

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
March 18, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Friday, March 18, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Terry Care, Ex-Senator

CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 87.

ASSEMBLY BILL 87: Enacts the Uniform Interstate Depositions and Discovery Act. (BDR 4-326)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
Assembly Bill 87 is a uniform bill. It passed unanimously in the Assembly.

TERRY CARE (Ex-Senator):

I represent myself and in my capacity as a Uniform Law Commissioner. I provided you a handout regarding A.B. 87, which is the Uniform Interstate Depositions and Discovery Act (Exhibit C). This Committee looks at the criminal code and makes changes and additions. Assembly Bill 87 addresses civil litigation.

The discovery phase is the period in a civil litigation where each party is allowed to discover the information and documents opposing parties or third parties have. This involves civil litigations in state court.

Discovery may be obtained by deposition, requests for production of documents or interrogatories. If a dispute arises during discovery regarding whether a party or third party must produce documents, the discovery commissioner handles the dispute.

A problem arises in obtaining discovery from third parties located outside the State. The Nevada courts have no jurisdiction beyond their boundaries. This bill would allow Nevada attorneys to pursue discovery in other states and vice versa. Reciprocity is involved because 15 jurisdictions have adopted this Act. Ideally, this Act would be adopted in all jurisdictions.

For example, if I want to take the deposition of someone in another state, I go to the courthouse and get a commission for an out-of-state deposition. I locate a law firm in the other state, usually in the county where the witness is located. Expense is involved in retaining the attorney. That attorney will open a miscellaneous file. The court in that jurisdiction issues a subpoena to the third-party witness for his deposition or to obtain documents.

This bill would eliminate that process in Nevada. This bill is a cost-saving measure. It would eliminate the time and expense involved to retain a law firm that would open a miscellaneous file in another jurisdiction.

Section 8 of the bill defines subpoena and sets forth the scope of a subpoena. This includes depositions; inspecting and copying books, records, documents; and inspection of the premises. This can be done under the Nevada Rules of Civil Procedure.

Section 9 of the bill describes how this act would work. For example, if a Kansas attorney is involved in a litigation and needs to depose a third-party witness in Nevada, he would send a Kansas subpoena and the form for a Nevada subpoena to the clerk of a court in Nevada. The clerk of a court in Nevada would take the language from the Kansas subpoena and incorporate it with the Nevada subpoena. It would become a Nevada subpoena which is served upon the witness.

Section 10 of the bill says, "A subpoena issued by the clerk of a court pursuant to section 9 of this act must be served and enforced in compliance with Rule 45 of the Nevada Rules of Civil Procedure or Rule 45 of the Justice Court Rules of Civil Procedure." That means the Nevada courts would retain jurisdiction of any discovery dispute in Nevada. A Nevada witness who is not a party to the action is protected by the Nevada courts. If the Kansas attorney thinks the witness in Nevada is not cooperative, he would go to the discovery commissioner or court in Nevada to resolve the matter.

This is easier in federal court because attorneys are officers of the court and can issue their own subpoenas. It would be easy for litigators in state court to pursue discovery from third parties located outside the forum where the lawsuit is filed if all 50 states adopted this Act. This bill has no fiscal note, and there was no opposition in the Assembly.

CHAIR WIENER:

Of the 15 states that have adopted this Act, how many are Western or Southwestern states?

SENATOR CARE:

California, Colorado, Idaho, Montana, New Mexico and Utah have adopted the Act. Some of these states adopted it by court rule rather than the legislative process.

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CHAIR WIENER:

If we pass this bill, how would it affect your practice?

SENATOR CARE:

If we were not required to go through that process any longer, I would not miss it. It burdens the litigants. I am not aware of a cottage industry where law firms just do this sort of thing.

CHAIR WIENER:

How often has this been of assistance to you?

SENATOR CARE:

I have done out-of-state depositions near Atlanta, Georgia, and in Texas. I have not done them in a jurisdiction that has adopted this act.

CHAIR WIENER:

When did those 15 states adopt this Act?

SENATOR CARE:

This Act was promulgated in 2007. The enactments have come in the last couple of years.

SENATOR COPENING MOVED TO DO PASS A.B. 87.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

I will close the hearing on A.B. 87 and open the hearing on A.B. 88.

ASSEMBLY BILL 88: Enacts the Uniform Unsworn Foreign Declarations Act.
(BDR 4-325)

ASSEMBLYMAN SEGERBLOM:

Assembly Bill 88 deals with foreign declarations. Rather than having a document notarized, you can swear under penalty of perjury what you are saying is true. This can be admissible in court.

SENATOR CARE:

I provided you a handout regarding A.B. 88 ([Exhibit D](#)). Assembly Bill 88 has its genesis following the tragedy of September 11, 2001 (9/11) when accessibility to U.S. consulates became much more difficult. Some consulates closed and others heightened security. Additionally, people travel long distances to U.S. consulates to have an affidavit notarized, for example. After 9/11, the American Bar Association approached the Uniform Law Commission and suggested a uniform act, which resulted in A.B. 88.

The Act allows the use of unsworn foreign declarations subject to penalty of perjury. Unsworn declarations are used in Nevada. This bill does not change anything. Where unsworn declarations are permitted, unsworn foreign declarations can be used. Federal courts have allowed this for 30 years. This Act is not confined to matters in litigation. The federal law is problematic because it is inapplicable to state court proceedings, and state courts have different laws governing unsworn declarations.

The bill has been adopted by nine states. The Council of State Governments endorsed it. The bill has no fiscal impact and no opposition in the Assembly.

This bill permits the use of unsworn declarations. If outside the boundaries of the United States, it becomes an unsworn foreign declaration and can be used where unsworn declarations are already allowed.

Section 12 of the bill specifies unsworn foreign declarations may not be used for certain purposes, such as depositions, because deponents must sign the deposition after they have reviewed the transcript. The declaration cannot be used for an oath of office because you must be physically present to take an oath, and the oath must be administered by a specified official other than a notary public. An unsworn declaration cannot be used on a document intended to be recorded pursuant to *Nevada Revised Statute* (NRS) 111, which relates to estates, property, conveyances and recordings. It cannot be used on a self-proving declaration or affidavit signed pursuant to NRS 133, which is a

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self-proving will or affidavit. The signature must be notarized in those instances. Section 14 sets forth the form to be used.

Section 18, subsection 2 of the bill says, "... the Division may allow the person to substitute a declaration that complies with the provisions of NRS 53.045 or sections 2 to 16, inclusive, of this act to satisfy the legal requirement."

Section 19 deals with the common-interest community. Section 20 relates to homeowners' associations. Section 21 relates to the sale of subdivided land, and section 22 deals with time-shares. Section 23 deals with memberships in campgrounds. These provisions exist for the use of unsworn declarations at the discretion of various departments or agencies. If this bill is passed, the use of unsworn foreign declarations would be treated the same as unsworn declarations. That is why these sections were added to the bill.

CHAIR WIENER:
When did the nine states adopt this act?

SENATOR CARE:
This is a 2008 Act. Colorado, New Mexico and Utah have adopted it.

CHAIR WIENER:
I will close the hearing on A.B. 88.

SENATOR BREEDEN MOVED TO DO PASS A.B. 88.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

I will open the hearing for public comment. There being nothing further to come before the Committee, we are adjourned at 8:24 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 87	C	Terry Care	Summary of Uniform Interstate Depositions and Discovery Act
A.B. 88	D	Terry Care	Summary of Uniform Unsworn Foreign Declarations Act