

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

JANUARY 23, 1979

The meeting was called to order at 10:00 am, Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

SB 17 Makes available garnishment in aid of execution of judgments in small claims court.

Senator Raggio stated that last session we passed a bill that was recommended by the District Courts in Las Vegas. It was to clarify the law, and to require a writ of garnishment be issued in justice court matters in aid of execution. Technically you needed a writ of garnishment and the law didn't provide for one, so we enacted a measure which required that. But, as it was interpreted by the District Attorney's office in Washoe County, and also the Attorney General's office, it stripped the small claims court of the right to issue writs of garnishment in aid of execution of their judgments, so this bill has been requested to correct that problem. It will now allow the small claims court to go ahead and issue garnishment as they always did in the past and we had no intention last session of stripping them of that power.

Senator Close stated that this is a power which exists in district courts only after judgment.

Senator Hernstadt said that Senator McCorkle had explained to him that he had some small claims court and he was unable to do anything with them, and so he has requested this bill.

Senator Ashworth asked that the difference be explained between garnishment, which relates to one thing, relating to possession of the third person, and we are talking about attachment which is another thing, and then execution.

Senator McCorkle, as introducer, testified that right now the way it works, the business man is unable to collect in the case of small claims judgment, or anyone that has been wronged by a consumer. All this bill does, is give some legitimate rights to collect a debt. Right now you can collect on a car, but there are limitations on the value. Many times the judgment debtor has no property, so I am trying to give us some rights if there is somebody without property.

Frank Daykin testified that as it reads, no attachment or garnishment may issue before judgment, but execution including garnishment, in aid may issue after attachment, so you do not change the law of attachment in any way in this bill. This is a prejudgment remedy, whereas execution is a post judgment remedy and this clarifies it in the statute. The law before 1977 was interpreted to allow in writ of garnishment after judgment in small claims court. I think it was misinterpreted but this was the practice and what this does is to confirm the practice as it existed before 1977. The attachment is a remedy by which the defendants goods are taken and held by the officer pending the judgment of the court, so that anytime thereafter, means at any time after the issuance of the complaint but necessarily before judgment, because after judgment you would have a writ of execution to levy upon the goods under NRS 73020. It is needed there because if it is not there, the plaintiff, in a small claims action could obtain a writ of attachment before he got his judgment. So the general law would apply.

Senator Dodge moved "do pass".
Senator Hernstadt seconded the motion.
The motion carried unanimously.

SCR 2 Urges Nevada supreme court to regulate legal assistants.

Senator Ashworth asked why the licensing of legal assistants was done by this type of a resolution.

Frank Daykin stated this is because every vocation, except that of lawyers is considered to be under the control of the legislature. The lawyers have been considered for the last 700 years or so, exclusively or primarily under the jurisdiction of the courts, therefore, my advice, was that the legislature call upon the courts to regulate these people rather than undertaking to do it themselves. Otherwise, it would be something like saying the court would regulate nurses, but the legislature would regulate physicians.

Senator Raggio stated that this bill recognizes the increasing role that is being played by the legal assistants and para-legal people. Many major law offices have increasing numbers of these people. If we accept the principle that the lawyer, as a profession should be regulated, I think it follows logically that those who perform these roles as para-legal or legal assistants should be under some circumscription or designated responsibility not only to the profession that they serve, but to the people of this state who the lawyers serve. It has been pointed out to me that there should be at least some urging of the court to set down some licensure provision, or some rules and regulations, governing the conduct of para-legal and legal assistants.

Senator Dodge asked if the State Bar had ever asked the Supreme Court to do this. He had some reservation as he felt the legislature ought to preserve the checks and balances relationship, separation of powers, as much as possible, but sometimes the court gets a little offended at the legislature trying to tell them how they ought to run the railroad.

Senator Close stated that this all falls back on the office of the attorney, as he is responsible for any actions that any employee of his office takes. He asked if there were no objections, they would hold the bill until Senator Raggio asked that it be brought back up for hearing and input from the bar association.

There being no objections it will be rescheduled for further hearings.

*
SJR 10 Proposes constitutional amendment to establish staggered terms for district judges.

Senator Sloan stated that he had talked with two judges who had some concern over this bill. They felt it would cut short some of the terms and that it should go into effect only after they had served the terms they were elected for in 1978.

Frank Daykin stated that there would be problems if you did it any way other than this because in some way you have to get them over into a group of staggered terms. They would draw by lots into three classes. Of course, it is true that in terms of first class they are cut off two years from the term for which they thought they were elected in 1978. He does not feel there is a problem under the United States Constitution, and there is not one under the Constitution of the State of Nevada, as this is a constitutional amend-

ment. The U.S. Supreme Court held in the case of Shamburger vs. Ferrari that a constitutional amendment could cut off the term of an officer even if he had been elected at the same election which ratified the constitutional amendment. This provided the method of dividing them into lots by classes. The Court specifically sustained that with respect to the Senator's terms under the re-apportionment.

Mr. Daykin further stated that this measure had passed last session and if approved again this session, it would then go on the ballot at the next general election.

Senator Dodge moved that SJR 10 of the 59th Session be passed out of Committee with a "Do Pass" recommendation.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

The following items were presented by Senator Raggio for committee introduction:

- BDR 1-393 Revises provisions relating to disqualification of judges. (SB 104)
- BDR 14-399 Requires bail to continue through different proceedings on same charge. (SB 103)
- BDR 1-395 Adds to procedural requirements for disqualification of judges. (SB 102)

The above measures were unanimously approved for introduction.

The following items were unanimously approved for committee introduction:

- BDR 2-385 Limits peremptory challenges of jurors by each side. (SB 101)
- BDR 1-344 Revises formual for determining amount of district judges' pensions. (SB 100)
- BDR 3-274 Consolidates various provisions relating to wrongful death actions. (SB 99)
- BDR 3-715 Limits liability of manufacturers and sellers for defective products. (SB 106)

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- BDR 16-416 Prohibits making of untrue or misleading statement to another with intent to induce payment or obligation. (SB 107)
- BDR 10-418 Clarifies procedures and requirements for disclaimers of property interests. (SB 105)
- BDR 17-108 Corrects names of certain divisions of legislative counsel bureau. (SB 97)
- BDR 2-118 Permits actions against political subdivisions without naming members of their governing bodies. (SB 114)
- BDR S-110 Makes technical correction to chapter 561, Statutes of Nevada 1977. (SB 113)
- BDR S-183 Amends title of chapter 567, Statutes of Nevada 1977, relating to crimes and punishments. (SB 112)
- BDR 1-111 Reinstates provision for one change of judge upon filing of affidavit alleging bias. (SB 111)
- BDR 19-112 Removes power of secretary of state to commission notaries public. (SB 94)
- BDR 7-291 Resolves conflict in description of document to be filed with secretary of state by foreign corporations. (SB 110)
- BDR 7-123 Changes date for filing certain corporation reports. (SB 109)
- BDR 14-391 Makes a technical change concerning challenges to sufficiency of evidence before grand jury. (SB 108)
- BDR S-106 Ratifies technical corrections made to multiple amendments of sections of NRS. (SB 115)

Senator Close informed the Committee that Senator Keith Ashworth had requested that they introduce BDR 10-196 (Provides regulation in increases in rent and service fees charged in mobile home parks.)

Senator Ford stated that there is a bill presently before the Assembly, AB 100 (Provides for regulation of increases in rents in certain mobile home parks and payment of costs of removal of mobile homes under certain circumstances.) which deals with the same problem.

It was the decision of the Committee to withhold introduction of this measure pending action by the Assembly on AB 100.

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There being no further business, the meeting was adjourned.

Respectfully submitted,

Virginia C. Letts, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman

S. B. 17

SENATE BILL NO. 17—SENATORS McCORKLE AND JACOBSEN

JANUARY 16, 1979

—○—
Referred to Committee on Judiciary

SUMMARY—Makes available garnishment in aid of execution of judgments in small claims court. (BDR 6-537)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to small claims courts; specifically authorizing garnishment in aid of execution of judgments of small claims courts; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. NRS 73.020 is hereby amended to read as follows:
2 73.020 No attachment or garnishment [shall] *may issue before*
3 *judgment* in cases mentioned in this chapter, but execution, *including*
4 *garnishment in aid of execution as provided in NRS 21.120*, may issue
5 [in the manner prescribed by law,] as in other cases arising in the
6 justice's court.

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S. J. R. 10 of the 59th Session

SENATE JOINT RESOLUTION NO. 10—SENATORS GIBSON,
DODGE, CLOSE, FAISS, GLASER, YOUNG, BRYAN, FOOTE,
SCHOFIELD, RAGGIO, HILBRECHT, ASHWORTH AND
LAMB

FEBRUARY 1, 1977

Referred to Committee on Judiciary

SUMMARY—Proposes constitutional amendment to establish staggered
terms for district judges. (BDR C-656)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada constitution
to provide for the election of one-third of the district judges at each general
election.

1 *Resolved by the Senate and Assembly of the State of Nevada, jointly,*
2 That section 5 of article 6 of the constitution of the State of Nevada be
3 amended to read as follows:

4 SEC. 5. [The State is hereby divided in to Nine Judicial Districts of
5 which the county of Storey shall constitute the First; The county of
6 Ormsby the Second; the county of Lyon the Third; The county of Washoe
7 the Fourth; The counties of Nye and Churchill the Fifth; The county of
8 Humboldt the Sixth; The county of Lander the Seventh; The county of
9 Douglas the Eighth; and the county of Esmeralda the Ninth. The county
10 of Roop shall be attached to the county of Washoe for judicial purposes
11 until otherwise provided by law. The Legislature, may however, provide
12 by law for an alteration in the boundaries or divisions of the Districts
13 herein prescribed, and also for increasing or diminishing the number of
14 the Judicial Districts and Judges therein. But no such change shall take
15 effect, except in case of a vacancy, or the expiration of the term of an
16 incumbent of the Office. At the first general election under this Constitu-
17 tion there shall be elected in each of the respective Districts (except
18 as in this Section hereafter otherwise provided) One District Judge, who
19 shall hold Office from and including the first Monday of December AD.
20 Eighteen hundred and Sixty four and until the first Monday of January
21 in the year Eighteen hundred and Sixty seven. After the said first election,
22 there shall be elected at the General election which immediately precedes
23 the expiration of the term of his predecessor, One District Judge in each
24 of the respective Judicial Districts (except in the First District as in this
25 Section hereinafter provided.) The District Judges shall be elected by the

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.