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MEMBERS PRESENT: Chairman Stewart  
Vice Chairman Sader  
Mr. Thompson  
Miss Foley  
Mr. Beyer  
Mr. Chaney  
Mr. Malone  
Mrs. Cafferata  
Mrs. Ham  
Mr. Banner

MEMBERS ABSENT: Mr. Price (Excused)

GUESTS PRESENT: Tom Davis, Nevada Judges Association  
Pat Mulroy, Clark County  
Jim Joyce, Nevada Judges Association  
Bryce Wilson, Nevada Association of Counties  
Bob Sullivan, Carson River Basin  
Lynnette Beyer

Chairman Stewart called the meeting to order at 8:10 a.m. and asked for action on AB 234.

AB 234: Provides alternative to grand jury proceedings.

Mrs. Cafferata moved INDEFINITELY POSTPONE AB 234, seconded by Mr. Thompson, and carried by a majority vote, Mr. Banner, Mr. Sader, Mr. Price and Miss Foley being absent for the vote.

AB 255: Reduces period required for sale of goods in storage to satisfy liens.

Chairman Stewart reminded the committee that it was suggested at the previous hearing that the people who own the goods should be allowed to purchase them right up to the time of sale. The warehouse people are amenable to that. He stated he had reviewed the proposed amendments prepared by Attorney Keith Lee (EXHIBIT A) and felt they accomplished the desired results.

Mrs. Cafferata moved AMEND AND DO PASS AB 255 in accordance with EXHIBIT A, seconded by Mr. Chaney, and carried by majority vote, Mr. Banner, Mr. Sader, Mr. Price and Miss Foley being absent for the vote.

AB 340: Provides procedure for fixing salaries of justices of peace and police judges.

Chairman Stewart stated that beginning with Section 10 of the bill, having to do with police judges, has in part been taken care of by AB 310 which has already been approved. AB 310 allows the city council to raise salaries for municipal court judges during their terms.

Carson City JP, Tom Davis, stated that at the previous hearing some of the terminology had been discussed, namely line 1 at page 2, and it had been suggested that language be changed to read "up to 95%". He indicated it is virtually impossible for most of the communities and townships to raise that salary at 95% of the district judge. Therefore, upon merit or work load, a JP or muni judge could be entitled to receive that amount.

In addition, SB 440 raises the civil fees which appear in this bill at line 24, page 2. Chairman Stewart asked if the Senate Bill also addressed the salaries of JP's. Judge Davis stated it did not. Chairman Stewart pointed out that the changes in civil fees will be handled according to a conflict amendment resulting from SB 440 in the event both bills pass.

Chairman Stewart asked if there were any other sections of SB 440 which are duplicated in AB 340. Judge Davis stated there were not.

At Section 13, line 5, Judge Davis commented there should be more clarity where it repeals NRS 4.080. NRS 4.215 would repeal the statute that disallows the private practice of law in communities of over 60,000. He stated that issue is addressed in other areas.

Judge Davis referred the committee to lines 16 through 19 of page 5 where it refers to private practice. Line 1, page 2 also touches on the private practice of law. To various questions from the committee, Judge Davis explained that many people feel that the JP should not have a private practice of law and they should spend the entire time devoted to the duties of being a judge. There is a potential conflict. Chairman Stewart commented that this will eliminate the practice of law by full time judges. The other JP's or muni judges are still entitled to practice law as long as it does not interfere with their duties. He added that the county commissioners determine which judges will be full time and pay them accordingly. If they are paid full time, then they cannot practice law. Part time JP's are allowed to practice.

Bryce Wilson, representing the Nevada Association of Counties, agreed with Judge Davis that line 1, page 2, after having coordinated with a number of the counties, should at least be changed to "up to" instead of "equal to". There is some thought that even that allows too much leeway. Certainly, the terminology "equal to 95%" creates the wrong impression as to whether or not it is mandatory to pay 95%.

At Section 8, page 4, line 25, Mr. Wilson suggested there may be a little confusion as to which county should foot the bill. He recommended that the language be clarified at line 25 by inserting after "fund" the words "of the county in which he is acting".

Since there was no further testimony on the bill, Chairman Stewart suggested the committee compare this bill with SB 440 for the necessary conflict amendments.

Judge Davis further clarified the intent of the bill by stating that it merely mandates that the county commissioners review the offices of the justice of the peace and determine the number of hours expended in that office and adjust the salary accordingly.

SB 223: Enlarges power of executor to designate substitute, alternate or co-executor.

Senator Mel Close stated that at the present time, when a person is nominated in a will to be the executor, he is not able to resign and appoint a successor. It seems reasonable that he should be able to appoint a successor since the deceased had great faith and confidence in the person named. Therefore, the person in whom he had the most confidence should be able to success his successor in the event he cannot serve as the executor. Under the current law, if an executor cannot serve or resigns for some reason, the office then follows the descending line of family members. This bill does not provide for approval by a judge of the appointment and is only effective if the decedent has not named a substitute. If the executor dies without appointing a substitute, then the court appoints an executor along the descending line.

Senator Close stated that line 18 deals with the co-executor, where an executor asks for assistance in the administering of the estate and appoints a co-executor to serve in conjunction with the executor.

To Mr. Sader's question about the alternate executor's ability to appoint a successor alternate or co-executor, Senator Close stated the alternate executor should have the same abilities as the original executor in the event of his death since the alternate is also an individual in whom the decedent had great confidence.

It was explained for the benefit of the committee that a co-executor serves along with the executor who is exercising the powers over the estate. They work side by side as partners. Mr. Sader explained that this is used when the executor resides outside the state, he may appoint a co-executor to serve with him who is a resident of the state. Another situation would be where the executor does not have the business ability to handle the estate and may ask that an institution serve as a co-executor.

Miss Foley asked why it was felt unnecessary to have a judge approve the appointment of an alternate. Senator Close stated that the judge did not approve the executor in the first place since the decedent made the appointment himself in his will. He added that if an executor is not performing his duties properly he can be removed by a petition.

It was added that in some cases, a decedent does not want the family involved in the distribution of his estate and therefore does not appoint a member of his family to serve as executor. Mr. Sader pointed out that as the law currently exists, the preferential list from which alternates are selected starts with relatives first. If they are not the ones wanted to handle the estate, then the executor should have the ability to appoint someone else, which is provided by this bill.

SB 321: Clarifies certain provisions of law relating to estates of decedents.

Senator Close stated that at the present time when closing an estate, there are a number of things which can be done by statute. Once that is done, the executor usually presumes that he has no further responsibility. In the appellate section of the statute, it provides that any order of the court can be appealed until 30 days after written notice of entry of the order. This means that once the judge orders something to be done, the attorney must notify the other side in writing that it has been done. Usually that is done only in litigation as a standard practice. In the event the attorney never makes written notice, the appeal does not begin to run and two or three years later an appeal can still be taken.

In reviewing the statutes, Senator Close found that there is no provision in the probate law for written notices of entry of judgment. For that reason, potentially, every estate in Nevada is open for appeal, although people think they have no further responsibility since the beneficiaries have the money, the estate has been closed, etc.

The solution provides, starting on page 1, that where the accounts of an executor have been settled and a decree of distribution has been made, the executor or administrator shall, after 10 days, distribute the remaining estate in his hands. The reason for that is that it gives people a chance to make an appeal for 10 days before the executor distributes the money and it protects the executor since he is not compelled to do it for 10 days. Many times, the heirs want their money immediately. This allows 10 days before he must distribute the money. If the executor feels secure, he can distribute it prior to the 10 days.

At line 12, the executor has 10 days before he has to distribute any real property. If the will provides that both real and personal property be distributed, the current law provides that the personal property must be immediately distributed and the real property 10 days later. This bill provides 10 days for both real and personal property.

Mr. Sader commented that at line 12 the language states "within 10 days" and at section 1, the language states "upon the expiration of 10 days". Senator Close stated that the intent is to give the executor the 10 days if he wants to use it. If he wants to distribute the property earlier he can. He added that in most cases there is no problem. Mr. Sader felt that language indicates the executor must wait 10 days.

Senator Close stated that this is "hortatory" language, a word used by Frank Daykin. Hortatory means advisory. He indicated again that the intent is to give the administrator the option of a 10 day waiting period. He suggested that it be discussed with Mr. Daykin.

Senator Close continued by saying that Section 2 provides that once the property has been distributed pursuant to an order of the court and there has been a mistake in the distribution, that can be rectified.

Section 3 provides that 30 days after the entry of the order closing the estate, the appeal time terminates insofar as the order is concerned. Service of the order is not required since notice of the hearing on the order is already required. At that point, it is the responsibility of the heir to make an appeal within 30 days.

Senator Close suggested that if there were any questions, Don Brown, the Trust Officer of Valley Bank, could answer them.

Senator Close continued by saying that subsection (3) merely requires the decree be recorded in the county where the probate was handled, which does not involve the conveyance of property. A deed would be recorded in the county where the property is situated to convey the property.

SCR 27: Requests supreme court to provide special provision for appeal in probate matters.

Senator Close stated that SCR 27 is a companion bill to SB 321, requesting the Supreme Court to amend Rule 4A of the Nevada Rules of Appellate Procedure to provide that in probate matters, SB 321 controls so far as to appellate time. 4A does provide that 30 days after written notice of entry of order the appeal time starts to run. This would have the Supreme Court amend their rule to conform with the statute so there is no confusion.

Mr. Sader asked if the Supreme Court changes the procedure, will they no longer require written notice of entry of judgment. Senator Close stated they don't require it now. He did not know of any executor who ever filed a written notice of entry of judgment. This resolution would just suggest to the Supreme Court that it amend the rules of appellate procedure to provide either a reference back to the language discussed in SB 321 showing 30 days appellate time, or to say that in appeal matters, time starts to run after entry of the orders listed in SB 321. He felt that if this is not done there will be confusion.

Mr. Beyer asked if the Legislature can tell the Supreme Court what rules to write. Senator Close stated we could only suggest to them what rules to write. He commented that four years ago a bill dealing with substitution of judges was passed and the Supreme Court declared the new statutory act unconstitutional and put back into effect what was repealed.

SB 223: Enlarges power of executor to designate substitute, alternate or co-executor.

Mr. Thompson moved DO PASS SB 223, seconded by Mrs. Cafferata, and unanimously carried by the committee, Mr. Price being absent.

SB 321: Clarifies certain provisions of law relating to estates of decedents.

Mr. Sader commented that unless Mr. Brown can come up with a better explanation of the intent of the language, it should be discussed with Mr. Daykin. Mrs. Cafferata was appointed to discuss the bill with Mr. Brown.

Mr. Sader commented that AB 157 was passed subject to the Legislative Counsel drawing up the amendments. He indicated he had received the amendments and they were in accordance with the committee's intent.

SB 188: Makes various changes concerning custody of children in cases of parents' separation or divorce.

Mr. Sader stated that the problems with the bill were with questions of whether or not the joint custody situation or the language created a problem with child snatching. It was his opinion that it did not need an amendment. The other problem was posed by a woman from Welfare who testified that she would have some real problems with the aid to dependent children program in joint custody matters. Mr. Sader's intern researched the problem and it was found that they would have to take a close look at how the program is administered and amendments were not necessary.

Mrs. Cafferata moved DO PASS SB 188, seconded by Miss Foley, and carried unanimously, Mr. Price being absent.

Since there was no further business or discussion, the meeting was adjourned at 9:40 a.m.

Respectfully submitted,



Jor Jan M. Martin  
Committee Stenographer

61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION

DATE: April 10, 1981  
 SUBJECT: AB 234: Provides alternative to grand jury proceedings.

MOTION:  
 DO PASS \_\_\_\_\_ AMEND \_\_\_\_\_ INDEFINITELY POSTPONE XX  
 RECONSIDER \_\_\_\_\_  
 MOVED BY: Cafferata      SECONDED BY: Thompson

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_  
 AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	XX	—	—	—	—	—
Foley	ABSENT	—	—	—	—	—
Beyer	XX	—	—	—	—	—
Price	ABSENT	—	—	—	—	—
Sader	ABSENT	—	—	—	—	—
Stewart	XX	—	—	—	—	—
Chaney	XX	—	—	—	—	—
Malone	XX	—	—	—	—	—
Cafferata	XX	—	—	—	—	—
Ham	XX	—	—	—	—	—
Banner	ABSENT	—	—	—	—	—
TALLY:	7	—	—	—	—	—

ORIGINAL MOTION:      Passed \_\_\_\_\_      Defeated \_\_\_\_\_      Withdrawn \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_      AMENDED & DEFEATED \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_      AMENDED & DEFEATED \_\_\_\_\_  
 INDEFINITELY POSTPONED XXX \_\_\_\_\_

ATTACHED TO MINUTES OF April 10, 1981



**61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION**

DATE: April 10, 1981

SUBJECT: AB 255: Reduces period required for sale of goods in storage to satisfy liens.

MOTION:

DO PASS XX      AMEND XX      INDEFINITELY POSTPONE \_\_\_\_\_  
RECONSIDER \_\_\_\_\_

MOVED BY: Cafferata      SECONDED BY: Chaney

AMENDMENT:

SEE ATTACHED EXHIBIT A

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	_____	_____	_____	_____	_____
Foley	<u>ABSENT</u>	_____	_____	_____	_____	_____
Beyer	<u>XX</u>	_____	_____	_____	_____	_____
Price	<u>ABSENT</u>	_____	_____	_____	_____	_____
Sader	<u>ABSENT</u>	_____	_____	_____	_____	_____
Stewart	<u>XX</u>	_____	_____	_____	_____	_____
Chaney	<u>XX</u>	_____	_____	_____	_____	_____
Malone	<u>XX</u>	_____	_____	_____	_____	_____
Cafferata	<u>XX</u>	_____	_____	_____	_____	_____
Ham	<u>XX</u>	_____	_____	_____	_____	_____
Banner	<u>ABSENT</u>	_____	_____	_____	_____	_____
TALLY:	<u>7</u>	_____	_____	_____	_____	_____

ORIGINAL MOTION:      Passed \_\_\_\_\_      Defeated \_\_\_\_\_      Withdrawn \_\_\_\_\_  
 AMENDED & PASSED XX      AMENDED & DEFEATED \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_      AMENDED & DEFEATED \_\_\_\_\_

ATTACHED TO MINUTES OF April 10, 1981

**61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION**

DATE: April 10, 1981  
 SUBJECT: SB 223: Enlarges power of executor to designate substitute, alternate or co-executor.

MOTION:  
 DO PASS XX AMEND \_\_\_\_\_ INDEFINITELY POSTPONE \_\_\_\_\_  
 RECONSIDER \_\_\_\_\_  
 MOVED BY: Thompson SECONDED BY: Cafferata

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_  
 AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	XX	—	—	—	—	—
Foley	XX	—	—	—	—	—
Beyer	XX	—	—	—	—	—
Price	ABSENT	—	—	—	—	—
Sader	XX	—	—	—	—	—
Stewart	XX	—	—	—	—	—
Chaney	XX	—	—	—	—	—
Malone	XX	—	—	—	—	—
Cafferata	XX	—	—	—	—	—
Ham	XX	—	—	—	—	—
Banner	XX	—	—	—	—	—
TALLY:	10	—	—	—	—	—

ORIGINAL MOTION: Passed XX Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_

ATTACHED TO MINUTES OF April 10, 1981

61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION

DATE: April 10, 1981

SUBJECT: SB 188: Makes various changes concerning custody of children in cases of parents' separation or divorce.

MOTION:

DO PASS XX AMEND      INDEFINITELY POSTPONE       
RECONSIDER     

MOVED BY: Cafferata SECONDED BY: Foley

AMENDMENT:

MOVED BY:                      SECONDED BY:                     

AMENDMENT:

MOVED BY:                      SECONDED BY:                     

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Foley	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Beyer	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Price	<u>ABSENT</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Sader	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Stewart	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Chaney	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Malone	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Cafferata	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Ham	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Banner	<u>XX</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
TALLY:	<u>10</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>

ORIGINAL MOTION: Passed XX Defeated      Withdrawn     

AMENDED & PASSED                      AMENDED & DEFEATED                     

AMENDED & PASSED                      AMENDED & DEFEATED                     

ATTACHED TO MINUTES OF April 10, 1981

WALTHER, KEY, MAUPIN, OATS  
COX, LEE & KLAICH

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FRED L. OATS  
C. ROBERT COX  
KEITH L. LEE  
DANIEL J. KLAICH  
L. ROBERT LEGOY, JR.  
MICHAEL E. MALLOY  
W. DOUGLASS MAUPIN  
G. BARTON MOWRY  
JEFFREY A. DANKWORTH

April 3, 1981

Assemblyman Janson S. Stewart  
Chairman  
Committee on Judiciary  
Legislative Building  
State of Nevada  
Capitol Complex  
Carson City, Nevada 89710

Re: AB 255

Dear Mr. Stewart:

Pursuant to our telephone conversation of April 6, 1981, I propose the following amendments to AB 255:

"(b) The notice must include a statement of the claim, a description of the goods, a demand for full payment at any time prior to the sale at public auction, and a statement that the goods will be advertised for sale and sold at public auction, at a specified place and time not less than thirty days after the date of the notice."

"2. After fifteen days from the date of the notice, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation in the town or township in which the bailee resides. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. . . ."

"3. The bailor may redeem his property from the lien imposed by NRS 108.440 at any time before public auction by paying to bailee the amount of accrued storage charges, late charges, advertising costs and bailee's storage charges. Nothing herein shall grant bailor a right to redeem his property after public auction."

WALTHER, KEY, MAUPIN, OATS  
COX, LEE & KLAICH

I believe the rewording of paragraph (b) and paragraph 2. clears up the ambiguity created by the addition of paragraph 3. That is, the notice will advise the bailee he may pay all accrued charges up to the time of public auction which is to be not less than thirty days from the date of the notice. Additionally, the change to paragraph 2 requires the bailee to wait at least fifteen days from the date of the notice to begin publication of the advertisement of the public auction.

Finally, I added the words "from the lien imposed by NRS 108.440," to my previously proposed paragraph 3. One of the definitions in Black's Law Dictionary for "redeem" is: "To free property or article from mortgage or pledge by paying the debt for which it stood as security." If we specifically mention that the bailor is redeeming his property from a lien, then I believe we are coming within this definition of "redeem."

If you have any questions, please don't hesitate to contact me. Thank you for your assistance.

Very truly yours,



Keith L. Lee

KLL:kr

HAND DELIVERED