

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
April 26, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:04 a.m., on Thursday, April 26, 2007, in Room 3138 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/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Ocegura (Excused)

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County, Senatorial District No. 7

Minutes ID: 1073



STAFF MEMBERS PRESENT:

Craig Hoffeecker, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Kathryn Burke, Recorder, representing Washoe County Recorder's Office
Charles Harvey, Assistant Recorder, Clark County
Frank W. Daykin, Uniform Law Commissioner, The National Conference
of Commissioners on Uniform State Laws
Louise Bush, Chief of Child Support Enforcement Program, Division of
Welfare and Supportive Services

Chairman Anderson:

[Meeting called to order and roll called.]

Let us open the hearing on Senate Bill 88.

**Senate Bill 88: Adopts the Uniform Real Property Electronic Recording Act.
(BDR 10-461)**

Senator Terry Care, Clark County, Senatorial District No. 7:

Senate Bill 88 is the Uniform Real Property Recording Act. There have been 11 adoptions and 11 introductions in 2007 in the 53 jurisdictions that belong to the National Conference. This is the age of e-commerce, so it is possible to have contracts, mortgage documents, and promissory notes memorialized in electronic form with electronic signatures.

Real estate transaction documents must be recorded. They go to the recorder's office which publicly establishes the chain of title. This act is intended to allow those real estate transactions to be recorded electronically. Sections 4 through 9 are definitions. Section 10 permits the submission of electronic documents for recording at a county recorder's office, only if the recorder has elected to accept electronic documents. Section 11 discusses the validity of electronic documents. In essence, an electronic document is an original document for recording purposes. The electronic signature is valid, as a required signature would be, and the attachment of an electronic signature satisfies any verification requirement. Section 12 has to do with the recording of documents. You will note that Section 12 allows the county recorder to do several things, which are basically what he does anyway. He would now be

allowed to do these things with electronic documents as well. It does require the implementation of regulations promulgated by the Secretary of State's office before the recorder could actually do any of these. Section 13 discusses the fact that the Secretary of State needs to promulgate standards as well as regulations for the electronic recordation of documents such as these. Section 14 has basic language that is the same as in any uniform act. Section 15 is designed to avoid preemption of state law under federal legislation. It considers electronic recording, or e-commerce. Section 16 makes it optional for county recorders to accept electronic recording. The act does not require any county recorder to do any electronic recording or to take the submission of electronic documents, it simply makes it optional. The language in Section 17 and Section 18 has been added to make the statutes in Chapter 247 conform to the electronic recording contemplated in S.B. 88. Unlike many of the acts that have come before this Committee, this one is fairly simple and straight forward. It brings us up-to-date in the world of e-commerce. We are not thrusting anything upon the rural counties. They may find someday that they want to take advantage of this act.

I have Kathryn Burke with me who is the Washoe County recorder. Debbie Conway, the Clark County recorder, testified in support of the bill when it was in the Senate.

Kathryn Burke, Recorder, representing Washoe County Recorder's Office:

We are here in support of S.B. 88. We have been electronically recording in our office since April 2003. We want to make sure that we will not have to stop electronically recording with the customers that we currently have. We hope to work with the Secretary of State's office to write the rules and regulations.

Chairman Anderson:

In Section 12, is it going to cost more to use a traditional form?

Kathryn Burke:

No, the fee would be the same because recording fees are the same.

Chairman Anderson:

I want to reassure myself that if someone hands you a traditional document and you are doing most of them electronically, it would still be covered by the original fee.

Kathryn Burke:

It is my understanding that the fee would be the same.

Charles Harvey, Assistant Recorder, Clark County:

I am here in support of S.B. 88.

Chairman Anderson:

Are you currently doing electronic filing in Clark County?

Charles Harvey:

No, we are in the process of procuring electronic recording software.

Chairman Anderson:

Is there anyone else who needs to be on the record for S.B. 88?

Let me close the hearing on S.B. 88.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
SENATE BILL 88.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA AND
ASSEMBLYMAN OHRENSCHALL WERE ABSENT FOR THE VOTE.)

Let me open the hearing on S.B. 77 (1st Reprint).

**Senate Bill 77 (1st Reprint): Amends the Uniform Interstate Family Support
Act. (BDR 11-755)**

Senator Terry Care, Clark County Senatorial District No. 7:

I have brought Mr. Daykin, who is the former director of the Legislative Counsel Bureau (LCB), to testify on Senate Bill 77 (R1) which contains amendments to the Uniform Interstate Family Support Act. The original Act was promulgated by The National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1992 and adopted by Nevada in 1997. It is contained in NRS Chapter 130. The amendments have been adopted by 18 jurisdictions and they are approved by the American Bar Association. Amendments are needed because there is always a need for technical changes. Time, technology, and attitudes all change and problems can arise which had not been foreseen when the Act was originally promulgated. The amendments clarify jurisdictional rules that limit the ability of parties to seek modifications of orders in the issuing state of the various orders that would come under family law. This also gives notice that the Act is not the exclusive method of enforcing a support order in a given state. It is intended to give clear guidance to what the amendments are to certain state support agencies.

Frank W. Daykin, Uniform Law Commissioner, The National Conference of Commissioners on Uniform State Laws:

This bill amends the Interstate Family Support Act to bring it up to date. We have added to NRS Chapter 130 where the Act presently occurs. The NCCUSL definition of person and record does not mean what we would normally understand—something in the county recorder's office—but merely written or otherwise electronically recorded material. Section 4 says a tribunal exercising personal jurisdiction over a nonresident may utilize the law of this State and obtain discovery through a tribunal of another state. Otherwise, the substantive law of the State of Nevada applies. A tribunal issuing a support order has continuing jurisdiction. A spousal-support order may not be modified if issued by a tribunal of another state which already has continuing exclusive jurisdiction. A tribunal of this State, that has continuing and exclusive jurisdiction, may act as an initiating tribunal to request a tribunal of another state to enforce its order, or it may act as a responding tribunal to modify or enforce its own spousal-support order. If a foreign country or political subdivision that is a state will not or may not modify a support order, a tribunal of this State may assume jurisdiction to modify a child support order and bind all natural persons subject to the personal jurisdiction of the tribunal of this State. In other words, if one of the spouses is in the State of Nevada and seeks to modify an order, the tribunal may modify it even if the original jurisdiction will not.

The other amendments are mechanical. They change the terminology to that presently used. Section 15, subsection 2 says the basis of personal jurisdiction, in the first subsection of that Section, may not be used to acquire the personal jurisdiction for tribunal of the state unless the requirements of NRS 130.611 or section 6 of this act are met. In other words, it modifies the law of this State accordingly. Section 17 has important changes in paragraph (b) of subsection 1. It states that even if this State is not the residence of the obligor, the obligee who is a natural person, or the child whose benefit the support order is issued, the tribunal of this State can continue to exercise jurisdiction, even if everybody has moved out of the State. The term "controlling order" is crucial to this Act. Controlling order means the order that is in force and must be obeyed. In Section 18, a tribunal that has issued a child support order consistent with the law of this State may ask another state to enforce it if the order is the controlling order and has not been modified by a tribunal of another state, under this act, or a money judgment. It may force a money judgment for arrears of support and interest before a modification by another state. Section 19 provides for registering a support order. If the tribunal modifying it has personal jurisdiction over both the obligor and the obligee, then that tribunal determines who is the controlling order. A request to determine which order is the controlling order must be accompanied by a copy of every child support

order in effect and the applicable method of payments so that the court is fully informed. An order in which a support order has been determined to be the controlling order for a judgment for consolidated arrears must be recognized in proceedings under this Chapter. Section 21 says that a tribunal of this State shall credit amounts collected under any child-support order against the amounts owed for the same period under any other child-support order so that the obligor is not burdened by two orders for the same period. Section 24 provides that, if requested to enforce a support order in a foreign currency, the tribunal of this state shall convert the amount stated to the equivalent amount in dollars under the applicable official or market exchange rate. That specifies the criteria and avoids arguments. In Section 27, a support enforcement agency of this State that requests registration of a child-support order in this State shall make reasonable efforts to ensure that it is the controlling order. Or, if two or more child support orders exist and the identity of the controlling order has not been determined, the agency shall ensure that a request for such a determination is made to a tribunal having jurisdiction to do so. The support enforcement agency of this State shall request the tribunal of this State to issue a withholding order for the direct payment of current support if requested to do so by a support enforcement agency of another state, pursuant to a law similar to this act which is the reciprocity among the states.

Present NRS 130.319 covers the situation where neither the obligor, nor the obligee, nor the child reside in this State, and upon request from a child-support agency of this State or another state, the tribunal of this State shall direct the support payment be made to the enforcement agency in the state in which the obligee is receiving services. The tribunal of this State shall issue and send to the employer of the obligor the withholding order. The support enforcement receiving will redirect their payment from another state and shall furnish the requesting party or tribunal of the other state a certified statement by the custodian of the record showing the amount and date of all of the payments received. Section 37 deals with a presumed father under NRS 126.051 who is petitioning to have his paternity adjudicated, is identified as the father, shown to be the father, or is otherwise a natural person who has been ordered to pay child support in a previous proceeding. This is for the enforcement of those orders. Section 46 states that a responding tribunal of this State shall apply the procedures and remedies of this State to enforce current support and collect arrears due on a support order of another state which is registered in this State. After a tribunal of this State determines which is the controlling order and consolidates arrears, the tribunals will prospectively apply the law of the state issuing the controlling order and make sure that only one order at a time is enforced. Section 47 provides for dealing with the problem when two or more orders are in effect. The paternal father shall identify the two or more orders

and the one which he alleges should be the controlling order, notify the other party, and then the registering tribunal of this State will enforce that unless it finds that Section 48, the alleged controlling order, is not the controlling order. Section 50 provides that if NRS 130.613, which is modified only by the internal references does not apply, a tribunal of this State may modify a child support order issued in another state which is registered in this State if neither the child, obligee, nor obligor resides in the issuing state and this State is the residence of the child. If none of them reside here except for the child, the tribunal of this State may enforce the order for the benefit of the child. I believe that those are the principle provisions of the act.

Chairman Anderson:

Child support collections are always a major concern of the legislature. How do you see this bill clarifying the procedures the State must take when the child is receiving money from out of state? Do you see this simplifying the process in some practical way?

Frank W. Daykin:

We believe it refines and simplifies the existing process. I do not practice in this area so I cannot point to the particular instances.

Senator Care:

The bill was amended in the Senate. The amendments are contained in Section 44 with the deletion of the words "state information agency." It now reads "appropriate tribunal" in one case and "registering tribunal" in another. That issue was raised in a letter I received from Mr. Robert Teuton from the District Attorney's office in Clark County. This is to allow an expedited proceeding by having the records go straight to the tribunal instead of the so-called state information agency, which may take its time getting it to the court.

Chairman Anderson:

The timelines are one of the things for which we are often criticized. We are concerned that the person who should be getting money is getting it as quickly as possible.

Assemblyman Ohrenschall:

I have a question and a disclosure. I need to disclose that Commissioner Ohrenschall is my mother and Commissioner Daykin is my stepfather.

Is there a possibility that Nevada and another jurisdiction could conflict over what the controlling order is or over who has personal or subject matter jurisdiction and how would that be resolved?

Frank W. Daykin:

I suppose that situation could arise. But in that case, it would be the tribunal of the State which has personal jurisdiction over the respondent which would be called upon to resolve it.

Senator Care:

That question points out the need for uniformity. These amendments have been adopted now by California, Arizona, New Mexico, Colorado, Idaho, and Utah. Oregon has not adopted them but hopefully will someday. When the question of the court comes up, at least everybody is playing by the same rules.

Assemblyman Cobb:

Section 7 describes the situation of a foreign country or political subdivision which will not or may not modify an order. What is the standard for determining that the foreign country will not or may not modify such an order?

Frank W. Daykin:

If the beneficiary of the order fails to obtain relief from the foreign court, we have recourse to the law of this State.

Assemblyman Cobb:

Are you saying that it would have to be a final determination of a court that it lacks jurisdiction over the order?

Frank Daykin:

No, the court of the State to which the application was made would determine whether the other court was failing to enforce the order. Then, if it so determined, it would enforce the order if it had jurisdiction.

Assemblyman Carpenter:

Is Section 14, line 11, stating that issues of child custody or visitation are not covered under this Act?

Frank Daykin:

That is correct, Assemblyman Carpenter. Those are under other provisions of law.

Chairman Anderson:

I would presume that is the case so that an individual cannot move from one jurisdiction to another and shop for child custody when he could not get child custody in the first trial.

Frank Daykin:

This Act does not facilitate forum shopping.

Louise Bush, Chief of Child Support Enforcement Program, Division of Welfare and Supportive Services:

[Read from prepared testimony ([Exhibit C](#)).]

Chairman Anderson:

Do you think this is going to help us enforce the collection of child support so that we are not ranked 52nd?

Louise Bush:

I do believe it will eliminate some of the paperwork that the courts have to go through. It eliminates having to go to the state information agency prior to going to the courts.

Chairman Anderson:

Is there anyone wishing to testify in opposition of S.B. 77 (R1)? [There were none.]

Let me close the hearing on S.B. 77 (R1).

ASSEMBLYMAN HORNE MOVED TO DO PASS SENATE BILL 77
(1st REPRINT).

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS
ABSENT FOR THE VOTE.)

Let me open the hearing on Senate Bill 168.

Senate Bill 168: Enacts the Uniform Assignment of Rents Act. (BDR 9-972)

Senator Terry Care, Clark County, Senatorial District No. 7:

Senate Bill 168 is the Uniform Assignment of Rents Act and it is one of the National Conference of Commissioners on Uniform State Laws (NCCUSL) newer Acts. Nevada recognizes the lien theory of mortgages, which basically means

that an individual buys a house and takes the title and owes a lot of money on it, but the lender has a security in that house. As long as the payments are made, it is just fine. If the payments are not made on time, the lender can foreclose on the house. Sometimes the mortgagee is not somebody who has bought a house, but is somebody who has bought, constructed, or financed a commercial office project or apartment complex. Sometimes those landlords, owners, or builders default. This bill is intended to address the issue of who gets the rent. If someone owns a commercial office building and he is not making payments, but he has tenants who are still obligated to pay the rent on their leases, who gets that rent money? Does it go to the owner of the building who is in default or does it go to the lender?

Normally in the commercial context, the lender will insist on a separate document called an assignment of rents. Even when that happens, there may be issues of priorities, because there may be others who have a claim to those rent proceeds as well. This Act is intended to address who gets the rent, or in other words, who does the tenant pay their rent to when they have notice that the owner of the complex is in default.

Sections 3 through 22 are all definitions. When someone makes an assignment, the person who does the assignment is the assignor and the person who is to receive the benefits of the assignment is the assignee. In the assignment of rents, the owner of the building assigns rents to the lender in the event that something goes wrong. Section 23 is a manner of giving notice and says that the assignee, also known as the lender, in the event that there is a default, gives notice to the tenant at the address that is contained in the lease agreement. If the lender does not have access to that information, he gives notice by mailing to the address of the tenant himself. Section 24 says that a security instrument creates the assignment of rents, and that the assignment of rents creates a security interest. This is talking about a security interest in all of the rents that are owed and all of the rents that are to become due, as long as the owner is in default. Also, the security interest in rents is separate from a security interest in the property itself. They are not necessarily one and the same.

The way this bill is drafted, existing mortgages would not count under this Act unless they already contain an expressed assignment of rents or there is a separate assignment of rents document. A security interest in the borrower's real property would create a security interest in rents, unless there is a document specifying otherwise. Section 25 has to do with recordation of the assignment of rents, perfection of the security interest in the rents, and the priority of conflicting rents. Perfection is when you take the document and record it. It is the same thing with Uniform Commercial Code (UCC) filings.

Perfection gets priority over the claims of a judgment creditor and someone who later purchases an interest in rents or the real property. Sections 26 through 30 deal with enforcement of the security interest in rents. They can be enforced by seeking the appointment of a receiver, but can also be enforced by notifying the assignor and hoping that the person who owns the building will start forwarding the rent proceeds. Notice and demand to the tenant can also be given.

There was concern on the drafting committee about the tenant. What if the tenant is a little old lady or a retired person who gets caught in the middle of this fight that he or she has nothing to do with? For example, the little old lady gets the notice from the lender that the landlord is in default and she needs to pay the rent to someone else. This is somebody who does not have the money to go to an attorney and may not even have any comprehension of what the notice is about and might just throw it away. The Act is drafted in such a way that when we are talking about a tenant who is occupying a primary residence, even if that tenant receives notice that he or she is supposed to start paying the assignee or lender, if that tenant continues to pay the landlord, then they are discharged from having to pay the lender. That is the biggest concern that most of us on the drafting committee had. If it is commercial or business people, they would understand. If it is a primary residence, they should not be caught up in this. You will find that exemption in several sections of the bill.

Section 30 is a notice form to the tenants. It is not the required form, but we did supply this sufficient form. If someone wanted to alter it that would be fine, but it would have to be substantially the same. Section 31 has to do with the effect of the enforcement. Section 32 goes to application of the proceeds if there is no agreement to the contrary. Let us say that the assignee starts receiving rents that he has an assignment in. He uses those rents to pay for the expenses related to enforcement and the reimbursement for the money that is expended to protect the premises and the rest of the proceeds are used for payment of the obligation. The money does not go into their pocket; it is used to help pay down the obligation underlying the loan. Section 33 covers the application of proceeds, claims, and defenses of the tenant. This would only apply where there has been a demand made on the assignor or the tenant. This gives the tenant the right to assert a claim if the tenant says that he is willing to pay the lender but does not think he should have to pay the full amount because under the terms of the lease, the property is supposed to be maintained and taken care of. The tenant is allowed to assert that defense. Section 34 addresses the issue of turnover of rents, the commingling of rents, and the liability of the assignor if that happens. Let us say that the assignor, the borrower, decides to collect the rents and even though he knows he is supposed to forward those proceeds to the lender, he does not do that. He

keeps the money and puts it into other accounts so that it is commingled. Section 34 says that the assignee still has a security interest in those rents and he can sue for those rents and even attempt to trace the rent proceeds to locate them in an attempt to get them back. Section 35 has to do with the perfection and priority of assignee security interest and proceeds. In a nutshell, it means that all of it is based on the rules in article 9 of the UCC. The rules in article 9 would determine the issues of priority of the assignees security interest in those proceeds. I do not practice in this area, but I feel I have been able to give the Committee an idea of what this bill is intended to do.

Assemblyman Carpenter:

Does this apply in the same way to a deed of trust?

Senator Care:

With any mortgage there is a deed of trust. We are talking about default on the underlying mortgage. There may be an instance in which the lender does not want to use the deed of trust and foreclose on the property, but still wants to pursue the rents while the borrower is in default. He may be trying to work something out with the borrower, but he still wants those rents to go directly to him, rather than be kept by the borrower.

Assemblyman Carpenter:

Would the same situations apply if you had a deed of trust or a mortgage?

Senator Care:

Yes.

Chairman Anderson:

If I decided that I wanted to take an existing piece of my property and turn it into a multi-office complex, I would put the property up along with my own personal property as part of the deed of trust to put the capitol together to do the project. After the building is built and the renters move in what if all of a sudden it does not go so well. Would I have to go back and draw a new mortgage against the structure to get out from having the first pieces of property obligated under this? I could lose my home and everything I have, but the mortgagee would get the first shot and I would not. So if I am the little old lady, am I going to be out of my house?

Senator Care:

No, I do not think the little old lady will be out of the house. Her rights under the lease are going to continue. If there is a foreclosure, it is not going to terminate the lease.

Chairman Anderson:

If there is a death, does it set aside those rights?

Senator Care:

Let me put it this way. The default is not going to terminate the terms of any existing lease unless the tenant agrees to that.

Chairman Anderson:

Mr. Bill Uffelman from the Nevada Bankers would like to be on the record in support of S.B. 168. Mr. Rocky Finseth from Carrara and the Realtors Association feels that this is not a harmful piece of legislation. He is also in support of S.B. 88.

Is there anyone wishing to speak in opposition to S.B. 168? [There were none.]

Let me close the hearing on S.B. 168.

Meeting adjourned [at 9:12 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 26, 2007

Time of Meeting: 8:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 77 (R1))	C	Louise Bush	Prepared testimony