MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
May 10, 2007

The Committee on Judiciary was called to order by Chair Bernie Anderson at 8:18 a.m., on Thursday, May 10, 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, Chair
Assemblyman William Horne, Vice Chair
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
Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

John McCabe, Legal Counsel and Legislative Director, National Conference of Commissioners on Uniform State Laws, Chicago, Illinois
Scott Anderson, Deputy Secretary of State, Office of the Secretary of State
Patrick Foley, Chief Deputy Treasurer, Office of the State Treasurer
Keith Lyons, Representative, Nevada Trial Lawyers Association

Chairman Anderson:
[Meeting called to order and roll called.]

Let me open the hearing on Senate Bill 72 (1st Reprint).

Senate Bill 72 (1st Reprint): Adopts the Uniform Limited Partnership Act (2001) and provides for its applicability on a voluntary basis. (BDR 7-720)

Senator Terry Care, Clark County Senatorial District No. 7:
This is the Uniform Limited Partnership Act of 2001 (Exhibit C). The original Uniform Limited Partnership Act was enacted in 1916 and revised in 1976. There were amendments adopted by Nevada in 1985. I will emphasize to the Committee that we are not changing existing law. Two years ago, we enacted the revised Partnership Act. That Act, like the Act before the Committee today, has an opt-in provision, meaning that anybody who wants to form a limited partnership (LP) in Nevada after the effective date of this act may do so under existing law or under this act if it were to become law. Existing LPs may remain under existing law, or, if they wish, they can fall under the purview of this Act if it becomes law. We are not changing existing law. The reason for the 2001 revision is that times and business practices change. This is intended to improve the capacity of LPs to do business and to serve the partners and third parties. The business law section of the Nevada State Bar reviewed this bill and said it is fine. They did not endorse it, but they are not against it. They asked for the opt-in provision. There are 11 states so far that have adopted the 2001 Act and introductions in more states this legislative year. There was not any opposition on the Senate side with one exception; there was discussion about

the liability of the generals and limited partners. Mr. McCabe can address that issue much better than I can.

Chairman Anderson:
The intent of the Uniform Commission is to make sure interstate commerce operates openly and with little hassle. Is there an error that this is going to solve?

Senator Care:
No, the idea here is to keep up with modern business practices and have an entity available for those who choose to use it.

John McCabe, Legal Counsel and Legislative Director, National Conference of Commissioners on Uniform State Laws, Chicago, Illinois:
Senate Bill 72 (R1) is the latest version of the Uniform Limited Partnership Act, which goes back in the conferences history to 1916 when the first Limited Partnership Act was introduced, the second being introduced in 1976. This should tell you something about business organization law in the United States because that is what a LP is—it is a business organization.

Business organizations used to rely upon four basic kinds of organization. One of them did not require any kind of organization at all—the sole proprietorship. If you went into business as a person, you are a sole proprietor and you are liable to all of your creditors. What capital you could acquire, how you spent it, and how you developed your business was your own prerogative, and you took the benefits, the profits, and the losses.

The second organization is the partnership, which essentially means that more than one person gets involved in doing business. A partnership can be created simply by meeting on a street corner to agree to sell something together and combining resources, whether the people know they are forming a partnership or not.

The third organization is the LP. It comes from English common law and was statutorily created in the 1916 era. In business organization, there are some important qualities. One of them is limitation of liability. If someone invests in a business, does he obtain all of the liabilities of the business? Limited partners are traditionally liable only to the extent of their contribution to the partnership. Their personal assets are not subject to the liabilities of the business. There is always at least one general partner. The general partner takes on the full liability of the partnership where there is no limitation of liability at all. These organizations are all about putting capital and resources together to do business to make profit.

The fourth organization is the corporation. That pertained from 1916 to 1976 where we talked about those four forms and the law was pretty somnolence; it was not very dynamic. In 1976, we sought to reform the Limited Partnership Act and were very successful. In 1985, we added 85 amendments to the LP law. Something was going on in the American economy that had not gone on before and other kinds of business organizations began to pop up, the most prominent of them being the limited liability company (LLC). Right now, the LLC is the dominant business organization because of the number of types of business organizations that are formed in all states of the United States. Here in Nevada, the Secretary of State expects to register about 46,000 LLCs this year. A LLC is like an LP except everybody has a limitation of liability. In 1997, the taxes were changed to allow total limitation of liability in any kind of business organization and still obtain what we call "pass-through status." As a tax matter, LLCs have more use for small, medium, and adjunct business—the business organization of choice. They have usurped much of the business opportunity or the kinds of business organization activities which we would have used LPs to form before.

Our business organization laws are the envy of the world because this is the easiest place to put a business together. That is because of our very efficient business organization laws from state to state from the basic law relating to partnerships to the law relating to corporations, and everything you might consider in between, including trusts and cooperatives. We came back to this in the conference to figure out what we do with an LP since most of the activity has moved to LLCs. We looked to see if LPs are still forming and they are. There are special uses in which LPs may be used. As we looked at the LP law differently, it became more useful and apparent. One of the reasons is that the family LP is not for business purposes; it is for estate planning. We found that around the United States the LP form is being used by a lot of people in estate planning in a somewhat similar way that trusts are used. The difference is that they are used to put a business into a LP form, where the limited partners are the intended heirs for the business. There is usually a dominant individual who is the business person and it is his family that he wishes to benefit, but he also wishes to control the partnership and to control the business until he dies.

There are other kinds of commercial partnership securitizations that are using LP laws across the country. If we are getting these kind of specialized activities, should we not make the LP law fit the activities to which it is being put? The Act you have in front of you takes the old LP form and makes it more consistent with the kinds of usage that people are actually using. We are trying to meet the demands of the economy, business, and people with an Act that does for them what needs to be done. This Act takes the form of an LP. There will still be general partners and limited partners, but there will be a more concentrated

manager driven entity that fits the LP for purposes such as family LPs, more than it does for general business purposes. General businesses in this country mostly use LLC's. Under current law and LP law, limited partners are a termed entity; they have an end point. For estate planning purposes and some of the other purposes, a perpetual entity, more like a corporation, is most desirable. It also meets the requirements of the tax code with respect to gifting into an LP for estate planning purposes. We have now a perpetual entity, and it is by the default rule of perpetual entity unless the partnership agreement makes it a term entity, which is the reverse of the way we have dealt with the law and LPs before. Limited partnerships are basically passive. They are either investors or heirs. They do not have voting rights. They simply are contributors. They either take the profits or the estate benefits, and they control this entirely in the central management of the entity. That is what makes this different from what we have in law today. This is an effort to bring LP law into a more useful mode. It is not that we have errors in our law, but for the purposes of using LPs, this will be a better fit.

I understand there have been concerns about Section 66, Section 68, and Section 69. Section 69 deals with the purported partner in partnership law. It covers what someone can do when he thinks he has contributed to a partnership and for some technical reason the partnership does not get formed. If someone is investing as a limited partner and the partnership does not become an LP, he may find himself generally liable if there is any business going on with his contribution. Section 69 is almost identical to what is currently in Nevada law. This Act does not change the notion of the purported partner and handling the purported partner. If you look at *Nevada Revised Statutes* (NRS) 88.435, you will find language almost identical to that in Section 69. This is a rule that allows someone to correct a situation which exposes him to liability, and it is hard to understand why it should be objectionable in this law and not in current law.

Section 66 makes a significant change in the law of LPs and limited liability. In current law, a limited partner has a vicarious liability shield. The limited partner makes a contribution into the LP and he is liable for the debts of the partnership only up to the extent of the contribution he makes. His personal assets are not subject to the liabilities of the partnership. If he extends himself as a limited partner into management and control, then he may relinquish his limited partner status and may then acquire the liability of a general partner. If a limited partner enters into a contract or does something which accrues liability, he will be liable for his own actions under current law. Vicarious liability will exist so long as he does not reach an extent where he participates in a management or control position in the business where he would be holding himself out to be a general partner. The new Act maintains this notion of vicarious liability for a limited

partner, but it rejects the old rule that if he participates in management and control, he loses vicarious liability but is still liable for his personal acts. If he participates in management and control, he does not lose the vicarious liability. That is because the control rule was very difficult to administer under the old law. One of the things we did in 1985 was create a group of things called "safe harbors." These were the things that a LP could do, which clearly seemed to be involved with management and control but would not relinquish the vicarious liability of the limited partner. In terms of doing business, it was often important in LPs to involve the limited partners in certain things like voting rights. Voting rights were allocated in partnership agreements and they were required to vote on certain acts of the partnership; it was a fairly common practice. We have struggled with this notion of control for a very long period of time and never satisfactorily solved the problem.

Much like limited partners, LLCs have no limitation or restriction on their liability. Members and managers may manage; everybody may participate. Limited liability companies are very internally flexible. There can be many arrangements, but everybody gets the same vicarious limitation. Given that we are doing that with LLCs, and that is the standard practice now, and given the problems with the idea of control under the old LP law, we decided that the control role was an anachronism and was not administrable anymore. We are now dealing with a LP that has a passive investor, limited partner, or a passive heir limited partner who is not intended to have any part in the business; he intends to get a benefit from the partnership. We are not creating an entity in which it is important to provide partners with anything other than fiduciary obligations on behalf of the general partners and information rights. The control rule has been taken out in this Act; we no longer think of a limited partner as losing vicarious liability in the event that there is some participation in the management of the business.

Vice Chairman Horne:
I do not see where and when this limited partner, who puts himself out as a general partner, is in violation of particular fiduciary responsibilities and duties. If they do benefit, how would they be able to get at their personal assets, or how could they ever be personally liable if we were to give them this protection? I foresee a person acting in such a way that harms others and being personally shielded. That is not sound public policy. I do not see a shield so that would not happen if they were not going to have any personal gain from their conduct.

John McCabe:
If there is actual conduct to which liability can be attached to a third party, then there will be liability because that is not vicarious liability. For actual conduct, there is always liability.

Vicarious liability is personal liability for the liabilities of the partnership in which the partner has had no personal responsibility and his own conduct has not created that liability. That is the kind of liability for which you have a shield. The shield is permanent; it is like a shareholder in a corporation.

Vice Chairman Horne:
If you have such an actor in the area of vicarious liability who places himself as a general partner in all acts, and the LP knows that this person is acting out in such a manner in elevation of their actual position and those acts cause harm, why would the LP representative not tell him that he knew he was not a general partner in the first place and he stepped outside his bounds? Why should he not be held personally liable for taking those risks?

John McCabe:
If he misrepresented his position with the partnership, he would have liability. That is conduct of a kind that would create liability.

Vice Chairman Horne:
From your testimony and how I read this bill, you pose that such a person, by simply acting in a scope of a general when they are not indeed a general, would not be held personally liable. You were explaining it differently with vicarious liability.

John McCabe:
The management and control issue that we are relinquishing here is different. It is not the situation in which a limited partner steps forward either misrepresenting himself as a general partner or conducting business on behalf of the partnership for which he is personally responsible. The management and control may be committing certain acts that would not accrue personal liability but that are in the conduct of the business partnership and under the old rules. That would open the door for the limited partner to be personally liable and his personal assets would be subject to the liabilities of the partnership as an entity. That is the kind of liability that loses vicarious liability simply because he had done something that may be considered management control, whether he has any culpability or not in any form with regard to his own conduct. That is relinquished in this section. If someone's conduct creates liability, he can be held personally liable. Most of the liabilities of the partnership are debts acquired with doing business. If the general partners want to consult with

someone in making a deal in good faith and he participates in the management of the business, this rule would allow him to do that, but it will not relinquish his liability. If he misrepresents his status in the partnership or commits acts of fraud or negligence on behalf of the partnership, he is going to be held liable.

There may be a time and place in LPs where somebody may inadvertently do something or want to do something to benefit the partnership, which is why the management control issue has been so difficult. That person may then find himself personally liable.

Chairman Anderson:
Here is a scenario: we have an LP named Carpenter, Anderson, and Buckley (CAB) that has been joined for many years and operates together. Buckley leaves to become part of a larger management group, leaving Carpenter and Anderson on their own, who now form a new corporation called Horne, Anderson, and Carpenter (HAC). Buckley has a management responsibility in her new position, and therefore, she still has a part of the original corporation, CAB. Other members have joined over time, and the original corporation still exists. Buckley has less of an active role in the partnership but still has a management role in the larger group. Mr. Horne plays an important role in making the determinations of what happens within this new group. Let us say that he mismanages the assets and decisions of the group and makes a profit from that, and moves that profit into another corporation that he has created. Will this provide him an opportunity to shield any of his mismanagement, and what is the liability of the group that Buckley is in?

John McCabe:
I do not think so. We are talking about active managers in a form. It was not clear to me whether these two are mergers in movements into companies. Under those circumstances, there are fiduciary obligations which will accrue. There are fiduciary obligations and the duty of loyalty in this Act. We are talking about usurpation; what you are talking about is usurping business opportunities. You are talking about actually taking assets out of one entity and trying to shield them in another, for which you would end up being liable. Fiduciary obligations, fraudulent transfers, and fraud are all going to be engaged here. You would be able to track the assets, and if they are still around, be able to get them back.

Chairman Anderson:
Some of the assets would be lost in uses along the way.

John McCabe:
We have expressed fiduciary obligations in S.B. 72 (R1) that are not in the existing LP law. The fiduciary obligations are the duty of loyalty, which is used on issues like usurpation of business opportunities, self-dealing, and other things you do not want someone in a managing position to be able to do against the interest of the LP. Current law does not have anything like that.

Chairman Anderson:
In a limited liability, do you not have the duty of loyalty?

John McCabe:
The laws on fiduciary obligations and partnerships are crude in common law. The original Partnership Act, the original Limited Partnership Act, and the 1976 Limited Partnership Act have no expressed fiduciary obligations. The current partnership law, which is the revised Uniform Partnership Act, is the first time that anybody attempted to express fiduciary obligations in the context of a partnership or a partnership like entity. Most LLC acts have expressed fiduciary obligations. The 2001 Limited Partnership Act has also expressed fiduciary obligations of which the major obligation is the duty of loyalty, which is also the fiduciary obligation of a general partner.

Chairman Anderson:
When Section 66 says that there is no limited liability as a limited partner, the vicarious limited liability is still there as to...

John McCabe:
Limited partners do not have general fiduciary obligations. Fiduciary obligations go to those who actually do, not to those who just invest.

Chairman Anderson:
If I am the managing partner of CAB and I am also the managing partner of HAC, I still have the same responsibilities I have always had to be loyal to the fiduciary responsibilities of both entities. From my mismanagement, I could still be held liable.

John McCabe:
Yes. We do not characterize this as a fiduciary obligation, but it is sometimes thought of as one. It is the obligation of good faith and fair dealing. The reason we do not consider fiduciary obligations is because we believe they are fundamental contract obligations. There is also a good faith and fair dealing. The duty of loyalty, good faith, and fair dealing, which is applicable to any activity of anybody in management of an LP.

Section 68 is directly related to the fiduciary obligation issue. It says that a limited partner does not have any fiduciary duty to the LP or to any other partner solely by reason of being a limited partner. If you bought into an LP as an investor, you do not have the duty of loyalty because you are just a passive investor and are subject to whoever is managing it and how it is being managed. They have the fiduciary obligations. However, you are subject to good faith and fair dealing. You do not have the duty of loyalty because you are just a passive investor. If your actions move beyond that, then you are going to acquire fiduciary obligations. Under the current LP law, there are no expressed fiduciary obligations. There is an unclear relationship between the current LP law and general partnership where there is fiduciary obligation expressed. This Act provides absolute expressed fiduciary obligations for general partners.

Assemblyman Mabey:
I have a limited liability partnership, but every time I go to an attorney I have to set up something new or do it a different way. I am concerned that attorneys do not always give the right advice.

John McCabe:
This Act brings in LLP. An LLP means that there is no such thing as a liable partner and the vicarious liability runs to all general partners in an LLP. If I were your legal counsel, I would be subject to malpractice if I looked at your arrangements and did not advise you to create an LLP.

I could advise a doctor to change what has been a traditional partnership to an LLP. It would solve a lot of the problems doctors and lawyers have. If someone comes to me as a lawyer with a small business proposition, and wants to acquire an investment from a limited number of investors, I am probably going to go set up an LLC for that person. That is the best thing to do in that situation. If somebody comes to me in an estate planning mode with a business and wants to be able to keep the business in tact and wants to put it in the best possible form for when the patriarch of the business wants it to transfer appropriately when he dies, this LP will do that. I practiced ranch estate planning which we used corporations. If I were still practicing ranch estate planning, I would use family LPs. We now have corporations in different forms and the ability to move between them. If somebody starts out with a small partnership and they get a business going, they can get an LLP. If that gets going well and we want to get more investors, we can now transfer that to a LLC, and if it gets really big and we want to go public with the LLC, we will make it into a business corporation. The combinations and permutations are what make American law so great, and it really does work that way.

Assemblyman Conklin:
There is one thing that concerns me about this bill. It appears that it is setting up two separate LPs. It seems like someone can have LP one or LP two. If that is not the case, then he has a smorgasbord of options any time he sets up an LP that can be configured in any way. How does that impact the general dealing of contract law, business law, and liability does not mean anything because we still do not know what his business entity is?

John McCabe:
It is still the same in the sense that someone is not able to look at the title of the partnership and tell what they are doing, but they can tell if the partnership has a limitation of liability.

Assemblyman Conklin:
I am not concerned with what they are doing. I am concerned with what the business entity is in terms of its formation and how to deal with it. If these are two separate LPs, can we just name them something like quadruple LP, so that we know what it is?

John McCabe:
Unfortunately, you cannot have a triple LP.

The partnership form and the LLC form all depend upon the agreement between either the partners or the members; they are agreement-driven entities. Unlike the corporation, which is almost entirely statutory, the corporation meets the statutory forms. In certain types of cooperatives, the agreement is the *sine qua non* of the entity. Until the agreement is read, the person does not know what the entity is. He knows, because it is on public record, that it has limited liability and that it is an LP of some kind. The contract means almost everything in these types of entities. If you understand that, it does not really make a difference if it is an LP or LLC. The important information needed about the company is in the agreement.

Assemblyman Conklin:
I am concerned that the internal dynamics, ownership, and management that an LP consists of be available for everybody wanting to make a deal with that organization. Anyone who is looking to deal with an organization does not fully understand its workings unless they have access to the contract that you have spoken of. I would doubt that contract is public; I would imagine it is private as part of the shielding of liability.

John McCabe:
Not necessarily. If an organization is doing business with a third party, the party has to be provided with enough information to give them conscience to do business with you. It is not necessarily true that the partnership agreement is going to be an entirely confidential document between partners.

Creditors demand all kinds of information if an organization wants to borrow money. The creditors are going to demand information about the internal workings of the partnership so that they can be clear about who is liable for what and who is actually doing the business.

Senator Care:
Scott Anderson from the Secretary of State's Office is here to give the implications that this Act may have, including filing fees listed in Section 58 and other ramifications.

Scott Anderson, Deputy Secretary of State, Office of the Secretary of State:
The Secretary of State supports S.B. 72 (R1). This bill gives our customers some additional options when filing an entity. To follow Assemblyman Conklin's question, the Secretary of State's office will have in its records and on its website what statute the entity has filed under. It will be noted whether an LP has chosen to be formed under existing law or under this Uniform Act. We have worked with Senator Care to reconcile some minimal differences in filing processes so that they are virtually the same as the existing LP statutes. Senator Care mentioned some fees; they are the same as in existing law, so we are not adding additional or new fees. They apply to the same processes that we are currently using in our office to file LPs under the existing statute. With that, there is no fiscal impact on the office because there will be minimal system or procedural changes necessary.

Chairman Anderson:
Do you perceive that this will somehow enhance our status?

Scott Anderson:
I believe it would. It will bring Nevada uniform with a number of other states in regard to filing LPs. It gives an additional option so that those entities that may possibly go to another jurisdiction with the Uniform Act would now come to Nevada based upon this Act and the services we provide in our office.

Chairman Anderson:
Does it hold any of the state services at any greater risk than they are currently held in terms of the procedures in the Secretary of State's office and protecting the citizens of our State?

Scott Anderson:
It does not put us at any disadvantage. This could protect the investors who are investing in LPs and actually bring more LPs to the State.

Chairman Anderson:
Is there anyone else wishing to testify on S.B. 72 (R1)? [There were none.]

Let me close the hearing on S.B. 72 (R1).

Let me open the hearing on Senate Bill 103 (1st Reprint).

Senate Bill 103 (1st Reprint): Adopts the Uniform Unclaimed Property Act. (BDR 10-718)

Senator Terry Care, Clark County Senatorial District No. 7:
This bill adopts the Uniform Unclaimed Property Act (Exhibit D.) It repeals the existing version of the unclaimed property act in Nevada, which is the 1981 Act adopted in Nevada in 1983. I have worked on this with the Treasurer's office.

Let us say that someone has a safety deposit box at a bank for five years and puts $250,000 in it and leaves all of his identifying information such as his name, address, and phone number in the box. At the end of the five years, the bank still has the safety deposit box but is not going to hold onto it forever. Under this Act, the presumed period of abandonment is three years. During the three years, the bank has made every effort to locate this person and cannot find him. The money does not belong to the bank; it is unclaimed. This Act mandates that the bank turn the money over to the State. Unclaimed property can be not only cash, but it can also be refunds, payments that are due under an annuity, stocks, dividend payments, and all manner of property. This bill has a provision with a period of abandonment where the property is presumed abandoned after a certain number of years. In Nevada, that period is three years. The holder, who is in possession of the property, is required to turn it over to the State. If it is non-cash, the State can sell it and put it into the general fund. The State can also hold onto it and create a fund where people, when they later lay claim to this property, can reclaim it. More people have unclaimed property than you might realize. I was astounded when I began working with the State Treasurer's office. They came to me with an application and asked me if I wanted to fill it out. It turned out that there was $149.00 in my name in unclaimed property held by the State.

Nevada uses a three-year time period, which is contained in this Act. There is another provision that says once a certain amount of money comes to the State in unclaimed property, then there is $7,600,000 that goes into the

Millennium Scholarship Fund. That is obviously unique to Nevada and this act keeps that on the books.

This Act does not include all property. There are a series of definitions in the bill that discuss the kind of property we are talking about. It does not include everything.

John McCabe, Legal Counsel and Legislative Director, National Conference of Commissioners on Uniform State Laws, Chicago, Illinois:
This is an update of the 1981 Act which was an update of the earlier 1960's Act. Unclaimed property laws were created in that time frame to put aside the old escheat laws and the non-escheat effects of abandoned property. This Act governs intangible property, which are things like stock shares, dividends, bank accounts, money due and owed, gift certificates, et cetera. It is the holder who is beholden to report on unclaimed property to transfer the unclaimed property and the intangible assets over to the State. The only tangible property is the property that may be found in safety deposit accounts. There are rules for dealing with property, such as how you hold it and how you sell it. Some kinds of tangible property are subject to sale. The property, the assets, and the value of the assets are held in perpetuity for the rightful owners, who are the creditors. There is a fund set aside to pay rightful claims and a claim procedure for claiming against the State. It is to protect people more than it is to provide money to the State, although it certainly has a very nice benefit to the states that have unclaimed property laws. This Act updates jurisdictional issues and takes care of case law that came subsequently to 1981. It upgrades and updates report forms and it allows states to cooperate for the collection of unclaimed property because this is very much an interstate business. Most states now enter into cooperative arrangements with other states to collect and pay unclaimed property. This is an effort to modernize and update. To some extent, it is actually a simplification of the 1981 Act. I feel it is a very useful thing for this State to adopt as a replacement for the 1981 Act.

Senator Care:
Assemblyman Kihuen proposed Assembly Bill 279 which we have passed out of Committee and has to do with gift certificates. It would appear as though we may need a conflict amendment because S.B. 103 (R1) refers to the presumed period of abandonment of a gift certificate after three years of non-use. Assemblyman Kihuen's bill makes a distinction between a gift certificate with an expiration date and one that does not have one. We are going to have to make a change to the bill before this Committee today so that the bills can work together.

Chairman Anderson:
What would happen to the remainder of a gift certificate when it is not used?

John McCabe:
In the 1981 law, there is a rule for any intangible property not specifically mentioned in the Act in a specific time. Any intangible property was subject to an abandonment provision, and I feel that it is very arguable that remainders on gift certificates would fall under the general intangible provisions and would be transferable to the State.

The Unclaimed Property Act of 1995 has a rule which says gift certificates have a specific abandonment period. This new Act uses the basic three-year abandonment period with a division rule which says that 60 percent of the remainder of gift certificates escheats and 40 percent stays with the organization. In our drafting committee, that was a compromise that was developed with the Retailers Association in order to get them to be more amenable to the Uniform Act. The controversy over gift certificates is an ongoing issue.

Patrick Foley, Chief Deputy Treasurer, Office of the State Treasurer:
In Chapter 120A of *Nevada Revised Statute* (NRS), gift certificates are under the current catch-all to be reported to my office under a three-year date. In most instances, gift certificates are issued without the name of the purchaser. The unused portion or the remainder of the balances would then be reverted, upon expiration of the cards or after non-use of three years, to the state of incorporation of the business that issued the gift card. That would be Delaware in most instances.

Chairman Anderson:
The unused portion would revert to the state where the home office is?

Patrick Foley:
Assembly Bill 279 makes it so that at the time of purchase of the card, if the issuer does not gain the purchaser's name, they must automatically substitute in the address of the State Treasurer in place of the name of the actual purchaser of the card. Any unused dollars would then be turned over to the State of Nevada to be held in perpetuity for the cardholder.

Assemblyman Mortenson:
If there is no name on the card, how would it be proved that it belonged to the person who was trying to claim it?

Patrick Foley:
It makes it difficult for us to find any unknown owner. If somebody brings in the actual gift certificate issued from a corporation, we have the ability to locate an identification number on the certificate in order to make payment to the owner of the certificate. That is a very difficult thing to accomplish, but under the current scenario, those dollars are going to Delaware where the likelihood of anybody in this State getting money back is greatly reduced.

Assemblyman Mortenson:
So if someone loses their card, they are out of luck?

Patrick Foley:
Basically, yes.

Chairman Anderson:
Do you see this being a larger issue now that gift cards for businesses are being sold in other places such as gas stations?

Patrick Foley:
The opportunity regarding gift cards is specific to one location selling those gift cards. If it is similar to something like a Visa card being sold and being able to be used at multiple locations, those gift certificates are not part of A.B. 279. We are talking about specific businesses. If it is a card for a specific business, that would then be turned over. In S.B. 103 (R1), we have made an indication that anybody filing a report of 15 items or more must file them electronically. That would help our process of loading all of the information in a much easier and simplified format.

Chairman Anderson:
Is there any other nuance to this that should bring us concern? Is the State Treasurer's Office going to be able to do the things in this Act without any additional costs?

Patrick Foley:
Yes, the growth that we have seen within unclaimed property has been phenomenal over the past four years and we are going to continue to see that type of growth. We do not see S.B. 103 (R1) having an impact on our operations. With our budget hearings right now, we have forwarded information on additional positions to keep up with the growth that we have had.

Chairman Anderson:
I notice that the bill requires a 2/3 majority vote and that raises a concern about the possibility of a veto.

Senator Care:
I had a conversation with Mr. Michael Dayton who is Chief of Staff at the Governor's Office. I explained what the Act was about, and the explanation that I got from Legislative Counsel Bureau (LCB) was that there is no fee or tax, but it increases funds going into the general fund. That is the reason for needing the 2/3 vote.

Chairman Anderson:
Will the Ways and Means Committee be looking at this also?

Patrick Foley:
Yes, the hearings are set for Monday.

Chairman Anderson:
Are you anticipating that this will pass?

Patrick Foley:
Until our budget closings are completed, I am not sure, but I anticipate that everything should go fine.

Assemblyman Carpenter:
My name was on the list from the Treasurer's Office as well. It was interesting that there was an item on the list for $30,000 for the Cattlemen's Association. I called and told them about it, and I received a letter thanking me for letting them know that.

Chairman Anderson:
Let me close the hearing on S.B. 103 (R1).

Let me open the hearing on Senate Bill 298 (1st Reprint).

Senate Bill 298 (1st Reprint): Enacts provisions relating to civil liability for causing the injury or death of certain pets. (BDR 3-479)

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:
Senate Bill 298 (R1) is a bill that I brought forth at the request of a friend. His wife was walking their children to school with their family dog, who was a Yorkshire Terrier named Auggie. They were in the crosswalk and a lady, who they later found out was high on drugs, blew through the crosswalk narrowly

missing his wife and kids, but unfortunately striking the dog. Miraculously, after several thousands of dollars in veterinary bills, the dog survived. They tried to recover some of the costs associated with bringing Auggie back to health, and realized that there was no mechanism in statute to allow them to pursue other than the property value, since dogs and cats are considered property. He asked me if I would bring legislation forward to try to remedy that.

Senate Bill 298 (R1) indicates that if a person intentionally, willfully, recklessly, or negligently injures or kills the pet of another, the person is liable for certain aspects, such as the cost of veterinary care, the reduction of market value of the pet, reasonable attorney fees, and punitive damages. Non-economic damages may not be awarded. We removed non-economic damages from the bill and capped economic damages at $5,000. We capped the economic damages at $5,000 because we wanted to keep this in the small claims court. The bill provides a mechanism for pet owners in these circumstances to recover economic damages in the event their pet is injured by the negligence of another person.

Chairman Anderson:
Does this hold you responsible for your pet hurting another pet?

Senator Hardy:
No, it does not. It certainly was not my intent. If your counsel opines otherwise, I would be open to an amendment.

Chairman Anderson:
This would have to be the action of the person. If a person ordered their dog to attack your dog, they could be held liable. It would have to take a willful act.

Senator Hardy:
I recognize that intentional, willful, reckless, and negligent are all very high standards. I am not looking to expand the breadth of litigation here.

Assemblyman Mortenson:
How is it going to be determined what the value of the harmed pet is?

Senator Hardy:
That has not been brought up to this point. My guess would be that the small claims court would be responsible for making that determination. I will certainly defer to your counsel on that. I think that the burden of proof would be on the owner to establish the economic damages, such as how much was spent in veterinary bills or if it was a purebred champion show dog that is now worth nothing. The owner could receive up to $5,000 in economic damages if the pet

were killed. We have completely removed non-economic damages from the bill for the reason of emotional attachment.

Chairman Anderson:
If you got it from the pound, you could receive the money you spent from having it spayed and neutered and the veterinary bills.

Assemblyman Ohrenschall:
On page 2, line 3, it states a cap of $5,000. I am thinking of the pet food companies who have been distributing animal food with rat poison in it. Would this possibly preclude a class action if pet owners whose animals got sick or died might try to sue those companies?

Senator Hardy:
I think this would limit it if it were an action brought in Nevada, to $5,000 if it could be proved that it was done intentionally, willfully or recklessly. Again, I will defer to your counsel. I imagine that would be a national class action lawsuit that would fall under federal laws.

Assemblywoman Gerhardt:
I am in support of this bill. Page 2, line 23 mentions livestock. Do we have statutes to address that elsewhere? I am thinking about areas where it is posted that livestock might be crossing and someone hits an animal. I think there are already penalties in the law. Does this muddy that water by including them? Also, if you could clarify what encompasses livestock under that section?

Senator Hardy:
I am not sure. This bill, by definition, only defines pet as a domesticated dog or cat, normally maintained in or near the household of its owner. There was discussion about whether or not we should expand that, but we thought that this is a good first step. By definition, this would not include livestock.

Assemblywoman Gerhardt:
Does this include livestock?

Senator Hardy:
No, it only relates to pets. Pets are defined for purpose of this statute as a domesticated dog or cat.

Assemblyman Cobb:
I do not know if this would fall under the definition of pet in this bill, stated as a cat that is normally maintained near the household: let us say that I have a

friend who owns a tiger. If the tiger attacks my friend and I shoot it, am I liable to that person for the damages?

Senator Hardy:
It could be argued in court that it was not intentional, willful, reckless, or negligent injury of a pet and that you are entitled to kill that pet.

Assemblyman Cobb:
I thought that would be intentionally killing it.

Senator Hardy:
It could be intentionally, but I think that intentionally, willfully and recklessly are considered together, separate from negligently. I do not think that it would meet the standard of recklessness.

Risa Lang, Committee Counsel:
The way this is written, it could be any of those things. You would not have to take intentionally, willfully and recklessly together. A lot of the questions being asked are questions of fact that a court would look at if it was litigated. The way I am looking at this section is that it is mostly to help compensate the owner for burial costs and veterinary costs.

Senator Hardy:
It would not be my intent for that circumstance to be covered by the bill. In my opinion, that would be self-defense. It was not my intent when bringing the bill forward.

Chairman Anderson:
If a bull dog attacked me and I had to break its jaw in order to get my leg free, and in doing so I caused substantial bodily harm to the animal and brought suit against the owner, would he then be able to counter-sue me for the cost of breaking the dog's jaw in order to free my leg?

Senator Hardy:
It would be my intention that he could not. If we need language to clarify that, I would certainly be amenable to that.

Assemblyman Manendo:
I am in support of this legislation, but I am thinking about the postal delivery people who carry mace and get attacked by a dog. If they spray the dog, it is definitely intentional but it is self-defense.

Senator Hardy:
The self-defense question is something that is definitely important to clarify, and I would certainly be supportive of any clarifying language.

Assemblyman Carpenter:
In regard to livestock, it is already in statute that if a dog is harassing livestock, you have the right to destroy that animal. A person could not be awarded if someone killed his dog that was harassing, chasing, or killing livestock.

Chairman Anderson:
We would want to make sure that the public is also protected if the animal has been a threat.

Senator Hardy:
We are proving an exemption for a dog that damages livestock. I do not see a reason why we could not expand that to a dog that causes damage to any other being.

Chairman Anderson:
I have heard of experiences where small children are attacked by animals and the owners of the animal become enraged when the parent is protecting their child and threaten suits.

Let me close the hearing on S.B. 298 (R1).

Let me open the hearing on S.B. 378.

Senate Bill 378: Limits the liability of certain nonprofit organizations and their agents, employees and volunteers under certain circumstances. (BDR 3-1318)

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:
I brought this bill forward at the request of people whom I serve with on the Board of Directors for the Boy Scouts of America. Boy Scouts of America is considering selling some of their land holdings with the intention of reinvesting the money in a number of different areas for the use of the public. They checked the law to see what the liability would be for having a large amount of money on hand, worried that they might be considered a deep-pocket organization for that period of time, and looked at what protections they might have under the law. They realized that there were no protections for them.

I have brought forward this very narrowly crafted bill that would provide a limit on damages that may be awarded against certain nonprofit organizations. The

limit in this case would be $100,000 to reflect an increase that Senator Care sought in the Senate. We crafted this as narrowly as we could so that it does not apply to associations such as the association that I direct, the Associated Builders and Contractors of Las Vegas. It is much more narrowly defined as a religious, charitable, or educational organization. With this bill, we are attempting to provide a cap for these associations.

Chairman Anderson:
In taking the liability away from these groups, does this take away their responsibility for the acts of their group which may be illegal?

Senator Hardy:
The intent is to provide the liability limit for any tort action, not any illegal activity. Additionally, we indicated that the limitations do not apply to a tort occurring from an activity that is designed for commercial activity to raise money. If they were having a bake sale or something else geared towards generating revenue for the association, the liability limit would not apply either. We have tried to craft this as narrowly as possible, but it is intended only for tortious actions.

Chairman Anderson:
Is there anyone wishing to testify in opposition?

Keith Lyons, Representative, Nevada Trial Lawyers Association:
We feel this bill harms the individuals that the nonprofits are here to serve. Nevada juries loathe to award big damages unless there have been serious injuries. This bill is asking to protect a pool of money so that the people hurt cannot be adequately compensated in tort cases. Litigation takes two to three years. By the time the money in the Boy Scouts of America organization is invested, the litigation will barely even be started, let alone be completed. This gives organizations a cap on liability. I do not practice tort law and I am not a personal injury attorney; I primarily practice in employment law or family law. I will tell you of a scenario that has happened in other states. An organization hires a staff member who fills out an employment application. On the employment application, there is a box to check if he had ever been convicted of a felony. That individual checks yes. The organization then negligently fails to follow up on it, and in doing so, accidentally hires a child molester who has been convicted of child molestation in other states. The sex offender is then at a nonprofit activity, such as a campground where children are involved, and ends up molesting three or four of the children. In that scenario, each of those children would then be able to receive $100,000, where, without this cap on limitation, they would receive significantly more. That is a significant harm to our children and should not be allowed to go forward. Another possible

situation is if a nonprofit organization designs a bridge and that bridge collapses and paralyzes somebody because it was not adequately designed, and that person can never walk again. Is $100,000 adequate compensation for their injuries? I do not see where this bill serves any legitimate purpose other than to protect organizations that have harmed our citizens. I would encourage not passing this bill.

Chairman Anderson:
Have you talked to Senator Hardy about your concerns on this bill?

Keith Lyons:
I testified at the Senate and raised the same concerns there. Senator Hardy has my information, but I do not believe he has contacted me.

Chairman Anderson:
Is there anyone else wishing to testify on S.B. 378? [There were none.]

Let me close the hearing on S.B. 378.

There is a document to be inserted in the record from yesterday submitted by Shelly Register in response to the questions that Assemblyman Horne asked (Exhibit E).

Meeting adjourned [at 10:47 a.m.].

RESPECTFULLY SUBMITTED:

_____
Kaci Kerfeld
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chair

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 10, 2007 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 72 (R1)	C	Senator Terry Care	Information Packet
S.B. 103 (R1)	D	Senator Terry Care	Information Packet
S.B. 157	E	Shelly A. Register	Proposed Amendments