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

**Seventy-Fifth Session**
**April 29, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:28 a.m. on Wednesday, April 29, 2009, 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/75th2009/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 Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

**COMMITTEE MEMBERS ABSENT**:

None

**GUEST LEGISLATORS PRESENT**:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12

**STAFF MEMBERS PRESENT**:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

**OTHERS PRESENT**:

Shirley Parraguirre, Clark County Clerk, Las Vegas, Nevada
Allen Lichtenstein, Las Vegas, Nevada, American Civil Liberties Union of Nevada
Laura "Bru" Ethridge, Notary Administrator, Office of the Secretary of State
Margaret Flint, Reno, Nevada, representing various wedding chapels in Nevada
Lora Myles, Attorney, RSVP Carson and Rural Elder (CARE) Law Program, Reno, Nevada
Ginny Casazza, Reno, Nevada, Director, National Guardianship Association
Barry Gold, Las Vegas, Nevada, Director, Government Relations, AARP of Nevada
Susan Swenson, Carson City, Nevada, Carson City Public Guardian
Kathleen Buchanan, Las Vegas, Nevada, Clark County Public Guardian

**Chairman Anderson:**
[Roll call and opening remarks.]
We will go in order today, so we will start with Senate Bill 130 (1st Reprint).

**Senate Bill 130 (1st Reprint): Revises certain provisions governing certificates of permission to perform marriages. (BDR 11-468)**

**Senator Warren B. Hardy II, Clark County Senatorial District No. 12:**
I introduced this bill after meeting with Shirley Parraguirre, the Clark County Clerk. During our conversation I realized that some of the provisions regarding marriage licensing and who may perform marriages are out of date; they are not keeping up with the need. This bill will broaden who can perform marriages but maintain the sanctity of the marriage ceremony.

We had a number of amendments offered in the Senate, and we tried to be as accommodating as we could, but some went too far and could not satisfy the concerns of those responsible for licensing. We think this bill passes constitutional muster, and I will turn it over to Ms. Parraguirre.

**Shirley Parraguirre, Clark County Clerk, Las Vegas Nevada:**
[Read from prepared statement (Exhibit C).]
[Page 3, paragraph 2] The timely recording of certificates is a huge problem in Clark County. [Continued to read from prepared statement (Exhibit C).]

When this bill was proposed in the Senate, there were two additional proposed amendments. One was from George and Margaret Flint, having to do with the grandfathering-in of ministers. The Flints withdrew that amendment. The other was from the American Civil Liberties Union of Nevada, and their proposal was to perhaps allow notaries public to perform marriages. We oppose it. We thought we might be able to include the words "religious or secular organizations," but there was quite a bit of discussion about that, and it was pointed out that secular organizations could conceivably include the Lions' Club, the Masons, the Rotary, et cetera, because all of those are secular organizations. The members of the Senate Judiciary Committee thought that language was too broad; therefore that amendment was not included.

We are very happy with the bill as it currently stands.

**Chairman Anderson:**
Could you explain the process when a new minister comes into a church or organization and his duties include performing marriages. Does he file with the county clerk's office?

**Shirley Parraguirre:**
The way the statute is currently written, anyone who wants to perform marriages must go to the clerk in his county for a certificate.

**Chairman Anderson:**
That will not change?

**Shirley Parraguirre:**
That will not change. We do not have many problems with the well-known religious groups, for instance, Catholics or the Latter Day Saints (LDS). When ministers come into the larger religious organizations they apply to us, and their application will normally state that they will spend 20 to 40 hours a week in their ministry and one or two hours a month performing marriages. It is with the smaller groups that we run into problems.

**Chairman Anderson:**
Now this particular church decides that this minister is not a good fit for their congregation and he leaves. He may be under the impression that he is still in the database as a recognized minister. Does he have to make a new application if he moves to another church or organization?

**Shirley Parraguirre:**
Yes, the statute now says that if a minister leaves a church, the church is supposed to notify the county clerk's office.

**Chairman Anderson:**
I did not include that in my question. He would have to make a new application—is that correct?

**Shirley Parraguirre:**
When he went to another church, yes.

**Chairman Anderson:**
Could it be possible for an individual to be authorized to perform marriages in several different churches or congregations?

**Shirley Parraguirre:**
I have never seen it happen, but I guess it is possible.

**Chairman Anderson:**
What requires the church to inform the county clerk's office that this person is no longer authorized to solemnize a marriage?

**Shirley Parraguirre:**
I do not know the specific provision, but *Nevada Revised Statutes* (NRS) Chapter 122 provides that the church is to notify us when a minister severs ties with the church, and the churches do that on a regular basis. They will write a letter or statement. This bill provides for an affidavit from someone from the church stating that an individual has the authority to perform marriages and another affidavit telling us that this individual has left and no longer has that authority.

**Chairman Anderson:**
But there is no penalty if the church does not do that?

**Shirley Parraguirre:**
No, there is not. If we find out that a minister has left one church and has moved on to another, we will write that minister and remind him that he needs to fill out another application and apply through the new church.

**Chairman Anderson:**
What happens to that marriage which was performed in the meantime? Is it still legally binding? The parties believed it was being performed properly.

**Shirley Parraguirre:**
Yes, there is a specific statute which addresses that issue. Oftentimes we have ministers who perform marriages before they receive their licenses. The provision states that if the couple believes, in good faith, that the person who performed the service had the right to do so, then it is a valid marriage.

**Assemblyman Segerblom:**
I want to commend you for bringing the bill. I had clients last year who had a problem because they wanted an out-of-state minister to marry them and they filled out the form incorrectly. The changes you are making will make it a lot simpler for those involved.

**Chairman Anderson:**
Is there anyone opposed? [There were none.] Neutral?

**Allen Lichtenstein, Las Vegas, Nevada, American Civil Liberties Union of Nevada:**
The reason we are neutral rather than opposed is because there is nothing particularly wrong with the changes. We are neutral because the bill does not address the overall constitutional problem that the system has regarding religious tests.

That violates the *Nevada Constitution* and the religious test and establishment clauses of the *United States Constitution*. We have had several people contact us. One was from the Humanist Association, who was rejected because Humanists are not ministers and therefore cannot perform marriages, and another was from a Wiccan group, who were denied because they do not have a particular building in which they hold services. We have also had some people who are secular and want to have a secular marriage but do not want to have to go to the marriage license bureau to do it. They want to get married like anyone else at a park or at home or wherever. Most judges do not make house calls, and the solution offered in the Senate was that someone can get a minister of the gospel and tell him to not say anything religious. This is not really the separation required.

We proposed something we thought would work, which is for a notary, who is already authorized to take oaths, to perform the very minimal service required. All that is required by statute is that people show up with a license, there be a witness, someone who is able to perform the ceremony asks if the two want to get married, they confirm, and they are married. This is the kind of act that notaries often do.

There were two objections. The first was there would be too many people who would want to do this, and it would be too much trouble. While I can appreciate that, I have never known the courts to say that too much trouble for the government is going to trump constitutional issues, and I think this is a serious constitutional issue. I just mentioned the other objection, about getting a minister to perform a secular ceremony.

We have no particular problem with notaries having to go through a process where they are under the jurisdiction of and must fill out whatever forms are required by the county. The objection is to the religious test, which occurs here. Restricting the authority to perform marriages to ministers or just someone authorized by their church or religious organization just does not make sense. Other states, such as Florida, have this particular provision, and it seems to work without any great problem.

Again, we had people approach us, and we said, "Let us not litigate, first, let us work something out." So we are here with this amendment.

**Chairman Anderson:**
We are looking at the amendment you submitted (Exhibit D). Apparently, the county clerks feel that it represents a problem in keeping track of documentation.

**Assemblyman Segerblom:**
Are you saying that Florida permits this?

**Allen Lichtenstein:**
Yes, that is correct. I believe there is another state that has something similar, but which state escapes me.

**Assemblyman Segerblom:**
Do you have any objection if the notaries had to register separately with the marriage license bureau or show their notary certificate to the bureau so the bureau could keep track?

**Allen Lichtenstein:**
No problem either way, whatever it would take to make it a workable system. Our particular concern is the religious test that now exists and will still exist with the bill in its current form.

**Assemblyman Carpenter:**
I do not see anything about religion where it says a judge or justice of the peace. I do not see any religious connotation there.

**Allen Lichtenstein:**
There is not, but judges and justices of the peace are not people who make house calls. If one wants to go to the courthouse and have a quick ceremony, it can be done. On the other hand, there are people who can perform marriages anywhere and will do so based solely on a religious test. That is where the constitutional issue comes in.

**Assemblyman Carpenter:**
I know, at least in Elko, that justices of the peace will go to homes and other locations and perform marriages. I know that a Justice went to Elko to perform a marriage, so I think they are willing to go wherever they might be needed.

**Laura "Bru" Ethridge, Notary Administrator**, **Office of the Secretary of State:**
The Secretary of State's Office opposes allowing notaries to perform marriages. Currently, they do not have that privilege under NRS Chapter 240. The notary can witness the signing of the document and administer an oath for an individual who may be testifying or signing an affidavit.

We already have problems with notaries who do not respond to the Secretary of State's Office when we send letters to them requesting information regarding their actions as a notary. Ms. Parraguirre already stated that she has problems with the ministers filing in a timely manner, and I would say that she would have more problems with notaries. There are over 46,000 current notaries, and I think it would be a nightmare for the county clerks to track notaries authorized to perform marriages.

**Assemblyman Cobb:**
Why is there no fiscal note with the new duties listed in this bill for the Secretary of State's Office?

**Bru Ethridge:**
I believe it is because we currently have a database for ministers, and all we plan to do is enhance that to allow the county clerks to log in and update the ministers list. It would streamline the process and eliminate the multiple

touching and processing of paperwork. Since the county clerks are the ones who appoint ministers, they would input the information, and the Secretary of State's Office would just maintain it. It could give the public the ability to go into the central database to confirm that their minister is viable and authorized to perform marriages.

**Margaret Flint, Reno, Nevada, representing various wedding chapels in Nevada:**
I have some ideas that may help address the concerns of the American Civil Liberties Union (ACLU). We generally see people who have no religious affiliation go through the basic, quick, what-has-to-be-said-by-law type of ceremony, and then they do their own family-type or affiliation-type ceremony separately. They can go to one of our organizations, or the commissioner of civil marriage, or a justice of the peace, if they are in the rural counties, for the legal ceremony, and then do their own home-type ceremony. That appeases and satisfies most, so that is some input the Committee can consider.

**Assemblyman Segerblom:**
If someone comes to one of your chapels and does not want a religious ceremony, other than a justice of the peace, who do you have that can come to your chapel to perform the wedding?

**Margaret Flint:**
We have ordained ministers affiliated....

**Assemblyman Segerblom:**
If they do not want a minister?

**Margaret Flint:**
Then the language is changed on the certificate, and we have been discussing part of this change with the county recorders. Rather than using any type of ministerial content, we are using the term "officiant." That way the certificate shows no religious connotation.

**Assemblyman Segerblom:**
Someone has to actually perform the ceremony, correct?

**Margaret Flint:**
Yes, and at this point, according to statute, it has to be an ordained minister, although ordained ministers are licensed to perform civil ceremonies.

**Chairman Anderson:**
Ms. Parraguirre, Mr. Lichtenstein raised an interesting question, so I would like to ask what kind of accommodations are made for groups whose religious practice is not done in a traditional building?

**Shirley Parraguirre:**
The Clark County Clerk's Office did issue a license for a Wiccan group. We made special provisions within the office. We know that they do not have a building. There are also a couple of ministers in Clark County who minister to the homeless and, therefore, do not have a building. But if their paperwork shows that they have been ordained and have been licensed, and it is what they have done in the past, we grant the licenses.

**Assemblyman Segerblom:**
My father was a justice of the peace, and I was a witness at a lot of weddings, so that is why I am so interested in the topic. Is there some reason why we could not have some kind of a special notary, who wants to perform marriages, they register with the Secretary of State, county clerks have access to them online, and they would be treated just like a minister?

**Shirley Parraguirre:**
I totally agree with the Secretary of State on this issue. We currently have about 2,500 ministers in Clark County. I realize that time involved probably should not be a consideration, but I cannot tell you how much time we spend trying to monitor those 2,500 ministers. We have to call some of them in and revoke them because they are forging signatures and listing witnesses, when there were no witnesses. I have revoked a number of ministers for those reasons. We send hundreds and hundreds of letters to ministers telling them that we have heard from couples, for whom they had performed the marriage six months ago, and they cannot get medical benefits, driver's licenses changed, et cetera, because the certificates are not timely recorded.

I was amazed by the number of notaries mentioned by Ms. Ethridge. If we were to open this to notaries, I can envision any number who want to make a few extra dollars by opening an office, putting out a sign, and adding to our problems.

There are already civil marriage commissioners in the two large counties, and anyone who is absolutely stuck on wanting nothing but a civil marriage can go to any of the judges, or a civil marriage commissioner, or a wedding chapel and have a civil ceremony. For the wedding chapels the main issue is the title of minister on the certificate, so we came up with the title of wedding officiant, removing any religious connotation.

As I said before, I oppose notaries being allowed to conduct weddings; I can see hundreds coming forward.

**Chairman Anderson:**
I will close the hearing on S.B. 130 (1st Reprint). I will open the hearing on Senate Bill 313 (1st Reprint).

**Senate Bill 313 (1st Reprint): Revises provisions relating to guardianships. (BDR 13-182)**

**Lora Myles, Attorney, RSVP Carson and Rural Elder Law Program, Reno, Nevada:**
I was selected by the Nevada Guardianship Association and various other members of the guardianship community to assist in drafting S.B. 313 (R1). This bill also contains the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Uniform Act), commonly known as the granny kidnapping law, formerly known as the Uniform Jurisdictional Proceedings and Adult Incapacity Cases law.

This Uniform Act is especially important to Nevada at this point in time. We have a lot of guardianship cases that are cross-border, particularly between California and Nevada. We recently have had several cases involving kidnapping of wards and taking them to another state by abusive parties who intend to obtain control of the ward and the ward's assets in the other state.

Nevada already has some provisions in *Nevada Revised Statutes* Chapter 159 regarding jurisdiction, but this bill enhances and amends some of those provisions to conform to the Uniform Act. In particular the Uniform Act defines "home state," "state of jurisdiction," and "state of venue" in a guardianship matter.

The provisions also allow our courts to discuss these matters with other courts in other states to determine, if the ward has property in California but resides in Nevada, for example; which state has jurisdiction over which provisions of the guardianship or which state has more right to be the court of record for the guardianship.

The bill also provides for the transfer of guardianship proceedings from another state to Nevada. We have a lot of wards moving in to Nevada from other states. Families retire and bring their parents or disabled children, who are under guardianship, to Nevada, but then they get letters from courts in the state of previous residence asking what is going on and why they have not filed their accounting. This bill allows them to transfer those guardianships, or

conservatorships as they are known in some states, to Nevada without any penalties.

The Uniform Act is supported by the National Guardianship Association, the Nevada Guardianship Association, and various guardians and attorneys who handle guardianships throughout the state.

The next provisions of the bill are driven by a case in the federal court in Washoe County, to declare a portion of Nevada's guardianship statutes unconstitutional. A determination was made that many guardianships did not provide the necessary documentation to prove that the ward requires a guardianship. In fact, Judge David Hardy of Washoe County did a survey of guardianships in the county and found that a large percentage of them never provided any proof to the court of a need for guardianship. This is detrimental to seniors or young adults who do not need a guardianship, but because of the process, they oftentimes do not have a say until a temporary guardian has already been appointed and the process for appointment of a permanent guardian is under way. The provisions under sections 29, 32, 33, and 34 indicate what information should be provided to the court in the petitions defining the need for a guardianship, whether the ward is able to reside independently, or has been abused or exploited, or if an elder or child abuse case has been brought on behalf of the ward.

In section 34 we have made specific restrictions on what a temporary guardian can do with the finances of the ward and what kind of access he can have to the ward's accounts and assets. It also allows the court to freeze accounts, if necessary, especially in the case of exploitation where there may be a third party on the ward's account who is abusing the ward. Banks usually will not freeze those accounts on the word of the guardian because the third party is a cosigner on the accounts, but the court would then have the ability to freeze the accounts to prevent any further exploitation of the ward.

Other provisions in the bill raise the summary guardianship level. Currently, if the ward has less than $5,000 in assets, there does not have to be annual accounting of the guardianship. Asset levels have changed, inflation happens, so we are asking that the level be raised to $10,000: if the ward has less than $10,000 in assets there does not have to be an annual accounting. There is still a requirement of an annual report to the court, but there does not have to be a formal accounting with hearings.

We also bring in language for the Health Insurance Portability and Accountability Act (HIPAA) stating that a guardian is a personal representative as defined under HIPAA so the guardian has full access to any medical information of the

ward. We are also requesting that the burial fund allowed to be set aside for the ward be increased to $3,000 from $1,500. When that provision was originally added to the statute it cost less than $700 to have a cremation; now cremations run between $1,200 and $1,500. The burial fund is an exempt asset under Medicaid rules, so it cannot be used to determine whether the ward is eligible for Medicaid.

We also have provisions in the bill which allow for sale of the property of the ward via the Internet. It describes the notices required if the assets are being sold over the Internet and allows the guardian to list assets on eBay or any other auction website. In today's world, selling certain assets seems to be the best way to get money for the ward.

One issue that has come up recently is jury duty. We have guardians who have caseloads, especially in the public guardian's office, of more than 30 wards. We are asking that guardians who have three or more wards be exempt from jury duty. We had a recent incident where the judge was not going to release the public guardian from jury duty, and it was a trial where the jury would have been sequestered for two weeks. This would have created a great deal of hardship, not just on the guardian but on the wards as well, because he would have been unavailable to care for them.

Section 55 is in response to some problems we have had with banks, where they have been placing certain accounts into unclaimed property as abandoned accounts. Oftentimes accounts for guardianships are not accessed on a regular basis; there may not be transactions for six months or more. The banks will then place those accounts into abandoned property and send them to the Office of the State Treasurer. We are asking that accounts specifically set up through a guardianship; accounts blocked by a court; trust accounts that are set up to address a special need, known as special need trust account; qualified income trust accounts; trust accounts established for tuition purposes; trust accounts established on behalf of a client, which would be a lawyer's trust account; and accounts established to meet the costs of burial, not be considered abandoned regardless of months or years of nonuse.

This bill also addresses issues with mental health agencies. When a ward is placed in a mental health facility, like Lake's Crossing Center, they often do not notify the guardian nor do they consult him when the ward is released, which oftentimes is back on the street or to a halfway house. We have had wards released by mental health facilities and it took several days for the guardian to find the ward. We are asking that the provisions under NRS Chapter 433A be changed so that mental health providers must notify the guardian of all actions

relating to his ward and must work with the guardian in regard to placement of the ward when he is released from a mental health facility.

These provisions are based on real life situations. We have been working on the bill for more than two years. We have a lot of support from attorneys, guardians, and guardianship associations.

**Assemblyman Segerblom:**
Has California adopted the Uniform Act?

**Lora Myles:**
I do not know if California has. The National Guardianship Association is making a huge push to have the Act adopted by every state in the union.

If I may, I would like to have Ginny Casazza answer that.

**Ginny Casazza, Reno, Nevada, Director, National Guardianship Association:**
As of yesterday, the status of the Uniform Act is that 7 states have passed it, 17 states have introduced the bill and it is pending, and 6 states plan to introduce the bill this year.

California is not one of those states that have introduced the bill. Our Association has not been told whether California plans to introduce the bill this year or in the near future.

**Assemblyman Segerblom:**
I do not think this law would have any impact here until California passes the law too. I do think it is important because there are a lot of cases where wards are stolen and taken to another state, and then the original guardian has to find another guardian in the new state. That part of the bill would really be beneficial.

**Ginny Casazza:**
We have had interstate issues for guardianships with several states that border Nevada. Utah and Montana have passed the Uniform Act. Oregon and Washington are working on it. I have been informed by the National Guardianship Association board members that there are several states waiting for other states to pass this Act. That is one of the problems with the Uniform Act: it is only effective if it is passed by the majority of the states.

I would really like to see Nevada be one of the states that passes it quickly and paves the way for other states, rather than be one of the states that waits.

**Assemblyman Carpenter:**
Did I understand that this act would not become effective until a majority of the states passed it?

**Ginny Casazza:**
No, the Act is more effective as more states pass it. If Nevada passes the Act, it will have a tremendous affect on people moving into the state. For example, someone from California who is currently under guardianship wants to move to Nevada to be near family. The Act, if passed, would create a situation where Nevada would have a mechanism to honor and respect the California guardianship orders without that guardian and ward having to go through the proceedings starting from scratch and incurring the great cost. It would save money, and proceedings can be very distressing to wards because they are not a friendly process. Whenever we can streamline the process, while protecting the rights of the wards, it is a good thing.

**Chairman Anderson:**
Is S.B. 313 (R1) the Uniform Act, or have you added provisions to make it more suitable for Nevada?

**Lora Myles:**
We have modified it to make it more suitable for Nevada. We conformed the Act to current Nevada law where applicable.

**Chairman Anderson:**
Sections 53 and 54 add the exception to serving on juries. We have dealt with that issue in this Committee before. Chief Justice Rose removed a whole group of people because of the nature of their employment, and he was adamant about it not happening again.

What makes guardians so unique that they and they alone, compared to other groups who are in a similar situation like caregivers, should be automatically excluded because of the nature of their employment?

**Lora Myles:**
A guardian is appointed by the court. It is not something they voluntarily do; it is something they are appointed to do. In many cases, if they are serving even as a family guardian, they may have guardianship of three or more children or the parents and a child. The guardian is literally responsible in every way, shape, and form for that ward's care. The ward has no say about his care anymore. It is the guardian who steps into the ward's shoes and makes all determinations regarding the ward's care. To take that guardian away and make him unavailable in an emergency or other situation, especially if he is

caring for three or more wards, such as a public guardian who may have 30 or more wards for whom he is responsible, creates a severe hardship, not only on the guardian but also on his wards.

The bill provides that if one is responsible for three or more wards, he would be exempted from jury duty. We realize this is a hot issue, but it is a situation that does create a real problem for the wards and the guardians.

**Chairman Anderson:**
How many times has this problem occurred?

**Lora Myles:**
We have had one judge who said he would never exempt a guardian from jury duty and we have had other issues where, particularly in the rural counties, the guardian does not have someone readily available to step in to take over his duties.

**Chairman Anderson:**
I guess it is not any different than any other caregivers, so that is why I am trying to figure out what makes guardians different.

**Lora Myles:**
An individual who is a caregiver, say, for his parent or disabled child, can be exempted from jury duty by stating that they have medical issues that cannot be avoided. That does not necessarily apply to a public guardian, or a professional or family guardian, especially if the individuals are in a care facility. For a guardian, who is responsible for three or more individuals, to have to ask for an exemption, each time, creates a different situation.

If the Committee has problems with those two provisions, we realize they are difficult provisions, we would be happy to accept passage of S.B. 313 (R1) without sections 53 and 54.

**Assemblyman Carpenter:**
My question is about section 50 which states "A guardian may sell perishable property and other personal property of the ward without notice...," and you have added "is less than $10,000 net value after deduction of all liens against the property." It seems that this could open the door to a lot of misappropriation.

**Lora Myles:**
That is particularly important in the rural counties, where often there are, for example, individuals who are living in single-wide mobile homes in mobile home

parks, and the home is definitely worth less than $10,000. If the ward is incurring fees to the park for space rent or the home is on a piece of land where they are not actually paying rent, but the home needs to be removed, it creates difficulties.

While $10,000 seems like a lot of money, it is not. The provision would not apply to real property; there are other provisions for that. This provision applies to things like cars or mobile homes that are depreciating or are low in value. Oftentimes the ward owns a car where the loan is $10,000 and the car is worth $12,000. This provision would allow us to sell that car without having to go through the entire process of notices and court hearings.

**Assemblyman Carpenter:**
I thought that section 50, subsection 1, paragraph (b) covered everything you were talking about.

**Lora Myles:**
It does not always cover a mobile home that may be sitting out on a parcel, is low in value, and needs to be removed. We see the kind of situations where a relative may own the property or the individual has been allowed to live on the property by the property owner. We have also encountered mobile homes parked on Bureau of Land Management (BLM) land, where the owner has been residing on BLM land without authorization, and we need to remove the mobile home. It is usually a single-wide mobile home or a trailer.

**Assemblyman Carpenter:**
I do not agree with that part.

**Assemblyman Hambrick:**
In my past experience, I have seen fiduciary fraud. I would like to see an executor overseeing some of the decisions of the guardian because I have seen misappropriation. We need to make sure the ward is safeguarded. Have you considered making sure that the guardians or the fiduciaries are on the straight and narrow?

**Lora Myles:**
The guardian is always accountable to the court. The court has oversight of all of the guardian's actions, and even if the property is valued at less than $10,000 and the guardian disposes of it without notice or court confirmation, he still has to account for it in an accounting required by the court. He still has to notify the court that he sold the property. The exception of no confirmation just means there will not be a court hearing on the sale of the property, but the

guardian is always accountable to the court, and the judge always has the right to request a full accounting at any time, not just annually.

**Chairman Anderson:**
Would you please explain sections 37 and 38 where you are increasing the threshold value of the ward's estate from $5,000 to $10,000 and giving the guardian the authority to manage the ward's estate? Why would you not want the lower threshold?

**Lora Myles:**
Ten thousand dollars will not pay for more than one month in a nursing home and that is our measure. If the assets would be gone in one month of paying for a nursing home, then a summary administration without any further court hearings would seem to be more sensible. The guardian would be using that money for the ward's care rather than continued attorney's fees and court hearings. It does not mean the guardian does not have to account to the court—he must still report to the court on an annual basis—it simply means there is no further hearing on those reports or accountings to the courts.

**Barry Gold, Las Vegas, Nevada, Director, Government Relations, AARP of Nevada:**
[Read from prepared statement, (Exhibit E).]

**Susan Swenson, Carson City, Nevada, Carson City Public Guardian:**
I support this bill.

**Kathleen Buchanan, Las Vegas, Nevada, Clark County Public Guardian:**
I support the bill.

**Chairman Anderson:**
Is there any opposition to S. B. 313 (R1)? [There was none.] Neutral? [There was none.] I will close the hearing on S.B. 313 (R1) and open the hearing on Senate Bill 314 (1st Reprint).

**Senate Bill 314 (1st Reprint): Adopts the Uniform Power of Attorney Act. (BDR 13-183)**

**Lora Myles, Attorney for RSVP Carson and Rural Elder (CARE) Law Program, Reno, Nevada:**
My group got together with Ms. Ramm from the Office of Specialist for the Rights of Elderly Persons of the Aging Services Division concerning issues we were having with prosecuting people who were committing elder abuse under powers of attorney.

We discussed this matter quite extensively with various members of the bar, judges, and other parties involved, and from these discussions we found out there was a Uniform Power of Attorney Act (Uniform Act). Currently Nevada's law regarding powers of attorney for financial matters is under *Nevada Revised Statutes* (NRS) Chapter 111, which is the real property statute. It is composed of three small clauses, has a very limited scope, and has no teeth. The current health care power of attorney statute is NRS Chapter 449, which deals with hospitals.

In looking at adopting the Uniform Act for finances, we decided the best thing to do would be to create a new chapter under title 13 and pull all of the powers of attorney in under the same chapter. The Uniform Act is a vast expansion of what we currently have. Part of the problem with our current statutes on powers of attorney result from their being located under the real property provisions. Therefore banks and other financial institutions have refused to accept Nevada's financial powers of attorney, saying there is no jurisdiction because financial powers of attorney only apply to real property. This creates a severe hardship on seniors, in particular, who have executed a power of attorney in advance of becoming incapacitated. After they are incapacitated, if the bank refuses to accept the power of attorney, there then has to be a guardianship.

The Uniform Act financial power of attorney provisions apply to all assets or businesses of the principal, defines when powers of attorney terminate, and creates standards for agents acting under a power of attorney. The Act defines who can request an accounting from a power of attorney agent and defines whether a court can get involved if the agent misuses the power of attorney. It clearly defines the risk of third parties accepting a power of attorney and how a third party can determine the validity of a power of attorney. It defines the use of the power of attorney regarding government benefits, and it creates a statutory form.

The bill was amended in the Senate with provisions requested by the Nevada Bankers Association.

The health care provisions of the bill have very few changes. We lifted the health care power of attorney and declaration to physicians directly out of NRS Chapter 449 and put them in this new chapter for powers of attorney. In the health care power of attorney language we removed the term "attorney in fact." It is very confusing to seniors. I have seniors who come in all of the time and execute a power of attorney. They read the term "attorney in fact" and look at me and say, "You are my attorney; you are going to handle

everything." I have to say, "No, I am your attorney; I am not your attorney in fact." We have replaced the term with the word "agent."

We also included language stating that anyone who is acting under a health care power of attorney is a personal representative for HIPAA and a provision that allows the agent to get copies of medical records for the principal.

One provision in particular that we added to the healthcare power of attorney is to prohibit the power of attorney agent from binding the principal to an arbitration clause regarding nursing homes. This is something that is litigated quite frequently: a person is placed in a nursing home, and he or his power of attorney agent signs an agreement stating that, if there are any problems with the nursing home, he must go to arbitration. If the individual is abused in the nursing home or there is malpractice in the nursing home, arbitration limits the resolution of a damage claim by the individual.

There is no change in the healthcare power of attorney to the end-of-life provisions regarding terminal illness.

We provided that if the principal is in a health care facility and has executed a power of attorney, there must be certification from a physician that the principal is competent to execute a power of attorney. There has to be a letter of competency saying the person has the capacity to execute the power of attorney. This is to avoid elder exploitation.

We did tailor the Uniform Act to Nevada. We worked with Eric Fish, Legislative Counsel for the American Bar Association (ABA) Uniform Law Commission, and the Nevada variations were approved by the ABA Commission. Senator Care was also involved in going through this bill, insuring that it complied with Nevada statutes and worked for Nevada as well as the Uniform Act.

**Assemblyman Segerblom:**
Are the current powers of attorney still valid or would they have to be revised?

**Lora Myles:**
The current powers of attorney are accepted. We added a provision, essentially a grandfather clause, which says that current powers of attorney are still valid if they were valid to begin with. We also added a provision that validly-executed powers of attorney from other states are also valid in Nevada.

**Barry Gold, Las Vegas, Nevada, Director, Government Relations, AARP of Nevada:**
[Read from prepared statement, (Exhibit F).]

**Assemblyman Mortenson:**
Are you saying that we still have a long way to go, that there are insufficient consumer protections and we need to improve them, or are you saying this bill is adequate and we are doing a good job?

**Barry Gold:**
I think S.B. 314 (R1) will take care of the problems that currently exist with powers of attorney, and it will give the sufficient protections we need.

**Chairman Anderson:**
We need to include Ms. Myles' handout. (Exhibit G)

**Lora Myles:**
That document was sent to me by Eric Fish with the ABA Commission to present to the Committees.

**Chairman Anderson:**
Is there any opposition to S.B. 314 (R1)? [There were none.] Neutral? [There were none.] I will close the hearing on S.B. 314 (R1).

The Chair will entertain a motion on S.B. 314 (R1).

> ASSEMBLYMAN MORTENSON MOVED TO DO PASS SENATE BILL 314 (1st REPRINT).
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN HORNE WAS ABSENT FOR THE VOTE.)

[Reviewed Committee business.]

We are adjourned [at 10:13 a.m.].

RESPECTFULLY SUBMITTED:

_____
Emilie Reafs
Committee Secretary

_____
Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

## EXHIBITS

**Committee Name: Committee on Judiciary**

**Date: April 29, 2009** **Time of Meeting: 8:28 a.m.**

| Bill | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| S.B 130 (R1) | C | Shirley Parraguirre, Clark County Clerk | Prepared Statement |
| S.B. 130 (R1) | D | Allen Lichtenstein, ACLU of Nevada | Proposed Amendment |
| S.B. 313 (R1) | E | Barry Gold, AARP of Nevada | Prepared Statement |
| S.B. 314 (R1) | F | Barry Gold, AARP of Nevada | Prepared Statement, supporting documents |
| S.B. 314 (R1) | G | Lora Myles, RSVP of Nevada | Handout from Eric Fish, ABA Uniform Law Commission |