFFICE  
REQUIREMENT UNDER NRS CHAPTER  
675**

Nevada Department of Business and Industry, Financial Institutions Division (hereinafter "Division") hereby issues its Declaratory Order regarding Hudson Cook, LLP on behalf of Earnest Operations, LLC's (hereinafter "Earnest") Petition for Declaratory Order pursuant to NAC 232.040.

**JURISDICTION**

1. Installment loans in the State of Nevada are governed by Chapter 675 of the Nevada Revised Statutes ("NRS") and Nevada Administrative Code ("NAC") Chapter 675. The Division has primary jurisdiction for the licensing and regulation of persons engaging in the making and/or soliciting of installment loans or persons seeking to evade the application of NRS 675.

2. Under NRS 675.060, a person is engaged in the business of lending in this state under 675 if (a) solicits loans in this State or makes loans to persons in this State, unless these are isolated, incidental or occasional transactions; or (b) is located in this State and

1 solicits loans outside of this State or makes loans to persons located outside of this State,  
2 unless these are isolated, incidental or occasional transactions.

3 **STATEMENT OF FACT**

4 3. Earnest is a consumer loan company based in San Francisco, California that  
5 offers its products exclusively on the internet. Earnest’s flagship product is private student  
6 loan refinancing of existing federal or private student loan debt to consolidate various loans  
7 into a single loan.

8 4. On or about April 29, 2020, Petitioner Earnest has submitted this Petition by and  
9 through its attorney, Hudson Cook, LLP.

10 5. Petitioner refers to Senate Bill (S.B.) 161, stating S.B.161 eliminated the in-state  
11 office requirement for internet lenders seeking a license under the Nevada Loan and Finance  
12 Act NRS 675.

13 6. The Petitioner requests a declaratory order as to whether the Nevada  
14 Installment Loan and Finance Act, NRS 675, require consumer-purpose internet lenders to  
15 maintain an in-state office as a prerequisite to obtaining an installment lending license.

16 **QUESTION PRESENTED AND RELIEF SOUGHT**

17  
18 7. Does the Nevada Installment Loan and Finance Act, Nev. Rev. Stat §§ 675.010  
19 *et seq.*, require consumer-purpose internet lenders to maintain an in-state office as a  
20 prerequisite to obtaining an installment lending license?

21 8. The Petitioner requests the Division to declare that consumer-purpose internet  
22 lenders will be treated the same as business-purpose internet lenders with respect to  
23 installment lending licenses, and that it will apply the law as written.

24 **ANALYSIS**

25 9. S.B.161 was introduced and passed in the 2019, 80<sup>th</sup> legislative session.

26 10. Senator Kieckhefer was the primary sponsor of the bill.  
27  
28

1 11. During the March 27, 2019 legislative hearing, a conceptual amendment to S.B.  
2 161 regarding NRS 675 in-state, brick & mortar requirement was submitted. This proposed  
3 amendment applied to business-to-business lending only and not consumer lending and was  
4 to amendment certain subsections in sections NRS 675.020, NRS 675.060, and NRS  
5 675.230. **Bolded Italics** below.

6 NRS 675.020 Definitions. As used in this chapter, unless the  
context otherwise requires:

7 1. "Amount of cash advance" means the amount of cash or  
8 its equivalent actually received by a borrower or paid out at his or  
her direction or on his or her behalf.

9 2. "Amount of loan obligation" means the amount of cash  
advance plus the aggregate of charges added thereto pursuant to  
10 authority of this chapter.

11 3. "Commissioner" means the Commissioner of Financial  
Institutions.

12 4. "Community" means a contiguous area of the same  
economic unit or metropolitan area as determined by the  
13 Commissioner, and may include all or part of a city or several  
towns or cities.

14 5. "License" means a license, issued under the authority of  
this chapter, to make loans in accordance with the provisions of  
15 this chapter, at a single place of business.

16 6. "Licensee" means a person to whom one or more licenses  
have been issued.

17 **\*7. "Internet Business Lender" means a lender that offers  
business loans online exclusively via the use of an internet  
website to make loans.**

18 *\*(Internet Business Lender is now defined in subsection 8, section  
19 020 of chapter NRS 675)*

20 NRS 675.060 Unlicensed dealing in loans prohibited; license  
required for each office or other place of business.

21 1. No person may engage in the business of lending in this State  
22 without first having obtained a license from the Commissioner  
pursuant to this chapter for each office or other place of business  
23 at which the person engages in such business, except that if a  
person intends to engage in the business of lending in this  
24 State as a deferred deposit loan service, high-interest loan service  
or title loan service, as those terms are defined in chapter 604A of  
25 NRS, the person must obtain a license from the Commissioner  
pursuant to chapter 604A of NRS before the person may engage in  
26 any such business.

1 2. For the purpose of this section, a person engages in the  
business of lending in this State if he or she:

2 (a) Solicits loans in this State or makes loans to persons in this  
State, unless these are isolated, incidental or occasional  
3 transactions; or

4 (b) Is located in this State and solicits loans outside of this  
State or makes loans to persons located outside of this State,  
5 unless these are isolated, incidental or occasional transactions.

6 **3. An Internet Business Lender is required to obtain a license  
from the Commissioner for each office or other place of  
7 business at which the person engages in the business of  
lending but is exempt from maintaining an office or physical  
8 location in this State.**

9 NRS 675.230 Restriction on location of business of making  
loans. [Effective January 1, 2020.]

10 1. Except as otherwise provided in subsection 2, a licensee  
may not conduct the business of making loans under this chapter  
11 within any office, suite, room or place of business in which any  
other business is solicited or engaged in, except an insurance  
12 agency, or notary public, **or internet business lender**, or in  
association or conjunction with any other business, unless  
13 authority to do so is given by the Commissioner.

14 2. A licensee may conduct the business of making loans  
pursuant to this chapter in the same office or place of business as  
a mortgage company if:

15 (a) The licensee and the mortgage company:

- 16 (1) Operate as separate legal entities;  
17 (2) Maintain separate accounts, books and records;  
18 (3) Are subsidiaries of the same parent corporation; and  
19 (4) Maintain separate licenses; and

20 (c) The mortgage company is licensed by this state pursuant  
to chapter 645B of NRS and does not receive money to acquire or  
21 repay loans or maintain trust accounts as provided by NRS  
22 645B.175.

23 12. In the April 5, 2019 legislative work session, an incorrect conceptual amendment  
24 was submitted. It referred to "internet lender" only and not "internet *business* lender".

25 13. In the April 24, 2019 legislative hearing, Senator Kieckhefer on page 5 (see  
26 "Exhibit A") stated "we made on amendment in the Senate that was specifically requested by  
27 Chris Ferrari on behalf of his client, Intuit, Inc.....That issue is related to Internet lenders and  
28 should read Internet Business Lender."

1           14.     On the bottom of page 13 and the top of page 14 (see “Exhibit A”) Chris Ferrari  
2 states “Intuit, Inc. is able to offer business-to-business loans in 49 states in the country....This  
3 is the one request that did not get incorporated into the bill, and I think it was an inadvertent  
4 omission in “internet business lender”. That will enable Intuit to go through the FID regulatory  
5 process to be licensed to offer a business-to-business internet-based loan.”

6           15.     S.B. 161 was enrolled and signed by the Governor, inadvertently without  
7 defining internet business lender.

8           16.     The Division and Attorney General’s Office notified the Legislative Council  
9 Bureau (“LCB”) of the error.

10          17.     LCB agreed it was the legislator’s intent to have internet business lender and  
11 deemed it a typographical error and corrected the language when the statute was codified.  
12 NRS 675.020(8) “Internet business lender” means a person who makes loans exclusively  
13 through the Internet.

14          18.     On June 25, 2020, LCB issued an opinion letter stating “Based on the statements  
15 made to the Senate Committee on Commerce and Labor on March 27, 2019, and the  
16 statements made to the Assembly Committee on Commerce and Labor on April 24, 2019... it  
17 is the opinion of this office that the exemption from the requirements set forth in NRS 675.090  
18 and 675.230 applies only to a person who makes business loans exclusively through the  
19 internet.” (see “Exhibit B”)

20          19.     On June 25, 2020, Brenda Erdoes, Esq. Director of Legislative Commission signed  
21 a Declaration stating “in performing my duty to prepare the 2019 reprint of Nevada Revised  
22 Statutes pursuant to chapter 220 of NRS, sections 42.5,43.3 and 43.7 of S.B.161 were  
23 revised to correct the manifest typographical error that resulted in the term “Internet lender”  
24 being used in those sections rather than the term “Internet business lender.” (see “Exhibit C”)

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2 **CONCLUSION**

3 The Nevada Legislature clearly distinguished between internet business lenders and  
4 internet consumer lenders. The statutory language found in NRS 675.020(8) defines “internet  
5 *business lender.*” (Emphasis added). The intent of the legislature was to provide an  
6 exemption from the in-state office requirement for business-to-business lenders only. The  
7 Division applies the law as written to consider business-to-business lending separate from  
8 consumer lending and in accordance with the legislative history, LCB’s opinion letter and  
9 Declaration of Brenda J. Erodes.

10 Therefore, in response to your questions, business-to-business internet lenders and  
11 consumer internet lenders are subject to different requirements under the provisions of NRS  
12 675, and internet lenders that make and/or solicit loans to Nevada consumers must maintain  
13 an in-state office to obtain an installment lending license under NRS 675.

14  
15 DATED this \_26th\_ day of June 2020.

16 STATE OF NEVADA  
17 DEPARTMENT OF BUSINESS AND INDUSTRY  
18 FINANCIAL INSTITUTIONS DIVISION

19 By:

20  
21 *Sandy O'Laughlin*  
22 \_\_\_\_\_  
23 Sandy O'Laughlin  
24 Commissioner  
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**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Eightieth Session  
April 24, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:36 p.m. on Wednesday, April 24, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen B. Spiegel, Chair  
Assemblywoman Maggie Carlton  
Assemblyman Skip Daly  
Assemblyman Chris Edwards  
Assemblyman Jason Frierson, Vice Chair  
Assemblywoman Melissa Hardy  
Assemblywoman Sandra Jauregui  
Assemblyman Al Kramer  
Assemblywoman Susie Martinez  
Assemblywoman Dina Neal  
Assemblywoman Jill Tolles  
Assemblyman Steve Yeager

**COMMITTEE MEMBERS ABSENT:**

Assemblyman William McCurdy II (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Ben Kieckhefer, Senate District No. 16

**STAFF MEMBERS PRESENT:**

Patrick Ashton, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Earlene Miller, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Elisa Cafferata, representing Nevada Technology Association, Inc.  
Matthew Digesti, Vice President of Government Affairs and Strategic Initiatives,  
Blockchains, LLC  
Chris Ferrari, representing Intuit, Inc.  
George E. Burns, Commissioner, Division of Financial Institutions, Department of  
Business and Industry  
Tyson K. Falk, representing Figure Technologies, Inc.  
David Dazlich, Director of Government Affairs, Las Vegas Metro Chamber of  
Commerce  
Sharath Chandra, Administrator, Real Estate Division, Department of Business and  
Industry  
Marcus Conklin, representing Coalition of Appraisers in Nevada  
Daniel Byrne, Member, Coalition of Appraisers in Nevada  
Brian Reeder, representing Nevada Credit Union League  
Matt Kershaw, President/Chief Executive Officer, Clark County Credit Union  
Scott A. Arkills, President/Chief Executive Officer, Silver State Schools Credit Union

**Chair Spiegel:**

[The roll was called.] We will start with our work session on Senate Bill 68.

**Senate Bill 68: Provides for the expedited granting of certain provisional registrations to volunteer providers of health or veterinary services during an emergency declaration. (BDR 36-352)**

**Patrick Ashton, Committee Policy Analyst:**

[Read from work session document ([Exhibit C](#)).] Senate Bill 68 provides for the expedited granting of provisional registration to a volunteer provider of health or veterinary services through an existing registration system while an emergency declaration is in effect. The bill requires the Division of Emergency Management, Department of Public Safety, to adopt regulations that provide for the procedures of granting such provisional registration. There were no amendments.

**Chair Spiegel:**

Are there any questions or discussion from the Committee? Seeing none, I will call for a motion.



ASSEMBLYMAN DALY MOVED TO DO PASS SENATE BILL 68.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

Is there any discussion?

**Assemblywoman Carlton:**

I still do not understand the problem this bill is trying to fix, but it does not seem to do much harm. It seems as though we do it already so we might as well reinforce it.

**Chair Spiegel:**

I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMEN FRIERSON AND McCURDY WERE ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Kramer. I will open the hearing on Senate Bill 161 (1st Reprint).

**Senate Bill 161 (1st Reprint): Revises provisions relating to certain financial businesses, products and services. (BDR 52-875)**

**Senator Ben Kieckhefer, Senate District No. 16:**

This bill specifically targets technology ecosystem development. This effort began for me nearly three years ago when, prior to the 2017 legislative session, I was working with a group of start-ups and entrepreneurs in northern Nevada. We were talking about what we could do to foster the creation of some ecosystem changes and enhancements in our state. Matthew Digesti from Blockchains was one of the people with whom I was meeting and brought up the idea of what we could do in the space around blockchain. That was the first time I heard the term "blockchain" and it was the beginning of this venture for me that culminated in Senate Bill 398 of the 79th Session. It was the first time we dipped our toe into the blockchain legislative waters. The success of that effort has been dramatic and has far outpaced what any of us would have expected at the time. Other states have clearly seen the success that Nevada has had in this space and have also entered into this arena in terms of public policy. In the past two years, Wyoming has passed 13 pieces of legislation specifically related to blockchain and we have passed one. While we do not need to do everything they have in order to keep pace, we need to be aggressive in our efforts to modernize our current statutes as well as put new programs into place, which will keep us as a state front and center when people are considering where to start a business.

Senate Bill 161 (1st Reprint) is one of those efforts, and it is modeled on legislation that was originally passed in Arizona and then in Wyoming to create what is generally referred to as a regulatory sandbox. Ultimately, it creates a program where a business can apply to the state for a waiver of certain statutes and regulations, which do not necessarily align with the reality of the marketplace they are facing and the technology they are using to address that

marketplace. In this program, they would apply for those waivers and there are various protections in place. Then they would get limited access to the Nevada marketplace to test a product for a limited period of time. The bill is in a first reprint—we made several changes in the Senate to address some concerns and realign the housing of the program. In its current version, it would reside in the Department of Business and Industry and would be overseen by the Director of the Department of Business and Industry. It was put in that Department because the regulatory sections and statutes that are subject for waiver are all included within that office under the Division of Financial Institutions and the Housing Division. All of the statutes that are outlined are in the definitions section. I will walk through the sections.

Sections 1-10 of the bill provide the definitions. The key is in section 6 where it relates to "financial product or service" or "product or service" that includes the statutes in subsection 2 of section 6. But for the provisions of this bill, they would be governed by *Nevada Revised Statutes* (NRS) Chapters 645A, 645B, 645F, or 645G or anything in Title 55 or Title 56. If you look at that, NRS Chapter 645G is exchange facilitators; Chapter 645F is mortgage lending and foreclosure consultants; Chapter 645B is mortgage brokers and agents; and Chapter 645A is escrow agents. Title 55 is banks and related organizations and Title 56 is other financial institutions. Those are siloed under the Commissioner of Mortgage Lending and the Commissioner of Financial Institutions. Those are the two silos within the Department of Business and Industry which the program would target.

Section 11 outlines the process for applying for participation in the program, and it goes into section 12 where it outlines what needs to be included in the application, including in subsection 4 the nonrefundable fee of \$1,000 which triggers the two-thirds requirement that you will see at the top of the bill. Section 13 outlines what happens after receipt of the completed application by the Director and gives the Director a timeframe to consider that application. Section 14 gives the Director broad authority over whether to approve or deny and makes that approval or denial a final determination not subject to administrative or judicial review. The bill goes on to say what happens if a program is approved to participate in the program, including putting restrictions on market access. Section 16 places limits on participation. The limit is for 5,000 consumers during the testing period which ultimately runs for two years. Any participant can apply for a waiver that would allow them to expand that access to 7,500 consumers, but that would be at the discretion of the director.

Section 17 of the bill outlines some financial limits for those who are applying for a waiver from sections of NRS Chapter 671, which are money transmitters. No single transaction can be for more than \$2,500 or \$25,000 for any series of transactions for a consumer. Section 20 outlines all the disclosures that need to be given to any consumer that is going to be using a product in the program. It is important to point out that section 20, subsection 2 gives the Director the ability to require any additional disclosure that he or she chooses. Section 21 requires the establishment of a website and telephone number for lodging complaints. Section 22 outlines that the director shall establish reporting requirements by regulation. In subsection 2, it says on the request of the Director, "a participant shall make any requested record, information, or data available for inspection." There needs to be total transparency from program participants up to the Director upon his or her request.

There are confidentiality protections for the business built into the bills that start in section 23. Section 26 is what happens at the end of two years if after the testing period expires, the company would like a one-year extension so they could apply for full licensure. This allows the Director to provide that one-year extension that can only be extended once so they can continue operating while applying for a full license under existing regulatory structure. Section 27 gives the Director the broad ability to take action against a company that he or she believes is acting inappropriately. Section 30 requires that the Director consult with the Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General and adopt regulations that establish consumer protections for the program. There are additional reporting requirements that follow and a lot of conforming language.

We made one amendment in the Senate that was specifically requested by Chris Ferrari on behalf of his client, Intuit, Inc., which has been prohibited from offering one specific product in Nevada that is offered in every other state in the country. That issue is related to Internet lenders and should read Internet business lender.

**Chair Spiegel:**

We have some questions from the Committee members.

**Assemblywoman Carlton:**

What are you trying to do?

**Senator Kieckhefer:**

We have a lot of laws and regulations that have been built up based on an understanding of the financial sector as it has grown over time. A lot is changing in that space. Financial technology, "fintech" as we refer to it, is both an emerging and continually evolving space from an economic development perspective and a business perspective. New products are regularly being created that may not have been previously considered. The ability to test and deploy those products for consumers may not always align with our existing laws because they were built for a different concept of what financial instruments are.

**Assemblywoman Carlton:**

What are you talking about when you talk about products?

**Senator Kieckhefer:**

These could be new types of consumer lending products, new types of facilitators, and using technology to create a new way of doing something that is oftentimes already done. For example, in the Arizona sandbox there are four or five companies currently approved. There is a product that allows people to take out a loan, but their payback schedule is not based on a fixed term. It is based on a percentage of what they earn. If they earn less, they pay less. If they earn more, they pay a little more. There is a no-default mechanism and they are never in violation of a term of a contract. It is a new way of conceptualizing lending and payback terms that was not captured in their statute. They create a waiver to allow a test of this product to see if consumers like it and if it functions.

**Assemblywoman Carlton:**

So if they are outside of the regulatory scheme, how do we protect the public?

**Senator Kieckhefer:**

It is critical, right? I do not want to open Nevada to predatory companies that take advantage of people. That is why it was originally housed, when it was drafted, in the Office of the Attorney General. For a lot of reasons it fits more neatly in the Department of Business and Industry. There are two pieces of regulatory authority within the bill itself. One gives the Director of the Department of Business and Industry permission to create regulations. There is a "may create regulations" that offers some guidelines on the programs, but there is also a mandate that they create regulations in coordination with the Office of the Attorney General to ensure consumer protections are in place. That mandate is in section 30 and is designed to recognize that consumer protections are still a critical piece of what we want to do.

We stripped from the original draft of the bill NRS Chapters 604A and 604B from the issues that may be waived and that is check cashing and deferred deposit loans that were originally included. We removed those because that is not necessarily a space where we want a lot of innovation.

**Assemblyman Daly:**

If you are exempt from everything, how will you regulate? Someone is going to come in to propose a new product which is exempt and they will ask for a waiver. They will be talking to somebody in the Department of Business and Industry who deals with financial services. They will present their product and our regulatory people will agree. Then will they put regulations in place to administer the program before they start? Regulations can take six months to a year.

**Senator Kieckhefer:**

Any regulations surrounding a program would be done so they would have general applicability over the entire program. When an application is made, an applicant must specify what regulatory piece from which they would like a waiver. The Director would then provide approval for a waiver from that specific regulation. The Director does not have to waive broadly. They have broad discretion to waive very specific pieces of regulations. A participant would not have to get a blanket waiver from the entire regulatory structure. It could be a single piece. They would not have to adopt new regulations specific to each individual program participant.

**Assemblyman Daly:**

In section 15, subsection 2, they can condition the application upon some of the rules. They can get a waiver in some places and not in others of existing statutes. What types of services or products are applicants going to be trying to use that they cannot innovate under the current system? What is stopping us from opening a new statute that covers us and our product?

**Senator Kieckhefer:**

I will defer to Mr. Digesti to answer that question. He will be able to do a much better job than I can.

**Chair Spiegel:**

We have more questions from the Committee.

**Assemblywoman Neal:**

Section 25 lays out the testing period for the financial product. If you have a period of testing that is two years, then how does section 19 relate? It says that at any time during the testing period, a participant may submit a written request for relief from the limitations of subsection 2 of section 16. This bill is so loose that relief can be granted. I am not clear on how you get relief except that you can get relief within one month, six months, or seventeen weeks and then you could walk out of almost all of the provisions. It only says "relief from." That means that it could be all, but what is the purpose of having supposed guardrails when you can go to the Director and say, I think I am in a financial place where I do not need these regulations anymore. Help me understand that.

**Senator Kieckhefer:**

They can request relief from the limit on 5,000 consumers with a waiver up to 7,500 consumers. They can request relief specific to subsection 2 of section 16, subsection 1 of section 17, or both. It is specific about what they can request that waiver from. It is not any parameter of the program.

**Assemblywoman Neal:**

How did you arrive at the 5,000 consumers and the dollar amounts of no more than \$2,500 in a single transaction and no more than \$25,000 in any series of transactions for a consumer? You have said some unique things that I do not think any of us are familiar with. You are saying they are old products with a new twist. If it is a consumer loan, how do we say we want to test 5,000? I do not know what is going on in Arizona, but you need to give me a real-life example of why you picked 5,000 to test a product and how you get the dollar amounts. What are we playing with and what outcomes are we expecting to see?

**Senator Kieckhefer:**

Those numbers were copied specifically from Arizona statutes. The idea is to give limited market access. I do not know what the right number is. Different products are going to have different numbers of consumers. I would be open to ideas on what the correct number is, but 5,000 consumers seems to be a reasonable cap in terms of access to the marketplace if you consider our population. It seems that it was not overly broad, but not so restricting that you could not get a reasonable sample size of whether your product is interesting to the marketplace or functions as you designed it.

**Assemblywoman Neal:**

You have \$25,000 for a series of transactions and I need the real-life example of more than \$25,000 in a series of transactions, and what does that mean? Is it six loans that are built around one consumer? Is that multiple products that meet the threshold of \$25,000?

**Senator Kieckhefer:**

Section 17 is also specifically limited to companies that are receiving a waiver from parameters of NRS Chapter 671. That is wire transfers and things like that. Those caps do not apply to everything in the program. They are specific to those types of transfers. I think the idea was that there were some financial protections in place based on the nature of that line of business.

**Assemblywoman Tolles:**

I know the regulatory sandbox started in the United Kingdom and has been used in other parts of the world, including Australia and a variety of Asian countries. Arizona is a model. One of the things that is interesting to me is the reporting mechanism. Can you speak to section 31, subsection 3, where it says that the report may include recommendations for legislation? Essentially, the regulatory sandbox idea is that we can play in a very small, contained model to see if it can work for a broader application. Do you have any examples in Arizona or other countries where that led to a broader application of legislation that came out of that small test group?

**Senator Kieckhefer:**

I think the idea in subsection 3 of section 31 is that there is no permanent change in our statute based on anything that happens in the sandbox. It would be incumbent, based on what we talked about earlier in section 26, for the one-year extension if someone wants to become fully licensed. If they test a program and find a way to deploy that and get full licensure, they could do that. The other side of that could be the regulator saying that this is a space that we think the regulation is outdated or is no longer applicable in certain instances. They can use their expertise to make recommendations to us on how to make our statutes friendlier to businesses from an economic development perspective. The purpose of the report and the request for recommended legislation is to have the people who are on the ground working in this space come to the Legislature and say, This is what we are seeing and this may be a direction you want to go, both from a consumer protection standpoint and a business facilitation standpoint.

**Assemblywoman Jauregui:**

In section 12, it lays out in detail the criteria that is required in the application. I am assuming it is also modeled from Arizona. Can you give us an example of successful applicants from Arizona and what the testing process looked like, what that product was, and did the product end up in full licensure?

**Senator Kieckhefer:**

The sandbox in Arizona is up and running and they have four participants. The products have not yet emerged from the sandbox.

**Assemblywoman Jauregui:**

What kind of financial product or service is in the sandbox?

**Senator Kieckhefer:**

It is all financial technology similar to the statutes of NRS that we are considering.

**Assemblywoman Jauregui:**

Can you tell me what they do?

**Senator Kieckhefer:**

They are lending products.

**Elisa Cafferata, representing Nevada Technology Association, Inc.:**

In Arizona, they provide fairly extensive applications about how they are going to protect consumers and what specifically their product rollout is going to be. There are currently four participants in the Arizona sandbox. The first one is Omni Mobile. It is a hospitality program, so you can link your bank account to an Omni rewards program and pay your hotel bills automatically with your phone. You can get the rewards points at the casino or the hotel and also get a discount because you are paying faster for your bills.

Green Technology is a perfect example of what we are trying to accomplish. It allows you to use your debit card as a credit card so you can use credit without affecting your credit score to get a discount. If you do not have a credit history, this is a hybrid that lives between those two markets and products. It is a way for people who do not have access to banking to build their credit.

The third one is called Sweetbridge. It is a blockchain product that allows vehicle title loans. There is a lending rate cap. The fourth one is Align Income Sharing Funding. It is a loan based on your income, but the payments are not a monthly payment. It is on a sliding fee scale based on your income at the time. Normally, if we took a loan and lost our job, we would have to call the bank and plead our case to get different terms, but this is designed to respond to our changing income.

**Chair Spiegel:**

Could you clarify for me when you say "consumer" in section 5, do you mean a person or could that also include a business? Would this also include business-to-business transactions?

**Senator Kieckhefer:**

I do not think there is anything that precludes business to business. Generally "person" is used both ways in our statutes. It can go for both individuals and businesses.

**Assemblywoman Carlton:**

Since a business can be a consumer, if one of these businesses had an agreement with another business, and it decided to make that decision, how would that impact those employees? They would literally have no choice. Are we talking about processing paychecks? Because there is so much innovation in here, I am concerned that the two businesses will get together and come up with something that will really work for them and the employees could be left having to deal with something that they may not want. You said you excluded the direct deposits, but I want to make sure we do not put employees in a position that their employer decides to do some new innovative way of paying them and the employees do not have a choice. By taking out some of these sections from the regulatory scheme, are those employees going to be protected?

**Senator Kieckhefer:**

I do not think it is applicable in the way that you are describing it. Payroll services are not included in these statutes. It is not my intent.

**Assemblywoman Carlton:**

I just want to make sure the people who are involved in it are doing it voluntarily and not being sucked into the vortex of this bill.

**Chair Spiegel:**

My question has to do with the sophistication of the participant in this. I understand the need for something like the sandbox. I know when you are dealing with early adopters, you can have people with various levels of where they can accept personal risk. I did not see a requirement that there be an examination of the consumers that you are working with to make sure they are able to handle the risk. There does not seem to be any means test of things that are available to consumers who would be experimenting with their money in new products that we cannot anticipate.

**Senator Kieckhefer:**

I heard a concern about a verification of the program participant and one for the consumer. Both are critical. In the process by which a program participant is approved, the Director consults with his regulatory agencies in deciding whether or not to permit participation in the program. Section 13, subsection 2 indicates that the Director will work with his regulatory commissioners to evaluate the ability of the company to bring their product to market effectively. The bill certainly contemplates the idea of the vetting process for program participants. As it relates to product consumers, I think that is the extension of that verification. There has to be a description in the application as well as of the benefit and the risk to consumers, and that disclosure has to be made in the disclosure section to consumers when those products are put on the market. Aside from the mandatory disclosure provisions, the level of confidence the director will have that he or she is dealing with a legitimate business entity that can bring this product to market will hopefully address some of those concerns. Depending on the product, the risk varies.



**Chair Spiegel:**

I was thinking of somebody doing arbitrage using artificial intelligence with large sums of money—something that would clearly be innovative, but hugely risky—so somebody could be wiped out without even understanding what they were getting involved in. In section 7, where it says the products must be determined by the Director to not be widely available in this state, is there also a requirement to perhaps see if other states are testing the same products so their experience may be examined before determination is made by the Director?

**Senator Kieckhefer:**

That could be included in a way that does not hurt the intent of the legislation. I think the language was included specific to Nevada because we were looking for something that was innovative to Nevada consumers. I do not think that experience review would undermine that intent.

**Matthew Digesti, Vice President of Government Affairs and Strategic Initiatives, Blockchains, LLC:**

Blockchains, LLC's founder and chief executive officer, Jeffrey Berns, was originally setting up shop in the state of Washington. In 2017, thanks in large part to Senator Kieckhefer and Senate Bill 398 of the 79th Session, there was another option. There was a state that was signaling to the ecosystem that there was a state that not only understood this emerging new technology, but embraced it. Nevada was not scared of it and rolled out a welcome mat in the form of a very light-touch enabling legislative framework. That caused my boss to leave the state of Washington after a significant amount of investment and look at Nevada and purchase land in the Tahoe Reno Industrial Center. Now we employ close to 100 employees at Innovation Park ([Exhibit D](#)).

I think thoughtful legislation, when it comes to emerging technology, is incredibly important. If Nevada wants to continue to diversify its economy and ensure we hedge against the next downturn, this is the type of legislation that is going to help us get to that goal as quickly as possible. Senate Bill 398 of the 79th Session—and by my informal estimates, in two years since passage—Nevada has seen well over \$300 million in investments with no tax abatements, no incentives, true organic economic development, which is really the sweet spot that the state should pursue to encourage investment in our state. It was great foundational legislation, but it is not enough. This bill is part of what I think phase two should be.

There are a lot of questions about real-world use cases and how this might apply. I can give you examples. About a year and a half ago, I was talking to a start-up individual who owned a pizza restaurant in Reno. He was a Bitcoin enthusiast, so he created an application for his customers to download to pay for pizza using Bitcoin. He came to me and asked, what does the regulatory framework look like in Nevada? Can I do this? Do I need a license? And is it expensive to comply? We talked briefly and I told him he was probably going to have to get a money transmission license with the Division of Financial Institutions and that he would probably have to post a bond and that would cost him an unknown amount. Then he would have to go through compliance obligations just so he could create an application for his customers to use at his local pizza restaurant. It was going to be incredibly expensive and

time-consuming and what he had was not enough on the compliance side. He is a good example of someone who could benefit from a program like this. He is a start-up individual looking to do something, but does not have the money to hire the lawyers to put together the compliance program that might work for one very specific application. Had this happened a year and a half ago, I know he would have taken advantage of it.

We talked about the Arizona sandbox and the product with loans that are tied to your income. It is really innovative in the sense that, if you lose your job, they will work with you and no payments are owed. If your salary increases, you can pay it back more quickly; if it decreases, they work with you. There is no interest strain. As we all know when it comes to installment loans, there are interest rate caps or there are certain disclosures you have to provide on how much you can charge a person for interest and how you calculate that. There is nothing in the Arizona statutes that talks about a loan that is very proactive on the consumer protection side, but does not offer an interest rate. It makes a compelling case to apply to their sandbox, work with regulators and have regulators oversee what you are doing almost on a daily basis to oversee what you are doing to make sure consumers are protected. Once regulators get comfortable with your product, maybe the regulators will make some rules and tweak or amend their regulatory framework to address the particular product that you would like to offer to the entire marketplace.

Looking long term, we have a lot of technologies that are interested in Nevada that our statutory scheme does not address, let alone understand. Artificial intelligence, as the Chair mentioned, is one of them. I have financial technology background and I used to work at a financial technology company in Reno. We looked at artificial intelligence to help underwrite our customers. When you make loans to people, you have to disclose during the application process what your underwriting process is and what you need to qualify for "x" and "y." How in the world are lawmakers going to create statutes for artificial intelligence algorithms that put all this data together and spit out an underwriting decision? I think some of the software engineers at this point do not even understand how you would articulate something like that.

I imagine that lenders that use artificial intelligence for underwriting would be prime candidates for this particular program. It allows legislators to work hand in hand with the start-ups, see how it actually operates in the real world, and rule-make as you go or after the program has expired for that particular product or service. It is a really powerful position to be in with the public/private partnership. My last example is a start-up in town called Filament. It is incredibly successful and very innovative. They are a blockchain company that uses hardware and software to unlock machines and allow machines to actually transact with each other. It is called the machine-to-machine economy. I did not understand it until I started to dig into what Filament does. You can imagine a future where autonomous vehicles like Teslas are going to have this technology. They pull up to an electrical charging station that has this technology and the car pays to get charged. That is all done without any human involvement. There is a bank account or credit card attached to that to help with that transaction, but these machines are all going to start becoming smart in the sense that they are going to be able to transact with each other.

If there are any consumer protection issues of which we need to be aware as lawmakers or regulatory authorities, what better place to do it than a sandbox? In a sandbox environment, it is a benefit to the business because they can invest knowing that regulators are not going to come and shut them down right away. It is an absolute benefit to the regulators because they get to see day to day how these products are operating and how it affects consumers. They can understand the business and rule making if they so choose in an informative way. Most important from my perspective, it is incredible consumer protection. The moment a regulator sees with that day-to-day oversight that something might be going wrong, they can shut it down. As a former financial technology general counsel, it is an environment which I wish I had had the option because you have to make a decision as a business whether you want to try a product and hope that regulators agree with you. This is a great safe place for all stakeholders to benefit and allow Nevada to stay on the cutting edge and push our emerging technology ecosystem forward.

**Chair Spiegel:**

Are there any questions from the Committee?

**Assemblywoman Neal:**

In section 40, it refers to NRS Chapter 645G, which would allow you to swap real property. How does this work in the area of financial technology? In section 43.7, you have pulled in NRS 675.230, which is traditional installment lending, and you have a carve-out where, in a normal brick-and-mortar situation, they could not have this exception, but you could make a loan in an office, suite, room, or place of business. It sounds shady to me—you could be in your bedroom doing Internet loans and say you are part of this landscape.

**Senator Kieckhefer:**

Section 43.7 is the amendment which I specifically referred to that was requested by Intuit. This is language that tries to encapsulate and facilitate a product that is deployed in 49 other states, but not Nevada. Intuit offers a lending product to their other existing business customers that they are not allowed to in Nevada based on these statutes and Intuit's conversations with Commissioner George Burns of the Division of Financial Institutions (FID), Department of Business and Industry. This was an amendment to this bill which tries to make Nevada a place where Intuit can conduct its business that it conducts in every other state in the country already.

**Chris Ferrari, representing Intuit, Inc.:**

Intuit, Inc., is able to offer business-to-business loans in 49 states in the country. Last year they exhausted the regulatory process through FID and there is a section in current statute, which is NRS 675.230, which says, "Except as otherwise provided in subsection 2, a licensee may not conduct the business of making loans under this chapter within any office, suite, room or place of business in which any other business is solicited or engaged in." Even though Intuit has more than 400 employees in south Reno, that location would not qualify. In speaking with FID, they said you would have to essentially seek a statutory change.

This is the one request that did not get incorporated into the bill, and I think it was an inadvertent omission in "internet business lender." That will enable Intuit to go through the FID regulatory process to be licensed to offer a business-to-business Internet based loan.

**Assemblywoman Neal:**

I guess your assumption is that Intuit is the only business that will be picked up from this language and no other Internet lender. I saw no framework that says this limits an international lender, that this was a domestic lender—this is just an Internet lender. Although you are giving the Intuit example, this does not specifically say that this is just for Intuit. This is broader than that.

**Chris Ferrari:**

We conveyed our challenges to the Legislative Counsel Bureau (LCB). Our challenge was in terms of running into that statutory/regulatory limitation and the LCB drafters incorporated that into the bill. We would be amenable to some type of limitation on an international corporation.

**Assemblywoman Tolles:**

My question is for Mr. Digesti. When you talked about the benefit of having regulators scrutinize these trial programs on a daily basis, are we competent we have the resources available of expertise within the office to know what to look for and how to examine the impact of these new financial technologies?

**Matthew Digesti:**

It is my understanding that that is a yes and a no from my perspective. We started with this bill originating in the Office of the Attorney General, and one of the concerns was whether the office had individuals with sufficient expertise to handle the day-to-day oversight. The Department of Business and Industry was consulted, and I believe there are talented individuals there who can absolutely handle this job. The purpose of the sandbox is that you are going to get into areas like artificial intelligence where I do not know if there is anybody in the country that is going to be qualified to do certain things at a regulator level. It is also an environment where we can teach the state regulators about this new technology and give them the time and space to understand it and educate themselves in an environment that is safe, controlled, and has complete oversight. I think it is a win-win for all three stakeholders involved.

**Assemblywoman Tolles:**

Through that process in that limited environment, we can learn some things that can then be more broadly applied to safeguard consumers as well as to keep up with emerging technology, perhaps on a statutory level. Is that correct?

**Matthew Digesti:**

That is absolutely right. I draw on my experience as an attorney. I spent the first nine years of my career suing companies for consumer protection violations. I spent the next five years of my career representing companies with emerging technology issues that

do not necessarily match up with regulatory frameworks. I have seen it from both sides and I have protected both sides. As a business, you have to make a decision. In the absence of a regulatory sandbox, you have to make a decision. Does this product or service violate any statutes and, if I think they might, I have to go to a regulator or I have to invest time and money to go to market and hope that nothing happens and that I do not get shut down. That does happen. From the perspective of a regulator, consumer protection attorney, or consumer, would it not be nice if you were dealing with a new technology to know that the company you are dealing with actually has the oversight of the Department of Business and Industry and experienced regulators in the state and that it is not some Bitcoin company that you have never heard of, but you want to experiment with this technology because it sounds fun? I think it is a very good marriage between all involved and it empowers the ecosystem to move forward in a very thoughtful, careful, and consumer-protective way.

**Chair Spiegel:**

We have some questions for Commissioner Burns.

**Senator Kieckhefer:**

I worked with Michael Brown of the FID on the transfer of this program. I do not want to represent that Commissioner Burns is here in support of the program.

**Assemblywoman Neal:**

Can you speak to the exception in section 43.7?

**George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:**

That particular exclusion relates to the fact that, under NRS Chapter 675, there is a requirement that there be a brick-and-mortar location in the state of Nevada for anyone doing lending here. The reasons for that are so the consumers have a place to go in order to work out any questions or concerns they have and for us to have a place to examine them. The exclusion here is primarily for business Internet lending only, so it will not affect individuals. Needing to have a physical location here has presented a difficulty for a number of types of businesses that are working through the Internet and do not want to have a physical location in the state.

**Assemblywoman Neal:**

How does that affect how you regulate and look at business practices? What then would be the requirement in this new language that you would seek?

**George Burns:**

The primary thing that has to be allotted for which already exists in the statute, is if the location for examination is out of state, that all costs are covered by the licensee in order for us to go wherever they are to examine them.

**Chris Ferrari:**

That is common practice around the country in terms of the regulatory administration process. The challenge is the way it is written. Even though there is a large campus in Reno, because there is other business taking place in that physical structure, that cannot be the location to which someone could go to ask a question about his or her loan. There are 54,000 [Intuit] QuickBooks users in Nevada who cannot access this line of capital based on the way that statute is written. This is a small business, economic development incentive that is permitted in 49 states. There is no intent to skirt any regulatory or statutory authority. It is to make sure that a product that can be offered across the country is also offered in Nevada and we are not lagging behind.

**Chair Spiegel:**

Will there be some kind of a surety bond that is required for someone to put up before they can conduct business here so consumers can get redress in case things go wrong?

**George Burns:**

I think that is something that will have to be looked at on a case-by-case basis on each proposal that is made. We would do a basic business plan analysis: what is the risk of that particular business plan; what are the exposures there; and are there exposures that are substantial enough that we think a bond or surety is necessary in order to protect consumers? Then that could be part of the requirements before they are granted the sandbox position.

**Chair Spiegel:**

Is there any testimony in support of S.B. 161 (R1)?

**Tyson K. Falk, representing Figure Technologies, Inc.:**

Figure Technologies is in support of this bill. They are a blockchain-based company in Reno and moved here in large part because of the steps we have taken from a legislative front. Certainly Senate Bill 398 of the 79th Session was the main reason they moved to this state. They support the ecosystem broadly and would love to be joined by fellow blockchain companies to take advantage of our innovative regulatory and statutory scheme. I found an interesting statistic from the United Kingdom. A study by the Financial Conduct Authority, which is probably equivalent to the Securities and Exchange Commission in the United States, found that of the firms that got accepted into their programs, 77 percent of those actually moved on to testing where they were doing limited testing, offering their financial products to consumers, and 90 percent of those went on to wider market testing, which is tremendously successful. One of the companies used cryptocurrency as an intermediary to do transfers from British pounds into South African rand, and the end result was that they were able to reduce transaction fees by up to 55 percent. Also, the transactions took from two minutes to about an hour, which is lightning fast. These are some of the innovative products that have enjoyed success around the world.

**David Dazlich, Director of Government Affairs, Las Vegas Metro Chamber of Commerce:**

We are in support and we believe this is a good measure to make us competitive with states like Arizona that have already adopted similar sandboxes. The Nevada start-up scene is already becoming competitive with some of the heavyweights such as California. We believe this will make us more competitive, and with the framework put forward, there are good consumer protections and regulations in place to allow us to grow our small business start-up economy in a smart way.

**Chair Spiegel:**

Is there anyone else to testify in support of S.B. 161 (R1)? [There was no one; however, a letter in support of S.B. 161 (R1) was submitted but not discussed ([Exhibit E](#)).] Is there anyone to testify in opposition? [There was no one.] Is there anyone to testify in a neutral position? Seeing no one, I will close the hearing on S.B. 161 (R1). I will open the hearing on Senate Bill 39 (1st Reprint).

**Senate Bill 39 (1st Reprint): Revises provisions governing appraisers and appraisal management companies. (BDR 54-224)**

**Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry:**

I am here to present Senate Bill 39 (1st Reprint) for your consideration. I provided you with a two-page summary of the bill ([Exhibit F](#)) which I will go over briefly. This bill concerns appraisal management companies (AMC), which are business entities that administer networks of independent appraisers to fulfill real estate transactions. These companies have been in existence for many years, but have considerably increased due to the financial crisis in 2008 and the issues that were related to appraisals.

In 2009 Assembly Bill 287 of the 75th Session introduced language that provided for the registration and regulation of AMCs. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) added certain minimum requirements for AMCs to register with states. In 2015 we had some guidance from the federal financial regulatory agencies that issued a final rule that implemented minimum requirements. This new requirement made additional registration requirements. The bill incorporated those requirements and we stuck with the minimum requirements. One of them was to make a registry of the AMCs and report back to the federal authorities.

We are on a timeline on this bill. Because of our biennial legislative cycle, the Real Estate Division, Department of Business and Industry requested an extension. We have been granted an extension until August 10, 2019, so the statutes and the relevant regulations will be adopted after this. June 2020 is when all state AMC programs will be reviewed for compliance. This is an important update to our statutes that govern the AMCs, so there are statutory restrictions on the performance and services that AMCs offer if we do not adopt these requirements in accordance with Dodd-Frank.

**Chair Spiegel:**

Could you explain the difference between an appraisal firm, which is excluded in section 13, subsection 2, and an appraisal management company?

**Sharath Chandra:**

The appraisal management company is the middleman and they facilitate the transaction. They are not licensed appraisers. They hire licensed appraisers to perform the appraisal. The appraisal firm offers the appraisal under that person's license.

**Chair Spiegel:**

Are there any questions from the Committee? Seeing none, is there anyone who wishes to testify in support?

**Marcus Conklin, representing Coalition of Appraisers in Nevada:**

We were not engaged in March when this bill made its way through the Senate, so we are a little bit late. We submitted to you today a potential amendment for this bill ([Exhibit G](#)), but I want to clarify. We are in support of this bill as it is and we understand what the Real Estate Division is doing. There are some areas we would like to see clarified if it is the will of the Committee. We would like an opportunity to explain "customary and reasonable" and the role of a middleman who, in essence, ends up controlling the flow of business and how that can squeeze appraisers.

**Daniel Byrne, Member, Coalition of Appraisers in Nevada:**

We understand the necessity for this bill. Our area of concern is in section 22, subsection 2, paragraph (d) in relation to the appraiser fee schedule. Dodd-Frank specifically provides guidelines of what a customary and reasonable fee schedule is and how it can be developed. It suggests a federally regulated fee schedule could be adopted such as the Veterans Administration, market surveys, and market reports completed by disinterested third parties. A fee schedule cannot be produced using what other AMCs are paying appraisers. We would like to see additional language in there that the applicant be able to demonstrate that they have produced a fee schedule or survey in compliance with Dodd-Frank as indicated in the final interim rule.

**Chair Spiegel:**

Are there any questions from the Committee? Seeing none, Mr. Conklin, do you have other remarks?

**Marcus Conklin:**

The original Dodd-Frank recognizes the market forces at play anytime you introduce a middleman. A middleman in this case was done so as to create a separation between the bank—the one that is making the loan—and the appraiser—the one who is appraising the value—so there is no pressure put on for an unbiased appraisal of the house. That is a good thing. By creating a middleman, it takes away the direct ability to determine what those services are worth. In Dodd-Frank it speaks to the fact that AMCs must charge a rate that is reasonable and customary for the marketplace. It may be that the language we proposed is



not the correct language, but that is to ensure the protection carries through into Nevada as well, so appraisers can maintain their independence without necessarily losing their fair market price for doing their job. We will continue to work with Administrator Chandra to find the correct wording.

**Chair Spiegel:**

I need to hear from Administrator Chandra regarding the proposed amendment.

**Sharath Chandra:**

We have had this conversation for a while. There is some ongoing litigation now and currently one of the things that that involved is a Federal Trade Commission complaint. I will read a brief synopsis of this: The Federal Trade Commission filed an administrative complaint [Matter/File Number 1610068 Docket Number 9374] against the Louisiana Real Estate Appraisers Board alleging the group is unreasonably restraining price competition for appraisal services in Louisiana. It is essentially the same concept. It is my understanding that they took this customary and reasonable fee approach and then determined through a study what that should be and implemented it. This was the result of it. The complaint alleges that the appraisal board's regulations exceeded the scope of the mandate outlined in the Dodd-Frank Act that required appraisal management companies to pay a rate that is customary and reasonable for services performed in the market area of the property being appraised. The board required appraisal fees to equal or exceed the median fees identified in the survey report's commission and published by the board. The board then investigated and sanctioned companies that paid fees below the specified levels. That is the litigation that is pending in front of the Federal Trade Commission (FTC). The commencement of hearings is September 17, 2019, at the FTC.

A lot of the states are in a holding pattern to see how those hearings play out. Because this is a federally regulated industry, we have to be in compliance with the federal government. There has been no guidance and the requirement is to implement three things. The AMCs are required to register and be subject to supervision by the state. We are to verify that state-certified and state-licensed appraisers are used for federally related transactions and require that the appraisers comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The fourth condition is to require that the appraisals are conducted in accordance with statutory valuation independent standards pursuant to the Truth in Lending Act (TILA) of 1968. That is the larger framework and what we have tried to incorporate in the statute and the regulation.

I understand the issue the appraisers are bringing and we are happy to listen. There is time to consider this—maybe between sessions or we can discuss a way forward. Hopefully, there is some determination on the legal aspect and then we can look for best practices and bring something to the Legislature. We have guidance from the Federal Housing Administration (FHA): FHA believes that the marketplace best determines what is reasonable and customary in terms of fees. The fees are the result of a business decision which may or may not be negotiated between the appraiser and the client. They do not set fees or determine whether a fee is reasonable and customary. That is their interpretation of that. Those are some of the

pieces that I wanted to bring to the Committee's attention. We understand some of the situations which may have caused this concern. There is language in the current statute that says the AMCs have to follow TILA so that framework is already in place in the statute. We are not excluding that piece.

**Chair Spiegel:**

Is there anyone else to testify in support of S.B. 39 (R1)? Seeing no one, is there any opposition? [There was none.] Is there anyone who wishes to testify in neutral? Seeing no one, I will close the hearing on S.B. 39 (R1). I will open the hearing on Senate Bill 479.

**Senate Bill 479: Repeals provisions relating to certain mortgage loan originators. (BDR 55-148)**

**Brian Reeder, representing Nevada Credit Union League:**

We are in support of Senate Bill 479. Credit unions are not-for-profit cooperatives focused on providing the best-priced products and services to their members, and they are committed to the members and the communities in which they live. This bill will help them better serve their members and their communities. In Nevada we have 15 credit unions that serve about 350,000 members and have more than \$5 billion in assets statewide. This bill has unanimous support from all of the members of the Nevada Credit Union League and we have worked in conjunction with the Division of Financial Institutions (FID), Department of Business and Industry, which is the state's regulatory arm that oversees credit unions ([Exhibit H](#)).

**Matt Kershaw, President/Chief Executive Officer, Clark County Credit Union:**

We are in support of Senate Bill 479. This bill is very important to state-chartered and privately insured credit unions and the communities they serve in Nevada. There are six privately insured credit unions with assets totaling about \$2.5 billion and over 136,000 members. Privately insured credit unions make up 35 percent of credit unions in the state, and state-chartered credit unions with local decision-making make up the biggest portion of state-chartered financial institutions in Nevada. All credit unions have a mission to help our members be financially successful.

Senate Bill 479 will help privately insured credit unions to accomplish that mission, as it will help to provide parity between privately and federally insured credit unions. This parity is important to privately insured credit unions as we seek to attract and retain qualified mortgage loan officers (MLOs). Today this is a problem because there are two different sets of requirements for privately insured credit unions versus those with federal insurance. When an MLO tries to move from a federally insured credit union to a privately insured credit union, they must meet a different set of requirements. Senate Bill 479 deletes an existing statute that precludes the FID, the regulating entity under the Department of Business and Industry, to enter a memorandum of understanding with the National Credit Union Administration for the purpose of MLO licensure. This removes regulatory burden from the state, while also ensuring transparency and the high level of consumer protections

through the compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Eight out of ten states allow privately insured credit unions across the country to operate this way. We have worked in Nevada for the past year with FID Commissioner George Burns and his staff to facilitate this change.

Privately insured credit unions know and understand the importance of having well-qualified MLOs to help our members achieve financial success. A great example of how Clark County Credit Union helped our members achieve success was in the years following the Great Recession. We developed what we called a second chance mortgage product that allowed those who could not get a mortgage because of a foreclosure, short sale, or bankruptcy to purchase a home. These loans helped our members to reestablish their credit and reenter the housing market. In addition, these loans were administered responsibly and we had no defaults. This program helped heal our housing market and the consumer. During this time, we were limited to two MLOs and they did the best they could to promote the second chance mortgage. This bill will help facilitate these types of programs for our members, as we can expand the number of qualified MLOs within the privately insured credit unions.

**Scott A. Arkills, President/Chief Executive Officer, Silver State Schools Credit Union:**

This matter is a parity issue for us involving privately insured and federally insured credit unions located in Nevada. It is important to note that the privately insured credit unions have the full support and blessing of the federally insured Nevada credit unions on this matter. In the state of Nevada, privately insured credit unions currently are held to much stricter MLO licensing requirements than our Nevada federally insured credit union partners.

As a state, Nevada has one of the highest concentration percentages of privately insured credit unions of the 10 states approved for private insurance. Silver State Schools Credit Union and its over 55,000 members would not exist today if not for the financial assistance that our private-insurance carrier, American Share Insurance, provided in the years immediately following the 2007-2008 recession. To be state chartered and privately insured is a decision many credit unions and their boards of directors have to make.

Senate Bill 479 will assist in eliminating the disparity that exists between federally insured credit unions and privately insured, state-chartered credit unions in the state of Nevada. I have served in my position for over three years and due to the restrictions placed on the privately insured credit unions in Nevada, I have not been able to hold more than two MLOs during that period at any given time. The onerous requirements placed on privately insured credit unions make it nearly impossible to attract and retain MLOs.

I think it is important to note that S.B. 479 does not in any way negate or minimize the federally approved requirements of the SAFE Act. It is consistent with all requirements and statutes under the SAFE Act. Commissioner George Burns of the FID and his staff have shown a willingness to assist and support our request as long as we have a uniform class and testing curriculum that can be reviewed for compliance with Nevada FID standards. We have found a federally approved SAFE Act vendor to fulfill this need.

It is the credit union mission and mantra to "serve the underserved." Nevada credit unions, both privately and federally insured, have shown a great propensity to serve our communities and the people who live and work here, both during and in the years following the Great Recession. Despite Nevada being one of the most adversely affected states economically during and after the recession, Nevada's credit unions have been collectively and consistently able to tout some of the lowest delinquency and loss numbers in the country over the past six years.

As a credit union that supports the education field, our credit union deals with overall lower salaries and therefore also has more substantial financial needs than many other banks and credit union constituents. That said, for Silver State Schools Credit Union to have only two MLOs to serve the needs of over 55,000 members is not sufficient. One of our signature programs over the past several years was to develop and implement a second chance mortgage loan program. It was successful for us in every way, including providing affordable housing opportunities, except that we did not have enough MLOs to handle the demand because of the disparity of the requirements for privately insured credit unions. This parity matter is one that will help us in assisting as many qualified mortgage applicants as possible in Nevada in the present and future and always in accordance with all federal and state SAFE Act statutes.

**Chair Spiegel:**

Are there any questions from the Committee? Seeing none, is there anyone else to testify in support of S. B. 479? [There was no one.] Is there anyone to testify in neutral?

**George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:**

I am here to testify in the neutral position, but I want the Committee to know that the FID does not have any concerns regarding this bill. The obvious question is how did we end up at this juncture in the first place? It occurred because when the SAFE Act was passed in 2008 and adopted in Nevada in 2009, the federal requirement was that the mortgage loan originators had to be supervised by a federal agency or register with the state's mortgage regulators such as the Nevada Division of Mortgage Lending. This is because the National Credit Union Administration (NCUA), which is equivalent to the Federal Deposit Insurance Corporation for credit unions, decided it would not allow registration of privately insured credit union MLOs through the NCUA. Since that time, the NCUA has reversed its position and will now allow MLOs and privately insured credit unions to be registered through the NCUA if the state credit union regulator enters into a memorandum of understanding (MOU) with the NCUA confirming that the state will ensure compliance with the SAFE Act by its privately insured credit unions. When *Nevada Revised Statutes* 658.210 went into effect, it served its purpose by providing our privately insured credit unions a means to comply with the SAFE Act. Now that the NCUA will allow privately insured credit unions to register their MLOs through it upon FID entering into the MOU, which we intend to do upon adoption of this bill, NRS 658.210 is no longer relevant and its repeal is appropriate in our thoughts.

**Chair Spiegel:**

Are there any questions from the Committee? Seeing none, is there any other neutral testimony? Seeing none, is there any opposition? Seeing none, I will close the hearing on S.B. 479. Is there any public comment? [There was none.] The meeting is adjourned [at 3:21 p.m.].

RESPECTFULLY SUBMITTED:

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Earlene Miller  
Committee Secretary

APPROVED BY:

---

Assemblywoman Ellen B. Spiegel, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is the Work Session Document for Senate Bill 68, dated April 24, 2019, presented by Patrick Ashton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is a copy of a letter dated April 24, 2019, in support of Senate Bill 161 (1st Reprint), to Chairwoman Spiegel and the honorable Committee members, authored by Matthew Digesti, Vice President of Government Affairs and Strategic Initiatives, Blockchains, LLC.

[Exhibit E](#) is a letter dated April 23, 2019, to Chairwoman Spiegel, authored by PJ Hoffman, Director of Regulatory Affairs, Electronic Transactions Association, in support of Senate Bill 161 (1st Reprint).

[Exhibit F](#) is written information regarding Senate Bill 39 (1st Reprint) submitted by Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry.

[Exhibit G](#) is a proposed amendment to Senate Bill 39 (1st Reprint), presented by Marcus Conklin, representing Coalition of Appraisers in Nevada.

[Exhibit H](#) is a document titled "SB479 Summary," submitted by Brian Reeder, representing Nevada Credit Union League.

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Brenda J. Erdoes, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821  
MAGGIE CARLTON, *Assemblywoman, Chair*  
Cindy Jones, *Fiscal Analyst*  
Mark Krmptic, *Fiscal Analyst*



June 25, 2020

Brenda J. Erdoes, Esq.  
Director  
Legislative Counsel Bureau  
401 S. Carson St.  
Carson City, Nevada 89701

Dear Director Erdoes:

You have asked this office a question concerning NRS 675.020, 675.090 and 675.230, as amended, respectively, by sections 42.5, 43.3 and 43.7 of Senate Bill No. 161 of the 2019 Legislative Session (S.B. 161). These provisions exempt persons licensed pursuant to chapter 675 of NRS who make loans exclusively through the Internet from the restrictions set forth in NRS 675.090 and 675.230 concerning the location of the place of business at which the person is authorized to engage in the business of making loans. The specific question you have asked is whether this exemption applies only to persons who make business loans exclusively through the Internet or whether this exemption would apply to a person who makes other types of loans through the Internet.

With certain exceptions, a person who wishes to engage in the business of making loans in this State is required to obtain a license pursuant to chapter 675 of NRS from the Commissioner of Financial Institutions before engaging in that business. NRS 675.020, 675.040, 675.060. A person licensed pursuant to chapter 675 of NRS to engage in the business of making loans in this State is also required to comply with certain regulations relating to the location of the place of business at which the person is authorized to engage in the business of making loans. NRS 675.090, 675.230. One such regulation prohibits the licensee from engaging in the business of lending at a place of business located outside this State unless the person agrees to certain conditions related to the maintenance of records and the examination of those records by the Commissioner or his or her representative. NRS 675.090. Another regulation prohibits a licensee from engaging in the business of lending within a place of business in which certain other types of business are solicited or conducted. NRS 675.230.

During the 2019 Legislative Session, the Legislature passed S.B. 161, which was approved by the Governor on June 13, 2019, and included in the bound volumes of the Statutes of Nevada for the 80th Session as chapter 611, Statutes of Nevada 2019, p. 3984. Sections 42.5, 43.3 and 43.7 of S.B. 161, as those sections appear in chapter 611, Statutes of Nevada 2019, pp. 3997-99, exempt an “Internet lender” from the restrictions set forth in NRS 675.090 and 675.230 concerning the location of the place of business at which the “Internet lender” is authorized to conduct the business of lending. Specifically, sections 43.3 and 43.7 of S.B. 161, as those sections appear in chapter 611, Statutes of Nevada 2019, pp. 3998-99, authorize an “Internet lender”: (1) to apply for a license to engage in the business of lending in this State at “an office or other place of business located outside this State from which the applicant will conduct business in this State”; and (2) “conduct the business of making loans . . . within any office, suite, room or place of business in which any other business is solicited or engaged in.” Section 42.5 of S.B. 161, as that section appears in chapter 611, Statutes of Nevada 2019, p. 3997, establishes the scope of these exemptions by defining the term “Internet lender” to mean “a person who makes loans exclusively through the Internet.”

Thus, the language in sections 42.5, 43.3 and 43.7 of S.B. 161, as those sections appear in chapter 611, Statutes of Nevada 2019, pp. 3997-99, exempts an “Internet lender” from the restrictions set forth in NRS 675.090 and 675.230. By contrast, the language codified in NRS 675.020, 675.090 and 675.230, respectively, of the 2019 reprint of the Nevada Revised Statutes prepared by the Legislative Counsel pursuant to chapter 220 of NRS, contains a different term in that the language in those sections of NRS exempts an “Internet business lender” from the restrictions set forth in NRS 675.090 and 675.230. Pursuant to subsection 5 of NRS 220.120, the language in those sections of NRS was revised to correct a manifest typographical error in sections 42.5, 43.3 and 43.7 of S.B. 161 that resulted in the use of the term “Internet lender” rather than the use of the term “Internet business lender.” As required by subsection 5 of NRS 220.120, this revision was made in a manner consistent with the intent of the Legislature as determined by the Legislative Counsel.

Even though different terms are used in sections 42.5, 43.3 and 43.7 of S.B. 161 and the codified NRS version of those sections contained in NRS 675.020, 675.090 and 675.230, the term “Internet lender,” as defined in section 42.5 of S.B. 161, and the term “Internet business lender,” as defined in NRS 675.020, are both defined to mean “a person who makes loans exclusively through the Internet.” Thus, we will consider the language of that substantive definition to determine whether the exemption from the restrictions set forth in NRS 675.090 and 675.230 applies only to a person who makes business loans exclusively through the Internet.

In determining the meaning of this definition, we apply the rules of statutory construction used by the Nevada Supreme Court. It is a well-established rule of statutory construction that “when examining a statute, [a court] . . . ascribes plain meaning to the words, unless the plain meaning was clearly not intended.” A.J. v. Eighth Judicial District



Court, 133 Nev. 202, 206-07 (2017) (quoting Cote H. v. Eighth Judicial District Court, 124 Nev. 36, 40 (2008)); People ex rel. Dept. of Transportation v. Southern California Edison Co., 996 P.2d 711, 716 (Cal. 2000) (declining to apply the plain language of a statute where “it is obvious that the Legislature cannot have intended the statute to apply”) (citation omitted). According to the Nevada Supreme Court, “the plain meaning rule . . . is not to be used to thwart or distort the intent of [the Legislature] by excluding from consideration enlightening material from the legislative’ history.” A.J., 133 Nev. at 206-207 (quoting 2A Norman J. Singer & Shambie Singer, Statutes and Statutory Construction § 48:1, at 555-56 (7th ed. 2014)). Moreover, “even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent.” Nat’l R.R. Passenger Corp. v. Nat’l Ass’n of R.R. Passengers, 414 U.S. 453, 458 (1974).

Thus, we must examine evidence of legislative intent to determine the clear intent of the Legislature. A.J., 133 Nev. at 206 (quoting Cote H., 124 Nev. at 40). The Nevada Supreme Court “determines the Legislature’s intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy.” A.J., 133 Nev. at 207 (quoting Great Basin Water Network v. Taylor, 126 Nev. 187, 196 (2010)). On many occasions, the Nevada Supreme Court has examined the minutes of legislative committee meetings at which a bill is discussed to determine the legislative intent. *See, e.g.*, A.J., 133 Nev. at 207-08 (determining legislative intent by examining statements made at a committee hearing concerning the bill); J.D. Construction v. IBEX Int’l Group, 126 Nev. 366, 372-73 (2010) (stating that “the legislative history of [a statute] provides further insight with regard to the legislative intent concerning” the statute and examining statements made at a committee meeting at which the bill was discussed); City of Las Vegas v. Walsh, 121 Nev. 899, 903 (2005) (“The minutes from the Senate Committee on the Judiciary reveal” the intent behind statutory language.).

An examination of the legislative history clearly indicates that the Legislature intended to exempt from the restrictions set forth in NRS 675.090 and 675.230 only businesses that make loans through the Internet to other businesses. When the amendment creating sections 42.5, 43.3 and 43.7 of S.B. 161 was first presented to the Senate Committee on Commerce and Labor on March 27, 2019, and when the first reprint of S.B. 161 containing these sections was presented to the Assembly Committee on Commerce and Labor on April 24, 2019, Chris Ferrari, as the proposer of the amendment, and Senator Ben Kieckhefer, as the legislative sponsor of S.B. 161, both indicated that the term “Internet lender” should be “Internet business lender.” Minutes of the Senate Committee on Commerce and Labor, March 27, 2019, at pp. 8-9; Minutes of the Assembly Committee on Commerce and Labor, April 24, 2019, at pp. 13-14. In addition, at the meeting of the Senate Committee on Commerce and Labor on March 27, 2019, Chris Ferrari stated that the amendment to add sections 42.5, 43.3 and 43.7 to S.B. 161 was intended to enable the offering of a “business-to-business loan product” in this State and that the amendment would have “no consumer crossover.” Minutes of the Senate Committee on Commerce and Labor, March 27, 2019, at pp. 8-9.

Director Erdoes

June 25, 2020

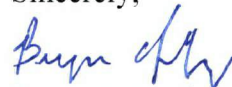
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After the Senate passed the first reprint of S.B. 161, which contained the amendment adding sections 42.5, 43.3 and 43.7 to the bill, the discussion concerning the bill in the Assembly Committee on Commerce and Labor confirms that the Legislature intended the term “Internet business lender” rather than “Internet lender” to be used in those sections. At the meeting of the Assembly Committee on Commerce and Labor to conduct a hearing on the first reprint of S.B. 161, Senator Ben Kieckhefer stated that the term “Internet lender” in sections 42.5, 43.3 and 43.7 of the bill “should read Internet business lender.” Minutes of the Assembly Committee on Commerce and Labor, April 24, 2019, at p. 5. In addition, Chris Ferrari reiterated his statement to the Senate Committee on Commerce and Labor by stating that his reason for seeking the statutory changes contained in those sections was to enable the offering of “a business-to-business Internet[-]based loan” in this State. Minutes of the Assembly Committee on Commerce and Labor, April 24, 2019, at pp. 13-14.

Based on the statements made to the Senate Committee on Commerce and Labor on March 27, 2019, and the statement made to the Assembly Committee on Commerce and Labor on April 24, 2019, it is the opinion of this office that the Legislature clearly intended sections 42.5, 43.3 and 43.7 of S.B. 161 to provide an exemption from the restrictions set forth in NRS 675.090 and 675.230 only for a person making loans to businesses exclusively through the Internet. Because we believe that a court would interpret these provisions in a manner consistent with this clearly expressed intent of the Legislature, it is the opinion of this office that the exemption from the requirements set forth in NRS 675.090 and 675.230 applies only to a person who makes business loans exclusively through the Internet.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,



Bryan J. Fernley  
Legislative Counsel

BJF:dtm

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File No. OP\_Erdoes200622133111



1           4. Pursuant to the statutory authority in subsection 5 of NRS 220.120, during the preparation of  
2 each reprint of Nevada Revised Statutes, the Legislative Counsel, in keeping Nevada Revised Statutes  
3 current, is authorized to “correct manifest clerical or typographical errors” if the correction does not alter  
4 “the sense, meaning or effect of any legislative act.”

5           6. During the 80th Session of the Legislature of the State of Nevada (Legislature) held in 2019,  
6 the Legislature passed Senate Bill No. 161 (S.B. 161), which was approved by the Governor of the State  
7 of Nevada on June 13, 2019, and included in the bound volumes of the Statutes of Nevada for the 80th  
8 Session as chapter 611, Statutes of Nevada 2019, p. 3984.

9           7. Section 43.3 of S.B. 161, as the language of that section appears in chapter 611, Statutes of  
10 Nevada 2019, p. 3998, authorizes an “Internet lender” to apply for a license to engage in the business of  
11 lending in this State for “an office or other place of business located outside this State from which the  
12 applicant will conduct business in this State.”

13           8. Section 43.7 of S.B. 161, as the language of that section appears in chapter 611, Statutes of  
14 Nevada 2019, p. 3999, authorizes an “Internet lender” to “conduct the business of making loans . . .  
15 within any office, suite, room or place of business in which any other business is solicited or engaged  
16 in.”

17           9. Sections 42.5 of S.B. 161, as the language of that section appears in chapter 611, Statutes of  
18 Nevada 2019, p. 3997, defines the term “Internet lender” to mean “a person who makes loans  
19 exclusively through the Internet.”

20           10. Pursuant to subsection 5 of NRS 220.120, in performing my duty to prepare the 2019 reprint  
21 of Nevada Revised Statutes pursuant to chapter 220 of NRS, sections 42.5, 43.3 and 43.7 of S.B. 161  
22 were revised to correct the manifest typographical error that resulted in the term “Internet lender” being  
23 used in those sections rather than the term “Internet business lender.”

24           11. As required by subsection 5 of NRS 220.120, this revision was made in a manner that is

1 consistent with the intent of the Legislature as determined by the Legislative Counsel.

2 Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada  
3 that the foregoing is true and correct.

4 EXECUTED ON: This 25<sup>th</sup> day of June 2020.

5  
6 By: 

**BRENDA J. ERDOES**

Nevada Bar No. 3644

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