

2-215

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session  
March 26, 1969, Afternoon Meeting

Meeting was called to order by Chairman Torvinen at 3:15, P.M.

PRESENT: Torvinen, Swackhamer, Bryan, Reid, Prince, Lowman, Fry, Kean, Schouweiler.

ABSENT: None.

AB 196: Provides penalty for failing to observe 3-day waiting period in purchase of firearms.

MR. REID: I move Do Pass AB 196.

MR. BRYAN: I second the motion.

MOTION FAILED.

AB 696: Empowers magistrate to exclude adverse witnesses from preliminary hearings.

MR. BRYAN: I move Do Pass AB 696.

MR. REID: I second the motion.

MR. BRYAN: Under present law, if counsel for the defense moves to exclude all persons from the courtroom, in a Justice Court, the Justice of the Peace must do so. Under this proposed law, this would no longer be the case. This can be done on request and reserves to the magistrate the power to exclude adverse witnesses until such time as they are called to testify.

MR. TORVINEN: Under another statute, the witnesses are now able to be excluded.

MR. BRYAN: That is true. There is a great deal of concern and anxiety about our criminal justice these days. I have been on both sides of this question. I believe the public interest in being informed is greater than the harm that might be done to the defendant.

MR. TORVINEN: I would like to state my views on this, even though I may engender the enmity of the newspaper people present. I am opposed to this bill. There are cases where testimony is of such an inflammatory nature the defendant may be bound over and the testimony may be damaging to him.

This is a right the Supreme Court said the defendant could waive. In some rare cases the damage to the individual may be so great as to outweigh the public interest. If the defendant requests that his preliminary hearing be closed-----

MR. REID: I think that we have to consider here that many times we have situations where we don't know, but it is possible that something could go wrong that would not go wrong is the press were there. The Supreme Court in their decision indicated it was something the Legislature had done and they were bound to abide by it. At the trial and at the preliminary hearing, the public has the right to know what is going on.

MR. TORVINEN: The public has the right to know the name of the man and the fact that he has been arrested. Sometimes the publicity makes it impossible to get a jury in a man's home town or community.

I can't see where there could be an improper hearing, because there are many motions and avenues open to the defendant.

MR. PRINCE: When one witness testifies, he doesn't influence another witness?

MR. BRYAN: No, that is not it. Under the present law, if the defendant requests it, the judge must clear the court. What this would do would be to take away from the defendant the right to exclude all witnesses.

MR. REID: I can speak from experience, also. When the Public Defender office excluded certain members of the press, nothing went wrong but it did effect suspicion as to what was going on in the courtroom.

MR. TORVINEN: The district attorney has the option to take the matter before the Grand Jury, where it is private. There are only about two months out of two years that there isn't a Grand Jury in session in Washoe County. If he wants to make a big splash and smear someone all over the papers, he can do it with this.

MR. FRY: Why not rather than say who can be excluded substitute the word "may" for the word "shall?"

MR. KEAN: Would he hear arguments?

MR. FRY: Yes. If you had a case like the Summers one in Reno, then the magistrate would hear arguments about why this should not be open to the press.

MR. TORVINEN: Many times there could be instances where a person would deliberately create a big fuss about the case. Then you have another trial at another jurisdiction and bills being introduced for the relief of that other county.

MR. BRYAN: Do you know of any other time when the Judiciary has been under so much suspicion as it is under now? I am not suggesting that a Justice of the Peace has ever done anything improper, but closed hearings create so much criticism because of not knowing what is going on. Those rumors do crop up.

MR. KEAN: When you were trying to get your case tried and it took two years to get it on the calendar and the judge was out playing golf or traveling around Europe or something, this was a situation that did contribute to this suspicion and distrust.

MR. REID: The newspapers in Las Vegas are writing editorials and talking about what a terrible thing it is for this to be on the books, that people can be excluded.

MR. BRYAN: If the committee finds this unacceptable, can we amend it in some way that would be acceptable to you?

THE MOTION TO DO PASS AB 696 FAILED, RECEIVING ONLY TWO AYES.

MR. BRYAN: How about Mr. Fry's amendment to leave the statute as it is except for inserting the word "may" in the place of "shall." Also, we would delete all the italicized language and the brackets.

MR. BRYAN: I move Do Pass AB 696 with these amendments.

MR. REID: I second the motion.

THE MOTION CARRIED WITH SIX AYES AND THREE NOES.

AB 654: Permits employment agency to charge fees to employers.

MR. TORVINEN: Mr. Close has already prepared amendments to this bill. We delete lines 4 through 8 and inserts "applicant for, etc."

Section 4, page 2, would also be deleted. We would put in "fee charge to the employer shall be that fee agreed upon by the employer and the agency."

Lines 27 and 28 are deleted. It will be changed so that if an employer pays an agency ahead of time and fails to find an employee through the efforts of the employment agency, the money paid in advance is to be returned to the employer.

MR. KEAN: It had better say "if the fee is paid in advance."

MR. REID: I don't like section 6, subsection 3.

MR. KEAN: All the way through, it assumes payment in advance. I don't like that.

MR. WHITTAKER: AMERICAN EMPLOYMENT AGENCY IN RENO: The statutes as they stand have never had anything to do with the employer. We as the agency did not request nor desire this now, but it was suggested by Mr. Lowman and Mr. Close. Other states do have this provision. We are talking primarily about the fee charged to the employer. This would mostly apply to the search for a very technical and specially qualified person. Then this fee would be agreed upon for this special case.

Basically speaking, fees are not paid until after the employee has been on the job and proved himself for two-three weeks or one month. Then the employee pays the fee. As far as agencies are concerned, we do not require that fees be paid in advance. We are not interested in the book-work of having to refund money. In most cases, the employer would not be asked or required to pay any fees in advance.

MR. SWACKHAMER: Why can't you contract with the employers now?

MR. WHITTAKER: We can, and that is what we have been doing.

MR. KEAN: What we are doing with this is taking away the right of contract from these people.

MR. WHITTAKER: We did not ask for this.

MR. TORVINEN: I raised this point with Mr. Close and he feels we need it. Let's hold this and see if he would like to come in and speak on this.

AB 551: Regulates the business of debt adjusting.

MR. TORVINEN: This is a bill which has been prepared by the State Department of Commerce, in the Banking Division. It regulates the business of debt adjusters.

There are businesses that take assignments or pledges of wages for people who are unable to regulate their own money, and then they pay the bills for the people, etc.

MR. REID: Is there any such business in Las Vegas? Two.

MR. PORTER: There has been comingling of funds and a confused situation. There is no regulation possible under present law for these trust funds.

MR. TIDWELL: I have here a copy of the changes I would like to propose to the committee. The first is section 11, page 2, line 11. We have several nonprofit organizations operating, particularly Beneficial Planning Corporation. I would like this to read "nonprofit corporations organized to render financial planning."

MR. TORVINEN: Why should nonprofit organizations be exempt anyway?

MR. TIDWELL: Because they are not in business for profit.

MR. TORVINEN: I wasn't in favor of this bill until I was told that Finance Companies are discouraging people from going to these planning companies. They won't do anything to help unless the people get all the money and do everything with their company.

MR. TORVINEN: I think it is wrong to exempt a nonprofit organization which is actually a subsidiary of another finance company.

MR. TIDWELL: We certainly don't want to exempt a loan company.

MR. REID: One company in Reno doing this? How many in other parts of the State?

MR. TIDWELL: Two in Las Vegas.

MR. KEAN: Can't this also be done under any collection agency?

MR. TORVINEN: Some of them do this.

MR. FRY: Aren't Beneficial and these others covered under line 5, page 2? Would that word "institution" give these loan companies an out?

MR. TIDWELL: Page 5, subsection 2 (e), line 12 and page 5, subsection 4: These are contradictory and will have to be conformed. I suggest we eliminate entirely subsection 4 under section 32.

On page 5, subsection 2 (a) says "An initial retainer fee of \$25, which need not be amortized." We want to prohibit the counselor from taking this \$25 off the top without actually doing anything to earn the money.

MR. PORTER: The idea there is not just to get the \$25.

MR. SWACKHAMER: Apparently the man is going to provide some service at the beginning for which he would not get paid. 2-219

MR. PORTER: He doesn't take it unless he is an enterprising person and thinks he can do something for the man.

MR. REID: Are there such statutes in any other jurisdictions?

MR. TIDWELL: 34 states have laws prohibiting this altogether. (Read list There are 12 states that regulate this business. (Read those.)

MR. SWACKHAMER: Do you know why the 34 states completely outlawed it?

MR. PORTER: There was no recourse and there was much abuse. There was nothing to fix the pro-rating of monies received from a debtor. The abuses were uncorrectible so they just decided the best thing to do was prohibit it entirely.

The banks and other reputable institutions do this counseling and there is a legitimate need for this, so we do not want to outlaw it completely. We want to try to regulate and license and control it before we do away with it.

MR. REID: Have you been receiving complaints from these three places?

MR. TIDWELL: No, we haven't. We have no authority over the debt-counseling part of their business. We have no method of controlling the debt-counseling portion of their business. There could be comingling of these funds in trust accounts. We can't actually go in and check the records and the books.

MR. TORVINEN: Page 4, about line 44: What this does in fact have the man do is turn over every one of his records once a year. Is this section 30, subsection 2 really necessary? He would have to xerox every sheet of records he had and send them to you.

MR. PORTER: I don't think this would actually be necessary. That would be too burdensome. Separate itemization would be unnecessary.

MR. SWACKHAMER: Do you have any idea of what volume of business these companies are doing now? I was wondering if the \$10,000 bond would be adequate.

MR. TORVINEN: I have talked to Mr. Brennan who operates the debt adjusting business in Reno and, with the exception of this reporting of records, he has no objections. They take over the business or try to sell it.

MR. LOWMAN: He made quite an issue of getting these amendments.

Mr. Close has an agency that is interested in coming into Nevada, but they will not come without this protection.

MR. REID: I move to Indefinitely Postpone AB 654.

MR. SCHOUWEILER: I second the motion.

MOTION CARRIED WITH TORVINEN AND LOWMAN VOTING NO.



AB 551: Regulates the business of debt adjusting.

MR. PRINCE: I move to KILL AB 551.

MR. KEAN: I second the motion.

MOTION CARRIED WITH SCHOUWEILER AND TORVINEN VOTING NO.

MR. TORVINEN: In a "one-agency" town it will work but not in a town where there are several fighting with one another to get this business. I happen to be one of the few attorneys in Nevada who knows anything about Chapter 13, so I have got in on a lot of these things. Sometimes they cannot go to a credit rating agency.

I agree that in Prince's case it probably works well.

MR. TORVINEN: Mr. Reid and Mr. Fry were supposed to have had amendments on AB 336 about three weeks ago and they are not here yet.

AB 158: Revises Uniform Reciprocal Enforcement of Support Act.

MR. BRYAN: I went over the amendments drafted for this. The first one is page 3, section 9, subsection 2, line 38: Delete word "and" and insert word "or".

Mr. Reid moved to adopt this amendment.

Mr. Fry seconded.

MOTION CARRIED.

MR. BRYAN: The next amendment is page 3, section 10, line 48: Insert after "any" the word "proper."

MOTION TO ADOPT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 4, section 12: Delete line 34 and insert "a responding court shall not require the posting of any bond, written undertaking, or security by the obligee, including bonds for the seizure or attachment of property or require payment of a filing fee or."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 5, section 15: Delete line 48 and insert: 2. The prosecuting attorney shall prosecute all proper cases diligently upon the request of the court. He."

MOTION TO ADOPT THE AMENDMENT CARRIED UNANIMOUSLY

MR. BRYAN: Page 6, section 15: Delete 1 and insert "and may initiate the proceedings under this chapter by civil summons or at any time request the court to set a time and place for a hearing and give."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 6, section 15: Delete 3 and insert "3. The prosecuting attorney may, as necessary, utilize all the remedies available to a litigant in a civil proceeding including attachment, execution and sequestration. 4. If the prosecuting attorney neglects or refuses to represent."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 6, section 17: Delete 40 and insert "the type of duty of support claimed]. The court shall conduct proceedings under <sup>221</sup> this chapter in the manner prescribed by law for an action for the <sup>2</sup> enforcement of the type of duty of support claimed. In any hearing in the civil enforce--."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 6, section 17: Delete 44 and insert a new line "the order shall be received as evidence of the duty of support and any arrearages which have accrued thereunder, subject."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 6, section 17: Delete 47 and insert "to enforce a foreign money judgment. Once an order of support is entered by the court in a proceeding under this chapter, it shall have the same effect and is subject to the same procedures, defenses, and proceedings for reopening, modifying, vacating or staying as any support order of this State and may be enforced and satisfied in a like manner. The determination or enforcement --."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 7, section 18: Delete 6 and insert "the responding state or other appropriate agency or office--."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 7, section 20: Insert after line 45 (we are entering a new section here) 4. Enter judgment for arrearages which have accrued and to direct that the obligor retire such arrearages in addition to his regular support payments."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 8, section 22: Delete 17 and insert "carried out through the clerk of the court or other appropriate agency or office."

MOTION TO ADOPT THIS AMENDMENT WAS CARRIED WITH MR. REID VOTING NO.

MR. BRYAN: Page 8, section 23: Delete 29 and insert "the court in proper cases."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 8, section 23: Delete 33 and insert "the court of this state pursuant to a proceeding under this chapter. Arrearages which have accrued prior to an order of a court of this state in a proceeding under this shall be computed in like manner."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 10, section 44, line 1: After "deposition" the words "or interrogatories."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 10, section 44, line 3: Delete line 3 and insert:  
"before whom a deposition may be taken or interrogatories propounded" 222

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY. -2

MR. BRYAN: Page 10, section 47, line 26: Delete "heard" and insert  
"heard under this chapter,"

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 10, section 47: Delete line 27 and insert "port order to the amount allowed in the other action or proceeding unless the court is of the opinion for good cause shown that another amount would be proper. There--."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 10, section 48: Delete line 31 - 32  
"Sec. 48. This chapter applies if both the obligee and the obligor are in this state but in different counties, or if both obligee and obligor reside in the same county. In such cases the proceedings may be initiated by the prosecuting attorney making application to the district court to represent the obligee. The court may request the prosecuting attorney to represent the obligee as in other matters under this chapter, upon a showing of one of the following:

- (a) Present financial hardship; or
- (b) No substantial compliance with a support order or agreement for at least six months prior to the application.

2. In cases where the obligee and the obligor are in the same state but in different counties if the court of the county in."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 10, section 48, line 39: Delete "2". and insert "3".

MOTION TO ADOPT THIS AMENDMENT CARRIED WITH MR. REID VOTING NO.

MR. BRYAN: Page 10, section 48: Insert, after line 43, "In cases where the obligee and obligor reside in the same county, the distinction of initiating and responding courts will consider merged in one uniform civil action for support originating in the district court of the county where both parties reside all otherwise relevant portions of this chapter shall apply to such a proceeding."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 10, section 49, line 44: Insert after the word "general" the words "or the prosecuting attorney."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 11, section 49: Delete line 2 and insert "order from funds appropriated for his office, or, where the appeal is taken by the prosecuting attorney, by the county involved."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 11, section 55, line 44: Insert after "reopening"



the words "modifying, vacating."

2- 223

MOTION TO ADOPT THE AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 11, section 55, line 41: Insert after "the" the word "confirmed."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 12, section 55: Delete line 2 and insert "an action to enforce a foreign money judgment concerning any arrearages which have accrued thereunder. If he shows to the court--."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 12, section 55, line 9: Delete "stayed" and insert "stayed or modified."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. BRYAN: Page 12, section 55, line 10: Insert after "order" the words "or modify it."

MOTION TO ADOPT THIS AMENDMENT CARRIED UNANIMOUSLY.

MR. REID: I move Do Pass AB 158 with these amendments.

MR. FRY: I second the motion.

MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: Who is going to take care of AB 696.

MR. BRYAN: That has already been requested.

MR. REID: What about AJR 40?

(Mr. Torvinen passed out to the committee copies of the Federal Register.)

AB 37: Enables State Board of Pharmacy to adopt more extensive regulations relating to sales of dangerous drugs.

MR. REID: The President of the Board called and said they are very unhappy because we have not got this one out. They want it out with no amendments. It seems to me that the last italicized section should be taken out.

MR. SWACKHAMER: Wasn't this to give the State Board of Pharmacy control over these proprietary medicines?

MR. REID: Mr. Lowman has an amendment but the Board would rather have the bill killed than to include these things.

MR. SWACKHAMER: I move AB 37 be Indefinitely Postponed.

MR. BRYAN: I second the motion.

MR. REID: May I be recorded as being terribly opposed to this murder you are about to commit?

MR. KEAN: Why should those people have the right to regulate me? 2-224

MR. SWACKHAMER: I think the "baddies" are in section 2.

MR. TORVINEN: What they want to do is to be able to take the stuff off the shelves, if they find kids are buying stuff for mixing their own dangerous drugs. The amendment would destroy the bill, in my opinion.

MR. SWACKHAMER: They are still afraid we are going to take even aspirin off the shelves.

MR. SWACKHAMER'S MOTION TO INDEFINITELY POSTPONE AB 37 FAILED, GETTING ONLY FOUR AYES.

MR. REID: I move Do Pass AB 37 with an amendment deleting section 2.

MR. PRINCE: I second the motion.

MOTION CARRIED WITH FIVE AYES.

MR. LOWMAN: If you leave out my amendments, you will be in restraint of trade.

MR. REID: Section 1 is good. Section 2 is an unworkable thing.

MR. TORVINEN: Asmador would be exempted with your amendments.

MR. REID: I can't believe they will try to restrict the sale of aspirin.

Meeting was adjourned at 5:00 P.M.