

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

**Seventy-Seventh Session
March 11, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:05 a.m. on Monday, March 11, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Linda Whimple, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Gary Milliken, representing the Nevada Self Storage Association
Travis Morrow, Director, Nevada Self Storage Association
Chuck Callaway, representing the Las Vegas Metropolitan Police
Department
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs'
Association
Nancy Parent, Chief Deputy Washoe County Clerk
Alan Glover, Carson City Clerk/Recorder
Diana Alba, Clark County Clerk

Chairman Frierson:

[Roll was taken. The Chair reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.] We have two bills on the agenda for today. We will go in order and open the hearing on Assembly Bill 182. Welcome, Mr. Carrillo.

Assembly Bill 182: Revises provisions governing liens of owners of storage facilities. (BDR 9-965)

Assemblyman Richard Carrillo, Clark County Assembly District No. 18:

I am here to talk about Assembly Bill 182, which would authorize owners of storage facilities to impose a late fee for a storage space that is not paid for when due. This would require an officer to remove a person residing in a storage facility within 24 hours after a request by the owner of the storage facility. Gary Milliken and Travis Morrow are here to talk more about the bill.

Gary Milliken, representing the Nevada Self Storage Association:

I have Travis Morrow with me, who is the Director of the Nevada Self Storage Association, and he would like to go through the changes that we are proposing in this piece of legislation.

Travis Morrow, Director, Nevada Self Storage Association:

In 2011, I was before you and we were able to pass a bill that modernized a self-storage lien law that was, at the time, 28 years old. We were able to update and modernize some of the processes that involved auctioning tenants'

goods when they were unable to pay. This bill seeks to further refine the law for the benefit of the public and self-storage operators alike. We seek to address four points in A.B. 182.

The first point, in section 3, provides for and imposes a limit on late fees when a tenant does not pay rent. It also requires that a late fee be stated in the rental agreement in order to be assessed. It defines a reasonable late fee of \$20 or 20 percent of the rental amount. There is no current limit on what an operator may charge for late fees, or any other language pertaining to late fees in the current law.

Section 5 would make it against the law to use a self-storage space in a facility as a residence. It allows peace officers to remove the person within 24 hours if they have reasonable cause to believe the person is using the space as a residence. The current process requires written notice to the tenant, an eviction order from a justice of the peace that must be obtained by the owner and turned over to a sheriff or constable, who then has 24 hours to evict the person. From start to finish, it takes a minimum of 48 hours to remove the person from the property, but it generally takes much longer. During this process, the tenant is still able to live in the unit, posing health and safety issues for the facility as well as a detriment to the business.

The third point, in section 7, allows an operator to deny access to a tenant if the tenant has charges that remain unpaid for five days after they are due. The current law lets Nevada self-storage tenants access their stored items for 28 days before they are denied access to their unit for not paying rent. The tenant is able to use the space rent free for almost an additional month. The law also lets them move their stored items out of the unit with a balance due, which circumvents the owner's possessory lien created in section 6.

The fourth point, in sections 7 and 8, allows lien notices to be sent either via verified mail or via electronic mail, if available, which are already defined in the statute. Section 8 requires that if the notice of sale is sent via electronic mail and if no confirmation of receipt is received, the notice must then be sent via verified mail. Currently, operators have to send notices through both verified mail and, if available, electronic mail. The current definition of electronic mail requires a confirmation of receipt. Tenants are sometimes able to deny this confirmation of the receipt to the operator, which makes it impossible, by definition, for an owner to execute the lien if they are unable to prove confirmation of receipt. This change defines the process more clearly, making it easier to execute correctly.

I am happy to answer any questions relating to A.B. 182. I also wanted to let you know with regard to the removal of tenants from the self-storage space, that we are working with the Las Vegas Metropolitan Police Department to come up with an equally agreeable process that works logistically on their side as well.

Assemblyman Martin:

Did I understand you correctly when you said currently there is no limit in terms of the late fees that they can charge? So if you are a day late, they can charge 100 percent, 200 percent? What is really done in practice? Is this what leads to those infamous auctions of the self-storage units that we all hear about?

Travis Morrow:

You are correct; there is nothing in the statute that would prevent an operator from doing that. Now in practice, there are many different systems where operators may charge you a certain fee if you are five days late and then you might be charged a fee if you are 15 days late. It is really up to the operator as far as what is being assessed. This would set the \$20 or 20 percent of the rent ceiling that could be charged on a monthly basis to a tenant.

Assemblywoman Cohen:

There is a reference to protected property, but I did not see a definition. Is there a definition for protected property?

Travis Morrow:

Their protected property would consist of firearms, alcohol, documents that are related to a business that would contain sensitive information such as social security numbers, financial information, et cetera, and the fourth is eluding me. I will have to get back to you, as I am not seeing it right here firsthand, but I am certain that the definition exists in another section. I do not see it in this portion that I have.

Assemblywoman Cohen:

In section 3, there is a reference to late fees, and the late fee has to be reasonable. Would you give an example of what a reasonable late fee would be and what the basis would be for it?

Travis Morrow:

"Reasonable" is language that we added. In our opinion, a reasonable late fee would be \$20 or 20 percent, whichever is greater. Some operators have different systems for employing late fees and this would, through legislation, at least put a cap on it as well as allow us to charge that fee.

Assemblywoman Cohen:

I was not very clear. I guess what I am getting at is this section allows for the late fee to be higher than the \$20 or 20 percent if the owner establishes the amount of the late fee as reasonable. I was just looking for an example. If you needed a higher amount, what would be the reasonable basis for that?

Travis Morrow:

Depending on the value of the stored item. For example, here in Las Vegas, there are facilities that I know of that store a Maserati and very expensive collectible vehicles. Items like that would be an example. It would be something that would be set forth in the rental agreement, which is what we are suggesting here. If you have a \$100,000 car and you are storing it in a self-storage facility, a 20 percent fee on a \$75 a month parking space, probably in some operators' estimation would be enough of a late fee to incentivize the tenant to continue to pay the rent on time.

Assemblywoman Cohen:

Would that not be covered in the regular fee?

Travis Morrow:

We are talking about late fees when they are not paying on time. Say their normal rent would be, for example, \$100. So if they were late in this instance, it would be 20 percent or a \$20 late fee. If you have an expensive vehicle, the process for auctioning that vehicle can be more daunting for the operator. You want to incentivize that tenant not to pay late. The last thing an operator wants to do is go through this lien process. We want the tenant to pay their rent on time and not have to charge these fees so we can continue on with our business and have our managers do other things besides track down this lien process.

Assemblywoman Cohen:

That should be covered in the regular monthly fee, so if someone is not paying, they owe that monthly fee and the owners can get those fees back. Why would you need a late fee? Even if it is a \$100 unit, it is not costing the owner of the business anything more than the loss of \$100. Is it costing them more? Are they doing extra things because they know it is a Maserati and they are trying to take extra care of it so the owner does not come back on them?

Travis Morrow:

Setting the Maserati aside, there is much more work involved because, once a tenant becomes late, the manager has to do more work collecting that money from the tenant: phone calls, letters, and whatever means they have available to them, whether they are Facebook friends or whatever it may be.

The manager has to go through that process to try and collect that money. That is what that fee is helping to subsidize.

Assemblywoman Dondero Loop:

Would you please repeat what company you are with?

Travis Morrow:

I am with the Nevada Self Storage Association.

Assemblywoman Dondero Loop:

With regard to fees, what fees are applicable? Besides this lien or late fee, can someone charge you to deliver to your storage unit? Can they charge you a fee to dump in garbage? Can they charge you a fee if you ask them to check on the Maserati? What are usual and customary fees?

Travis Morrow:

The usual and customary fees vary greatly from facility to facility. There are a lot of independent operators in the industry in Nevada. Depending on facility amenities, yes, you can charge. They really are not fees; they are more penalties for using a dumpster. Generally, a self-storage facility has one dumpster that is intended for its own facility use, not the use of its tenants. Facilities might charge a fee to prevent people from using their dumpster and overfilling the dumpster. There are administrative fees that deal with the initial paperwork and signup at that facility which are generally used when a tenant moves into a facility. Those are the two main ones, but they can vary greatly depending upon the operator. Those are also similar to the different late fee structures that I mentioned earlier, which are completely dependent on the operator, their systems, and setup.

Assemblywoman Dondero Loop:

I find it almost humorous that a storage facility would charge a dumpster fee and charge a lien if you cannot move your stuff out and dump it. It is kind of an oxymoron to me, as a person who has three different storage units in two different cities in this state and pays huge fees.

Travis Morrow:

I can speak to my own storage facilities. We have a five-cubic-yard dumpster on our facility. The average self-storage unit is a 10-by 10-foot cube. If you were to take the contents of that cube and dump it into the five-cubic-yard dumpster, we would have an overflowing dumpster, and that is only one unit of 400 in a facility. If we allowed all of our tenants to dump what they wanted into our dumpster, we would have multiple pickups throughout the month on our dumpster that we pay for, and that would cause our dumpster cost to rise.

Assemblyman Hansen:

Following up on Assemblywoman Cohen's question, I have a real problem with this one sentence: "The amount of a late fee may be greater than the amount set forth in this subsection if the owner establishes that the amount of the late fee is reasonable." It just places way too much control in the hands of the owner, and the explanation you gave of a Maserati does not make any sense. I do not care if there are gold bars stored in there, the rental agreement is renting the unit, not what is stored in the unit, and if there is something specific in the storage unit, I would assume that would be covered in the rental agreement and you have a 20 percent possibility on that. You kind of explained it, but to me, frankly, it is way too open-ended. I am not willing to leave that entirely in the hands of the owner to establish whether or not it is reasonable.

Travis Morrow:

We would be happy to strike that line.

Assemblyman Duncan:

I know you said you were dealing with local law enforcement. In looking at section 5, I was wondering what factors you are looking at as a person who owns a storage facility that will determine what a reasonable cause is for removing someone who may be living there? What is typically done with the property after it is removed from the storage facility? Is there an idea of where that personal property is stored?

Travis Morrow:

As far as factors go, self-storage facilities generally have gate access hours. They can vary from 6 a.m. to 9 p.m. or 7 a.m. to 7 p.m. It varies from facility to facility. Generally, they are living in the facility when we find them at the facility after hours, which is what we would call using it as a residence. Sometimes with the door shut, sometimes with the door open, sometimes they are in there with an electric heater. I have seen entire TV and couch setups. You can go from debatable to, "they have an apartment in here." The first factor is the fact that they are just there outside of our normal access hours.

As far as the personal property, we have it in here that they will not remove the personal property. The property stays. We still have a rental agreement with them, and one of the requirements of that rental agreement says it is unlawful to use self-storage space at a facility as a residence. All we are trying to do is enforce that section of the rental agreement and prevent them from living there. Having people use the property as a residence can be a very dangerous situation from a fire safety standpoint to a health and safety standpoint.

Assemblywoman Fiore:

I have storage units around the state, and I am hoping that what is in my storage unit is private to me. Sometimes people who own Maseratis can get into a financial pinch too. What I thought I heard you say was that if the owner thinks there is something of greater value in their storage unit, then he is going to charge more. Is that what your intent was?

Travis Morrow:

That was absolutely not my intent. I was trying to think of an unusual circumstance where a late fee would be greater than \$20 or 20 percent, so I tried to come up with a high-value number. It had nothing to do with the fact that the customer had a Maserati; it had more to do with the fact that the customer would be storing a more difficult item for the owner to deal with. If a tenant is having problems making their payments regardless of the late fee, auctioning off that Maserati becomes a very significant and onerous task for the operator. If he was to auction off a Maserati, one of his responsibilities would be to get a commercially reasonable value for that Maserati. That is not by just holding our normal self-storage auction where we get 50 cents on the dollar. That would open us up to potential liability, so trying to encourage someone not to get into that situation is what I am referring to.

Assemblywoman Diaz:

I keep hearing about not making it onerous on the owners of the storage facilities, but I think good public policy also does not make it onerous on the consumer. I am a little concerned with section 7, which states, "If any charges for rent or other items owed by the occupant remain unpaid for five days or more, the owner may deny the occupant access to the storage space" I believe five days is a very short window, and it is not stipulating that this is after the second or third time that they are late.

For example, I am a renter. My world has turned upside down. I am late one time. I need something from my storage unit. I go on the sixth day and you can deny me access to the things that I might need in that moment of time. Why is it such a short window? Even when you pay your cell phone bill, they give you more leeway as to how late it can be. Why the five days? It leaves it all so very open-ended so that on the first time it is happening, you are penalizing someone who honestly could be late for the first time.

Travis Morrow:

Five days is the number that coincides with when the late fee is generally assessed at many facilities. We are willing to slide that number back if it would make the Committee more comfortable. Generally after five days, a late fee is assessed to a self-storage tenant. At that time, the operator would place a red lock over the tenant's unit to deny them access. At that time, the tenant would come to the office and hopefully be able to pay their rent. Then we take the red lock off and they can have access to the unit. We are trying to provide for the tenant to pay their rent. If they are in a financial difficulty, we can move that date. If five is too much, then maybe it is ten. Right now it is 28. That is essentially a free month for any tenant who wanted to exercise it.

Chairman Frierson:

I have the same concern about the five-day period. That was one of the only things that really jumped out at me. Oftentimes, the tenant's means to pay the fee are contained in the unit. Their inability to access the things they may ultimately use to pay the late fees or the monthly fees may create a catch-22.

Travis Morrow:

We are happy to discuss with the Committee different time frames that would make you more comfortable.

Chairman Frierson:

The current time frame is 28 days?

Travis Morrow:

Correct.

Chairman Frierson:

We may be getting off course here, but currently storage units are able to charge late fees, so this is not creating the right to charge late fees? It is actually capping the amount of fees that can be charged, at least part of what the bill does, correct?

Travis Morrow:

Correct.

Chairman Frierson:

As a member of the Nevada Self Storage Association, why would you be proposing to cap the fees that you charge? I read this initially as an effort to corral some of the bad actors in your industry. Is that where this is coming from?

Travis Morrow:

That is correct. Part of our role as an association is to up the professionalism of our industry and, as you said, through this corral some of the bad actors who can give our industry a bad name.

Assemblyman Duncan:

I understand what you are trying to do, even with the fee part of it, trying to incentivize the behavior that they pay on time. I share the concerns. What would be your limit for the time frame? Twenty-eight days seems like a long time. People are obviously getting a month of free rent. What percentage of people is delinquent each month and extends it out for that period of time? Where is your limit at where you think, seven days, ten days, and beyond?

Travis Morrow:

I will use my facilities as an example as far as delinquency goes. Generally, late fees can vary between the facility and the neighborhood, between 5 to 15 percent of our tenants. That can vary in a facility that is 300 to 400 units. As far as the time frame goes, we are happy to discuss it. I would think on the long end ten days would be a fair number as far as being able to grant them access to their stored items without having them take full advantage of the 28 days.

Assemblyman Duncan:

I know we talked about a red lock being placed on the actual storage facility. Does that occur right now after the 28 days, or is their storage facility completely open to them right now?

Travis Morrow:

We cannot deny the access right now. A red lock might be placed on a unit and if a customer comes in and says, "I want to get into my unit," we let them in their unit. The red lock is there to get them to come into the office. By law, we have to give them access to their unit, even though they might still owe money. The red lock is used industry-wide as a way to over lock the unit so that a tenant cannot get access. Generally, the way a storage door is set up is with a hasp on it that has two holes. One hole is for the tenant's lock and the second hole is for an over lock in the event that they do not pay their rent.

Chairman Frierson:

You said right now you have to let a tenant in even if that lock is on there. Is that written anywhere or is that in law? I think most folks would see that lock and assume they cannot get in. Obviously, after hours they would not be able to, but even during office hours. I am curious if that is an association policy or if that is in statute somewhere else.

Travis Morrow:

After 28 days or are you referring to before?

Chairman Frierson:

Anytime there is a red lock on.

Travis Morrow:

Generally, anytime there is a red lock, they are also denied access to the property through their gate code. Most storage facilities have a gate code that you enter before entering the property, before you even get to see that there is a red lock on your unit. You are denied access there. If you see a red lock on your unit, yes, you would assume that you cannot access it because you do not have the key to that red lock. The idea is that you need to go to the office because they would be the people who have the key to that red lock and you need to figure out how to get that red lock off. We are ultimately trying to get the customer to come to us and pay their rent.

Assemblywoman Spiegel:

I also have a rental space. One of the concerns I have about this is that many times I will take time off to try to talk with someone in the office, and they are either out to lunch or not there. Sometimes I cannot take time off work and I can see other people having even greater challenges than me because I have flexibility in my job. If there are short, truncated time frames for people to go in and get their account up to date—and it can be something as simple as they have been on automatic payments, their credit card expired and they did not realize it—would you be open to having a requirement that there be someone there at all times during standard business hours and perhaps on Saturdays as well, so that people could actually go in and take care of matters?

Travis Morrow:

I do not know if we would be comfortable legislating our operators' office hours. That varies from operator to operator and it varies from city to city based on the size of the self-storage facility and based on the number of units the self-storage facility has. I think there would be too many variables. If you have a 100-unit facility in Elko versus a 700-unit facility in Las Vegas, those two facilities are going to have much different hour requirements. The property in Elko probably does not need to be open 6 days a week from 9 to 6 or whatever. The way you described it, and the way I understand it, no, we probably would not want to do that.

Assemblywoman Spiegel:

I understand your point. What about having something in statute that was based on business days? Counting business days when the facility is open and

staffed during the continuous hours that the office is supposed to be open? Again, it is trying to have something that is fair to the customer. If every time you take time off from work to go into your facility, there is no one there, and you are trying to get things done, you can take a whole lot of time off of work, not be able to get things done, and lose all of your possessions.

Travis Morrow:

I do not think we would be in favor of that either. The reason for that is, because in order to make a payment to get caught up on your storage rent, you do not physically have to visit the property. Many facilities offer online payments. You can pick up the phone and call the facility. Once you pay your rent and are caught up and current, that manager goes out and removes the red lock. I do not think that would be something we would want to have in statute, especially when you mentioned about having your belongings sold. That process itself is over a couple of months. If over a couple of months you are not able to get in through various inconveniences and not be able to make a phone call and not be able to pay online, then I would suggest you move into my facility because we would be able to take care of it.

Assemblywoman Dondero Loop:

I am struggling with this as a storage unit holder. If I do not have Internet access or the email goes to my spam folder and for some reason I do not see it, I call the facility because it is a larger company, I maybe get someone in Oklahoma who says, "They are busy," and will give them a message to call me, and then I do not hear from someone, and two days, three days, four days, five days go by—and by the way, this has happened—how do I take care of that? It was a credit card that belonged to a company that had expired and the company is also not open. I cannot call them on the weekends. I guess I am just trying to find some middle ground. I get it. I know people do not pay bills; I know people may be irresponsible; but there are people who are not, and I feel as though the legislation is—in a way, the bill wants to legislate the consumer, but does not want to take any responsibility on the other end. It has been my experience that the rules change in the office as do the people who may be working in the office.

Travis Morrow:

If I am understanding your question correctly, say you are in the facility on the tenth day or fifth day, and you happen to be over locked that day or you are over locked on Saturday. You are trying to access your stuff on Sunday and you are not able to access your stored items. Even though the lease is with a company, if you were named in the lease and you do not have Internet access, there are facilities that allow you to pay at the keypad. There are facilities that have kiosks and there are facilities that have call centers.

As an industry, we try to provide as many options as possible for someone to get their unit current and give them access. Now it can be very difficult and there are very specific situations where it just cannot be accomplished at that time. There are managers who live onsite. If the manager happens to be onsite at the time you are trying to access your unit, they would be happy to come in and open up the office and take a payment from you and pull the red lock off. If it is on their day off, they might not be able to help you. I do not know how I can address the specifics of that, other than there have been ten days. I understand the automatic payment portion of it, but I would suggest to you that over that ten days you would have been contacted by the facility a couple of times to inform you that your automatic payment had expired.

Assemblywoman Dondero Loop:

This could be a whole Dr. Phil show, I am sure. Thank you. Most of our points up here are just that a five-day window is a fairly short window for people. Not that anyone is looking to have you carry us for three months, but I think that for any given reason, five days can be a pretty short amount of time.

Assemblywoman Spiegel:

Do you have some industry-specific data about how people pay for their storage units? I know that in Nevada we have a very large unbanked population, many of whom I suspect use storage facilities or have need to use storage facilities. I am wondering if you have data about the percentage of people who pay by credit card, debit out of their checking account, or other means, which would take in the unbanked people.

Travis Morrow:

I can get you some industry information on it. I can speak for my company. Our credit card payments are probably only about 25 percent of our overall collections for a month. At our company, we do not offer any kind of electronic debit from a checking account. The majority of it is either through automatic payments from banks where the bank sends us the check, cash, or a check from the tenant.

Assemblywoman Spiegel:

Do you find that the majority of the people who are late with their payments are the people who are using one of these other means?

Travis Morrow:

No, absolutely not. It is absolutely across the board.

Assemblywoman Fiore:

I want to be clear on the language that you want to change with the verifying through electronic mail. If that language was changed, would that mean that you would not have to literally talk to the person who owns the contents in the unit if you could not get through to them electronically? What is the time frame? Things happen to people. People do not put things in storage that they want to lose; they are obviously paying a fee because they want to hold on to them. What exactly is the intent of changing that language?

Travis Morrow:

There are two different ways in the current statute that we contact our tenants. When we are dealing specifically with the lien process—and this goes to noticing our tenants of our lien and then our intent to sell their stored items. There is verified mail and electronic mail. The verified mail is defined in the statute as anything that the United States Postal Service offers that provides proof of mailing. That is the physical—going to the post office, putting a stamp on it, and mailing it. The electronic mail is any electronic means—primarily email—that can provide a confirmation of receipt for that communication. Both ways we know we sent the mail and that they received the mail on the electronic side.

There are two separate pieces to this. The first part is that, as the bill is currently written, it requires that when we send a notice of lien out to our tenants, if we have an electronic address available, we send it verified and electronic. We are looking to change the verified "or" electronic. We are changing the "and" to "or". The reason for that is if a tenant were to receive our email and get our letter and click on the "Deny" on the confirmation request that pops up on the email, then the storage operator is then left with no way to prove confirmation on the electronic side. We have instead proposed that we send an electronic notification, verified or electronic. If we do not get the electronic, then we send a verified. It backs up that electronic step in the event we do not receive confirmation that they received it.

Assemblywoman Fiore:

So you want to send electronic before you send postal, correct?

Travis Morrow:

If available, we would prefer to send electronic because that tenant has provided us with that information. If we can confirm that they received it, we would like to attempt that first, yes.

Assemblywoman Fiore:

Would you be okay with keeping in your bill that you have to do a verified postal service and electronic? The "or" is iffy to me, because of the fact that emails change and accounts close.

Travis Morrow:

The point of switching the "and" to the "or" is that in the event that we went through an auction process and ultimately sold the goods of the tenant, that tenant could come back with an attorney and say, "You did not lawfully sell my stored items." If we did not have any way of getting a confirmation of receipt through the email—which is required that we have now, because we have to do the verified mail and the electronic mail, which by definition requires a receipt—we could potentially be liable for that auction, even though the tenant of whom we sold their stuff clicked "Decline" on the confirmation of receipt. That could be construed across all options that we had an email address for that time.

Assemblywoman Fiore:

So you are keeping the "and" in and you are not removing the "and?" I think a signature in ink is a lot better than, "Oops, I did not get the email."

Travis Morrow:

We are taking the "and" out and putting the "or" in. If we do not get the electronic confirmation, then we send it physically with the signature.

Chairman Frierson:

Are there any other questions? [There were none.]

I will now invite those here to testify in support of A.B. 182 to come forward. [There was no one.] Is there anyone in Carson City who would like to testify in opposition to A.B. 182?

Chuck Callaway, representing the Las Vegas Metropolitan Police Department:

I am here today in opposition to A.B. 182, mainly because of sections 5 and 9, which require law enforcement to remove someone from a storage facility within 24 hours after being notified. I support the concept of the bill; I believe that there are health and safety hazards and concerns with people residing in a storage facility. With that being said, I believe that section 5 in particular is unclear on exactly how law enforcement's role would be played out in that scenario. For example, it says, "The owner of such a facility shall request" Is that request in writing, such as currently what happens with eviction notices or would simply a call to 9-1-1 or 3-1-1 be considered a request? If law enforcement responded to the storage facility and the person

got wind that we were coming, then they left and when we got there, no one was there. Then we leave and they come back, and we come back. Does the 24 hours start over or is it from the time of the original call? I believe that section is unclear.

In addition, if the person refuses to leave the storage facility and says they are not going to go, then would a reasonable amount of force be used to remove that person from the facility? What would be the potential criminal charge they would be charged with? Trespassing? Is it the intent to establish a criminal misdemeanor charge for residing in a storage unit that could then be charged if the person refused to leave? Currently, an eviction process is used, which is a civil process, and the person is given notice. The person has the ability to appeal that notice and ultimately, in Clark County, the constable's office is responsible for conducting evictions. It is a civil process, not a criminal process.

Section 5 also states, "The peace officer shall not remove the person's personal property . . ." and I understand that, at first glance, to refer specifically that the officer should not take the person's property from the storage facility. What if the citizen wants to take their property with them when they leave? Is the officer able to allow them to pack up their property at that time and take it with them? What if, during the course of this process, property is found inside the storage unit and there may be a question as to whether it is stolen property or contraband? Would that limit the officer's ability to take property from the storage shed?

Unless these issues can be addressed, I believe that the section that deals with evictions should be left in the bill. I believe that it should be the private securities' job and function to ensure that people who come and go from the storage facility are not staying after hours or not setting up residence in the storage facility. In my mind, I see this as a way to circumvent the eviction process.

With that being said, I did speak with Mr. Morrow and he understands our concerns. He is willing to work with us on a potential amendment, and I look forward to that conversation with him. Hopefully these issues can be addressed.

Chairman Frierson:

In general terms, the mandatory language in the statute somehow provides some practical discretion and makes it permissive on the part of law enforcement. I am glad you spoke with the sponsor about coming up with some language that would be workable.

Assemblyman Hansen:

Typically, the eviction process has to do with a legitimate residence. If I had someone living in my automobile who was not supposed to be there, I would call the cops to throw them out. I would not need an eviction process. It would seem to me that this case is very similar. These were never intended to be residences, and I do not understand why you would have to go through an eviction process to get someone out of a building that was never intended to be used as a residence in the first place.

Chuck Callaway:

On the surface I would agree with you that the eviction process is not directly designed for this situation and is somewhat cumbersome when dealing with someone residing in a storage facility as opposed to a residence, such as an apartment complex. With that being said, there is a civil contract between the owner of that unit and the owner of the facility. The person has property and is renting that unit, so to have law enforcement show up, there may be a question as to whether or not the person is really residing there as Mr. Morrow stated. Sometimes they may have the place set up like an actual apartment with couches. I have heard of bands practicing in storage facilities, I have heard of people doing mechanic work on vehicles in storage facilities. If that person has a couch in there, do we automatically assume that they are residing inside the facility based on the word of the manager of the storage facility? I just believe that rather than requiring law enforcement to forcibly remove people when there is a civil contract in place and the person is renting that facility, there should be some other civil avenue, and maybe tweaking the eviction process to suit this particular incident would be a better avenue. I am open to suggestions regarding that.

Assemblyman Duncan:

Are there any civil actions that you enforce right now, or would this be the first one?

Chuck Callaway:

As a general rule, we do not get involved in civil law. Typically what we will do, and an example would be that we run into quite frequently, is child custody issues. A husband says, "Meet me at this location; I am going to go over and get my kids from the wife," and we go over there and the wife says, "I am not giving you the kids." Obviously, unless the court issues an order that we will take a child from one parent and give him to the other parent, we refer that person back to court. It is very similar in an eviction process. If an apartment manager calls us and says, "This guy has not paid his rent; I want him out," we refer that person to civil court. There are some cases where the courts will

issue some type of an order requiring us to take action on civil matters, but it is rare and infrequent.

Chairman Frierson:

Are there any other questions? [There were none.]

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We mirror the concerns that were already discussed by Chuck Callaway. A major concern is that you are going to be placing law enforcement in the middle of a civil situation, and it seems like they are attempting to use us to circumvent possibly having security on scene to handle these issues. We would be more than willing to work with the bill sponsor to iron out these issues and concerns.

Assemblyman Hansen:

If, in fact, they were to call on law enforcement because someone was living in the place—do they normally call the police? How do you remove someone? Is that not like trespassing? Just because I have a contract to store stuff there does not necessarily give me a right to go and live there. Do they call the police? How is that handled?

Robert Roshak:

I would have to pass that question to the bill sponsor to see how they deal with it. If we get a call with regard to that and it indicates that the person should not be there—if it is a violation of the contract, we can stand there and keep the peace while management explains to the individual. As a consequence of living in there and there is something in the contract that says it is voided after so many days, if they refuse to leave, then we can return back and handle it as a trespassing situation. That would be about the extent of it.

Chuck Callaway:

I reached out to some of our people in patrol to see if they could recall recently responding to a call of someone living inside of a storage facility, and the officer I spoke with, who has worked the street for quite a while, said that he vaguely remembers a case several months back, but that was all he could think of. Typically, what would happen when we respond to a call like that if the manager said, "I believe these people are living in the storage unit," the very first thing we are going to do is make contact with the individuals. Obviously, if there are any children inside the facility, we would evaluate the circumstances and determine if those children need to be taken out of that environment, and taken to Child Haven where they have a roof over their head and running water so they are not subject to living in those conditions. Then we would work with the people who are living in the storage facility to find out why they are living

there, if they need to be referred to a shelter, and if they need to get some assistance from some of the organizations that we have in southern Nevada that can help people get back on their feet. In some cases, when we respond to these people, they will be gone because they get wind that we are coming and they do not want to be there when we arrive. Typically, we try to handle it that way. In some cases, the officer may tell the people, "Hey, you cannot live in a storage facility" and they may be cooperative and leave on their own. If they call our bluff and say, "Well, I am not leaving; I have nowhere to go. My stuff is in this facility," then we would talk to the manager and say, "It is a civil matter; they do not have any kids, there is not a current safety issue, so you need to contact the courts and go through the civil process to have them removed."

Chairman Frierson:

Are there any questions? [There were none.] Is there anyone else in Carson City in opposition to A.B. 182? [There was no one.] Is there anyone in Las Vegas in opposition to A.B. 182? [There was no one.] Is there anyone in Carson City or Las Vegas to testify in a neutral position? [There was no one.] Mr. Carrillo, would you like to come back up and give closing remarks?

Assemblyman Carrillo:

This bill is about providing protection to both the consumer and storage facilities. Currently, there is no cap on how much a storage facility can charge for a late fee. This leaves the consumer vulnerable through unscrupulous people who may end up charging a lot more money on late fees. There has been a lot of concern over the five-day window, and I am willing to address the concerns that the Committee has on it. It comes down to personal responsibility for the renter to ensure they can be reached in a timely manner.

Chairman Frierson:

I will close the hearing on A.B. 182. Before we move onto the second bill on the agenda for today, I am going to seek a motion to introduce BDR 15-123.

BDR 15-123—Makes various changes relating to the mandatory reporting of elder abuse. (Later introduced as [Assembly Bill 229](#).)

ASSEMBLYWOMAN DIAZ MOVED TO INTRODUCE BDR 15-123.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

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

Chairman Frierson:

I will open the hearing on Assembly Bill 192, and invite Assemblywoman Cohen to introduce the bill.

Assembly Bill 192: Repeals the prospective expiration of the authority of county clerks to charge and collect an additional fee for filing and recording a bond of a notary public. (BDR S-1037)

Assemblywoman Lesley E. Cohen, Clark County Assembly District No. 29:

Currently, *Nevada Revised Statutes* (NRS) 19.013 and 19.016 authorize county clerks to charge a fee of up to \$5 for filing and recording a notary bond. The proceeds from the fee must be accounted for separately in the county general fund and be used solely to acquire or improve technology used in the county clerks' offices. This technology includes converting and archiving records, purchasing hardware and software, maintaining technology, training employees to operate technology, and related professional services.

Assembly Bill 192 simply removes the sunset language for this fee. As you can see, the bill is very short because it just removes the sunset language. I provided a page from NRS 19.013 and 19.016 ([Exhibit C](#)). *Nevada Revised Statutes* 19.016 sets the requirements that the fee be accounted for separately and be used for technology only, and NRS 19.013 sets the fee at \$5 for notary bonds.

For some background, the Legislature authorized county clerks to charge the technology fee in 2007. The Nevada Association of Counties introduced the bill to offset costs associated with technology upgrades by the county clerks. According to the 2007 testimony, most of the clerks' offices were having difficulty managing marriage data, notary information, and other data due to inadequate funding. At that time, Clark County testified that they had microfilm records dating from 1908 that were deteriorating and needed to be digitalized. Earlier in 2001, the Legislature authorized county recorders—and remember, the clerks, recorders, and assessors are all separate—to collect a \$3 technology fee for recording documents, which is very similar to this technology fee. The ability for the clerks to find upgrades to their data processing and storage has been a big help to the county clerks, and it helps them to control staff costs since there is less of a need to perform manual tasks.

Over the last few years, this technology fund has become very important for many of the counties in order to serve their citizens by providing more efficient offices and providing the citizens with access to records. Unlike the recorders and assessors, the clerks do not have another fund for this technology.

To testify about the importance of the technology fund is Washoe County Chief Deputy Clerk Nancy Parent, and Carson City Clerk Alan Glover. The Washoe County Clerk, Amy Harvey, has provided a statement ([Exhibit D](#)). Also available to testify is Diana Alba in Clark County, who is the Clark County Clerk. She has provided a statement and a chart with information on which counties have taken advantage of the ability to charge this fee and what they are using the funds for ([Exhibit E](#)). Some of the rural counties do not have enough money yet, so they are still saving the funds, but they have an idea of what they would like to use the funds for. Ms. Alba also provided information about what notaries are paying in nearby states. It shows that in the surrounding states, even if you do not include the \$5 fee, Nevada is still well within the range of what other states are charging their notaries.

Assemblyman Wheeler:

It seems pretty straightforward to me. Why was it set to expire originally?

Assemblywoman Cohen:

In 2007, the Assembly Committee on Judiciary added the sunset provision to give the Legislature basically a chance to review the law after six years to see how it did. The Committee was specifically looking at the fact that the rural counties would need some time to build up some money. I did read through some of that legislative history, and I can direct you to it if you would like to review it more thoroughly. I do not know if the Committee was taking into account at that time that technology changes. It is not like you save up a certain amount of money and you buy your technology and you are done for the next 100 years. It keeps changing, and I think it is still a very important fee because the work still needs to be done.

Chairman Frierson:

Are there any other questions? [There were none.]

Nancy Parent, Chief Deputy Washoe County Clerk:

The money that most of us have received from this technology fund has been pretty minimal, but it has allowed us to make some great strides in Washoe County that we would not otherwise have been able to do. With most of the county clerks, our purpose, in addition to issuing marriage licenses and things like that, is we are the official record of the county and the county commissioners and what they do. Our records, in most situations, date back to 1861 in Washoe County and other years throughout the state. We are constantly trying to make that information more available to our citizens, and in order to do that, we need this technology fee.

In Washoe County, we have collected just over \$31,000 since July of 2007. We have spent about \$14,000 of that. It has been spent on things to help us retrieve records that we have and to be more responsive to our citizens. The first program we bought was something called the VeriScan program. We have handwritten minute books dating back to 1861, and this program allowed us to scan it so it is now searchable. It is not online for the public yet, as it is proprietary software. Instead of having to go through of all those books page by page, now we can search electronically by word, let our citizens know where to go to get it, and pull the book for them so they can see it.

Also, all of the records are on microfilm dating back to 1861. What you use to read microfilm was called the Reader Printer. They are not making microfilm Reader Printers anymore as such, and they are also running short of parts to repair the ones that we have. There has been a program and scanner developed called ScanPro, where we can take our old reels and, instead of putting them in the Reader Printer, we scan them to digital and look at them on a computer. That has been enormously helpful to provide access in the office.

We have about \$19,000 left in the fund as of December 31, 2012, and one of the things that we would like to look into for the future, as we accumulate more money in Washoe County, is to get those records that we have now digitized available to people online. Right now we can give it to them in the office, but we cannot push it out. The microfilm is also deteriorating, as was testified in 2007. We have just now realized that in Washoe County and are trying to determine the best way to deal with it.

Chairman Frierson:

Are there any questions? [There were none.]

Alan Glover, Carson City Clerk/Recorder:

We are one of the counties that has not spent our money yet; we are trying to build it up. We do not have that many notaries here. I know it is terribly important for Washoe and Clark Counties. I think we are heading like Washoe County has with ScanPro, and getting our records converted over.

Chairman Frierson:

Are there any questions? [There were none.] Ms. Cohen, did you want to introduce Ms. Alba, or just have her available if there are any questions?

Assemblywoman Cohen:

If Ms. Alba would like to come up, I believe she may have something to say to the Committee.

Diana Alba, Clark County Clerk:

I echo much of what has been said by my colleagues, Nancy Parent and Alan Glover. Much of what we have done has been similar. We purchased scanning software and equipment, indexing software that has allowed us to do some pretty amazing things and to make plans for doing greater things in the future.

In particular, my county commission records have been neglected for a number of years, and we really need to do something to replace the microfilm. We still have some things that are on hard copy. The only thing I might add to what has already been said is that my staff is about 20 percent smaller than it was five years ago, and yet we still have all of the same mandates.

One thing this fund has allowed us to do with some of this technology is to automate processes that were primarily manual before. We are able to forgo some data entry that we were doing before because documents have a bar code placed on them and they are automatically scanned and indexed. When you have reduced staff in an office like mine, one thing that gets pushed back to the back burner is some of our archival record management duties because we are just so busy taking care of what our current operation is. With automating some of these processes, I have been able to take a couple of my staff in my commission division and marriage license division, and during blocks of time when we are predictably less busy, put them on archival tasks, have them index marriage records from the early twentieth century, and work on county commission records.

Because of the automation, we have been able to be much more efficient and productive, and we are starting to make some good progress in records management that has been neglected for quite some time. So even though this fee is not huge, and we generate about \$20,000 a year in Clark County, we have been able to put that money to really good use. We have even partnered with Clark County management on a project to digitize all of our microfilm. It was a situation where they said, "Give us the remainder of what is in your tech fund and we will make up the difference of what we need to pay this vendor." That is exactly what we did. We are working together on that right now.

I want to stress it is not a new fee. It has been in place for a few years, it is certainly very reasonable, and very valuable to the county clerks.

Chairman Frierson:

Are there any questions for Ms. Alba? [There were none.]

Is there anyone here to testify in support of A.B. 192? Is there anyone in Las Vegas to speak in support of A.B. 192? [There was no one.] Is there anyone in opposition, either here or in Las Vegas, to A.B. 192? [There was no one.] Is there anyone in the neutral either here or in Las Vegas? [There was no one.]

Ms. Cohen, do you have any closing remarks before we close the hearing?

Assemblywoman Cohen:

Thank you for allowing me to present this bill today. Assembly Bill 192 allows the county clerks to provide more efficient services, as you have heard, through technology that benefits our citizens. This bill removes the sunset date from existing language, and I urge your support.

Chairman Frierson:

With that, I will close the hearing on A.B. 192. I will open it up for public comment for anyone in Carson City or Las Vegas. [There was no one.] Having already introduced the one BDR we had for today, and there are no other matters from any previous meetings, this meeting is adjourned [at 10:29 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 11, 2013

Time of Meeting: 9:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 192	C	Assemblywoman Lesley Cohen	Testimony
A.B. 192	D	Amy Harvey	Testimony
A.B. 192	E	Diana Alba	Testimony