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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

APRIL 16, 2003

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ASSEMBLY JUDICIARY

DATE: 4/16/03 ROOM: 3138 EXHIBIT D

SUBMITTED BY: ALISON COMBS

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WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

April 16, 2003

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

- SENATE BILL 88** (BDR 1-610 was requested on behalf of the Nevada Supreme Court).
The bill was heard in Committee on March 6, 2003, and no action was taken.

Senate Bill 88 allows a district judge to transfer civil actions to justice's court if the judge determines the sum claimed does not exceed \$7,500.

Proponents/those testifying in support of the bill: Justice Mark Gibbons, Nevada Supreme Court; Judge Nancy M. Saitta, Eighth Judicial District Court; Judge James W. Hardesty, Second Judicial District Court; Joe Tommasino, Las Vegas Justice Court; Marguerite Creel, Las Vegas Justice Court.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure was requested to allow plaintiffs, particularly those without an attorney, who file in district court the opportunity to have their case transferred to justice court and preserve the cause of action when it is determined the amount does not exceed \$7,500. Concerns and amendments were raised by the Las Vegas Justice Court to address the potential impact to that court.

Proposed Amendments: The following amendments were proposed:

1. **Delete definition of "action" (all of subsection 2 of Section 1)**, proposed by Assemblyman John Carpenter, Judge Saitta, and Mr. Tommasino.
2. **Require the party to pay a filing fee**, proposed by Mr. Tommasino. (A copy of Mr. Tommasino's testimony and proposals is attached on blue paper.) Revise Section 2, page 2, lines 35 and 36, to delete the language prohibiting the payment of a new filing fee. When cases are transferred down to justice court, require the party to pay a filing fee of \$42, which is the fee charged under NRS 19.013 when a case is transferred up to district court. (The existing fees for commencing an action in justice court range from \$28 to \$150 depending upon the amount claimed. (NRS 4.060))
3. **Right to jury trial**, proposed by Mr. Tommasino. Clarify that the parties retain their right to a jury trial in justice court, if requested in a timely manner.

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4. **Limit amount that may be recovered by plaintiff**, proposed by Mr. Tommasino. In support of this change, Mr. Tommasino requests an amendment to provide that when a case is transferred from district court to justice court, the district court judge must order the plaintiff's recover to be limited to \$7,500 or less. Mr. Tommasino states that if such a provision is not included it is unclear whether the justice court would then have original jurisdiction in cases in which the plaintiff originally filed a claim for more than \$7,500 in district court. The plaintiff may later decide to amend the justice court complaint to a higher amount and request the case be transferred back up to district court.

5. **Clarify jurisdiction over the action**, proposed by Mr. Tommasino. In support of his request for an amendment, Mr. Tommasino requests that S.B. 88 incorporate language similar to language governing cases transferred up to district court under NRS 66.070. Mr. Tommasino suggests the following:

From the time of filing the pleadings or transcript with the clerk of the justice court, the justice court has the same jurisdiction over the action as if it had been commenced in the justice court.

AJWS-04-16-03

LEGISLATIVE TESTIMONY
ON SB 88

Joseph Tommasino
Staff Attorney, Las Vegas Justice Court

March 6, 2003

Good morning. My name is Joe Tommasino, and I am the Staff Attorney for the Las Vegas Justice Court. I am here on behalf of the Justices of the Peace and the Administrative Staff of the Court to offer some suggestions relating to SB 88.

Initially, I want to emphasize that the Court fully supports the goal of SB 88. There is a current gap in the law because a case that is filed in Justice Court can be transferred to District Court, but a case that is filed in District Court cannot be transferred to Justice Court.

Justice Courts have jurisdiction of civil matters where the amount sought by the Plaintiff is less than \$7,500.00. If the Plaintiff wants to recover more than \$7,500.00, he has to file the complaint in District Court. The transfer problem usually arises in the following fact pattern.

A plaintiff files suit in District Court before the relevant statute of limitations expires, and the matter goes to arbitration. After arbitration, the District Court judge determines that the plaintiff is likely to recover no more than \$7,500.00, and that the case really belongs in Justice Court. Because there is no mechanism to transfer the case down to Justice Court, the District Court judge is forced to dismiss the case without prejudice. This forces the plaintiff to re-file the case in Justice Court and pay an accompanying filing fee. However, the defendant then files a Motion to Dismiss, based on an argument that the Justice Court case was filed after the relevant statute of limitations has expired. In the past, the justices of the peace were forced to grant the motion to dismiss, with prejudice, based on the statute of limitations issue. More recently, the District Court judges have directed us to consider whether a theory of "equitable tolling" should apply. Specifically, the justices of the peace have to determine, on a case-by-case basis, whether the statute of limitations was "on pause" while the case was at the District Court level.

This is a cumbersome process that would be eliminated if the District Court had clear statutory authorization to transfer a case down to Justice Court.

Although we endorse the transfer concept envisioned by SB 88, we have some concerns about the methods used to effectuate the transfer.

First, Section 2 of the bill explicitly states that if an action is transferred from the District Court to the Justice Court, "a party to the action may not be required to pay a new filing fee to the justice's court as the result of the transfer of the action." This language is not consistent with existing law, since NRS 19.013 requires a \$42.00 fee when a case is transferred up to District Court. We would request that the same \$42.00 fee should be charged when a case is transferred down from District Court.

Second, the bill should clarify that the parties to the transferred case retain their right to a jury trial in Justice Court, if requested in a timely manner. SB 88 does not address this.

Third, Section 1 of SB 88 enumerates specific "actions" where transfers are allowed, based on the "probable damage award." These enumerated actions correspond to the provisions of NRS 4.370(1)(a)-(k) of the Justice Court jurisdictional statute. The apparent purpose of this enumeration is to exclude small claims cases and all temporary protective orders (TPO's). However, we believe this is not necessary because a TPO case would not have a "probable damage award" at all, so it would not be eligible for a transfer under the bill. Moreover, a small claims case would never be filed originally in District Court because the amount of the claim in a small claims matter can never exceed \$5,000.00. Thus, we believe that Section 1 of SB 88 should simply allow transfer of "an action properly within the jurisdiction of the Justice Court, pursuant to NRS 4.370." This would be much more concise and easier to understand. It would also eliminate the need for Section 3 of the bill, because there would be no need to enumerate "transferred actions" in the Justice Court jurisdictional statute.

Fourth, we think that when a case is transferred from District Court to Justice Court, the District Court judge should order that the Plaintiff's recovery must be limited to \$7,500.00 or less. Otherwise, problems might ensue. For example, Section 1 of SB 88 currently states that the District Court judge can "transfer original jurisdiction of the action to the Justice Court." If a plaintiff files a claim for \$15,000.00 in District Court, and the case is transferred to Justice Court, it is unclear if the Justice Court would then have "original jurisdiction" over the action for \$15,000.00. If the Justice Court is to assume that the amount in controversy was intended to be lowered to \$7,500.00, it is unclear if the Plaintiff can later amend the Justice Court Complaint to a higher amount and then request that the case be transferred back up to District Court. If the District Court makes an order limiting recovery to \$7,500.00 or less, then these problems will not arise when the case is transferred to Justice Court.

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Finally, SB 88 should incorporate language from NRS 66.070 that currently applies when a case is transferred up to District Court. The statute provides that “[f]rom the time of filing the pleadings or transcript with the clerk of the district court, the district court has the same jurisdiction over the action as if it had been commenced in the district court.”). A similar provision should apply at the Justice Court level. For example, a provision could be added to state that “[f]rom the time of filing the pleadings or transcript with the clerk of the justice court, the justice court has the same jurisdiction over the action as if it had been commenced in the justice court.”

To summarize, we are in complete agreement that transfers from District Court should be authorized so that cases can move between the courts without creating a statute of limitations problem. We are merely suggesting structural changes to SB 88 to make the bill easier to administer. If you would like us to provide any necessary statistics of information, we would be happy to do so. Thank you.