MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
April 26, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:48 p.m. on Wednesday, April 26, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Aaron D. Ford (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman Justin Watkins, Assembly District No. 35

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Eileen Church, Committee Secretary

OTHERS PRESENT:

Lindsay Beaver, Legislative Counsel, Uniform Law Commission
Benjamin Orzeske, Chief Counsel, Uniform Law Commission
Cory Hunt, Deputy Director, Office of Economic Development, Office of the Governor
Scott Anderson, Chief Deputy, Office of the Secretary of State

CHAIR SEGERBLOM:
I will open the hearing on A.B. 146.

ASSEMBLY BILL 146: Enacts the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act. (BDR 3-617)

ASSEMBLYMAN JUSTIN WATKINS (Assembly District No. 35):
This bill enacts the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act. It was drafted by the Uniform Law Commission.

The purpose of this bill is twofold. First, it provides a tool to local law enforcement to enforce a Canadian domestic-violence protection order before it is recognized by a Nevada state court. Second, it provides for a more expedient procedure in the State court for adopting a Canadian domestic-violence protection order into a Nevada order and placing it in the record through the Central Repository for Nevada Records of Criminal History.

CHAIR SEGERBLOM:
I am not big on criminal law, but I know there is stacking of domestic-violence offenses. If you had a Canadian domestic-violence protection order and you came to Nevada and did something here, would that mean you would start at the second level?

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
As I understand the bill, this has to do with the protection order only. The statutory framework you are referring to speaks to three domestic-violence convictions in seven years, and I do not believe a Canadian conviction would apply. I am not certain, however.

CHAIR SEGERBLOM:
This bill protects the victim, then.

ASSEMBLYMAN OHRENSCHALL:
Correct, in terms of allowing us to honor that protection order. As to whether a Canadian conviction would count toward one of those three in seven years, I do not believe it would. If I am incorrect, we can certainly ask for an opinion.

SENATOR CANNIZZARO:
The way I read this, the bill relates only to the order of protection. The protection order is filed and noticed with the court. If the order is violated, that could be a violation of a protective order under Nevada law, which is a separate misdemeanor or gross misdemeanor offense depending on the violation. However, I do not believe this bill relates to whether a domestic-violence conviction can be enhanced.

ASSEMBLYMAN WATKINS:
I believe that is correct. This bill seeks to expand the protection of victims of domestic violence in Nevada. There are more than 10,000 Canadian nationals who live and work in Nevada every day, and we have approximately 1.5 million visitors from Canada every year. With the proper amount of education, our Canadian visitors and residents will recognize this system and use it for their protection.

When A.B. 146 was heard in the Assembly, there were some concerns among various law enforcement agencies about how this would play out in the field. By the end of the discussion, all parties agreed that the bill did not need any amendments. Law enforcement was comfortable they would be able, through their current system, to check the validity of a Canadian domestic-violence protection order. If officers are not able to verify the validity of the order, the language in this bill gives them immunity from civil or criminal liability. This means they can use their best judgment to deal with the situation and cannot be held liable for one action or the other.

The meat of this bill is in sections 13, 14 and 15.

Section 13 of the bill tells officers what to look for when presented with a Canadian domestic-violence protection order and lays out their options.

Section 14 provides guidance to the district court for adopting a Canadian domestic-violence protection order into a Nevada order and then placing it in our Repository.

Section 15 of A.B. 146 provides immunity for officers who enforce a Canadian domestic-violence protection order because they believe it to be valid, or who refuse to enforce it because they believe it to be invalid.

CHAIR SEGERBLOM:
Does this require reciprocity with Canada? Some of the uniform bills only go into effect when the other state has adopted the same uniform law.

ASSEMBLYMAN WATKINS:
It does not require reciprocity. Canada already accepts domestic-violence protection orders from the U.S.

LINDSAY BEAVER (Legislative Counsel, Uniform Law Commission):
I am Legislative Counsel at the Uniform Law Commission (ULC), which provides states with well-drafted legislation that brings clarity and stability to critical areas of state law. We support A.B. 146, which will enact many provisions of the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act.

CHAIR SEGERBLOM:
Nevada is well aware of the work of the ULC. In fact, I believe Nevada holds the record for the most uniform laws passed in one Session, thanks to former Senator Terry Care.

MS. BEAVER:
Yes, it does. We have had great experience working with Assemblyman James Ohrenschall this Session, so hopefully we can keep that statistic up.

This particular project was finished in 2015. It has been enacted in Delaware and North Dakota, and it is pending in California, Rhode Island and Nevada. The thought behind this project reflects the friendship between the U.S. and Canada and recognizes that citizens move freely between the two countries. There was also recognition that sometimes this freedom can, in certain limited circumstances, work against victims of domestic violence. As was previously mentioned, Canada has granted recognition to the protection orders of the U.S.

through their own Uniform Enforcement of Canadian Judgments and Decrees Act. With A.B. 146, Nevada will accord similar recognition to protection orders from Canada.

The uniform law A.B. 146 is based on is the product of a one-year study period and a two-year drafting process. The drafting committee included judges, law professors and practicing lawyers, and attorneys appointed by the American Bar Association. Representatives from national family law organizations also participated in the drafting committee meetings.

The threat of domestic violence transcends state and national boundaries. By passing this bill, Nevada will ensure that domestic-violence victims are protected, even if that order was issued in Canada.

SENATOR HARRIS:
Could you walk me through section 13? What documentation is needed to satisfy the requirements to have those orders enforced? As I read it, as long as there is probable cause to believe the order exists, it does not have to be a certified copy of a protection order to be accepted. But in the case of something less than a certified copy, how does the officer know what protections the victim is entitled to?

ASSEMBLYMAN WATKINS:
That is the million-dollar question with this bill and why we worked so closely with law enforcement to ensure they had the tools they needed in place in the field to verify these orders. They do not want to enforce any protection order based on a piece of paper handed to them out in the field. Anybody can do anything with a piece of paper. Officers always call dispatchers to verify protection orders, even ones from Nevada or California. They use different systems to do this; the most common are the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunication System (NLETS). All Canadian orders are accessible through those systems by Nevada dispatchers.

All the same, it is possible that on occasion, the dispatch center might not have access to those systems and therefore be unable to verify a valid Canadian document. It is because of this possibility that we provide for immunity for officers. The bill gives them the tool they need to act or not act. If they have probable cause to believe an order is valid on its face and choose to act, they

have immunity for making that choice. If they say, "Our standard protocol is to always verify before we enforce, and because we couldn't verify, we're not going to enforce," they are immune for that as well.

SENATOR HARRIS:
Why have that verbiage about providing paperwork to the police officer at all?

ASSEMBLYMAN WATKINS:
A piece of paper handed to law enforcement in the field is going to give officers identifiers that will enable them to verify the document more quickly. If it has a case number or a tribunal number on it, then if the dispatcher does not have access to NCIC or NLETS, the court of jurisdiction can be called to verify that it is a real order. For that reason, even a piece of paper with numbers on it has some effect. It is certainly a helpful tool for law enforcement to help confirm. However, as I said, it my understanding that in the field, officers would never rely on a piece of paper and nothing else, domestic or international.

SENATOR HARRIS:
I appreciate the clarification. I would hope law enforcement would err on the side of protection, recognizing that we are balancing civil rights.

ASSEMBLYMAN OHRENSCHALL:
I would also point out that section 13, subsection 3 says that officers, if they do not have that record but there is some evidence that a protection order exists, can try to find out if an order exists.

ASSEMBLYWOMAN LESLEY E. COHEN (Assembly District No. 29):
I appreciate my colleagues asking me to join them on this bill. It is an interesting coincidence that today is Denim Day. First Lady Kathleen Sandoval has asked us to wear denim to encourage education about sexual violence prevention. Domestic violence and sexual violence do not always overlap, but it is important for Nevada to continue our efforts to educate people about domestic violence and sexual violence. Whether it is Nevadans or our visitors from around the world, it is important for us to make sure we are doing our best to keep people safe in Nevada.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 146 and open the hearing on A.B. 239.

ASSEMBLY BILL 239: Enacts the Revised Uniform Fiduciary Access to Digital Assets Act. (BDR 59-687)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
This bill is based on the Revised Uniform Fiduciary Access to Digital Assets (RUFADA) Act. I will give you a brief presentation on the bill.

When we were growing up, landline telephones were our main electronic communication. Now, there are social media, emails, text messages and more. So much of our lives are on electronic accounts. Assembly Bill 239 attempts to protect the digital assets of users who have passed away or become incapacitated. Whether it is cherished photos or information about property and bank accounts, this bill strives to protect those assets and make sure the users' final wishes are respected.

Last Session, we brought the original version of this ULC act to the Assembly Committee on Judiciary, where some of the social media companies had issues with the language. Over the Interim, the ULC took the suggestions of Google, Facebook and others and came out with the RUFADA Act.

If you die intestate and have not said what you want to happen with your Facebook account, there are lots of issues as to who will control that account. You might want it to be deleted upon your death or incapacity, or you might want someone specific to keep it going for you. Even if you have a will that states who you want to control your Facebook account, Facebook's terms of service may not work so well with your will. This bill aims to remedy that. To date, 30 states have enacted this Act and 14 states are considering it, including Nevada. It may be one of the most popular uniform acts since the Uniform Commercial Code. States that have not enacted the RUFADA Act are having problems with these issues.

Google and Facebook have endorsed A.B. 239. In Facebook, you can now designate someone to be your legacy contact and control your Facebook account if you die or become incapacitated. In the 30 states that have passed the RUFADA Act, that legacy contact will be recognized even if you die intestate or have a will that does not mention your digital assets. In other states, this online tool will not have that recognition until the RUFADA Act is passed. In my Gmail account, there is a setting to assign an account trustee. Regardless of whether I have a will, I can use this tool to say whom I want to

manage my Gmail account. I can also say that I want my account deleted upon my incapacity or death. In our increasingly modern electronic digital society, a lot of people have treasured family photos, bank account information and the like on these social media accounts.

CHAIR SEGERBLOM:
Does this cover microchips?

ASSEMBLYMAN OHRENSCHALL:
It covers digital assets. I will defer the question to the next speaker.

BENJAMIN ORZESKE (Chief Counsel, Uniform Law Commission):
To answer Chair Segerblom's question, if it is your own microchip, for example, in a watch that you own, it is personal property and does not fall under A.B. 239. If it is a microchip on which you have digital information stored and it is on a server on the Internet somewhere, this law would apply to it and would allow you to get your executor to get your files off.

SENATOR HARRIS:
I like the language of the Act, and I like what it does with regard to preserving those precious assets, whether treasured memories or bank accounts. My concerns have to do with section 42, which allows guardian access to these types of assets. There are several bills before us from the Guardianship Commission this Session, and there is concern that A.B. 239 would allow a guardian to shut down some of these assets. We have taken great care with all of the bills drafted from the Guardianship Commission to give guardians a limited ability to act on behalf of the people they are guardians for. We need to be cautious. It is important to make sure that in cases of guardianship, particularly limited guardianships, guardians do not automatically have the authority to control these assets. It might be that the person under guardianship has the ability to petition the court at a later date to remove that guardianship and would not potentially want that asset terminated.

ASSEMBLYMAN OHRENSCHALL:
You bring up some good points. The intent of section 42 of the bill is to require that if someone becomes a ward, the guardian or conservator must get specific authority from the court to have access to those digital accounts. Being a guardian would not be enough to allow that to happen.

SENATOR HARRIS:
My concern is that the emphasis in section 42, subsection 2 is on disclosure to the guardian unless otherwise ordered by the court. This seems to imply that if the court fails to make a specific finding, the default is to grant disclosure to the guardian.

MR. ORZESKE:
The Act defaults to disclosure only for a subset of digital assets, which does not include the contents of electronic communications, which is where most of the privacy concerns would arise. There are different default rules in the RUFADA Act for each of the four different types of fiduciaries that it covers. Guardianship is the only one of those relationships that is potentially involuntary, where the person subject to guardianship did not necessarily ask to have someone acting as his or her guardian. Because of that, there are special privacy concerns there. As you will note, section 12 of the bill defines "digital asset" very broadly. It could be almost anything online. The content of electronic communications is a subset that includes things like emails, text messages and social media posts that go only to a select group of your friends. By default, a guardian will not have access to any of those unless there is express permission from the person subject to guardianship.

The language in the bill regarding closing accounts was a compromise solution trying to deal with the situation. Representatives from the guardianship community told us that they recognized the privacy concerns. However, they said they have had situations in which a person subject to guardianship was posting inappropriate information on his or her Facebook page, such inappropriate photos or comments or personal information. In that case, the RUFADA Act would allow guardians not to access the account and violate those privacy concerns, but instead request from the custodian of the asset—in my example, that would be Facebook—to close or temporarily suspend the account. Guardians can only do that if they show good cause and have authority from the court. It should be noted that Facebook is not required to follow that request. Section 17 of the RUFADA Act states that custodians are normally required to comply with an order from a fiduciary if the fiduciary provides all the required information. This is an exception to that. Facebook can use its judgment to decide whether that account should be suspended or terminated, recognizing that the guardian is not the account holder.

ASSEMBLYMAN OHRENSCHALL:
That is section 44, subsection 4 of A.B. 239.

SENATOR HARRIS:
Does the bill offer less-restrictive options, such as temporary suspension, or are we just assuming that a custodian will have a range of options should the circumstance arise?

MR. ORZESKE:
I am not looking at the bill, but the RUFADA Act says "suspend or terminate." The bill should say both.

ASSEMBLYMAN OHRENSCHALL:
I believe that language is in section 42, subsection 3 of A.B. 239.

Thank you for hearing this bill. This Act will benefit our constituents. It will make an easy way to ensure our final wishes are honored. So much of our lives now are online, and very few of our constituents have made a will. Even for those who have, this is still an unsettled area, and I believe this bill will settle the law in this area.

ASSEMBLYWOMAN COHEN:
One of the things I like about A.B. 239 is not only does it protect the owners of the accounts and honor their wishes, it also adds some protection for the general public. Many of our campaign Websites include buttons to allow visitors to make donations, as do Websites for many charities. This bill will help to ensure that when members of the public see a solicitation for funds, they can be assured it is not a scam and comes from real people who are actually alive.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 239 and open the hearing on A.B. 6.

ASSEMBLY BILL 6: Revises provisions governing exemptions from the requirement to obtain a state business registration. (BDR 7-247)

CORY HUNT (Deputy Director, Office of Economic Development, Office of the Governor):
This bill may go down as the most simple bill ever to come from the Governor's Office of Economic Development (GOED). You have already heard this in the

Secretary of State's omnibus bill. Existing law requires most businesses doing business in Nevada to obtain a state business license and pay an annual fee. Companies whose primary purpose is the production of motion pictures are exempt from that requirement. Assembly Bill 6 eliminates that exemption, which we believe is unnecessary and represents a potential loophole that should be closed.

There is no reliable method to verify if a company is indeed engaged primarily in producing motion pictures. The Secretary of State's office has historically looked to the Nevada Film Office and GOED to tell us that a company is engaged primarily in the production of films. The Film Office does not certify companies as being production companies. It looks at the productions themselves and assigns a number to a production company for purposes of tracking its investments and activities in the State.

The Nevada Film Office does not believe A.B. 6 will have any effect on the motion picture industry in the State. The competitiveness of our film industry is more based on film tax credits and locations we have to offer, and the business license fee is really immaterial for a significant film production company.

The Secretary of State's Office has some information that this exemption may have been abused. Currently, there are about 245 companies that have availed themselves of this exemption. In the past, one individual filed 225 times with different company names and used this exemption to keep from having to pay the fee. Those have since been rescinded. We researched the history of this law. It was created during the 20th Special Session in 2003 on the Assembly Floor, and as such there are no minutes of the action, so it is hard for us to determine what the original intent was.

SCOTT ANDERSON (Chief Deputy, Office of the Secretary of State):
We are in support of this bill.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 6.

CHAIR SEGERBLOM:
Is there any public comment? Hearing none, I will adjourn the meeting at 2:31 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY			
Bill	**Exhibit / # of pages**	**Witness / Entity**	**Description**
	A	1	Agenda
	B	2	Attendance Roster