MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
May 7, 2007

The Committee on Judiciary was called to order by Chair Bernie Anderson at 9:07 a.m., on Monday, May 7, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No.7

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Darlene Rubin, Committee Secretary

OTHERS PRESENT:

Scott Anderson, Deputy Secretary of State for Commercial Recording, Office of the Secretary of State
Scott Scherer, representing Nevada Resident Agents Association

Thomas Connolly, Senior Manager, CT Corporation, San Francisco, California
Randall Tindall, Attorney at Law, Las Vegas
Steve Burris, representing Nevada Trial Lawyers Association

Bill Bradley, Nevada Trial Lawyers Association
Neena Laxalt, representing CT Resident Agents

Chairman Anderson:
Meeting called to order and roll called. Let us turn our attention to Senate Bill 242 (1st Reprint).

Senate Bill 242 (1st Reprint): Enacts the Model Registered Agents Act. (BDR 7460)

Senator Terry Care, Clark County Senatorial District No. 7:
Senate Bill 242 (R1), the Model Registered Agents Act, is a lengthy bill—110 pages as now written, with 195 sections. Sections 3 through 28 are definitions, Section 29 has filing fees for the Secretary of State, and Section 29.5 has some language provided by the Secretary of State that refers to filing. The core of the bill is contained in Sections 30 through 41. There are three definitions I would like to call to the Committee's attention. You all know what a "resident agent" is: corporations, other entities, nonprofit corporations, limited liability companies, and others have a resident agent on file with the Secretary of State. That means that when those entities get sued, service of process can be made on the resident agent as opposed to the appropriate person for that entity. Nevada uses the term "resident agent," and it is the only state to use that term. Every other state uses "registered agent." Massachusetts was the last state to make the change about three years ago. That is why this bill is called the "Model Registered Agents Act."

The three definitions are: "registered agent," "noncommercial registered agent," and "commercial registered agent." One aspect of this bill is to make a distinction between an entity that is in the business of being a registered agent and someone who may be a registered agent for one entity. There is nothing currently that makes that distinction. This bill had its genesis in conversations that took place between registered agents, various secretaries of states' offices, and the American Bar Association going back several years. The purpose was to simplify procedures for the secretaries of states' offices and the registered agents, while seeking uniformity throughout the United States. The result is S.B. 242 (R1).

Section 30 concerns addresses and filing. Anytime a registered agent, whether commercial or noncommercial, has a filing to submit there must be included an actual street address or a rural route box number, and if there is another address such as a post office box, that must be included as well. Section 31 deals with the appointment of the registered agent and indicates that a registered agent filing must state if it is a commercial registered agent. If so, the name will suffice. If it is a noncommercial registered agent, then the name and address or the title of someone within that entity who will serve as a registered agent must be stated. Section 32 concerns the listing of the commercial resident agent and allows someone to file with the Secretary of State a statement that reads "I am in the business of being a commercial registered agent." Once the commercial registered agent submits that filing to the Secretary of State's Office, it has the effect of deleting that registered agent's name from all the individual filings. They then become part of an online index; someone can enter the name of the newly created commercial registered agent and find every single entity that the commercial registered agent lists.

Section 33 is the termination of a commercial registered agent. It allows a commercial registered agent to declare he is not in business any longer and resign from every entity he formerly represented. Within 31 days, however, that registered agent has to give notice to all of the entities that he represented, allowing time for those entities to locate another registered agent. Section 34 is the change of the resident agent by entity. That means an individual or corporation can decide to change agent, for whatever reason, by filing a statement with the Secretary of State, stating that they no longer want that agent, and then designate a replacement. That action does not require the consent of the outgoing registered agent. Section 35 relates to change of the name or address by a noncommercial registered agent. The noncommercial registered agent is required, by filing with the Secretary of State, to inform the entity. Section 36 relates to change of name, address, or type of organization by the commercial registered agent, by notifying the Secretary of State, and that becomes effective for all of the entities represented by the registered

agent. Section 37 relates to resignation of a registered agent, either commercial or noncommercial, but they must fulfill certain obligations, such as notification to the entities they represent. Section 38 regards appointment of an agent by a nonfiling or nonqualified foreign entity. There are non-Nevada entities who want to have a registered agent in Nevada. This section allows those entities to have a registered agent appointed. However, in subsection 3, the appointment of a registered agent and under this section does not qualify a nonqualified foreign entity to do business in this State and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this State. Section 39 concerns service of process on entities. Section 40 specifies the duties of a registered agent; subsections 1-4, to any represented entity at the address most recently supplied. There are certain requirements for both commercial and noncommercial registered agents to keep certain documents on hand. Section 41 regards jurisdiction, venue, and the appointment or maintenance in this State of a registered agent not by itself creating the basis for personal jurisdiction over the represented entity. In other words, if you have a registered agent in this State, that fact is not sufficient to establish personal jurisdiction over you or the entity with whom you are affiliated. That could be a factor, however, and the court could perhaps ask why you had a registered agent here if you said the State did not have jurisdiction over you.

Sections 42 and 43 are consistent with what is customary for uniform acts. The remaining sections, 44 through 193, are there because the term "resident agent" is being changed to "registered agent." There is information required in filing in the sections just discussed, which leads to changes in all the remaining sections.

I hope the Committee is not misled by the length of the bill. I brought Mr. Scott Anderson with me who is well known in the circle of secretaries of states' offices—and they do talk to each other—and he can answer any questions about procedures.

Chairman Anderson:
That would almost lead you to believe that the resident agents do not talk to each other, from that last statement. I have often wondered about that in dealing with them over the years.

Senator Care:
I unintentionally misled you. They do talk to each other. They had a lot to do with drafting this bill. There are about six or seven resident agents in Nevada. The businesses they represent run the gamut and number into the thousands.

Chairman Anderson:
They are an interesting group, from my experience with them.

Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State:
We are in support of S.B. 242 (R1). We believe that any way we can standardize the provisions for what we would now call "registered agents" between the states and within the State of Nevada would be most helpful to our office. It would also help when dealing with our national groups in trying to develop model acts and model legislation in making sure that we have the same terminology, as well as many of the same processes. There are some new provisions in this bill that would require additional work in the Secretary of State's Office; however, most of these have been anticipated and worked into the enhancement program for our system, so we do not feel there would be any major effect on our Office as far as our systems or the need to return for any financial resources. There is an amendment, and I would like to suggest that Scott Scherer, who is representing the resident agents, speak to this.

Chairman Anderson:
On page 9 on the bill, Section 38.4, line 44 states, "A statement appointing an agent for service of process may not be rejected for filing..." This keeps us in compliance with an earlier concern that you had relative to duplication of names. Does this give you the same protection?

Scott Anderson:
Section 38, subsection 4, relates to an entity that is not on file with the Secretary of State's Office that wishes to appoint a registered agent and would be kept in a separate database. Since it is not an entity filed with the Office, then the same name guidelines would not apply. This is strictly a foreign entity that may not necessarily be qualified in the State of Nevada, or may be registered federally and not required to file with the Secretary of State of Nevada to have a resident agent on file in the State.

Chairman Anderson:
Is it going to cause problems in the Secretary of State's Office?

Scott Anderson:
No, it is not.

Assemblyman Horne:
What is the current practice for attorneys who act as resident agents? Would that have to change under this bill?

Senator Care:
An attorney, a law firm, may be a registered agent for these entities. I have worked for smaller law firms and have been a resident agent for a half dozen entities, and when I received the annual filing I passed it on to the client with instructions to take care of it and send me a copy. Larger law firms could be registered agents for hundreds of entities. They may want to set up a separate entity to act as a commercial registered agent. The bill does not make a distinction between law firms or non-attorneys.

Assemblyman Horne:
One does not have to be an attorney to be a resident agent, but there are some attorneys who do have a small number of clients. I am curious as to whether this bill will require them to do specific things to be a registered agent?

Senator Care:
No, it would not. The more clients one represents as a registered agent, the greater the incentive to become a commercial registered agent.

Scott Anderson:
The requirements in the Secretary of State's Office for filing as a resident agent are the same regardless of the type of entity—attorney, certified public accountant, or private citizen—acting as a resident agent.

Assemblyman Carpenter:
When one is a commercial resident agent, is there a fee charged to the clients? If so, what happens if suddenly the agent sends in a termination notice—does the agent keep the fees?

Senator Care:
As the bill is written, the agent can resign from a corporation that is in good standing or otherwise. Ideally, the corporation will be in good standing, not in default, with all of the filing fees current. I do not know about the larger organizations, but what I normally do as a resident agent is simply pass the annual filing onto the entity with instructions to take care of it. The filing document will state how much is due. It is up to the entity to take care of the filing, not my responsibility as a resident agent. I never see the fees. Other commercial resident agents may operate differently.

Scott Anderson:
The process would be the same as now; there are resident agents who have a contractual agreement with the entities they represent. If they do resign or otherwise stop service, then there would be a private cause of action not taken into consideration by the Secretary of State's Office.

Scott Scherer, representing Nevada Resident Agents Association:
I would like to present a proposed amendment to S.B. 242 (R1), (Exhibit C), that has been reviewed by the Secretary of State's Office, the Nevada Residents Agents Association, CT Corporation, and Senator Care. We are all in agreement and offer this amendment jointly, at least to the Secretary of State's Office, Nevada Resident Agents, and CT Corporation. I do not believe Senator Care has any objection to it, but he can correct me if I am in error.

This amendment would add a new section, Section 39.5, which would give the Secretary of State the authority to adopt regulations to enforce the statutory requirements for registered agents. There has been some question about the breadth of the current authority of the Secretary of State's Office to adopt regulations to do that. This would clarify specifically that authority. It would also give them the authority to go to court to seek an injunction to enjoin a registered agent who was in violation of the statutory requirements, or who may be defrauding the public or promoting illegal activities. This would give the Secretary of State's Office greater strength. The Secretary of State has formed a task force with law enforcement, the industry, and with some business attorneys to examine ways in which to improve the process.

Congress has recently become involved in holding hearings about the effect of shell corporations, the anonymity of shareholders, and different issues that have given them some concern with regard to potential money laundering, terrorist activities, and so on. Most states have rules similar to Nevada, but we are trying to give the Secretary of State some ability to take action to try to satisfy the concerns that have been expressed in Washington, D.C., and hopefully address them in a Nevada fashion rather than in a "one-size-fits-all" national fashion. We feel it is important to give them the authority to do that.

The rest of the amendment basically does one thing throughout the bill. The original bill as introduced took away the current requirement that requires someone appointed as a resident agent to consent to that appointment. That consent was removed in the original version of the bill along with the fees for resigning as a resident agent. The Secretary of State's Office was concerned about that because they built their budget based upon some of that fee revenue, and the amendment puts the fees back in. We were concerned that if one had to pay a fee to resign, it would be fair to be able to consent in the first place before someone just appoints a person to serve as resident agent without their consent. Additionally, with the pressure we are getting from Washington, D.C. to know something about our customers in order to facilitate our due diligence, it would be appropriate to maintain that consent requirement that is in current law. The remaining sections of this amendment accomplish putting in

the requirement that before someone can be appointed as a registered agent, he would have to consent to that appointment.

Chairman Anderson:
Before I become a resident agent I have to agree that I am a resident agent. I can get out of being a resident by giving notice to the Secretary of State's Office that I am no longer the resident agent. What happens to the corporation—could they exist for 31 days before they have to come up with a new resident agent?

Senator Care:
Under the bill, it is effective upon filing. There is a duty for the registered agent who is resigning to notify the entities within 31 days so that the entity losing the resident agent can assign that task to someone else.

Chairman Anderson:
Let us say that I agree to be your resident agent. I receive a check from you as a retainer for my role as a resident agent. Some months pass and I decide that I no longer want to be your resident agent; I give notice to you that I intend to resign my position, and the following week I inform the Secretary of State of my intent. As soon as the Secretary of State recognizes that, I am no longer the resident agent.

Scott Scherer:
The bill, on page 7, Section 33, subsection 2, line 23, states "...a commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed." Therefore it would not take effect immediately. The registered agent would have to continue to serve for those 31 days. For example, if the entity was served with a lawsuit in that time period, they would still have the obligations under the statute to forward that on to the entity they represent during that time period.

Chairman Anderson:
Is the requirement that I must simultaneously inform the entity that I represent?

Scott Scherer:
The current language beginning on line 25 of subsection 3 says the commercial registered agent shall promptly furnish to each entity represented by it with notice of the filing.

Chairman Anderson:
I guess "promptly" is a strange word.

Scott Scherer:
It is somewhat vague.

Assemblyman Horne:
Explain to me again why we have a fee for resigning.

Scott Scherer:
Perhaps Mr. Scott Anderson might be better able to address that. But historically there has been a fee to resign as a resident agent.

Assemblyman Horne:
That does not mean it is right.

Scott Scherer:
I am not suggesting that, but that fee is something that the Secretary of State has built their budget on. From our standpoint, we are not as concerned about paying the fee as about having the ability to consent initially. That is a cost of doing business.

Scott Anderson:
One of the reasons we have that fee for resignation is that there has been some abuse in some cases. Generally, the reason a resident agent terminates is that there has been a failure to pay the resident agent fees, or there has been some act where the resident agent no longer wants to serve. But there have also been those who simply decided they no longer wished to be a resident agent and want to file in the Secretary of State's Office without any type of fee. As Mr. Scherer stated, there are no filings in the Secretary of State's Office that do not require a fee, and we felt it was necessary to continue to charge this historic fee.

Chairman Anderson:
The requirement that you agree is new to this process?

Scott Scherer:
No. The requirement to consent is in current law. For example, if I as an attorney am appointed a resident agent for a particular company client, I actually have to sign the form creating that entity, saying that I have consented to become the resident agent for that company. The current version of this bill would strike out that consent requirement. All we are asking to do is to leave it in.

Assemblyman Horne:
These abuses you mentioned were failure to be paid by client, but what about the attorney with six clients who considers it a pain to do it and decides not to be a resident agent any longer. It is a contractual agreement between you and your clients, so you send them notice that you are not going to provide that service any longer and effective 31 days from now you will no longer be their registered agent. Now I have to pay the Secretary of State to remove my name off the website for those entities?

Scott Anderson:
It would be difficult currently to determine how many they represent; however, under the new system we probably could figure that out. We do not want to set a precedent where we are providing a service to our customers including resident agents without a fee. Therefore we felt it was necessary to keep this fee in.

Assemblyman Cobb:
I am assuming the Secretary of State's Office is fine with this proposed amendment.

Scott Anderson:
Yes, we are fine with this amendment.

Assemblyman Mortenson:
Following up on Mr. Horne's line of questioning, if the registered agent dies does he still have to pay that fee?

Scott Anderson:
I believe the answer is no. But the corporation that is represented by the deceased resident agent is required within a certain period—I believe it is 30 days—to appoint a new resident agent.

Chairman Anderson:
Based upon the question that Mr. Horne asked relative to the fee, let us say I am a resident agent for a corporation and have been for some time. When it comes time for them to pay their annual retainer, they fail to do so. I send them a bill, they still do not pay, so I send another one, and again they do not pay. Now it is going to cost me to resign?

Scott Anderson:
Yes, that is the case currently. The Secretary of State has no way of knowing if there has been a breach of contract between the agent and the entity. We have to rely on the information received.

Chairman Anderson:
So the breach of contract does not constitute a termination of their obligation as resident agent?

Scott Anderson:
That is correct.

Chairman Anderson:
Are there any questions? [There were none.]

Does anyone else wish to speak on S.B. 242 (R1)?

Tom Connelly, Senior Manager, CT Corporation, San Francisco, California:
We are a national registered agent service provider and we are part of the team involved in drafting the Model Registered Agents Act over the last several years. We appreciate the opportunity to work with Secretary Miller's office and with the local agents to put together this bill and bring it to your consideration. We are in support of the bill as well as the amendments offered by the Secretary of State and by the local agents.

CT Corporation is the largest provider of registered agent services. Part of the motivation to bring this bill forward, in addition to standardizing the process, is also to make life simpler for persons who act as registered agents and those who are customers. I have heard a lot of consumer questions about issues such as resignation and fees. On occasion some folks ask us to act as agent, we accept the appointment, and over a period of time we decide if we are not going to get paid we probably would resign. The intent of the Model Registered Agents Act is to make it simple for persons who no longer have a relationship with the company that they represent to get their name off the record. It is not in anyone's interest to continue to have a company on file for which they may not even have a forwarding address. In a perfect world we like to think that we could resign with no fee; however, we understand the realities of administering a state agency. As long as the process is simple and we have the opportunity to consent up front, we bear the risk of having to pay if ultimately we have to resign because our client did not provide us with what we expected.

Assemblyman Carpenter:
What do you charge someone to become a registered agent?

Tom Connelly:
It can vary dramatically depending upon the size of the company as well as the number of additional services beyond acting as registered agent. Some companies charge as little as $75 to $100 per year. Our standard fee starts at $300 per year. Depending on the number of companies we represent, the fee goes down per company, based on the volume of the company and the services they require us to do.

Chairman Anderson:
Are you a resident agent here in Nevada, Mr. Connelly?

Tom Connelly:
Yes. Here in Nevada we operate under the name of the Corporation Trust Company of Nevada. We do business in the law firm of Woodburn & Wedge, in Reno, and we represent about 17,000 business entities in the State.

Scott Scherer:
I want to clarify one thing. To be listed as a commercial registered agent is voluntary. In answer to Mr. Horne's earlier question about particular law firms, they would not necessarily have to be registered as a commercial registered agent if they did not want to be, but they would be able to take advantage of the things that Mr. Connelly alluded to, such as the simplicity in resigning for all of their clients at once, and more importantly, giving notice of an address change for all of their clients at once.

Chairman Anderson:
Are there any other questions? Does anyone else wish to speak on S.B. 242 (R1)? There is one question I forgot to ask. Regarding your amendment, Mr. Scherer, it was not presented on the Senate side because…?

Scott Scherer:
There were a couple of issues. Portions of the amendment were overlooked on the Senate side and they were submitted but not in a timely manner. Unfortunately, I was out of town the day of the hearing, and we also had to work out the language because we wanted it to be agreed upon between our client, Nevada Resident Agents, CT Corporation, and the Secretary of State's Office. We were still working on it, especially as regarded the regulatory authority in the Secretary of State's Office.

Chairman Anderson:
Regarding the dollar question, Mr. Scott Anderson, is the fee going to be changed, is it going to be raised? Is the bill going to be worked out with the Governor's Office?

Scott Anderson:
My understanding is that the fees remain the same as in current statute. So there would not be any additional fee. We did offer some amendatory language for the regulation; however, it was quite broad and there were some concerns. We spoke with Senator Care and both the Nevada Resident Agents Association and CT Corporation, and we decided that we would pull it on the Senate side with the understanding that we would get together and arrive at something that would work for all parties. We have been trying to get in some sort of regulatory language since 1997, and I believe this will get all the parties together in a public forum to develop a structure that works for everyone.

Scott Scherer:
On the fee question, there are some new fees in Section 29 for commercial registered agents because being a commercial registered agent is new. Again, it is voluntary, but if it is justified by your business and you want that ease of operation with the Secretary of State's Office for multiple clients, then you can choose to pay that fee and become listed.

Chairman Anderson:
I wanted to make sure we got that in the record as to why we were going to two-thirds—I knew there had to be something. We will close the hearing on S.B. 242 (R1).

Let us turn our attention to a simpler and dramatically smaller bill, Senate Bill 291 (1st Reprint). However, it is more controversial.

Senate Bill 291 (1st Reprint): **Revises certain provisions governing civil practice in actions in which a plaintiff is a nonresident or a foreign corporation. (BDR 2-1309)**

Randall Tindall, Attorney at Law, Las Vegas:
I am an attorney in Las Vegas. I am here to support S.B. 291 (R1).

Senate Bill 291 (R1) looks to amend NRS 18.130, the Nonresident Cost Bond. Currently, when a nonresident plaintiff files suit against a Nevada defendant, that plaintiff, if requested to do so, must file a $500 bond with the court. The purpose of the bond is to pay the defendant's costs in the event the plaintiff does not prevail. The second section of NRS 18.130 gives the court discretion to increase that $500 later in the case after the defendant has incurred more costs. The court now has discretion. What typically happens is a nonresident plaintiff files suit and pays the $500. In 1975 that $500 was established. That money would go a long way since the costs were not as great. Now, for a defendant, the $500 is eaten up quickly with the filing fee, runner's fees, and a

deposition. Then the defendant is incurring costs beyond the $500. The first part I would like to have changed to $1,000. That amount still does not cover the defendant very far into the litigation, but it is not an unduly burdensome amount for a plaintiff to have to pay at the outset.

The second part of the statute, where the cost can be increased later at the court's discretion, takes the emphasis off the low amount of the initial amount. It has been the law in Nevada for some time that the money is posted for a defendant's benefit. When the request is made, the court should be exercising its discretion to make the nonresident plaintiff pay more costs, but that rarely is the case. I have been litigating this issue before Judicial District Court for ten years and in my experience judges routinely exercise their discretion not to allow additional costs. In some cases some judges would, but they would never allow all of the defendant's costs, which does not promote the purpose of the statute. For that reason, I want it amended to take away the court's discretion. When an application is made later in the case, the court will be required to make the nonresident plaintiff post all of the defendant's costs that it has incurred up to that point as well as costs that have been estimated to be incurred, experts' costs through trial, court reporter fees, jury per diem, and other reasonable costs in NRS 18.005.

I know well what the opposition to this bill will be. First, if this statute is amended it will deny litigants access to Nevada's courts. That simply is not the case. Ninety-nine percent of the cases that would be covered under this are going to be personal injury cases, which are being handled on a contingency fee. As we all know, contingency fees are called the "poor person's key to the courthouse." This is not going to deny a litigant's access to the court because the litigant is not going to have to pay the money. It is going to be the personal injury attorney who is taking the case, often a frivolous lawsuit, on a contingency fee basis. It will be an overhead expense like any other deposition, runner's fees, and so on.

The opposition may argue that the statute is going to be unconstitutional. I believe this statute has been in existence in some form since 1911. Had there been a constitutional issue, it would have been brought forward by now. It is my understanding that most every state has a similar statute that provides for a nonresident plaintiff to post a defendant's costs. If there is a situation where a plaintiff is proceeding *in forma pauperis,* they will not be affected; it will not take away the ability of a genuinely indigent person to get access to the court. There are forms for that available at the county clerk's office and if they meet the requirements then this statute will not affect them. These are cases typically handled by personal injury attorneys under contingency fee agreements.

I am asking that you change this law so that it is enforced as it was meant to be enforced all these years. This is a situation where a law exists but enforcement of it is left completely up to the whim of whatever district court judge is presiding over the case, and I do not believe that is the way the law is supposed to be. That is the reason we have laws—to take away discretion for this type of enforcement. Many times I have gone before a court with $15,000 to $20,000 in my client's costs wrapped up in a frivolous lawsuit. I ask the court for an increase, and the court totally disregards what the plaintiff's counsel is arguing—that of constitutionality, and so on. It just goes in one ear and out the other. Typically there is not even any argument considered, and it is simply the judge saying, "I don't want to do that." I have asked him why and his response is, "Well, I just don't want to...and if you want it changed, go to the Legislature and change it." That is what I am here to do today. I would like you to make an amendment to this that requires a judge to enforce the law that is already in existence. The law clearly provides for protection for Nevada's defendants against nonresident claims. I have had two cases that I have taken to trial. In one, early in the case the court denied the increase in costs, so my client gets to trial with $15,000 to $20,000 in costs, the plaintiff loses the case, and my client has no recourse to recover that money from the nonresident. The plaintiff declared bankruptcy to avoid having to pay any money.

Assemblyman Horne:
I can understand increasing to $1,000, but I am having a problem with taking away discretion and the mandatory provisions on increase in the security. You said that these were costs that could be borne as overhead by plaintiff's attorney. You said that 99 percent of the cases are personal injury, and I would venture a guess that the majority of those are cases where the defendant is covered by an insurance company. Who could better bear a cost—an insurance company or an attorney? There are large law firms, but also small practitioners that practice in this area and you just said you had a client that had $15,000 in costs going into trial. I know a number of sole practitioners who practice in this area and do contingency work but could not bear that cost. Would this not be shifting a burden onto some professionals who could not bear that cost from a larger group that probably could bear it?

Randall Tindall:
I do not think so. That is the cost of doing business. Keep in mind, of those 99 percent personal injury cases, how many are frivolous lawsuits? What we want to do is curb frivolous lawsuits. Obviously, the insurance companies are rich, but any plaintiff's counsel who is running a case is fully equipped to handle that type of burden, and that will place a burden on them. That increase will

make them think a little more about whether or not they are going to file a frivolous lawsuit.

Assemblyman Horne:
With all due respect, Mr. Tindall, I think one man's frivolous lawsuit is another man's legitimate one. I have been fortunate to work in both a defense firm and a personal injury firm, and I have seen questionable cases on both sides. There are also sanctions for such frivolous activities that judges can impose if they wish. If they find someone inappropriately using the legal system, we have sanctions for that as well.

Randall Tindall:
I disagree. You almost have to show fraud to a district court judge for those to be applied. I believe you are referring to NRCP 11, or perhaps a local court rule. I have never seen it applied. I have never seen a judge say, "This lawsuit was blatantly frivolous," even though it may have been, and sanctioned someone. The sanction is in NRS 18.130, which provides that a defendant is required to be protected from out-of-state litigants. If the lawsuit is frivolous, the defendant has no recourse otherwise.

Assemblyman Horne:
In having no recourse, defendants do not have the ability for countersuits, nor can they ask for attorney's costs and fees, particularly in areas where you make an offer of judgment and it is not met. There are some mechanisms on recouping those losses should the defendant prevail. Is that correct?

Randall Tindall:
There are some mechanisms, but your question almost seems to suggest that we have several laws in place. Why should we enforce this one? You should enforce this one because the law is on the books and the case law that the Supreme Court has looked at when analyzing this statute says it is posted for a defendant's benefit. That is the law. What we are speaking of here is the recourse, if the law would be enforced. What I am asking you to do is to amend it so that it will be enforced. We have a law that requires enforcement, but there is no enforcement unless the judge decides he or she wants to do that.

As far as offer of judgment, the case I discussed earlier had an offer of judgment in. The court did not award costs or fees.

Assemblyman Cobb:
This bill deals with a $1,000 maximum security for out-of-state plaintiffs. Can you please tell us why it is so important to have a security against an out-of-state plaintiff or foreign corporation?

Randall Tindall:
It is almost impossible to attach an out-of-state litigant's assets, if they have any. They are in a different state, there is no law that allows you to do that, and we have NRS 18.130 which is required to protect defendants against that. That is why the law is in place because the Legislature, I believe around 1911, decided that protection needed to be put in place.

Chairman Anderson:
Are there any other questions from the Committee? Does anyone else wish to speak in support? In opposition I have Mr. Burris in the south, and Mr. Bradley here, both from Nevada Trial Lawyers Association.

Steve Burris, representing Nevada Trial Lawyers Association:
I am an attorney with the law firm of Burris, Thomas & Springberg, in Las Vegas, and I am against S.B 291 (R1). This bill will impose a barrier to access to the courts to persons of limited income. The second paragraph is the real problem where it says the court must kick up the amount of the bond. The bonds are not cheap; currently the cost is about 20 cents per dollar. If this law is passed, every case that is filed involving an out-of-state resident is going to have defense lawyers come in and say, "We think this case is going to trial, we are going to have to hire all kinds of experts, and our costs on this are going to be at least $25,000." The court could be tied up with scores, perhaps hundreds of these hearings every year, so it will burden the court resources. Should the judge impose a bond of $25,000 regardless of who pays it, it is a $5,000 bond. I listed the out-of-state plaintiffs I currently have and all five are senior citizens. One is a woman who lives in Bullhead City. She crossed the river to go to a buffet in Laughlin and was struck by a drunk driver, resulting in very serious injuries. The only issue in her case is the amount of damages, and so far the insurance company is jerking her around because she is elderly, and they want to make this take as long as possible so she will settle more cheaply. If she has a $30,000 to $40,000 case, for instance, and she has to come up with a $25,000 cost bond of $5,000, she cannot afford it, and I am not sure an attorney is going to want to pay for it. Basically it ends up being a sword to keep people with righteous claims out of court.

I do not know where Mr. Tindall sees all these frivolous lawsuits, but I can tell you with an out-of-state plaintiff, I am going to make sure that that is a very valid case before I file because these people have to come to Nevada two or

three times for different litigation procedures. That fact alone creates more of a barrier to filing a lawsuit than if they lived in Nevada.

The fact remains that this is going to impose a great cost on the courts and a barrier to people. As far as whether it is constitutional, I do not know that anyone can come up with a rational basis to distinguish between that client I just spoke of and one who lived just half a mile across the river in Laughlin. It is the same plaintiff, the same thing happened to her, and to say that because she lived across the river she cannot have access to our courts sounds to me like a violation of interstate commerce. This law is basically an anachronism. When Mr. Tindall says, "They live clear across the border in California, how can we ever collect from them?" Perhaps back in 1911 there was some truth to that, but there is the Uniform Enforcement of Judgments Act, where one simply registers the judgment in California or Arizona. It is just as easy to find a collection agency or collection law firm in Phoenix as in Las Vegas. In the 21st century there is not much difference in trying to collect from someone in Las Vegas versus someone in San Bernardino. Also, I want to point out that this law does not cut both ways. If the plaintiff must post bond for costs and so forth then why should it not be the same for the defendant? The fact is the system we now have says "loser pays." We wait until the end of the case to see who wins and then we assess the costs. To front load the cost to pay the other side in advance is like having a mini-trial at the start of the case by arguing over these things, and there is no reason for it. Our judges and our courts already have enough to do.

Chairman Anderson:
One of the issues, you said, was that it was going to cost the court more. Where is the increased cost to the court in this process?

Steve Burris:
There would have to be evidentiary hearings, when the defendant comes in and says, "This is going to cost me $20,000." The most contentious hearings I see now in court are the ones that happen after the trial is over and the winning side is presenting its costs, both sides arguing over whether they are reasonable or not. When you get into the issue of proposing hypothetical costs, whether they are reasonable, and whether the other side has a good chance of prevailing, I can imagine 45-minute-long hearings on all of those motions. Every out-of-state plaintiff that files, the defense firms are going to take a shot at it. That would add up to hundreds of hours of evidentiary hearings over something that does not serve any good purpose.

Assemblyman Cobb:
What is the standard under current law whereby a judge would order a greater undertaking?

Steve Burris:
I think the current law just says the judge may in his discretion order an increased undertaking upon proof that the original undertaking is insufficient. Mr. Tindall is correct in that most judges currently do not like the fact that someone is trying to pre-try their case and make the judge decide on who wins or loses right at the start. The reality is 99 percent of the cases that are filed get settled. It is because they are legitimate and people just have to agree on the number. To come in and propose that one is going to have all these costs for trial and expert testimony is phony because the cases do not go that far. Why decide in advance, which is what would happen, that the defense will prevail, and therefore load up a bond for his costs?

Assemblyman Cobb:
Given the standard that must be met and the discretion after the judge believes that standard has been met, is it a very limited circumstance in which an undertaking is actually increased?

Steve Burris:
I see defendants rarely filing these motions. If your question is, are the motions regularly filed? No, they are not. Do the judges regularly grant them when they are? No. What is the standard that the judge must look at? I do not know if the statute sets it out, but I think he has to decide if this is really going to trial. Is the defendant really going to win? What are his costs going to be? That is quite a crystal ball to ask the judge to look into, and most of them rightfully do not want to get into crystal-ball gazing.

Bill Bradley, representing Nevada Trial Lawyers Association:
I endorse everything that Mr. Burris said. This statute, quite frankly, is one of the few statutes I have encountered that I believe should be abolished, not strengthened.

I want to discuss what happens in one of these cases, and this only applies to a nonresident defendant. I find it cynical that we encourage visitors to come to our State, but when they do and if they happen to get hurt, we are going to "stick it to them" under this bill. I am troubled by that. If that person is legitimately hurt and we file a lawsuit on their behalf, the defendant is served, and the first document we get is a request for nonresident bond for $500. Some firms will pay that, some will go to a bonding company. This is great bill for bonding companies and I am surprised they are not here supporting it

because if it goes up to $1,000, they will make more money, which I also struggle with. The bond is posted either by the lawyer or by the victim. Unfortunately many victims may be unable to work but still have all their regular expenses and cannot afford it, so there has to be another source, which is the lawyer. Sometimes I worry that even that might be determined to be unethical—a lawyer advancing those costs on behalf of their client. In any event, the nonresident bond is posted, and the defense lawyer for the insurance company then answers and the case starts. Mr. Burris is correct—99 percent of these cases settle. At the conclusion of the settlement, the bond is released, the bond company made its money, the plaintiff took the burden of the cost of the bond as one of their expenses in pursuing their case, and therefore their award is slightly decreased by the cost of the bond.

In the 26 years I have been practicing, I have never seen a single hearing where I have had an insurance defense lawyer come in and ask the judge under NRS 18.130 for an additional undertaking. In fact, it is amazing what is sometimes found when reading these statutes. I agree with Mr. Burris that in the 21st century with the Uniform Enforcement of Judgment Act, what would happen in the rare case where costs are awarded against this nonresident defendant, a court would enter a judgment against that nonresident defendant. That judgment would be repeated over to the State from which that nonresident came, and it could be enforced.

I am somewhat surprised by Mr. Tindall's comment that the only rule to enforce these judgments is Rule 11. Many of you were not on this Committee when the Nevada Trial Lawyers sponsored, I believe in 1997, the "Lawyer Pays" bill. *Nevada Revised Statutes* 7.085 holds a lawyer personally accountable for all costs associated with either maintaining the filing or maintaining a frivolous case, or equally, cutting both ways, the frivolous defense of a meritorious case. That is a bill on which we and this Committee worked hard and which passed. Therefore, in the event where there is frivolous activity, Nevada Trial Lawyers felt it should be the lawyer who is encouraging the client to pursue that case should be held personally responsible, not the client.

Chairman Anderson, you asked about the increased costs. If you refer to subsection 2 on the back page of the bill, line 14, it talks about a new or additional undertaking. The new language is "*must*" be ordered by the court or judge upon proof..." What will happen is that lawyers will be filing affidavits. Mr. Tindall and his firm would be filing affidavits saying that they are going to be charging such and such for this expert and that expert, we are going to be filing opposing briefs that say that is ridiculous, our expert charges half that much, or that the expert is not necessary. In Las Vegas, because of their motion calendar, this will set up argument, resulting in additional lawyer's time,

additional court time, and driving up the cost of litigation. To get a handle on just how important this is, I note that none of the "Big Four" insurance companies is present.

I know that this Committee occasionally looks for ways to shorten our laws as opposed to lengthening them, and this is one law that is antiquated; it is no longer necessary in today's environment. Rather than see this bill amended to strengthen it and make the judge's discretion nondiscretion, this is a law that could be taken off our books.

Assemblyman Horne:
Mr. Bradley, you are in opposition to the increase of the $1,000 as well as the removal of the discretionary language in paragraph 2?

Bill Bradley:
Yes, I am. It is a formality in today's environment. I have never had a bond chased because these cases successfully resolve. If there are costs at the end of the case, if we lose, the costs are going to be pursued by the insurance company against that individual. However, once that case starts moving forward, there may be an appeal, and everyone talks about dropping the costs if there is no appeal. This law goes back to 1911; there is no longer a reason for this law—it is out of date.

Chairman Anderson:
Is there any further opposition to S.B 291(R1)? [There was none.] We will close the hearing on S.B. 291(R1).
We will open the hearing on Senate Bill 317 (1st Reprint).

Senate Bill 317 (1st Reprint): **Makes various changes to provisions relating to agents for service of process and business entities. (BDR 7-445)**

Scott Scherer, representing Nevada Resident Agents Association:
I am appearing on behalf of Nevada Resident Agents Association. Senate Bill 317 (1st Reprint) does three things. First, and most important, it provides a simple mechanism for enforcing judgments against small, closely-held corporations—i.e., to create a charging order that currently exists for partnerships in the State of Nevada—and would now allow that charging order for small corporations with 75 shareholders or less not publicly traded, which is the threshold for subchapter S corporations. The reason for this is there is not a ready public market for small, closely-held corporations, so if the shares were to be seized—if there was a judgment against someone who happened to own shares in a small corporation—it is difficult to recognize the value out of those shares. Moreover, most of those closely-held corporations are family-owned

and they would then be disrupted. This mechanism currently exists for partnerships in the State, and this would simply apply it to small corporations as well. There would be a charging order, so that any dividends or income from that corporation to which the shareholder was entitled would go to pay the judgment creditor. It would be similar to a writ of garnishment, but instead of garnishing wages, it would attach to their stream of income from that corporation. It is an appropriate balance for those small companies. It would not apply to someone who owns all of the shares; in that case, the entire company could be taken and sold.

Section 2 provides that a registered agent for multiple business entities—i.e., one in the business of being a registered agent—must have their office in a location properly zoned for that business. The reason is that some people will conduct business from their home. Some may live in gated communities and there have been instances where a process server has tried to serve the registered agent and been unable to gain access. It would be left to the local governments to determine the appropriate zone for that use. The bill simply states that the registered agent comply with the local zoning laws.

Section 3 provides that the records of a resident agent have to be kept for three years following resignation. This goes back to the testimony I gave earlier on S.B. 242 (1st Reprint) with regard to requests from law enforcement and others in Washington, D.C., saying that we must have a greater knowledge of our customers and maintain records that they might have access to through appropriate means to aid them in their investigations. It also gives the resident agent a bright line as to their obligations. Currently there is no standard for maintaining records. The rest of the bill adds to the provisions in current law regarding enforcement of judgment and writs of garnishment, and are procedural with regard to implementing Section 1, creating a charging order of protection for small, closely-held corporations.

Assemblyman Carpenter:
Where you say that the address must be in a location that is zoned for such use, sometimes in the rural areas there may not be any zoning. So how would this bill apply in those situations?

Scott Scherer:
The intent was to simply leave it to the local governments to decide the appropriate zoning. If it is not contrary to the local ordinances it would not be a violation of this statute. The idea was that if one was running a business from home and that was contrary to the local ordinances, it would be a violation of this statute. Going back to S.B. 242 (R1), the amendment we offered giving the Secretary of State regulatory authority would tie in there, and they could

take some action against the commercial registered agent to enforce this statutory requirement. Each local government would decide what zoning was appropriate.

Assemblyman Carpenter:
What if one is running a business from their home and it is not actually zoned commercial. Would that be a problem here, if it was residential?

Scott Scherer:
It would be a problem if the local government said it was a problem—if they say that kind of business cannot be conducted at that location because it is zoned residential. If that particular use is minimal and is permissible in a residential area, and the permit to do that had been obtained, then it could be done. If the local government says no, that the business has to be conducted in a commercial or other designated zone, then one would have to comply. This would apply to the commercial registered agent, not one who was simply a registered agent, as I have been for nonprofits, youth sports leagues, charities, or others, where I have agreed to serve but did not charge a fee.

Chairman Anderson:
Apparently the question of residence is the concern. Does this bill become discriminatory toward smaller resident agents who may not be located in the proper zoning area?

Scott Scherer:
I do not believe so. They should already be in compliance with the local ordinances. This bill simply brings it into the state law and gives the Secretary of State some jurisdiction to enforce that. However, certainly it is more likely that a smaller registered agent is going to be trying to operate in a residential zone or another zone that may not be appropriate. The purpose of a registered agent is to be available for service of process and documents, and if they live in a gated community, or someplace not accessible to the public, that defeats the purpose.

Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State:
The Secretary of State is not opposed to this legislation; specifically we are supportive of anything that allows for proper service. That is why registered agents are appointed or consent to serve.
Chairman Anderson:
I see no further questions. Does anyone wish to speak in opposition? [There was no one.] I have received this morning an email in opposition from Business First Formations, Inc., (Exhibit D) signed by Megan Hughes. Her bottom line is

that as written, it creates an unnecessary burden on small business owners by requiring them to establish a staffed commercial location, and an unfair financial advantage for attorneys and CPAs by exempting them from the registration and yearly licensing requirement, and does not achieve the intended goal of timely service and meaningful safeguards for clients. We will make sure you all receive copies and will include it in the meeting record.

Is there anything further on S.B. 317 (R1)? [There was nothing.] We will close the hearing on S.B. 317 (R1).

[Meeting adjourned at 10:43 a.m.]

RESPECTFULLY SUBMITTED:

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Darlene Rubin
Committee Secretary

APPROVED BY:

____

Assemblyman Bernie Anderson, Chair

DATE:____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 7, 2007 **Time of Meeting: 9:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign In Sheets
SB 242	C	Scott Scherer, Nevada Resident Agents Association	Proposed Amendment to SB 242
SB 317	D	Megan Hughes, Business First Formations (By email)	Objection to be entered on the record