

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
February 28, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:01 a.m. on Thursday, February 28, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Rick Combs, Director, Legislative Counsel Bureau
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Terry Care
Chad J. Schatzle, Student Services Librarian, Wiener-Rogers Law Library,
William S. Boyd School of Law, University of Nevada, Las Vegas
Sandy Marz, Retired Washoe County Law Library Director
Bill Uffelman, President and CEO, Nevada Bankers Association
Keith Munro, Assistant Attorney General, Office of the Attorney General
Jennifer P. Togliatti, District Judge, Department 9, Eighth Judicial District
John T. Jones, Jr., Clark County District Attorney's Office; Nevada District
Attorneys Association

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Wes Henderson, Nevada League of Cities and Municipalities

Chair Segerblom:

We have a bill draft request (BDR) to introduce.

BILL DRAFT REQUEST 15-504: Makes it a felony to perform certain medical procedures without a license. (Later introduced as [Senate Bill 199.](#))

SENATOR KIHUEN MOVED TO INTRODUCE BDR 15-504.

SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on Senate Bill (S.B.) 105.

SENATE BILL 105: Enacts the Uniform Electronic Legal Material Act. (BDR 59-168)

Terry Care:

As an introduction, I will briefly describe the Uniform Law Commission and define a uniform act. The Uniform Law Commission has been around for 121 years. It meets once a year to promulgate and approve so-called uniform acts. Before it gets to that point, a committee studies an issue to decide if there ought to be an attempt to draft a uniform act. The process of drafting the uniform act takes 2 years. The charge of the Uniform Law Commission is to take these uniform acts to the legislatures of different states to get them enacted. Nevada's Legislature has enacted many of these in the past. The best known uniform act is the Uniform Commercial Code (UCC).

The goal of the Uniform Law Commission is to draft laws that can be used by all the states, with the result that everyone is playing by the same rules across state lines. We consider an act to be successful when it is adopted by 25 or 30 states. In a few cases, a uniform act will be adopted by all 50 states, as well as Washington, D.C., the Virgin Islands and Puerto Rico. Those are the 53 jurisdictions represented by the Uniform Law Commission.

The Uniform Law Commission has no political agenda. It is left to the states to determine how commissioners are appointed. In Nevada, it is done by the Legislative Commission. We have slots for Legislators, members of the Legislative Counsel Bureau (LCB) and a couple of law school professors from the University of Nevada, Las Vegas. On this Committee, Chair Segerblom and Senator Brower are Uniform Law Commissioners. It is not a political organization. We just try to craft good laws that should be adopted by all states.

Senate Bill 105, the Uniform Electronic Legal Material Act, is one of our more recent efforts. It was adopted last year in California and Colorado. It is being introduced in eight states so far this year, including Nevada, and we are hoping for more.

So what is this bill, and what does it do? Increasingly, state governments make printed material available online, such as statutes and agency rules. In some states, this material is available only online, though that is not the case in Nevada. That raises a number of issues: Is the material being viewed by the public authentic? How should the material be preserved? How do we ensure access in the future? This bill is a response to those issues.

Let me give you a few points before I walk you through the bill. Electronic legal material is authenticated when a method is provided to determine that it is unaltered. It must be preserved in either electronic or print form, and it must be accessible by the public on a permanent basis. If the electronic legal material is authenticated, it is presumed to be accurate. If another state enacts this uniform act, the legal materials from that state are presumed to be authentic. The idea is that this will lead to harmonization between the states on how this is to be done.

Sections 4 through 9 of S.B. 105 are definitions, and I would call the Committee's attention to two of those. Section 5 defines "legal material" as the Nevada Constitution, the statutes of Nevada, the *Nevada Revised Statutes* (NRS) and the *Nevada Administrative Code*. The Uniform Law Commission defined the term narrowly and left it up to the states to determine what was to be included in this section. Section 6 defines "official publisher" as the LCB. The LCB has the duties listed in S.B. 105 and the discretion on how to implement those duties.

Section 10 of S.B. 105 states that the bill applies to legal material first published electronically on or after January 1, 2014. That is also the effective date of the bill. Section 11 leaves implementation of the bill up to the LCB. Section 12 covers authentication. Section 13 is the effect of authentication. Subsection 2 of section 13 establishes that if this act is adopted in another state, that state's authentications are accepted as valid.

Section 14 covers preservation and security of records. Section 15 addresses public access. Section 16 goes to the standards to be considered by the LCB. Sections 17 and 18 are standard language included in most uniform acts.

Rick Combs (Director, Legislative Counsel Bureau):

I am not here to testify in favor or opposition to S.B. 105 but rather to go through some of the provisions and how they would impact the LCB if the bill is enacted.

Section 11 of S.B. 105 designates what the LCB will need to do if the bill passes. It authorizes the LCB to decide that we do not need to authenticate records unless the electronic record is the only copy of that document. If there is a hard copy, the electronic record does not have to be authenticated, but we can choose to do so if we want the electronic record to have that level of security. So far, we have not received much outside pressure to authenticate the electronic versions of these documents. We have taken many steps to make sure the electronic version matches the paper version of the documents, but we have not gone through the procedures this bill would require for those documents to be designated as authenticated.

Section 16 of S.B. 105 contains the standards and practices we would need to follow for our records to be considered authenticated. The best way to go about that is open to our interpretation. It could be something as simple as having a document signed by the LCB director attached to the record.

We do not have any concerns about the fiscal impact of S.B. 105. We do not anticipate that it will cause any additional workload we cannot handle.

Senator Hutchison:

What do you do when there are amendments or updates to these documents?

Mr. Combs:

I am not an expert on this. When we issue an update to the paper version of the NRS, we send replacement pages to the registered holders who must go through the volumes replacing the pages. For the electronic version, we would need to include some statement that this electronic document is authentic with updates through a specific date, and that date would match what was in the hard copy version. If at some point we use the electronic version only and stop publishing the hard version, we would have to look at the procedure again. However, that is not something we anticipate happening in the near future.

Mr. Care:

I have two documents for the record; one is a list entitled "Uniform Electronic Legal Material Act: Why States Should Adopt the Act" ([Exhibit C](#)), and the other is an article from the Uniform Law Commission entitled "Electronic Legal Material Act Summary ([Exhibit D](#))".

Chad J. Schatzle (Student Services Librarian, Wiener-Rogers Law Library, William S. Boyd School of Law, University of Nevada, Las Vegas):

I support S.B. 105. I have written testimony explaining the importance of this critical bill ([Exhibit E](#)).

Chair Segerblom:

Will there be some sort of authentication seal on these electronic documents?

Mr. Care:

That is not a requirement of the bill. I believe it would be part of the LCB's procedures.

Sandy Marz (Retired Washoe County Law Library Director):

I support S.B. 105. I have written testimony explaining the importance of this bill ([Exhibit F](#)).

Chair Segerblom:

I will close the hearing on S.B. 105 and open the hearing on S.B. 110.

SENATE BILL 110: Revises provisions relating to the Uniform Commercial Code.
(BDR 8-873)

Mr. Care:

When I was in law school, my least favorite subject was anything dealing with the UCC, and I swore that after I graduated I was going to have nothing to do with it. The problem with that, of course, is that when you get into commercial litigation, you are always running into issues dealing with collateral, perfection, priority and so on. In Nevada, the UCC is chapters 104 and 104A of NRS.

The UCC has been around a long time, and all states have it. The idea is to have this world of commercial transactions where everybody plays by the same rules. Each state tweaks the UCC; for example, in Nevada we do not have Article 6, which deals with bulk sales, and we have added two articles, Article 2A regarding leases and Article 4A regarding funds transfers. Senate Bill 110 deals with Article 4A of the UCC, which is NRS 104A. The language in S.B. 110 was adopted in New York, Ohio and California last year. A further 28 states have introduced the change this year.

Here is the issue that triggered S.B. 110. There has been a lot of legislation from Washington, D.C., in response to the recent recession. One of these is the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Before that, there was the Electronic Fund Transfer Act of 1978 (EFTA). The problem is that the Dodd-Frank Act will amend the preexisting EFTA later this year. The concern is that this will result in a legal uncertainty as to how to read Article 4A of the UCC as it applies to certain transactions.

Article 4A of the UCC does not govern a fund transfer, any part of which is governed by the EFTA. A fund transfer is a series of transactions made for the purpose of making payment to the beneficiary of a payment order. When the EFTA amendment goes into effect, that act will govern so-called remittance transfers whether or not they are also electronic transfers governed by the EFTA. A remittance transfer is a transfer of funds from a foreign worker in the U.S. to someone in another country. An electronic fund transfer is a transfer from one account to another within a single institution or across multiple institutions through some sort of computer-based system.

What all this means is that when the amendment to the EFTA goes into effect later this year, a fund transfer initiated by a remittance transfer will be entirely outside the scope of Article 4A of the UCC, even if it is not an electronic fund transfer. Currently, fund transfers that are not electronic fund transfers as

defined in the EFTA are excluded from EFTA and instead governed by Article 4A of the UCC.

Thus, providers and receiving banks of international fund transfers rely on rights and responsibilities contained in Article 4A of the UCC where the subject is a remittance transfer but not an electronic fund transfer. The amendment to the EFTA would exclude fund transfers that are not remittance transfers from the scope of Article 4A, leaving rights and responsibilities of those parties unregulated by either Article 4A or the EFTA. This bill would ensure that Article 4A would apply to fund transfers that are remittance transfers but not electronic fund transfers.

The U.S. Consumer Financial Protection Bureau has looked at this issue and made the determination that a legal uncertainty will arise if nothing is done with Article 4A. The Bureau has also decided that the best way to approach this is for the states to amend Article 4A. That is what S.B. 110 does.

I have two articles from the Uniform Law Commission regarding this matter. The first is entitled "Why States Should Adopt the Amendment to UCC Article 4A" ([Exhibit G](#)), and the second is entitled "UCC Article 4A Amendments (2012) Summary" ([Exhibit H](#)).

Senator Brower:

Would we be the third state to adopt this?

Mr. Care:

We would be the sixth. In addition to California, Ohio and New York, there are Arkansas and one other state.

Bill Uffelman (President and CEO, Nevada Bankers Association):

We support S.B. 110. The Dodd-Frank Act has backhandedly negated a lot of longstanding law. The problem is when money is transferred, which law applies? If it is not under the EFTA, the UCC rules apply. It all has to be under the law, and this bill fixes it. The American Bankers Association endorses the language in this uniform act.

Chair Segerblom:

I will close the hearing on S.B. 110 and open the work session on S.B. 27.

SENATE BILL 27: Clarifies the authority of the Attorney General to appear in civil actions to defend state judicial officers who are sued for certain acts or omissions related to their public duties or employment. (BDR 3-219)

Mindy Martini (Policy Analyst):

I have a work session document presenting the two amendments we have received for S.B. 27 ([Exhibit I](#)). The first amendment is on pages 2 through 5 of [Exhibit I](#) and was a compromise amendment prepared by the Office of the Attorney General (AG) and the Administrative Office of the Courts (AOC). Pages 6 through 18 of [Exhibit I](#) are supporting documents. This first amendment replaces the original language of S.B. 27 with the provisions of a similar bill, S.B. 57, which had been offered by the court, and adds two provisions.

SENATE BILL 57: Revises provisions relating to legal representation of certain persons by the Attorney General or the chief legal officer of a political subdivision of this State in certain civil actions. (BDR 3-389)

In S.B. 27, "state judicial officer" is defined as justice of the Supreme Court, senior justice, judge of a district court or senior judge. In addition, it clarifies the authority of the chief legal officer or other authorized legal representative of a political subdivision to provide legal counsel under certain circumstances to any present or former local judicial officer. In S.B. 57, "local judicial officer" is defined as justice of the peace, senior justice of the peace, municipal judge or senior municipal judge.

The amendment from the AG's Office and the AOC adds two provisions to S.B. 27. The first provision authorizes the official attorney to appoint a special deputy if the official attorney determines that it is impractical, uneconomical or could present a conflict of interest for the official attorney to serve in this capacity. The second provision requires the Department of Administration to include the AG's cost allocation plan for implementing this measure in the budget submitted for the 2015 Legislative Session.

The second amendment was submitted by Clark County and is on page 19 of [Exhibit I](#). This amendment accepts the first amendment, but adds the words "district court employee" to section 7, subsection 1, paragraph (a) of S.B. 57 and thus to the amended version of S.B. 27.

Keith Munro (Assistant Attorney General, Office of the Attorney General):

We originally brought S.B. 27 because there was an issue regarding the authority of the AG's Office to represent judges in litigation.

Chair Segerblom:

Are you good with the way the first amendment was drafted?

Mr. Munro:

Yes.

Jennifer P. Togliatti (District Judge, Department 9, Eighth Judicial District):

We have worked on this amendment with the AOC and the AG's Office.

Chair Segerblom:

Are you in agreement with the first amendment?

District Judge Togliatti:

Yes.

John T. Jones, Jr. (Clark County District Attorney's Office; Nevada District Attorneys Association):

We support the concept behind S.B. 27. We agree with the first amendment, with the exception that we think district court employees should also be included in this coverage. This is what our amendment adds.

Chair Segerblom:

Can you explain why you feel they should be included?

Mr. Jones:

District court employees are unique in that they are funded at the county level, but for all intents and purposes they serve at the pleasure and direction of district court judges, who are State employees. Because of that, it is our position that they are best represented by the AG's Office. The language in the bill does not make it clear where their representation would come from.

We have been in discussion with the AG's Office and the AOC this morning, and we have decided not to pursue our amendment at this time. We have agreed to continue the discussion and work on the questions, with the intention

of bringing a further amendment when the bill reaches the Assembly Committee on Judiciary.

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 27 WITH THE AMENDMENT FROM THE AG'S OFFICE AND THE AOC.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the work session on S.B. 37.

SENATE BILL 37: Revises provisions relating to the destruction or theft of certain property. (BDR 15-261)

Ms. Martini:

I have a work session document for S.B. 37 that summarizes the bill and presents an amendment on behalf of the Public Works Department of Clark County ([Exhibit J](#)). The amendment further expands the definition of "utility property" to include storm water and drainage facilities.

Wes Henderson (Nevada League of Cities and Municipalities):

We are okay with the amendment.

SENATOR BROWER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 37 WITH THE AMENDMENT FROM CLARK COUNTY.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

As there is no further business before the Committee, the meeting is adjourned at 10:33 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 105	C	2	Terry Care	Uniform Electronic Legal Material Act: Why States Should Adopt the Act
S.B. 105	D	2	Terry Care	Electronic Legal Material Act Summary
S.B. 105	E	1	Chad Schatzle	Written testimony
S.B. 105	F	1	Sandy Marz	Written testimony
S.B. 110	G	1	Terry Care	Why States Should Adopt the Amendment to UCC Article 4A
S.B. 110	H	1	Terry Care	UCC Article 4A Amendments (2012) Summary
S.B. 27	I	19	Mindy Martini	Work session document
S.B. 37	J	3	Mindy Martini	Work session document