

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
March 16, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:16 a.m., on Friday, March 16, 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, Chairman
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 Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No. 7
Senator Joe Heck, Clark County Senatorial District No. 5

Minutes ID: 525



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Janie Novi, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association, Henderson
Michael Hackett, Vice President, Alrus Consulting, Representing the Nevada State Medical Association, Reno
Frank Daykin, Commissioner on Uniform State Laws, Representing Nevada
Genie Ohrenschall, Commissioner on Uniform State Laws, Representing Nevada

Chairman Anderson:

[Meeting called to order. Roll called.] Let us turn to Senate Bill 9.

Senate Bill 9: Provides that the provisions related to obtaining the informed consent of patients apply to osteopathic physicians. (BDR 3-728)

Senator Joe Heck, Clark County Senatorial District No. 5:

S.B. 9 simply makes a housekeeping change by including physicians licensed under Chapter 633 of *Nevada Revised Statutes* (NRS) within the provisions of informed consent as outlined in Chapter 41A of NRS. In 1975 the Legislature passed provisions regarding informed consent for medical and surgical procedures. It only applied to physicians licensed under Chapter 630 of NRS, medical doctors. In 1997 and 1999 it was amended to include dentists, but has never included physicians licensed under Chapter 633 of NRS, osteopathic physicians. This requires osteopathic physicians to comply with the same informed consent requirements as the medical doctors and dentists in the State of Nevada.

Assemblywoman Gerhardt:

What has been the past practice? This suggests that they have not been informing patients.

Senator Heck:

No, we do obtain consent, although it is not statutorily required at the time. This statute describes when informed consent is conclusively determined to be obtained. We just want to make sure that the same provisions are statutorily applied to osteopathic physicians.

Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association, Henderson:

We are in support of this bill.

Michael Hackett, Vice President, Alrus Consulting, Representing the Nevada State Medical Association, Reno:

We also are in support of S.B. 9. The laws of consent should apply to doctors of osteopathic medicine.

Assemblywoman Gerhardt:

Does this differ in any way from the requirements for dentists and doctors?

Senator Heck:

No, it includes the exact same provisions. It is just adding Chapter 633 of NRS to the current law, which already includes the chapters for doctors and dentists.

Chairman Anderson:

We will close the hearing on S.B. 9, and turn our attention to Senate Bill 44.

**Senate Bill 44: Enacts the Uniform Disclaimer of Property Interests Act.
(BDR 10-754)**

Please note that Frank Daykin and Genie Ohrenschall, Commissioners on Uniform State Laws, are present.

Senator Terry Care, Clark County Senatorial District No. 7:

The National Conference of Commissioners on Uniform State Law (NCCUSL) is a 116-year-old organization. The idea is to promote uniformity, largely in the field of commerce across state lines, so you do not have to worry about federal legislation. The same legal issues come up in many different fields, in all 50 states. In some cases state laws differ, making the rules different. In some cases there are two separate parties in different states that have different laws. These circumstances make things difficult. Uniform Acts across state lines can help ease these different transactions from state to state.

We meet once a year for a national conference for eight days. We promulgate and revise existing uniform acts. The best example is the Uniform Commercial Code.

Senate Bill 44 is the Uniform Disclaimer of Property Interests Act ([Exhibit C](#)). You may have heirs, beneficiaries, remainder beneficiaries, people who are entitled to something through the provisions of a trust. For example, it may be a beneficiary to an insurance policy. Unbelievably, there are times when the beneficiary does not want what is coming their way; this is a disclaimer. This is often due to tax implications. This act simply clarifies the circumstances in which a person or organization may step aside and refuse. This act also governs what happens if that person was never entitled to the benefit to begin with. For example, a grandfather with a lot of money has created a document stating that upon his death everything will go to his son, but the son does not want it because there is a grandson involved and the son has judgments against him. If he were to get the inheritance, it would immediately be attached by judgment creditors, causing the family to lose the inheritance. The dad may then say he does not want it. The inheritance would then go to the grandson. That is the idea behind a disclaimer.

The act has been adopted by 14 states, and is approved by the American Bar Association (ABA). This act not only includes inheritance and insurance policies, it also allows for a power of appointment. A power of appointment is where you give somebody the power to handle your assets. This act allows for an appointee to say that they do not want to be the said appointee.

To expand, Sections 2, 3, and 11 are definitions. Section 12 says that we are talking about any interest or power over property. Section 13 makes it clear that this act is not necessarily the exclusive manner in which to disclaim if there are other statutes that provide for such disclaimants. Those other statutes may apply. We actually have a disclaimer act on the books in Nevada although it is not the Uniform Act. This act was promulgated in 1995. If you look under Chapter 120 of NRS, you will not see any case annotations. This act will bring everything up to date so that it conforms to the other states. Section 14 lays out the general requirements for a disclaimer, allowing the disclaimant to disclaim the interest or the power in whole or in part. Also, it provides for the disclaimant to disclaim even if the document says that he may not. It grants the general rules for power of appointment. It clarifies that the power of appointment must be in writing. Section 15 includes the rules for disclaiming. The power to disclaim becomes irrevocable; it is usually when someone dies. You may say that you do not want the inheritance, but it is not effective until the person dies. Also clarified is what will happen if it is not specified in the document where the estate goes in the case of a disclaimer. Section 16 is new

to Nevada law. It simply says that the holder of joint property may disclaim. Section 17 allows for trustees to disclaim. Section 18 allows appointees to disclaim. Section 19 clarifies when the power of appointment may be disclaimed. Section 20 clarifies when a disclaimer by a fiduciary becomes effective. There may be times when a fiduciary wants to disclaim the power to invade the principal. This may be because he is also the beneficiary, as well as the trustee. One or more of these powers may be disclaimed. It also contains a provision for when a trust document contains more than one trustee or fiduciary. Section 21 explains how to do a disclaimer and who to deliver the disclaimer to. Section 23 says that if the disclaimer is written wrong or is messed up, if it does qualify for certain federal gift and estate tax purposes, then it is still a valid disclaimer under Nevada state law. The rest of the act is pretty standard. This can get very involved; I have tried to make it simple.

Assemblyman Horne:

In instances where property is for a minor, and there is a guardian, is that included? I know a minor may not disclaim, but may a parent or guardian disclaim? There may be property that a minor may want to disclaim for scholarship purposes etcetera?

Senator Care:

The words "guardian" and "guardianship" are not included in the bill. "Trustee" and "fiduciary" are included. The trustee has the power to disclaim if he thinks it is in the best interest of the beneficiary. I will let Mr. Daykin further answer.

Frank Daykin, Commissioner on Uniform State Law, Representing Nevada:

A general guardian of the person and property, or the guardian of the property of a minor could disclaim. Normally, such a guardian has all powers with respect to property or interest in property.

Assemblyman Cobb:

Are there laws already on the books in the State of Nevada involving disclaiming of property? I assume this act is to help in the instances of receiving property and property interest from other states.

Senator Care:

If you look at page 9 of the bill, that is the existing statute. The problem is that Chapter 120 of NRS just does not have the elaborate rules contained in this revised act.

Chairman Anderson:

That is outlined in the handout. It would be well advised to take this act under consideration at this time.

Senator Care:

What often happens is that you get a uniform act, a large number of states enact it, then certain situations arise. We then need revised acts.

Assemblyman Cobb:

Is there a way in which an individual can prevent a beneficiary from disclaiming just a part of the property interest? Can a person be prevented from picking and choosing the best pieces of a trust or estate?

Senator Care:

I do not practice in that field. There may be a way that it could be drafted. The act indicates that if the disclaimant does not want all or part of the estate, even though it was set up that way, he does not have to take it.

Frank Daykin:

I believe I could draft the document that you are describing and make it valid under this act.

Chairman Anderson:

In terms of the timeline, compared to the federal statute, do you only have a narrow window of time to make a disclaimer statement? Under this act, do you have a longer or shorter period of time?

Senator Care:

The bill drafters made a conscious effort not to include that in this act. You cannot receive something then later say that you do not want it. Once you have accepted, it is yours.

Chairman Anderson:

If you have taken something and used it, then decide parts are a burden, you cannot then disclaim those parts?

Senator Care:

Correct.

Chairman Anderson:

Are there any other questions or anyone else who wants to testify?

Genie Ohrenschall, Commissioner on Uniform State Law, Representing Nevada:

I have an example of what may happen. You have children and set up an estate. In addition to setting up provisions for your wife, daughters, and so on, you set up an amount for the local church or other charity. As the years go by,

with inflation, etcetera, the amount may not be worth as much, or one of the daughters may become ill requiring more. The church may come together with other beneficiaries and disclaim a portion of their entitlements so that the beneficiary who needs it more may get it.

Chairman Anderson:

It would not be possible to disclaim a portion?

Genie Ohrenschall:

If they do it all together, the same percent or so on, they can.

Chairman Anderson:

If there are no other questions or concerns, let us close the hearing on S.B. 44, and move to Senate Bill 46.

Senate Bill 46: Enacts the Uniform Custodial Trust Act. (BDR 13-753)

[Chairman Anderson leaves the room.]

Frank Daykin:

The Custodial Trust Act ([Exhibit D](#)) is simply a device which permits a person to make a written transfer of property by registration of the property. The holder may change the custodial registration of the property from his son to himself. This means that he is no longer the legal or beneficial owner. Upon his death, it would pass to his son, under whatever provisions he might make. The title remains with the custodial trustee, and custody of the property is retained.

The details of the act provide for how the custodial trustee should register or record the instrument, the rights, transfers, etcetera. I will not go through every section; it is very long. If there are questions, I will answer them.

Vice Chairman Horne:

Are there any questions for Mr. Daykin?

Assemblyman Cobb:

Under Section 19, it states that if the custodial trust has not been terminated during the lifetime of the beneficiary, the custodial trust terminates upon the death of the beneficiary. What happens to the trust at that point?

Frank Daykin:

Upon the death of the beneficiary, there is no one to whom the property is to pass unless it has been appointed in the trust. The property would revert to the settler of the trust.

[Chairman Anderson returns to the room.]

Vice Chairman Horne:

If there are no further questions, I am going to close the hearing on S.B. 46.

Chairman Anderson:

I am not concerned about these three bills. We will probably be moving forward with them.

Meeting adjourned [at 9:11 a.m.]

RESPECTFULLY SUBMITTED:

Janie Novi
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 16, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
SB 44	C	Senator Terry Care, National Conference of Commissioners on Uniform State Laws	Uniform Disclaimer of Property Interests Act.
SB 46	D	Frank Daykin, Commissioner On Uniform State Laws	Uniform Custodial Trusts Act